



1 pandemic’s disruption of the credit market, Big Rivers may need to delay the  
2 issuance of the new bonds in order to maximize the interest rate savings from the  
3 new issuance, as Big Rivers previously advised the Commission may be necessary.<sup>2</sup>  
4 Other than the potential use of a temporary bridge loan, more fully discussed below,  
5 the 2020 Big Rivers Project substantially mirrors the Commission-approved 2010  
6 Big Rivers Project. This is illustrated more fully by Exhibit 2 to this Application,  
7 which includes redline copies of the relevant agreements tracking the changes  
8 between the 2010 agreements and the proposed 2020 agreements. In support of its  
9 Application, Big Rivers states as follows:

10 HISTORY

11 3. When it constructed the D.B. Wilson Generating Station in the early  
12 1980s, Big Rivers financed the pollution control facilities at the facility, in part,  
13 with the proceeds from two issues of pollution control bonds issued by the County  
14 for the benefit of Big Rivers. Those issues were (i) the \$58,800,000 Pollution  
15 Control Floating Rate Demand Bonds, Series 1983 (the “1983 Bonds”),<sup>3</sup> and (ii) the  
16 \$83,300,000 Variable Rate Demand Pollution Control Refunding Bonds, Series 1985

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<sup>2</sup> See *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*, Application, P.S.C. Case No. 2020-00129, at 4. “In the event that circumstances warrant delaying issuance of the new bonds, Big Rivers would utilize the funds available under its revolving credit facility by the Commission in Case No. 2020-00129 to redeem the 2010A Bonds and act as a temporary bridge loan until the new bonds are issued. This will allow Big Rivers to immediately begin receiving the benefit of the lower interest rate under the revolving credit facility. Big Rivers’ bond counsel advises that this temporary bridge will not affect the tax exemptions applicable to the new bonds.”

<sup>3</sup> See *In the Matter of: Application of Big Rivers Electric Corporation*, Order, P.S.C. Case No. 7990 (Oct. 6, 1982).

1 (Big Rivers Electric Corporation Project) (the “1985 Bonds”).<sup>4</sup> Big Rivers refunded  
2 the 1983 Bonds by purchase in May 2013. The entire outstanding principal amount  
3 of the 1985 Bonds was refunded by redemption in 2001 through the issuance by the  
4 County of Pollution Control Refunding Revenue Bonds, Series 2001A (the “2001A  
5 Bonds”).<sup>5</sup> The entire outstanding principal amount of the 2001A Bonds was then  
6 refunded by redemption in 2010 through the issuance by the County of the 2010A  
7 Bonds.<sup>6</sup>

8 4. The fixed interest rate on the 2010A Bonds is six percent (6%), and  
9 these bonds have a final maturity date of July 15, 2031. The 2010A Bonds are  
10 subject to an optional redemption call after 10 years, allowing Big Rivers to call the  
11 2010A Bonds beginning July 15, 2020. The County has approved the issuance of  
12 the 2020 Bonds at Big Rivers’ request to redeem the existing 2010A Bonds.

13 PROPOSED EVIDENCES OF INDEBTEDNESS

14 5. Big Rivers now proposes to refund the 2010A Bonds through Ohio  
15 County’s issuance of 2020 Bonds. The 2010A Bonds will be called for redemption on  
16 or about July 15, 2020; either the proceeds of the 2020 Bonds or funds available

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<sup>4</sup> See *In the Matter of: Application of Big Rivers Electric Corporation to Amend the Order Issued November 13, 1980, Case No. 7990, By Authorizing Big Rivers Electric Corporation’s Borrowing of Proceeds of up to \$83,300,000 Count of Ohio, Kentucky Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 (Big Rivers Electric Corporation Project), and Execution of Documents Evidencing Such Debt*, Order, P.S.C. Case No. 9448 (Oct. 29, 1985).

<sup>5</sup> See *In the Matter of: Big Rivers Electric Corporation’s Application for Approval to Amend and Issue Evidence of Indebtedness*, P.S.C. Case No. 2001-102.

<sup>6</sup> See, *In the Mater of: Application of Big Rivers Electric Corporation for Approval of Issue of Evidence of Indebtedness*, P.S.C. Case No. 2009-00441

1 under Big Rivers' revolving credit agreement<sup>7</sup> will be used to pay off the principal of  
2 the 2010A bonds due on the redemption date; and certain funds of Big Rivers will be  
3 used to pay the interest due on the 2010A Bonds through the redemption date. If  
4 Big Rivers' revolving credit agreement is used as a temporary bridge loan to redeem  
5 the 2010A Bonds prior to the issuance of the 2020 Bonds, then once the 2020 Bonds  
6 are issued, Big Rivers would use their proceeds to repay the principal amount  
7 borrowed under the revolving credit facility. Big Rivers estimates that the  
8 applicable interest rate for a three-month LIBO loan under its revolving credit  
9 facility would be approximately 2.0% (based on the current three-month U.S. dollar  
10 LIBO rate of 0.35%, as of May 31, 2020, plus the applicable LIBO margin of 1.65%  
11 per the terms of Big Rivers' revolving credit agreement). Based on the difference  
12 between the estimated interest rate of 2.0% that would apply to a three-month  
13 LIBO loan under Big Rivers' revolving credit facility, and the 6.0% interest rate  
14 applicable to the 2010A Bonds, Big Rivers would recognize approximately \$833,000  
15 of interest savings over the three-month term of the bridge loan.

16         6.         The up-front cost to Big Rivers in connection with the refunding of the  
17 2010A Bonds and the issuance of the 2020 Bonds is estimated to be \$1.3 million.  
18 Big Rivers will use its internal funds to pay the up-front cost of the refunding of the  
19 existing bonds and the issuance of the new bonds, and to pay any interest and fees  
20 resulting from the use of the revolving credit facility.

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<sup>7</sup> See *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*, Application, K.P.S.C. Case No. 2020-00129, at 4.

1           7.     In connection with the foregoing, Big Rivers seeks to issue the  
2 following evidences of indebtedness:

3           a.     Big Rivers proposes to issue the 2020 Bonds Loan Agreement  
4                 between the County and Big Rivers, pursuant to which (1) the  
5                 County will loan Big Rivers the entire principal amount of the 2020  
6                 Bonds in order to pay the principal amount of the 2010A Bonds due  
7                 on the redemption date or to pay the principal amount due under  
8                 the temporary bridge loan, and (2) Big Rivers will repay such loan  
9                 by paying all debt service on the 2020 Bonds to maturity. The 2020  
10                Bonds Loan Agreement provides for a maturity date for the 2020  
11                Bonds of no later than August 31, 2031, which is the end of the  
12                maximum useful life of the pollution control facilities according to  
13                an engineering estimate made in connection with the issuance of  
14                the 2001A Bonds. The interest rate on the 2020 Bonds will be fixed  
15                to maturity at the time the 2020 Bonds are sold. Since the current  
16                market provides better pricing with a premium coupon structure,  
17                approximately \$83.3 million of bond proceeds are expected to be  
18                derived from a lower par amount (e.g., \$75 million) with the  
19                remainder comprised of original issue premium. The underwriter  
20                for the 2020 Bonds, BofA Securities, Inc. (“*BofA*”) currently  
21                estimates (based on a maturity date of August 31, 2031, Big Rivers’  
22                current credit ratings, and market conditions existing at the time

1 such estimates were provided) that the coupon rate on the 2020  
2 Bonds would be 5% with a yield to investors in the range of 3.75 %  
3 to 4.25% per annum. A copy of the 2020 Bonds Loan Agreement is  
4 attached as Exhibit 3.

5 b. In order to evidence Big Rivers' obligation to repay the loan made  
6 by the County under the 2020 Bonds Loan Agreement, Big Rivers  
7 will issue its Tenth Supplemental First Mortgage Note, Series 2020  
8 (the "*2020 Bonds Note*") in the name of the trustee for the 2020  
9 Bonds, U.S. Bank National Association (the "*2020 Bond Trustee*"),  
10 in an amount up to the aggregate principal amount of the 2020  
11 Bonds: \$83.3 million.<sup>8</sup> The 2020 Bonds Note will have a maturity  
12 date, interest rate, and terms which will match those of the 2020  
13 Bonds, and payments thereon will be used to pay all debt service on  
14 the 2020 Bonds. A copy of the 2020 Bonds Note is attached as  
15 Exhibit 4.

16 c. The 2020 Bonds Note will be issued pursuant to and secured under  
17 the Tenth Supplemental Indenture (the "*Supplemental Indenture*")  
18 to Big Rivers' existing Indenture dated as of July 1, 2009 (the  
19 "*Indenture*"), between Big Rivers and U.S. Bank National

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<sup>8</sup> Per Paragraph 7a, this amount is likely to be lower than \$83.3 million as a 5% coupon rate would result in a premium being paid (e.g. \$75 million loan plus investor premium paid will result in approximately \$83.3 million actually collected).

1 Association, as trustee (the “*Indenture Trustee*”).<sup>9</sup> A copy of the  
2 Tenth Supplemental Indenture is attached as Exhibit 5.

- 3 d. Big Rivers further proposes to enter into the “*Continuing Disclosure*  
4 *Agreement*” between Big Rivers and the 2020 Bond Trustee, which  
5 provides that Big Rivers will undertake to provide certain periodic  
6 and material information for use by the holders of the 2020 Bonds,  
7 and in the secondary bond market. A copy of the Continuing  
8 Disclosure Agreement is attached as Exhibit 6 to this Application.
- 9 e. Big Rivers further proposes to deliver to BofA a “*Letter of*  
10 *Representations*,” a copy of which is attached as Exhibit 7 to this  
11 Application. In the Letter of Representations, Big Rivers will agree  
12 to pay certain costs and expenses in connection with the issuance of  
13 the 2020 Bonds, and will agree to indemnify BofA for losses in  
14 connection with certain matters under the Securities Act of 1933, as  
15 amended.

16 OTHER DOCUMENTS FILED FOR INFORMATION PURPOSES

17 8. Other agreements will be entered into in connection with the issuance  
18 of the 2020 Bonds. While these agreements are not evidences of indebtedness of Big

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<sup>9</sup> A copy of the Indenture is attached as Exhibit 7 to the Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness, P.S.C. Case No. 2009-00441.

1 Rivers, and do not require approval of the Commission, the documents listed below  
2 are provided for informational purposes:

- 3 a. The County and the 2020 Bond Trustee will enter into the Trust  
4 Indenture (the “*Trust Indenture*”), attached as Exhibit 8 to this  
5 Application, which sets forth the terms and conditions of the 2020  
6 Bonds. Big Rivers is not a party to this document.
- 7 b. BofA and the County will enter into the “*Bond Purchase Contract*,”  
8 pursuant to which BofA agrees to buy the 2020 Bonds from the  
9 County. The Letter of Representation, for which Commission  
10 approval is sought, is Appendix A to the Bond Purchase Contract.  
11 A copy of the Bond Purchase Contract is attached as Exhibit 9 to  
12 this Application.

13 9. Additionally, because the proceeds of the new bonds will be used to  
14 refund the note that accompanied the 2010A Bond issuance (the “*2010A Note*”), a  
15 copy of the note showing the date, amount, and payee is attached as Exhibit 10 to  
16 this Application. The maturity date of the 2010A Note and the interest rate on the  
17 note are the same as for the 2010A Bonds.

18 THE COMMISSION SHOULD AUTHORIZE THE ISSUANCE OF THE  
19 PROPOSED EVIDENCES OF INDEBTEDNESS

20 10. As noted above, BofA currently estimates that the coupon rate on the  
21 2020 Bonds will be 5% with a yield to investors in the range of 3.75% to 4.25% per



1 annum. This will result in annual interest expense savings of approximately \$1.5 to  
2 \$1.9 million.

3 11. Additionally, as more fully explained in Big Rivers' application in Case  
4 No. 2020-00064, Big Rivers is diligently pursuing regaining its investment grade  
5 credit rating. If Big Rivers is successful in this effort prior to the issuance of the  
6 new bonds, BofA estimates that the yield to investors on the 2020 Bonds will be in  
7 the range of 3.25% to 3.75% per annum, which would result in an additional annual  
8 interest expense savings of approximately \$0.4 million.

9 12. These savings will benefit not only Big Rivers, but also its Members  
10 and their retail member-customers. These savings will build Member equity and  
11 reduce future needs to increase rates. Additionally, to the extent Big Rivers  
12 achieves the TIER threshold in its current MRSM tariff, the savings will be used to  
13 reduce the regulatory asset balances that have accumulated and which otherwise  
14 would need to be paid for through rates or Member equity, and if the Commission  
15 approves the changes to the MRSM tariff Big Rivers proposed in Case No. 2020-  
16 00064, half of the savings will be passed through to the Members and their retail  
17 member-customers as a bill credit. For these reasons, Big Rivers requests that the  
18 Commission authorize the proposed evidences of indebtedness.

19 REQUEST FOR AUTHORITY TO MAKE CHANGES TO THE PROPOSED  
20 EVIDENCES OF INDEBTEDNESS

21 13. Big Rivers additionally requests the authority to make certain changes  
22 to the proposed evidences of indebtedness.

1           14.    First, as discussed above, Big Rivers appreciates the flexibility to use  
2 its existing revolving credit facility as a temporary bridge loan to maximize the  
3 savings available from the redemption of the existing bonds. Big Rivers will make  
4 this determination close in time to the redemption of the existing bonds, and  
5 therefor requests approval to revise the proposed evidences of indebtedness to  
6 incorporate the use of the revolving credit facility, if necessary.

7           15.    Second, under the proposed transaction documents, specifically within  
8 the Trust Indenture, Big Rivers will make semi-annual interest payments, but the  
9 principal will be paid in a single bullet payment at maturity. Big Rivers is  
10 investigating the possibility of instead structuring the 2020 Bonds with amortizing  
11 principal payments. Big Rivers would do so if that structure will produce greater  
12 benefits than the bullet payment structure. Big Rivers would need to make this  
13 decision close in time to the issuance of the new bonds based on whether it appears  
14 at that time it will produce greater interest rate savings, and Big Rivers requests  
15 the flexibility to incorporate amortizing principal payments into the proposed  
16 evidences of indebtedness should it appear at the time of issuance of the new bonds  
17 that an amortizing structure will provide greater savings.

18           16.    Finally, except for the two options discussed in the previous two  
19 paragraphs, the proposed evidences of indebtedness are in substantially complete  
20 form. Big Rivers does not expect substantial changes in the forms of documents  
21 submitted, but certain schedules and exhibits will be completed immediately before  
22 closing and the parties may request non-material language changes. Big Rivers will

1 file copies of the executed documents with the Commission, if the Commission so  
2 desires.

3 TIMELINE

4 17. To maximize the savings from lower interest rates, Big Rivers most  
5 likely will call the 2010A Series bonds on or about July 15, 2020, using funds  
6 available under its revolving credit agreement. Issuance of the 2020 Bonds will  
7 require a clean opinion from Big Rivers' outside counsel, and Big Rivers' outside  
8 counsel requires a final, non-appealable Order from the Commission in order to  
9 issue a clean opinion, which we will not have until after July 15, 2020. This  
10 flexibility not only allows Big Rivers to begin saving potentially before having a  
11 non-appealable Order, but also allows Big Rivers additional time to achieve the  
12 most favorable interest rates.

13 COMPLIANCE WITH FILING REQUIREMENTS

14 18. A table of each statutory and regulatory requirement for this filing,  
15 cross-referenced to the location in this Application where that requirement is  
16 satisfied, is attached hereto as Exhibit 11.

17 19. Big Rivers is a rural electric generating and transmission cooperative  
18 corporation that was incorporated in the Commonwealth of Kentucky under KRS  
19 Chapter 279 on June 14, 1961, and attests that it is in good standing. Its mailing  
20 address is P.O. Box 24, Henderson, Kentucky, 42419-0024; its street address is 201  
21 Third Street, Henderson, Kentucky 42420; and its electronic mail address is  
22 [regulatory@bigrivers.com](mailto:regulatory@bigrivers.com).

1           20.    Big Rivers owns electric generation and transmission facilities, and  
2 purchases, transmits, and sells electricity at wholesale. Big Rivers exists for the  
3 principal purpose of providing the wholesale electricity requirements of its three  
4 distribution cooperative members (the “Members”): Jackson Purchase Energy  
5 Corporation, Kenergy Corp., and Meade County Rural Electric Cooperative  
6 Corporation. The Members in turn provide retail electric service to approximately  
7 118,000 consumer/members located in 22 Western Kentucky counties: Ballard,  
8 Breckenridge, Caldwell, Carlisle, Crittenden, Daviess, Graves, Grayson, Hancock,  
9 Hardin, Henderson, Hopkins, Livingston, Lyon, Marshall, McCracken, Mclean,  
10 Meade, Muhlenberg, Ohio, Union, and Webster.

11           21.    The relief sought by Big Rivers in this Application is authorized by  
12 KRS 278.300, and related sections, and 807 KAR 5:001 Section 18, and related  
13 sections.22. A general description of Big Rivers’ property and the field of its  
14 operation, together with a statement of the original cost of the same and the cost to  
15 Big Rivers, are attached as Exhibit 12.

16           22.    Big Rivers will issue no stock or bonds in connection with the issuances  
17 of indebtedness described in this Application.

18           23.    None of the proceeds from the issuances of evidence of indebtedness  
19 will be used to acquire property, construct, complete, extend, or improve facilities,  
20 or improve or maintain service; and Big Rivers has not entered into any contracts  
21 for the acquisition, construction, extension or improvement of property or facilities.

22           24.    A financial exhibit is attached hereto as Exhibit 13.



**BIG RIVERS ELECTRIC CORPORATION**  
**ELECTRONIC APPLICATION OF**  
**BIG RIVERS ELECTRIC CORPORATION**  
**FOR APPROVAL TO ISSUE EVIDENCES OF INDEBTEDNESS**  
**CASE NO. 2020-00153**

**VERIFICATION**

1  
2  
3 I, Paul G. Smith, Chief Financial Officer for Big Rivers Electric Corporation,  
4 hereby state that I have read the foregoing Application and that the statements  
5 contained therein are true and correct to the best of my knowledge and belief, on this  
6 the 17<sup>th</sup> day of June, 2020.  
7  
8

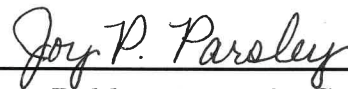


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Paul G. Smith  
Chief Financial Officer  
Big Rivers Electric Corporation

9  
10  
11 COMMONWEALTH OF KENTUCKY )  
12 COUNTY OF HENDERSON )  
13  
14

15 SUBSCRIBED AND SWORN TO before me by Paul G. Smith on this the  
16 17<sup>th</sup> day of June, 2020.  
17  
18



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Notary Public, Kentucky State at Large

My Commission Expires \_\_\_\_\_

Notary Public, Kentucky State-At-Large  
My Commission Expires: July 10, 2022  
ID: 604480



## Table of Contents

### (documents identified by defined term)

<b>EXHIBIT</b>	<b>DOCUMENT</b>
1	Order dated March 31, 2010, in <i>In the Matter of: The Application of Big Rivers Electric Corporation for Approval To Issue Evidences of Indebtedness</i> , P.S.C. Case No. , 2009-00441
2	Redline copies of 2020 Loan Agreement, 2020 Note, Tenth Supplemental Indenture, Continuing Disclosure Agreement, and Letter of Representation
3	2020 Bonds Loan Agreement
4	2020 Bonds Note
5	Tenth Supplemental Indenture
6	Continuing Disclosure Agreement
7	Letter of Representation
8	Trust Indenture
9	Bond Purchase Contract
10.	2010A Note
11.	Table of References for Compliance with Statutory and Regulatory Filing Requirements
12	Description of Property
13	Financial Exhibit

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR APPROVAL TO ISSUE EVIDENCES OF INDEBTEDNESS	)	CASE NO.
	)	2009-00441
	)	

O R D E R

On November 13, 2009, Big Rivers Electric Corporation (“Big Rivers”) tendered its application seeking Commission approval to supplement or terminate certain existing evidences of indebtedness and issue new evidences of indebtedness in connection with refunding, by redemption, \$83,300,000 in County of Ohio, Kentucky (“Ohio County”), Pollution Control Refunding Revenue Bonds, Series 2001A Periodic Auction Reset Securities (“2001A Bonds”)<sup>1</sup> and the issuance by Ohio County of a like amount of Pollution Control Refunding Revenue Bonds, Series 2010A (“2010A Bonds”).

Big Rivers is an electric generation and transmission cooperative organized under KRS Chapter 279 which owns electric generation and transmission facilities and purchases, transmits, and sells electricity at wholesale. It exists for the primary purpose of supplying the wholesale electricity requirements of its three distribution cooperative members, Kenergy Corp., Meade County Rural Electric Cooperative Corporation, and Jackson Purchase Energy Corporation (“Members”). Its Members provide retail electric service to approximately 112,000 retail members in 22 Western Kentucky counties.

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<sup>1</sup> Case No. 2001-00102, Big Rivers Electric Corporation’s Application for Approval to Amend and Issue Evidences of Indebtedness (Ky. PSC Jun. 18, 2001).



A procedural schedule was established for this case which provided for two rounds of discovery on Big Rivers, intervenor testimony, and one round of discovery on the intervenors. Alcan Primary Products Corporation and Century Aluminum of Kentucky General Partnership (“Intervenors”) requested and were granted intervention. Commission Staff issued two data requests to Big Rivers. The intervenors issued no data requests.

On February 11, 2009, Big Rivers and the Intervenors submitted a stipulation which stated that the Intervenors would not file testimony, that the matter was ready to be submitted on the record for decision by the Commission, and that Big Rivers sought a final Order in this matter by no later than April 1, 2010.

#### BACKGROUND

Big Rivers financed construction of the pollution control facilities at its Wilson Generating Station, in part, with the proceeds from the \$83,300,000 Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 (“1985 Bonds”).<sup>2</sup> The outstanding principal amount of the 1985 Bonds was refunded by redemption in 2001 through the issuance by Ohio County of the 2001A Bonds.

The 2001A Bonds, which mature October 1, 2022, are auction rate securities, which bear interest at rates that are reset periodically through open market auctions. With respect to the 2001A Bonds, investors can seek to liquidate these securities every 28 days. In recent years, the market for auction rate securities has experienced

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<sup>2</sup> Big Rivers Electric Corporation’s Application to Amend the November 13, 1980 Order Issued in Case No. 7990 by Authorizing Big Rivers Electric Corporation’s Borrowing of Proceeds of up to \$83,300,000 County of Ohio, Kentucky Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 and Execution of Documents Evidencing Such Debt, Case No. 9448.

problems causing such securities, including the 2001A Bonds, to bear interest, at times, at their maximum rates. The 2001A Bonds' maximum interest rate is 18 percent.

PROPOSED INDEBTEDNESS

Primary Evidences of Indebtedness

Big Rivers proposes to refund the 2001A Bonds through Ohio County's issuance of the 2010A Bonds. The 2001A Bonds will be called for redemption, the proceeds of the 2010A Bonds will be used to pay the principal of the 2001A Bonds due on the redemption date, and certain funds of Big Rivers will be used to pay the interest due on the 2001A Bonds through the redemption date.<sup>3</sup> In connection with the foregoing, Big Rivers also seeks to issue the following evidences of indebtedness.

The first evidence of Indebtedness is the "2010 Loan Agreement" between Ohio County and Big Rivers under which Ohio County will loan Big Rivers the entire amount of the 2010A Bonds in order to pay off the 2001A Bonds. Big Rivers will repay the new loan by paying all debt service on the 2010A Bonds to maturity. The 2010 Loan Agreement provides for a maturity date for the 2010A Bonds of no later than August 31, 2031. The interest rate on the 2010A Bonds will be fixed to maturity at the time they are sold. Based on information provided to Big Rivers by the 2010A Bonds' underwriter, Goldman, Sachs & Co. ("Goldman Sachs"), Big Rivers estimated, based on a maturity date of August 31, 2031 and market conditions at the time the estimates were made, that the interest rate on the 2010A Bonds would be between 6.75 and 7.25 percent, assuming Big Rivers' credit is unenhanced. The 2010A Bonds will be subject to an optional redemption call after 10 years.

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<sup>3</sup> Big Rivers' estimated up-front cost associated with refunding the 2001A Bonds and issuance of the 2010A Bonds is \$1.635 million.

Big Rivers will issue its First Mortgage Note, Series 2010A (“2010A Note”), in the name of the trustee for the 2010A Bonds, U.S. Bank National Association (“2010A Bond Trustee”), in an amount equal to the \$83.3 million aggregate principal amount of the 2010A Bonds. The 2010A Note will have a maturity date, interest rate and terms which will match those of the 2010A Bonds, and payments thereon will be used to pay all debt service on the 2010A Bonds.

The 2010A Note will be issued and secured under the First Supplemental Indenture (“Supplemental Indenture”) to the July 1, 2009 Indenture between Big Rivers and U. S. Bank National Association, as Trustee.

#### Supplemental Evidences of Indebtedness

The cost to Big Rivers of the 2010A Bonds may be reduced if its credit is enhanced. The means selected by Big Rivers to enhance its credit is a guaranty (“Guaranty”) of the principal and interest payments on the 2010A Bonds to the 2010A Bond Trustee, with such Guaranty being provided by the National Rural Utilities Cooperative Finance Corporation (“CFC”). Based on the bond market at the time of Big Rivers’ application, Goldman Sachs estimated that such a Guaranty could result in a net present value savings of approximately \$3.3 million over the life of the 2010A Bonds compared to their being priced based solely on Big Rivers’ credit. This savings would lower the net effective interest rate on the 2010A Bonds to a range of 6.4 to 6.9 percent.

Such a Guaranty will require that Big Rivers issue a note and other agreements, which are in the nature of evidences of indebtedness. Big Rivers will use the Guaranty and enter into various other arrangements in connection with the marketing of the 2010A Bonds if use of the Guaranty results in an economic benefit in the pricing and

interest rate on the 2010A Bonds. Big Rivers will make this determination on or about the time the 2010A Bonds are sold. These other arrangements are described below.

1. The "Reimbursement Agreement" between Big Rivers and CFC relating to the Guaranty will address the fees related to the Guaranty and Big Rivers' repayment obligations in the event CFC is called upon to make any payments under the Guaranty. The Guaranty will be structured as follows: At least one business day prior to any payment date of principal and/or interest on the 2010A Bonds, the 2010A Bond Trustee will notify CFC if there are insufficient funds available to make said payment. CFC will then send funds to the 2010A Bond Trustee in the amount of any insufficiency in order to pay bondholders. CFC will be subrogated to the rights of the bondholders, and the amounts of principal and/or interest due and owing on such date will become obligations of Big Rivers to CFC. The Reimbursement Agreement will be issued only if the Guaranty results in an economic benefit in the pricing and interest rate on the 2010A Bonds as determined by Big Rivers on or about the time the 2010A Bonds are sold.

2. CFC will require that Big Rivers purchase \$11,903,570 in interest-bearing equity certificates in CFC ("Equity Certificates"). This amount is equal to 14.29 percent of the principal amount of the 2010A Bonds issued by Ohio County and guaranteed by CFC. The Equity Certificates will amortize on the same basis and over the same term as the principal required to be repaid on the 2010A Bonds. The Equity Certificates will yield a return to Big Rivers pursuant to applicable CFC policies.

3. Big Rivers proposes to enter into an Equity Loan Agreement with CFC ("CFC Loan Agreement"), under which it will obtain an unsecured term loan from CFC ("CFC Loan") to purchase the Equity Certificates. The CFC Loan will be evidenced by

an unsecured note from Big Rivers to CFC (“CFC Note”) matching the term of the 2010A Bonds, with other terms fixed on the loan advance date at CFC’s standard interest rates and terms for unsecured term loans as described in the CFC Loan Agreement. The interest rate applicable at the time of Big Rivers’ application would be between 7.0 and 7.5 percent. Big Rivers will issue the CFC Loan Agreement and CFC Note only if the Guaranty results in an economic benefit in the pricing and interest rate on the 2010A Bonds as determined on or about the time the 2010A Bonds are sold.

4. There are certain costs under the Guaranty for which Big Rivers will be responsible. Under Section 2.02(a) of the Reimbursement Agreement, Big Rivers will owe an annual, non-refundable fee equal to 0.35 percent of the aggregate principal amount of the 2010A Bonds outstanding. At \$83.3 million, the annual fee would be \$291,550. Big Rivers will also owe interest on the principal balance of the CFC Note. These costs will be mitigated by interest earned on the Equity Certificates. Big Rivers estimates that its net cost of interest paid on the CFC Note and interest earned on the Equity Certificates will be 0.16 percent of the aggregate principal amount of the 2010A Bonds outstanding, or \$133,280. The resulting total estimated annual cost to Big Rivers of the Guaranty is \$424,830. This cost will be offset by an estimated annual bond interest savings of \$708,050, resulting in an estimated annual benefit of \$283,220.

5. Big Rivers will incur a one-time estimated expense of \$105,000 to cover CFC’s expenses related to documenting and approving the Guaranty arrangements, whether or not Big Rivers determines to implement the Guaranty. Big Rivers will not elect to use the Guaranty arrangements unless the present value cost to Big Rivers of

the 2010A Bonds with the Guaranty is less than the present value cost to Big Rivers of the 2010A Bonds without the Guaranty.

### DISCUSSION

Big Rivers states that it seeks to refund the 2001A Bonds primarily to eliminate its exposure to uncertain costs of debt service on the 2001A Bonds resulting from the recent turmoil in financial markets and the specific uncertainties associated with the auction rate securities market. Big Rivers states that it would have sought to refund the 2001A Bonds to reduce the costs and risks of that debt at an earlier date, but its financial condition prior to the July 16, 2009 closing of the “unwind transaction” made such refunding nearly impossible. With the closing of the unwind transaction, however, Big Rivers states that it has obtained three investment grade credit ratings.

According to Big Rivers, the refunding of the 2001A Bonds and issuance of the 2010A Bonds with no credit support from Ambac Assurance Corporation<sup>4</sup> will also eliminate the exposure it had to Ambac for certain fees set out in the July 16, 2009 letter agreement between Big Rivers and Ambac,<sup>5</sup> that Ambac required as consideration for its consent to the unwind transaction. The commitments made by Big Rivers in the letter to Ambac were consistent with its plans to seek a refunding of the 2001A Bonds, in any event.

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<sup>4</sup> Ambac Assurance Corporation (“Ambac”), bond insurer for the 2001A Bonds.

<sup>5</sup> The July 16, 2009 letter to Ambac was filed in Case No. 2007-00455, The Applications of Big Rivers Electric Corporation for: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (2) Approval of Transactions, (3) Approval to Issue Evidences of Indebtedness, and (4) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc. for Approval of Transactions (Ky. PSC Sept. 1, 2009).

Big Rivers seeks to refund the 2001A Bonds in order to reduce the risks and potential excess costs associated with a financing arrangement such as auction rate securities. The 2008 turmoil in the financial markets caused most investors to shy away from auction rate securities, which adversely affected the rates on the 2001A Bonds. As bond insurers began to be downgraded, the market for auction rate securities experienced difficulties, eventually failing on a regular basis. As a result, auction rate securities, including the 2001A Bonds, were sometimes forced to bear interest at their maximum rates. Big Rivers paid interest on the 2001A Bonds at average rates of 8.95 percent in 2008 and 11.74 percent in 2009 (through October), with rates at or near the maximum rate of 18 percent for much of 2009.

Because the 2001A Bonds are exposed to the market every 28 days, any adverse credit event affecting Big Rivers can be reflected almost immediately in the interest rates on the 2001A Bonds. According to Big Rivers, Ambac's credit support no longer has value,<sup>6</sup> and it will not mitigate any adverse credit event. While it is currently rated investment grade by three ratings agencies, Big Rivers' ratings can be negatively affected by a number of factors beyond its control such as environmental legislation, load reduction or notice of closure by one of the aluminum smelters on the Big Rivers system, or by the continuing depressed state of the wholesale power market, on which it relies for most of its margins.

Big Rivers states that each one-percent increase in the interest rate on the 2001A Bonds costs it \$833,000 annually. With projected margins of \$6.20 million for

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<sup>6</sup> Ambac has been downgraded a number of times since mid-2008. On June 19, 2009, Moody's Investor's Services ("Moody's") downgraded Ambac to "Aa3." On July 29, 2009, Moody's downgraded Ambac to "Caa2."

2010, and \$4.79 million for 2011, Big Rivers states that it cannot prudently risk a fluctuation in interest rates that would damage or eliminate its thin margins and its ability to meet the margins for interest ratio requirement in the Indenture.<sup>7</sup>

Big Rivers also points to a timing advantage with the proposed financing. The maturity date of the 2010A Bonds can be as late as August 31, 2031, compared to the 2001A Bonds' October 1, 2022 maturity date. This allows Big Rivers to avoid having to refinance the 2001A Bonds in late 2022, roughly one year before the December 31, 2023 due date of the Rural Utilities Service 2009 Promissory Note Series B in the amount of approximately \$243 million.

The closing date for sale of the 2010A Bonds will be determined after Big Rivers receives Commission approval to issue the proposed evidences of indebtedness. To advance the review process and to assure that the necessary approvals would be obtained in time for the Commission's Order to become final and non-appealable before the 2010A Bonds are sold, Big Rivers presented the documents for which it seeks approval in substantially complete form, still subject to comment by the parties to the documents. Once final comments are received from all creditors, Big Rivers stated that if a document changes, it will submit to the Commission a revision of the document showing those changes. Big Rivers indicated that it did not expect substantial changes in the forms of documents submitted.

#### FINDINGS AND ORDERS

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that issuance of evidences of indebtedness requested by Big

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<sup>7</sup> Big Rivers' Indenture provides in Section 13.14 that it must maintain a margin for interest ratio of 1.10.



Rivers as set forth in its application will result in more stable and predictable interest costs, eliminate the interest rate risk associated with the auction rate provision of the existing 2001A Bonds, and provide for greater financial flexibility by extending the final maturity date of the debt evidenced by the 2001A Bonds. Consequently, the proposed evidences of indebtedness are for lawful purposes within Big Rivers' corporate purposes, are necessary for and consistent with the proper performance by Big Rivers of its service to the public, will not impair its ability to perform that service, and are reasonable, necessary, and appropriate for such purposes. Therefore, the issuance of the evidences of indebtedness as proposed by Big Rivers should be approved.

IT IS THEREFORE ORDERED that:

1. Big Rivers is authorized to enter into the 2010 Loan Agreement with Ohio County under which Ohio County will loan Big Rivers the entire amount of the 2010A Bonds in order to pay off the 2001A Bonds.
2. Big Rivers is authorized to issue its 2010A Note in the name of the trustee for the 2010A Bonds, U.S. Bank National Association, in an amount equal to the \$83.3 million aggregate principal amount of the 2010A Bonds.
3. Big Rivers is authorized to enter into the Supplemental Indenture with U.S. Bank National Association, under which the 2010A Note will be issued and secured.
4. Big Rivers is authorized to enter into the Guaranty provided by CFC, as set forth in its application, if the Guaranty will result in an economic benefit in the pricing and interest rate on the 2010A Bonds. In conjunction with the Guaranty, Big Rivers is authorized to: enter into the Reimbursement Agreement with CFC; purchase Equity

Certificates from CFC; enter into the CFC Loan Agreement; obtain the CFC Loan; and execute the CFC Note, all as set forth in its application.

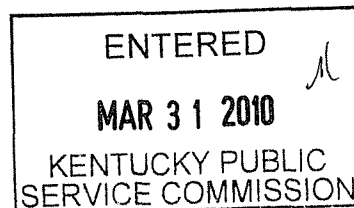
5. Big Rivers is authorized to execute, deliver, and perform its obligations under the agreements and documents as set out in its application and to perform the transactions contemplated by such agreements.

6. The proceeds from the transactions authorized herein shall be used only for the lawful purposes set out in Big Rivers' application.

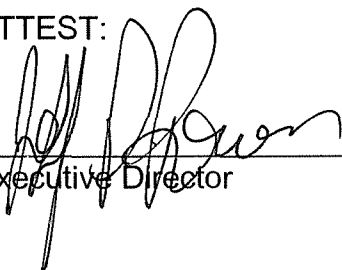
7. Big Rivers shall, within 30 days of the date of issuance, file with the Commission a statement setting forth the date or dates of issuance of the evidences of indebtedness authorized herein, the proceeds of such issuances, the interest rates, the maturity date(s), all fees and expenses involved in the issuance of these evidences of indebtedness, whether or not the Guaranty was entered into, and, if it was, the economic analysis showing the benefit of the Guaranty.

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

By the Commission



ATTEST:

  
\_\_\_\_\_  
Executive Director

Case No. 2020-00153  
Application Exhibit 1  
Case No. 2009-00441

Honorable Tyson A Kamuf  
Attorney at Law  
Sullivan, Mountjoy, Stainback & Miller, PSC  
100 St. Ann Street  
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Albert Yockey  
VP of of Governmental Relations  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42419-0024

**Case No. 2020-00153**  
**Application Exhibit 1**

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**LOAN AGREEMENT**

**Between**

**COUNTY OF OHIO, KENTUCKY**

**and**

**BIG RIVERS ELECTRIC CORPORATION**

Dated as of ~~June 1, 2010~~           , 2020

Relating to

~~\$83,300,000~~

~~\$~~           

**COUNTY OF OHIO, KENTUCKY**

**Pollution Control Refunding Revenue Bonds, Series ~~2010A~~ 2020B<sup>1</sup>**

**(Big Rivers Electric Corporation Project)**

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<sup>1</sup> Series designation to be confirmed.

## TABLE OF CONTENTS

	Page
<b>ARTICLE I DEFINITIONS</b> .....	3
<b>SECTION 1.1.</b> Definitions .....	3
<b>ARTICLE II REPRESENTATIONS AND WARRANTIES</b> .....	5
<b>SECTION 2.1.</b> <i>Representations And Warranties By The County</i> .....	5
<b>SECTION 2.2.</b> <i>Representations And Warranties By Big Rivers</i> .....	6
<b>ARTICLE III TERM OF AGREEMENT</b> .....	7
<b>SECTION 3.1.</b> <i>Term of This Agreement</i> .....	7
<b>ARTICLE IV ISSUANCE OF BONDS AND LOAN OF PROCEEDS</b> .....	7
<b>SECTION 4.1.</b> <i>Issuance of the Bonds; Loan of Proceeds to Big Rivers;     Prepayment of <del>2001</del>2010 Note and Redemption of     <del>2001</del>2010 Bonds; Use of Proceeds</i> .....	7
<b>SECTION 4.2.</b> <i>Agreement as to Ownership and Use of the Facilities</i> .....	<del>7</del> <u>8</u>
<b>SECTION 4.3.</b> <i>Investment of Moneys</i> .....	8
<b>ARTICLE V PROVISION FOR REPAYMENT OF LOAN BY BIG RIVERS</b> .....	8
<b>SECTION 5.1.</b> <i>Repayments By Big Rivers</i> .....	8
<b>SECTION 5.2.</b> <i>Credits</i> .....	8
<b>SECTION 5.3.</b> <i>Execution And Delivery Of The Note</i> .....	8
<b>SECTION 5.4.</b> <i>Payment Of Certain Fees And Expenses</i> .....	<del>8</del> <u>9</u>
<b>SECTION 5.5.</b> <i>Payees Of Payments</i> .....	9
<b>SECTION 5.6.</b> <i>Taxes And Other Governmental Charges</i> .....	9
<b>SECTION 5.7.</b> <i>Obligations Of Big Rivers Unconditional</i> .....	9
<b>SECTION 5.8.</b> <i>Termination Of Obligations Under Note</i> .....	10
<b>ARTICLE VI MAINTENANCE; INSURANCE; CONDEMNATION</b> .....	10
<b>SECTION 6.1.</b> <i>Maintenance; Improvements; Disposition</i> .....	10
<b>SECTION 6.2.</b> <i>Insurance</i> .....	10
<b>SECTION 6.3.</b> <i>Use of Insurance and Condemnation Proceeds</i> .....	10
<b>ARTICLE VII SPECIAL COVENANTS</b> .....	<del>10</del> <u>11</u>
<b>SECTION 7.1.</b> <i>No Warranty Of Condition Or Suitability By The County</i> .....	<del>10</del> <u>11</u>
<b>SECTION 7.2.</b> <i>Further Assurances</i> .....	<del>10</del> <u>11</u>

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>SECTION 7.3.</b> <i>Authority Of Big Rivers Representative</i> .....	11
<b>SECTION 7.4.</b> <i>Authority Of County Representative</i> .....	11
<b>SECTION 7.5.</b> <i>Use of Facilities</i> .....	11
<b>SECTION 7.6.</b> <i>No Abatement Of Note Payments</i> .....	11
<b>SECTION 7.7.</b> <i>Amendments To Indenture</i> .....	11
<b>SECTION 7.8.</b> <i>Tax Covenants</i> .....	11
<del><b>SECTION 7.9.</b> <i>Reserved</i> .....</del>	<del>12</del>
<b>ARTICLE VIII ASSIGNMENT</b> .....	12
<b>SECTION 8.1.</b> <i>Assignment By Big Rivers</i> .....	12
<b>SECTION 8.2.</b> <i>Assignment And Pledge By County; Indenture Provisions</i> .....	12
<b>ARTICLE IX EVENTS OF DEFAULT AND REMEDIES</b> .....	13
<b>SECTION 9.1.</b> <i>Events Of Default Defined</i> .....	13
<b>SECTION 9.2.</b> <i>Remedies On Default</i> .....	13
<b>SECTION 9.3.</b> <i>No Remedy Exclusive</i> .....	<del>13</del> 14
<b>SECTION 9.4.</b> <i>Agreement To Pay Attorneys' Fees And Expenses</i> .....	14
<b>SECTION 9.5.</b> <i>Waiver And Rescission Of Acceleration Under Indenture</i> .....	14
<b>SECTION 9.6.</b> <i>Remedial Rights Assigned To Bond Trustee</i> .....	14
<b>SECTION 9.7.</b> <i>Rescission Of Acceleration Required By Big Rivers Indenture</i> .....	14
<b>ARTICLE X PREPAYMENT OF THE NOTE</b> .....	15
<b>SECTION 10.1.</b> <i>Optional Prepayments</i> .....	15
<b>SECTION 10.2.</b> <i>Exercise Of Optional Prepayment</i> .....	15
<del><b>SECTION 10.3.</b> <i>Mandatory Prepayments</i> .....</del>	<del>16</del>
<b>ARTICLE XI MISCELLANEOUS</b> .....	16
<b>SECTION 11.1.</b> <i>Notices</i> .....	16
<b>SECTION 11.2.</b> <i>Binding Effect</i> .....	16
<b>SECTION 11.3.</b> <i>Severability</i> .....	16
<b>SECTION 11.4.</b> <i>Amounts Remaining In Funds</i> .....	16
<b>SECTION 11.5.</b> <i>Bond Trustee Powers Under Big Rivers Indenture</i> .....	16
<b>SECTION 11.6.</b> <i>Amendments, Changes And Modifications</i> .....	16

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>SECTION 11.7.</b> <i>Execution In Counterparts</i> .....	17
<b>SECTION 11.8.</b> <i>Governing Law</i> .....	17
<b>SECTION 11.9.</b> <i>Captions</i> .....	17
<b>SECTION 11.10.</b> <i>Pecuniary Liability Of The County</i> .....	17
<b>SECTION 11.11.</b> <i>Payments Due On Holidays</i> .....	17
<del><b>SECTION 11.12.</b>    <i>Reserved.</i>.....</del>	<del>17</del>
 EXHIBIT A – The Facilities	

## LOAN AGREEMENT

This **LOAN AGREEMENT** (this “Agreement”), dated as of ~~June 1~~ [\_\_\_\_], ~~2010~~**2020**, between **COUNTY OF OHIO, KENTUCKY**, a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky (together with any successor to its duties and functions, the “County”) acting by and through its Fiscal Court which is the governing body of the County, and **BIG RIVERS ELECTRIC CORPORATION**, a nonprofit rural electric cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky (“Big Rivers”).

### WITNESSETH:

**WHEREAS**, the County is a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky and is authorized and empowered by law, including particularly the provisions of the Industrial Building Revenue Bond Act (Sections 103.200 through 103.285, inclusive) of the Kentucky Revised Statutes, as amended (such Act, and collectively with all future acts supplemental thereto or amendatory thereof, the “Act”), to issue bonds and loan the proceeds thereof to a rural electric cooperative corporation to repay borrowings used to refund bonds previously issued by the County to finance the acquisition of pollution control facilities; and

**WHEREAS**, by a resolution adopted by the Fiscal Court of the County on September 9, 1980, the County agreed to finance the Facilities for Big Rivers; and

**WHEREAS**, the County initially financed the Facilities by issuing the 1982 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to pay a portion of the costs of the Facilities; and

**WHEREAS**, the County financed the refunding of the 1982 Bonds by issuing the 1985 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to retire the 1982 Bonds; and

**WHEREAS**, the County financed the refunding of the 1985 Bonds by issuing the 2001 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to retire the 1985 Bonds; and

**WHEREAS, the County financed the refunding of the 2001 Bonds by issuing the 2010 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to retire the 2001 Bonds; and**

**WHEREAS**, Big Rivers has requested the County to issue \$~~83,300,000~~ [\_\_\_\_\_] aggregate principal amount of its “Pollution Control Refunding Revenue Bonds, Series



~~2010A~~2020B (Big Rivers Electric Corporation Project)” (the “Bonds”) and to loan the proceeds thereof to Big Rivers for the purpose of providing funds to ~~refund by redemption the 2001 Bonds; and~~

~~WHEREAS, the County and Big Rivers propose that the County so refund the 2001 Bonds by depositing into escrow the proceeds of the Bonds and certain other funds provided by Big Rivers in sufficient amounts to effect such refunding by redemption of the 2001 Bonds on June 23, 2010 in accordance with the terms of the 2001 Indenture and an Escrow Deposit Agreement, dated as of June 1, 2010 (the “Escrow Deposit Agreement”), among the County, Big Rivers and the trustee named therein; and~~repay a borrowing under Big Rivers’ Amended and Restated Senior Secured Credit Agreement, dated as of June 11, 2020, with the lenders party thereto, National Rural Utilities Cooperative Finance Corporation, as administrative agent, issuing lender and swingline lender (the “Credit Agreement”), used to fund the redemption of the 2010 Bonds; and

WHEREAS, the County will issue the Bonds under the Indenture and loan the proceeds thereof to Big Rivers under this Agreement, and the Bonds shall be secured by, among other things, a pledge of this Agreement, certain revenues of the County received pursuant to this Agreement and a note issued to evidence Big Rivers’ payment obligations hereunder (the “Note”), which Note will be issued pursuant to the ~~First~~Tenth Supplemental Indenture, dated as of ~~June 1~~June 11, ~~2010~~2020, supplemental to the Indenture, dated as of July 1, 2009, between Big Rivers and U.S. Bank National Association, as trustee (the “Big Rivers Indenture”), and secured on a parity basis with all other obligations secured thereunder; and

WHEREAS, the execution and delivery of this Agreement and the Indenture and the issuance of the Bonds have been in all respects duly and validly authorized by an ordinance of the Fiscal Court of the County; and

WHEREAS, the Kentucky Department of Natural Resources and Environmental Protection has certified that the Facilities, as designed, are in furtherance of the purposes of abating or controlling atmospheric pollutants or contaminants or water pollution; and

WHEREAS, the County makes the following findings and determinations: (a) the Facilities constitute “pollution control facilities” within the meaning of Section 103.246 of the Act, (b) the acquisition and financing of the Facilities inures to the public interest and constitutes the performance of a proper governmental purpose with the result that atmospheric, solid waste and water pollution in the Commonwealth of Kentucky may be abated and controlled to the maximum possible extent, (c) the issuance of the Bonds is and will be for a public purpose and tends to further the purpose of the Act and, in addition, aids in the retention of existing industry through the control of pollution, (d) the Facilities are located wholly within the geographic boundaries of the County, (e) title to the Facilities is held by Big Rivers and will not be acquired by the County, (f) the statutory mortgage lien provided for by Section 103.250 of the Act shall not apply to the Facilities, (g) the principal amount of the Bonds (together with funds provided and to be provided by Big Rivers) is necessary to effect the ~~refunding~~repayment of the borrowing under the Credit Agreement used to fund the redemption of the ~~2001~~2010 Bonds and to pay all premiums, expenses and commissions required to be paid in connection with the

issuance of the Bonds and the ~~refunding~~repayment of the borrowing under the Credit Agreement used to fund the redemption of the ~~2001~~2010 Bonds, and (h) the issuance of the Bonds, the ~~refunding~~repayment of the borrowing under the Credit Agreement used to fund the redemption of the ~~2001~~2010 Bonds, the loan of the proceeds of the Bonds to Big Rivers for this purpose and the execution, delivery and performance of the Bonds, the Indenture and this Agreement are, in all respects, permitted by the Act and conform to the requirements of the Act.

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

## ARTICLE I

### DEFINITIONS

**SECTION 1.1.** Definitions. In addition to terms otherwise defined in this Agreement, when used in this Agreement, the following capitalized terms shall have, except where the context indicates otherwise, the respective meanings set forth below.

“Act” means ~~the Industrial Building Revenue Bond Act (Title IX (Counties, Cities, and Local Units), Chapter 103 (Revenue Bonds for Miscellaneous City or County Projects), Sections 103.200 through 103.285, inclusive),~~ of the Kentucky Revised Statutes, as amended, and all acts supplemental thereto or amendatory thereof.

“Administration Expenses” shall mean the reasonable and necessary expenses incurred by the County with respect to this Agreement, the Indenture and any transaction or event contemplated by this Agreement or the Indenture, including the compensation and expenses paid to the Bond Trustee.

“Agreement” shall mean this Loan Agreement and any amendments and supplements hereto.

“Big Rivers” shall mean Big Rivers Electric Corporation, a nonprofit rural electric cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky, and its lawful successors and assigns.

“Big Rivers Indenture” shall mean the Indenture, dated as of July 1, 2009, between Big Rivers and U.S. Bank National Association, as trustee, as supplemented or amended from time to time, including as supplemented by the ~~First~~Tenth Supplemental Indenture, providing for the issuance of the Note, and as also amended and supplemented by any alternate indenture or mortgage.

“Big Rivers Representative” shall mean any one of the following officers and/or employees of Big Rivers: (i) the President and Chief Executive Officer, (ii) the ~~Senior~~-Vice President, ~~Financial and Energy Services~~ and Chief Financial Officer or (iii) any other officer or employee of Big Rivers at the time designated to act on behalf of Big Rivers by a written certificate furnished to the County and the Bond Trustee containing the specimen signature of

such person and signed on behalf of Big Rivers by any one of the above-described officers and/or employees. Such certificate may designate one or more alternates.

“*Bond Fund*” shall mean the fund created by Section 4.01 of the Indenture.

“*Bond Trustee*” shall mean the trustee under the Indenture, or any successor corporate trustee.

“*Bonds*” shall mean the County’s “Pollution Control Refunding Revenue Bonds, Series ~~2010A~~2020B (Big Rivers Electric Corporation Project)” authorized under the Indenture.

“*Business Day*” shall mean any day on which (i) banks located in New York, New York, and the city in which the principal office of the Bond Trustee is located is not required or authorized to be closed and (ii) The New York Stock ~~exchange~~Exchange is open.

“*County Representative*” shall mean the County Judge/Executive of the County or any other person at the time designated to act on behalf of the County by written certificate furnished to Big Rivers and the Bond Trustee containing the specimen signature of such person and signed on behalf of the County by the County Judge/Executive. Such certificate may designate one or more alternates.

“~~*Escrow-Deposit*~~*Credit* Agreement” shall mean the ~~Escrow-Deposit~~Amended and Restated Senior Secured Credit Agreement, dated as of June ~~11~~, ~~2010~~2020, by and among Big Rivers, the ~~County and the Escrow-Deposit Trustee~~.

~~“Escrow-Deposit Trustee” shall mean U.S. Bank National Association, in its capacity as trustee under the Escrow-Deposit Agreement.~~lenders party thereto, and National Rural Utilities Cooperative Finance Corporation, as administrative agent, issuing lender and swingline lender.

“*Facilities*” shall mean those air and water pollution control and sewage and solid waste disposal facilities located at the Plant which were financed with the proceeds of the 1982 Bonds. The Facilities are listed on Exhibit A hereto.

~~“First Supplemental Indenture” shall mean the First Supplemental Indenture, dated as of June 1, 2010, between Big Rivers and U.S. Bank National Association, as trustee under the Big Rivers Indenture.~~

“*Fiscal Court*” shall mean the Fiscal Court of the County or any successor governing body of the County.

“*Indenture*” shall mean the Trust Indenture for the Bonds, dated as of ~~June 1~~[\_\_\_\_\_], ~~2010~~2020, between the County and the Bond Trustee, including any indentures supplemental thereto or amendatory thereof.

“*Interest Payment Date*” shall have the meaning set forth in the Indenture.

“1954 Code” shall mean the Internal Revenue Code of 1954, as amended, and the regulations promulgated thereunder.

“1982 Bonds” shall mean the \$82,500,000 aggregate principal amount of the County’s “Pollution Control Interim Bonds, Series 1982 (Big Rivers Electric Corporation Project)” previously issued by the County to finance a portion of the cost of the Facilities. The 1982 Bonds were retired with the proceeds of the 1985 Bonds and are no longer outstanding.

“1985 Bonds” shall mean the \$83,300,000 aggregate principal amount of the County’s “Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 (Big Rivers Electric Corporation Project)” previously issued by the County to refund the 1982 Bonds. The 1985 Bonds were retired with the proceeds of the ~~2001~~2010 Bonds and are no longer outstanding.

“1986 Act” means the Tax Reform Act of 1986.

“1986 Code” shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Note” shall mean the first mortgage note issued by Big Rivers under the ~~First~~[Tenth] Supplemental Indenture and this Agreement, which Note is secured by the Big Rivers Indenture on a parity with all other notes secured by the Big Rivers Indenture.

“Opinion of Bond Counsel” shall mean an opinion in writing signed by an attorney or firm of attorneys experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds and who is acceptable to the Bond Trustee.

“Outstanding,” when used with respect to the Bonds, shall have the meaning set forth in the Indenture.

“Plant” shall mean the D.B. Wilson Plant Unit No. 1, a coal-fired steam electric generating plant located within the geographic boundaries of the County and wholly-owned by Big Rivers.

“Tax Certificate and Agreement” shall mean the Tax Certificate and Agreement by and between the County and Big Rivers.

“~~[Tenth]~~ Supplemental Indenture” shall mean the ~~[Tenth]~~ Supplemental Indenture, dated as of [ ], 2020, between Big Rivers and U.S. Bank National Association, as trustee under the Big Rivers Indenture.

“~~2001~~2010 Bonds” shall mean the \$83,300,000 aggregate principal amount of the County’s “Pollution Control Refunding Revenue Bonds, Series ~~2001~~2010A (Big Rivers Electric Corporation Project), ~~Periodic Auction Reset Securities (PARS)~~”.

“~~2001~~2010 Indenture” shall mean the Trust Indenture dated as of ~~August~~June 1, ~~2001~~2010 between the County and U.S. Bank Trust National Association, as trustee, under which the ~~2001~~2010 Bonds were issued and secured.

“2010 Note” shall mean the First Mortgage Note Series 2010A issued on June 1, 2010 in the name of the County of Ohio in the aggregate principal amount of \$83,300,000 due July 15, 2031, under the 2010 Indenture.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**SECTION 2.1.** *Representations And Warranties By The County.* The County represents and warrants that:

(a) The County is a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and the laws of the Commonwealth.

(b) The County has the corporate power to execute, deliver and perform this Agreement and the Indenture and to make the loan to Big Rivers hereunder, and has taken all necessary corporate action to authorize such loan on the terms and conditions hereof and to authorize the execution, delivery and performance of this Agreement and the Indenture, and the issuance, execution and delivery of the Bonds.

(c) The County is not in default under any of the provisions of the laws of the Commonwealth which would affect its existence, or its powers referred to in the preceding paragraph (b), and the execution, delivery and performance by the County of this Agreement and the Indenture (i) to the best knowledge of the County, will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator or governmental authority, and (ii) will not violate any provision of, or constitute a default under, or (except as provided in the Indenture) result in the creation or imposition of any lien on any of the assets of the County pursuant to the provisions of, any mortgage, indenture, contract, agreement or other undertaking to which the County is a party or which, to the best knowledge of the County, purports to be binding upon the County or upon any of its assets.

(d) Under existing statutes and decisions, no Federal, state or local taxes on income or profits are imposed on the County.

(e) The Facilities constitute and will constitute “pollution control facilities” within the meaning of Section 103.246 of the Act.

**SECTION 2.2.** *Representations And Warranties By Big Rivers.* Big Rivers represents and warrants that:

(a) Big Rivers is a nonprofit rural electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth, and has the corporate power to own its assets and to transact the business in which it is engaged, and the

conduct of Big Rivers' business does not make necessary the qualification or licensing of Big Rivers as a foreign corporation in any other state or jurisdiction.

(b) Big Rivers has the corporate power to enter into, and to perform and observe the covenants and agreements on its part contained in, this Agreement, the Big Rivers Indenture, the ~~First[Tenth] Supplemental Indenture, the Escrow Deposit Agreement~~ and the Note, and by proper corporate action has duly authorized the execution and delivery of this Agreement, the Big Rivers Indenture, the ~~First[Tenth] Supplemental Indenture, the Escrow Deposit Agreement~~ and the Note. The execution and delivery of this Agreement, the Big Rivers Indenture, ~~and the First[Tenth] Supplemental Indenture and the Escrow Deposit Agreement~~ do not, and the execution and delivery of the Note and the consummation of the transactions contemplated hereby and thereby and the fulfillment of the terms hereof and thereof will not, conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which Big Rivers is now a party or by which it is bound, or constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Big Rivers under the terms of any instrument or agreement.

(c) Synchronization of the Plant was completed on September 24, 1984.

(d) The Facilities (i) are designed to meet or exceed applicable federal, Commonwealth and local requirements now in effect for the control of air and water pollution and are used to abate or control air and water pollution or contamination by removing, altering, disposing of or storing pollutants, contaminants, wastes or heat and the Facilities as designed constitute "air or water pollution control facilities" within the meaning of Section 103(b)(4)(F) of the 1954 Code or (ii) are used for the collection, storage, treatment, utilization, processing or final disposal of sewage or solid waste and constitute "sewage or solid waste disposal facilities" within the meaning of Section 103(b)(4)(E) of the 1954 Code.

(e) The Facilities consist of either land or property subject to the allowance for depreciation under Section 167 of the 1986 Code.

(f) The Facilities constitute "pollution control facilities" within the meaning of Section 103.246 of the Act.

(g) The Commonwealth's Department of National Resources and Environmental Protection (predecessor of National Resources and Environmental Protection Cabinet), having appropriate jurisdiction, has certified that the Facilities, as designed, are in furtherance of the purposes of abating or controlling atmospheric pollutants or contaminants or water pollution.

(h) The information furnished by Big Rivers and filed by the County with the Internal Revenue Service pursuant to Section 103(1) of the 1954 Code was true and correct as of the date of filing of said information.

## ARTICLE III

### TERM OF AGREEMENT

**SECTION 3.1.** *Term of This Agreement.* This Agreement shall remain in full force and effect from the date of delivery hereof until such time as all of the Bonds shall have been fully paid or provision made for such payment pursuant to the Indenture, and all reasonable and necessary Administration Expenses and fees and expenses of the Bond Trustee and any paying agent accrued and to accrue through final payment of the Bonds and all other Administration Expenses and other liabilities of Big Rivers accrued and to accrue through final payment of the Bonds hereunder have been paid.

## ARTICLE IV

### ISSUANCE OF BONDS AND LOAN OF PROCEEDS

**SECTION 4.1.** *Issuance of the Bonds; Loan of Proceeds to Big Rivers; Prepayment of ~~2001~~2010 Note and Redemption of ~~2001~~2010 Bonds; Use of Proceeds.*

(a) The County agrees to ~~deposit with the Escrow Deposit Trustee pursuant to the Escrow Deposit~~ transfer to National Rural Utilities Cooperative Finance Corporation, as administrative agent under the Credit Agreement, funds necessary, together with funds provided by Big Rivers, to repay the borrowing under the Credit Agreement used to refund by redemption the ~~2001~~2010 Bonds on ~~June 23~~[\_\_\_\_], ~~2010~~2020, ~~resulting which resulted~~ in a prepayment of the ~~2001~~2010 Note relating to the ~~2001~~2010 Bonds. In order to provide funds for such purpose, the County agrees to sell and cause to be delivered to the initial purchasers thereof the Bonds.

~~(b) The County will deposit such amount of the proceeds of the Bonds with the Escrow Deposit Trustee in accordance with the 2001 Indenture and the Escrow Deposit Agreement.~~

~~(b)~~ ~~(e)~~ Simultaneously with the issuance and delivery of the Bonds to the purchasers thereof, Big Rivers will cause to be transferred to ~~the Escrow Deposit Trustee~~ National Rural Utilities Cooperative Finance Corporation, as administrative agent under the Credit Agreement, such amounts as Big Rivers shall be required to provide to effect the ~~refunding of~~ repayment of the borrowing under the Credit Agreement used to refund the ~~2001~~2010 Bonds.

**SECTION 4.2.** *Agreement as to Ownership and Use of the Facilities.* The County and Big Rivers agree that title to the Facilities shall be in and remain in Big Rivers and that the Facilities shall be the sole property of Big Rivers in which the County shall have no interest.

**SECTION 4.3.** *Investment of Moneys.* All moneys held as a part of the Bond Fund shall be invested or reinvested and transferred to other funds by the Bond Trustee as provided in Article V of the Indenture.

## ARTICLE V

### PROVISION FOR REPAYMENT OF LOAN BY BIG RIVERS

**SECTION 5.1.** *Repayments By Big Rivers.* Big Rivers agrees to repay the loan made by the County to Big Rivers hereunder of the proceeds of the Bonds by paying to the County an amount sufficient to pay, when due, all principal of and interest on the Bonds, which obligation will be evidenced by the Note. In satisfaction of its obligation under this Section 5.1, Big Rivers agrees to pay to the Bond Trustee for the account of the County all payments when due on the Note; provided, however, that if for any reason the amounts paid to the Bond Trustee by Big Rivers on the Note, together with any other amounts available in the Bond Fund, are not sufficient to pay the principal of or interest on the Bonds when due, Big Rivers agrees to pay the amount required to make up such deficiency.

**SECTION 5.2.** *Credits.* Any amounts which are in the Bond Fund at the close of business of the Bond Trustee on the Business Day immediately preceding any payment date on the Note shall be credited against the payments due by Big Rivers on such payment date on the Note.

If any or all of the Bonds then Outstanding are called for redemption, any amounts contained in the Bond Fund on such redemption date shall be credited against the payments due by Big Rivers on the Note.

The principal amount of any Bonds held by the Bond Trustee on the maturity date of the Note which are to be applied by the Bond Trustee as a credit against the next required sinking fund redemption pursuant to the Indenture shall, to the extent not previously credited as provided for in this paragraph, be credited against the obligation of Big Rivers with respect to payment of principal of the Note due on such maturity date.

**SECTION 5.3.** *Execution And Delivery Of The Note.* Concurrently with the sale and delivery by the County of the Bonds, in order to evidence the obligation of Big Rivers to pay an amount sufficient to pay the principal of and interest on the Bonds when due, Big Rivers shall execute and deliver to the Bond Trustee the Note substantially in the form attached as Exhibit B to the ~~First~~Tenth Supplemental Indenture. The Note shall be nontransferable by the Bond Trustee except as required to effect assignment thereof to any successor Bond Trustee under the Indenture.

**SECTION 5.4.** *Payment Of Certain Fees And Expenses.* Big Rivers agrees to pay the reasonable fees and actual out-of-pocket expenses (including counsel fees) necessarily incurred by the County in connection with the Bonds, the issuance and sale thereof and the transactions contemplated by the Indenture, the Big Rivers Indenture, the Note and this Agreement and in connection with the services of the Bond Trustee and any co-paying agents designated pursuant to Sections 9.19 and 9.20 of the Indenture (except those incurred as a result of the negligence or bad faith of the County or the Bond Trustee or co-paying agent), as and when the same become due, upon submission by the Bond Trustee or any paying agent of a statement therefor; provided, however, that Big Rivers may, without creating a default



hereunder, contest in good faith the necessity for and reasonableness of any such fees or expenses.

**SECTION 5.5.** *Payees Of Payments.* The payments to be made on the Note pursuant to Section 5.1 hereof shall be paid directly to the Bond Trustee for the account of the County and shall be deposited into the Bond Fund in accordance with this Agreement, the Note and the Indenture. The payments to be made to the Bond Trustee or any paying agent pursuant to Section 5.4 hereof shall be paid directly to the Bond Trustee or such paying agent for its own use.

**SECTION 5.6.** *Taxes And Other Governmental Charges.* Big Rivers will pay promptly, as the same become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Facilities. Compliance by Big Rivers with the provisions of the Big Rivers Indenture shall constitute compliance with this Section 5.6.

**SECTION 5.7.** *Obligations Of Big Rivers Unconditional.* The obligations of Big Rivers to make the payments pursuant to this Agreement and the Note shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of setoff, counterclaim or recoupment arising out of any breach by the County of any obligation to Big Rivers, whether hereunder or otherwise, or out of any indebtedness or liability at any time owed to Big Rivers by the County. Until such time as the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, Big Rivers (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payment provided for herein or in the Note, (ii) will perform and observe all of its other agreements contained in this Agreement and in the Note and (iii) except as provided in Section 5.8 hereof, will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Facilities, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the Commonwealth of Kentucky or any political subdivision of either, or any failure of the County to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, whether express or implied. Nothing contained in this Section 5.7 shall be construed to release the County from the performance of any agreements on its part herein contained; and in the event the County shall fail to perform any such agreement, Big Rivers may institute such action against the County as it deems necessary to compel performance, provided that no such action shall violate the agreements on the part of Big Rivers contained herein. Big Rivers may, however, at its own cost and expense prosecute or defend any action or proceeding or take any other action involving third persons which it deems reasonably necessary in order to secure or protect its right of possession, occupancy and use of the Facilities or the Plant, and in such event the County hereby agrees to cooperate fully with Big Rivers.

**SECTION 5.8.** *Termination Of Obligations Under Note.* At the time when all of the Bonds cease to be Outstanding under the Indenture, the Note issued in connection with the issuance of the Bonds shall become void and shall be returned to Big Rivers.

## ARTICLE VI

### MAINTENANCE; INSURANCE; CONDEMNATION

**SECTION 6.1.** *Maintenance; Improvements; Disposition.* During the term of this Agreement, Big Rivers will, at its own expense, cause the Facilities to be maintained, preserved and kept in good repair, working order and condition and will from time to time cause to be made all proper repairs, renewals and replacements thereof. Big Rivers may also, at its own expense, make from time to time any modifications or improvements to the Facilities, provided such modifications or improvements do not impair the character of the Facilities as a “project” within the meaning of the Act or impair the exclusion of interest on the Bonds from gross income for federal income tax purposes. All such modifications and improvements shall become a part of the Facilities.

Big Rivers may sell or otherwise dispose of its interest in any element of the Facilities (in whole or in part), upon compliance with the provisions of the Big Rivers Indenture to the extent it is applicable to the Facilities. In the event that the Bond Trustee receives any moneys pursuant to the Big Rivers Indenture as the result of any such sale or disposition, upon compliance with the provisions of the Big Rivers Indenture, such moneys shall be deposited by the Bond Trustee into the Bond Fund and applied in accordance with the Indenture.

**SECTION 6.2.** *Insurance.* Big Rivers will, at its own expense, provide or cause to be provided insurance against loss or damage, less appropriate deductibles, to its interest in the Facilities. Compliance with Section 13.8 of the Big Rivers Indenture shall be deemed compliance with this Section 6.2.

**SECTION 6.3.** *Use of Insurance and Condemnation Proceeds.* Any moneys received by the Bond Trustee pursuant to the Big Rivers Indenture from any payment in respect of any insurance described in Section 6.2 hereof or condemnation award, upon compliance with the Big Rivers Indenture, shall be forthwith deposited into the Bond Fund and applied in accordance with the Indenture.

## ARTICLE VII

### SPECIAL COVENANTS

**SECTION 7.1.** *No Warranty Of Condition Or Suitability By The County.* The County makes no warranty, either express or implied, as to the Facilities or that they will be suitable for Big Rivers’ purposes or needs.

**SECTION 7.2.** *Further Assurances.* The County and Big Rivers agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.

**SECTION 7.3.** *Authority Of Big Rivers Representative.* Whenever under the provisions of this Agreement the approval of Big Rivers is required or the County is required to take some action at the request of Big Rivers, such approval or such request shall be made by the Big Rivers Representative unless otherwise specified in this Agreement, and the County or the Bond Trustee are each authorized to act on any such approval or request. Big Rivers shall have no complaint against the County or the Bond Trustee as a result of any such action taken.

**SECTION 7.4.** *Authority Of County Representative.* Whenever under the provisions of this Agreement the approval of the County is required, or Big Rivers is required to take some action at the request of the County, such approval or such request shall be made by the County Representative unless otherwise specified in this Agreement, and Big Rivers or the Bond Trustee are each authorized to act on any such approval or request. The County shall have no complaint against Big Rivers or the Bond Trustee as a result of any such action taken.

**SECTION 7.5.** *Use of Facilities.* So long as Big Rivers operates the Facilities, the Facilities shall be used for the purpose of air or water pollution control as described in Section 103(b)(4)(F) of the 1954 Code or the disposal of sewage or solid waste within the meaning of Section 103(b)(4)(E) of the 1954 Code.

**SECTION 7.6.** *No Abatement Of Note Payments.* It is understood and agreed that Big Rivers shall be obligated to continue to pay the amounts specified in Article V hereof and in the Note whether or not the Facilities are damaged, destroyed, taken in condemnation or become obsolete (including economic obsolescence) and that there shall be no abatement or postponement of any such payments by reason thereof.

**SECTION 7.7.** *Amendments To Indenture.* The County shall not execute or permit any amendment or supplement to the Indenture which affects any rights, powers and authority of Big Rivers under this Agreement or under the Note or requires a revision of this Agreement, the Note or the Big Rivers Indenture without the prior written consent of Big Rivers.

**SECTION 7.8.** *Tax Covenants.*

(a) Big Rivers covenants that it will not take any action which would adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes pursuant to Section 103(a) of the 1954 Code, and will take, or require to be taken, such acts as may from time to time be required under applicable law or regulation to continue the exclusion of the interest on the Bonds from gross income for federal income tax purposes. In furtherance of those covenants, Big Rivers agrees to comply with the Tax Certificate and Agreement.

(b) Big Rivers covenants that it will not take any action or fail to take any action with respect to the Bonds which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the 1986 Code, as incorporated into the 1954 Code by the 1986 Act.

(c) Big Rivers covenants that it will not use or permit the use of any property financed or refinanced with the proceeds of the Bonds by any person (other than the Commonwealth or local governmental unit) in such manner or to such extent as would result in loss of the exclusion of the interest on the Bonds from gross income for federal income tax

purposes (other than during the period the Bonds are held by a “substantial user” of the facilities financed or refinanced with the proceeds of the Bonds or a “related person” within the meaning of Section 103(b)(6)(C) of the 1954 Code).

Notwithstanding any other provisions of this Agreement to the contrary, so long as necessary in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes under Section 103(a) of the 1954 Code, the covenants in this Section shall survive the payment for the Bonds and the interest thereon, including any payment or defeasance thereof pursuant to the Indenture.

~~SECTION 7.9. —Reserved.~~

## ARTICLE VIII

### ASSIGNMENT

**SECTION 8.1.** *Assignment By Big Rivers.* This Agreement may be assigned by Big Rivers without the necessity of obtaining the consent of either the County or the Bond Trustee, subject, however, to each of the following conditions:

(a) No assignment shall relieve Big Rivers from primary liability for any of its obligations hereunder, and in the event of any such assignment Big Rivers shall continue to remain primarily liable for payments of the amounts specified in the Note and in Article V hereof and for performance and observance of the other agreements on its part herein provided to be performed and observed by it to the same extent as though no assignment had been made.

(b) The assignee shall assume the obligations of Big Rivers hereunder to the extent of the interest assigned.

(c) Big Rivers shall, within fifteen (15) days after the delivery thereof, furnish or cause to be furnished to the County, ~~Standard & Poor’s, a division of The McGraw-Hill Companies, Inc.~~ Fitch Ratings, Moody’s Investors Service, Inc., or their respective successors, and to the Bond Trustee a true and complete copy of each such assignment and assumption of obligation.

**SECTION 8.2.** *Assignment And Pledge By County; Indenture Provisions.* Solely pursuant to the Indenture, the County shall assign its interest in and pledge any moneys receivable under Section 5.1 of this Agreement and the Note, including the right of possession of the Note, to the Bond Trustee as security for payment of the principal of and premium, if any, and interest on the Bonds, but each such assignment or pledge shall be subject to this Agreement. Big Rivers consents to such assignment and pledge. Big Rivers also agrees to be bound by, observe, and perform its obligations under, the provisions in the Indenture referring to Big Rivers or imposing conditions, obligations or requirements on Big Rivers under this Agreement, the Note or the Big Rivers Indenture.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 9.1.** *Events Of Default Defined.* The following shall be “events of default” under this Agreement and the term “event of default” shall mean, whenever used in this Agreement, any one of the following events:

(a) Failure by Big Rivers to pay when due any amount required to be paid under the Note to the Bond Trustee for deposit into the Bond Fund.

(b) Acceleration of payment of any Obligation (as defined in the Big Rivers Indenture) secured by the Big Rivers Indenture pursuant to an “event of default” as such term is defined in Article VIII of the Big Rivers Indenture.

(c) Big Rivers files a petition in bankruptcy or is adjudicated as bankrupt or insolvent, or makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver of itself or of its property, or institutes proceedings for its reorganization, or proceedings instituted by others for its reorganization are not dismissed within thirty (30) days after the institution thereof, or a receiver or liquidator of Big Rivers or of any substantial portion of its property is appointed and the order appointing such receiver or liquidator shall not be vacated within thirty days after the entry thereof.

**SECTION 9.2.** *Remedies On Default.* Whenever any event of default referred to in Section 9.1 hereof shall have happened and be continuing, the County, or the Bond Trustee as provided in the Indenture:

(a) shall, by written notice to Big Rivers, upon the acceleration of maturity of the Bonds as provided in Section 8.01 of the Indenture, declare an amount equal to the principal of and accrued interest on the Note to have matured and therefore to be immediately due and payable, whereupon the same shall mature and become immediately due and payable; and

(b) may take whatever action at law or in equity may appear necessary or desirable to collect the amounts payable by Big Rivers hereunder and under the Note, then due and thereafter to be due, or to enforce performance and observance of any obligation, agreement or covenant of Big Rivers under this Agreement or under the Note, whether for specific performance of any covenant or agreement contained herein or therein or in aid of the execution of any power herein granted.

Any amounts collected pursuant to action taken under this Section 9.2 shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

**SECTION 9.3.** *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the County or the Bond Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, subject to the provisions of the Indenture. No delay or omission to

exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County to exercise any remedy reserved to it in this Article IX, it shall not be necessary to give any notice, other than notice required herein. Such rights and remedies given the County hereunder shall also extend to the Bond Trustee and the holders of the Bonds, subject to the provisions of the Indenture and the Big Rivers Indenture.

**SECTION 9.4.** *Agreement To Pay Attorneys' Fees And Expenses.* In the event Big Rivers should default under any of the provisions of this Agreement and the County or the Bond Trustee or their agents should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of the performance or observance of any obligation or agreement on the part of Big Rivers herein or in the Note contained, Big Rivers will on demand therefor pay to the County or the Bond Trustee, as the case may be, the reasonable ~~fee~~fees of such attorneys and such other reasonable expenses incurred by the County or the Bond Trustee.

**SECTION 9.5.** *Waiver And Rescission Of Acceleration Under Indenture.* In the event any agreement contained in this Agreement or in the Note should be breached by Big Rivers or the County and thereafter waived by the other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder or thereunder. Notwithstanding the foregoing, a waiver of an Event of Default under the Indenture or a rescission of a declaration of acceleration of the Bonds and a rescission and annulment of its consequences shall constitute a waiver of the corresponding event of default under this Agreement and a rescission and annulment of its consequences, including any acceleration of maturity of principal of and interest on the Note; provided, that no such waiver or rescissions shall extend to or affect any subsequent or other default hereunder or impair any right consequent thereon.

**SECTION 9.6.** *Remedial Rights Assigned To Bond Trustee.* All rights and remedies conferred upon or reserved to the County in this Article IX, including the right to waive events of default, shall upon the execution and delivery of the Indenture be deemed to have been assigned to the Bond Trustee and the Bond Trustee shall have the exclusive right to exercise such rights and remedies in the same manner and under the limitations and conditions that the Bond Trustee is entitled to exercise rights and remedies upon the occurrence of an Event of Default pursuant to Article VIII of the Indenture.

**SECTION 9.7.** *Rescission Of Acceleration Required By Big Rivers Indenture.*

(a) If at any time following a declaration of acceleration pursuant to an Event of Default under Section 8.01(c) of the Indenture, and prior to payment of the Bonds pursuant to such acceleration, the Bond Trustee shall receive written notice that the acceleration of the Obligations under the Big Rivers Indenture has been rescinded, then the Bond Trustee shall rescind any declaration of acceleration of the maturity of principal of and interest on the Bonds. In the event of such rescission of a declaration of acceleration of the Bonds, the Bond Trustee shall also rescind any declaration of acceleration of the maturity of the Note.

(b) In case of any such rescission, then and in every such case the County, the Bond Trustee and Big Rivers shall be restored to their former positions and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or event of default, or impair any right consequent thereon, nor shall such rescission extend to any instance in which the holder of any note secured by the Big Rivers Indenture other than the Note has subsequent to a request for rescission declared all unpaid principal of and accrued interest on such other note to be due and payable immediately.

## ARTICLE X

### PREPAYMENT OF THE NOTE

**SECTION 10.1.** *Optional Prepayments.* Big Rivers shall have, and is hereby granted, subject to the provisions of the Big Rivers Indenture, the option to prepay all or any portion of the unpaid balance of the Note at any time by taking the actions required by the Indenture (a) to discharge the lien thereof through the redemption of all or part of the Bonds under Section 3.01 of the Indenture, or (b) to effect the partial redemption of all or a part of such Bonds under Section 3.01 of the Indenture.

**SECTION 10.2.** *Exercise Of Optional Prepayment.* To exercise an option granted in Section 10.1 hereof to prepay the Note and thereby redeem some or all of the Bonds, Big Rivers shall give written notice to the County and the Bond Trustee at any time during the period beginning with (and including) the 45th day prior to the date of redemption and ending with (and including) the 30th day prior to the date of redemption. Such notice shall specify (i) that the Bonds are being redeemed pursuant to Section 3.01 of the Indenture, (ii) the principal amount of Bonds to be redeemed and the premium, if any, payable on such redemption, and (iii) the date such Bonds are to be redeemed (which must be a date permitted by Section 3.01 of the Indenture). If, at the time Big Rivers gives this notice, the Bond Trustee does not have on deposit sufficient available funds to pay the principal of, premium, if any, and interest accrued and to accrue through the redemption date on the Bonds so called for redemption, then Big Rivers' notice of redemption is conditional and revocable, that is, Big Rivers is under no obligation to provide, or cause to be provided, to the Bond Trustee funds to effect such redemption and, if it does not elect to do so by 12:00 noon, New York City time, on the redemption date, then the Bonds called for redemption shall not be redeemed pursuant to the above-mentioned notice of redemption or the notice of redemption given by the Bond Trustee pursuant to subsection (b) of Section 3.03 of the Indenture. Neither of Big Rivers nor the County or shall be liable to any Bondowner if Big Rivers does not provide, or cause to be provided, funds sufficient to effect redemption of any such Bonds with the result that such Bonds are not redeemed on the redemption date specified in such notices. If, at the time Big Rivers gives this notice, the Bond Trustee has on deposit sufficient funds to effect such redemption, then Big Rivers' notice is unconditional and irrevocable and the Bonds specified in the notice of Big Rivers and given by the Bond Trustee pursuant to subsection (b) of Section 3.03 of the Indenture shall become due and payable at the specified redemption price (plus accrued interest) on the specified redemption date.

Upon receipt of a notice furnished pursuant to this Section 10.2, the County and the Bond Trustee, as provided in the Indenture, shall forthwith take or cause to be taken all actions necessary under the Indenture to discharge the lien of the Indenture or effect the redemption of Bonds in accordance with such notice, as the case may be.

~~**SECTION 10.3.** *Mandatory Prepayments.* Big Rivers shall prepay all or a portion of the Note at the time or times and in the principal amount required to redeem all or such portions of the applicable Bonds required to be redeemed pursuant to Section 3.01 of the Indenture.~~

## ARTICLE XI

### MISCELLANEOUS

**SECTION 11.1.** *Notices.* All notices, certificates, requests or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows: if to the County, to: Ohio County Fiscal Court, 301 South Main, Hartford, Kentucky 42347, Attention: County Judge/Executive; if to Big Rivers, to: Big Rivers Electric Corporation, 201 Third Street, Henderson, Kentucky 42420, Attention: President and Chief Executive Officer; and if to the Bond Trustee, to: U.S. Bank National Association, Corporate Trust Services, 225 Asylum Street, 23rd Floor, Hartford, Connecticut 06103, Attention: ~~Philip G. Kane, Jr.~~ Laurel Casasanta (Big Rivers ~~2010~~2020 Indenture). A duplicate copy of each notice, certificate, request or other communication given hereunder by the County or Big Rivers shall also be given to the Bond Trustee, the County and Big Rivers. A party may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

**SECTION 11.2.** *Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon the County, Big Rivers and their respective successors and assigns.

**SECTION 11.3.** *Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 11.4.** *Amounts Remaining In Funds.* It is agreed by the parties hereto that any amounts remaining in the Bond Fund upon expiration or sooner termination of this Agreement, as provided in this Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture), the fees, charges and expenses of the Bond Trustee and any paying agent in accordance with the Indenture and all other amounts required to be paid under this Agreement and the Indenture, shall belong to and be paid to Big Rivers by the Bond Trustee.

**SECTION 11.5.** *Bond Trustee Powers Under Big Rivers Indenture.* The Bond Trustee is authorized in connection with the Big Rivers Indenture to execute and deliver all such further instruments as may be required by the provisions thereof and to exercise all the rights of



a holder of the Note ~~as it in its sole discretion deems to be in the best interests of the Bondowners and~~ without the prior consent of the ~~Bondowners or the~~ County.

**SECTION 11.6.** *Amendments, Changes And Modifications.* Except as otherwise provided in this Agreement or in the Indenture, subsequent to the initial issuance of Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Agreement and the Note may not be effectively amended, changed, modified, altered or terminated without the written consent of the Bond Trustee, given in accordance with the Indenture.

**SECTION 11.7.** *Execution In Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**SECTION 11.8.** *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, WITHOUT REFERENCE TO THE CHOICE OF LAWS PROVISIONS OF THE COMMONWEALTH OF KENTUCKY.

**SECTION 11.9.** *Captions.* The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**SECTION 11.10.** *Pecuniary Liability Of The County.* No provision, covenant or agreement contained in this Agreement or any obligations herein imposed upon the County, or the breach thereof, shall constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers. In making the agreements, provisions and covenants set forth in this Agreement, the County has not obligated itself except with respect to this Agreement and the application of the revenues, income and all other property therefrom, as hereinabove provided. The Bonds shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the County be subject to any liability thereon. No holder or holders of any of the Bonds shall ever have the right to compel any exercise of the taxing power of the County to pay any such Bonds or the interest thereon, nor to enforce payment thereon against any property of the County. The Bonds shall not constitute a charge, lien nor encumbrance, legal or equitable, upon any property of the County.

**SECTION 11.11.** *Payments Due On Holidays.* If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement or the Note, shall not be a ~~legal holiday or a day on which banking institutions in the city in which is located the principal office of the Bond Trustee are authorized by law to remain closed~~**Business Day**, such payment may be made or act performed or right exercised on the next succeeding ~~day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed~~**Business Day** with the same force and effect as if done on the nominal date provided in this Agreement or the Note and no interest shall accrue for the period after such nominal date.

~~SECTION 11.12. Reserved.~~

~~OHS-East:160594940.10-~~

[4161-1987-0244.5](#)

-19-

IN WITNESS WHEREOF, the County and Big Rivers have caused this Agreement to be executed in their respective corporate names by their duly authorized officers and have caused their corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

(SEAL)

COUNTY OF OHIO, KENTUCKY

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

~~County~~  
David Johnston  
*Judge/Executive*

Attest:

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

Miranda Funk  
*Fiscal Court Clerk, County of*  
*Ohio, Kentucky*

(SEAL)

BIG RIVERS ELECTRIC CORPORATION

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

~~Mark A. Bailey~~  
~~President and Chief Executive Officer~~

Attest:

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

~~C. William Blackburn~~  
~~Senior Vice President of Financial~~  
~~& Energy Services and Chief~~  
~~Financial Officer~~

[SM to confirm need for seal and attestation.]

**BIG RIVERS ELECTRIC CORPORATION**

**By:**

**Robert W. Berry**

**President and Chief Executive Officer**

**THE FACILITIES**

The following are the air and water pollution control facilities, sewage and solid waste disposal facilities and other facilities installed at or in connection with the Plant:

1. Electrostatic Precipitator System - designed to remove flyash from the flue gases emitted from Unit 1's boiler. Such facilities consist of two precipitators and transitional ducting.
2. Sulphur Dioxide Removal Facility - consists of a "wet spray type scrubber" system to remove sulphur from the flue gases emitted from Unit 1's boiler. Such facilities consist of sulphur dioxide spray absorbers, lime and limestone receiving, storage, conveying and handling facilities, flue gas reheat facilities, and transitional ducting.
3. Run-off Retention Ponds - designed to provide settling of rain water suspended solids prior to discharge through normal drainage system.
4. Waste Water Treatment Facility - consists of pH trim tank and clarifier to treat and process liquids from the following Items 6 , 7 , and 8.
5. Coal Pile Run-off Pond - designed to collect acidic water run-off from the station's coal storage area. The facility includes a pond and pumping equipment.
6. Waste Water Pond - designed to collect various Plant waste streams. The facility includes a pond and pumping equipment.
7. Waste Impoundment Pond - designed to collect highly contaminated liquid wastes. The facility includes a pond and pumping equipment.
8. Solid Waste Treatment Facility - designed to concentrate and process waste slurry from the dewatering system of the Sulphur Dioxide Removal Facility by addition of flyash and lime to produce a suitable landfill material.
9. Sanitary Waste System - designed to process station sanitary wastes.
10. Solid Waste Landfill Area - land required for placement of all Plant solid wastes.
11. Flyash Collection Facility - designed to transport ash collected by the Electrostatic Precipitator System and consists of blowers, air locks and an ash transport and silo vent piping system.

~~STATE OF NEW YORK~~ )  
 )-ss  
~~COUNTY OF NEW YORK~~ )

I, the undersigned Notary Public in and for the State and County aforesaid, do hereby certify that on the 8th day of June, 2010, the ~~foregoing instrument was~~ produced to me in said County by Mark A. Bailey and C. William Blackburn, personally known to me and personally known by me to be President and Chief Executive Officer and Senior Vice President of Financial & Energy Services and Chief Financial Officer, respectively, of ~~BIG RIVERS ELECTRIC CORPORATION~~, a nonprofit rural electric cooperative corporation incorporated under the laws of the Commonwealth of Kentucky, who being by me duly sworn, did say that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in ~~behalf of said corporation~~ by authority of its Board of Directors and said respective persons acknowledged before me said instrument to be the free act and deed of said corporation and to be their free act and deed as such officers of such corporation.

WITNESS my hand and seal this 8th day of June, 2010. My commission expires  
\_\_\_\_\_.

(SEAL) \_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
\_\_\_\_\_, New York

COMMONWEALTH OF KENTUCKY )  
 ) ss

COUNTY OF ~~OHIO~~ HENDERSON )

~~I, the undersigned Notary Public in and for the Commonwealth and County aforesaid, do hereby certify that on the \_\_\_\_ day of June, 2010, the foregoing instrument was produced to me in said County by David G. Jones and Cheryl Morris, personally known to me and personally known by me to be the County Judge/Executive and Fiscal Court Clerk, respectively, of the COUNTY OF OHIO, KENTUCKY, and acknowledged before me by them and each of them to be their free act and deed as County Judge/Executive and Fiscal Court Clerk of such County, and the free act and deed of such County, as authorized by an ordinance of the Fiscal Court of such County.~~

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_, 2020, by Robert W. Berry, President and Chief Executive Officer of Big Rivers Electric Corporation, a Kentucky corporation, for and on *behalf of said corporation.*

WITNESS my hand and official seal ~~this \_\_\_\_ day of June, 2010.~~ My commission,

\_\_\_\_\_  
Notary Public's Signature  
Notary Public, Commonwealth-at-Large  
My \_\_\_\_\_ Commission expires:  
\_\_\_\_\_

(Notarial Seal)

COMMONWEALTH OF KENTUCKY )  
 ) SS.  
COUNTY OF OHIO )

The *foregoing instrument* was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by David Johnston, as Judge/Executive of the County of Ohio, Kentucky, and by Miranda Funk, as Fiscal Court Clerk of the County of Ohio, Kentucky.

(SEAL)

\_\_\_\_\_  
*Notary Public*  
\_\_\_\_\_, for the Commonwealth of  
*Kentucky*

My Commission Expires: \_\_\_\_\_



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**FIRST[TENTH]<sup>1</sup> SUPPLEMENTAL INDENTURE**  
**(to that certain Indenture dated as of July 1, 2009)**  
**dated as of ~~June 4~~[\_\_\_\_], ~~2010~~2020**

**Relating to the Big Rivers Electric Corporation**  
**First Mortgage Note, Series ~~2010A~~2020B<sup>2</sup>**  
**Authorized by this First[Tenth] Supplemental Indenture**

**BIG RIVERS ELECTRIC CORPORATION**

to

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

**FIRST MORTGAGE OBLIGATIONS**

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- THIS INSTRUMENT IS A MORTGAGE.
- THIS INSTRUMENT GRANTS A SECURITY INTEREST IN A TRANSMITTING UTILITY.
- BIG RIVERS ELECTRIC CORPORATION IS A TRANSMITTING UTILITY.
- THIS INSTRUMENT CONTAINS PROVISIONS THAT COVER REAL AND PERSONAL PROPERTY, AFTER-ACQUIRED PROPERTY, FIXTURES AND PROCEEDS.
- FUTURE ADVANCES AND FUTURE OBLIGATIONS ARE SECURED BY THIS INSTRUMENT.
- THE MAXIMUM ADDITIONAL INDEBTEDNESS WHICH MAY BE SECURED HEREUNDER IS \$3,000,000,000.
- THE TYPES OF PROPERTY COVERED BY THIS INSTRUMENT ARE DESCRIBED ON PAGES 2 THROUGH 4.
- THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

STATE TAXPAYER'S IDENTIFICATION NUMBER: 25757

FEDERAL TAXPAYER'S IDENTIFICATION NUMBER: 61-0597287

THIS INDENTURE WAS PREPARED BY ~~JAMES M. MICHAEL A. MILLER~~ FIORELLA OF SULLIVAN, MOUNTJOY, ~~STAINBACK & MILLER, P.S.C. PSC~~, 100 ~~ST. SAINT ANN BUILDING STREET~~, OWENSBORO, KENTUCKY 42303, ATTORNEY FOR BIG RIVERS ELECTRIC CORPORATION.

<sup>1</sup> Supplemental number to be confirmed as at the time of execution and delivery.

<sup>2</sup> Series designation to be confirmed.

**TABLE OF CONTENTS**  
(continued)

**Page**

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

THIS ~~FIRST~~[TENTH] SUPPLEMENTAL INDENTURE, dated as of ~~June 1~~[\_\_\_\_\_], ~~2010~~2020 (this "~~First~~[Tenth] Supplemental Indenture"), is between **BIG RIVERS ELECTRIC CORPORATION**, a cooperative corporation organized under the laws of the Commonwealth of Kentucky, as Grantor (hereinafter called the "Company"), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the "Trustee"), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

WHEREAS, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the "Original Indenture"), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Original Indenture) by the Trustee from time to time under the Original Indenture, which Original Indenture is filed of record as shown on Exhibit A hereto;

WHEREAS, the Company is the owner of the D.B. Wilson Plant Unit No. 1, a coal-fired steam electric generating plant (the "Plant") located within the geographical limits of the County of Ohio, Kentucky (the "County"), and pursuant to a resolution adopted by the Fiscal Court of the County on September 9, 1980 and the provisions of ~~the Industrial Building Revenue Bond Act (Title IX (Counties, Cities, and Local Units), Chapter 103 (Revenue Bonds for Miscellaneous City or County Projects), Sections 103.200 through 103.285, inclusive)~~, of the Kentucky Revised Statutes, as amended (the "Act"), the County agreed to finance the air and water pollution and sewage and solid waste facilities located at the Plant (the "Facilities") as an authorized project under the Act, by issuing its "Pollution Control Refunding Revenue Bonds, Series ~~2010A~~2020B (Big Rivers Electric Corporation Project)" (the "Series ~~2010A~~2020B Bonds") pursuant to a Trust Indenture, dated as of ~~June 1~~[\_\_\_\_\_], ~~2010~~2020, between the County and U.S. Bank National Association, as trustee (the "~~2010~~2020 Indenture") and loaning the proceeds thereof to the Company pursuant to the Loan Agreement, dated as of ~~June 1~~[\_\_\_\_\_], ~~2010~~2020, between the County and the Company (the "~~2010 Financing~~2020 Loan Agreement"); and

WHEREAS, in order to evidence its obligation to repay the loan of the proceeds of the Series ~~2010A~~2020B Bonds, the Company will issue to the County its note (the "First Mortgage Note, Series ~~2010A~~2020B"), which First Mortgage Note, Series ~~2010A~~2020B will be secured under the Indenture; and

WHEREAS, the Company desires to execute and deliver this ~~First~~[Tenth] Supplemental Indenture, in accordance with the provisions of the Original Indenture, for the purpose of providing for the creation and designation of the First Mortgage Note, Series ~~2010A~~2020B as an Additional Obligation and specifying the form and provisions of the First Mortgage Note, Series ~~2010A~~2020B;

WHEREAS, Section 12.1 of the Original Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the First Mortgage Note, Series ~~2010A~~2020B, to make the First Mortgage Note, Series ~~2010A~~2020B issued hereunder, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligation of the Company, and to constitute the Indenture a valid and binding lien for the security of the First Mortgage Note, Series ~~2010A~~2020B, in accordance with its terms, have been done and taken; and the execution and delivery of this ~~First~~Tenth Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS ~~FIRST~~TENTH SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the First Mortgage Note, Series ~~2010A~~2020B, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the First Mortgage Note, Series ~~2010A~~2020B is secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Original Indenture, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Original Indenture and to the rights of the Company under the Original Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as “Excepted Property” in the Original Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Original Indenture or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Trust Estate, all the Excepted Property described or referred to in Paragraphs A through H, inclusive, of “Excepted Property” in the Original Indenture then owned or thereafter acquired by the Company, shall immediately, and, in the case of any Excepted Property described or referred to in Paragraphs I, J and L of “Excepted Property” in the Original Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture to the extent permitted by law, and the Trustee or such other trustee or receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and whenever all Events of Default shall have been cured and the possession of all or substantially all of the Trust Estate shall have been restored to the Company, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Original Indenture, subject to the lien of the Indenture any Excepted Property, whereupon the same shall cease to be Excepted Property.

**TO HAVE AND TO HOLD** all such property, rights, privileges and franchises hereby and hereafter (by Supplemental Indenture or otherwise) granted, bargained, sold, alienated, remised, released, conveyed, assigned, transferred, mortgaged, hypothecated, pledged, set over or confirmed (or in which a security interest is granted) as aforesaid, together with all the tenements, hereditaments and appurtenances thereto appertaining (said properties, rights, privileges and franchises, including any cash and securities hereafter deposited or required to be deposited with the Trustee (other than any such cash which is specifically stated in the Original Indenture not to be deemed part of the Trust Estate) being part of the Trust Estate), unto the Trustee, and its successors and assigns in the trust herein created, forever.

**SUBJECT, HOWEVER,** to (i) Permitted Exceptions and (ii) to the extent permitted by Section 13.6 of the Original Indenture as to property hereafter acquired (a) any duly recorded or perfected Prior Lien that may exist thereon at the date of the acquisition thereof by the Company and (b) purchase money mortgages, other purchase money liens, chattel mortgages, conditional sales agreements or other title retention agreements created by the Company at the time of acquisition thereof.

**BUT IN TRUST, NEVERTHELESS,** with power of sale, for the equal and proportionate benefit and security of the Holders from time to time of all the Outstanding Secured Obligations without any priority of any Outstanding Secured Obligation over any other Outstanding Secured Obligation and for the enforcement of the payment of Outstanding Secured Obligations in accordance with their terms.

**UPON CONDITION** that, until the happening of an Event of Default under the Indenture and subject to the provisions of Article V of the Original Indenture, and not in limitation of the rights elsewhere provided in the Original Indenture, including the rights set forth in Article V of the Original Indenture, the Company shall have the right to (i) possess, use, manage, operate and enjoy the Trust Estate (other than cash and securities constituting part of the Trust Estate that are deposited with the Trustee), (ii) explore for, gather, cut, mine and produce crops, timber, coal, ore, gas, oil, minerals or other natural resources and products, and to use, consume and dispose of any thereof, and (iii) collect, receive, use, make payments from, transfer, invest, otherwise utilize or employ amounts constituting or derived from the rents, issues, tolls, earnings, profits, revenues, products and proceeds from the Trust Estate or the operation of the property constituting part of the Trust Estate.

Should the indebtedness secured by the Indenture be paid according to the tenor and effect thereof when the same shall become due and payable and should the Company perform all covenants therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the First Mortgage Note, Series ~~2010A~~2020B is to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in

the Original Indenture, and the Company does hereby covenant and agree to and with the Trustee, for the equal and proportionate benefit of all Holders of the Outstanding Secured Obligations, as follows:

## ARTICLE I

### THE FIRST MORTGAGE NOTE, SERIES ~~2010A~~2020B AND CERTAIN PROVISIONS RELATING THERETO

#### SECTION 1.01. Definitions.

All words and phrases defined in Article I of the Original Indenture shall have the same meaning in this ~~First~~Tenth Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### SECTION 1.02. Authorization and Terms of the First Mortgage Note, Series ~~2010A~~2020B.

There shall be established an Additional Obligation in the form of the promissory note known as and entitled the “First Mortgage Note, Series ~~2010A~~2020B” (hereinafter referred to as the “First Mortgage Note, Series ~~2010A~~2020B”), the form, terms and conditions of which shall be substantially as set forth in this Section and Section 1.03. The First Mortgage Note, Series ~~2010A~~2020B is the same Note described and defined in the ~~2010~~2020 Indenture and the ~~2010~~Financing~~2020~~ Loan Agreement as the “Note.” The aggregate principal face amount of the First Mortgage Note, Series ~~2010A~~2020B which shall be authenticated and delivered and Outstanding at any one time is limited to \$~~83,300,000~~[00,000,000].

The First Mortgage Note, Series ~~2010A~~2020B shall be dated the date of its authentication and shall mature on ~~[July 15, 2031]~~. The First Mortgage Note, Series ~~2010A~~2020B shall bear interest computed in the same manner and payable at the same time as the interest on the Series ~~2010A~~2020B Bonds is computed and paid as described and computed in accordance with the terms of the ~~2010~~2020 Indenture. The First Mortgage Note, Series ~~2010A~~2020B shall be subject to optional prepayment as more particularly set forth in such First Mortgage Note, Series ~~2010A~~2020B. The First Mortgage Note, Series ~~2010A~~2020B shall be authenticated and delivered to, and made payable to, U.S. Bank National Association, as trustee for the Series ~~2010A~~2020B Bonds (in such capacity, the “Bond Trustee”), as assignee and pledgee of the County pursuant to the ~~2010~~2020 Indenture.

All payments made on the First Mortgage Note, Series ~~2010A~~2020B shall be made to the Bond Trustee at its principal office in St. Paul, Minnesota in lawful money of the United States of America which will be immediately available on the date payment is due.

#### SECTION 1.03. Form of the First Mortgage Note, Series ~~2010A~~2020B.

The First Mortgage Note, Series ~~2010A~~2020B and the Trustee’s authentication certificate to be executed on the First Mortgage Note, Series ~~2010A~~2020B shall be substantially in the form

of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Original Indenture.

**SECTION 1.04. Payments on First Mortgage Note, Series ~~2010A~~2020B.**

Payments by the Company on the First Mortgage Note, Series ~~2010A~~2020B shall be used to make payments required under the ~~2010 Financing~~2020 Loan Agreement.

**ARTICLE II**

**MISCELLANEOUS**

**SECTION 2.01. Supplemental Indenture.**

This ~~First~~[Tenth] Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. All of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Notes, Series 2020B to the same extent as if specifically set forth herein except to the extent any such provisions, terms, covenants and conditions are covered or addressed by the express terms of this [Tenth] Supplemental Indenture or the 2020 Loan Agreement, in which case this [Tenth ] Supplemental Indenture or the 2020 Loan Agreement, as applicable, shall apply. Except to the extent inconsistent with the express terms of this ~~First~~[Tenth] Supplemental Indenture, the ~~2010~~2020 Indenture, the ~~2010 Financing~~2020 Loan Agreement and the Series ~~2010A~~2020B Bonds, all of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Note, Series ~~2010A~~2020B to the same extent as if specifically set forth herein.

**SECTION 2.02. Recitals.**

All recitals in this ~~First~~[Tenth] Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this [Tenth] Supplemental Indenture or the First Mortgage Notes, Series 2020B (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the First Mortgage Notes, Series 2020B; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee is not a party to the 2020 Loan Agreement, and it will not be responsible for or charged with knowledge of any terms of the 2020 Loan Agreement.

**SECTION 2.03. Successors and Assigns.**

Whenever in this ~~First~~[Tenth] Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Original Indenture, be deemed to include the successors and assigns of such party, and all the covenants and

agreements in this [First\[Tenth\]](#) Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

**SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this [First\[Tenth\]](#) Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this [First\[Tenth\]](#) Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this [First\[Tenth\]](#) Supplemental Indenture contained by or on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

**SECTION 2.05. Counterparts.**

This [First\[Tenth\]](#) Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 2.06. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this [First\[Tenth\]](#) Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association, [as](#)  
[Trustee](#)  
[Global Corporate Trust](#)  
[Goodwin Square](#)  
225 Asylum Street, [23<sup>rd</sup> floor](#)  
Hartford, Connecticut 06103

Additionally, this [First\[Tenth\]](#) Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The



Company is authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created.

[Signatures on Next Page.]





**EXHIBIT A**

~~[Filing and recording information for the Original Indenture on a county by county basis]~~

**RECORDING INFORMATION FOR  
INDENTURE DATED AS OF JULY 1, 2009**

<u>Breckinridge County</u>	<u>Mortgage Book 354, page 533</u>
<u>Caldwell County</u>	<u>Mortgage Book 258, page 1</u>
<u>Crittenden County</u>	<u>Mortgage Book 184, page 457</u>
<u>Daviess County</u>	<u>Mortgage Book 1707, page 562</u>
<u>Hancock County</u>	<u>Mortgage Book 177, page 259</u>
<u>Henderson County</u>	<u>Mortgage Book 1032, page 1</u>
<u>Hopkins County</u>	<u>Mortgage Book 965, page 227</u>
<u>Livingston County</u>	<u>Mortgage Book 262, page 305</u>
<u>Marshall County</u>	<u>Mortgage Book 672, page 592</u>
<u>McCracken County</u>	<u>Mortgage Book 1232, page 329</u>
<u>Meade County</u>	<u>Mortgage Book 627, page 222</u>
<u>Ohio County</u>	<u>Mortgage Book 435, page 500</u>
<u>Union County</u>	<u>Mortgage Book 373, page 152</u>
<u>Webster County</u>	<u>Mortgage Book 283, page 578</u>

## EXHIBIT B

THIS FIRST MORTGAGE NOTE, SERIES ~~2010A2020B~~ IS NONTRANSFERABLE EXCEPT AS MAY BE REQUIRED TO EFFECT ANY TRANSFER TO ANY SUCCESSOR BOND TRUSTEE UNDER THE TRUST INDENTURE, DATED AS OF ~~JUNE 1~~[\_\_\_\_\_], ~~2010~~2020, BETWEEN THE COUNTY OF OHIO, KENTUCKY AND U.S. BANK NATIONAL ASSOCIATION, AS BOND TRUSTEE.

No. R-

~~\$83,300,000~~[00,000,000]

### **BIG RIVERS ELECTRIC CORPORATION FIRST MORTGAGE NOTE, SERIES ~~2010A2020B~~**

**BIG RIVERS ELECTRIC CORPORATION** (“Big Rivers”), a cooperative corporation organized under the laws of the Commonwealth of Kentucky, for value received, promises to pay to U.S. Bank National Association, as trustee (the “Bond Trustee”), or its successors in trust, the principal sum of ~~\$83,300,000~~[00,000,000] and interest thereon as follows: Big Rivers shall pay, during the term of the Loan Agreement, dated as of ~~June 1~~[\_\_\_\_\_], ~~2010~~2020 (the “Financing Loan Agreement”), between the County of Ohio, Kentucky (the “County”) and Big Rivers, for deposit into the Bond Fund, (i) on or prior to each date on which interest is due on the County’s Pollution Control Refunding Revenue Bonds, Series ~~2010A2020B~~ (Big Rivers Electric Corporation Project), (the “Series ~~2010A2020B~~ Bonds”) issued by the County under the Trust Indenture, dated as of ~~June 1~~[\_\_\_\_\_], ~~2010~~2020 (the “Bond Indenture”), between the County and the Bond Trustee, as the same may be amended and supplemented from time to time, the amount of interest due on the Series ~~2010A2020B~~ Bonds on such date, computed in the manner described in the Bond Indenture, (ii) on the stated maturity date of the Series ~~2010A2020B~~ Bonds (or earlier date to which the maturity of the Series ~~2010A2020B~~ Bonds has been accelerated as a result of an event of default), a sum which will equal the principal amount of the Series ~~2010A2020B~~ Bonds which will become due on such date and (iii) on or prior to any redemption date for the Series ~~2010A2020B~~ Bonds, an amount equal to the principal of (premium, if any) and interest on the Series ~~2010A2020B~~ Bonds which are to be redeemed on such date.

This First Mortgage Note, Series ~~2010A2020B~~ is issued under, is described in and is subject to the Financing Loan Agreement, and is secured by an Indenture, dated as of July 1, 2009 ~~(, as amended and supplemented, including by that certain [Tenth] Supplemental Indenture, dated as of [\_\_\_\_], [\_\_\_\_] (collectively,~~ the “Big Rivers Indenture”), between Big Rivers and U.S. Bank National Association, as trustee (the “Indenture Trustee”), ~~as supplemented and amended.~~

All payments required pursuant hereto shall be made to the Bond Trustee at its principal office in St. Paul, Minnesota, in lawful money of the United States of America. As set forth in Section 5.7 of the Financing Loan Agreement, the obligation of Big Rivers to make the payments required hereunder shall be absolute and unconditional.

This First Mortgage Note, Series 2010A may be prepaid upon the terms and conditions set forth in Article X of the [Financing Loan](#) Agreement.

Big Rivers shall be entitled to credits against payments required hereby as provided in Section 5.2 of the [Financing Loan](#) Agreement.

If the maturity date of the Series [2010A2020B](#) Bond shall be accelerated as a result of an event of default, the principal of this First Mortgage Note, Series [2010A2020B](#) shall become due and payable in the manner and with the effect provided in the [Financing Loan](#) Agreement. The [Financing Loan](#) Agreement provides that, under certain conditions, such acceleration shall be rescinded.

No recourse shall be had for the payments required hereby or for any claim based herein or on the [Financing Loan](#) Agreement or on the Big Rivers Indenture against any officer, director or stockholder, past, present or, future, of Big Rivers as such, either directly or through Big Rivers, or under any constitution and provision, statute or rule of law or by the enforcement of any assessment or by any legal or equitable proceedings or otherwise.

This First Mortgage Note, Series [2010A2020B](#) shall not be entitled to any benefit under the Big Rivers Indenture and shall not become valid or obligatory for any purpose until the Indenture Trustee shall have signed the form of authentication certificate endorsed hereon.

All terms use in this First Mortgage Note, Series [2010A2020B](#) which are not defined herein shall have the meanings assigned to them in the [Financing Loan](#) Agreement or the Bond Indenture.

IN WITNESS WHEREOF, Big Rivers has caused this First Mortgage Note, Series ~~2010A~~2020B to be duly executed, attested and delivered the ~~8th~~      day of ~~June~~    , ~~2010~~2020.

(SEAL)

**BIG RIVERS ELECTRIC CORPORATION**

---

~~Mark A. Bailey~~

Robert W. Berry

President and Chief Executive Officer

**Attest:**

---

~~C. William Blackburn~~

~~Senior Vice President of Financial~~

~~& Energy Services and Chief Financial Officer~~

This is one of the Obligations of the series designated therein referred to in within-mentioned Big Rivers Indenture.

U.S. BANK NATIONAL ASSOCIATION, as  
Indenture Trustee

By: \_\_\_\_\_  
~~Philip G. Kane, Jr.~~  
Laurel Casasanta  
Vice President

Date of Authentication: ~~June 8~~   ,  
~~2010~~ 2020



## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the "Agreement"), dated as of ~~June 1, 2010~~, 2010/2020, ~~by is executed and between delivered by~~ Big Rivers Electric Corporation ("Big Rivers") ~~and U.S. Bank National Association, as trustee (the "Trustee") under the Trust Indenture, dated as of June 1, 2010 (the "Indenture"), between the County of Ohio, Kentucky (the "Issuer") and the Trustee, is executed and delivered~~ in connection with the issuance of ~~the Issuer's \$[83,300,000]~~ principal amount of ~~County of Ohio, Kentucky~~ Pollution Control Refunding Revenue Bonds, Series ~~2010A~~2020B (Big Rivers Electric Corporation Project) (the "Bonds") ~~issued by the County of Ohio, Kentucky (the "Issuer").~~ The proceeds of the sale of the Bonds will be used to ~~refund the entire outstanding principal amount of~~ refinance funds borrowed to redeem the Issuer's Pollution Control Refunding Revenue Bonds, Series ~~2001~~2010A (Big Rivers Electric Corporation Project), ~~Periodic Auction Rate Securities.~~ In connection therewith, the Issuer and Big Rivers have entered into a Loan Agreement dated as of ~~June 1, 2010~~, 2010/2020 (the "Financing Loan Agreement"), pursuant to which the Issuer has loaned to Big Rivers the aggregate principal amount of the Bonds. Capitalized terms used in this Agreement shall have the meanings given to them in the Trust Indenture, dated as of \_\_\_\_\_, 2020 (the "Indenture"), between the Issuer and U.S. Bank National Association, as trustee; capitalized terms used in this Agreement which are not otherwise defined in the Indenture shall have the respective meanings specified in Article IV hereof.

### ARTICLE I The Undertaking

Section 1.1. Purpose: No Issuer Responsibility or Liability. This Agreement is being executed and delivered solely to assist the Underwriter in complying with paragraph (b)(5) of the Rule and in consideration of the purchase of the Bonds by the Underwriters from the Issuer, and the contemplated sale of the Bonds to, and transfer of the Bonds between, holders and Beneficial Owners. Big Rivers acknowledges that the Issuer has undertaken no responsibility, and shall not be required to undertake any responsibility, with respect to any reports, notices or disclosures required by or provided pursuant to this Agreement, and shall have no liability to any person, including any holder of the Bonds, with respect to any such reports, notices or disclosures.

#### Section 1.2. Annual Financial Information.

(a) Big Rivers shall provide Annual Financial Information with respect to each fiscal year, commencing with the fiscal year ending December 31, 2010/2020, by no later than six months after the end of the respective fiscal year to (i) the MSRB and (ii) the Issuer ~~(with copies to the Trustee).~~

(b) Big Rivers shall provide, in a timely manner, notice of any failure of Big Rivers to provide the Annual Financial Information by the date specified in subsection (a) above to (i) the MSRB and (ii) the Issuer ~~(with copies to the Trustee)~~ in substantially the form of Exhibit A hereto.

Section 1.3. Audited Financial Statements. If not provided as part of Annual Financial Information by the date required by Section 1.2 hereof because Audited Financial Statements are not available, Big Rivers shall provide Audited Financial Statements, when and if available, to (i) the MSRB and (ii) the Issuer ~~(with copies to the Trustee).~~

#### Section 1.4. Material Listed Events Notices.

(a) If a ~~Material~~Listed Event occurs, Big Rivers shall provide, in a timely manner, ~~a Material not in excess of ten Business Days after the occurrence of the event, a Listed~~ Event Notice to (i) the MSRB and (ii) the Issuer ~~(with copies to the Trustee).~~

(b) Any such notice of a defeasance of Bonds shall state whether the Bonds have been escrowed to maturity or to an earlier redemption and the timing of such maturity or redemption.

~~(c) The Trustee shall promptly advise Big Rivers and the Issuer whenever, in the course of performing its duties as Trustee under the Indenture, the Trustee has actual notice of an occurrence which, if material, would require Big Rivers to provide a Material Event Notice hereunder; provided, however, that the failure of the Trustee so to advise Big Rivers or the Issuer shall not constitute a breach by the Trustee of any of its duties and responsibilities under this Agreement or the Indenture.~~

Section 1.5. Information. Nothing in this Agreement shall be deemed to prevent Big Rivers from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Financial Information or ~~Material~~Listed Event Notice, in addition to that which is required by this Agreement. If Big Rivers chooses to include any information in any Annual Financial Information or ~~Material~~Listed Event Notice in addition to that which is specifically required by this Agreement, Big Rivers shall have no obligation under this Agreement to update such information or include it in any future Annual Financial Information or ~~Material~~Listed Event Notice.

Section 1.6. No Previous Non-Compliance. Except as disclosed in the Preliminary Offering Statement, Big Rivers represents that ~~since July 3, 1995~~during the previous five years, it has not failed to comply in any material respect with any previous undertaking in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule.

## ARTICLE II Operating Rules

Section 2.1. Reference to Other Documents. It shall be sufficient for purposes of Section 1.2 hereof if Big Rivers provides Annual Financial Information by specific reference to documents (i) either (1) provided to the MSRB or (2) filed with the SEC, or (ii) if such document is an offering statement provided in connection with a subsequent financing and meeting the definition of “final official statement” as defined in paragraph (f)(3) of the Rule, available from the MSRB.

Section 2.2. Submission of Information. Annual Financial Information may be provided in one document or multiple documents, and at one time or in part from time to time.

Section 2.3. MaterialListed Event Notices. Each ~~Material~~Listed Event Notice shall be so captioned and shall prominently state the title, date and CUSIP numbers of the Bonds.

Section 2.4. ~~Transmission of Information and Notices.~~ ~~Unless otherwise required by law and, in Big Rivers’ sole determination, subject to technical and economic feasibility, Big Rivers shall employ such methods of information and notice transmission as shall be requested or recommended by the herein designated recipients of Big Rivers’ information and notices. Notwithstanding the foregoing, all documents provided to the MSRB shall be~~Format for Filings with MSRB. Any report or filing with the MSRB pursuant to this Agreement must be submitted in electronic format, accompanied by such identifying information as is prescribed by the MSRB.

Section 2.5. Fiscal Year. Annual Financial Information shall be provided at least annually notwithstanding any fiscal year longer than twelve calendar months. Big Rivers' current fiscal year is January 1 - December 31, and Big Rivers shall promptly notify (i) the MSRB and (ii) the Issuer, of each change in its fiscal year.

### ARTICLE III

#### Effective Date, Termination, Amendment and Enforcement

##### Section 3.1. Effective Date; Termination.

- (a) This Agreement shall be effective upon issuance of the Bonds.
- (b) If Big Rivers' obligations under the Financing Loan Agreement are assumed in full by some other entity, such person shall be responsible for compliance with this Agreement in the same manner as if it were Big Rivers, and thereupon Big Rivers shall have no further responsibility hereunder.
- (c) Big Rivers' obligations under this Agreement shall terminate upon the legal defeasance pursuant to Section VII of the Indenture, prior redemption or payment in full of all of the Bonds.

(d) This Agreement, or any provision hereof, shall be null and void in the event that Big Rivers delivers to (i) the MSRB, and (ii) the Issuer ~~and (iii) the Trustee~~, an opinion of Counsel, addressed to Big Rivers, the Issuer ~~and the Trustee~~, to the effect that those portions of the Rule which require this Agreement, or any of such provisions, do not or no longer apply to the Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, as shall be specified in such opinion.

##### Section 3.2. Amendment.

(a) This Agreement may be amended, by ~~written agreement of the parties~~, Big Rivers without the consent of the holders of the Bonds (except to the extent required under clause (4)(ii) in this paragraph), if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of Big Rivers or the type of business conducted thereby, (2) this Agreement as so amended would have complied with the requirements of the Rule as of the date of this Agreement, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) Big Rivers shall have ~~delivered to the Trustee~~received an opinion of Counsel, addressed to Big Rivers, and the Issuer ~~and the Trustee~~, to the same effect as set forth in clause (2) above, (4) either (i) Big Rivers shall have ~~delivered to the Trustee~~received an opinion of Counsel or a determination by a person, in each case unaffiliated with the Issuer or Big Rivers (such as bond counsel ~~or the Trustee~~) and acceptable to Big Rivers ~~and the Trustee~~, addressed to Big Rivers, and the Issuer ~~and the Trustee~~, to the effect that the amendment does not materially impair the interests of the holders of the Bonds or (ii) the holders of the Bonds consent to the amendment to this Agreement pursuant to the same procedures as are required for amendments to the Indenture with consent of holders of Bonds pursuant to Section 11.03 of the Indenture as in effect on the date of this Agreement, and (5) Big Rivers shall have delivered copies of such opinion(s) and amendment to (i) the MSRB, and (ii) the Issuer.

(b) In addition to subsection (a) above, Big Rivers may amend this Agreement ~~may be amended by written agreement of the parties~~, without the consent of the holders of the Bonds, if all of the following conditions are satisfied: (1) an amendment to the Rule is adopted, or a new or modified official

interpretation of the Rule is issued, after the effective date of this Agreement which is applicable to this Agreement, (2) Big Rivers shall have ~~delivered to the Trustee~~received an opinion of Counsel, addressed to Big Rivers; and the Issuer ~~and the Trustee~~, to the effect that performance by Big Rivers under this Agreement as so amended will not result in a violation of the Rule and (3) Big Rivers shall have delivered copies of such opinion and amendment to (i) the MSRB; and (ii) the Issuer.

(c) To the extent any amendment to this Agreement results in a change in the type of financial information or operating data provided pursuant to this Agreement, the first Annual Financial Information provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

(d) If an amendment is made pursuant to Section 3.2(a) hereof to the accounting principles to be followed by Big Rivers in preparing its financial statements, the Annual Financial Information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a qualitative and, to the extent reasonably feasible, quantitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information.

Section 3.3. Benefit; Third-Party Beneficiaries; Enforcement.

(a) The provisions of this Agreement shall constitute a contract with and inure solely to the benefit of the holders from time to time of the Bonds, except that beneficial owners of Bonds shall be third-party beneficiaries of this Agreement. The provisions of this Agreement shall create no rights in any person or entity except as provided in this subsection (a) and subsection (b) of this Section.

(b) The obligations of Big Rivers to comply with the provisions of this Agreement shall be enforceable (i) in the case of enforcement of obligations to provide financial statements, financial information, operating data and notices, by any holder of Outstanding Bonds, or by ~~the Trustee~~a trustee on behalf of the holders of Outstanding Bonds, or (ii), in the case of challenges to the adequacy of the financial statements, financial information and operating data so provided, by ~~the Trustee~~a trustee on behalf of the holders of Outstanding Bonds; ~~provided, however, that the Trustee shall not be required to take any enforcement action with respect to the Bonds, except at the direction of the Issuer (but the Issuer shall have no obligation to take any such action), or, Any such proceedings to require Big Rivers to perform any obligation under this Agreement shall be instituted and maintained only by~~ the holders of not less than ~~twenty five percent~~25% in aggregate principal amount of the Bonds at the time Outstanding, ~~who shall have provided the Trustee with security and indemnity determined by the Trustee to be adequate or a trustee acting on their behalf.~~ The holders' ~~and Trustee's~~or such trustee's rights to enforce the provisions of this Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of Big Rivers' obligations under this Agreement. In recognition of the third-party beneficiary status of beneficial owners of Bonds pursuant to subsection (a) of this Section, beneficial owners shall be deemed to be holders of Bonds for purposes of this subsection (b).

(c) Any failure by Big Rivers ~~or the Trustee~~ to perform in accordance with this Agreement shall not constitute a default or an Event of Default under the Indenture or the Financing Loan Agreement, and the rights and remedies provided by the Indenture or the Financing Loan Agreement, as the case may be, upon the occurrence of a default or an Event of Default shall not apply to any such failure.

(d) This Agreement shall be construed and interpreted in accordance with the laws of the State, and any suits and actions arising out of this Agreement shall be instituted in a court of competent jurisdiction in the State; *provided, however*, that to the extent this Agreement addresses matters of federal

securities laws, including the Rule, this Agreement shall be construed in accordance with such federal securities laws and official interpretations thereof.

ARTICLE IV  
Definitions

Section 4.1. Definitions. The following terms used in this Agreement shall have the following respective meanings:

(1) “Annual Financial Information” means, collectively, (i) the following financial information and operating data of the type included in the Offering Statement with respect to Big Rivers and the Members, as applicable, contained under the following captions in the Offering Statement updated on an annual basis (capitalized terms used in this definition of Annual Financial Information and not otherwise defined in this Agreement shall have the meanings set forth in the Offering Statement):

- **[TO BE UPDATED]**
- “BIG RIVERS ELECTRIC CORPORATION – Introduction – General”: the numbers set forth in the second and fourth paragraphs thereof;
- “BIG RIVERS ELECTRIC CORPORATION – Introduction – The Members”: the numbers set forth therein;
- “SELECTED BIG RIVERS’ FINANCIAL DATA”;
- “CAPITALIZATION”;
- “Management’s Discussion and Analysis of Financial Condition and Results of Operations”: all of the information contained therein other than forecasted capital expenditures;
- “QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK – Interest Rate Risk and Commodity Price Risk”: the numbers or percentages set forth;
- “GENERATION AND TRANSMISSION ASSETS – Generating Resources – General”: the table set forth therein;
- “GENERATION AND TRANSMISSION ASSETS – Generating Resources – Kenneth C. Coleman Plant, Robert D. Green Plant, Robert A. Reid Plant, D.B. Wilson Unit No. 1 Plant and Station Two Facility”: the numbers set forth under such captions;
- “GENERATION AND TRANSMISSION ASSETS – Transmission”: the numbers set forth under such caption;
- “APPENDIX B – Member Financial and Statistical Information”: the tables set forth therein;
- “APPENDIX E-1 – SUMMARY OF MORTGAGE INDENTURE – Additional Mortgage Indenture Obligations”: the numbers set forth in the second paragraph thereof;

and (ii) the information regarding amendments to this Agreement required pursuant to Sections 3.2(c) and (d) of this Agreement. Annual Financial Information shall include Audited Financial Statements, if available, or Unaudited Financial Statements.

The descriptions contained in clause (i) above of financial information and operating data constituting Annual Financial Information are of general categories of financial information and operating data. When such descriptions include information that no longer can be generated because the operations to which it related have been materially changed or discontinued, a statement to that effect shall be provided in lieu of such information. Any Annual Financial Information containing modified financial information or operating data should explain, in narrative form, the reasons for the modification and the impact of the modification on the type of financial information or operating data being provided.

(2) “Audited Financial Statements” means (i) the annual financial statements, if any, of Big Rivers, audited by such auditor as shall then be required or permitted by State law or the Indenture and (ii) audited financial statements of each of the Members for the prior fiscal year. Audited Financial Statements shall be prepared in accordance with GAAP; provided, however, that, pursuant to Section 3.2(a) hereof, Big Rivers or the Members, as the case may be, may from time to time, if required by federal or State legal requirements, modify the basis upon which its financial statements are prepared. Written notice of any such modification shall be provided by Big Rivers ~~to the Trustee~~, pursuant to Section 3.2(d) hereof, and shall include a reference to the specific federal or State law or regulation describing such accounting basis.

(3) “Business Day” means any day other than a Saturday, Sunday, a legal holiday or a day on which banking institutions in the State ~~or the state where the principal office of the Trustee is located~~ are authorized or required by law to remain closed.

(4) “Counsel” means Orrick, Herrington & Sutcliffe LLP or other nationally recognized bond counsel or counsel expert in federal securities laws.

(5) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(6) “Financial Obligation” shall mean a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “Financial Obligation” shall not include municipal securities (as defined in the Exchange Act) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

(5) “GAAP” means generally accepted accounting principles as prescribed from time to time by the Financial Accounting Standards Board.

~~(6) “Material Listed Event” means any of the following events with respect to the Bonds, whether relating to Big Rivers or otherwise, if material:~~

- ~~(1) (i) ~~principal~~ Principal and interest payment delinquencies;~~
- ~~(2) (ii) ~~non-payment~~ Non-payment related defaults, if material;~~
- ~~(3) (iii) ~~unscheduled~~ Unscheduled draws on debt service reserves reflecting financial difficulties;~~

~~(4)~~ ~~(iv) unscheduled~~Unscheduled draws on credit enhancements reflecting financial difficulties;

~~(5)~~ ~~(v) substitution~~Substitution of credit or liquidity providers, or their failure to perform;

~~(6)~~ ~~(vi) adverse~~Adverse tax opinions ~~or, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material~~ events affecting the ~~tax-exempt~~tax status of the ~~security~~Bonds;

~~(7)~~ ~~(vii) modifications~~Modifications to rights of security holders, if material;

~~(8)~~ ~~(viii) bond~~Bond calls, if material, and tender offers;

~~(9)~~ ~~(ix) defeasances~~Defeasances;

~~(10)~~ ~~(x) release~~Release, substitution, or sale of property securing repayment of the ~~securities~~Bonds, if material; ~~and~~

~~(xi) rating changes.~~

~~(11)~~ Rating changes;

~~(12)~~ Bankruptcy, insolvency, receivership or similar event of the obligated person;

Note: for the purposes of the event identified in subparagraph (12), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person;

~~(13)~~ The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

~~(14)~~ Appointment of a successor or additional trustee or the change of name of a trustee, if material;

~~(15)~~ Incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

(7) “~~Material~~Listed Event Notice” means notice of a ~~Material~~Listed Event.

(8) “Members” means ~~the~~Big Rivers’ Members.

(9) “MSRB” means the Municipal Securities Rulemaking Board or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the SEC, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org>.

(10) “Offering Statement” means the “final official statement,” as defined in paragraph (f)(3) of the Rule, relating to the Bonds.

(11) “Rule” means Rule 15c2-12 promulgated by the SEC under the ~~Securities~~-Exchange Act of 1934 (~~17 CFR Part 240, §240.15c2-12~~), as in effect on the date of this Agreement, including any official interpretations thereof issued before or after the effective date of this Agreement which are applicable to this Agreement.

(12) “SEC” means the United States Securities and Exchange Commission.

(13) “State” means the Commonwealth of Kentucky.

(14) “Unaudited Financial Statements” means the same as Audited Financial Statements, except that they shall not have been audited.

(15) “Underwriter” means ~~Goldman, Sachs & Co.~~BofA Securities, Inc.

~~ARTICLE~~ \_\_\_\_\_ ~~V~~  
Miscellaneous

~~Section 5.1. Duties, Immunities and Liabilities of Trustee. Article IX of the Indenture is hereby made applicable to this Agreement as if this Agreement were (solely for this purpose) contained in the Indenture.~~

~~Section 5.2. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.~~

IN WITNESS WHEREOF, ~~the parties have each~~Big Rivers has caused this Agreement to be executed by ~~their~~its duly authorized ~~representatives all~~representative as of the date first above written.



BIG RIVERS ELECTRIC CORPORATION

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~~Attest: U.S. BANK NATIONAL  
ASSOCIATION, as Trustee~~

**EXHIBIT A**

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL INFORMATION REPORT**

<u>Name of Provider:</u>	<u>Big River Electric Corporation</u>
<u>Name of Bond Issue:</u>	<u>County of Ohio, Kentucky Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project)</u>
<u>Date of Issuance:</u>	<u>                    , 2020</u>

NOTICE IS HEREBY GIVEN that Big Rivers has not provided an Annual Information Report with respect to the above-named Bonds as required by Section 1 of the Continuing Disclosure Agreement dated \_\_\_\_\_, 2020. Big Rivers anticipates that the Annual Information Report will be filed by \_\_\_\_\_.

Dated:

**BIG RIVERS ELECTRIC POWER CORPORATION**

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

\$[83,300,000]<sup>2</sup>  
County of Ohio, Kentucky  
Pollution Control Refunding Revenue Bonds, Series ~~2010A~~2020B  
(Big Rivers Electric Corporation Project)

LETTER OF REPRESENTATION

~~May 27~~[●], ~~2010~~2020

Fiscal Court of the County of Ohio  
Hartford, Kentucky

BofA Securities, Inc.  
One Bryant Park, 12<sup>th</sup> Floor  
~~Goldman, Sachs & Co.~~  
~~200 West Street, 33<sup>rd</sup> Floor~~  
New York, New York ~~10282-2198~~10036

Ladies and Gentlemen:

~~1-~~ Big Rivers Electric Corporation (the “**Company**”), in order to induce ~~Goldman, Sachs & Co. (the “**Underwriter**”~~BofA Securities, Inc. (the “**Representative**”), acting on its own behalf and on behalf of the other underwriter listed in Schedule 1 to the Purchase Contract (the Representative and such other underwriter being collectively called the “**Underwriters**”) and County of Ohio, Kentucky (the “**Issuer**”) to enter into a Purchase Contract dated the date hereof (the “**Purchase Contract**”) relating to the purchase by the ~~Underwriter~~Underwriters from the Issuer of \$[83,300,000] aggregate principal amount of County of Ohio, Kentucky Pollution Control Refunding Revenue Bonds, Series ~~2010A~~2020B (Big Rivers Electric Corporation Project) (the “**Bonds**”) does hereby execute and deliver this Letter of Representation. Capitalized terms used herein, if not otherwise defined herein, shall have the meanings assigned to such terms in the Purchase Contract, and, if not defined therein, in the Preliminary Offering Statement.

The Bonds will be issued under and pursuant to a Trust Indenture dated as of ~~June 1~~[●], ~~2010~~2020 (the “**Bond Indenture**”), by and between the Issuer and U.S. Bank National Association, as trustee (the “**Bond Trustee**”). ~~The Bond proceeds shall be paid by the Issuer to U.S. Bank National Association, the current trustee, as successor (the “**2001 Trustee**”), under the Trust Indenture between the Issuer and the 2001 Trustee, dated as of August 1, 2001 (the “**2001 Trust Indenture**”), and shall be used by the 2001 Trustee, together with other moneys provided by the Company, to refund by redemption the Issuer’s Pollution Control Revenue Refunding~~

<sup>2</sup> Subject to adjustment for premium issuance.

~~Bonds, Series 2001A (Big Rivers Electric Corporation Project), Periodic Auction Reset Securities (PARS) (the “Refunded Bonds”). The Bond proceeds and such other moneys shall be deposited with the 2001 Trustee pursuant to the Escrow Deposit Agreement, dated as of June 1, 2010 (the “Escrow Deposit Agreement”), among the Issuer, the Company and U.S. Bank National Association, in its capacity as 2001 Trustee and as Escrow Deposit Trustee (as defined in the Escrow Deposit Agreement) On behalf of and at the direction of the Issuer, the proceeds of the Bonds shall be transferred to or at the direction of the Company.~~

The payment by the Issuer of a portion of the proceeds of the Bonds to or as directed by the Company is provided for by the provisions of the Loan Agreement, dated as of ~~June 1~~[●], ~~2010~~2020 (the “**Financing Loan Agreement**”), between the Issuer and the Company, and the obligations thereunder to repay the principal amount of the Bonds when due at maturity and interest on the Bonds when due shall be evidenced by a note of the Company dated the date of issuance of the Bonds (the “**Note**”). The Note will be in the form specified in the Supplemental Indenture (as hereinafter defined) and the **Financing Loan** Agreement and will be an Obligation secured under the Indenture, dated as of July 1, ~~2009~~2010, between the Company and U.S. Bank National Association, as trustee (the “**Mortgage Indenture Trustee**”), as heretofore supplemented or amended, including as supplemented by the ~~First~~[Tenth] Supplemental Indenture, dated as of ~~June 1~~[●], ~~2010~~2020 (the “**Supplemental Indenture**”), between the Company and the Mortgage Indenture Trustee (as supplemented and amended, the “**Mortgage Indenture**”).

The Company and the Issuer have caused to be prepared the following information: (i) a Preliminary Offering Statement, dated ~~May 20~~[●], ~~2010~~2020 (together with the appendices thereto, the “**Preliminary Offering Statement**”), (ii) the Pricing Supplement attached as Appendix B to the Purchase Contract (the “**Pricing Supplement**”), and (iii) ~~the Supplement to the Preliminary Offering Statement distributed to investors on May 26, 2010 attached as Appendix C to the Purchase Contract (the “May 26 Supplement”), and~~ (iv) the electronic road show made available to investors via the Internet (not including telephone question and answer sessions with investors) (the “**Electronic Road Show**”). The Preliminary Offering Statement, together with the Pricing Supplement ~~and the May 26 Supplement~~, is referred to herein as the “**Disclosure Package.**”

~~Capitalized terms used herein, if not otherwise defined herein, shall have the meanings assigned to such terms in the Purchase Contract, and, if not defined therein, in the Preliminary Offering Statement.~~

1. Representations, Warranties, and Covenants of the Company. In consideration of the execution and delivery of the Purchase Contract, the Company represents, warrants and covenants to and with the ~~Underwriter~~Underwriters and the Issuer as follows:

(a) The Company has been duly incorporated and is now validly existing and in good standing as a rural electric cooperative corporation under the laws of the Commonwealth of Kentucky. The Company has been duly qualified as a foreign corporation in each jurisdiction in which such qualification is required and is in good

standing under the laws of each such jurisdiction or is not subject to any material liability or disability by reason of the failure to be so qualified in any such jurisdiction.

(b) ~~(a) The~~ Except for the information which is permitted to be omitted pursuant to Rule 15c2-12(b)(1), the Preliminary Offering Statement, as of its date, and the Disclosure Package, as of ~~12:00 p.m.~~ [\_\_\_ P.M.], New York ~~city~~ City time, on ~~May 27~~ [●], ~~2010~~ 2020 (the “**Initial Sale Time**”), did not, and the Offering Statement, as of its date and as of the Closing Date, will not, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; as of the Initial Sale Time, the Electronic Road Show, when considered together with the Disclosure Package, did not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations or warranties in this Section ~~21~~ (a) shall not apply to information contained in or omitted from the Preliminary Official Statement, the Official Statement or the Disclosure Package (or any supplement or amendment thereto) (i) in reliance upon information furnished to the Company in writing by or on behalf of the ~~Underwriter~~ Representative expressly for use in the Preliminary Offering Statement and the Offering Statement under the heading “UNDERWRITING:” ~~The Company authorizes the Underwriter~~ (the “**Underwriter Covered Section**”), (ii) the DTC-related sections, (iii) the Issuer Covered Sections, and (iii) under the heading “TAX MATTERS” (collectively, the “**Excluded Material**”). The Company agrees to provide the Underwriters electronic versions of the Disclosure Package and print copies and electronic versions of the Offering Statement in “designated electronic format” (as defined in MSRB Rule G-32) in sufficient quantity to permit the Underwriters to comply with Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (“**Rule 15c2-12**”), and other applicable rules of the SEC and the MSRB, within seven business days of the date hereof and in sufficient time to accompany any confirmation requesting payment from any customer. The Company has duly authorized the Underwriters to use the Disclosure Package and the Offering Statement in connection with the public offering and sale of the Bonds and transactions contemplated by the Preliminary Offering Statement and Offering Statement and hereby authorizes the Representative to file the Preliminary Offering Statement and Offering Statement with EMMA.

(c) ~~(b) The~~ Company has full legal right, power and authority to, and has taken all corporate action necessary to, execute ~~and,~~ deliver, and perform its obligations under this Letter of Representation, the Mortgage Indenture, the Supplemental Indenture, the Financing Loan Agreement, the Continuing Disclosure Agreement ~~(in substantially the form attached as an Appendix H-1 to the Preliminary Offering Statement),~~ the Tax Certificate and Agreement, ~~the Escrow Deposit Agreement~~ and the Note (together, the “Company Documents”). As of the date hereof, this Letter of Representation ~~is~~ and the Mortgage Indenture (excluding the Supplemental Indenture) are, and as of the Closing, the ~~Mortgage Indenture, the Supplemental Indenture, the Financing Loan Agreement, the Continuing Disclosure Agreement (in substantially the form attached as an Appendix H-1 to the Preliminary Offering Statement),~~ the Tax Certificate and ~~Agreement, the Escrow Deposit~~ Agreement and the Note will have been, duly authorized, executed and delivered by the Company (and in the case of the Note, will be duly authenticated by the Mortgage

Indenture Trustee pursuant to the terms of the Mortgage Indenture) and will be in or are in full force and effect and will or do constitute the legal, valid and binding obligations of the Company enforceable in accordance with their respective terms (except as to enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting enforcement of creditors' rights and by equitable rights where equitable remedies are sought and except that rights to indemnity and remedies for breach of representations and warranties relating to the Disclosure Package or the Offering Statement may be limited under the federal securities laws or other applicable laws), and performance by the Company thereunder will not conflict with, violate, or result in a breach of any of the provisions of, or constitute a default under (i) the Company's Articles of Incorporation, as amended, or its Bylaws, as amended, or (ii) any agreement or instrument to which, or any law, administrative regulation or court decree by which, the Company is bound, except in the case of clause (iii) above, for any such violation, breach or default that would not individually or in the aggregate, be reasonably expected to have a material adverse effect on the business ~~or~~ properties, operations or current or future financial position, patronage capital, margins or results of operations of the Company or on the performance by the Company of its obligations under the ~~2010~~ Financing Documents (a "Material Adverse Effect"). To the extent described therein, the Company Documents conform to the descriptions thereof contained in the Disclosure Package and the Offering Statement.

~~(d)~~ ~~(e)~~—The Company agrees to assist the Issuer in providing to the ~~Underwriter~~Underwriters the Offering Statement in the quantities and at the times required by Section 5(a)(1) of the Purchase Contract.

~~(e)~~ ~~(d)~~—During the ~~period commencing on the date hereof and ending on the earlier of (i) ninety (90) days following the End of the Underwriting Period (as defined in the Purchase Contract), or (ii) the time when the Offering Statement is available to any person from a nationally recognized municipal securities information repository, but in the case of this clause (ii), no less than twenty five (25) days following the End of the Underwriting~~Update Period, if any event shall occur which in the reasonable opinion of the ~~Underwriter~~Representative would cause the Offering Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and if in the reasonable opinion of the ~~Underwriter~~Representative such event requires the preparation and publication of a supplement or amendment to the Offering Statement, the Company will ~~assist in amending or supplementing~~amend or supplement the Offering Statement in a form and manner approved by the Issuer, the ~~Underwriter~~Representative and Bond Counsel so that the Offering Statement, as so supplemented or amended, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided, however, that all expenses incurred in connection with any such supplement or amendment will be paid by the Company. The Company agrees to notify the ~~Underwriter~~Representative of any event of the type described in this paragraph of which it has knowledge.

(f) If the Offering Statement is supplemented or amended, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended) at all times subsequent thereto up to and including that date that is 25 days from the “end of the underwriting period” (as defined in Rule 15c2-12), the Offering Statement as so supplemented or amended will be true and correct in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) ~~(e)~~ Except as contemplated herein or as contemplated or set forth in the Disclosure Package, or as the result of operations in the ordinary course of business as described in the Disclosure Package, the Company, subsequent to the dates as of which information is given in the Disclosure Package and as of the date on which the representation with respect to this paragraph is being made (being the date of this Letter of Representation and, pursuant to clause 5(i) of paragraph (e) of Section 9 of the Purchase Contract, the Closing Date), has not incurred, and will not incur without the written consent of the Representative, any material liabilities or obligations for borrowed money or for the deferred purchase of goods or services, direct or contingent; ~~and, except as contemplated or set forth in the Disclosure Package, subsequent to the dates as of which information is given in the Disclosure Package and as of the date on which the representation with respect to this paragraph is being made, there has been no material adverse change in the condition, financial or otherwise, of the Company.~~

~~(f) The Company has been duly incorporated and is now validly existing and in good standing as a rural electric cooperative corporation under the laws of the State of Kentucky. The Company has been duly qualified as a foreign corporation in each jurisdiction in which such qualification is required and is in good standing under the laws of each such jurisdiction or is not subject to any material liability or disability by reason of the failure to be so qualified in any such jurisdiction.~~

(h) ~~(g)~~ There ~~[Other than as described in the Disclosure Package,]~~ there is no action, suit, proceeding, or inquiry or investigation of which the Company has notice, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending, ~~other than as described in the Disclosure Package,~~ or known to the Company to be threatened against ~~or affecting~~ the Company; ~~nor to the best of the Company’s knowledge is there any basis therefor~~, wherein an unfavorable decision, ruling or finding would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(i) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending that is (1) contesting the exclusion from gross income of interest on the Bonds for federal income tax purposes or (2) contesting in any way the completeness or accuracy of the Disclosure Package or the Offering Statement or any supplement or amendment thereto, or to the Company’s actual knowledge, no such action, suit or proceeding, inquiry or investigation is threatened.

(j) ~~(h)~~ The Company will cause the proceeds from the sale of the Bonds to be applied as provided for in the Bond Indenture and the ~~Finaneing~~Loan Agreement.

(k) ~~(i)~~ All consents, licenses, approvals, authorizations, permits and orders of any governmental authority, board, agency or commission or filings or registrations with any governmental authority of the ~~State~~Commonwealth of Kentucky or the United States of America required in connection with, or the absence of which would materially adversely affect the execution and delivery by the Company of, the ~~Finaneing~~Loan Agreement, the Continuing Disclosure Agreement, the Mortgage Indenture, the Supplemental Indenture, the Tax Certificate and Agreement, ~~the Escrow Deposit Agreement~~, the Note and this Letter of Representation, the performance by the Company of its obligations thereunder and hereunder and of the transactions contemplated in the Disclosure Package, except as described in the Disclosure Package, and the issuance and sale of the Bonds, have been obtained or made and are in full force and effect or will be obtained prior to the Closing; provided, however, that no representation is made concerning compliance with the federal securities laws or the securities or “blue sky” laws of the various jurisdictions of the United States of America.

(l) ~~(j)~~ The Company will notify the ~~Underwriter~~Representative if, prior to the Closing Date, any event occurs which, in the judgment of the Company, makes the Disclosure Package or the Offering Statement contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading, and the Company will change the Disclosure Package or the Offering Statement so that it does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements, in the light of the circumstances under which they were made, not misleading.

(m) ~~(k)~~—The Company will diligently cooperate with the ~~Underwriter~~Representative to qualify the Bonds for offer and sale under the securities or “blue sky” laws of such jurisdictions as the ~~Underwriter~~Representative may request; provided that in no event shall the Company be obligated to qualify to do business in any jurisdictions where it is not now so qualified or to take any action which would subject it to the general service of process in any jurisdictions where it is not now so subject. The Company will not be responsible for compliance with or the consequences of failure to comply with applicable “blue sky” laws. The Company will notify the Representative immediately of receipt by the Company of any written notification with respect to the suspension of the qualification of Bonds for sale in any jurisdictions or the initiation or threat of any proceeding for that purpose.

(n) ~~(l)~~ The Company will pay the reasonable expenses to be paid by it pursuant to Section ~~1213~~ of the Purchase Contract (subject to the terms and conditions set forth therein). In addition, as compensation to the ~~Underwriter for its~~Underwriters for their commitments and obligations under the Purchase Contract, the Company will pay to the ~~Underwriter~~Representative by wire transfer ~~or a check or checks payable~~ in immediately available funds, an amount equal to \$~~941,505.50~~[●] (such fee being inclusive of the ~~Underwriter's~~Underwriters' out-of-pocket expenses).] Such payment shall be made



simultaneously with the payment by the ~~Underwriter~~Representative of the purchase price of the Bonds as provided in the Purchase Contract.

(o) ~~(m)~~—The Preliminary Offering Statement was, as of its date, “deemed final,” within the meaning of Rule 15c2-12 ~~promulgated under the Securities Exchange Act of 1934, as amended (“Rule 15c2-12”)~~, by the Company on behalf of the Issuer as of the date thereof and as of the date hereof, except for the omission of such information as is specified in paragraph (b)(1) of Rule 15c2-12 and the Issuer Covered Sections, and is deemed to be a “final official statement” within the meaning of Rule 15c2-12.

(p) ~~(n)~~—The Company is in compliance with all of its continuing disclosure undertakings entered into pursuant to Rule 15c2-12 and has not failed to comply with any such undertakings during the last five years.

(q) ~~(o)~~—The ~~consolidated~~ audited financial statements of the Company for the fiscal years ended December 31, ~~2008~~2019 and December 31, ~~2009~~2018 contained in Appendix A to the Preliminary Offering Statement and the Offering Statement and the unaudited financial statements as of June 30, 2020 and June 30, 2019 contained in the Preliminary Offering Statement and Offering Statement present fairly the consolidated financial position of the Company as of the dates indicated and the results of operations and changes in cash flows for the periods specified, and such financial statements have been prepared in conformity with generally accepted accounting principles consistently applied. There has been no material adverse change in the condition, financial or otherwise, of the Company since ~~December 31, 2009~~[June 30, 2020], from that set forth in the financial statements, as of and for the period ended that date, except as disclosed in the ~~Disclosure Package~~Preliminary Offering Statement and the Offering Statement.

(r) ~~(p)~~—The Company has taken all action required to perfect the security interest created by the Mortgage Indenture wherever such security interest can be perfected by the filing of financing statements under the Uniform Commercial Codes of the jurisdictions where such filings are made, including any recording or re-recording of the Mortgage Indenture in all counties where the Company owns substantial assets, as security for the Obligations referred to therein, including the Note.

(s) ~~(q)~~—The Company has good and marketable title to the mortgaged property (as described and defined in the Mortgage Indenture) subject to Permitted Exceptions and Prior Liens permitted by Section 13.6 the Mortgage Indenture, all as such terms are defined in the Mortgage Indenture.

(t) ~~(r)~~—Each of the Wholesale Power Contracts (each, a “**Wholesale Power Contract**” and, collectively, the “**Wholesale Power Contracts**”), between the Company and those Members identified in the Preliminary Offering Statement as parties to such Wholesale Power Contracts, have been duly authorized, executed and delivered by the Company and constitute legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject, as to enforcement, to bankruptcy, insolvency reorganization and other laws of general applicability relating to or affecting creditors’ rights and to general equity principles.

~~(s) Each of the agreements listed on Schedule 1 hereto (each, a “Smelter Agreement” and, collectively, the “Smelter Agreements”) has been duly authorized, executed and delivered by the Company and constitute legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject, as to enforcement, to bankruptcy, insolvency reorganization and other laws of general applicability relating to or affecting creditors’ rights and to general equity principles.~~

(u) [In the last ten years,] the Company, to the best of its knowledge, has never been and is not in default in the payment of principal of, premium, if any, or interest on, or otherwise is not nor has it been in default with respect to any bonds, notes, or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest.

(v) Any certificate signed by an authorized officer of the Company and delivered to the Underwriters shall be deemed a representation and warranty of the Company to the Underwriters as to the statements made therein.

2. 2. Acceptance by the Issuer. The acceptance and confirmation of this Letter of Representation ~~on behalf of~~by the Issuer shall constitute a representation and warranty by the Issuer to the Company that the representations and warranties contained in Section 7 of the Purchase Contract are true as of the date hereof and will be true in all material respects as of the Closing Date, as if made on the Closing Date.

### 3. Indemnification.

~~3.—(a) The Company agrees to~~shall indemnify and hold harmless, to the Underwriter, and extent permitted by law, the Underwriters and their respective directors, officers, and employees and each person, ~~if any,~~ who controls ~~the~~any Underwriter within the meaning of Section 15 of the Securities Act of 1933, as amended (the “**Securities Act**”); ~~(any such person being therein sometimes called an “Underwriter Indemnitee”)~~ and the Issuer, ~~to the extent permitted under applicable law,~~ against any and all losses, claims, damages, or liabilities and expenses (including reasonable costs of investigation) arising out of or based on (i) the failure to register any security under the Securities Act or to qualify any indenture under the Trust Indenture Act of 1939, as amended, in connection with the offering of the Bonds or (ii) any untrue statement or alleged, joint or several, (a) to which any such Underwriter Indemnitee or the Issuer may become subject, under any statute or regulation at law or in equity or otherwise, insofar as such losses claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement of a material fact contained set forth in the Disclosure Package or the Offering Statement; or in any amendment or supplement thereto, arising out of or based on any omission or allegedto either, or the Electronic Road Show, or arise out of or are based upon the omission to state therein a material fact which is necessary in order to make the statements made therein, in the light of the circumstances under in which they were made, not misleading, except ~~insofar as such losses, claims, damages, liabilities or expenses arising out of or~~such indemnification shall not extend to statements in the Disclosure Package, the Preliminary Offering Statement or the Offering Statement under the Underwriter Covered Section and (b) to the extent of the aggregate amount paid in any settlement of any litigation commenced or threatened arising from a claim based on upon any such untrue statement or omission ~~or allegation thereof in reliance upon and in~~

~~conformity with~~ if such settlement is effected with the ~~written information furnished to consent of the Company by the Underwriter expressly for use in the Disclosure Package and the Offering Statement under the heading "UNDERWRITING."~~ (which consent shall not be unreasonably withheld); and will reimburse any legal or other expenses reasonably incurred by any such Underwriter Indemnitee or the Issuer in connection with investigating or defending any such loss, claim, damage, liability or action. This indemnity agreement shall not be construed as a limitation on any other liability which the Issuer may otherwise have to any Underwriter Indemnitee or the Issuer.

~~(b) If any action or claim (including any governmental investigation) shall be brought or asserted against the Underwriter or any person so controlling the Underwriter, or the Issuer, based upon the Disclosure Package or Offering Statement or any amendment or supplement thereto, and in respect of which indemnity may be sought from the Company pursuant to subsection (a) hereof, the Underwriter or such controlling person or the Issuer, as the case may be, shall promptly notify the Company in writing, and the Company shall assume the defense thereof, including the employment of counsel and the payment of all expenses. The Underwriter or any such controlling person or the Issuer, as the case may be, shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Underwriter or such controlling person or the Issuer, as the case may be, unless (i) the employment thereof has been specifically authorized by the Company, (ii) the Company has failed to assume the defense and employ counsel or (iii) the named parties to any such action (including any impleaded parties) include both the Underwriter or such controlling person or the Issuer and the Company, and representation of the Underwriter or such controlling person or the Issuer and the Company by counsel representing the Company would be inappropriate due to actual or potential differing interests between the Company and the other named party (in which case the Company shall not have the right to assume the defense of such action on behalf of the Underwriter or such controlling person or the Issuer, it being understood, however, that the Company shall not, in connection with any one such action or separate but substantially similar or related actions arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys at any point in time for the Underwriter and such controlling persons, and one separate firm of attorneys for the Issuer, which respective firms shall be designated in writing by the Underwriter and the Issuer). The Company shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Company or if there is a final judgment for the plaintiff in any such action, the Company will indemnify and hold harmless any indemnified person from and against any loss or liability by reason of such settlement or judgment. The Company shall not, without the prior written consent of the Underwriter, effect any settlement of any pending or threatened proceeding in respect of which the Underwriter is or could have been a party and indemnity could have been sought hereunder by the Underwriter, unless such settlement (i) includes an unconditional release of the Underwriter from any liability or claims that are the subject matter of such proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of the Underwriter.~~

(b) The Underwriters shall indemnify and hold harmless, to the extent permitted by law, the Company and its directors, officers, members, and employees and

each person who controls the Company within the meaning of Section 15 of the 1933 Act (any such person being therein sometimes called a “**Company Indemnitee**”) and the Issuer, against any and all losses, claims, damages or liabilities, joint or several, to which such Company Indemnitee or the Issuer may become subject under any statute or at law or in equity or otherwise, and shall promptly reimburse any such Company Indemnitee or the Issuer for any reasonable legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, but only to the extent that such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement of a material fact contained in, or the omission to state therein a material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, the Disclosure Package or the Offering Statement, or any amendment or supplement thereof, under the Underwriter Covered Section. This indemnity agreement shall not be construed as a limitation on any other liability which the Underwriters may otherwise have to any Issuer Indemnitee. The liability of any Underwriter obligations under this Section 3 shall not exceed the amount of its *pro rata* compensation under the Purchase Contract.

(c) For purposes of subsection (a) or (b) above, an “**Indemnified Party**” means an Underwriter Indemnitee, an Issuer Indemnitee or the Issuer as the context dictates and an “**Indemnifying Party**” means the Company or the Underwriter who is under the obligation to indemnify an Indemnified Party under this Section 3. An Indemnified Party shall, promptly after the receipt of notice of the commencement of any action against such Indemnified Party in respect of which indemnification may be sought against an Indemnifying Party, notify the Indemnifying Party in writing of the commencement thereof, but the omission to notify the Indemnifying Party of any such action shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party otherwise than under the indemnity agreement contained herein. In case any such action shall be brought against an Indemnified Party and such Indemnified Party shall notify the Indemnifying Party of the commencement thereof, the Indemnifying Party may, or if so requested by such Indemnified Party shall, participate therein or assume the defense thereof, with counsel satisfactory to such Indemnified Party, and after notice from the Indemnifying Party to such Indemnified Party of an election so to assume the defense thereof, the Indemnifying Party will not be liable to such Indemnified Party under this paragraph for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof other than reasonable costs of investigation. If the Indemnifying Party shall not have employed counsel to manage the defense of any such action or if the Indemnified Party shall have reasonably concluded that there may be defenses available to it or them that are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of such Indemnified Party), such Indemnified Party shall have the right to retain legal counsel of its own choosing and the reasonable legal and other expenses incurred by such Indemnified Party shall be borne by the Indemnifying Party.

An Indemnifying Party shall not be liable for any settlement of any such action effected without its consent by any Indemnified Party, which consent shall not be unreasonably withheld, but if settled with the consent of the Indemnifying Party or if there

be a final judgment for the plaintiff in any such action against the Indemnifying Party or any Indemnified Party, with or without the consent of the Indemnifying Party, the Indemnifying Party agrees to indemnify and hold harmless such Indemnified Party to the extent provided herein.

~~(c) The Underwriter agrees to indemnify and hold harmless the Company and the Issuer to the same extent as the foregoing indemnity from the Company to the Underwriter and the Issuer, but only with respect to written information furnished by the Underwriter to the Company expressly for use in the Disclosure Package and the Offering Statement under the heading "UNDERWRITING." If any action or claim shall be brought against the Company or the Issuer based upon the Disclosure Package and the Offering Statement and in respect of which indemnity may be sought against the Underwriter, the Underwriter shall have the rights and duties given to the Company; and the Company or the Issuer, as the case may be, shall have the rights and duties given to the Underwriter by subparagraph (b) hereof. The indemnity agreement of this subparagraph (c) shall extend upon the same terms and conditions to each officer and director of the Company or the Issuer, as applicable, and to each person, if any, who controls the Company or the Issuer, as applicable, within the meaning of Section 15 of the Securities Act.~~

(d) If the indemnification provided for in this Section is unavailable ~~to~~ or insufficient to hold harmless an ~~indemnified party~~ Indemnified Party under subsection (a) or ~~(e)~~ above ~~in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein,~~ then each ~~indemnifying party~~ Indemnifying Party shall contribute to the amount paid or payable by such ~~indemnified party~~ Indemnified Party as a result of ~~such~~ the losses, claims, damages ~~or,~~ liabilities ~~(or actions in respect thereof)~~ expenses referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the ~~Underwriter,~~ Underwriters on the other, from the offering of the Bonds. ~~If, however, or (ii) if~~ the allocation provided by ~~the immediately preceding sentence~~ clause (i) above is not permitted by applicable law ~~or if the indemnified party failed to give the notice required under subsection (b), then each indemnifying party shall contribute to such amount paid or payable by such indemnified party~~ in such proportion as is appropriate to reflect not only ~~such~~ the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the ~~Underwriter,~~ Underwriters on the other, in connection with the statements or omissions which resulted in such losses, claims, damages ~~or,~~ liabilities ~~(or actions in respect thereof),~~ expenses as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the ~~Underwriter,~~ Underwriters on the other, shall be deemed to be in the same proportion as the total net proceeds from the ~~sale of the Bonds~~ offering (before deducting expenses) received by the Company bear to the total ~~fee~~ underwriting discounts and commissions received by the Underwriter. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, ~~on the one hand, or the Underwriter, on the other, or the Underwriters~~ and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. ~~The Company and the Underwriter agree that it would not be just and equitable if contribution pursuant to~~

~~this subsection (d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party~~ amount paid by an Indemnified Party as a result of the losses, claims, damages ~~or~~ liabilities (or actions in respect thereof) expenses referred to ~~above~~ in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such ~~indemnified party~~ Indemnified Party in connection with investigating or defending any ~~such~~ action or claim ~~(which shall be limited as provided in~~ which is the subject to this subsection (b) above if the indemnifying party has assumed the defense of any such action in accordance with the provisions thereof). Notwithstanding the provisions of this subsection (d), ~~the~~ each Underwriter shall not ~~be required~~ have any obligation under this subsection (d) to contribute ~~any~~ an amount in excess of the amount ~~by which the total price at which the Bonds were offered to the public exceeds the amount of any damages which the Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission of its pro rata compensation under the Purchase Contract.~~ No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The indemnity agreements contained in this Section 3 shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the ~~Underwriter~~ Underwriters or any person so controlling ~~the~~ an Underwriter or by or on behalf of the Company or by or on behalf of the Issuer. A successor of ~~the~~ any Underwriter or the Company or of the Issuer, as the case may be, shall be entitled to the benefits of the indemnity and reimbursement agreements contained in this Section 3; the term "successor" shall not include any purchaser of Bonds from ~~the~~ an Underwriter merely because of such purchase.

4. 4. The Underwriter Termination by Underwriters. The Representative agrees that, if the Purchase Contract is terminated pursuant to Section 10 thereof, the Company shall not have any further obligations to the ~~Underwriter~~ Underwriters under this Letter of Representation other than as set forth in ~~clause (l) of~~ Section 1 (n) and the agreements set forth in Section 3 hereof.

5. 5. Parties. This Letter of Representation is made solely for the benefit of the Issuer and its directors, officers and agents, the ~~Underwriter~~ Underwriters, persons controlling ~~the~~ any Underwriter, and the Company and its directors and officers or any person who controls the Company within the meaning of Section 15 of the Securities Act, and their respective successors and assigns, and no other person, partnership, association or corporation shall acquire or have any right under or by virtue hereof. The terms "successors" and "assigns" shall not include any purchaser of Bonds from ~~the~~ an Underwriter merely because of such purchase.

6. 6. Authorization of Transactions. The execution and delivery of this Letter of Representation by the Company shall constitute the Company's approval of and consent to the

Issuer's entering into, acceptance and execution of the Purchase Contract and performance thereunder.

7. ~~7.~~ Notices. Any notice or other communication to be given to the Company under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received) to the Company at 201 Third Street, Henderson, Kentucky 42420, Attention: ~~Senior Vice President,~~ Chief Financial/~~Energy Services & CFO Officer,~~ or by facsimile (such notice to be deemed effective when sent) to the attention of the ~~Senior Vice President,~~ Chief Financial/~~Energy Services & CFO Officer~~ of the Company at 270-827-2101. Any notice or other communication to be given to the ~~Underwriter~~ Underwriters under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received) to ~~Goldman, Sachs & Co. at 200 West Street, 33<sup>rd</sup>~~ BofA Securities, Inc. at One Bryant Park, 12<sup>th</sup> Floor, New York, New York ~~10282-2198, Attention: Mark Glotfelty, 10036,~~ or by facsimile (such notice to be deemed effective when sent) to the attention of ~~Mark Glotfelty~~ [generic reference] at [646-835743-32441607], and any notice or communication to be given to the Issuer under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received), at Ohio County Fiscal Court, 301 South Main, Hartford, Kentucky 42347, Attention: County Judge/Executive. The Company, the Issuer and the ~~Underwriter~~ Underwriters shall each be fully entitled to rely upon notice given pursuant to this ~~Paragraph~~ paragraph and to act thereon.

8. ~~8.~~ Effectiveness; Termination Generally; Survival. This Letter of Representation shall become effective upon execution hereof and the effectiveness of the Purchase Contract ~~referred to herein.~~ It shall terminate upon termination of the Purchase Contract. The Company's representations and warranties and agreements (including, without limitation, the Company's agreements in Section 3) contained herein shall survive the Closing and shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of the ~~Underwriter~~ Underwriters, (b) delivery of and payment for the Bonds, and (c) any termination of the Purchase Contract or this Letter of Representation but ~~only to the extent,~~ in the case of this clause (c), as provided by ~~subsection (l) of~~ Section 1 (n) hereof.

9. ~~9.~~ Underwriters Not Fiduciaries. The Company acknowledges and agrees that (i) ~~the purchase and sale of the Bonds pursuant to the Purchase Contract is an arm's length~~ Underwriters are not acting as a municipal advisor within the meaning of Section 15B of the Securities Exchange Act, as amended; (ii) ~~the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm's length commercial transaction between~~ among the Issuer, the Company and the Issuer on one hand, and the Underwriter on the other hand, (ii) ~~in connection therewith and with the process leading to such transaction the Underwriter is acting solely as a principal and not the agent or fiduciary of the Company,~~ (iii) ~~the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the Company~~ Underwriters and the Underwriters have financial or other interests that differ from those of the Company; (iii) the Underwriters are acting solely as principals and are not acting as municipal advisors, financial advisors or fiduciaries to any party with respect to the offering ~~transactions~~ contemplated hereby ~~or the process~~ and the discussions, undertakings and

procedures leading thereto (irrespective of whether the ~~Underwriter has advised~~ Underwriters have provided other services or is currently ~~advising~~ providing services to the Company on other matters) ~~or any other obligation~~; (iv) the only obligations the Underwriters have to the Company ~~except the obligations with respect to the transaction contemplated hereby are~~ expressly set forth in the Purchase Contract ~~or~~ and this Letter of Representation; and (~~iv~~) the Company has consulted its own legal ~~and~~ accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate. The Company agrees that it will not claim that the ~~Underwriter has~~ Underwriters have rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

10. ~~10.~~—Waiver of Right to Jury Trial. The Company and the ~~Underwriter~~ Underwriters hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Letter of Representation, the Purchase Contract or the transactions contemplated hereby.

11. Counterparts; Electronic Signature. This Letter of Representation may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be one and the same instrument. A signature to this Letter of Representation delivered by facsimile, e-mail in portable document format (.pdf) or DocuSign electronic signature system shall be deemed to be an original manual signature and shall be binding upon the executing party and have the same legal effect as an original manual signature.

12. Entire Agreement. This Letter of Representation supersedes all prior agreements and understandings between the parties.

13. Amendments. This Letter of Representation may not be amended or supplemented without the written consent of the parties hereto.

14. ~~11.~~ Governing Law. The validity, interpretation and performance of this Letter of Representation shall be governed by and construed in accordance with the laws of the State of New York without regard to choice of law rules (other than New York General Obligations Laws Section 5-1401 and 5-1402).

[Signatures begin on the following page.]



Very truly yours,

**BIG RIVERS ELECTRIC CORPORATION**

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

Name:

Title:

~~Mark A. Bailey~~

~~President and Chief Executive Officer~~

Accepted and confirmed as of the  
date first above written

~~**GOLDMAN, SACHS & CO.**~~  
**BofA Securities, Inc., as Representative of  
the Underwriters listed in Schedule 1**

\_\_\_\_\_  
~~Goldman, Sachs & Co.~~  
Andrew K. Hildreth

Accepted by County of Ohio, Kentucky pursuant to a resolution of the County of Ohio, Kentucky adopted at Hartford, Kentucky on ~~May 4~~<sup>[●]</sup>, ~~2010~~<sup>2020</sup>.

By: \_\_\_\_\_  
*County Judge/Executive  
of County of Ohio, Kentucky*

**Schedule 1**  
**Smelter Agreements**

1. ~~Coordination Agreement, dated as of July 1, 2009, by and between the Company and Alcan Primary products Corporation~~
2. ~~Wholesale Electric Service Agreement (Alcan), dated as of July 1, 2009, by and between the Company and Kenergy Corp.~~
3. ~~Coordination Agreement, dated as of July 1, 2009, by and between the Company and Century Aluminum of Kentucky General Partnership~~
4. ~~Wholesale Electric Service Agreement (Century), dated as of July 1, 2009, by and between the Company and Kenergy Corp.~~

**LOAN AGREEMENT**

**Between**

**COUNTY OF OHIO, KENTUCKY**

**and**

**BIG RIVERS ELECTRIC CORPORATION**

**Dated as of [\_\_\_\_], 2020**

**Relating to**

**\$\_[\_\_\_\_\_]**

**COUNTY OF OHIO, KENTUCKY**

**Pollution Control Refunding Revenue Bonds, Series 2020B<sup>1</sup>**

**(Big Rivers Electric Corporation Project)**

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<sup>1</sup> Series designation to be confirmed.

**TABLE OF CONTENTS**

	<b>Page</b>
<b>ARTICLE I DEFINITIONS .....</b>	<b>3</b>
<b>SECTION 1.1.    Definitions.....</b>	<b>3</b>
<b>ARTICLE II REPRESENTATIONS AND WARRANTIES.....</b>	<b>5</b>
<b>SECTION 2.1.    <i>Representations And Warranties By The County</i>.....</b>	<b>5</b>
<b>SECTION 2.2.    <i>Representations And Warranties By Big Rivers</i> .....</b>	<b>6</b>
<b>ARTICLE III TERM OF AGREEMENT .....</b>	<b>7</b>
<b>SECTION 3.1.    <i>Term of This Agreement</i>.....</b>	<b>7</b>
<b>ARTICLE IV ISSUANCE OF BONDS AND LOAN OF PROCEEDS.....</b>	<b>7</b>
<b>SECTION 4.1.    <i>Issuance of the Bonds; Loan of Proceeds to Big Rivers; Prepayment of 2010 Note and Redemption of 2010 Bonds; Use of Proceeds</i> .....</b>	<b>7</b>
<b>SECTION 4.2.    <i>Agreement as to Ownership and Use of the Facilities</i>.....</b>	<b>8</b>
<b>SECTION 4.3.    <i>Investment of Moneys</i>.....</b>	<b>8</b>
<b>ARTICLE V PROVISION FOR REPAYMENT OF LOAN BY BIG RIVERS .....</b>	<b>8</b>
<b>SECTION 5.1.    <i>Repayments By Big Rivers</i> .....</b>	<b>8</b>
<b>SECTION 5.2.    <i>Credits</i>.....</b>	<b>8</b>
<b>SECTION 5.3.    <i>Execution And Delivery Of The Note</i> .....</b>	<b>8</b>
<b>SECTION 5.4.    <i>Payment Of Certain Fees And Expenses</i> .....</b>	<b>9</b>
<b>SECTION 5.5.    <i>Payees Of Payments</i>.....</b>	<b>9</b>
<b>SECTION 5.6.    <i>Taxes And Other Governmental Charges</i> .....</b>	<b>9</b>
<b>SECTION 5.7.    <i>Obligations Of Big Rivers Unconditional</i>.....</b>	<b>9</b>
<b>SECTION 5.8.    <i>Termination Of Obligations Under Note</i> .....</b>	<b>10</b>
<b>ARTICLE VI MAINTENANCE; INSURANCE; CONDEMNATION.....</b>	<b>10</b>
<b>SECTION 6.1.    <i>Maintenance; Improvements; Disposition</i>.....</b>	<b>10</b>
<b>SECTION 6.2.    <i>Insurance</i>.....</b>	<b>10</b>
<b>SECTION 6.3.    <i>Use of Insurance and Condemnation Proceeds</i>.....</b>	<b>10</b>
<b>ARTICLE VII SPECIAL COVENANTS.....</b>	<b>11</b>
<b>SECTION 7.1.    <i>No Warranty Of Condition Or Suitability By The County</i>.....</b>	<b>11</b>
<b>SECTION 7.2.    <i>Further Assurances</i>.....</b>	<b>11</b>
<b>SECTION 7.3.    <i>Authority Of Big Rivers Representative</i> .....</b>	<b>11</b>
<b>SECTION 7.4.    <i>Authority Of County Representative</i> .....</b>	<b>11</b>



**TABLE OF CONTENTS**  
(continued)

**Page**

**SECTION 11.11.**    *Payments Due On Holidays* ..... 17

EXHIBIT A – The Facilities

## LOAN AGREEMENT

This **LOAN AGREEMENT** (this “Agreement”), dated as of [\_\_\_ \_\_], 2020, between **COUNTY OF OHIO, KENTUCKY**, a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky (together with any successor to its duties and functions, the “County”) acting by and through its Fiscal Court which is the governing body of the County, and **BIG RIVERS ELECTRIC CORPORATION**, a nonprofit rural electric cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky (“Big Rivers”).

### WITNESSETH:

**WHEREAS**, the County is a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky and is authorized and empowered by law, including particularly the provisions of the Industrial Building Revenue Bond Act (Sections 103.200 through 103.285, inclusive) of the Kentucky Revised Statutes, as amended (such Act, and collectively with all future acts supplemental thereto or amendatory thereof, the “Act”), to issue bonds and loan the proceeds thereof to a rural electric cooperative corporation to repay borrowings used to refund bonds previously issued by the County to finance the acquisition of pollution control facilities; and

**WHEREAS**, by a resolution adopted by the Fiscal Court of the County on September 9, 1980, the County agreed to finance the Facilities for Big Rivers; and

**WHEREAS**, the County initially financed the Facilities by issuing the 1982 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to pay a portion of the costs of the Facilities; and

**WHEREAS**, the County financed the refunding of the 1982 Bonds by issuing the 1985 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to retire the 1982 Bonds; and

**WHEREAS**, the County financed the refunding of the 1985 Bonds by issuing the 2001 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to retire the 1985 Bonds; and

**WHEREAS**, the County financed the refunding of the 2001 Bonds by issuing the 2010 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to retire the 2001 Bonds; and



**WHEREAS**, Big Rivers has requested the County to issue \$[\_\_\_\_\_] aggregate principal amount of its “Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project)” (the “Bonds”) and to loan the proceeds thereof to Big Rivers for the purpose of providing funds to repay a borrowing under Big Rivers’ Amended and Restated Senior Secured Credit Agreement, dated as of June 11, 2020, with the lenders party thereto, National Rural Utilities Cooperative Finance Corporation, as administrative agent, issuing lender and swingline lender (the “Credit Agreement”), used to fund the redemption of the 2010 Bonds; and

**WHEREAS**, the County will issue the Bonds under the Indenture and loan the proceeds thereof to Big Rivers under this Agreement, and the Bonds shall be secured by, among other things, a pledge of this Agreement, certain revenues of the County received pursuant to this Agreement and a note issued to evidence Big Rivers’ payment obligations hereunder (the “Note”), which Note will be issued pursuant to the [Tenth] Supplemental Indenture, dated as of [\_\_\_\_], 2020, supplemental to the Indenture, dated as of July 1, 2009, between Big Rivers and U.S. Bank National Association, as trustee (the “Big Rivers Indenture”), and secured on a parity basis with all other obligations secured thereunder; and

**WHEREAS**, the execution and delivery of this Agreement and the Indenture and the issuance of the Bonds have been in all respects duly and validly authorized by an ordinance of the Fiscal Court of the County; and

**WHEREAS**, the Kentucky Department of Natural Resources and Environmental Protection has certified that the Facilities, as designed, are in furtherance of the purposes of abating or controlling atmospheric pollutants or contaminants or water pollution; and

**WHEREAS**, the County makes the following findings and determinations: (a) the Facilities constitute “pollution control facilities” within the meaning of Section 103.246 of the Act, (b) the acquisition and financing of the Facilities inures to the public interest and constitutes the performance of a proper governmental purpose with the result that atmospheric, solid waste and water pollution in the Commonwealth of Kentucky may be abated and controlled to the maximum possible extent, (c) the issuance of the Bonds is and will be for a public purpose and tends to further the purpose of the Act and, in addition, aids in the retention of existing industry through the control of pollution, (d) the Facilities are located wholly within the geographic boundaries of the County, (e) title to the Facilities is held by Big Rivers and will not be acquired by the County, (f) the statutory mortgage lien provided for by Section 103.250 of the Act shall not apply to the Facilities, (g) the principal amount of the Bonds (together with funds provided and to be provided by Big Rivers) is necessary to effect the repayment of the borrowing under the Credit Agreement used to fund the redemption of the 2010 Bonds and to pay all premiums, expenses and commissions required to be paid in connection with the issuance of the Bonds and the repayment of the borrowing under the Credit Agreement used to fund the redemption of the 2010 Bonds, and (h) the issuance of the Bonds, the repayment of the borrowing under the Credit Agreement used to fund the redemption of the 2010 Bonds, the loan of the proceeds of the Bonds to Big Rivers for this purpose and the execution, delivery and performance of the Bonds, the Indenture and this Agreement are, in all respects, permitted by the Act and conform to the requirements of the Act.

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

## **ARTICLE I**

### **DEFINITIONS**

**SECTION 1.1.** Definitions. In addition to terms otherwise defined in this Agreement, when used in this Agreement, the following capitalized terms shall have, except where the context indicates otherwise, the respective meanings set forth below.

“*Act*” means Title IX (*Counties, Cities, and Local Units*), Chapter 103 (*Revenue Bonds for Miscellaneous City or County Projects*), Sections 103.200 through 103.285, inclusive, of the Kentucky Revised Statutes, as amended, and all acts supplemental thereto or amendatory thereof.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County with respect to this Agreement, the Indenture and any transaction or event contemplated by this Agreement or the Indenture, including the compensation and expenses paid to the Bond Trustee.

“*Agreement*” shall mean this Loan Agreement and any amendments and supplements hereto.

“*Big Rivers*” shall mean Big Rivers Electric Corporation, a nonprofit rural electric cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky, and its lawful successors and assigns.

“*Big Rivers Indenture*” shall mean the Indenture, dated as of July 1, 2009, between Big Rivers and U.S. Bank National Association, as trustee, as supplemented or amended from time to time, including as supplemented by the [Tenth] Supplemental Indenture, providing for the issuance of the Note, and as also amended and supplemented by any alternate indenture or mortgage.

“*Big Rivers Representative*” shall mean any one of the following officers and/or employees of Big Rivers: (i) the President and Chief Executive Officer, (ii) the Vice President and Chief Financial Officer or (iii) any other officer or employee of Big Rivers at the time designated to act on behalf of Big Rivers by a written certificate furnished to the County and the Bond Trustee containing the specimen signature of such person and signed on behalf of Big Rivers by any one of the above-described officers and/or employees. Such certificate may designate one or more alternates.

“*Bond Fund*” shall mean the fund created by Section 4.01 of the Indenture.

“*Bond Trustee*” shall mean the trustee under the Indenture, or any successor corporate trustee.

“*Bonds*” shall mean the County’s “Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project)” authorized under the Indenture.

“*Business Day*” shall mean any day on which (i) banks located in New York, New York, and the city in which the principal office of the Bond Trustee is located is not required or authorized to be closed and (ii) The New York Stock Exchange is open.

“*County Representative*” shall mean the County Judge/Executive of the County or any other person at the time designated to act on behalf of the County by written certificate furnished to Big Rivers and the Bond Trustee containing the specimen signature of such person and signed on behalf of the County by the County Judge/Executive. Such certificate may designate one or more alternates.

“*Credit Agreement*” shall mean the Amended and Restated Senior Secured Credit Agreement, dated as of June 11, 2020, by and among Big Rivers, the lenders party thereto, and National Rural Utilities Cooperative Finance Corporation, as administrative agent, issuing lender and swingline lender.

“*Facilities*” shall mean those air and water pollution control and sewage and solid waste disposal facilities located at the Plant which were financed with the proceeds of the 1982 Bonds. The Facilities are listed on Exhibit A hereto.

“*Fiscal Court*” shall mean the Fiscal Court of the County or any successor governing body of the County.

“*Indenture*” shall mean the Trust Indenture for the Bonds, dated as of [\_\_\_], 2020, between the County and the Bond Trustee, including any indentures supplemental thereto or amendatory thereof.

“*Interest Payment Date*” shall have the meaning set forth in the Indenture.

“*1954 Code*” shall mean the Internal Revenue Code of 1954, as amended, and the regulations promulgated thereunder.

“*1982 Bonds*” shall mean the \$82,500,000 aggregate principal amount of the County’s “Pollution Control Interim Bonds, Series 1982 (Big Rivers Electric Corporation Project)” previously issued by the County to finance a portion of the cost of the Facilities. The 1982 Bonds were retired with the proceeds of the 1985 Bonds and are no longer outstanding.

“*1985 Bonds*” shall mean the \$83,300,000 aggregate principal amount of the County’s “Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 (Big Rivers Electric Corporation Project)” previously issued by the County to refund the 1982 Bonds. The 1985 Bonds were retired with the proceeds of the 2010 Bonds and are no longer outstanding.

“*1986 Act*” means the Tax Reform Act of 1986.

“*1986 Code*” shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“*Note*” shall mean the first mortgage note issued by Big Rivers under the [Tenth] Supplemental Indenture and this Agreement, which Note is secured by the Big Rivers Indenture on a parity with all other notes secured by the Big Rivers Indenture.

“*Opinion of Bond Counsel*” shall mean an opinion in writing signed by an attorney or firm of attorneys experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds and who is acceptable to the Bond Trustee.

“*Outstanding*,” when used with respect to the Bonds, shall have the meaning set forth in the Indenture.

“*Plant*” shall mean the D.B. Wilson Plant Unit No. 1, a coal-fired steam electric generating plant located within the geographic boundaries of the County and wholly-owned by Big Rivers.

“*Tax Certificate and Agreement*” shall mean the Tax Certificate and Agreement by and between the County and Big Rivers.

“*[Tenth] Supplemental Indenture*” shall mean the [Tenth] Supplemental Indenture, dated as of [\_\_\_], 2020, between Big Rivers and U.S. Bank National Association, as trustee under the Big Rivers Indenture.

“*2010 Bonds*” shall mean the \$83,300,000 aggregate principal amount of the County’s “Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project)”.

“*2010 Indenture*” shall mean the Trust Indenture dated as of June 1, 2010 between the County and U.S. Bank Trust National Association, as trustee, under which the 2010 Bonds were issued and secured.

“*2010 Note*” shall mean the First Mortgage Note Series 2010A issued on June 1, 2010 in the name of the County of Ohio in the aggregate principal amount of \$83,300,000 due July 15, 2031, under the 2010 Indenture.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**SECTION 2.1.** *Representations And Warranties By The County.* The County represents and warrants that:

(a) The County is a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and the laws of the Commonwealth.

(b) The County has the corporate power to execute, deliver and perform this Agreement and the Indenture and to make the loan to Big Rivers hereunder, and has taken all necessary corporate action to authorize such loan on the terms and conditions hereof and to

authorize the execution, delivery and performance of this Agreement and the Indenture, and the issuance, execution and delivery of the Bonds.

(c) The County is not in default under any of the provisions of the laws of the Commonwealth which would affect its existence, or its powers referred to in the preceding paragraph (b), and the execution, delivery and performance by the County of this Agreement and the Indenture (i) to the best knowledge of the County, will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator or governmental authority, and (ii) will not violate any provision of, or constitute a default under, or (except as provided in the Indenture) result in the creation or imposition of any lien on any of the assets of the County pursuant to the provisions of, any mortgage, indenture, contract, agreement or other undertaking to which the County is a party or which, to the best knowledge of the County, purports to be binding upon the County or upon any of its assets.

(d) Under existing statutes and decisions, no Federal, state or local taxes on income or profits are imposed on the County.

(e) The Facilities constitute and will constitute “pollution control facilities” within the meaning of Section 103.246 of the Act.

**SECTION 2.2.** *Representations And Warranties By Big Rivers.* Big Rivers represents and warrants that:

(a) Big Rivers is a nonprofit rural electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth, and has the corporate power to own its assets and to transact the business in which it is engaged, and the conduct of Big Rivers’ business does not make necessary the qualification or licensing of Big Rivers as a foreign corporation in any other state or jurisdiction.

(b) Big Rivers has the corporate power to enter into, and to perform and observe the covenants and agreements on its part contained in, this Agreement, the Big Rivers Indenture, the [Tenth] Supplemental Indenture and the Note, and by proper corporate action has duly authorized the execution and delivery of this Agreement, the Big Rivers Indenture, the [Tenth] Supplemental Indenture and the Note. The execution and delivery of this Agreement, the Big Rivers Indenture and the [Tenth] Supplemental Indenture do not, and the execution and delivery of the Note and the consummation of the transactions contemplated hereby and thereby and the fulfillment of the terms hereof and thereof will not, conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which Big Rivers is now a party or by which it is bound, or constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Big Rivers under the terms of any instrument or agreement.

(c) Synchronization of the Plant was completed on September 24, 1984.

(d) The Facilities (i) are designed to meet or exceed applicable federal, Commonwealth and local requirements now in effect for the control of air and water pollution and are used to abate or control air and water pollution or contamination by removing, altering,

disposing of or storing pollutants, contaminants, wastes or heat and the Facilities as designed constitute “air or water pollution control facilities” within the meaning of Section 103(b)(4)(F) of the 1954 Code or (ii) are used for the collection, storage, treatment, utilization, processing or final disposal of sewage or solid waste and constitute “sewage or solid waste disposal facilities” within the meaning of Section 103(b)(4)(E) of the 1954 Code.

(e) The Facilities consist of either land or property subject to the allowance for depreciation under Section 167 of the 1986 Code.

(f) The Facilities constitute “pollution control facilities” within the meaning of Section 103.246 of the Act.

(g) The Commonwealth’s Department of National Resources and Environmental Protection (predecessor of National Resources and Environmental Protection Cabinet), having appropriate jurisdiction, has certified that the Facilities, as designed, are in furtherance of the purposes of abating or controlling atmospheric pollutants or contaminants or water pollution.

(h) The information furnished by Big Rivers and filed by the County with the Internal Revenue Service pursuant to Section 103(1) of the 1954 Code was true and correct as of the date of filing of said information.

### **ARTICLE III**

#### **TERM OF AGREEMENT**

**SECTION 3.1.** *Term of This Agreement.* This Agreement shall remain in full force and effect from the date of delivery hereof until such time as all of the Bonds shall have been fully paid or provision made for such payment pursuant to the Indenture, and all reasonable and necessary Administration Expenses and fees and expenses of the Bond Trustee and any paying agent accrued and to accrue through final payment of the Bonds and all other Administration Expenses and other liabilities of Big Rivers accrued and to accrue through final payment of the Bonds hereunder have been paid.

### **ARTICLE IV**

#### **ISSUANCE OF BONDS AND LOAN OF PROCEEDS**

**SECTION 4.1.** *Issuance of the Bonds; Loan of Proceeds to Big Rivers; Prepayment of 2010 Note and Redemption of 2010 Bonds; Use of Proceeds.*

(a) The County agrees to transfer to National Rural Utilities Cooperative Finance Corporation, as administrative agent under the Credit Agreement, funds necessary, together with funds provided by Big Rivers, to repay the borrowing under the Credit Agreement used to refund by redemption the 2010 Bonds on [\_\_\_ \_\_], 2020, which resulted in a prepayment of the 2010 Note relating to the 2010 Bonds. In order to provide funds for such purpose, the County agrees to sell and cause to be delivered to the initial purchasers thereof the Bonds.

(b) Simultaneously with the issuance and delivery of the Bonds to the purchasers thereof, Big Rivers will cause to be transferred to National Rural Utilities Cooperative Finance Corporation, as administrative agent under the Credit Agreement, such amounts as Big Rivers shall be required to provide to effect the repayment of the borrowing under the Credit Agreement used to refund the 2010 Bonds.

**SECTION 4.2.** *Agreement as to Ownership and Use of the Facilities.* The County and Big Rivers agree that title to the Facilities shall be in and remain in Big Rivers and that the Facilities shall be the sole property of Big Rivers in which the County shall have no interest.

**SECTION 4.3.** *Investment of Moneys.* All moneys held as a part of the Bond Fund shall be invested or reinvested and transferred to other funds by the Bond Trustee as provided in Article V of the Indenture.

## ARTICLE V

### PROVISION FOR REPAYMENT OF LOAN BY BIG RIVERS

**SECTION 5.1.** *Repayments By Big Rivers.* Big Rivers agrees to repay the loan made by the County to Big Rivers hereunder of the proceeds of the Bonds by paying to the County an amount sufficient to pay, when due, all principal of and interest on the Bonds, which obligation will be evidenced by the Note. In satisfaction of its obligation under this Section 5.1, Big Rivers agrees to pay to the Bond Trustee for the account of the County all payments when due on the Note; provided, however, that if for any reason the amounts paid to the Bond Trustee by Big Rivers on the Note, together with any other amounts available in the Bond Fund, are not sufficient to pay the principal of or interest on the Bonds when due, Big Rivers agrees to pay the amount required to make up such deficiency.

**SECTION 5.2.** *Credits.* Any amounts which are in the Bond Fund at the close of business of the Bond Trustee on the Business Day immediately preceding any payment date on the Note shall be credited against the payments due by Big Rivers on such payment date on the Note.

If any or all of the Bonds then Outstanding are called for redemption, any amounts contained in the Bond Fund on such redemption date shall be credited against the payments due by Big Rivers on the Note.

The principal amount of any Bonds held by the Bond Trustee on the maturity date of the Note which are to be applied by the Bond Trustee as a credit against the next required sinking fund redemption pursuant to the Indenture shall, to the extent not previously credited as provided for in this paragraph, be credited against the obligation of Big Rivers with respect to payment of principal of the Note due on such maturity date.

**SECTION 5.3.** *Execution And Delivery Of The Note.* Concurrently with the sale and delivery by the County of the Bonds, in order to evidence the obligation of Big Rivers to pay an amount sufficient to pay the principal of and interest on the Bonds when due, Big Rivers shall execute and deliver to the Bond Trustee the Note substantially in the form attached as Exhibit B to the [Tenth] Supplemental Indenture. The Note shall be nontransferable by the

Bond Trustee except as required to effect assignment thereof to any successor Bond Trustee under the Indenture.

**SECTION 5.4.** *Payment Of Certain Fees And Expenses.* Big Rivers agrees to pay the reasonable fees and actual out-of-pocket expenses (including counsel fees) necessarily incurred by the County in connection with the Bonds, the issuance and sale thereof and the transactions contemplated by the Indenture, the Big Rivers Indenture, the Note and this Agreement and in connection with the services of the Bond Trustee and any co-paying agents designated pursuant to Sections 9.19 and 9.20 of the Indenture (except those incurred as a result of the negligence or bad faith of the County or the Bond Trustee or co-paying agent), as and when the same become due, upon submission by the Bond Trustee or any paying agent of a statement therefor; provided, however, that Big Rivers may, without creating a default hereunder, contest in good faith the necessity for and reasonableness of any such fees or expenses.

**SECTION 5.5.** *Payees Of Payments.* The payments to be made on the Note pursuant to Section 5.1 hereof shall be paid directly to the Bond Trustee for the account of the County and shall be deposited into the Bond Fund in accordance with this Agreement, the Note and the Indenture. The payments to be made to the Bond Trustee or any paying agent pursuant to Section 5.4 hereof shall be paid directly to the Bond Trustee or such paying agent for its own use.

**SECTION 5.6.** *Taxes And Other Governmental Charges.* Big Rivers will pay promptly, as the same become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Facilities. Compliance by Big Rivers with the provisions of the Big Rivers Indenture shall constitute compliance with this Section 5.6.

**SECTION 5.7.** *Obligations Of Big Rivers Unconditional.* The obligations of Big Rivers to make the payments pursuant to this Agreement and the Note shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of setoff, counterclaim or recoupment arising out of any breach by the County of any obligation to Big Rivers, whether hereunder or otherwise, or out of any indebtedness or liability at any time owed to Big Rivers by the County. Until such time as the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, Big Rivers (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payment provided for herein or in the Note, (ii) will perform and observe all of its other agreements contained in this Agreement and in the Note and (iii) except as provided in Section 5.8 hereof, will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Facilities, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the Commonwealth of Kentucky or any political subdivision of either, or any failure of the County to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, whether express or implied. Nothing contained in this Section 5.7 shall be construed to release the County from the performance of any agreements on its part



herein contained; and in the event the County shall fail to perform any such agreement, Big Rivers may institute such action against the County as it deems necessary to compel performance, provided that no such action shall violate the agreements on the part of Big Rivers contained herein. Big Rivers may, however, at its own cost and expense prosecute or defend any action or proceeding or take any other action involving third persons which it deems reasonably necessary in order to secure or protect its right of possession, occupancy and use of the Facilities or the Plant, and in such event the County hereby agrees to cooperate fully with Big Rivers.

**SECTION 5.8.** *Termination Of Obligations Under Note.* At the time when all of the Bonds cease to be Outstanding under the Indenture, the Note issued in connection with the issuance of the Bonds shall become void and shall be returned to Big Rivers.

## ARTICLE VI

### MAINTENANCE; INSURANCE; CONDEMNATION

**SECTION 6.1.** *Maintenance; Improvements; Disposition.* During the term of this Agreement, Big Rivers will, at its own expense, cause the Facilities to be maintained, preserved and kept in good repair, working order and condition and will from time to time cause to be made all proper repairs, renewals and replacements thereof. Big Rivers may also, at its own expense, make from time to time any modifications or improvements to the Facilities, provided such modifications or improvements do not impair the character of the Facilities as a “project” within the meaning of the Act or impair the exclusion of interest on the Bonds from gross income for federal income tax purposes. All such modifications and improvements shall become a part of the Facilities.

Big Rivers may sell or otherwise dispose of its interest in any element of the Facilities (in whole or in part), upon compliance with the provisions of the Big Rivers Indenture to the extent it is applicable to the Facilities. In the event that the Bond Trustee receives any moneys pursuant to the Big Rivers Indenture as the result of any such sale or disposition, upon compliance with the provisions of the Big Rivers Indenture, such moneys shall be deposited by the Bond Trustee into the Bond Fund and applied in accordance with the Indenture.

**SECTION 6.2.** *Insurance.* Big Rivers will, at its own expense, provide or cause to be provided insurance against loss or damage, less appropriate deductibles, to its interest in the Facilities. Compliance with Section 13.8 of the Big Rivers Indenture shall be deemed compliance with this Section 6.2.

**SECTION 6.3.** *Use of Insurance and Condemnation Proceeds.* Any moneys received by the Bond Trustee pursuant to the Big Rivers Indenture from any payment in respect of any insurance described in Section 6.2 hereof or condemnation award, upon compliance with the Big Rivers Indenture, shall be forthwith deposited into the Bond Fund and applied in accordance with the Indenture.

## ARTICLE VII

### SPECIAL COVENANTS

**SECTION 7.1.** *No Warranty Of Condition Or Suitability By The County.* The County makes no warranty, either express or implied, as to the Facilities or that they will be suitable for Big Rivers' purposes or needs.

**SECTION 7.2.** *Further Assurances.* The County and Big Rivers agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.

**SECTION 7.3.** *Authority Of Big Rivers Representative.* Whenever under the provisions of this Agreement the approval of Big Rivers is required or the County is required to take some action at the request of Big Rivers, such approval or such request shall be made by the Big Rivers Representative unless otherwise specified in this Agreement, and the County or the Bond Trustee are each authorized to act on any such approval or request. Big Rivers shall have no complaint against the County or the Bond Trustee as a result of any such action taken.

**SECTION 7.4.** *Authority Of County Representative.* Whenever under the provisions of this Agreement the approval of the County is required, or Big Rivers is required to take some action at the request of the County, such approval or such request shall be made by the County Representative unless otherwise specified in this Agreement, and Big Rivers or the Bond Trustee are each authorized to act on any such approval or request. The County shall have no complaint against Big Rivers or the Bond Trustee as a result of any such action taken.

**SECTION 7.5.** *Use of Facilities.* So long as Big Rivers operates the Facilities, the Facilities shall be used for the purpose of air or water pollution control as described in Section 103(b)(4)(F) of the 1954 Code or the disposal of sewage or solid waste within the meaning of Section 103(b)(4)(E) of the 1954 Code.

**SECTION 7.6.** *No Abatement Of Note Payments.* It is understood and agreed that Big Rivers shall be obligated to continue to pay the amounts specified in Article V hereof and in the Note whether or not the Facilities are damaged, destroyed, taken in condemnation or become obsolete (including economic obsolescence) and that there shall be no abatement or postponement of any such payments by reason thereof.

**SECTION 7.7.** *Amendments To Indenture.* The County shall not execute or permit any amendment or supplement to the Indenture which affects any rights, powers and authority of Big Rivers under this Agreement or under the Note or requires a revision of this Agreement, the Note or the Big Rivers Indenture without the prior written consent of Big Rivers.

**SECTION 7.8.** *Tax Covenants.*

(a) Big Rivers covenants that it will not take any action which would adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes

pursuant to Section 103(a) of the 1954 Code, and will take, or require to be taken, such acts as may from time to time be required under applicable law or regulation to continue the exclusion of the interest on the Bonds from gross income for federal income tax purposes. In furtherance of those covenants, Big Rivers agrees to comply with the Tax Certificate and Agreement.

(b) Big Rivers covenants that it will not take any action or fail to take any action with respect to the Bonds which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the 1986 Code, as incorporated into the 1954 Code by the 1986 Act.

(c) Big Rivers covenants that it will not use or permit the use of any property financed or refinanced with the proceeds of the Bonds by any person (other than the Commonwealth or local governmental unit) in such manner or to such extent as would result in loss of the exclusion of the interest on the Bonds from gross income for federal income tax purposes (other than during the period the Bonds are held by a “substantial user” of the facilities financed or refinanced with the proceeds of the Bonds or a “related person” within the meaning of Section 103(b)(6)(C) of the 1954 Code).

Notwithstanding any other provisions of this Agreement to the contrary, so long as necessary in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes under Section 103(a) of the 1954 Code, the covenants in this Section shall survive the payment for the Bonds and the interest thereon, including any payment or defeasance thereof pursuant to the Indenture.

## ARTICLE VIII

### ASSIGNMENT

**SECTION 8.1.** *Assignment By Big Rivers.* This Agreement may be assigned by Big Rivers without the necessity of obtaining the consent of either the County or the Bond Trustee, subject, however, to each of the following conditions:

(a) No assignment shall relieve Big Rivers from primary liability for any of its obligations hereunder, and in the event of any such assignment Big Rivers shall continue to remain primarily liable for payments of the amounts specified in the Note and in Article V hereof and for performance and observance of the other agreements on its part herein provided to be performed and observed by it to the same extent as though no assignment had been made.

(b) The assignee shall assume the obligations of Big Rivers hereunder to the extent of the interest assigned.

(c) Big Rivers shall, within fifteen (15) days after the delivery thereof, furnish or cause to be furnished to the County, Fitch Ratings, Moody’s Investors Service, Inc., or their respective successors, and to the Bond Trustee a true and complete copy of each such assignment and assumption of obligation.

**SECTION 8.2.** *Assignment And Pledge By County; Indenture Provisions.* Solely pursuant to the Indenture, the County shall assign its interest in and pledge any moneys receivable under Section 5.1 of this Agreement and the Note, including the right of possession

of the Note, to the Bond Trustee as security for payment of the principal of and premium, if any, and interest on the Bonds, but each such assignment or pledge shall be subject to this Agreement. Big Rivers consents to such assignment and pledge. Big Rivers also agrees to be bound by, observe, and perform its obligations under, the provisions in the Indenture referring to Big Rivers or imposing conditions, obligations or requirements on Big Rivers under this Agreement, the Note or the Big Rivers Indenture.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 9.1.** *Events Of Default Defined.* The following shall be “events of default” under this Agreement and the term “event of default” shall mean, whenever used in this Agreement, any one of the following events:

(a) Failure by Big Rivers to pay when due any amount required to be paid under the Note to the Bond Trustee for deposit into the Bond Fund.

(b) Acceleration of payment of any Obligation (as defined in the Big Rivers Indenture) secured by the Big Rivers Indenture pursuant to an “event of default” as such term is defined in Article VIII of the Big Rivers Indenture.

(c) Big Rivers files a petition in bankruptcy or is adjudicated as bankrupt or insolvent, or makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver of itself or of its property, or institutes proceedings for its reorganization, or proceedings instituted by others for its reorganization are not dismissed within thirty (30) days after the institution thereof, or a receiver or liquidator of Big Rivers or of any substantial portion of its property is appointed and the order appointing such receiver or liquidator shall not be vacated within thirty days after the entry thereof.

**SECTION 9.2.** *Remedies On Default.* Whenever any event of default referred to in Section 9.1 hereof shall have happened and be continuing, the County, or the Bond Trustee as provided in the Indenture:

(a) shall, by written notice to Big Rivers, upon the acceleration of maturity of the Bonds as provided in Section 8.01 of the Indenture, declare an amount equal to the principal of and accrued interest on the Note to have matured and therefore to be immediately due and payable, whereupon the same shall mature and become immediately due and payable; and

(b) may take whatever action at law or in equity may appear necessary or desirable to collect the amounts payable by Big Rivers hereunder and under the Note, then due and thereafter to be due, or to enforce performance and observance of any obligation, agreement or covenant of Big Rivers under this Agreement or under the Note, whether for specific performance of any covenant or agreement contained herein or therein or in aid of the execution of any power herein granted.

Any amounts collected pursuant to action taken under this Section 9.2 shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

**SECTION 9.3.** *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the County or the Bond Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, subject to the provisions of the Indenture. No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County to exercise any remedy reserved to it in this Article IX, it shall not be necessary to give any notice, other than notice required herein. Such rights and remedies given the County hereunder shall also extend to the Bond Trustee and the holders of the Bonds, subject to the provisions of the Indenture and the Big Rivers Indenture.

**SECTION 9.4.** *Agreement To Pay Attorneys' Fees And Expenses.* In the event Big Rivers should default under any of the provisions of this Agreement and the County or the Bond Trustee or their agents should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of the performance or observance of any obligation or agreement on the part of Big Rivers herein or in the Note contained, Big Rivers will on demand therefor pay to the County or the Bond Trustee, as the case may be, the reasonable fees of such attorneys and such other reasonable expenses incurred by the County or the Bond Trustee.

**SECTION 9.5.** *Waiver And Rescission Of Acceleration Under Indenture.* In the event any agreement contained in this Agreement or in the Note should be breached by Big Rivers or the County and thereafter waived by the other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder or thereunder. Notwithstanding the foregoing, a waiver of an Event of Default under the Indenture or a rescission of a declaration of acceleration of the Bonds and a rescission and annulment of its consequences shall constitute a waiver of the corresponding event of default under this Agreement and a rescission and annulment of its consequences, including any acceleration of maturity of principal of and interest on the Note; provided, that no such waiver or rescissions shall extend to or affect any subsequent or other default hereunder or impair any right consequent thereon.

**SECTION 9.6.** *Remedial Rights Assigned To Bond Trustee.* All rights and remedies conferred upon or reserved to the County in this Article IX, including the right to waive events of default, shall upon the execution and delivery of the Indenture be deemed to have been assigned to the Bond Trustee and the Bond Trustee shall have the exclusive right to exercise such rights and remedies in the same manner and under the limitations and conditions that the Bond Trustee is entitled to exercise rights and remedies upon the occurrence of an Event of Default pursuant to Article VIII of the Indenture.

**SECTION 9.7.** *Rescission Of Acceleration Required By Big Rivers Indenture.*

(a) If at any time following a declaration of acceleration pursuant to an Event of Default under Section 8.01(c) of the Indenture, and prior to payment of the Bonds pursuant to such acceleration, the Bond Trustee shall receive written notice that the acceleration of the

Obligations under the Big Rivers Indenture has been rescinded, then the Bond Trustee shall rescind any declaration of acceleration of the maturity of principal of and interest on the Bonds. In the event of such rescission of a declaration of acceleration of the Bonds, the Bond Trustee shall also rescind any declaration of acceleration of the maturity of the Note.

(b) In case of any such rescission, then and in every such case the County, the Bond Trustee and Big Rivers shall be restored to their former positions and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or event of default, or impair any right consequent thereon, nor shall such rescission extend to any instance in which the holder of any note secured by the Big Rivers Indenture other than the Note has subsequent to a request for rescission declared all unpaid principal of and accrued interest on such other note to be due and payable immediately.

## **ARTICLE X**

### **PREPAYMENT OF THE NOTE**

**SECTION 10.1.** *Optional Prepayments.* Big Rivers shall have, and is hereby granted, subject to the provisions of the Big Rivers Indenture, the option to prepay all or any portion of the unpaid balance of the Note at any time by taking the actions required by the Indenture (a) to discharge the lien thereof through the redemption of all or part of the Bonds under Section 3.01 of the Indenture, or (b) to effect the partial redemption of all or a part of such Bonds under Section 3.01 of the Indenture.

**SECTION 10.2.** *Exercise Of Optional Prepayment.* To exercise an option granted in Section 10.1 hereof to prepay the Note and thereby redeem some or all of the Bonds, Big Rivers shall give written notice to the County and the Bond Trustee at any time during the period beginning with (and including) the 45th day prior to the date of redemption and ending with (and including) the 30th day prior to the date of redemption. Such notice shall specify (i) that the Bonds are being redeemed pursuant to Section 3.01 of the Indenture, (ii) the principal amount of Bonds to be redeemed and the premium, if any, payable on such redemption, and (iii) the date such Bonds are to be redeemed (which must be a date permitted by Section 3.01 of the Indenture). If, at the time Big Rivers gives this notice, the Bond Trustee does not have on deposit sufficient available funds to pay the principal of, premium, if any, and interest accrued and to accrue through the redemption date on the Bonds so called for redemption, then Big Rivers' notice of redemption is conditional and revocable, that is, Big Rivers is under no obligation to provide, or cause to be provided, to the Bond Trustee funds to effect such redemption and, if it does not elect to do so by 12:00 noon, New York City time, on the redemption date, then the Bonds called for redemption shall not be redeemed pursuant to the above-mentioned notice of redemption or the notice of redemption given by the Bond Trustee pursuant to subsection (b) of Section 3.03 of the Indenture. Neither of Big Rivers nor the County or shall be liable to any Bondowner if Big Rivers does not provide, or cause to be provided, funds sufficient to effect redemption of any such Bonds with the result that such Bonds are not redeemed on the redemption date specified in such notices. If, at the time Big Rivers gives this notice, the Bond Trustee has on deposit sufficient funds to effect such redemption, then Big Rivers' notice is unconditional and irrevocable and the Bonds specified in the notice of Big Rivers and given by the Bond Trustee pursuant to subsection (b) of Section

3.03 of the Indenture shall become due and payable at the specified redemption price (plus accrued interest) on the specified redemption date.

Upon receipt of a notice furnished pursuant to this Section 10.2, the County and the Bond Trustee, as provided in the Indenture, shall forthwith take or cause to be taken all actions necessary under the Indenture to discharge the lien of the Indenture or effect the redemption of Bonds in accordance with such notice, as the case may be.

## ARTICLE XI

### MISCELLANEOUS

**SECTION 11.1.** *Notices.* All notices, certificates, requests or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows: if to the County, to: Ohio County Fiscal Court, 301 South Main, Hartford, Kentucky 42347, Attention: County Judge/Executive; if to Big Rivers, to: Big Rivers Electric Corporation, 201 Third Street, Henderson, Kentucky 42420, Attention: President and Chief Executive Officer; and if to the Bond Trustee, to: U.S. Bank National Association, Corporate Trust Services, 225 Asylum Street, 23rd Floor, Hartford, Connecticut 06103, Attention: Laurel Casasanta (Big Rivers 2020 Indenture). A duplicate copy of each notice, certificate, request or other communication given hereunder by the County or Big Rivers shall also be given to the Bond Trustee, the County and Big Rivers. A party may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

**SECTION 11.2.** *Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon the County, Big Rivers and their respective successors and assigns.

**SECTION 11.3.** *Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 11.4.** *Amounts Remaining In Funds.* It is agreed by the parties hereto that any amounts remaining in the Bond Fund upon expiration or sooner termination of this Agreement, as provided in this Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture), the fees, charges and expenses of the Bond Trustee and any paying agent in accordance with the Indenture and all other amounts required to be paid under this Agreement and the Indenture, shall belong to and be paid to Big Rivers by the Bond Trustee.

**SECTION 11.5.** *Bond Trustee Powers Under Big Rivers Indenture.* The Bond Trustee is authorized in connection with the Big Rivers Indenture to execute and deliver all such further instruments as may be required by the provisions thereof and to exercise all the rights of a holder of the Note without the prior consent of the County.

**SECTION 11.6.** *Amendments, Changes And Modifications.* Except as otherwise provided in this Agreement or in the Indenture, subsequent to the initial issuance of Bonds and prior to their payment in full (or provision for the payment thereof having been made in

accordance with the provisions of the Indenture), this Agreement and the Note may not be effectively amended, changed, modified, altered or terminated without the written consent of the Bond Trustee, given in accordance with the Indenture.

**SECTION 11.7.** *Execution In Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**SECTION 11.8.** *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, WITHOUT REFERENCE TO THE CHOICE OF LAWS PROVISIONS OF THE COMMONWEALTH OF KENTUCKY.

**SECTION 11.9.** *Captions.* The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**SECTION 11.10.** *Pecuniary Liability Of The County.* No provision, covenant or agreement contained in this Agreement or any obligations herein imposed upon the County, or the breach thereof, shall constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers. In making the agreements, provisions and covenants set forth in this Agreement, the County has not obligated itself except with respect to this Agreement and the application of the revenues, income and all other property therefrom, as hereinabove provided. The Bonds shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the County be subject to any liability thereon. No holder or holders of any of the Bonds shall ever have the right to compel any exercise of the taxing power of the County to pay any such Bonds or the interest thereon, nor to enforce payment thereon against any property of the County. The Bonds shall not constitute a charge, lien nor encumbrance, legal or equitable, upon any property of the County.

**SECTION 11.11.** *Payments Due On Holidays.* If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement or the Note, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement or the Note and no interest shall accrue for the period after such nominal date.



IN WITNESS WHEREOF, the County and Big Rivers have caused this Agreement to be executed in their respective corporate names by their duly authorized officers and have caused their corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

(SEAL)

COUNTY OF OHIO, KENTUCKY

By: \_\_\_\_\_  
David Johnston  
*Judge/Executive*

Attest:

By: \_\_\_\_\_  
Miranda Funk  
*Fiscal Court Clerk, County of Ohio,  
Kentucky*

[SM to confirm need for seal and attestation.]

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Robert W. Berry  
President and Chief Executive Officer

**THE FACILITIES**

The following are the air and water pollution control facilities, sewage and solid waste disposal facilities and other facilities installed at or in connection with the Plant:

1. Electrostatic Precipitator System - designed to remove flyash from the flue gases emitted from Unit 1's boiler. Such facilities consist of two precipitators and transitional ducting.
2. Sulphur Dioxide Removal Facility - consists of a "wet spray type scrubber" system to remove sulphur from the flue gases emitted from Unit 1's boiler. Such facilities consist of sulphur dioxide spray absorbers, lime and limestone receiving, storage, conveying and handling facilities, flue gas reheat facilities, and transitional ducting.
3. Run-off Retention Ponds - designed to provide settling of rain water suspended solids prior to discharge through normal drainage system.
4. Waste Water Treatment Facility - consists of pH trim tank and clarifier to treat and process liquids from the following Items 6 , 7 , and 8.
5. Coal Pile Run-off Pond - designed to collect acidic water run-off from the station's coal storage area. The facility includes a pond and pumping equipment.
6. Waste Water Pond - designed to collect various Plant waste streams. The facility includes a pond and pumping equipment.
7. Waste Impoundment Pond - designed to collect highly contaminated liquid wastes. The facility includes a pond and pumping equipment.
8. Solid Waste Treatment Facility - designed to concentrate and process waste slurry from the dewatering system of the Sulphur Dioxide Removal Facility by addition of flyash and lime to produce a suitable landfill material.
9. Sanitary Waste System - designed to process station sanitary wastes.
10. Solid Waste Landfill Area - land required for placement of all Plant solid wastes.
11. Flyash Collection Facility - designed to transport ash collected by the Electrostatic Precipitator System and consists of blowers, air locks and an ash transport and silo vent piping system.

COMMONWEALTH OF KENTUCKY )

) ss

COUNTY OF HENDERSON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Robert W. Berry, President and Chief Executive Officer of Big Rivers Electric Corporation, a Kentucky corporation, for and on behalf of said corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public's Signature  
Notary Public, Commonwealth-at-Large  
My Commission expires: \_\_\_\_\_

(Notarial Seal)



**EXHIBIT B**

THIS FIRST MORTGAGE NOTE, SERIES 2020B IS NONTRANSFERABLE EXCEPT AS MAY BE REQUIRED TO EFFECT ANY TRANSFER TO ANY SUCCESSOR BOND TRUSTEE UNDER THE TRUST INDENTURE, DATED AS OF [\_\_\_\_ \_], 2020, BETWEEN THE COUNTY OF OHIO, KENTUCKY AND U.S. BANK NATIONAL ASSOCIATION, AS BOND TRUSTEE.

No. R-

\$[00,000,000]

**BIG RIVERS ELECTRIC CORPORATION  
FIRST MORTGAGE NOTE, SERIES 2020B**

**BIG RIVERS ELECTRIC CORPORATION** (“Big Rivers”), a cooperative corporation organized under the laws of the Commonwealth of Kentucky, for value received, promises to pay to U.S. Bank National Association, as trustee (the “Bond Trustee”), or its successors in trust, the principal sum of \$[00,000,000] and interest thereon as follows: Big Rivers shall pay, during the term of the Loan Agreement, dated as of [\_\_\_\_ \_], 2020 (the “Loan Agreement”), between the County of Ohio, Kentucky (the “County”) and Big Rivers, for deposit into the Bond Fund, (i) on or prior to each date on which interest is due on the County’s Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project), (the “Series 2020B Bonds”) issued by the County under the Trust Indenture, dated as of [\_\_\_\_ \_], 2020 (the “Bond Indenture”), between the County and the Bond Trustee, as the same may be amended and supplemented from time to time, the amount of interest due on the Series 2020B Bonds on such date, computed in the manner described in the Bond Indenture, (ii) on the stated maturity date of the Series 2020B Bonds (or earlier date to which the maturity of the Series 2020B Bonds has been accelerated as a result of an event of default), a sum which will equal the principal amount of the Series 2020B Bonds which will become due on such date and (iii) on or prior to any redemption date for the Series 2020B Bonds, an amount equal to the principal of (premium, if any) and interest on the Series 2020B Bonds which are to be redeemed on such date.

This First Mortgage Note, Series 2020B is issued under, is described in and is subject to the Loan Agreement, and is secured by an Indenture, dated as of July 1, 2009, as amended and supplemented, including by that certain [Tenth] Supplemental Indenture, dated as of [\_\_\_\_], [\_\_\_\_] (collectively, the “Big Rivers Indenture”), between Big Rivers and U.S. Bank National Association, as trustee (the “Indenture Trustee”).

All payments required pursuant hereto shall be made to the Bond Trustee at its principal office in St. Paul, Minnesota, in lawful money of the United States of America. As set forth in Section 5.7 of the Loan Agreement, the obligation of Big Rivers to make the payments required hereunder shall be absolute and unconditional.

This First Mortgage Note, Series 2010A may be prepaid upon the terms and conditions set forth in Article X of the Loan Agreement.

Big Rivers shall be entitled to credits against payments required hereby as provided in Section 5.2 of the Loan Agreement.

If the maturity date of the Series 2020B Bond shall be accelerated as a result of an event of default, the principal of this First Mortgage Note, Series 2020B shall become due and payable in the manner and with the effect provided in the Loan Agreement. The Loan Agreement provides that, under certain conditions, such acceleration shall be rescinded.

No recourse shall be had for the payments required hereby or for any claim based herein or on the Loan Agreement or on the Big Rivers Indenture against any officer, director or stockholder, past, present or, future, of Big Rivers as such, either directly or through Big Rivers, or under any constitution and provision, statute or rule of law or by the enforcement of any assessment or by any legal or equitable proceedings or otherwise.

This First Mortgage Note, Series 2020B shall not be entitled to any benefit under the Big Rivers Indenture and shall not become valid or obligatory for any purpose until the Indenture Trustee shall have signed the form of authentication certificate endorsed hereon.

All terms use in this First Mortgage Note, Series 2020B which are not defined herein shall have the meanings assigned to them in the Loan Agreement or the Bond Indenture.

IN WITNESS WHEREOF, Big Rivers has caused this First Mortgage Note, Series 2020B to be duly executed, attested and delivered the \_\_\_\_ day of [\_\_\_\_], 2020.

**BIG RIVERS ELECTRIC CORPORATION**

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Robert W. Berry  
President and Chief Executive Officer



This is one of the Obligations of the series designated therein referred to in within-mentioned Big Rivers Indenture.

U.S. BANK NATIONAL ASSOCIATION, as  
Indenture Trustee

By: \_\_\_\_\_  
Laurel Casasanta  
Vice President

Date of Authentication: [\_\_\_\_], 2020

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**[TENTH]<sup>1</sup> SUPPLEMENTAL INDENTURE  
(to that certain Indenture dated as of July 1, 2009)  
dated as of [\_\_\_\_ \_], 2020**

**Relating to the Big Rivers Electric Corporation  
First Mortgage Note, Series 2020B<sup>2</sup>  
Authorized by this [Tenth] Supplemental Indenture**

**BIG RIVERS ELECTRIC CORPORATION**

**to**

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

**FIRST MORTGAGE OBLIGATIONS**

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- **THIS INSTRUMENT IS A MORTGAGE.**
- **THIS INSTRUMENT GRANTS A SECURITY INTEREST IN A TRANSMITTING UTILITY.**
- **BIG RIVERS ELECTRIC CORPORATION IS A TRANSMITTING UTILITY.**
- **THIS INSTRUMENT CONTAINS PROVISIONS THAT COVER REAL AND PERSONAL PROPERTY, AFTER-ACQUIRED PROPERTY, FIXTURES AND PROCEEDS.**
- **FUTURE ADVANCES AND FUTURE OBLIGATIONS ARE SECURED BY THIS INSTRUMENT.**
- **THE MAXIMUM ADDITIONAL INDEBTEDNESS WHICH MAY BE SECURED HEREUNDER IS \$3,000,000,000.**
- **THE TYPES OF PROPERTY COVERED BY THIS INSTRUMENT ARE DESCRIBED ON PAGES 2 THROUGH 4.**
- **THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.**

**STATE TAXPAYER'S IDENTIFICATION NUMBER: 25757**

**FEDERAL TAXPAYER'S IDENTIFICATION NUMBER: 61-0597287**

**THIS INDENTURE WAS PREPARED BY MICHAEL A. FIORELLA OF SULLIVAN MOUNTJOY, PSC, 100 SAINT ANN STREET, OWENSBORO, KENTUCKY 42303, ATTORNEY FOR BIG RIVERS ELECTRIC CORPORATION.**

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<sup>1</sup> Supplemental number to be confirmed as at the time of execution and delivery.

<sup>2</sup> Series designation to be confirmed.

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

**THIS [TENTH] SUPPLEMENTAL INDENTURE**, dated as of [\_\_\_\_], 2020 (this “[Tenth] Supplemental Indenture”), is between **BIG RIVERS ELECTRIC CORPORATION**, a cooperative corporation organized under the laws of the Commonwealth of Kentucky, as Grantor (hereinafter called the “Company”), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the “Trustee”), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the “Original Indenture”), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Original Indenture) by the Trustee from time to time under the Original Indenture, which Original Indenture is filed of record as shown on Exhibit A hereto;

**WHEREAS**, the Company is the owner of the D.B. Wilson Plant Unit No. 1, a coal-fired steam electric generating plant (the “Plant”) located within the geographical limits of the County of Ohio, Kentucky (the “County”), and pursuant to a resolution adopted by the Fiscal Court of the County on September 9, 1980 and the provisions of Title IX (*Counties, Cities, and Local Units*), Chapter 103 (*Revenue Bonds for Miscellaneous City or County Projects*), Sections 103.200 through 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the “Act”), the County agreed to finance the air and water pollution and sewage and solid waste facilities located at the Plant (the “Facilities”) as an authorized project under the Act, by issuing its “Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project)” (the “Series 2020B Bonds”) pursuant to a Trust Indenture, dated as of [\_\_\_\_], 2020, between the County and U.S. Bank National Association, as trustee (the “2020 Indenture”) and loaning the proceeds thereof to the Company pursuant to the Loan Agreement, dated as of [\_\_\_\_], 2020, between the County and the Company (the “2020 Loan Agreement”); and

**WHEREAS**, in order to evidence its obligation to repay the loan of the proceeds of the Series 2020B Bonds, the Company will issue to the County its note (the “First Mortgage Note, Series 2020B”), which First Mortgage Note, Series 2020B will be secured under the Indenture; and

**WHEREAS**, the Company desires to execute and deliver this [Tenth] Supplemental Indenture, in accordance with the provisions of the Original Indenture, for the purpose of providing for the creation and designation of the First Mortgage Note, Series 2020B as an Additional Obligation and specifying the form and provisions of the First Mortgage Note, Series 2020B;

**WHEREAS**, Section 12.1 of the Original Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the First Mortgage Note, Series 2020B, to make the First Mortgage Note, Series 2020B issued hereunder, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligation of the Company, and to constitute the Indenture a valid and binding lien for the security of the First Mortgage Note, Series 2020B, in accordance with its terms, have been done and taken; and the execution and delivery of this [Tenth] Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS [TENTH] SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the First Mortgage Note, Series 2020B, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the First Mortgage Note, Series 2020B is secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Original Indenture, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Original Indenture and to the rights of the Company under the Original Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as “Excepted Property” in the Original Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Original Indenture or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Trust Estate, all the Excepted Property described or referred to in Paragraphs A through H, inclusive, of “Excepted Property” in the Original Indenture then owned or thereafter acquired by the Company, shall immediately, and, in the case of any Excepted Property described or referred to in Paragraphs I, J and L of “Excepted Property” in the Original Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture to the extent permitted by law, and the Trustee or such other trustee or receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and whenever all Events of Default shall have been cured and the possession of all or substantially all of the Trust Estate shall have been restored to the Company, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Original Indenture, subject to the lien of the Indenture any Excepted Property, whereupon the same shall cease to be Excepted Property.

**TO HAVE AND TO HOLD** all such property, rights, privileges and franchises hereby and hereafter (by Supplemental Indenture or otherwise) granted, bargained, sold, alienated, remised, released, conveyed, assigned, transferred, mortgaged, hypothecated, pledged, set over or confirmed (or in which a security interest is granted) as aforesaid, together with all the tenements, hereditaments and appurtenances thereto appertaining (said properties, rights, privileges and franchises, including any cash and securities hereafter deposited or required to be deposited with the Trustee (other than any such cash which is specifically stated in the Original Indenture not to be deemed part of the Trust Estate) being part of the Trust Estate), unto the Trustee, and its successors and assigns in the trust herein created, forever.

**SUBJECT, HOWEVER,** to (i) Permitted Exceptions and (ii) to the extent permitted by Section 13.6 of the Original Indenture as to property hereafter acquired (a) any duly recorded or perfected Prior Lien that may exist thereon at the date of the acquisition thereof by the Company and (b) purchase money mortgages, other purchase money liens, chattel mortgages, conditional sales agreements or other title retention agreements created by the Company at the time of acquisition thereof.

**BUT IN TRUST, NEVERTHELESS,** with power of sale, for the equal and proportionate benefit and security of the Holders from time to time of all the Outstanding Secured Obligations without any priority of any Outstanding Secured Obligation over any other Outstanding Secured Obligation and for the enforcement of the payment of Outstanding Secured Obligations in accordance with their terms.

**UPON CONDITION** that, until the happening of an Event of Default under the Indenture and subject to the provisions of Article V of the Original Indenture, and not in limitation of the rights elsewhere provided in the Original Indenture, including the rights set forth in Article V of the Original Indenture, the Company shall have the right to (i) possess, use, manage, operate and enjoy the Trust Estate (other than cash and securities constituting part of the Trust Estate that are deposited with the Trustee), (ii) explore for, gather, cut, mine and produce crops, timber, coal, ore, gas, oil, minerals or other natural resources and products, and to use, consume and dispose of any thereof, and (iii) collect, receive, use, make payments from, transfer, invest, otherwise utilize or employ amounts constituting or derived from the rents, issues, tolls, earnings, profits, revenues, products and proceeds from the Trust Estate or the operation of the property constituting part of the Trust Estate.

Should the indebtedness secured by the Indenture be paid according to the tenor and effect thereof when the same shall become due and payable and should the Company perform all covenants therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the First Mortgage Note, Series 2020B is to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Original Indenture, and the Company does hereby covenant and agree to and with the Trustee, for the equal and proportionate benefit of all Holders of the Outstanding Secured Obligations, as follows:

## ARTICLE I

### THE FIRST MORTGAGE NOTE, SERIES 2020B AND CERTAIN PROVISIONS RELATING THERETO

#### **SECTION 1.01. Definitions.**

All words and phrases defined in Article I of the Original Indenture shall have the same meaning in this [Tenth] Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### **SECTION 1.02. Authorization and Terms of the First Mortgage Note, Series 2020B.**

There shall be established an Additional Obligation in the form of the promissory note known as and entitled the “First Mortgage Note, Series 2020B” (hereinafter referred to as the “First Mortgage Note, Series 2020B”), the form, terms and conditions of which shall be substantially as set forth in this Section and Section 1.03. The First Mortgage Note, Series 2020B is the same Note described and defined in the 2020 Indenture and the 2020 Loan Agreement as the “Note.” The aggregate principal face amount of the First Mortgage Note, Series 2020B which shall be authenticated and delivered and Outstanding at any one time is limited to \$[00,000,000].

The First Mortgage Note, Series 2020B shall be dated the date of its authentication and shall mature on [July 15, 2031]. The First Mortgage Note, Series 2020B shall bear interest computed in the same manner and payable at the same time as the interest on the Series 2020B Bonds is computed and paid as described and computed in accordance with the terms of the 2020 Indenture. The First Mortgage Note, Series 2020B shall be subject to optional prepayment as more particularly set forth in such First Mortgage Note, Series 2020B. The First Mortgage Note, Series 2020B shall be authenticated and delivered to, and made payable to, U.S. Bank National Association, as trustee for the Series 2020B Bonds (in such capacity, the “Bond Trustee”), as assignee and pledgee of the County pursuant to the 2020 Indenture.

All payments made on the First Mortgage Note, Series 2020B shall be made to the Bond Trustee at its principal office in St. Paul, Minnesota in lawful money of the United States of America which will be immediately available on the date payment is due.

#### **SECTION 1.03. Form of the First Mortgage Note, Series 2020B.**

The First Mortgage Note, Series 2020B and the Trustee’s authentication certificate to be executed on the First Mortgage Note, Series 2020B shall be substantially in the form of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Original Indenture.

#### **SECTION 1.04. Payments on First Mortgage Note, Series 2020B.**

Payments by the Company on the First Mortgage Note, Series 2020B shall be used to make payments required under the 2020 Loan Agreement.

## ARTICLE II

### MISCELLANEOUS

#### **SECTION 2.01. Supplemental Indenture.**

This [Tenth] Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. All of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Notes, Series 2020B to the same extent as if specifically set forth herein except to the extent any such provisions, terms, covenants and conditions are covered or addressed by the express terms of this [Tenth] Supplemental Indenture or the 2020 Loan Agreement, in which case this [Tenth] Supplemental Indenture or the 2020 Loan Agreement, as applicable, shall apply. Except to the extent inconsistent with the express terms of this [Tenth] Supplemental Indenture, the 2020 Indenture, the 2020 Loan Agreement and the Series 2020B Bonds, all of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Note, Series 2020B to the same extent as if specifically set forth herein.

#### **SECTION 2.02. Recitals.**

All recitals in this [Tenth] Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this [Tenth] Supplemental Indenture or the First Mortgage Notes, Series 2020B (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the First Mortgage Notes, Series 2020B; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee is not a party to the 2020 Loan Agreement, and it will not be responsible for or charged with knowledge of any terms of the 2020 Loan Agreement.

#### **SECTION 2.03. Successors and Assigns.**

Whenever in this [Tenth] Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Original Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this [Tenth] Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

#### **SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this [Tenth] Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this [Tenth] Supplemental Indenture or any covenant, condition,



stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this [Tenth] Supplemental Indenture contained by or on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

**SECTION 2.05. Counterparts.**

This [Tenth] Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 2.06. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this [Tenth] Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association, as  
Trustee  
Global Corporate Trust  
Goodwin Square  
225 Asylum Street, 23<sup>rd</sup> floor  
Hartford, Connecticut 06103

Additionally, this [Tenth] Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company is authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created.

[Signatures on Next Page.]





**EXHIBIT A**

**RECORDING INFORMATION FOR  
INDENTURE DATED AS OF JULY 1, 2009**

Breckinridge County	Mortgage Book 354, page 533
Caldwell County	Mortgage Book 258, page 1
Crittenden County	Mortgage Book 184, page 457
Daviess County	Mortgage Book 1707, page 562
Hancock County	Mortgage Book 177, page 259
Henderson County	Mortgage Book 1032, page 1
Hopkins County	Mortgage Book 965, page 227
Livingston County	Mortgage Book 262, page 305
Marshall County	Mortgage Book 672, page 592
McCracken County	Mortgage Book 1232, page 329
Meade County	Mortgage Book 627, page 222
Ohio County	Mortgage Book 435, page 500
Union County	Mortgage Book 373, page 152
Webster County	Mortgage Book 283, page 578

**EXHIBIT B**

THIS FIRST MORTGAGE NOTE, SERIES 2020B IS NONTRANSFERABLE EXCEPT AS MAY BE REQUIRED TO EFFECT ANY TRANSFER TO ANY SUCCESSOR BOND TRUSTEE UNDER THE TRUST INDENTURE, DATED AS OF [\_\_\_\_ \_], 2020, BETWEEN THE COUNTY OF OHIO, KENTUCKY AND U.S. BANK NATIONAL ASSOCIATION, AS BOND TRUSTEE.

No. R-

[\$[00,000,000]

**BIG RIVERS ELECTRIC CORPORATION  
FIRST MORTGAGE NOTE, SERIES 2020B**

**BIG RIVERS ELECTRIC CORPORATION** (“Big Rivers”), a cooperative corporation organized under the laws of the Commonwealth of Kentucky, for value received, promises to pay to U.S. Bank National Association, as trustee (the “Bond Trustee”), or its successors in trust, the principal sum of \$[00,000,000] and interest thereon as follows: Big Rivers shall pay, during the term of the Loan Agreement, dated as of [\_\_\_\_ \_], 2020 (the “Loan Agreement”), between the County of Ohio, Kentucky (the “County”) and Big Rivers, for deposit into the Bond Fund, (i) on or prior to each date on which interest is due on the County’s Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project), (the “Series 2020B Bonds”) issued by the County under the Trust Indenture, dated as of [\_\_\_\_ \_], 2020 (the “Bond Indenture”), between the County and the Bond Trustee, as the same may be amended and supplemented from time to time, the amount of interest due on the Series 2020B Bonds on such date, computed in the manner described in the Bond Indenture, (ii) on the stated maturity date of the Series 2020B Bonds (or earlier date to which the maturity of the Series 2020B Bonds has been accelerated as a result of an event of default), a sum which will equal the principal amount of the Series 2020B Bonds which will become due on such date and (iii) on or prior to any redemption date for the Series 2020B Bonds, an amount equal to the principal of (premium, if any) and interest on the Series 2020B Bonds which are to be redeemed on such date.

This First Mortgage Note, Series 2020B is issued under, is described in and is subject to the Loan Agreement, and is secured by an Indenture, dated as of July 1, 2009, as amended and supplemented, including by that certain [Tenth] Supplemental Indenture, dated as of [\_\_\_\_], [\_\_\_\_] (collectively, the “Big Rivers Indenture”), between Big Rivers and U.S. Bank National Association, as trustee (the “Indenture Trustee”).

All payments required pursuant hereto shall be made to the Bond Trustee at its principal office in St. Paul, Minnesota, in lawful money of the United States of America. As set forth in Section 5.7 of the Loan Agreement, the obligation of Big Rivers to make the payments required hereunder shall be absolute and unconditional.

This First Mortgage Note, Series 2010A may be prepaid upon the terms and conditions set forth in Article X of the Loan Agreement.

Big Rivers shall be entitled to credits against payments required hereby as provided in Section 5.2 of the Loan Agreement.

If the maturity date of the Series 2020B Bond shall be accelerated as a result of an event of default, the principal of this First Mortgage Note, Series 2020B shall become due and payable in the manner and with the effect provided in the Loan Agreement. The Loan Agreement provides that, under certain conditions, such acceleration shall be rescinded.

No recourse shall be had for the payments required hereby or for any claim based herein or on the Loan Agreement or on the Big Rivers Indenture against any officer, director or stockholder, past, present or, future, of Big Rivers as such, either directly or through Big Rivers, or under any constitution and provision, statute or rule of law or by the enforcement of any assessment or by any legal or equitable proceedings or otherwise.

This First Mortgage Note, Series 2020B shall not be entitled to any benefit under the Big Rivers Indenture and shall not become valid or obligatory for any purpose until the Indenture Trustee shall have signed the form of authentication certificate endorsed hereon.

All terms use in this First Mortgage Note, Series 2020B which are not defined herein shall have the meanings assigned to them in the Loan Agreement or the Bond Indenture.

IN WITNESS WHEREOF, Big Rivers has caused this First Mortgage Note, Series 2020B to be duly executed, attested and delivered the \_\_\_\_ day of [\_\_\_\_], 2020.

**BIG RIVERS ELECTRIC CORPORATION**

---

Robert W. Berry  
President and Chief Executive Officer

This is one of the Obligations of the series designated therein referred to in within-mentioned Big Rivers Indenture.

U.S. BANK NATIONAL ASSOCIATION, as  
Indenture Trustee

By: \_\_\_\_\_  
Laurel Casasanta  
Vice President

Date of Authentication: [\_\_\_\_], 2020



## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Agreement”), dated as of \_\_\_\_\_, 2020, is executed and delivered by Big Rivers Electric Corporation (“Big Rivers”) in connection with the issuance of \$[83,300,000] principal amount of Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project) (the “Bonds”) issued by the County of Ohio, Kentucky (the “Issuer”). The proceeds of the sale of the Bonds will be used to refinance funds borrowed to redeem the Issuer’s Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project). In connection therewith, the Issuer and Big Rivers have entered into a Loan Agreement dated as of \_\_\_\_\_, 2020 (the “Loan Agreement”), pursuant to which the Issuer has loaned to Big Rivers the aggregate principal amount of the Bonds. Capitalized terms used in this Agreement shall have the meanings given to them in the Trust Indenture, dated as of \_\_\_\_\_, 2020 (the “Indenture”), between the Issuer and U.S. Bank National Association, as trustee; capitalized terms used in this Agreement which are not otherwise defined in the Indenture shall have the respective meanings specified in Article IV hereof.

### ARTICLE I The Undertaking

Section 1.1. Purpose: No Issuer Responsibility or Liability. This Agreement is being executed and delivered solely to assist the Underwriter in complying with paragraph (b)(5) of the Rule and in consideration of the purchase of the Bonds by the Underwriters from the Issuer, and the contemplated sale of the Bonds to, and transfer of the Bonds between, holders and Beneficial Owners. Big Rivers acknowledges that the Issuer has undertaken no responsibility, and shall not be required to undertake any responsibility, with respect to any reports, notices or disclosures required by or provided pursuant to this Agreement, and shall have no liability to any person, including any holder of the Bonds, with respect to any such reports, notices or disclosures.

#### Section 1.2. Annual Financial Information.

(a) Big Rivers shall provide Annual Financial Information with respect to each fiscal year, commencing with the fiscal year ending December 31, 2020, by no later than six months after the end of the respective fiscal year to (i) the MSRB and (ii) the Issuer.

(b) Big Rivers shall provide, in a timely manner, notice of any failure of Big Rivers to provide the Annual Financial Information by the date specified in subsection (a) above to (i) the MSRB and (ii) the Issuer in substantially the form of Exhibit A hereto.

Section 1.3. Audited Financial Statements. If not provided as part of Annual Financial Information by the date required by Section 1.2 hereof because Audited Financial Statements are not available, Big Rivers shall provide Audited Financial Statements, when and if available, to (i) the MSRB and (ii) the Issuer.

#### Section 1.4. Listed Events Notices.

(a) If a Listed Event occurs, Big Rivers shall provide, in a timely manner not in excess of ten Business Days after the occurrence of the event, a Listed Event Notice to (i) the MSRB and (ii) the Issuer.

(b) Any such notice of a defeasance of Bonds shall state whether the Bonds have been escrowed to maturity or to an earlier redemption and the timing of such maturity or redemption.

Section 1.5. Information. Nothing in this Agreement shall be deemed to prevent Big Rivers from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Financial Information or Listed Event Notice, in addition to that which is required by this Agreement. If Big Rivers chooses to include any information in any Annual Financial Information or Listed Event Notice in addition to that which is specifically required by this Agreement, Big Rivers shall have no obligation under this Agreement to update such information or include it in any future Annual Financial Information or Listed Event Notice.

Section 1.6. No Previous Non-Compliance. Except as disclosed in the Preliminary Offering Statement, Big Rivers represents that during the previous five years, it has not failed to comply in any material respect with any previous undertaking in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule

## ARTICLE II Operating Rules

Section 2.1. Reference to Other Documents. It shall be sufficient for purposes of Section 1.2 hereof if Big Rivers provides Annual Financial Information by specific reference to documents (i) either (1) provided to the MSRB or (2) filed with the SEC, or (ii) if such document is an offering statement provided in connection with a subsequent financing and meeting the definition of “final official statement” as defined in paragraph (f)(3) of the Rule, available from the MSRB.

Section 2.2. Submission of Information. Annual Financial Information may be provided in one document or multiple documents, and at one time or in part from time to time.

Section 2.3. Listed Event Notices. Each Listed Event Notice shall be so captioned and shall prominently state the title, date and CUSIP numbers of the Bonds.

Section 2.4. Format for Filings with MSRB. Any report or filing with the MSRB pursuant to this Agreement must be submitted in electronic format, accompanied by such identifying information as is prescribed by the MSRB.

Section 2.5. Fiscal Year. Annual Financial Information shall be provided at least annually notwithstanding any fiscal year longer than twelve calendar months. Big Rivers’ current fiscal year is January 1 - December 31, and Big Rivers shall promptly notify (i) the MSRB and (ii) the Issuer, of each change in its fiscal year.

## ARTICLE III Effective Date, Termination, Amendment and Enforcement

Section 3.1. Effective Date; Termination.

(a) This Agreement shall be effective upon issuance of the Bonds.

(b) If Big Rivers’ obligations under the Loan Agreement are assumed in full by some other entity, such person shall be responsible for compliance with this Agreement in the same manner as if it were Big Rivers, and thereupon Big Rivers shall have no further responsibility hereunder.

(c) Big Rivers’ obligations under this Agreement shall terminate upon the legal defeasance pursuant to Section VII of the Indenture, prior redemption or payment in full of all of the Bonds.

(d) This Agreement, or any provision hereof, shall be null and void in the event that Big Rivers delivers to (i) the MSRB and (ii) the Issuer, an opinion of Counsel, addressed to Big Rivers, the Issuer, to the effect that those portions of the Rule which require this Agreement, or any of such provisions, do not or no longer apply to the Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, as shall be specified in such opinion.

Section 3.2. Amendment.

(a) This Agreement may be amended by Big Rivers without the consent of the holders of the Bonds (except to the extent required under clause (4)(ii) in this paragraph), if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of Big Rivers or the type of business conducted thereby, (2) this Agreement as so amended would have complied with the requirements of the Rule as of the date of this Agreement, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) Big Rivers shall have received an opinion of Counsel, addressed to Big Rivers and the Issuer, to the same effect as set forth in clause (2) above, (4) either (i) Big Rivers shall have received an opinion of Counsel or a determination by a person, in each case unaffiliated with the Issuer or Big Rivers (such as bond counsel) and acceptable to Big Rivers, addressed to Big Rivers and the Issuer, to the effect that the amendment does not materially impair the interests of the holders of the Bonds or (ii) the holders of the Bonds consent to the amendment to this Agreement pursuant to the same procedures as are required for amendments to the Indenture with consent of holders of Bonds pursuant to Section 11.03 of the Indenture as in effect on the date of this Agreement, and (5) Big Rivers shall have delivered copies of such opinion(s) and amendment to (i) the MSRB, and (ii) the Issuer.

(b) In addition to subsection (a) above, Big Rivers may amend this Agreement without the consent of the holders of the Bonds, if all of the following conditions are satisfied: (1) an amendment to the Rule is adopted, or a new or modified official interpretation of the Rule is issued, after the effective date of this Agreement which is applicable to this Agreement, (2) Big Rivers shall have received an opinion of Counsel, addressed to Big Rivers and the Issuer, to the effect that performance by Big Rivers under this Agreement as so amended will not result in a violation of the Rule and (3) Big Rivers shall have delivered copies of such opinion and amendment to (i) the MSRB and (ii) the Issuer.

(c) To the extent any amendment to this Agreement results in a change in the type of financial information or operating data provided pursuant to this Agreement, the first Annual Financial Information provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

(d) If an amendment is made pursuant to Section 3.2(a) hereof to the accounting principles to be followed by Big Rivers in preparing its financial statements, the Annual Financial Information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a qualitative and, to the extent reasonably feasible, quantitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information.

Section 3.3. Benefit; Third-Party Beneficiaries; Enforcement.

(a) The provisions of this Agreement shall constitute a contract with and inure solely to the benefit of the holders from time to time of the Bonds, except that beneficial owners of Bonds shall

be third-party beneficiaries of this Agreement. The provisions of this Agreement shall create no rights in any person or entity except as provided in this subsection (a) and subsection (b) of this Section.

(b) The obligations of Big Rivers to comply with the provisions of this Agreement shall be enforceable (i) in the case of enforcement of obligations to provide financial statements, financial information, operating data and notices, by any holder of Outstanding Bonds, or by a trustee on behalf of the holders of Outstanding Bonds, or (ii), in the case of challenges to the adequacy of the financial statements, financial information and operating data so provided, by a trustee on behalf of the holders of Outstanding Bonds. Any such proceedings to require Big Rivers to perform any obligation under this Agreement shall be instituted and maintained only by the holders of not less than 25% in aggregate principal amount of the Bonds at the time Outstanding, or a trustee acting on their behalf. The holders' or such trustee's rights to enforce the provisions of this Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of Big Rivers' obligations under this Agreement. In recognition of the third-party beneficiary status of beneficial owners of Bonds pursuant to subsection (a) of this Section, beneficial owners shall be deemed to be holders of Bonds for purposes of this subsection (b).

(c) Any failure by Big Rivers to perform in accordance with this Agreement shall not constitute a default or an Event of Default under the Indenture or the Loan Agreement, and the rights and remedies provided by the Indenture or the Loan Agreement, as the case may be, upon the occurrence of a default or an Event of Default shall not apply to any such failure.

(d) This Agreement shall be construed and interpreted in accordance with the laws of the State, and any suits and actions arising out of this Agreement shall be instituted in a court of competent jurisdiction in the State; *provided, however*, that to the extent this Agreement addresses matters of federal securities laws, including the Rule, this Agreement shall be construed in accordance with such federal securities laws and official interpretations thereof.

#### ARTICLE IV Definitions

Section 4.1. Definitions. The following terms used in this Agreement shall have the following respective meanings:

(1) "Annual Financial Information" means, collectively, (i) the following financial information and operating data of the type included in the Offering Statement with respect to Big Rivers and the Members, as applicable, contained under the following captions in the Offering Statement updated on an annual basis (capitalized terms used in this definition of Annual Financial Information and not otherwise defined in this Agreement shall have the meanings set forth in the Offering Statement):

- **[TO BE UPDATED]**
- "BIG RIVERS ELECTRIC CORPORATION – Introduction – General": the numbers set forth in the second and fourth paragraphs thereof;
- "BIG RIVERS ELECTRIC CORPORATION – Introduction – The Members": the numbers set forth therein;
- "SELECTED BIG RIVERS' FINANCIAL DATA";
- "CAPITALIZATION";

- “Management’s Discussion and Analysis of Financial Condition and Results of Operations”: all of the information contained therein other than forecasted capital expenditures;
- “QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK – Interest Rate Risk and Commodity Price Risk”: the numbers or percentages set forth;
- “GENERATION AND TRANSMISSION ASSETS – Generating Resources – General”: the table set forth therein;
- “GENERATION AND TRANSMISSION ASSETS – Generating Resources – Kenneth C. Coleman Plant, Robert D. Green Plant, Robert A. Reid Plant, D.B. Wilson Unit No. 1 Plant and Station Two Facility”: the numbers set forth under such captions;
- “GENERATION AND TRANSMISSION ASSETS – Transmission”: the numbers set forth under such caption;
- “APPENDIX B – Member Financial and Statistical Information”: the tables set forth therein;
- “APPENDIX E-1 – SUMMARY OF MORTGAGE INDENTURE – Additional Mortgage Indenture Obligations”: the numbers set forth in the second paragraph thereof;

and (ii) the information regarding amendments to this Agreement required pursuant to Sections 3.2(c) and (d) of this Agreement. Annual Financial Information shall include Audited Financial Statements, if available, or Unaudited Financial Statements.

The descriptions contained in clause (i) above of financial information and operating data constituting Annual Financial Information are of general categories of financial information and operating data. When such descriptions include information that no longer can be generated because the operations to which it related have been materially changed or discontinued, a statement to that effect shall be provided in lieu of such information. Any Annual Financial Information containing modified financial information or operating data should explain, in narrative form, the reasons for the modification and the impact of the modification on the type of financial information or operating data being provided.

(2) “Audited Financial Statements” means (i) the annual financial statements, if any, of Big Rivers, audited by such auditor as shall then be required or permitted by State law or the Indenture and (ii) audited financial statements of each of the Members for the prior fiscal year. Audited Financial Statements shall be prepared in accordance with GAAP; provided, however, that, pursuant to Section 3.2(a) hereof, Big Rivers or the Members, as the case may be, may from time to time, if required by federal or State legal requirements, modify the basis upon which its financial statements are prepared. Written notice of any such modification shall be provided by Big Rivers, pursuant to Section 3.2(d) hereof, and shall include a reference to the specific federal or State law or regulation describing such accounting basis.

(3) “Business Day” means any day other than a Saturday, Sunday, a legal holiday or a day on which banking institutions in the State are authorized or required by law to remain closed.

(4) “Counsel” means Orrick, Herrington & Sutcliffe LLP or other nationally recognized bond counsel or counsel expert in federal securities laws.

(5) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(6) “Financial Obligation” shall mean a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “Financial Obligation” shall not include municipal securities (as defined in the Exchange Act) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

(6) “GAAP” means generally accepted accounting principles as prescribed from time to time by the Financial Accounting Standards Board.

(7) “Listed Event” means any of the following events with respect to the Bonds:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) Modifications to rights of security holders, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the obligated person;

Note: for the purposes of the event identified in subparagraph (12), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person;

(13) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an

action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material;

(15) Incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

(7) “Listed Event Notice” means notice of a Listed Event.

(8) “Members” means Big Rivers’ Members.

(9) “MSRB” means the Municipal Securities Rulemaking Board or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the SEC, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org>.

(10) “Offering Statement” means the “final official statement,” as defined in paragraph (f)(3) of the Rule, relating to the Bonds.

(11) “Rule” means Rule 15c2-12 promulgated by the SEC under the Exchange Act, as in effect on the date of this Agreement, including any official interpretations thereof issued before or after the effective date of this Agreement which are applicable to this Agreement.

(12) “SEC” means the United States Securities and Exchange Commission.

(13) “State” means the Commonwealth of Kentucky.

(14) “Unaudited Financial Statements” means the same as Audited Financial Statements, except that they shall not have been audited.

(15) “Underwriter” means BofA Securities, Inc.

IN WITNESS WHEREOF, Big Rivers has caused this Agreement to be executed by its duly authorized representative as of the date first above written.

BIG RIVERS ELECTRIC CORPORATION

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**EXHIBIT A**

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL INFORMATION REPORT**

Name of Provider: Big River Electric Corporation

Name of Bond Issue: County of Ohio, Kentucky Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project)

Date of Issuance: , 2020

NOTICE IS HEREBY GIVEN that Big Rivers has not provided an Annual Information Report with respect to the above-named Bonds as required by Section 1 of the Continuing Disclosure Agreement dated , 2020. Big Rivers anticipates that the Annual Information Report will be filed by\_\_\_\_\_.



Dated:

**BIG RIVERS ELECTRIC POWER CORPORATION**

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

\$[83,300,000]<sup>2</sup>  
County of Ohio, Kentucky  
Pollution Control Refunding Revenue Bonds, Series 2020B  
(Big Rivers Electric Corporation Project)

**LETTER OF REPRESENTATION**

[●], 2020

Fiscal Court of the County of Ohio  
Hartford, Kentucky

BofA Securities, Inc.  
One Bryant Park, 12<sup>th</sup> Floor  
New York, New York 10036

Ladies and Gentlemen:

Big Rivers Electric Corporation (the “**Company**”), in order to induce BofA Securities, Inc. (the “**Representative**”), acting on its own behalf and on behalf of the other underwriter listed in Schedule 1 to the Purchase Contract (the Representative and such other underwriter being collectively called the “**Underwriters**”) and County of Ohio, Kentucky (the “**Issuer**”) to enter into a Purchase Contract dated the date hereof (the “**Purchase Contract**”) relating to the purchase by the Underwriters from the Issuer of \$[83,300,000] aggregate principal amount of County of Ohio, Kentucky Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project) (the “**Bonds**”) does hereby execute and deliver this Letter of Representation. Capitalized terms used herein, if not otherwise defined herein, shall have the meanings assigned to such terms in the Purchase Contract, and, if not defined therein, in the Preliminary Offering Statement.

The Bonds will be issued under and pursuant to a Trust Indenture dated as of [●], 2020 (the “**Bond Indenture**”), by and between the Issuer and U.S. Bank National Association, as trustee (the “**Bond Trustee**”). On behalf of and at the direction of the Issuer, the proceeds of the Bonds shall be transferred to or at the direction of the Company.

The payment by the Issuer of a portion of the proceeds of the Bonds to or as directed by the Company is provided for by the provisions of the Loan Agreement, dated as of [●], 2020 (the “**Loan Agreement**”), between the Issuer and the Company, and the obligations thereunder to repay the principal amount of the Bonds when due at maturity and interest on the Bonds when due shall be evidenced by a note of the Company dated the date of issuance of the Bonds (the

<sup>2</sup> Subject to adjustment for premium issuance.

“**Note**”). The Note will be in the form specified in the Supplemental Indenture (as hereinafter defined) and the Loan Agreement and will be an Obligation secured under the Indenture, dated as of July 1, 2010, between the Company and U.S. Bank National Association, as trustee (the “**Mortgage Indenture Trustee**”), as heretofore supplemented or amended, including as supplemented by the [Tenth] Supplemental Indenture, dated as of [●], 2020 (the “**Supplemental Indenture**”), between the Company and the Mortgage Indenture Trustee (as supplemented and amended, the “**Mortgage Indenture**”).

The Company and the Issuer have caused to be prepared the following information: (i) a Preliminary Offering Statement, dated [●], 2020 (together with the appendices thereto, the “**Preliminary Offering Statement**”), (ii) the Pricing Supplement attached as Appendix B to the Purchase Contract (the “**Pricing Supplement**”), and (iii) the electronic road show made available to investors via the Internet (not including telephone question and answer sessions with investors) (the “**Electronic Road Show**”). The Preliminary Offering Statement, together with the Pricing Supplement, is referred to herein as the “**Disclosure Package**.”

1. **Representations, Warranties, and Covenants of the Company.** In consideration of the execution and delivery of the Purchase Contract, the Company represents, warrants and covenants to and with the Underwriters and the Issuer as follows:

(a) The Company has been duly incorporated and is now validly existing and in good standing as a rural electric cooperative corporation under the laws of the Commonwealth of Kentucky. The Company has been duly qualified as a foreign corporation in each jurisdiction in which such qualification is required and is in good standing under the laws of each such jurisdiction or is not subject to any material liability or disability by reason of the failure to be so qualified in any such jurisdiction.

(b) Except for the information which is permitted to be omitted pursuant to Rule 15c2-12(b)(1), the Preliminary Offering Statement, as of its date, and the Disclosure Package, as of [\_\_\_ P.M.], New York City time, on [●], 2020 (the “**Initial Sale Time**”), did not, and the Offering Statement, as of its date and as of the Closing Date, will not, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; as of the Initial Sale Time, the Electronic Road Show, when considered together with the Disclosure Package, did not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations or warranties in this Section 1(a) shall not apply to information contained in or omitted from the Preliminary Official Statement, the Official Statement or the Disclosure Package (or any supplement or amendment thereto) (i) in reliance upon information furnished to the Company in writing by or on behalf of the Representative expressly for use in the Preliminary Offering Statement and the Offering Statement under the heading “**UNDERWRITING**” (the “**Underwriter Covered Section**”), (ii) the DTC-related sections, (iii) the Issuer Covered Sections, and (iii) under the heading “**TAX MATTERS**” (collectively, the “**Excluded Material**”). The Company agrees to provide the Underwriters electronic versions of the Disclosure Package and print copies and electronic versions of the Offering Statement in “designated electronic format” (as

defined in MSRB Rule G-32) in sufficient quantity to permit the Underwriters to comply with Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (“**Rule 15c2-12**”), and other applicable rules of the SEC and the MSRB, within seven business days of the date hereof and in sufficient time to accompany any confirmation requesting payment from any customer. The Company has duly authorized the Underwriters to use the Disclosure Package and the Offering Statement in connection with the public offering and sale of the Bonds and transactions contemplated by the Preliminary Offering Statement and Offering Statement and hereby authorizes the Representative to file the Preliminary Offering Statement and Offering Statement with EMMA.

(c) The Company has full legal right, power and authority to, and has taken all corporate action necessary to, execute, deliver, and perform its obligations under this Letter of Representation, the Mortgage Indenture, the Supplemental Indenture, the Loan Agreement, the Continuing Disclosure Agreement, the Tax Certificate and Agreement and the Note (together, the “**Company Documents**”). As of the date hereof, this Letter of Representation and the Mortgage Indenture (excluding the Supplemental Indenture) are, and as of the Closing, the Supplemental Indenture, the Loan Agreement, the Continuing Disclosure Agreement, the Tax Certificate and Agreement and the Note will have been, duly authorized, executed and delivered by the Company (and in the case of the Note, will be duly authenticated by the Mortgage Indenture Trustee pursuant to the terms of the Mortgage Indenture) and will be in or are in full force and effect and will or do constitute the legal, valid and binding obligations of the Company enforceable in accordance with their respective terms (except as to enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting enforcement of creditors’ rights and by equitable rights where equitable remedies are sought and except that rights to indemnity and remedies for breach of representations and warranties relating to the Disclosure Package or the Offering Statement may be limited under the federal securities laws or other applicable laws), and performance by the Company thereunder will not conflict with, violate, or result in a breach of any of the provisions of, or constitute a default under (i) the Company’s Articles of Incorporation, as amended, or its Bylaws, as amended, or (ii) any agreement or instrument to which, or any law, administrative regulation or court decree by which, the Company is bound, except in the case of clause (ii) above, for any such violation, breach or default that would not individually or in the aggregate, be reasonably expected to have a material adverse effect on the business, properties, operations or current or future financial position, patronage capital, margins or results of operations of the Company or on the performance by the Company of its obligations under the Financing Documents (a “**Material Adverse Effect**”). To the extent described therein, the Company Documents conform to the descriptions thereof contained in the Disclosure Package and the Offering Statement.

(d) The Company agrees to assist the Issuer in providing to the Underwriters the Offering Statement in the quantities and at the times required by Section 5(a)(1) of the Purchase Contract.

(e) During the Update Period, if any event shall occur which in the reasonable opinion of the Representative would cause the Offering Statement, as then supplemented

or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and if in the reasonable opinion of the Representative such event requires the preparation and publication of a supplement or amendment to the Offering Statement, the Company will amend or supplement the Offering Statement in a form and manner approved by the Issuer, the Representative and Bond Counsel so that the Offering Statement, as so supplemented or amended, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided, however, that all expenses incurred in connection with any such supplement or amendment will be paid by the Company. The Company agrees to notify the Representative of any event of the type described in this paragraph of which it has knowledge.

(f) If the Offering Statement is supplemented or amended, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended) at all times subsequent thereto up to and including that date that is 25 days from the “end of the underwriting period” (as defined in Rule 15c2-12), the Offering Statement as so supplemented or amended will be true and correct in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) Except as contemplated herein or as contemplated or set forth in the Disclosure Package, or as the result of operations in the ordinary course of business as described in the Disclosure Package, the Company, subsequent to the dates as of which information is given in the Disclosure Package and as of the date on which the representation with respect to this paragraph is being made (being the date of this Letter of Representation and, pursuant Section 9 of the Purchase Contract, the Closing Date), has not incurred, and will not incur without the written consent of the Representative, any material liabilities or obligations for borrowed money or for the deferred purchase of goods or services, direct or contingent.

(h) [Other than as described in the Disclosure Package,] there is no action, suit, proceeding, or inquiry or investigation of which the Company has notice, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or known to the Company to be threatened against the Company, wherein an unfavorable decision, ruling or finding would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(i) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending that is (1) contesting the exclusion from gross income of interest on the Bonds for federal income tax purposes or (2) contesting in any way the completeness or accuracy of the Disclosure Package or the Offering Statement or any supplement or amendment thereto, or to the Company’s actual knowledge, no such action, suit or proceeding, inquiry or investigation is threatened.

(j) The Company will cause the proceeds from the sale of the Bonds to be applied as provided for in the Bond Indenture and the Loan Agreement.

(k) All consents, licenses, approvals, authorizations, permits and orders of any governmental authority, board, agency or commission or filings or registrations with any governmental authority of the Commonwealth of Kentucky or the United States of America required in connection with, or the absence of which would materially adversely affect the execution and delivery by the Company of, the Loan Agreement, the Continuing Disclosure Agreement, the Mortgage Indenture, the Supplemental Indenture, the Tax Certificate and Agreement, the Note and this Letter of Representation, the performance by the Company of its obligations thereunder and hereunder and of the transactions contemplated in the Disclosure Package, except as described in the Disclosure Package, and the issuance and sale of the Bonds, have been obtained or made and are in full force and effect or will be obtained prior to the Closing; provided, however, that no representation is made concerning compliance with the federal securities laws or the securities or “blue sky” laws of the various jurisdictions of the United States of America.

(l) The Company will notify the Representative if, prior to the Closing Date, any event occurs which, in the judgment of the Company, makes the Disclosure Package or the Offering Statement contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading, and the Company will change the Disclosure Package or the Offering Statement so that it does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements, in the light of the circumstances under which they were made, not misleading.

(m) The Company will diligently cooperate with the Representative to qualify the Bonds for offer and sale under the securities or “blue sky” laws of such jurisdictions as the Representative may request; provided that in no event shall the Company be obligated to qualify to do business in any jurisdictions where it is not now so qualified or to take any action which would subject it to the general service of process in any jurisdictions where it is not now so subject. The Company will not be responsible for compliance with or the consequences of failure to comply with applicable “blue sky” laws. The Company will notify the Representative immediately of receipt by the Company of any written notification with respect to the suspension of the qualification of Bonds for sale in any jurisdictions or the initiation or threat of any proceeding for that purpose.

(n) The Company will pay the reasonable expenses to be paid by it pursuant to Section 13 of the Purchase Contract (subject to the terms and conditions set forth therein). [In addition, as compensation to the Underwriters for their commitments and obligations under the Purchase Contract, the Company will pay to the Representative by wire transfer in immediately available funds, an amount equal to \$[●] (such fee being inclusive of the Underwriters’ out-of-pocket expenses).] Such payment shall be made simultaneously with the payment by the Representative of the purchase price of the Bonds as provided in the Purchase Contract.

(o) The Preliminary Offering Statement was, as of its date, “deemed final,” within the meaning of Rule 15c2-12 by the Company on behalf of the Issuer as of the date thereof and as of the date hereof, except for the omission of such information as is specified in paragraph (b)(1) of Rule 15c2-12 and the Issuer Covered Sections, and is deemed to be a “final official statement” within the meaning of Rule 15c2-12.

(p) The Company is in compliance with all of its continuing disclosure undertakings entered into pursuant to Rule 15c2-12 and has not failed to comply with any such undertakings during the last five years.

(q) The audited financial statements of the Company for the fiscal years ended December 31, 2019 and December 31, 2018 contained in Appendix A to the Preliminary Offering Statement and the Offering Statement and the unaudited financial statements as of June 30, 2020 and June 30, 2019 contained in the Preliminary Offering Statement and Offering Statement present fairly the consolidated financial position of the Company as of the dates indicated and the results of operations and changes in cash flows for the periods specified, and such financial statements have been prepared in conformity with generally accepted accounting principles consistently applied. There has been no material adverse change in the condition, financial or otherwise, of the Company since [June 30, 2020], from that set forth in the financial statements, as of and for the period ended that date, except as disclosed in the Preliminary Offering Statement and the Offering Statement.

(r) The Company has taken all action required to perfect the security interest created by the Mortgage Indenture wherever such security interest can be perfected by the filing of financing statements under the Uniform Commercial Codes of the jurisdictions where such filings are made, including any recording or re-recording of the Mortgage Indenture in all counties where the Company owns substantial assets, as security for the Obligations referred to therein, including the Note.

(s) The Company has good and marketable title to the mortgaged property (as described and defined in the Mortgage Indenture) subject to Permitted Exceptions and Prior Liens permitted by Section 13.6 the Mortgage Indenture, all as such terms are defined in the Mortgage Indenture.

(t) Each of the Wholesale Power Contracts (each, a “**Wholesale Power Contract**” and, collectively, the “**Wholesale Power Contracts**”), between the Company and those Members identified in the Preliminary Offering Statement as parties to such Wholesale Power Contracts, have been duly authorized, executed and delivered by the Company and constitute legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject, as to enforcement, to bankruptcy, insolvency reorganization and other laws of general applicability relating to or affecting creditors’ rights and to general equity principles.

(u) [In the last ten years,] the Company, to the best of its knowledge, has never been and is not in default in the payment of principal of, premium, if any, or interest on, or otherwise is not nor has it been in default with respect to any bonds, notes,

or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest.

(v) Any certificate signed by an authorized officer of the Company and delivered to the Underwriters shall be deemed a representation and warranty of the Company to the Underwriters as to the statements made therein.

2. **Acceptance by the Issuer.** The acceptance and confirmation of this Letter of Representation by the Issuer shall constitute a representation and warranty by the Issuer to the Company that the representations and warranties contained in Section 7 of the Purchase Contract are true as of the date hereof and will be true in all material respects as of the Closing Date, as if made on the Closing Date.

3. **Indemnification.**

(a) The Company shall indemnify and hold harmless, to the extent permitted by law, the Underwriters and their respective directors, officers, and employees and each person who controls any Underwriter within the meaning of Section 15 of the Securities Act of 1933, as amended (the “**Securities Act**”) (any such person being therein sometimes called an “**Underwriter Indemnitee**”) and the Issuer, against any and all losses, claims, damages or liabilities, joint or several, (a) to which any such Underwriter Indemnitee or the Issuer may become subject, under any statute or regulation at law or in equity or otherwise, insofar as such losses claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement of a material fact set forth in the Disclosure Package or the Offering Statement or any amendment or supplement to either, or the Electronic Road Show, or arise out of or are based upon the omission to state therein a material fact which is necessary in order to make the statements made therein, in the light of the circumstances in which they were made, not misleading, except such indemnification shall not extend to statements in the Disclosure Package, the Preliminary Offering Statement or the Offering Statement under the Underwriter Covered Section and (b) to the extent of the aggregate amount paid in any settlement of any litigation commenced or threatened arising from a claim based upon any such untrue statement or omission if such settlement is effected with the written consent of the Company (which consent shall not be unreasonably withheld); and will reimburse any legal or other expenses reasonably incurred by any such Underwriter Indemnitee or the Issuer in connection with investigating or defending any such loss, claim, damage, liability or action. This indemnity agreement shall not be construed as a limitation on any other liability which the Issuer may otherwise have to any Underwriter Indemnitee or the Issuer.

(b) The Underwriters shall indemnify and hold harmless, to the extent permitted by law, the Company and its directors, officers, members, and employees and each person who controls the Company within the meaning of Section 15 of the 1933 Act (any such person being therein sometimes called a “**Company Indemnitee**”) and the Issuer, against any and all losses, claims, damages or liabilities, joint or several, to which such Company Indemnitee or the Issuer may become subject under any statute or at law or in equity or otherwise, and shall promptly reimburse any such Company Indemnitee or



the Issuer for any reasonable legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, but only to the extent that such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement of a material fact contained in, or the omission to state therein a material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, the Disclosure Package or the Offering Statement, or any amendment or supplement thereof, under the Underwriter Covered Section. This indemnity agreement shall not be construed as a limitation on any other liability which the Underwriters may otherwise have to any Issuer Indemnitee. The liability of any Underwriter obligations under this Section 3 shall not exceed the amount of its *pro rata* compensation under the Purchase Contract.

(c) For purposes of subsection (a) or (b) above, an “**Indemnified Party**” means an Underwriter Indemnitee, an Issuer Indemnitee or the Issuer as the context dictates and an “**Indemnifying Party**” means the Company or the Underwriter who is under the obligation to indemnify an Indemnified Party under this Section 3. An Indemnified Party shall, promptly after the receipt of notice of the commencement of any action against such Indemnified Party in respect of which indemnification may be sought against an Indemnifying Party, notify the Indemnifying Party in writing of the commencement thereof, but the omission to notify the Indemnifying Party of any such action shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party otherwise than under the indemnity agreement contained herein. In case any such action shall be brought against an Indemnified Party and such Indemnified Party shall notify the Indemnifying Party of the commencement thereof, the Indemnifying Party may, or if so requested by such Indemnified Party shall, participate therein or assume the defense thereof, with counsel satisfactory to such Indemnified Party, and after notice from the Indemnifying Party to such Indemnified Party of an election so to assume the defense thereof, the Indemnifying Party will not be liable to such Indemnified Party under this paragraph for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof other than reasonable costs of investigation. If the Indemnifying Party shall not have employed counsel to manage the defense of any such action or if the Indemnified Party shall have reasonably concluded that there may be defenses available to it or them that are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of such Indemnified Party), such Indemnified Party shall have the right to retain legal counsel of its own choosing and the reasonable legal and other expenses incurred by such Indemnified Party shall be borne by the Indemnifying Party.

An Indemnifying Party shall not be liable for any settlement of any such action effected without its consent by any Indemnified Party, which consent shall not be unreasonably withheld, but if settled with the consent of the Indemnifying Party or if there be a final judgment for the plaintiff in any such action against the Indemnifying Party or any Indemnified Party, with or without the consent of the Indemnifying Party, the Indemnifying Party agrees to indemnify and hold harmless such Indemnified Party to the extent provided herein.

(d) If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an Indemnified Party under subsection (a) or (b) above, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of the losses, claims, damages, liabilities or expenses referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Bonds or (ii) if the allocation provided by clause (i) above is not permitted by applicable law in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriter. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an Indemnified Party as a result of the losses, claims, damages, liabilities or expenses referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any action or claim which is the subject to this subsection (d). Notwithstanding the provisions of this subsection (d), each Underwriter shall not have any obligation under this subsection (d) to contribute an amount in excess of the amount of its *pro rata* compensation under the Purchase Contract. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The indemnity agreements contained in this Section 3 shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the Underwriters or any person so controlling an Underwriter or by or on behalf of the Company or by or on behalf of the Issuer. A successor of any Underwriter or the Company or of the Issuer, as the case may be, shall be entitled to the benefits of the indemnity and reimbursement agreements contained in this Section 3; the term "successor" shall not include any purchaser of Bonds from an Underwriter merely because of such purchase.

4. **Termination by Underwriters.** The Representative agrees that, if the Purchase Contract is terminated pursuant to Section 10 thereof, the Company shall not have any further obligations to the Underwriters under this Letter of Representation other than as set forth in Section 1(n) and the agreements set forth in Section 3 hereof.

5. **Parties.** This Letter of Representation is made solely for the benefit of the Issuer and its directors, officers and agents, the Underwriters, persons controlling any Underwriter, and the Company and its directors and officers or any person who controls the Company within the meaning of Section 15 of the Securities Act, and their respective successors and assigns, and no other person, partnership, association or corporation shall acquire or have any right under or by virtue hereof. The terms “successors” and “assigns” shall not include any purchaser of Bonds from an Underwriter merely because of such purchase.

6. **Authorization of Transactions.** The execution and delivery of this Letter of Representation by the Company shall constitute the Company’s approval of and consent to the Issuer’s entering into, acceptance and execution of the Purchase Contract and performance thereunder.

7. **Notices.** Any notice or other communication to be given to the Company under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received) to the Company at 201 Third Street, Henderson, Kentucky 42420, Attention: Chief Financial Officer, or by facsimile (such notice to be deemed effective when sent) to the attention of the Chief Financial Officer of the Company at 270-827-2101. Any notice or other communication to be given to the Underwriters under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received) to BofA Securities, Inc. at One Bryant Park, 12<sup>th</sup> Floor, New York, New York, 10036, or by facsimile (such notice to be deemed effective when sent) to the attention of [generic reference] at [646-743-1607], and any notice or communication to be given to the Issuer under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received), at Ohio County Fiscal Court, 301 South Main, Hartford, Kentucky 42347, Attention: County Judge/Executive. The Company, the Issuer and the Underwriters shall each be fully entitled to rely upon notice given pursuant to this paragraph and to act thereon.

8. **Effectiveness; Termination Generally; Survival.** This Letter of Representation shall become effective upon execution hereof and the effectiveness of the Purchase Contract. It shall terminate upon termination of the Purchase Contract. The Company’s representations and warranties and agreements (including, without limitation, the Company’s agreements in Section 3) contained herein shall survive the Closing and shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of the Underwriters, (b) delivery of and payment for the Bonds, and (c) any termination of the Purchase Contract or this Letter of Representation but, in the case of this clause (c), as provided by Section 1(n) hereof.

9. **Underwriters Not Fiduciaries.** The Company acknowledges and agrees that (i) the Underwriters are not acting as a municipal advisor within the meaning of Section 15B of the Securities Exchange Act, as amended; (ii) the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm’s length commercial transaction among the Issuer, the Company and the Underwriters and the Underwriters have financial or other interests that differ from those of the Company; (iii) the Underwriters are acting solely as principals and are not acting as municipal advisors, financial advisors or fiduciaries to any party

with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or is currently providing services to the Company on other matters); (iv) the only obligations the Underwriters have to the Company with respect to the transaction contemplated hereby are expressly set forth in the Purchase Contract and this Letter of Representation; and (v) the Company has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate. The Company agrees that it will not claim that the Underwriters have rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

10. **Waiver of Right to Jury Trial.** The Company and the Underwriters hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Letter of Representation, the Purchase Contract or the transactions contemplated hereby.

11. **Counterparts; Electronic Signature.** This Letter of Representation may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be one and the same instrument. A signature to this Letter of Representation delivered by facsimile, e-mail in portable document format (.pdf) or DocuSign electronic signature system shall be deemed to be an original manual signature and shall be binding upon the executing party and have the same legal effect as an original manual signature.

12. **Entire Agreement.** This Letter of Representation supersedes all prior agreements and understandings between the parties.

13. **Amendments.** This Letter of Representation may not be amended or supplemented without the written consent of the parties hereto.

14. **Governing Law.** The validity, interpretation and performance of this Letter of Representation shall be governed by and construed in accordance with the laws of the State of New York without regard to choice of law rules (other than New York General Obligations Laws Section 5-1401 and 5-1402).

[Signatures begin on the following page.]

Very truly yours,

**BIG RIVERS ELECTRIC CORPORATION**

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

Name:

Title:

Accepted and confirmed as of the  
date first above written

**BofA Securities, Inc., as Representative of  
the Underwriters listed in Schedule 1**

\_\_\_\_\_  
Andrew K. Hildreth

Accepted by County of Ohio, Kentucky pursuant to a resolution  
of the County of Ohio, Kentucky adopted at  
Hartford, Kentucky on [●], 2020.

By: \_\_\_\_\_  
*County Judge/Executive  
of County of Ohio, Kentucky*

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**TRUST INDENTURE**

**Between**

**COUNTY OF OHIO, KENTUCKY**

**and**

**U.S. BANK NATIONAL ASSOCIATION**

**as Bond Trustee**

**Dated as of [\_\_\_\_ \_], 2020**

**Authorizing**

**[\$\_\_\_\_\_]**

**COUNTY OF OHIO, KENTUCKY**

**Pollution Control Refunding Revenue Bonds, Series 2020B<sup>1</sup>**

**(Big Rivers Electric Corporation Project)**

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<sup>1</sup> Series designation to be confirmed.

**TABLE OF CONTENTS**

	<b>Page</b>
<b>ARTICLE I DEFINITIONS .....</b>	<b>4</b>
<b>ARTICLE II THE BONDS .....</b>	<b>10</b>
<b>SECTION 2.01     <i>Limited Obligations Of County; Payment And Security</i> .....</b>	<b>10</b>
<b>SECTION 2.02     <i>Authorization And Terms Of Bonds</i> .....</b>	<b>10</b>
<b>SECTION 2.03     <i>Application Of Proceeds Of The Bonds</i> .....</b>	<b>11</b>
<b>SECTION 2.04     <i>Execution Of Bonds; Signatures</i> .....</b>	<b>12</b>
<b>SECTION 2.05     <i>Authentication of Bonds by Bond Trustee</i> .....</b>	<b>12</b>
<b>SECTION 2.06     <i>Prerequisites to Authentication of Bonds</i> .....</b>	<b>12</b>
<b>SECTION 2.07     <i>Bonds Mutilated, Lost, Stolen Or Destroyed</i>.....</b>	<b>13</b>
<b>SECTION 2.08     <i>Transfer, Registration And Exchange</i> .....</b>	<b>13</b>
<b>SECTION 2.09     <i>Temporary Bonds</i> .....</b>	<b>14</b>
<b>SECTION 2.10     <i>Bonds Or Other Obligations Under Other Indentures</i> .....</b>	<b>15</b>
<b>SECTION 2.11     <i>Book Entry Bonds</i> .....</b>	<b>15</b>
<b>SECTION 2.12     <i>The Depository Trust Company As Initial Securities                           Depository For The Bonds</i> .....</b>	<b>18</b>
<b>ARTICLE III REDEMPTION; CANCELLED BONDS .....</b>	<b>19</b>
<b>SECTION 3.01     <i>Optional Redemption</i> .....</b>	<b>19</b>
<b>SECTION 3.02     <i>Selection of Bonds To Be Redeemed</i> .....</b>	<b>19</b>
<b>SECTION 3.03     <i>Procedure for Redemption</i> .....</b>	<b>20</b>
<b>SECTION 3.04     <i>Cancellation and Destruction Of Bonds</i> .....</b>	<b>21</b>
<b>SECTION 3.05     <i>Partial Redemption after Default; Minimum Sum</i> .....</b>	<b>21</b>
<b>SECTION 3.06     <i>Payment to Bond Trustee upon Redemption</i> .....</b>	<b>22</b>
<b>ARTICLE IV THE BOND FUND .....</b>	<b>22</b>
<b>SECTION 4.01     <i>Creation Of Bond Fund</i> .....</b>	<b>22</b>
<b>SECTION 4.02     <i>Receipts And Revenues To Be Remitted To Bond Trustee</i> .....</b>	<b>22</b>
<b>SECTION 4.03     <i>Deposits Into Bond Fund</i> .....</b>	<b>22</b>
<b>SECTION 4.04     <i>Use Of Moneys In Bond Fund</i> .....</b>	<b>22</b>
<b>SECTION 4.05     <i>Custody And Application Of Bond Fund</i> .....</b>	<b>23</b>
<b>SECTION 4.06     <i>Bonds Not Presented When Due</i> .....</b>	<b>23</b>
<b>ARTICLE V INVESTMENTS .....</b>	<b>24</b>



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
SECTION 5.01 <i>Investment Of Moneys Held In Bond Fund</i> .....	24
<b>ARTICLE VI GENERAL COVENANTS</b> .....	24
SECTION 6.01 <i>No General Obligation, Pecuniary Liability, Or Charge Against General Credit Or Taxing Powers Of County</i> .....	24
SECTION 6.02 <i>County Will Perform Obligations; Due Authorization And Enforceability Thereof</i> .....	25
SECTION 6.03 <i>Corporate Existence Of County; Compliance With Laws</i> .....	25
SECTION 6.04 <i>County Will Enforce And Not Amend Obligations Of Big Rivers</i> .....	25
SECTION 6.05 <i>Execution And Delivery Of Instruments By County</i> .....	25
SECTION 6.06 <i>No Other Disposition Of Receipts And Revenues</i> .....	25
SECTION 6.07 <i>Bond Trustee’s Access To County Books</i> .....	26
SECTION 6.08 <i>Filing Of Financing Statements By County</i> .....	26
SECTION 6.09 <i>Tax Covenants Of The County</i> .....	26
SECTION 6.10 <i>Supplemental Indentures; Recordation Of Indenture And Supplemental Indentures</i> .....	27
SECTION 6.11 <i>Notices By Bond Trustee</i> .....	27
<b>ARTICLE VII DEFEASANCE</b> .....	27
SECTION 7.01 <i>Defeasance</i> .....	27
<b>ARTICLE VIII DEFAULTS AND REMEDIES</b> .....	29
SECTION 8.01 <i>“Events Of Default” Enumerated; Acceleration</i> .....	29
SECTION 8.02 <i>Exercise Of Remedies By Bond Trustee</i> .....	30
SECTION 8.03 <i>Restoration To Former Position</i> .....	31
SECTION 8.04 <i>Bondowner Direction Of Remedial Proceedings</i> .....	31
SECTION 8.05 <i>Limitations On Proceedings By Bondowners</i> .....	31
SECTION 8.06 <i>No Impairment Of Certain Rights Of Bondowners</i> .....	31
SECTION 8.07 <i>Bond Trustee May Act Without Possession Of Bonds</i> .....	31
SECTION 8.08 <i>No Remedy Exclusive</i> .....	32
SECTION 8.09 <i>No Waiver Of Remedies</i> .....	32
SECTION 8.10 <i>Application Of Moneys Recovered</i> .....	32
SECTION 8.11 <i>Severability Of Remedies</i> .....	33

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>ARTICLE IX TRUSTEE AND CO-PAYING AGENTS .....</b>	<b>33</b>
<b>SECTION 9.01</b> <i>Acceptance Of Trusts By Bond Trustee .....</i>	<i>33</i>
<b>SECTION 9.02</b> <i>Bond Trustee Not Responsible For Recitals, Statements     And Representations In Indenture .....</i>	<i>33</i>
<b>SECTION 9.03</b> <i>Bond Trustee Not Liable Except For Own Negligence Or     Bad Faith .....</i>	<i>34</i>
<b>SECTION 9.04</b> <i>Compensation And Reimbursement Of Bond Trustee .....</i>	<i>34</i>
<b>SECTION 9.05</b> <i>Limitations On Required Notice By Bond Trustee .....</i>	<i>34</i>
<b>SECTION 9.06</b> <i>Limitations On Obligations Of Bond Trustee .....</i>	<i>34</i>
<b>SECTION 9.07</b> <i>Bond Trustee Protected In Relying Upon     Communications And Actions Believed Genuine .....</i>	<i>35</i>
<b>SECTION 9.08</b> <i>Bond Trustee May Deal In Bonds And With County And     Big Rivers .....</i>	<i>35</i>
<b>SECTION 9.09</b> <i>Construction Of Indenture By Bond Trustee .....</i>	<i>35</i>
<b>SECTION 9.10</b> <i>Resignation Of Bond Trustee .....</i>	<i>35</i>
<b>SECTION 9.11</b> <i>Removal Of Bond Trustee .....</i>	<i>35</i>
<b>SECTION 9.12</b> <i>Appointment Of Successor Bond Trustee .....</i>	<i>36</i>
<b>SECTION 9.13</b> <i>Qualifications Of Successor Bond Trustee .....</i>	<i>36</i>
<b>SECTION 9.14</b> <i>Acceptance Of Trusts By Successor Bond Trustee .....</i>	<i>36</i>
<b>SECTION 9.15</b> <i>Successor Bond Trustee Upon Merger, Consolidation Or     Succession .....</i>	<i>37</i>
<b>SECTION 9.16</b> <i>Standard Of Care In Exercise Of Rights And Power .....</i>	<i>37</i>
<b>SECTION 9.17</b> <i>Bond Trustee To Notify Registered Owners Of Event Of     Default .....</i>	<i>37</i>
<b>SECTION 9.18</b> <i>Intervention By Bond Trustee In Certain Litigation .....</i>	<i>37</i>
<b>SECTION 9.19</b> <i>Bond Trustee; The Paying Agent; Co-Paying Agents .....</i>	<i>37</i>
<b>SECTION 9.20</b> <i>Qualifications Of Co-Paying Agent; Resignation;     Removal .....</i>	<i>38</i>
<b>SECTION 9.21</b> <i>Moneys Held by Trustee .....</i>	<i>38</i>
<b>SECTION 9.22</b> <i>Force Majeure .....</i>	<i>38</i>
<b>ARTICLE X EXECUTION OF INSTRUMENTS BY BONDOWNERS AND     PROOF OF OWNERSHIP OF BONDS.....</b>	<b>39</b>

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>SECTION 10.01</b> <i>Execution Of Instruments By Bondowners And Proof Of Ownership Of Bonds</i> .....	39
<b>ARTICLE XI MODIFICATION OF THIS INDENTURE, THE LOAN AGREEMENT, THE BIG RIVERS INDENTURE AND THE NOTE</b> .....	39
<b>SECTION 11.01</b> <i>No Modification Except Pursuant To Article XI</i> .....	39
<b>SECTION 11.02</b> <i>Supplemental Indenture Without Bondowner Consent</i> .....	40
<b>SECTION 11.03</b> <i>Supplemental Indentures With Bondowner Consent.</i> .....	41
<b>SECTION 11.04</b> <i>Effect Of Supplemental Indenture</i> .....	42
<b>SECTION 11.05</b> <i>When Big Rivers Consent Required</i> .....	42
<b>SECTION 11.06</b> <i>Amendment Of Loan Agreement Or The Note without Bondowner Consent</i> .....	42
<b>SECTION 11.07</b> <i>Other Amendments Of Loan Agreement</i> .....	43
<b>SECTION 11.08</b> <i>Amendments To Big Rivers Indenture</i> .....	43
<b>ARTICLE XII MISCELLANEOUS</b> .....	43
<b>SECTION 12.01</b> <i>Indenture To Bind and Inure To Benefit Of Successors To County</i> .....	43
<b>SECTION 12.02</b> <i>Indenture To Benefit Only County, Bond Trustee And Bondowners</i> .....	44
<b>SECTION 12.03</b> <i>Severability</i> .....	44
<b>SECTION 12.04</b> <i>No Personal Liability Of County Officials Under Indenture</i> .....	44
<b>SECTION 12.05</b> <i>Bonds Owned By County Or Big Rivers Disregarded For Certain Purposes</i> .....	44
<b>SECTION 12.06</b> <i>Counterparts</i> .....	44
<b>SECTION 12.07</b> <i>Kentucky Law to Govern</i> .....	44
<b>SECTION 12.08</b> <i>Notices</i> .....	45
<b>SECTION 12.09</b> <i>Holidays</i> .....	45
<b>SECTION 12.10</b> <i>Captions</i> .....	45
<b>SECTION 12.11</b> <i>U.S.A. Patriot Act</i> .....	45
<b>ARTICLE XIII FORMS OF BONDS AND TRUSTEE’S CERTIFICATE OF AUTHENTICATION</b> .....	45

## **TRUST INDENTURE**

This **TRUST INDENTURE** (this “Indenture”), is made and entered into as of [\_\_\_\_ \_], 2020, by and between **COUNTY OF OHIO, KENTUCKY**, a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky (together with any successor to its duties and functions, the “County”), acting by and through its Fiscal Court which is the governing body of the County, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States of America and authorized to accept and execute trusts of the character herein set out (together with any successor to its duties and functions, the “Bond Trustee”).

### **WITNESSETH:**

**WHEREAS**, the County is a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky and is authorized and empowered by law, including particularly the provisions of the Industrial Building Revenue Bond Act (Sections 103.200 through 103.285, inclusive) of the Kentucky Revised Statutes, as amended (collectively with all future acts supplemental thereto or amendatory thereof, the “Act”), to issue bonds and loan the proceeds thereof to a rural electric cooperative corporation to refund bonds previously issued by the County to finance the acquisition of pollution control facilities; and

**WHEREAS**, by a resolution adopted by the Fiscal Court of the County on September 9, 1980, the County agreed to finance the Facilities for Big Rivers Electric Corporation (“Big Rivers”); and

**WHEREAS**, the County initially financed the Facilities by issuing the 1982 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to pay a portion of the costs of the Facilities; and

**WHEREAS**, the County financed the refunding of the 1982 Bonds by issuing the 1985 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to retire the 1982 Bonds; and

**WHEREAS**, the County financed the refunding of the 1985 Bonds by issuing the 2001 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to retire the 1985 Bonds; and

**WHEREAS**, the County financed the refunding of the 2001 Bonds by issuing the 2010 Bonds and loaning to Big Rivers the proceeds thereof which Big Rivers used to retire the 2001 Bonds; and

**WHEREAS**, Big Rivers has requested the County to issue \$[\_\_\_\_\_] aggregate principal amount of its “Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project)” (the “Bonds”) and to loan the proceeds thereof to Big Rivers for

**Case No. 2020-00153**  
**Application Exhibit 8**  
**Page 6 of 60**

the purpose of providing funds to repay a borrowing under Big Rivers' Amended and Restated Senior Secured Credit Agreement, dated as of June 11, 2020, with the lenders party thereto, National Rural Utilities Cooperative Finance Corporation, as administrative agent, issuing lender and swingline lender (the "Credit Agreement"), used to fund the redemption of the 2010 Bonds; and

**WHEREAS**, the County will issue the Bonds under this Indenture and loan the proceeds thereof to Big Rivers under a Loan Agreement, dated as of [\_\_\_\_ \_], 2020 (the "Loan Agreement"), pursuant to which (i) the County will loan to Big Rivers the proceeds of the Bonds and (ii) Big Rivers will agree to repay such loan by paying to the County an amount sufficient to pay the principal of the Bonds when due at maturity, the interest on the Bonds when due and any other expenses incurred by the County in connection with the Bonds, and the Bonds shall be secured by, among other things, a pledge of the Loan Agreement, certain revenues of the County received pursuant to the Loan Agreement and a note issued by Big Rivers to evidence its payment obligations under the Loan Agreement (the "Note"), which Note will be issued pursuant to the [Tenth]<sup>2</sup> Supplemental Indenture, dated as of [\_\_\_\_ \_], 2020, supplemental to the Indenture, dated as of July 1, 2009, between Big Rivers and U.S. Bank National Association, as trustee (the "Big Rivers Indenture"), and secured on a parity basis with all other obligations secured thereunder; and

**WHEREAS**, the refunding by redemption of the 2010 Bonds also resulted in the prepayment of the 2010 Note issued to evidence Big Rivers' obligation to repay the loan made by the County to Big Rivers under the 2010 Loan Agreement; and

**WHEREAS**, Big Rivers, by executing and delivering the Loan Agreement, has consented to the issuance of the Bonds and the loan of the proceeds thereof to Big Rivers; and

**WHEREAS**, the execution and delivery of this Indenture and the Loan Agreement and the issuance of the Bonds have been in all respects duly and validly authorized by a resolution of the Fiscal Court of the County; and

**WHEREAS**, the Kentucky Department of Natural Resources and Environmental Protection has certified that the Facilities, as designed, are in furtherance of the purposes of abating or controlling atmospheric pollutants or contaminants or water pollution; and

**WHEREAS**, the County makes the following findings and determinations: (a) the Facilities constitute "pollution control facilities" within the meaning of Section 103.246 of the Act, (b) the acquisition and financing of the Facilities inures to the public interest and constitutes the performance of a proper governmental purpose with the result that atmospheric, solid waste and water pollution in the Commonwealth of Kentucky may be abated and controlled to the maximum possible extent, (c) the issuance of the Bonds is and will be for a public purpose and tends to further the purpose of the Act and, in addition, aids in the retention of existing industry through the control of pollution, (d) the Facilities are located wholly within the geographic boundaries of the County, (e) title to the Facilities is held by Big Rivers and will not be acquired by the County, (f) the statutory mortgage lien provided for by Section 103.250 of the Act shall

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<sup>2</sup> Supplemental indenture number to be confirmed at the time of execution and delivery.

not apply to the Facilities, (g) the principal amount of the Bonds (together with funds provided and to be provided by Big Rivers) is necessary to effect the repayment of the borrowing under the Credit Agreement used to fund the redemption of the 2010 Bonds and to pay all premiums, expenses and commissions required to be paid in connection with the issuance of the Bonds and the repayment of the borrowing under the Credit Agreement used to fund the redemption of the 2010 Bonds, and (h) the issuance of the Bonds, the repayment of the borrowing under the Credit Agreement used to fund the redemption of the 2010 Bonds, the loan of the proceeds of the Bonds to Big Rivers for this purpose and the execution, delivery and performance of the Bonds, this Indenture and the Loan Agreement are, in all respects, permitted by the Act and conform to the requirements of the Act; and

**WHEREAS**, all other things necessary to make the Bonds, when issued, executed and delivered by the County and authenticated by the Bond Trustee pursuant to this Indenture, the valid and binding obligations of the County, and to constitute this Indenture a valid pledge of certain income and revenues derived from the Loan Agreement and the Note for the payment of the principal of and interest on the Bonds authenticated and delivered under this Indenture, have been performed, and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have all been duly authorized.

**NOW, THEREFORE:**

The County, in consideration of the premises and the acceptance by the Bond Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Owners thereof and of the sum of One Dollar (\$1.00), lawful money of the United States of America, to it duly paid by the Bond Trustee at or before the execution and delivery of these presents and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and the performance and observance by the County of all the obligations and covenants expressed or implied herein and in the Bonds, does hereby grant, convey, pledge, transfer and assign to the Bond Trustee, and to its successors in trust, the following (herein called the "Trust Estate"):

*First*, the amounts required from time to time to be deposited in or credited to the account of the Bond Fund in accordance with this Indenture and the Loan Agreement and the Note from time to time held by the Bond Trustee or a Co-Paying Agent for the benefit of the Owners of the Bonds pursuant to this Indenture, together, as provided herein, with any investments and reinvestments made with such amounts and moneys and the proceeds thereof; and

*Second*, all of the County's right, title and interest in and to the Note, and payments made thereon, delivered by Big Rivers to the Bond Trustee pursuant to the Loan Agreement; and

*Third*, all of the County's right, title and interest in and to the Receipts and Revenues of the County from the Loan Agreement and all of the County's right, title and interest in and to the Loan Agreement together with all powers, privileges, options and other benefits of the County contained in the Loan Agreement which are not specifically described in the First Granting Clause above other than the rights of the County set forth in Sections 5.4, 5.6 and 9.4 of the Loan Agreement; provided, however, that nothing in this clause shall impair, diminish or otherwise

affect the County's obligations under the Loan Agreement or, except as otherwise provided in this Indenture, impose any such obligations on the Bond Trustee; and

*Fourth*, any and all property of every kind or description which may from time to time hereafter be sold, transferred, conveyed, assigned, hypothecated, endorsed, deposited, pledged, mortgaged, granted or delivered to, or deposited with, the Bond Trustee as additional security hereunder by the County or anyone on its behalf or with its written consent, or which pursuant to any of the provisions hereof or of the Loan Agreement may come into the possession or control of the Bond Trustee, or of a lawfully appointed receiver, as such additional security; and the Bond Trustee is hereby authorized to receive any and all such property as and for additional security for the payment of the Bonds and to hold and apply all such property subject to the terms hereof.

**TO HAVE AND TO HOLD** the said Trust Estate, whether now owned or held or hereafter acquired, unto the Bond Trustee, its successors and assigns, forever.

**IN TRUST NEVERTHELESS**, upon the terms and trusts herein set forth for the equal and proportionate benefit and security of all present and future Owners of the Bonds without preference of any Bond over any other, and for enforcement of the payment of the Bonds, in accordance with their terms, and all other sums payable hereunder or on the Bonds and for the performance of and compliance with the obligations, covenants and conditions of this Indenture, as if all the Bonds at any time outstanding had been authenticated, executed and delivered simultaneously with the execution and delivery of this Indenture, all as herein set forth.

**IT IS HEREBY COVENANTED, DECLARED AND AGREED** that this Indenture creates a continuing lien to secure equally and ratably the payment in full of the principal of and interest on all Bonds which may, from time to time, be outstanding hereunder, and that the Bonds are to be issued, authenticated and delivered, and that the Trust Estate is to be held, dealt with and disposed of by the Bond Trustee, upon and subject to the terms, covenants, conditions, uses, agreements and trusts set forth in this Indenture, as follows:

## **ARTICLE I**

### **DEFINITIONS**

The terms defined in this Article I shall, for all purposes of this Indenture, have the meanings herein specified, unless the context clearly requires otherwise:

*“Act”* shall mean Title IX (*Counties, Cities, and Local Units*), Chapter 103 (*Revenue Bonds for Miscellaneous City or County Projects*), Sections 103.200 through 103.285, inclusive, of the Kentucky Revised Statutes, as amended, and all acts supplemental thereto or amendatory thereof.

*“Administration Expenses”* shall mean the reasonable and necessary expenses incurred by the County with respect to the Loan Agreement, this Indenture and any transaction or event contemplated by the Loan Agreement or this Indenture, including the compensation and expenses paid to the Bond Trustee.

“*Big Rivers*” shall mean Big Rivers Electric Corporation, a nonprofit rural electric cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky, and its lawful successors and assigns.

“*Big Rivers Indenture*” shall mean the Indenture, dated as of July 1, 2009, between Big Rivers and U.S. Bank National Association, as trustee, as supplemented or amended from time to time, including as supplemented by the [Tenth] Supplemental Indenture, providing for the issuance of the Note, and as also amended and supplemented by any alternate indenture or mortgage.

“*Big Rivers Representative*” shall mean any one of the following officers and/or employees of Big Rivers: (i) the President and Chief Executive Officer, (ii) the Vice President and Chief Financial Officer or (iii) any other officer or employee of Big Rivers at the time designated to act on behalf of Big Rivers by a written certificate furnished to the County and the Bond Trustee containing the specimen signature of such person and signed on behalf of Big Rivers by any one of the above-described officers and/or employees. Such certificate may designate one or more alternates.

“*Bond Fund*” shall mean the fund created by Section 4.01 hereof.

“*Bond Trustee*” shall mean U.S. Bank National Association, and its successor or successors hereunder, as trustee and Paying Agent under this Indenture.

“*Bondowner*” or “*Owner*” shall mean the person in whose name a Bond of any series is registered upon the registration books maintained by the Registrar.

“*Bonds*” or “*Bond*” shall mean the County’s “Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project),” authorized under Section 2.02 hereof.

“*Book Entry Bond*” shall mean a Bond of any series authorized to be issued hereunder and issued to and, except as provided in Section 2.11(d) hereof, restricted to being registered in the name of, a Securities Depository for the participants in such Securities Depository or the beneficial owners of such Bond.

“*Business Day*” shall mean any day on which (i) banks located in New York, New York, and the city in which the principal office of the Bond Trustee is located is not required or authorized to be closed and (ii) The New York Stock Exchange is open.

“*Co-Paying Agent*” shall mean any co-paying agent appointed in accordance with Sections 9.20 and 9.21 hereof.

“*County*” shall mean County of Ohio, Kentucky, a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky.

“*Credit Agreement*” shall mean the Amended and Restated Senior Secured Credit Agreement, dated as of June 11, 2020, by and among Big Rivers, the lenders party thereto, and



National Rural Utilities Cooperative Finance Corporation, as administrative agent, issuing lender and swingline lender.

“*Event of Default*” shall have the meaning specified in Section 8.01 hereof.

“*Facilities*” shall mean those air and water pollution control and sewage and solid waste disposal facilities located at the Plant which were financed with the proceeds of the 1982 Bonds. The Facilities are listed on Exhibit A to the Loan Agreement.

“*Loan Agreement*” shall mean the Loan Agreement, dated as of [\_\_\_\_ \_], 2020, between the County and Big Rivers, as amended or supplemented by any and all Supplemental Loan Agreements.

“*Fiscal Court*” shall mean the Fiscal Court of the County or any successor governing body of the County.

“*Indenture*” shall mean this Trust Indenture of the County, as amended or supplemented by any and all Supplemental Indentures.

“*Interest Payment Date*” shall mean January 15 and July 15 of each year, commencing [January 15, 2021].<sup>3</sup>

“*Investment Securities*” shall mean the following obligations or securities (only to the extent investment therein would not violate the laws of the Commonwealth of Kentucky), maturing or redeemable at the option of the holder thereof at such time or times as to enable disbursements to be made from the Bond Fund in accordance with the terms hereof, or which shall be marketable prior to the maturities thereof:

- (i) Direct obligations of, or obligations guaranteed by, the United States of America;
- (ii) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America:
  - Export-Import Bank,
  - Farm Credit System Financial Assistance Corporation,
  - Farmers Home Administration,
  - General Services Administration,
  - U.S. Maritime Administration,
  - Small Business Administration,
  - Government National Mortgage Association (GNMA),
  - U.S. Department of Housing & Urban Development (PHA’s), and
  - Federal Housing Administration;
- (iii) U.S. dollar denominated certificates of deposit (whether negotiable or non-negotiable), demand deposits, time deposits and banker’s acceptances with any bank

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<sup>3</sup> To be confirmed.

or trust company organized under the laws of any state of the United States of America or any national banking association whose deposit obligations on the date of purchase are rated either “A-1” or better by Standard & Poor’s Global Ratings, a Standard & Poor’s Financial Services LLC business (“S&P”) and “P-1” or better by Moody’s Investors Service, Inc. (“Moody’s”) (provided that a rating on a holding company shall not be deemed to be such rating on a subsidiary bank);

(iv) Commercial paper which is rated at the time of purchase either “A-1” or better by S&P and “P-1” or better by Moody’s and which matures not more than 270 days after the date of purchase;

(v) Senior debt obligations rated “AAA” by S&P and “Aaa” by Moody’s issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

(vi) Investments in a money market fund rated “AAAm” or “AAAm-G” or better by S&P;

(vii) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

- (1) which are rated, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of S&P and Moody’s or any successors thereto; or
- (2) (A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (a) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate and (B) which escrow is sufficient, as verified by a nationally recognized firm of independent certified public accountants, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate.

“*Maturity Date*” shall mean, with respect to the Bonds, [July 15], 2031.

“*1954 Code*” shall mean the Internal Revenue Code of 1954, as amended, and the regulations promulgated thereunder.

“*1982 Bonds*” shall mean the \$82,500,000 aggregate principal amount of the County’s “Pollution Control Interim Bonds, Series 1982 (Big Rivers Electric Corporation Project)”

previously issued by the County to finance a portion of the cost of the Facilities. The 1982 Bonds were retired with the proceeds of the 1985 Bonds and are no longer outstanding.

“1985 Bonds” shall mean the \$83,300,000 aggregate principal amount of the County’s “Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 (Big Rivers Electric Corporation Project)” previously issued by the County to refund the 1982 Bonds. The 1985 Bonds were retired with the proceeds of the 2001 Bonds and are no longer outstanding.

“1986 Act” means the Tax Reform Act of 1986.

“1986 Code” shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Note” shall mean the first mortgage note issued by Big Rivers under the [Tenth] Supplemental Indenture and the Loan Agreement, which Note is secured by the Big Rivers Indenture on a parity with all other notes secured by the Big Rivers Indenture.

“Offering Statement” shall mean the Offering Statement, dated [\_\_\_\_ \_], 2020, relating to the Bonds.

“Opinion of Bond Counsel” shall mean an opinion in writing signed by an attorney or firm of attorneys experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds and who is acceptable to the Bond Trustee.

“Outstanding under this Indenture,” “Outstanding hereunder,” or “Outstanding” when used in reference to the Bonds shall mean, as at any particular date, the aggregate of all Bonds authenticated and delivered under this Indenture except:

- (a) Bonds cancelled at or prior to such date or delivered to or acquired by the Bond Trustee at or prior to such date for cancellation or, in the case of Book Entry Bonds, to the extent provided in Section 2.11(f) hereof, portions of Bonds deemed to have been cancelled;
- (b) Bonds (or, in the case of Book Entry Bonds, as provided in Section 2.11(f) hereof, portions thereof) for the payment of which cash shall have been theretofore deposited with the Bond Trustee in an amount equal to the principal amount thereof and interest thereon to maturity;
- (c) Bonds otherwise deemed to be paid in accordance with Article VII hereof; and
- (d) Bonds in lieu of or in exchange or substitution for which other Bonds shall have been authenticated and delivered pursuant to this Indenture, unless proof satisfactory to the Bond Trustee and Big Rivers is presented that such Bonds are held by a bona fide holder in due course.

“Plant” shall mean the D.B. Wilson Plant Unit No. 1, a coal-fired steam electric generating plant located within the geographic boundaries of the County and wholly-owned by Big Rivers.

“*Principal Office*” shall mean, (i) for the Bond Trustee and Registrar, the principal corporate trust office of the Bond Trustee, which office at the date of acceptance by the Bond Trustee of the duties and obligations imposed on the Bond Trustee by this Indenture is located at 225 Asylum Street, 23rd Floor, Hartford, Connecticut 06103, Attention: Laurel Casasanta (Big Rivers 2020 Indenture), and (ii) for a Co-Paying Agent, the office of such Co-Paying Agent designated in writing to the Bond Trustee.

“*Purchase Contract*” shall mean that certain Purchase Contract providing for the purchase by BofA Securities, Inc., as underwriter, of the Bonds from the County.

“*Receipts and Revenues of the County from the Loan Agreement*” shall mean all moneys paid to the County by Big Rivers pursuant to Section 5.1 of the Loan Agreement, and pursuant to the Note, and all receipts of the Bond Trustee credited under the provisions of this Indenture against such payments.

“*Record Date*” shall mean the fifteenth (15th) day (whether or not a Business Day) next preceding an Interest Payment Date.

“*Registrar*” shall mean the Bond Trustee acting in its capacity as Registrar of the Bonds.

“*Securities Depository*” shall mean, with respect to a Book Entry Bond, the person, firm, association or corporation specified to serve as the securities depository for such Book Entry Bond, or its nominee, and its successor or successors and any other person, firm, association or corporation which may at any time be substituted in its place pursuant to this Indenture.

“*Supplemental Loan Agreement*” shall mean any agreement between the County and Big Rivers amending or supplementing the Loan Agreement in accordance with the terms of this Indenture.

“*Supplemental Indenture*” shall mean any Indenture of the County modifying, altering, amending, supplementing or confirming this Indenture.

“*Tax Certificate and Agreement*” shall mean the Tax Certificate and Agreement by and between the County and Big Rivers.

“*[Tenth] Supplemental Indenture*” shall mean the [Tenth] Supplemental Indenture, dated as of [\_\_\_\_], 2020, between Big Rivers and U.S. Bank National Association, as trustee.

“*2001 Bonds*” shall mean the \$83,300,000 aggregate principal amount of the County’s “Pollution Control Refunding Revenue Bonds, Series 2001A (Big Rivers Electric Corporation Project), Periodic Auction Reset Securities (PARS)”.

“*2010 Bonds*” shall mean the \$83,300,000 aggregate principal amount of the County’s “Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project)”.

“*2010 Loan Agreement*” shall mean that certain Loan Agreement, dated as of June 1, 2010, between the County and Big Rivers relating to the 2010 Bonds.

“2010 Indenture” shall mean the Trust Indenture, dated as of June 1, 2010, between the County and U.S. Bank Trust National Association, as trustee, under which the 2010 Bonds were issued and secured.

“2010 Note” shall mean the First Mortgage Note Series 2010A issued on June 1, 2010 in the name of the County of Ohio in the aggregate principal amount of \$83,300,000 due July 15, 2031, under the 2010 Indenture.

“2010 Trustee” shall mean U.S. Bank Trust National Association, the current trustee under the 2010 Indenture.

## ARTICLE II

### THE BONDS

#### **SECTION 2.01**      *Limited Obligations Of County; Payment And Security.*

All Bonds issued under this Indenture and at any time Outstanding shall in all respects be equally and ratably secured hereby, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds, so that all Bonds at any time issued and Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture. The Bonds shall not be payable from or charged upon any funds other than the revenues pledged to the payment thereof, nor shall the County be subject to any liability thereon. No holder or holders of any of the Bonds shall ever have the right to compel any exercise of the taxing power of the County to pay any such Bonds or the interest thereon, nor to enforce payment thereon against any property of the County. The Bonds shall not constitute a charge, lien nor encumbrance, legal or equitable, upon any property of the County. Each Bond shall recite in substance that the Bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof, as authorized in the Act, and that the Bond does not constitute a debt of the County within the meaning of any constitutional or statutory limitation.

**SECTION 2.02**      *Authorization And Terms Of Bonds.* The Bonds entitled to the benefit, protection and security of this Indenture are hereby authorized in the aggregate principal amount of \$[\_\_\_\_\_] and shall be designated “Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project).” The Bonds shall be dated their date of issuance and shall mature (subject to provisions for prior redemption upon the terms and conditions hereinafter set forth) on the Maturity Date. The Bonds shall bear interest (computed on the basis of a 360-day year consisting of twelve 30-day months) from the date of delivery thereof, or from the most recent Interest Payment Date to which interest has been paid, and shall be payable on January 15 and July 15 of each year, commencing [January 15, 2021] until the Maturity Date or until the date fixed for redemption, and until payment of the principal or redemption price thereof shall have been made or provided for in accordance with the provisions of this Indenture, at the rate of [\_\_\_\_\_] % per annum.

The Bonds shall be issued as fully registered bonds without coupons in the denomination of \$5,000 and integral multiples thereof and shall be numbered from 1 consecutively upwards prefixed by the letter “R”.

For the payment of interest on the Bonds, the County shall cause to be deposited in the Bond Fund, at the Principal Office of the Bond Trustee on or prior to each Interest Payment Date, out of the Receipts and Revenues of the County from the Loan Agreement and other moneys pledged therefor, an amount sufficient to pay the interest to become due on such Interest Payment Date. Any amount in the Bond Fund available for the payment of interest on such Bonds shall be credited against any amount required to be caused to be so deposited in the Bond Fund.

For the payment of the principal of the Bonds upon maturity, the County shall cause to be deposited in the Bond Fund, at the Principal Office of the Bond Trustee on or prior to the Maturity Date of the Bonds, out of the Receipts and Revenues of the County from the Loan Agreement and other moneys pledged therefor, an amount sufficient to pay the principal of the Bonds on the Maturity Date. Any amount in the Bond Fund available for the payment of the principal of the Bonds shall be credited against any amount required to be caused to be so deposited in the Bond Fund.

Subject to Section 2.11 hereof with respect to Book Entry Bonds, principal of and interest on the Bonds shall be payable at the Principal Office of the Bond Trustee or, at the option of the Owner, at the Principal Office of the Co-Paying Agent. Payment as aforesaid shall be made in such coin or currency of the United States of America as, at the respective times of payment, shall be legal tender for the payment of public and private debts; *provided, however*, that, subject to Section 2.11 hereof, interest may be payable, at the option of the Bond Trustee, by check or draft drawn upon the Bond Trustee and mailed to the registered address of the Owner as it shall appear on the registration books maintained by the Registrar as of the close of business on the Record Date for a particular Interest Payment Date, or, at the written request of any Owner of Bonds in an aggregate principal amount greater than or equal to \$1,000,000 delivered to the Bond Trustee on or prior to such Record Date prior to such Interest Payment Date, by wire transfer per the instructions of such Owner as set forth in such request.

Any Bond issued on or subsequent to the first Interest Payment Date thereon shall be dated as of the Interest Payment Date next preceding the date of authentication thereof, unless such date of authentication shall be an Interest Payment Date to which interest on such Bond has been paid in full or duly provided for, in which case it shall be dated as of such date of authentication; *provided, however*, that if, as shown by the records of the Bond Trustee, interest on such Bond shall be in default, the Bond issued in exchange for such Bond surrendered for transfer or exchange shall be dated as of the date to which interest has been paid in full on the Bond surrendered.

**SECTION 2.03**      *Application Of Proceeds Of The Bonds.* The proceeds from the sale of the Bonds shall be transferred to National Rural Utilities Cooperative Finance Corporation, as administrative agent under the Credit Agreement, and used to repay the borrowing under the Credit Agreement used to refund by redemption the 2010 Bonds on July 15, 2020.

**SECTION 2.04**      *Execution Of Bonds; Signatures.*

(a) The Bonds shall be executed on behalf of the County by the County Judge/Executive of the County and shall have affixed, impressed or reproduced thereon the seal of the County, attested by the Fiscal Court Clerk. Each of such officers of the County may execute or cause to be executed the Bonds with a facsimile signature in lieu of his or her manual signature provided that the signature of such officer, certified by such officer under oath, is on file with the Auditor of the County. Except as provided in the preceding sentence, the signatures of the said officers of the County on Bonds shall be manual signatures.

(b) In case any officer of the County whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the authentication by the Bond Trustee and delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery; and any Bond may be signed on behalf of the County by such persons as, at the time of execution of such Bond or coupon, shall be the proper officers of the County, even though at the date of such Bond or of the adoption of this Indenture any such person was not such officer.

**SECTION 2.05**      *Authentication of Bonds by Bond Trustee.* Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form hereinafter set forth manually executed by the Bond Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Bond Trustee, and such executed certificate of the Bond Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Bond Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed with an authorized signature of the Bond Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder.

**SECTION 2.06**      *Prerequisites to Authentication of Bonds.* The County shall execute and deliver to the Bond Trustee and the Bond Trustee shall authenticate the Bonds and deliver the Bonds to the initial purchasers thereof as may be directed hereinafter pursuant to this Section 2.06. Prior to the delivery by the Bond Trustee of any authenticated Bonds, there shall be or have been delivered to the Bond Trustee:

- (a) A duly certified copy of this Indenture.
- (b) A duly certified copy of the Loan Agreement.
- (c) The Note in an aggregate principal amount equal to the aggregate principal amount of the Bonds.
- (d) A duly certified copy of the Big Rivers Indenture.
- (e) [Reserved].
- (f) A request and authorization to the Bond Trustee on behalf of the County and signed by Big Rivers Representative to authenticate and deliver the Bonds to the purchaser

or purchasers therein identified upon payment to the Bond Trustee, but for the account of the County, of a sum specified in such request and authorization, in the aggregate principal amount determined by this Indenture.

(g) A copy of the notice from Big Rivers instructing the 2010 Trustee under the 2010 Indenture to redeem the 2010 Bonds and establishing the redemption date therefor.

(h) A written statement on behalf of Big Rivers, executed by a Big Rivers Representative, (i) approving the issuance and delivery of the Bonds and (ii) consenting to each and every provision of this Indenture.

(i) A copy of the Opinion of Bond Counsel addressed to the County substantially in the form set forth as Appendix G to the Offering Statement, together with a reliance letter addressed to the Bond Trustee solely for the benefit of the Bond Trustee as if the Bond Trustee were one of the Owners of the Bonds.

(j) A copy of the opinion of counsel to Big Rivers addressed to the underwriter for the Bonds as described in the Purchase Contract.

(k) A copy of the opinion of counsel to the County addressed to the underwriter for the Bonds as described in the Purchase Contract.

**SECTION 2.07** *Bonds Mutilated, Lost, Stolen Or Destroyed.* In the event any Bond is mutilated, lost, stolen or destroyed, the County may execute and the Bond Trustee may authenticate a new Bond of like date, maturity and denomination and bearing the same number (supplemented to permit specific identification of such new Bond) as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Bond Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Bond Trustee evidence of such loss, theft or destruction satisfactory to the Bond Trustee, together with indemnity satisfactory to the Bond Trustee and Big Rivers. Upon the issuance of any substitute Bond, the County and the Bond Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto. In the event any such Bond shall have matured or is about to mature, or has been called for redemption instead of issuing a substitute Bond the County may, with the consent of the Bondowner, pay the same without surrender thereof if there shall be first furnished to the Bond Trustee evidence of such loss, theft or destruction satisfactory to the Bond Trustee, together with indemnity satisfactory to the Bond Trustee and Big Rivers. The Bond Trustee may charge the Owner of such Bond with the Bond Trustee's reasonable fees and expenses in connection with any transaction described in this Section 2.07. Every substitute Bond issued pursuant to the provisions of this Section 2.07 by virtue of the fact that any Bond is lost, stolen or destroyed shall constitute an additional contractual obligation of the County, whether or not the lost, stolen or destroyed Bond shall be at any time enforceable, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder.

**SECTION 2.08** *Transfer, Registration And Exchange.* All the Bonds issued under this Indenture shall be negotiable, subject to the provisions for registration and



transfer contained in this Indenture and in the Bonds. The Bond Trustee shall be the Registrar for the Bonds. So long as any of the Bonds shall remain Outstanding, the Registrar shall, on behalf of the County, maintain and keep, at its Principal Office, books for the registration and transfer of Bonds; and, upon presentation thereof for such purpose at said Principal Office, the Registrar shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Registrar may prescribe, any Bond entitled to registration or transfer. So long as any of the Bonds remain Outstanding, the Registrar shall make all necessary provisions to permit the exchange of Bonds at its Principal Office.

Each Bond shall be transferable only upon the books of the Registrar, which shall be kept for that purpose at the Principal Office of the Registrar, at the written request of the Owner thereof or its attorney duly authorized in writing, upon surrender thereof at said office, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Owner or its duly authorized attorney. Upon the transfer of any Bond or Bonds, the County shall issue in the name of the transferee, in authorized denominations, a new Bond or Bonds of the same series, aggregate principal amount, maturity and interest rate as the surrendered Bond or Bonds.

The County, the Bond Trustee and any Co-Paying Agent may deem and treat the Owner of any Bond as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such Owner or upon its order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and none of the County, the Bond Trustee or any Co-Paying Agent shall be affected by any notice to the contrary.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the County shall execute and the Bond Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled and destroyed by the Bond Trustee. Counterparts of the certificates of destruction evidencing such destruction shall be furnished by the Bond Trustee to the County and Big Rivers, upon written request. For every such exchange or transfer of Bonds, whether temporary or definitive, the County, the Registrar or the Bond Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding an Interest Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the mailing of notice of such redemption. The Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption.

**SECTION 2.09**      *Temporary Bonds.* Pending the preparation of definitive Bonds, the County may execute and the Bond Trustee shall authenticate and deliver temporary Bonds (printed, lithographed or typewritten). Temporary Bonds shall be issuable as registered Bonds without coupons, of any authorized denomination, and substantially in the form of the definitive Bonds but with such omissions, insertions and variations as may be appropriate for temporary Bonds, all as may be determined by the County. Temporary Bonds may be issued

without specific redemption prices and may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the County and be authenticated by the Bond Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds. As promptly as practicable the County shall execute and shall furnish definitive fully registered Bonds and thereupon temporary Bonds may be surrendered in exchange therefor without charge at the Principal Office of the Bond Trustee, and the Bond Trustee shall authenticate and deliver in exchange for such temporary Bonds a like aggregate principal amount of definitive Bonds of authorized denominations and of the same series. Until so exchanged the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds.

**SECTION 2.10**      *Bonds Or Other Obligations Under Other Indentures.*

The County expressly reserves the right to issue, to the extent permitted by law, additional or refunding bonds or other obligations under another indenture to provide for additional costs of construction or for additional facilities or to refund any of the Outstanding Bonds, or any combination thereof.

**SECTION 2.11**      *Book Entry Bonds.*

(a) Anything in this Indenture to the contrary notwithstanding, the Bonds shall be issued as Book Entry Bonds.

(b) For all purposes of this Indenture, the Owner of a Book Entry Bond shall be the Securities Depository therefor and none of the County, the Bond Trustee, the Registrar or any Co-Paying Agent shall have any responsibility or obligation to the beneficial owner of such Bond or to any direct or indirect participant in such Securities Depository. Without limiting the generality of the foregoing, none of the County, the Bond Trustee, the Registrar or any Co-Paying Agent shall have any responsibility or obligation to any such participant or to the beneficial owner of a Book Entry Bond with respect to (i) the accuracy of the records of the Securities Depository or any participant with respect to any beneficial ownership interest in such Bond, (ii) the delivery to any participant of the Securities Depository, the beneficial owner of such Bond or any other person, other than the Securities Depository, of any notice with respect to such Bond, including any notice of the redemption thereof, or (iii) the payment to any participant of the Securities Depository, the beneficial owner of such Bond or any other person, other than the Securities Depository, of any amount with respect to the principal or redemption price of, or interest on, such Bond. The County, the Registrar, the Bond Trustee and any Co-Paying Agent may treat the Securities Depository as the absolute owner of a Book Entry Bond for all purposes whatsoever, including, but not limited to, (w) payment of the principal or redemption price of, and interest on, such Bond, (x) giving notices of redemption and of other matters with respect to such Bond, (y) registering transfers with respect to such Bond and (z) giving to the County or the Bond Trustee any notice, consent, request or demand pursuant to this Indenture for any purpose whatsoever. The Bond Trustee and any Paying Agent shall pay the principal or redemption price of, and interest on, a Book Entry Bond only to or upon the order of the Securities Depository therefor, and all such payments shall be valid and effective to satisfy fully and discharge the County's obligations with respect to such principal or redemption price, and interest, to the extent of the sum or sums so paid. Except as otherwise provided in subsection (d) of this Section 2.11, no person other than the Securities Depository shall receive a Bond or other

instrument evidencing the County's obligation to make payments of the principal thereof and interest thereon.

(c) Subject to Section 2.12 hereof, the County, in its sole discretion and without the consent of any other person, may, by notice to the Bond Trustee and a Securities Depository, terminate the services of such Securities Depository with respect to the Book Entry Bonds for which such Securities Depository serves as securities depository if the County determines that (i) the Securities Depository is unable to discharge its responsibilities with respect to such Bonds or (ii) a continuation of the requirement that all of the Bonds issued as Book Entry Bonds be registered in the registration books of the County in the name of the Securities Depository is not in the best interests of the beneficial owners of such Bonds or of the County.

(d) Upon the termination of the services of a Securities Depository with respect to a Book Entry Bond pursuant to clause (ii) of subsection (c) of this Section 2.11, such Bond no longer shall be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository. Upon the termination of the services of a Securities Depository with respect to a Book Entry Bond pursuant to clause (i) of subsection (c) of this Section 2.11, the County may within 90 days thereafter appoint a substitute securities depository which, in the opinion of the County, is willing and able to undertake the functions of Securities Depository under this Indenture upon reasonable and customary terms. If no such successor can be found within such period, such Book Entry Bond shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository. In the event that a Book Entry Bond shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository, (i) the County shall execute and the Bond Trustee shall authenticate and deliver, upon presentation and surrender of the Book Entry Bond, Bond certificates as requested by the Securities Depository so terminated of like series, principal amount, maturity and interest rate, in authorized denominations, to the identifiable beneficial owners in replacement of such beneficial owners' beneficial ownership interests in such Book Entry Bond and (ii) the Bond Trustee shall notify the Registrar and any Co-Paying Agents that such Bond is no longer restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository.

(e) Anything in this Indenture to the contrary notwithstanding, payment of the redemption price of a Book Entry Bond, or portion thereof, called for redemption prior to maturity may be paid to the Securities Depository by check or draft mailed to the Securities Depository or by wire transfer. Anything in this Indenture to the contrary notwithstanding, such redemption price may be paid without presentation and surrender to the Bond Trustee of the Book Entry Bond, or portion thereof, called for redemption; *provided, however*, that payment of (i) the principal payable at maturity of a Book Entry Bond and (ii) the redemption price of a Book Entry Bond as to which the entire principal amount thereof has been called for redemption shall be payable only upon presentation and surrender of such Book Entry Bond to the Bond Trustee; and *provided, further*, that no such redemption price shall be so payable without presentation and surrender unless such Book Entry Bond shall contain or have endorsed thereon a legend substantially to the following effect (provided that such legend may be modified as may be determined necessary or desirable by the County or a particular Securities Depository):

“AS PROVIDED IN THE INDENTURE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH [NAME OF SECURITIES DEPOSITORY] (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE INDENTURE, “THE SECURITIES DEPOSITORY”), AND NOTWITHSTANDING ANY OTHER PROVISION OF THE INDENTURE TO THE CONTRARY, (A) THIS BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO A NOMINEE OF THE SECURITIES DEPOSITORY, OR BY A NOMINEE OF THE SECURITIES DEPOSITORY TO THE SECURITIES DEPOSITORY OR A NOMINEE OF THE SECURITIES DEPOSITORY TO ANY SUCCESSOR SECURITIES DEPOSITORY OR ANY NOMINEE THEREOF AND (B) A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE TRUSTEE. THE SECURITIES DEPOSITORY OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF THE SECURITIES DEPOSITORY OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE INDENTURE.”

Anything in this Indenture to the contrary notwithstanding, upon any such payment to the Securities Depository without presentation and surrender, for all purposes of (i) the Book Entry Bond as to which such payment has been made and (ii) this Indenture, the unpaid principal amount of such Book Entry Bond Outstanding shall be reduced automatically by the principal amount so paid. In such event, the Bond Trustee shall notify forthwith the Registrar as to the particular Book Entry Bond as to which such payment has been made, and the principal amount of such Bond so paid, the Registrar shall note such payment on the registration books maintained by it, but failure to make any such notation shall not affect the automatic reduction of the principal amount of such Book Entry Bond Outstanding as provided in this subsection (e).

(f) For all purposes of this Indenture authorizing or permitting the purchase of Bonds, or portions thereof, by, or for the account of, the County for cancellation, and anything in this Indenture to the contrary notwithstanding, a portion of a Book Entry Bond may be deemed to have been purchased and cancelled without surrender thereof upon delivery to the Registrar of a certificate executed by the County and a participant of the Securities Depository therefor to the effect that a beneficial ownership interest in such Bond, in the principal amount stated therein, has been purchased by, or for the account of, the County through the participant of the Securities Depository executing such certificate; *provided, however*, that any purchase for cancellation of the entire principal amount of a Book Entry Bond shall be effective for purposes of this Indenture only upon surrender of such Book Entry Bond to the Bond Trustee; and *provided*,

*further*, that no portion of a Book Entry Bond may be deemed to have been so purchased and cancelled without surrender thereof unless such Book Entry Bond shall contain or have endorsed thereon the legend(s) referred to in subsection (e) of this Section 2.11. Anything in this Indenture to the contrary notwithstanding, upon delivery of any such certificate to the Registrar, for all purposes of (i) the Book Entry Bond to which such certificate relates and (ii) this Indenture, the unpaid principal amount of such Book Entry Bond Outstanding shall be reduced automatically by the principal amount so purchased. In such event, the Registrar shall notify forthwith the Bond Trustee as to the particular Book Entry Bond as to which a beneficial ownership interest therein has been so purchased, and the principal amount of such Bond so purchased, and the Registrar shall note such reduction in principal amount of such Book Entry Bond Outstanding on the registration books maintained by it, but failure to make any such notation shall not affect the automatic reduction of the principal amount of such Book Entry Bond Outstanding as provided in this subsection (f).

(g) Anything in this Indenture to the contrary notwithstanding, a Securities Depository may make a notation on a Book Entry Bond (i) redeemed in part or (ii) purchased by, or for the account of, the County in part for cancellation, to reflect, for informational purposes only, the date of such redemption or purchase and the principal amount thereof redeemed or deemed cancelled, but failure to make any such notation shall not affect the automatic reduction of the principal amount of such Book Entry Bond Outstanding as provided in subsection (e) or (f) of this Section 2.11 as the case may be.

(h) Anything in this Indenture to the contrary notwithstanding, in the case of a Book Entry Bond, the County shall be authorized to redeem or purchase (by or for the account of the County), or issue additional or refunding bonds or other obligations to refund, all or less than all of the entire Outstanding principal amount thereof (in portions thereof of \$5,000 or integral multiples thereof), and in the event of such partial defeasance, redemption, purchase or refunding, the provisions of this Indenture relating to the defeasance, redemption or purchase refunding of a Bond or Bonds shall be deemed to refer to the redemption, purchase or refunding of a portion of a Bond.

**SECTION 2.12      *The Depository Trust Company As Initial Securities Depository For The Bonds.***

(a) The Depository Trust Company, New York, New York (“DTC”), is hereby appointed as the initial Securities Depository for the Bonds.

(b) The Bonds shall be initially issued in the form of a single fully registered bond in the aggregate principal amount thereof. So long as DTC serves as Securities Depository for the Bonds, the registered holder of all Bonds shall be, and each of the Bonds shall be registered in the name of, Cede & Co. (“Cede”), as nominee of DTC. Upon delivery by DTC to the Bond Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions of this Indenture, the word “Cede” in this Indenture shall refer to such new nominee of DTC. So long as any Bonds are registered in the name of Cede, as nominee of DTC in its capacity as Securities Depository for the Bonds, all payments with respect to the principal or redemption price of, and interest on, such Bonds and all notices with respect to such Bonds shall be made or given, as the case may be, to

DTC as provided in the representation letter of the County and the Bond Trustee, dated the date of the issuance of such Bonds and addressed to DTC, with respect to such Bonds, as such representation letter may be amended and supplemented from time to time.

(c) (i) DTC may determine to discontinue providing its services as Securities Depository for the Bonds at any time by giving reasonable notice thereof to the County or the Bond Trustee, which notice shall include a certification that DTC has discharged its responsibilities with respect to the Bonds under applicable law. Upon the discontinuance of the services of DTC as Securities Depository for the Bonds pursuant to the immediately preceding sentence of this paragraph, the County may within 90 days thereafter appoint a substitute securities depository which, in the opinion of the County, is willing and able to undertake the functions of Securities Depository under this Indenture upon reasonable and customary terms. If no such successor can be found within such period, the Bonds shall no longer be restricted to being registered in the registration on books kept by the Registrar in the name of a Securities Depository.

(ii) If the Bonds no longer shall be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository as provided in paragraph (i) of this subsection (c), (A) the County shall execute and the Bond Trustee shall authenticate and deliver, upon presentation and surrender of the Bonds, the applicable Bond certificates as requested by the Securities Depository therefor of like series, aggregate principal amount, maturity and interest rate, in authorized denominations, to the identifiable beneficial owners in replacement of such beneficial owners' beneficial ownership interests in such Bonds, if applicable and (B) the Bond Trustee shall notify the Registrar and any Paying Agent that the Bonds are no longer restricted to being registered on the books kept by the Registrar in the name of a Securities Depository.

### ARTICLE III

#### REDEMPTION; CANCELLED BONDS

**SECTION 3.01** *Optional Redemption.* The Bonds are not subject to redemption in whole or in part prior to maturity at any time by the County.<sup>4</sup>

**SECTION 3.02** *Selection of Bonds To Be Redeemed.* If less than all of the Bonds shall be called for redemption pursuant to Section 3.01 hereof, the applicable Bonds or portions of registered Bonds of such maturity to be redeemed shall be selected by the Bond Trustee by lot or in such manner as the Bond Trustee in its discretion may deem proper; *provided, however,* that the portion of any such Bonds to be redeemed shall be in the principal amount of \$5,000 or any integral multiple thereof and that, in selecting the applicable Bonds for redemption, the Bond Trustee shall treat each such Bond as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by \$5,000. Subject to Section 2.11 hereof, if it is determined that one or more, but not all of the \$5,000 units of principal amount represented by any such Bonds is to be called for redemption, then upon notice of intention to redeem such \$5,000 unit or units, the Owner of any such Bonds shall forthwith

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<sup>4</sup> Redemption provisions to be confirmed.

surrender such Bond or Bonds to the Bond Trustee for (1) payment of the redemption price (including the interest to the date fixed for redemption) of the \$5,000 unit or units of principal amount called for redemption and (2) exchange for a new Bond or Bonds, of the aggregate principal amount of the unredeemed balance of the principal amount of such Bonds and of like maturity and interest rate, and such new Bond or Bonds shall be numbered corresponding to the numbers of the \$5,000 units of principal amount not called for redemption. New Bonds representing the unredeemed balance of the principal amount of such Bonds shall be issued to the registered Owner thereof, without charge therefor. Subject to Section 2.11 hereof, if the Owner of any such a denomination greater than \$5,000 shall fail to present such Bonds to the Bond Trustee for payment and exchange as aforesaid, such Bonds shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the \$5,000 unit or units of principal amount called for redemption (and to that extent only).

**SECTION 3.03**      *Procedure for Redemption.*

(a) Any Bonds may be called for redemption pursuant to Section 3.01 hereof only upon the written notice of Big Rivers, and from amounts representing prepayment of the Note in accordance with the terms of the Note and the Loan Agreement. Such notice shall be given by Big Rivers to the County and the Bond Trustee at any time during the period beginning with (and including) the 45th day prior to the date of redemption and ending with (and including) the 30th day prior to the date of redemption. Such notice shall specify that Big Rivers is electing to prepay the Note and have the amount of such prepayment applied to the redemption of the principal amount of the Bonds specified in the notice (together with any required premium) on the date for their redemption specified in such notice (which must be a date permitted by Section 3.01 hereof). If, at the time Big Rivers gives this notice, the Bond Trustee does not have on deposit sufficient available funds to pay the principal of, premium, if any, and interest accrued and to accrue through the redemption date on the Bonds so called for redemption, then Big Rivers' notice of redemption is conditional and revocable; that is, Big Rivers is under no obligation to provide, or cause to be provided, to the Bond Trustee funds to effect such redemption and, if it does not elect to do so by 12:00 noon, New York City time, on the redemption date, then the Bonds called for redemption shall not be redeemed pursuant to the above-mentioned notice of redemption or the notice of redemption given by the Bond Trustee pursuant to subsection (b) of this Section 3.03. Neither Big Rivers nor the County shall be liable to any Bondowner if Big Rivers does not provide, or cause to be provided, funds sufficient to effect redemption of any such Bonds with the result that such Bonds are not redeemed on the redemption date specified in such notices. If, at the time Big Rivers gives this notice, the Bond Trustee has on deposit sufficient funds to effect such redemption, then Big Rivers' notice is unconditional and irrevocable and the Bonds specified in the notice of Big Rivers and given by the Bond Trustee pursuant to subsection (b) of this Section 3.03 shall become due and payable at the specified redemption price on the specified redemption date.

(b) In the event any Bonds are called for redemption, the Bond Trustee shall give notice to the Bondowners of those Bonds subject to redemption, in the name of the County, of the redemption of such Bonds, which notice shall specify the Bonds to be redeemed, the redemption date and the place or places where amounts due upon such redemption will be payable, which shall be the Principal Office of the Bond Trustee as Paying Agent for the Bonds, and the Principal Office of any Co-Paying Agent for such Bonds, and, if less than all of the

Bonds are to be redeemed, the numbers of such Bonds to be redeemed. Such notice shall be given by mailing a copy of the redemption notice by first-class, postage prepaid, mail at least thirty (30) days prior to the date fixed for redemption to the Bondowners of the Bonds to be redeemed at the addresses shown on the registration books maintained by the Bond Trustee, as Registrar; *provided, however*, that failure duly to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds. If Big Rivers' notice of redemption for such Bonds given pursuant to subsection (a) of this Section 3.03 is conditional and revocable, then the notice of redemption given by the Bond Trustee pursuant to this subsection (b) shall so state and shall further state (i) that the redemption of such Bonds is conditional upon Big Rivers providing, or causing to be provided, to the Bond Trustee, by 12:00 noon, New York City time, on the redemption date, funds sufficient to effect such redemption, (ii) that if such funds are not so provided, such Bonds will not be redeemed on such date and the Bond Trustee's notice of the redemption of such Bonds given pursuant to this subsection (b) will be of no force or effect, (iii) that Big Rivers is under no obligation to provide, or cause to be provided, such funds and, (iv) that neither Big Rivers nor the County shall be liable to any Bondowner if Big Rivers does not provide, or cause to be provided, funds sufficient to effect such redemption with the result that such Bonds are not redeemed on the redemption date specified in such notice. If the Big Rivers notice is unconditional and irrevocable, then the Bond Trustee's notice shall so state, and shall also state (i) that the Bond Trustee has on deposit sufficient funds to effect such redemption and (ii) that such Bonds shall become due and payable at the specified redemption price (plus accrued interest) on the redemption date specified in the notice. If such moneys shall not have been so received, the Bond Trustee shall give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. Subject to Section 2.11 hereof, on presentation and surrender of such Bonds so called for redemption at the place or places of payment, such Bonds shall be paid and redeemed.

(c) Any Bonds so called for redemption which are deemed to be not Outstanding under the provisions of Section 7.01 hereof, will cease to bear interest on the specified redemption date and shall no longer be protected under this Indenture.

(d) On or prior to the date the Bond Trustee first gives to the Bondowners any notice of redemption of Bonds, the Bond Trustee shall provide the County and Big Rivers a copy of such notice.

**SECTION 3.04** *Cancellation and Destruction Of Bonds.* All Bonds which have been redeemed or delivered to or acquired by the Bond Trustee for cancellation shall be cancelled and destroyed by the Bond Trustee and shall not be reissued. Counterparts of the certificates of destruction evidencing such destruction shall be furnished by the Bond Trustee to Big Rivers, upon written request.

**SECTION 3.05** *Partial Redemption after Default; Minimum Sum.* No redemption of less than all of the Bonds at the time Outstanding shall be made pursuant hereto unless the total amount of funds available and to be used for such partial redemption is equal to or more than \$50,000. Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing an Event of Default defined in clause (a) or (b) of Section 8.01 hereof, there shall be no redemption of less than all of the Bonds at the time Outstanding, except in the case of any Bonds notice of the redemption of which has been given pursuant to



Section 3.02 hereof and moneys or obligations for the payment of which have been deposited with or paid to the Bond Trustee prior to the occurrence of such Event of Default.

**SECTION 3.06** *Payment to Bond Trustee upon Redemption.* For the redemption of any Bonds, the County shall cause to be deposited in the Bond Fund, before 12:00 noon, New York City time, at the Principal Office of the Bond Trustee on the redemption date, but only out of the Receipts and Revenues of the County from the Loan Agreement (and subject to the right of Big Rivers to elect not to provide funds sufficient for such redemption as provided in Section 3.02 hereof), an amount sufficient to pay the principal of, premium, if any, and interest to become due on such redemption date. Any amount in the Bond Fund available to pay such redemption price shall be credited against any amount required to be caused to be so deposited in the Bond Fund.

## ARTICLE IV

### THE BOND FUND

**SECTION 4.01** *Creation Of Bond Fund.* There is hereby created and established with the Bond Trustee a trust fund in the name of the County to be designated “County of Ohio, Kentucky, Pollution Control Refunding Revenue Bonds, Bond Fund (Big Rivers Electric Corporation Project),” which shall be used by the Bond Trustee to pay the principal of the Bonds when due at maturity and interest on the Bonds when due.

**SECTION 4.02** *Receipts And Revenues To Be Remitted To Bond Trustee.* The Receipts and Revenues of the County from the Loan Agreement are to be remitted directly to the Bond Trustee for the account of the County and deposited in the Bond Fund as provided in this Indenture. Said payments shall be sufficient in amount to pay the principal of the Bonds when due at maturity and interest on the Bonds when due. The entire amount of Receipts and Revenues of the County from the Loan Agreement are pledged to the payment of the principal of the Bonds when due at maturity and interest on the Bonds when due. The County hereby covenants and agrees that it will not create any lien upon the Receipts and Revenues of the County from the Loan Agreement other than the lien hereby created.

**SECTION 4.03** *Deposits Into Bond Fund.* There shall be paid into the Bond Fund:

- (a) all payments by Big Rivers on the Note; and
- (b) all other moneys received by the Bond Trustee under and pursuant to any of the provisions of the Loan Agreement when accompanied by written directions by Big Rivers that such moneys are to be paid into the Bond Fund. The County hereby covenants and agrees that so long as any of the Bonds issued hereunder are Outstanding, it will deposit, or cause to be deposited, in the Bond Fund sufficient sums from the Receipts and Revenues of the County from the Loan Agreement promptly to meet and pay the principal of the Bonds when due at maturity and interest on the Bonds when due.

**SECTION 4.04** *Use Of Moneys In Bond Fund.*

(a) Except as provided in this Section 4.04, moneys in the Bond Fund shall be used solely for the payment of the principal of the Bonds when due at maturity and interest on the Bonds when due. Notwithstanding anything to the contrary contained herein, if moneys have been deposited into the Bond Fund sufficient to pay the principal of, premium, if any, and interest due on the Bonds to the date such Bonds had been called for redemption in accordance with the terms of this Indenture, and are at the time available for such purpose, then such moneys shall be applied to the redemption of such Bonds.

(b) Any amounts remaining in the Bond Fund after payment in full of the principal of and interest on all Bonds (or provision for payment thereof as provided in this Indenture), the fees, charges and expenses of the Bond Trustee and the Co-Paying Agent, and the fees and expenses of the Registrar, and all other amounts required to be paid hereunder, shall be paid to Big Rivers.

**SECTION 4.05** *Custody And Application Of Bond Fund.* The Bond Fund shall be in the custody of the Bond Trustee but in the name of the County and the County hereby authorizes and directs the Bond Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of the Bonds when due at maturity, the interest on the Bonds when due and any other amounts payable from the Bond Fund as the same shall become due and payable.

**SECTION 4.06** *Bonds Not Presented When Due.*

(a) Subject to Section 2.11 hereof, in the event any Bonds shall not be presented for payment when the principal thereof and premium, if any, becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if moneys sufficient to pay such Bonds are on deposit in the Bond Fund for the benefit of the Owners thereof, all liability of the County to the Owners thereof for the payment of such Bonds shall forthwith cease, terminate and be completely discharged, and it shall be the duty of the Bond Trustee to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of Owners of such Bonds, who shall thereafter be restricted exclusively to such fund or funds for the satisfaction of any claim of whatever nature on their part under this Indenture or relating to such Bonds. Such segregated funds shall not be subject to investment.

(b) Any money deposited with the Bond Trustee or any Co-Paying Agent in trust for the payment of the principal of or interest on any Bond and remaining unclaimed for two years and eleven months after such principal or interest has become due and payable shall, subject to applicable escheat law, upon Big Rivers' request to the Bond Trustee, be paid to Big Rivers; *provided, however*, that before the Bond Trustee or such Co-Paying Agent shall be required to make any such repayment, the Bond Trustee may at the written request and expense of Big Rivers cause to be mailed by first class mail, postage prepaid, to each of the Bondowners at the addresses thereof as listed on the registration books kept by the Registrar, a notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such mailing, any unclaimed balance of such money then remaining will be repaid to Big Rivers. After the payment of such unclaimed moneys to Big Rivers, the Owner of such Bond shall thereafter look only to Big Rivers for the payment thereof, and all liability of the Bond Trustee or such Co-Paying Agent with respect to such money shall thereupon cease.

## ARTICLE V

### INVESTMENTS

**SECTION 5.01** *Investment Of Moneys Held In Bond Fund.* The moneys in the Bond Fund shall be invested and reinvested by the Bond Trustee in such Investment Securities as Big Rivers shall direct in writing by a Big Rivers Representative; *provided, however,* that Big Rivers shall not direct such moneys be invested in such manner as will violate the provisions of Section 6.09 hereof. All income or other gain from such investments shall be carried to the credit of the Bond Fund, and any loss resulting from such investments shall be charged to the Bond Fund.

As and when any amounts thus invested may be needed for disbursements from the Bond Fund, the Bond Trustee shall cause a sufficient amount of Investments Securities to be sold or otherwise converted into cash to the credit of the Bond Fund. So long as no Event of Default (as defined in Section 8.01 hereof) shall have occurred and be continuing, Big Rivers shall have the right to designate the investments to be sold and to otherwise direct the Bond Trustee in writing with respect to the sale or conversion to cash of the investments made with the moneys in the Bond Fund.

Moneys credited to any account or fund maintained hereunder which are uninvested pending disbursement or receipt of proper investment directions or as directed herein, may be deposited to and held in a non-interest bearing demand deposit account established with the commercial banking department of the Bond Trustee or with any bank affiliated with the Bond Trustee, without the pledge of securities to or other collateralization of such deposit accounts. The Bond Trustee may invest in Investment Securities through its own trust department and such moneys may be deposited in time deposits, or certificates of deposit issued by the Bond Trustee or its affiliates.

## ARTICLE VI

### GENERAL COVENANTS

**SECTION 6.01** *No General Obligation, Pecuniary Liability, Or Charge Against General Credit Or Taxing Powers Of County.* Each and every covenant herein made, including all covenants made in the various sections of this Article VI, is predicated upon the condition that any obligation for the payment of money incurred by the County shall not be the general obligation of the County and shall never constitute nor give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers, but shall be payable solely from the Receipts and Revenues of the County from the Loan Agreement, which are required to be set apart and transferred to the Bond Fund, and which, along with the balance of the Trust Estate, are hereby specifically pledged to the payment thereof in the manner and to the extent in this Indenture specified, and nothing in the Bonds or in this Indenture shall be considered as pledging any other funds or assets of the County.

The Bonds shall not constitute an indebtedness of the County within the meaning of the Constitution of Kentucky, but shall be payable as to principal and interest solely from the

revenues derived from the payments made by Big Rivers under the Note and from the other Receipts and Revenues of the County from the Loan Agreement.

The County will promptly cause to be paid solely from the sources stated herein the principal of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in said Bond, according to the true intent and meaning thereof.

**SECTION 6.02** *County Will Perform Obligations; Due Authorization And Enforceability Thereof.* The County will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder, and in all proceedings pertaining thereto. The County covenants that it is duly authorized under the Constitution and laws of the Commonwealth of Kentucky to issue the Bonds authorized hereby, to enter into the Loan Agreement, and to pledge to the Bond Trustee the Receipts and Revenues of the County from the Loan Agreement and to pledge and assign to the Bond Trustee all the County's right, title and interest under the Loan Agreement, and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the County according to the import thereof.

**SECTION 6.03** *Corporate Existence Of County; Compliance With Laws.* The County will at all times maintain its corporate existence or assure the assumption of its obligations under this Indenture by any public body succeeding to its powers under the Act, and it will use its best efforts to maintain, preserve and renew all the rights and powers provided to it by the Act; and it will comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the Loan Agreement.

**SECTION 6.04** *County Will Enforce And Not Amend Obligations Of Big Rivers.* So long as any Bonds are Outstanding, upon receipt of written notification from the Bond Trustee the County will enforce the obligation of Big Rivers to pay, or cause to be paid, all the payments and other costs and charges payable by Big Rivers under the Loan Agreement and the Note. The County will not enter into any agreement with Big Rivers amending the Loan Agreement or the Note without the prior written consent of the Bond Trustee and compliance with Sections 11.06 and 11.07 hereof.

**SECTION 6.05** *Execution And Delivery Of Instruments By County.* The County will, upon the reasonable request of the Bond Trustee, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Indenture; *provided, however,* that no such instruments or actions shall pledge the credit or taxing power of the Commonwealth of Kentucky, the County, or any other political subdivision of said State.

**SECTION 6.06** *No Other Disposition Of Receipts And Revenues.* Except for the pledge and assignment to the Bond Trustee, the County will not sell, lease, pledge, assign or otherwise dispose of or encumber its interest in the Receipts and Revenues of the County from the Loan Agreement or any interest in the Note, or its rights and interest under the Loan Agreement or the Note; and will promptly pay or cause to be discharged or make adequate provision to satisfy and discharge any lien or charge on any part thereof.

**SECTION 6.07**      *Bond Trustee's Access To County Books.* All books and documents in the possession of the County relating to the Facilities and the Loan Agreement and the moneys, revenues and receipts derived from the Loan Agreement shall at all reasonable times be open to inspection by such accountants or other agencies as the Bond Trustee may from time to time designate.

**SECTION 6.08**      *Filing Of Financing Statements By County.* In order to perfect the interest of the Bond Trustee in the Receipts and Revenues of the County from the Loan Agreement, the County will cause appropriate financing statements, naming the Bond Trustee as pledgee of the Receipts and Revenues of the County from the Loan Agreement and of the other moneys pledged under this Indenture for the payment of the principal of and interest on the Bonds, and as pledgee and assignee of certain of the County's rights and interest under the Loan Agreement, to be duly filed and recorded in the appropriate state and county offices as required by the provisions of the Uniform Commercial Code or other similar law as adopted in the Commonwealth of Kentucky and any other applicable jurisdiction, as from time to time amended. The Bond Trustee, at the sole expense of Big Rivers, will file and record, with such assistance as necessary from the County, such necessary continuation statements from time to time as may be required pursuant to the provisions of said Uniform Commercial Code or other similar law to protect the interest of the Bond Trustee.

**SECTION 6.09**      *Tax Covenants Of The County.*

(a) The County covenants to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes pursuant to Section 103(a) of the 1954 Code, and will take, or require to be taken, such acts as may from time to time be required under applicable law and regulation to continue the exclusion of the interest on the Bonds from gross income for federal income tax purposes; and in furtherance of such covenants, the County agrees to comply with the Tax Certificate and Agreement executed in connection with the Bonds and the provisions of the 1954 Code as amended by the 1986 Act.

(b) The County covenants that it will not take any action or fail to take any action with respect to the Bonds which would cause the Bonds to be "arbitrage bonds" within the meaning of such term as used in Section 148 of the 1986 Code, as incorporated into the 1954 Code by the 1986 Act.

(c) The County shall make any and all payments required to be made to the United States Department of the Treasury in connection with the Bonds pursuant to Section 148(f) of the 1986 Code, as incorporated into the 1954 Code by the 1986 Act, from amounts on deposit in the funds and accounts established under this Indenture and available therefor.

(d) The County covenants that it will not use or permit the use of any property financed or refinanced with the proceeds of the Bonds by any person (other than a state or local governmental unit) in such manner or to such extent as would result in a loss of exclusion of the interest on the Bonds from gross income for federal income tax purposes (other than during the period the Bonds are held by a "substantial user" of the facilities financed or refinanced with

proceeds of the Bonds or a “related person” within the meaning of Section 103(b)(6)(C) of the 1954 Code).

(e) Notwithstanding any other provisions of this Indenture to the contrary, so long as necessary in order to maintain the exclusion of interest on the Bonds from gross income under Section 103(a) of the 1954 Code, the covenants in this Section 6.09 shall survive the payment of the Bonds and the interest thereon, including any payment or defeasance thereof pursuant to Section 7.01 hereof.

**SECTION 6.10** *Supplemental Indentures; Recordation Of Indenture And Supplemental Indentures.* The County will execute and deliver all Supplemental Indentures, and will cause this Indenture, the Loan Agreement and all supplements thereto as well as all security instruments as may be required at all times to be recorded, registered, filed and to be kept recorded, registered and filed in such manner and in such places as may be required by law in order fully to preserve and protect the security of the Bondowners and all rights of the Bond Trustee hereunder.

**SECTION 6.11** *Notices By Bond Trustee.* The Bond Trustee shall give the same notices to the County that it is required to give to Big Rivers pursuant to any of the terms of this Indenture.

## ARTICLE VII

### DEFEASANCE

**SECTION 7.01** *Defeasance.*

(a) If and when the Bonds secured hereby shall become due and payable in accordance with their terms or through redemption proceedings as provided in this Indenture, or otherwise, and the whole amount of the principal of, premium, if any, and interest so due and payable upon all of the Bonds shall be paid, or provision shall have been made for the payment of the same, together with all other sums payable hereunder by the County, including the payment of the fees and expenses of the Bond Trustee, then and in that case, the right, title and interest of the Bond Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the County to the Bondowners shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, upon request of the County or Big Rivers, and at the expense of Big Rivers, the Bond Trustee shall assign and transfer to Big Rivers all property and funds then held by the Bond Trustee pursuant to this Indenture and shall execute and deliver such documents as may be reasonably required by the County or Big Rivers for such purpose. If and when the Bond Trustee shall hold sufficient moneys hereunder to provide for payment of the whole amount of the principal of, premium, if any, and interest due and payable and thereafter to become due and payable upon all the Bonds, together with all other sums payable or which may thereafter become payable hereunder by the County, notwithstanding that all the Bonds have not yet become due and payable and that consequently the right, title and interest of the Bond Trustee in and to the Trust Estate shall not have ceased, terminated and become void pursuant to the foregoing provisions of this Section 7.01, the Bond Trustee, on demand of the County or Big Rivers, shall turn over to Big Rivers any surplus in the Bond Fund and in any other fund created

under this Indenture in excess of the sum sufficient to pay the whole amount of the principal of, premium, if any, and interest due and payable and thereafter to become due and payable upon all the Bonds, together with all other sums payable or which may thereafter become payable hereunder by the County, including the payment of the fees and expenses of the Bond Trustee.

(b) Any Bond shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in this Section 7.01 if (i) in case such Bond is to be redeemed on any date prior to its maturity, Big Rivers and the County shall have given to the Bond Trustee in form satisfactory to it unconditional and irrevocable instructions and notice to give on a date in accordance with the provisions of Section 3.03 hereof notice of redemption of such Bond on said redemption date, such notice to be given in accordance with the provisions of Section 3.03 hereof, (ii) there shall have been deposited with the Bond Trustee either moneys in an amount which shall be sufficient, or obligations of or guaranteed as to principal and interest by the United States of America, or certificates of an ownership interest in the principal of or interest on obligations of or guaranteed as to principal and interest by the United States of America, which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of, premium, if any, and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Bond Trustee or any Co-Paying Agent at the same time, shall be sufficient to pay when due the principal of and interest due and to become due on such Bond on and prior to the redemption date or maturity date thereof, as the case may be, and (iii) in the event such Bond does not mature or is not by its terms subject to redemption within the next succeeding 60 days, Big Rivers and the County shall have given the Bond Trustee in form satisfactory to it irrevocable instructions to give, as soon as practicable in the same manner as a notice of redemption is given pursuant to Section 3.03 hereof, a notice to the Owners of such Bond that the deposit required by (ii) above has been made with the Bond Trustee and that said Bond is deemed to have been paid in accordance with this Section 7.01 and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of and interest on such Bond. Neither the obligations nor moneys deposited with the Bond Trustee pursuant to this Section 7.01 nor principal or interest payments on any such obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, premium, if any, and interest on such Bond; provided that any cash received from such principal or interest payments on such obligations deposited with the Bond Trustee, (x) to the extent such cash will not be required at any time for such purpose, shall be paid over to Big Rivers as received by the Bond Trustee, free and clear of any trust, lien or pledge, and (y) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in obligations or certificates of the type described in clause (ii) of this subsection (b) maturing at times and in amounts sufficient to pay when due the principal of and interest to become due on such Bond on and prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to Big Rivers, as received by the Bond Trustee, free and clear of any trust, lien or pledge.

(c) Any release of the obligations of the County under this Section 7.01 shall be without prejudice to the right of the Bond Trustee to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and other disbursements and those of its attorneys, agents and employees, incurred on and about the

administration of the trusts hereby created and the performance of its powers and duties hereunder.

## ARTICLE VIII

### DEFAULTS AND REMEDIES

**SECTION 8.01** *“Events Of Default” Enumerated; Acceleration.* Each of the following events shall constitute and is referred to in this Indenture as an “Event of Default”:

(a) payment of the principal of any of the Bonds (whether by maturity, upon a call for redemption or otherwise) or interest on any of the Bonds shall not be made within one Business Day of when due with the result that such principal or interest remains unpaid as of such date; or

(b) an “event of default” as defined in Section 9.1(a) of the Loan Agreement shall have occurred and be continuing; or

(c) acceleration of payment of any Obligation (as defined in the Big Rivers Indenture) secured by the Big Rivers Indenture pursuant to an “event of default” as such term is defined in Section 8.1 of Article VIII of the Big Rivers Indenture; or

(d) Big Rivers shall file a petition in bankruptcy or is adjudicated as bankrupt or insolvent, or makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver of itself or of its property, or institutes proceedings for its reorganization, or proceedings instituted by others for its reorganization are not dismissed within thirty (30) days after the institution thereof, or a receiver or liquidator of Big Rivers or of any substantial portion of its property is appointed and the order appointing such receiver or liquidator shall not be vacated within thirty (30) days after the entry thereof.

Upon the occurrence and continuance of an Event of Default described in clause (c) of this Section 8.01, and subject to Section 9.05 hereof, the Bond Trustee shall, and upon the occurrence and continuance of any other Event of Default, the Bond Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding, the Bond Trustee shall, declare the principal amount of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable and said principal and interest shall thereupon become immediately due and payable, and the Bond Trustee shall give notice thereof in writing to the County and Big Rivers, and notice to Bondowners in the same manner as a notice of redemption under Section 3.03 hereof. Upon any declaration of acceleration hereunder, the County and the Bond Trustee shall immediately declare all payments due on the Note to be immediately due and payable as provided in Section 9.2 of the Loan Agreement.

If at any time after such declaration, but before the Bonds shall have matured by their terms, all overdue installments of principal and interest upon the Bonds, together with interest on such overdue installments of principal and interest to the extent permitted by law and the reasonable and proper charges, expenses and liabilities of the Bond Trustee, and all other sums then payable by the County under this Indenture (except the principal of and interest accrued



since the next preceding Interest Payment Date on the Bonds due and payable solely by virtue of such declaration) shall either be paid by or for the account of the County or provision satisfactory to the Bond Trustee shall be made for such payment, and all defaults under the Bonds or under this Indenture (other than the payment of principal and interest due and payable solely by reason of such declaration) shall be made good or be secured to the satisfaction of the Bond Trustee or provision deemed by the Bond Trustee to be adequate shall be made therefor, then by written notice of the Owners of a majority in aggregate principal amount of the Bonds Outstanding to the County and to the Bond Trustee, the Bond Trustee shall rescind such declaration and annul such default in its entirety. In such event, the Bond Trustee shall rescind any declaration of acceleration of the maturity of the Note and the interest thereon as provided in Section 9.5 of the Loan Agreement.

As set forth in Section 9.7 of the Loan Agreement, if at any time following a declaration of acceleration pursuant to an Event of Default under Section 8.01(c) hereof, and prior to payment of the Bonds pursuant to such acceleration, the Bond Trustee shall receive written notice that the acceleration of the Obligations under the Big Rivers Indenture has been rescinded, then the Bond Trustee shall rescind any declaration of acceleration of the maturity of principal of and interest on the Bonds. In the event of such rescission of a declaration of acceleration of the Bonds, the Bond Trustee shall also rescind any declaration of acceleration of the maturity of the Note.

In case of any rescission, then and in every such case the County, the Bond Trustee and the Bondowners shall be restored to their former positions and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon, nor shall such rescission extend to any instance in which the holder of any Obligation under the Big Rivers Indenture other than the Note has subsequent to a request for rescission declared all unpaid principal of and accrued interest on such other Obligation to be due and payable immediately.

**SECTION 8.02**      *Exercise Of Remedies By Bond Trustee.* Upon the happening of any Event of Default or upon the failure by the County to observe and perform any covenant, condition, agreement or provision contained in the Bonds or this Indenture, then and in every such case the Bond Trustee in its discretion may, and upon the written request of the Bondowners of not less than 25% in principal amount of the Bonds then Outstanding and receipt of indemnity to its satisfaction, shall, in its own name and as the Bond Trustee of an express trust:

- (i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondowners, and require the County or Big Rivers to carry out any agreements with or for the benefit of the Bondowners and to perform its or their duties under the Act, the Loan Agreement, the Note and this Indenture;
- (ii) bring suit upon the Bonds;
- (iii) by action or suit in equity require the County to account as if it were the trustee of an express trust for the Bondowners; or

(iv) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondowners.

**SECTION 8.03** *Restoration To Former Position.* In case any proceeding taken by the Bond Trustee to enforce any right under this Indenture shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Bond Trustee, then and in every case the County, the Bond Trustee and the Bondowners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Bond Trustee shall continue as though no such proceeding had been taken.

**SECTION 8.04** *Bondowner Direction Of Remedial Proceedings.* Anything in this Indenture to the contrary notwithstanding, the Holders of a majority in aggregate principal amount of the Bonds then Outstanding hereunder shall have the right, by an instrument in writing executed and delivered to the Bond Trustee, to direct the time, method and place of conducting all remedial proceedings available to the Bond Trustee under this Indenture or exercising any trust or power conferred on the Bond Trustee by this Indenture.

**SECTION 8.05** *Limitations On Proceedings By Bondowners.* No Bondowner shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust or power hereunder, or any other remedy hereunder or on said Bonds, unless such Bondowner previously shall have given to the Bond Trustee written notice of an Event of Default as hereinabove provided and unless the Bondowners of not less than 25% in principal amount of the Bonds then Outstanding shall have made written request of the Bond Trustee so to do, after the right to institute said suit, action or proceeding shall have accrued, and shall have afforded the Bond Trustee a reasonable opportunity to proceed to institute the same in either its or their name, and unless there also shall have been offered to the Bond Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Bond Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Bond Trustee, to be conditions precedent to the institution of said suit, action or proceeding; it being understood and intended that no one or more of the Bondowners shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided, and that all suits, actions and proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Bondowners.

**SECTION 8.06** *No Impairment Of Certain Rights Of Bondowners.* Notwithstanding any other provision in this Indenture, the right of any Bondowner to receive payment of the principal of and interest on any Bond on or after the respective due dates expressed therein, or to institute suit for the enforcement of any such payment on or after such respective date, shall not be impaired or affected without the consent of such Bondowner.

**SECTION 8.07** *Bond Trustee May Act Without Possession Of Bonds.* All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Bond Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof on the trial or other proceedings relative thereto, and any such

suit, action or proceeding instituted by the Bond Trustee shall be brought in its name for the equal and ratable benefit of the Bondowners, subject to the provisions of this Indenture.

**SECTION 8.08**      *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Bond Trustee or to Bondowners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**SECTION 8.09**      *No Waiver Of Remedies.* No delay or omission of the Bond Trustee or of any Bondowner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article VIII to the Bond Trustee and to the Bondowners may be exercised from time to time and as often as may be deemed expedient.

**SECTION 8.10**      *Application Of Moneys Recovered.* Any moneys received by the Bond Trustee, by any receiver or by any Bondowner pursuant to any right given or action taken under the provisions by this Article VIII, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Bond Trustee, shall be deposited in the Bond Fund and all moneys so deposited in the Bond Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds that have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default) shall be applied as follows:

(i) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied (i) first, to the payment to the persons entitled thereto of all installments of interest then due on the Bonds, with interest on overdue installments, if lawful, at the same rate or rates per annum as specified in the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment with such interest, then to the payment ratably, according to the amounts due on such installment, and (ii) second, to the payment to the persons entitled thereto of the unpaid principal of the Bonds which shall have become due at maturity (other than Bonds called for redemption for the payment of which money is held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds at their respective rates from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, in each case to the persons entitled thereto, without any discrimination or privilege.

(ii) If the principal of all the Bonds shall have become due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, with interest on overdue interest and principal, as aforesaid, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any

other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

(iii) If the principal of all the Bonds shall have become due and payable, and if such event shall thereafter have been rescinded and annulled under the provisions of this Article VIII then, subject to the provisions of paragraph (ii) of this Section 8.10 which shall be applicable in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be applied in accordance with the provisions of paragraph (i) of this Section 8.10.

Whenever moneys are to be applied pursuant to the provisions of this Section 8.10, such moneys shall be applied at such times, and from time to time, as the Bond Trustee shall determine having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Bond Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal, premium and interest to be paid on such dates shall cease to accrue. The Bond Trustee shall give such notice by mailing as it may deem appropriate of the deposit with it of any such moneys and of the filing of any such date to any Bondowner until such Bond shall be presented to the Bond Trustee for appropriate endorsement or for cancellation if fully paid.

**SECTION 8.11** *Severability Of Remedies.* It is the purpose and intention of this Article VIII to provide rights and remedies to the Bond Trustee and Bondowners which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted be held to be unlawful, the Bond Trustee and the Bondowners shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

## ARTICLE IX

### TRUSTEE AND CO-PAYING AGENTS

**SECTION 9.01** *Acceptance Of Trusts By Bond Trustee.* By executing the certificate of authentication endorsed upon the Bonds, the Bond Trustee shall signify its acceptance and agree to execute the trusts hereby created, but only upon the additional terms set forth in this Article IX, to all of which the County agrees and the respective Bondowners agree by their acceptance of delivery of any of the Bonds. The Bond Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Bond Trustee.

**SECTION 9.02** *Bond Trustee Not Responsible For Recitals, Statements And Representations In Indenture.* The recitals, statements and representations contained in this Indenture or in the Bonds, other than the Bond Trustee's authentication upon the Bonds, shall be taken and construed as made by and on the part of the County, and not by the Bond Trustee and the Bond Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof. The Bond Trustee makes no representations as to the validity or condition of the Trust Estate or any part thereof, or as to the title of the County

thereto or as to the security afforded thereby or hereby, or as to the validity or genuineness of any securities at any time pledged and deposited with the Bond Trustee hereunder or as to the validity or sufficiency of this Indenture or any of the Bonds.

**SECTION 9.03**      *Bond Trustee Not Liable Except For Own Negligence Or Bad Faith.* The Bond Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Bond Trustee shall not be answerable for the default or misconduct of any such attorney, agent, or employee selected by it with reasonable care and the written advice of such counsel selected by the Trustee with due care or any Opinion of Bond Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon. The Bond Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatever in connection with the trust except only for its own negligence or bad faith.

**SECTION 9.04**      *Compensation And Reimbursement Of Bond Trustee.* The Bond Trustee shall be entitled to reasonable compensation for its services rendered hereunder and to reimbursement for its actual out-of-pocket expenses (including counsel fees) necessarily incurred in connection therewith except as a result of its negligence or bad faith. In the Loan Agreement, Big Rivers has agreed that it will pay to the Bond Trustee such compensation and reimbursement but Big Rivers may, without creating a default hereunder, contest in good faith the necessity for and reasonableness of any such fees or expenses.

**SECTION 9.05**      *Limitations On Required Notice By Bond Trustee.* The Bond Trustee shall not be required to take notice, or be deemed to have notice, of any Event of Default under subsection (c) of Section 8.01 hereof, unless specifically notified in writing of such Event of Default by the Bondowners of not less than 25% in principal amount of the Bonds then Outstanding. The Bond Trustee shall be required to take notice, or be deemed to have notice, of any Event of Default under subsections (a) of Section 8.01 hereof. The Bond Trustee may, however, at any time, in its discretion, require of the County full information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

In the event the Bond Trustee does not timely receive any payment on the Note in accordance with Section 5.1 of the Loan Agreement, the Bond Trustee shall immediately give telephonic or electronic notice thereof to Big Rivers, but the Bond Trustee shall incur no liability for failure to give such notice and such failure shall have no effect on the rights of the Bond Trustee or the Bondowners set forth in this Indenture or any Bond.

**SECTION 9.06**      *Limitations On Obligations Of Bond Trustee.* The Bond Trustee shall be under no obligation to take any action in respect of any default, Event of Default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested so to do by Owners of not less than 25% in principal amount of the Bonds then Outstanding, and if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and indemnity satisfactory to it; but the foregoing provisions are intended only for the protection of the Bond Trustee, and

shall not affect any discretion or power given by any provisions of this Indenture to the Bond Trustee to take action in respect of any default without such notice or request from the Bondowners, or without such security or indemnity.

**SECTION 9.07**      *Bond Trustee Protected In Relying Upon Communications And Actions Believed Genuine.* The Bond Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Loan Agreement, and the Bond Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Bond Trustee shall not be bound to recognize any person as a Bondowner or to take any action at its request unless such person's Bond shall be deposited with the Bond Trustee or satisfactory evidence of the ownership of such Bond shall be furnished to the Bond Trustee.

**SECTION 9.08**      *Bond Trustee May Deal In Bonds And With County And Big Rivers.* The Bond Trustee may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Bondowner may be entitled to take with like effect as if the Bond Trustee were not a party to this Indenture. The Bond Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the County or Big Rivers, and may act as depository, trustee or agent for any committee or body of Bondowners secured hereby or other options of the County as freely as if it were not Bond Trustee hereunder.

**SECTION 9.09**      *Construction Of Indenture By Bond Trustee.* The Bond Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof, and any construction of any such provisions hereof by the Bond Trustee in good faith shall be binding upon the Bondowners.

**SECTION 9.10**      *Resignation Of Bond Trustee.* No resignation of the Bond Trustee will be effective until the appointment of, and acceptance of such appointment by, a successor Bond Trustee. The Bond Trustee may resign and be discharged of the trusts created by this Indenture at any time by executing any instrument in writing resigning such trust, and filing the same with the Clerk of the County, and by giving notice of such resignation mailed by first class mail, postage prepaid, to Big Rivers and the Bondowners at their addresses as they appear on the registration books maintained by the Registrar. If an instrument of acceptance by a successor Bond Trustee is not delivered to the resigning Bond Trustee with 45 days after the giving of such notice of resignation, the resigning Bond Trustee may petition any court of competent jurisdiction for the appointment of a successor Bond Trustee.

**SECTION 9.11**      *Removal Of Bond Trustee.* (a) The Bond Trustee may be removed at any time by filing with the Bond Trustee so removed, with the County and with Big Rivers an instrument in writing, appointing a successor, executed by the Bondowners of not less than a majority in principal amount of the Bonds then Outstanding.

(b) At any time other than during the continuance of an Event of Default, the Bond Trustee may be removed for any reason by an instrument in writing, executed by an authorized officer of the County, removing the Bond Trustee and appointing a successor, filed with the Bond Trustee so removed and Big Rivers, provided that prior to the appointment of such successor Bond Trustee, the County shall consult in good faith with Big Rivers regarding such appointment. Other than during the continuance of an Event of Default, the Bond Trustee may also be removed for any reason by Big Rivers with the approval of the County (which consent shall not be unreasonably withheld, conditioned or delayed), by an instrument in writing, executed by a Big Rivers Representative, removing the Bond Trustee and designating a successor Bond Trustee, filed with the Bond Trustee so removed and the County.

**SECTION 9.12** *Appointment Of Successor Bond Trustee.* In case at any time the Bond Trustee shall be removed, or be dissolved, or if its property or affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or for any other reason, then a vacancy shall forthwith and ipso facto exist in the office of Bond Trustee and a successor may be appointed, and in case at any time the Bond Trustee shall resign, then or may be appointed, by filing with the County and Big Rivers an instrument in writing, executed by the Bondowners of not less than a majority in principal amount of Bonds then Outstanding. Copies of such instrument shall be promptly delivered by the County to the predecessor Bond Trustee and to the Bond Trustee so appointed.

Until a successor Bond Trustee shall be appointed by the Bondowners as herein authorized, Big Rivers may appoint a successor Bond Trustee. After any appointment by Big Rivers, it shall cause notice of such appointment to be mailed by first class mail, postage paid, to the County and the Bondowners at their addresses as they appear on the registration books maintained by the Registrar. Any successor Bond Trustee so appointed by Big Rivers shall immediately and without further act be superseded by a Bond Trustee appointed by the Bondowners in the manner above provided.

**SECTION 9.13** *Qualifications Of Successor Bond Trustee.* Every successor Bond Trustee shall be a bank or trust company or a national bank with trust powers, having a combined capital stock, undivided profits and surplus of at least \$500,000,000 if there be such a trust company, bank and trust company or national bank willing and able to accept the trust on reasonable and customary terms.

**SECTION 9.14** *Acceptance Of Trusts By Successor Bond Trustee.* Any successor appointed hereunder shall execute, acknowledge and deliver to the County an instrument accepting such appointment hereunder, and thereupon such successor Bond Trustee, without any further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Bond Trustee herein. Upon request of such Bond Trustee, such predecessor Bond Trustee and the County shall execute and deliver an instrument transferring to such successor Bond Trustee all the estates, property, rights, powers and trusts hereunder of such predecessor Bond Trustee and such predecessor Bond Trustee shall pay over to the successor Bond Trustee all moneys and other assets at the time held by it hereunder.

**SECTION 9.15**      *Successor Bond Trustee Upon Merger, Consolidation Or*

*Succession.* Any corporation into which any Bond Trustee hereunder may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Bond Trustee hereunder shall be a party or any corporation succeeding to all or substantially all of the corporate trust business of the Bond Trustee, shall be the successor Bond Trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 9.16**      *Standard Of Care In Exercise Of Rights And Power.* The

Bond Trustee shall, during the existence of an Event of Default as to which the Bond Trustee has actual notice, exercise such of the rights and powers vested in it by this Indenture and use the same degree of skill and care in their exercise as a prudent man would use and exercise under the circumstances in the conduct of his own affairs.

**SECTION 9.17**      *Bond Trustee To Notify Registered Owners Of Event Of*

*Default.* If an Event of Default occurs of which the Bond Trustee by Section 9.05 hereof is required to take notice and deemed to have notice, or any other Event of Default as so defined occurs of which the Bond Trustee has been specifically notified in accordance with Section 9.05 hereof, and any such Event of Default shall continue for at least two Business Days after the Bond Trustee acquires actual notice thereof, the Bond Trustee shall give written notice thereof by first-class mail to the last known Owners of all registered Bonds then Outstanding addressed to such Owners at their addresses appearing on the registration books maintained by the Registrar.

**SECTION 9.18**      *Intervention By Bond Trustee In Certain Litigation.* In

any judicial proceeding to which the County is a party and which in the opinion of the Bond Trustee and its counsel has a substantial bearing on the interests of Bondowners, the Bond Trustee may intervene on behalf of the Bondowners, and shall, upon receipt of indemnity satisfactory to it, do so if requested in writing by the Owners of not less than 25% in principal amount of Bonds then Outstanding if permitted by the court having jurisdiction in the premises.

**SECTION 9.19**      *Bond Trustee; The Paying Agent; Co-Paying Agents.* The

Bond Trustee shall be the Paying Agent for the Bonds. The County may at any time or from time to time, with the approval of Big Rivers, appoint one or more Co-Paying Agents for the Bonds, in the manner and subject to the conditions set forth in Section 9.20 hereof for the appointment of a Co-Paying Agent. Each Co-Paying Agent shall designate to the Bond Trustee its Principal Office and signify its acceptance of the duties and obligations imposed upon it by written instrument of acceptance deposited with the County and the Bond Trustee under which such Co-Paying Agent will agree with the Bond Trustee that such Co-Paying Agent will:

- (i) hold all sums held by it for the payment of the principal of and premium, if any, or interest on Bonds in trust for the benefit of the Bondowners until such sums shall be paid to such Bondowners or otherwise disposed of as herein provided; and
- (ii) upon the written request of the Bond Trustee, forthwith pay to the Bond Trustee all sums so held in trust by such Co-Paying Agent.



The County hereby covenants and agrees to cooperate with the Bond Trustee to cause the necessary arrangements to be made through the Bond Trustee and to be thereafter continued whereby funds derived from the sources specified in Section 4.03 hereof will be made available for the payment of such of the Bonds as are presented when due at the appropriate offices of the Co-Paying Agents.

**SECTION 9.20**      *Qualifications Of Co-Paying Agent; Resignation;*

*Removal.* Any Co-Paying Agent appointed by the County, with the approval of Big Rivers, shall be a bank or trust company duly organized under the laws of the United States of America or any state or territory thereof, having a combined capital stock, surplus and undivided profits of at least \$500,000,000 and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture. Any Co-Paying Agent may at any time resign and be discharged of the duties and obligations created by Indenture by giving at least sixty (60) days written notice to the County, Big Rivers and the Bond Trustee. Any Co-Paying Agent may be removed at any time with the consent of Big Rivers by an instrument filed with such Co-Paying Agent and the Bond Trustee and signed by the County. In the event of the resignation or removal of any Co-Paying Agent, such Co-Paying Agent shall pay over, assign and deliver any moneys held by it as Co-Paying Agent to its successor, or if there be no successor, to the Bond Trustee.

**SECTION 9.21**      *Moneys Held by Trustee.*

Money and investments held in trust by the Bond Trustee or any paying agent hereunder shall be held in one or more trust accounts hereunder but need not be segregated from other funds except to the extent required in this Indenture or required by law. The Bond Trustee or any paying agent shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the County or otherwise specifically provided in this Indenture.

**SECTION 9.22**      *Force Majeure.*

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, epidemics or pandemics, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

## ARTICLE X

### EXECUTION OF INSTRUMENTS BY BONDOWNERS AND PROOF OF OWNERSHIP OF BONDS

#### SECTION 10.01 *Execution Of Instruments By Bondowners And Proof Of Ownership Of Bonds.*

(a) Any request, direction, consent or other instrument in writing whether or not required or permitted by this Indenture to be signed or executed by Bondowners, may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Bond Trustee with regard to any action taken by it under such instrument if the fact and date of the execution by any person of any such in instrument shall be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution. Nothing contained in this Article X shall be construed as limiting the Bond Trustee to such proof, it being intended that the Bond Trustee may accept any other evidence of matters herein stated which to it may seem sufficient.

(b) The ownership of Bonds, the amount, number and other identification thereof and the date of ownership shall be proved by the registration books maintained by the Registrar.

(c) Any request or consent of any Bondowner shall bind every future Owner of the same Bond or any Bond or Bonds issued in lieu thereof in respect of anything done by the Bond Trustee or the County in pursuance of such request or consent.

## ARTICLE XI

### MODIFICATION OF THIS INDENTURE, THE LOAN AGREEMENT, THE BIG RIVERS INDENTURE AND THE NOTE

SECTION 11.01 *No Modification Except Pursuant To Article XI.* Neither this Indenture, the Loan Agreement, nor the Note shall be modified or amended in any respect subsequent to the first issuance of the Bonds except as provided in and in accordance with and subject to the provisions of this Article XI.

**SECTION 11.02**      *Supplemental Indenture Without Bondowner Consent.*

(a) The County and the Bond Trustee may, from time to time and at any time, without the consent of or notice to Bondowners, enter into Supplemental Indentures as follows:

(i) To specify and determine any matters and things relative to the Bonds which are not contrary to or inconsistent with this Indenture and which shall not adversely affect the interests of the Bondowners; or

(ii) To cure any ambiguity, or to cure, correct or supplement any defect, omission or inconsistent provisions contained in this Indenture, the Loan Agreement, the Big Rivers Indenture or the Note or to make any provisions with respect to matters arising under this Indenture or for any other purpose if such provisions are necessary or desirable and if such action does not in the sole opinion of the Bond Trustee adversely affect the interests of the Bondowners; or

(iii) To grant to or confer upon the Bond Trustee for the benefit of the Bondowners any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as theretofore in effect; or

(iv) To add to the covenants and agreements of the County in this Indenture, other covenants and agreements to be observed by the County which are not contrary to or inconsistent with this Indenture as theretofore in effect; or

(v) To add to the limitations and restrictions in this Indenture, other limitations and restrictions to be observed by the County which are not contrary to or inconsistent with this Indenture as theretofore in effect; or

(vi) To confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by, this Indenture, of the Receipts and Revenues of the County from the Loan Agreement or of any other moneys, securities or funds; or

(vii) To comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended; or

(viii) To subject to this Indenture additional revenues; or

(ix) To make any other changes which do not in the sole opinion of the Bond Trustee materially adversely affect the interests of the Bondowners.

The Bond Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment the interests of any Bondowners would be adversely affected by any modification or amendment of this Indenture and any such determination shall be binding and conclusive on the County, Big Rivers and all Bondowners, and the Bond Trustee shall have no liability as a result of any such determination made in good faith. The interests of a Bondowner shall be deemed to be adversely affected by any modification or amendment of this

Indenture if such modification or amendment adversely affects or diminishes the rights of such Bondowner.

(b) Before the County shall enter into any Supplemental Indenture pursuant to this Section 11.02 there shall have been filed with the Bond Trustee an Opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and that it will be valid and binding upon the County in accordance with its terms; *provided, however*, that such opinion may take exception for limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization or other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights or contractual obligations generally.

### **SECTION 11.03      *Supplemental Indentures With Bondowner Consent.***

(a) Except for any Supplemental Indenture entered into pursuant to Section 11.02 hereof, subject to the terms and provisions contained in this Section 11.03 and not otherwise, (i) the Bondowners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, and (ii) in case of a change in the terms of any sinking fund installment (except as provided in clause (A) of the proviso of this Section 11.03(a) below), the Bondowners of not less than a majority in aggregate principal amount of each maturity of Bonds so affected and Outstanding shall have the right, from time to time, to consent to and approve the execution by the County and the Bond Trustee of any Supplemental Indenture as shall be deemed necessary or desirable by the County for the purposes of modifying, altering, amending, supplementing or rescinding in any particular, any of the terms or provisions contained in this Indenture; *provided, however*, that, unless approved in writing by the Bondowners of all affected Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitting, (A) a change in the times, amounts or currency of payment of the principal of and interest on any Outstanding Bond, or a reduction in the principal amount or redemption price of any Outstanding Bond or the rate of interest thereon or in any maturity with respect thereto or any sinking fund payment with respect to any Bond, or (B) the creation of a claim or lien upon, or a pledge of, the Receipts and Revenues of the County from the Loan Agreement ranking prior to or on a parity with the claim, lien or pledge created by this Indenture, or (C) a preference or priority of any Bonds over any other Bonds, or (D) a reduction in the aggregate principal amount of Bonds the consent of the Bondowners of which is required for any such Supplemental Indenture.

(b) If at any time the County shall determine to enter into any Supplemental Indenture for any of the purposes of this Section 11.03, it shall cause notice of the proposed Supplemental Indenture to be mailed, postage prepaid, to all Owners of the Bonds. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that a copy thereof is on file at the Principal Office of the Bond Trustee for inspection by all Bondowners.

(c) Within one year after the date of such notice, the County may enter into such Supplemental Indenture in substantially the form described in such notice only if there shall have first been filed with the Bond Trustee (i) the written consents of Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding or, if required hereunder,

all Bondowners and (ii) an Opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and that upon execution and delivery it will be valid and binding upon the County in accordance with its terms; *provided, however,* that such opinion may take exception for limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization or other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights or contractual obligations generally.

(d) If the Bondowners of not less than the percentage of Bonds required by this Section 11.03 shall have consented to and approved the execution thereof as herein provided, no Bondowner shall have any right to object to the execution and delivery of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution and delivery thereof, or to enjoin or restrain the County from executing and delivering the same or from taking any action pursuant to the provisions thereof.

**SECTION 11.04** *Effect Of Supplemental Indenture.* Upon the execution and delivery of any Supplemental Indenture pursuant to the provisions of this Article XI, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the County, the Bond Trustee and all Owners of Bonds then Outstanding shall thereafter be determined, exercised, and enforced under this Indenture subject in all respects to such modifications and amendments.

**SECTION 11.05** *When Big Rivers Consent Required.* Anything herein to the contrary notwithstanding, any Supplemental Indenture under this Article XI which affects any rights, powers and authority of Big Rivers under this Indenture or the Loan Agreement or the Note or requires a revision of the Loan Agreement, the Note or the Big Rivers Indenture shall not become effective unless and until Big Rivers shall have consented in writing to such Supplemental Indenture.

**SECTION 11.06** *Amendment Of Loan Agreement Or The Note without Bondowner Consent.* Without the consent of or notice to the Bondowners, the County and the Bond Trustee may consent to any amendment, change or modification of the Loan Agreement or the Note as may be required (i) by the provisions of the Loan Agreement, the Note and this Indenture, (ii) for the purpose of curing any ambiguity, defect, omission or inconsistent provision, (iii) to conform to any modifications to or alterations permitted by the Big Rivers Indenture or this Indenture, if such provisions are necessary or desirable and do not in the sole opinion of the Bond Trustee materially adversely affect the interests of the Bondowners, or (iv) in connection with any other change therein which, in the judgment of the Bond Trustee, is not to the prejudice of the Bond Trustee, or materially adverse to the interests of the Bondowners. The Bond Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment the interests of the Owners of the Bonds would be adversely affected by any such modification or amendment, and any such determination by the Bond Trustee shall be binding and conclusive on the County, Big Rivers and all Bondowners; and the Bond Trustee shall have no liability as a result of any such determination made in good faith.

**SECTION 11.07** *Other Amendments Of Loan Agreement.* Except in the case of amendments, changes or modifications referred to in Section 11.06 hereof, the County and the Bond Trustee shall not consent to any amendment, change or modification of the Loan Agreement, without first giving notice and receipt of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding given and procured as in Section 11.03 hereof provided. If at any time the County or Big Rivers shall request the consent of the Bond Trustee to any such proposed amendment, change or modification of the Loan Agreement, the Bond Trustee shall cause notice of such proposed amendment, change or modification to be given in the same manner as provided by Section 11.03 hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Bond Trustee for inspection by all Bondowners.

**SECTION 11.08** *Amendments To Big Rivers Indenture.* The Bond Trustee shall not exercise any of the rights of a holder of the Note under the Big Rivers Indenture to permit any amendment, modification, supplement or consolidation of the Big Rivers Indenture or said Note, whereby any such amendment, modification, supplement or consolidation results in changing the times, amounts or currency of payment of the payments due, on the Note, without the prior consent of the Bondowners adversely affected thereby. The Bond Trustee may otherwise consent to the amendment or modification of the Big Rivers Indenture or exercise any other rights thereunder of a holder of the Note either (i) without notice to or consent of any Bondowner if the Bond Trustee, in its sole discretion, deems the effects of such exercise, taken as a whole, to be not materially adverse to the interests of the Bondowners or (ii) in any event, upon notice by the Bond Trustee to the Bondowners of the action proposed to be taken and the consent thereto of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding; *provided, however,* that no such notice to or consent of the Bondowners shall be required in connection with any supplemental indenture or other instrument as may be required by the provisions of the Big Rivers Indenture. The Bond Trustee hereby agrees to execute and deliver all such further instruments as may be required by the provisions of the Big Rivers Indenture. The Bond Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment the interests of the Owners of the Bonds would be adversely affected by any such modification or amendment, and any such determination by the Bond Trustee shall be binding and conclusive on the County, Big Rivers and all Bondowners; and the Bond Trustee shall have no liability as a result of any such determination made in good faith.

## ARTICLE XII

### MISCELLANEOUS

**SECTION 12.01** *Indenture To Bind and Inure To Benefit Of Successors To County.* In the event of the termination of the existence of the County, all the covenants, stipulations, promises and agreements contained in this Indenture, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the County shall be transferred.

**SECTION 12.02** *Indenture To Benefit Only County, Bond Trustee And Bondowners.* Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the County, the Bond Trustee and the Bondowners, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the County, the Bond Trustee and the Bondowners.

**SECTION 12.03** *Severability.* In case any one or more of the provisions of this Indenture or of the Loan Agreement or of the Bonds issued hereunder shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Indenture or of the Loan Agreement or of said Bonds and this Indenture and the Loan Agreement and the Bonds shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

**SECTION 12.04** *No Personal Liability Of County Officials Under Indenture.* No covenant or agreement contained in the Bonds or in this Indenture shall be deemed to be the covenant or agreement of any official, officer, agent, or employee of the County in its individual capacity, and neither the members of the Board of County Commissioners of the County nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**SECTION 12.05** *Bonds Owned By County Or Big Rivers Disregarded For Certain Purposes.* In determining whether the Bondowners of the requisite aggregate principal amount of Bonds have concurred in any direction, consent or waiver under this Indenture, Bonds which are owned by the County or Big Rivers or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with Big Rivers shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Bond Trustee shall be protected in relying on any such direction, consent or waiver, only Bonds which an officer in the corporate trust division of the Bond Trustee knows are so owned shall be so disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Bond Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the County or Big Rivers or any person directly or indirectly controlling or controlled by or under direct or indirect common control with Big Rivers. In case of a dispute as to such right, any decision by the Bond Trustee taken upon the advice of counsel shall be full protection to the Bond Trustee.

**SECTION 12.06** *Counterparts.* This Indenture may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**SECTION 12.07** *Kentucky Law to Govern.* THE LAWS OF THE COMMONWEALTH OF KENTUCKY SHALL GOVERN THE CONSTRUCTION OF THIS INDENTURE AND OF ALL BONDS, WITHOUT REFERENCE TO THE CHOICE OF LAW PROVISIONS OF THE COMMONWEALTH OF KENTUCKY.

**SECTION 12.08** *Notices.* Except as otherwise provided in this Indenture, all notices, certificates, requests or other communications by the County, the Bond Trustee or Big Rivers pursuant to this Indenture shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows: If to the County, to: Ohio County Fiscal Court, 301 South Main, Hartford, Kentucky 42347, Attention: County Judge/Executive; if to Big Rivers, to: Big Rivers Electric Corporation, 201 Third Street, Henderson, Kentucky 42420, Attention: President and Chief Executive Officer; if to the Bond Trustee, to: U.S. Bank National Association, 225 Asylum Street, 23rd Floor, Hartford, Connecticut 06103, Attention: Laurel Casasanta (Big Rivers 2020 Indenture). A duplicate copy of each notice, certificate, request or other communication given hereunder by the County or the Bond Trustee shall also be given to Big Rivers. Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

**SECTION 12.09** *Holidays.* If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall not be a Business day, such payment may be made or act performed or right exercised on the next Business day with the same force and effect as if done on the nominal date provided in this Indenture, and no interest shall accrue for the period after such nominal date.

**SECTION 12.10** *Captions.* The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

**SECTION 12.11** *U.S.A. Patriot Act.* In accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to the transactions contemplated by this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

### **ARTICLE XIII FORMS OF BONDS AND TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

Subject to the provisions of this Indenture, the Bonds and the certificate of authentication to be executed thereon by the Bond Trustee are to be in substantially the following forms, with necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture.

(Form of Legends for All Bonds)

THIS BOND IS NOT A GENERAL OBLIGATION OF THE COUNTY AND DOES NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.



THIS BOND SHALL NOT CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF KENTUCKY, BUT SHALL BE PAYABLE AS TO PRINCIPAL AND INTEREST SOLELY FROM THE REVENUES DERIVED FROM THE PAYMENTS MADE BY BIG RIVERS ELECTRIC CORPORATION UNDER THE NOTE (AS DEFINED HEREIN) AND FROM THE OTHER RECEIPTS AND REVENUES OF THE COUNTY FROM THE LOAN AGREEMENT (AS DEFINED HEREIN). THE BONDS ARE ISSUED UNDER THE PROVISIONS OF SECTIONS 103.200 THROUGH 103.285, INCLUSIVE, OF THE KENTUCKY REVISED STATUTES, AS AMENDED.

[Until such time as the Bonds are no longer restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository, each Bond shall contain or have endorsed thereon the following legends:]

AS PROVIDED IN THE INDENTURE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK, TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE INDENTURE (“DTC”), AND NOTWITHSTANDING ANY OTHER PROVISION OF THE INDENTURE TO THE CONTRARY, (A) THIS BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO A NOMINEE OF DTC, OR BY A NOMINEE OF DTC TO DTC OR NOMINEE THEREOF AND (B) A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE TRUSTEE. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT NOT THERETOFORE PAID AS DETERMINED IN THE MANNER PROVIDED IN THE INDENTURE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE PAYING AGENT FOR PAYMENT OF PRINCIPAL OR REDEMPTION PRICE, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC OR ITS NOMINEE OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, CEDE & CO., AS NOMINEE OF DTC, HAS AN INTEREST HEREIN.

[FORM OF BOND]

No. R-

\$

**COUNTY OF OHIO, KENTUCKY  
POLLUTION CONTROL REFUNDING REVENUE BONDS, SERIES 2020B  
(BIG RIVERS ELECTRIC CORPORATION PROJECT)**

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**BOND DATE:**

**INTEREST RATE:**

**CUSIP:**

**DOLLARS**

County of Ohio, Kentucky, a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky, United States of America (together with any successor to its duties and functions, the "County"), for value received hereby promises to pay (but only out of the "Receipts and Revenues of the County from the Loan Agreement" as herein defined and out of the other security pledged therefor) to the registered owner named above or registered assigns, on [July 15], 2031 upon the presentation and surrender hereof, the principal sum set forth above and to pay (but only out of the Receipts and Revenues of the County from the Loan Agreement and out of the other security pledged therefor) interest on said principal sum from the date hereof until payment of said principal sum has been made or duly provided for, at the rate of [\_\_\_]% per annum (computed on the basis of a 360-day year consisting of twelve 30-day months), semiannually on January 15 and July 15 each year, commencing on [January 15, 2021]. The principal of and interest on this Bond are payable at the principal corporate trust office of U.S. Bank National Association (the "Bond Trustee"), or of its successor as Bond Trustee, or, at the option of the owner of this Bond, at the principal office of any co-paying agent appointed in accordance with the Indenture (as hereinafter defined); *provided, however*, that, subject to the next succeeding paragraph, interest may be payable, at the option of the Bond Trustee, by check or draft drawn upon the Bond Trustee and mailed to the registered address of the registered owner of this Bond as of the close of business on the fifteenth (15th) day prior to the applicable interest payment date, or, at the written request of the registered owner of Bonds (as defined herein) in an aggregate principal amount greater than or equal to \$1,000,000 delivered to the Bond Trustee on or prior to such fifteenth (15th) day prior to such payment date, by wire transfer per the instructions of such registered owner as set forth in such request. Payment of the principal of and interest on this Bond shall be in any coin or currency of the United States of America as, at the respective times of payment, shall be legal tender for the payment of public and private debts.

Notwithstanding any other provision of this Bond to the contrary, so long as this Bond shall be restricted to being registered on the registration on books of the County kept by the Registrar in the name of the Securities Depository (as defined in the hereinafter defined Indenture) for this Bond, the provisions of the Indenture governing Book Entry Bonds (as

defined in the Indenture) shall govern the manner of payment of the principal of and interest on this Bond.

This Bond is one of a duly authorized series of the County's revenue bonds designated as "Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project)" (the "Bonds") aggregating in outstanding principal amount upon original issuance of \$[\_\_\_\_\_] issued or to be issued under and pursuant to the Constitution and laws of the Commonwealth of Kentucky, particularly Title IX (*Counties, Cities, and Local Units*), Chapter 103 (*Revenue Bonds for Miscellaneous City or County Projects*) (Sections 103.200 through 103.285, inclusive) of the Kentucky Revised Statutes, as amended (the "Act"), and the Trust Indenture, dated as of [\_\_\_\_], 2020 (the "Indenture"; capitalized terms used herein and not otherwise defined herein are as defined in the Indenture) between the County and the Bond Trustee. The Bonds are being issued to refund bonds previously issued by the County to refund bonds previously issued by the County to finance certain pollution control facilities (the "Facilities") for Big Rivers Electric Corporation, a nonprofit rural electric cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky ("Big Rivers"). The Facilities are located at Big Rivers' D.B. Wilson Plant Unit No. 1, a coal-fired steam electric generating plant located within the geographic boundaries of the County and wholly-owned by Big Rivers (the "Plant").

The Bonds are equally and ratably secured, to the extent provided in the Indenture, by the pledge thereunder of the "Receipts and Revenues of the County from the Loan Agreement," which term is used herein as defined in the Indenture and which as therein defined means all payments to the County by Big Rivers under the Loan Agreement, dated as of [\_\_\_\_], 2020, between the County and Big Rivers (the "Loan Agreement") and the corresponding note (the "Note") of Big Rivers delivered pursuant to the Loan Agreement to the County, and all receipts of the Bond Trustee credited by the provisions of the Indenture against such payments and by the other security pledged therefor under the Indenture. The County has also pledged and assigned to the Bond Trustee as security for the Bonds other rights and interests of the County under the Loan Agreement. The Note is secured, on a parity basis with certain outstanding indebtedness of Big Rivers, by assets of Big Rivers under the Indenture, dated as of July 1, 2009, between Big Rivers and U.S. Bank National Association, as trustee, as supplemented and amended.

As more fully provided in the Indenture, this Bond does not constitute an obligation to which the full faith and credit of the County is pledged but is a limited obligation of the County, which is obligated to pay the principal of and interest on this Bond only out of the Receipts and Revenues of the County from the Loan Agreement and the other security pledged therefor under the Indenture. No holder of this Bond shall ever have the right to compel any exercise of the taxing power of the County to pay this Bond or interest thereon, nor to enforce payment thereon against any property of the County. This Bond shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the County. This Bond, including interest hereon, is payable solely from the revenue pledged to the payment hereof, as authorized in the Act, and does not constitute a debt of the County within the meaning of any constitutional or statutory limitation.

The Bonds shall not constitute an indebtedness of the County within the meaning of the Constitution of Kentucky, but shall be payable as to principal and interest solely from the

revenues derived from the payments made by Big Rivers under the Note and from the other Receipts and Revenues of the County from the Loan Agreement.

Reference is hereby made to the Indenture and the Loan Agreement, copies of which are on file with the Bond Trustee, for the provisions, among others, with respect to the nature and extent of the rights, duties and obligations of the County, Big Rivers, the Bond Trustee and the owner of this Bond, the terms upon which this Bond is issued and secured, and the modification or amendment of the Indenture or the Loan Agreement, to all of which the registered owner of this Bond assents by the acceptance of this Bond.

This Bond is transferable, as provided in the Indenture, only upon the registration books maintained by the Registrar, which shall be the Bond Trustee, kept at its principal office, upon presentation at said office of this Bond with the written request of the registered owner hereof or its attorney duly authorized in writing, and a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its duly authorized attorney. The Registrar shall not be obliged to make any exchange or transfer of this Bond during the fifteen (15) days next preceding an interest payment date or, in the case of any proposed redemption of the Bonds, next preceding the date of the mailing of the notice of such redemption. The Registrar shall not be required to make any exchange or transfer of this Bond if it has been called for redemption.

The Bonds are issuable in the form of fully registered Bonds without coupons in the denomination of \$5,000 each or integral multiples thereof. Upon payment of any required tax or other governments charge and subject to such conditions, Bonds, upon the surrender thereof at the principal office of the Registrar, with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its duly authorized attorney, may, at the option of the registered owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same interest rate and in any other authorized denominations.

[The Bonds are subject to redemption in whole or in part (and if less than all of the Bonds are to be redeemed, by lot or in such manner as shall be determined by the Bond Trustee) prior to maturity at any time on or after [July 15, 2020] by the County, upon the exercise by Big Rivers of its option to prepay all or a part of the unpaid balance of the Note, at a redemption price of 100percent of the principal amount thereof, together with interest accrued thereon to the date fixed for redemption.]

In the manner and with the effect provided in the Indenture, upon any prepayment of the Note by Big Rivers under the provisions of Article X of the Loan Agreement, the Bonds shall be redeemed out of the amounts received in prepayment of the Note, prior to maturity as a whole, or in part, at any time at the principal amount thereof plus accrued interest to the redemption date.

In the event any Bonds are called for redemption, the Bond Trustee shall give notice, in the name of the County, of the redemption of such Bonds, which notice shall specify the Bonds to be redeemed, the redemption date and the place or places where amounts due upon such redemption will be payable, which shall be the principal corporate trust office of the Bond Trustee as paying agent for the Bonds, and the principal office of any co-paying agent for such Bonds, and, if less than all of the Bonds are to be redeemed, the numbers of such Bonds to be

redeemed. Such notice shall be given by mailing a copy of the redemption notice by first-class mail, postage prepaid, at least thirty (30) days prior to the date fixed for redemption to the owners of the Bonds to be redeemed at the addresses shown on the registration books maintained by the Bond Trustee, as Registrar; provided, however, that failure duly to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds. All Bonds so called for redemption shall be deemed not to be outstanding under the provisions of the Indenture from the date upon which there shall have been deposited with the Bond Trustee moneys or obligations as specified by the Indenture sufficient to pay when due the principal of, premium, if any, and interest due and to become due on or prior to the redemption date. All Bonds so deemed to be not outstanding will cease to bear interest on the specified redemption date. On presentation and surrender of Bonds so called for redemption at the place or place of payment, such Bonds shall be paid and redeemed.

The Bonds may be redeemed by the County only at the direction of Big Rivers. Big Rivers may elect to exercise such direction on a conditional and revocable basis, or on an unconditional and irrevocable basis. If the direction and call for redemption is on a conditional and revocable basis, then Big Rivers is under no obligation to provide the funds necessary to effect such redemption and, if it elects not to do so, then the Bonds called for redemption will not be redeemed, and neither Big Rivers nor the County shall be liable to any Bondowner for this failure to redeem, all as provided for in the Indenture.

Pursuant to the Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid to the Bond Trustee for the account of the County and deposited in a special account created by the County and have been pledged for that purpose.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

All acts, conditions and things required by the Constitution and statutes of the Commonwealth of Kentucky, the governing rules and procedures of the County and the Indenture to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed.

No covenant or agreement contained in this Bond or the Indenture shall be deemed to be a covenant or agreement of any official, officer, agent or employee of the County in his or her individual capacity, and neither the members of the Board of County Commissioners of the County nor any official executing this Bond shall be liable personally on this Bond or be subject to any personal liability or accountability by reason of the issuance of this Bond.

This Bond shall not be entitled to any benefit under the Indenture or be valid until this Bond shall have been authenticated by the execution by the Bond Trustee, or its successor as Bond Trustee, of the Certificate of Authentication inscribed hereon.

**IN WITNESS WHEREOF**, County of Ohio, Kentucky, has caused this Bond to be executed by the Judge/Executive of the County by his or her signature, and has caused the corporate seal of the County to be affixed, impressed or reproduced hereon and attested by the Fiscal Court Clerk of the County with his or her signature.

COUNTY OF OHIO, KENTUCKY

By: \_\_\_\_\_  
County Judge/Executive

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Fiscal Court Clerk

(Form of Bond Trustee's Certificate of Authentication)

This is to certify that this Bond is one of the Bonds described in the within mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,  
as Bond Trustee

By: \_\_\_\_\_  
*Authorized Officer*

Date of Authentication:

**IN WITNESS WHEREOF**, as of [\_\_\_\_ \_], 2020, County of Ohio, Kentucky, has caused these presents to be signed in its name and behalf by the Judge/Executive of the County and its official seal to be hereunto affixed and attested by the Fiscal Court Clerk, and to evidence its acceptance of the trusts hereby created, U.S. Bank National Association, as trustee has caused these presents to be signed in its name and on its behalf by one of its Trust Officers and the same to be attested by its Secretary or an Assistant Secretary.

(SEAL)

COUNTY OF OHIO, KENTUCKY

By: \_\_\_\_\_  
David Johnston  
*Judge/Executive*

Attest:

By: \_\_\_\_\_  
Miranda Funk  
*Fiscal Court Clerk, County of Ohio,  
Kentucky*

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
*Authorized Officer*







\$[83,300,000]<sup>1</sup>  
County of Ohio, Kentucky  
Pollution Control Refunding Revenue Bonds, Series 2020B  
(Big Rivers Electric Corporation Project)

**PURCHASE CONTRACT**

[●], 2020

Fiscal Court of the County of Ohio  
Hartford, Kentucky

Ladies and Gentlemen:

BofA Securities, Inc. (the “**Representative**”), acting on its own behalf and on behalf of the other underwriter listed in Schedule 1 hereto (the Representative and such other underwriter being collectively called the “**Underwriters**”), hereby offers to enter into this Purchase Contract (this “**Purchase Contract**”) with County of Ohio, Kentucky (the “**Issuer**”), for the purchase by the Underwriters, and the sale by the Issuer, of \$[83,300,000]<sup>1</sup> aggregate principal amount of County of Ohio, Kentucky Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project) (the “**Bonds**”). This offer is made subject to the acceptance of this Purchase Contract by the Issuer on or before [5:00] p.m. New York time on the date hereof by (i) due adoption of a resolution of the Issuer authorizing and approving the execution and delivery of this Purchase Contract and (ii) execution and delivery of this Purchase Contract by authorized representatives of the Issuer. Upon such acceptance, this Purchase Contract shall be in full force and effect in accordance with its terms and shall be binding upon the Issuer and the Underwriters. Delivered to the Issuer herewith is a Letter of Representation, dated the date hereof, substantially in the form of Appendix A hereto, under which Big Rivers Electric Corporation (the “**Company**”) undertakes certain obligations in order to induce the Underwriters and the Issuer to enter into this Purchase Contract (the “**Letter of Representation**”). The Representative may withdraw this Purchase Contract upon written notice delivered by the Representative to the [\_\_\_\_\_] of the Issuer and the [\_\_\_\_\_] of the Company at any time before the Issuer accepts this Purchase Contract and the Company delivers the Letter of Representation. Capitalized terms used herein, if not otherwise defined herein, shall have the meanings assigned to such terms in the Preliminary Offering Statement as defined and described in Section 2 hereof.

<sup>1</sup> Subject to adjustment for premium issuance.

1. **Purchase Price.** Upon the terms and conditions and in reliance on the representations, warranties and covenants set forth herein and in the Letter of Representation, the Underwriters hereby agree to purchase from the Issuer for offering to the public, and the Issuer hereby agrees to sell to the Underwriters for such purpose, all, but not less than all, of the Bonds. The purchase price for the Bonds shall be \$[\_\_\_\_\_] (equal to the [par amount] of the Bonds [plus net original issue premium of \$\_\_\_\_\_] ), payable by the Representative at the time and in the manner set forth in Section 8 hereof. The Underwriters will be paid \$[\_\_\_\_\_], as underwriting compensation, excluding expenses reimbursable under Section 13.

The Bonds shall be dated their date of delivery. The Bonds shall mature on the date, and shall bear interest (from their date of delivery) at the rate, set forth in the Offering Statement (as hereinafter defined) and as described in the Pricing Supplement (as hereinafter defined), and shall be payable at the times and in the manner, and shall otherwise have the terms and provisions, set forth in the Offering Statement.

2. **Offering Documents.** The Company and the Issuer have caused to be prepared the following information: (i) a Preliminary Offering Statement, dated [●], 2020 (together with the appendices thereto, the “**Preliminary Offering Statement**”), (ii) the Pricing Supplement attached as Appendix B hereto (the “**Pricing Supplement**”), and (iii) the electronic road show made available to investors via the Internet (not including telephone question and answer sessions with investors) (the “**Electronic Road Show**”). The Preliminary Offering Statement, together with the Pricing Supplement, is referred to herein as the “**Disclosure Package.**” The Company agrees to furnish the Underwriters with a final Offering Statement in form and substance satisfactory to the Representative (the “**Offering Statement**”) within seven business days of the date hereof but in no event later than two business days prior to the Closing Date (as defined in Section 8 hereof). The Company, on behalf of the Issuer, “deemed final” the Preliminary Offering Statement as of the date thereof for purposes of Rule 15c2-12 (“**Rule 15c2-12**”) promulgated by the Securities and Exchange Commission (the “**SEC**”) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), except for the omission of such information as is specified in paragraph (b)(1) of Rule 15c2-12 and the Issuer Covered Sections (as defined below). The Issuer hereby represents and warrants that the Issuer Covered Sections in the Preliminary Offering Statement previously furnished to the Underwriter were “deemed final” by the Issuer as of its date for purposes of Rule 15c2-12 except for the omission of such information as is specified in Rule 15c2-12(b)(1). The final Offering Statement shall be substantially the same (except for insertions, deletions and changes contemplated by the Preliminary Offering Statement and this Purchase Contract) as the Preliminary Offering Statement and shall contain only those substantive changes as are approved by the Representative. The Issuer hereby authorizes the Representative to file the Preliminary Offering Statement and Offering Statement with the Municipal Securities Rulemaking Board’s (“**MSRB**”) Electronic Municipal Market Access system (“**EMMA**”).

3. **Financing Documents.** The Bonds shall be as described in, and shall be issued and secured under and pursuant to, a Trust Indenture, dated as of [●], 2020 (the “**Bond Indenture**”), by and between the Issuer and U.S. Bank National Association, as trustee (the “**Bond Trustee**”). On behalf of and at the direction of the Issuer, the proceeds of the Bonds shall be transferred to the Company or, at its direction, to National Rural Utilities Cooperative Finance Corporation, as administrative agent (the “**Administrative Agent**”), under the Amended and Restated Senior Secured Credit Agreement, dated as of June 11, 2020 (the “**Credit**”).

**Agreement**”), among the Company, the lenders party thereto and National Rural Utilities Cooperative Finance Corporation, Issuing Lender, Swingline Lender and Administrative Agent, and shall be used, together with other moneys provided by the Company, to refund a borrowing under the Credit Agreement made by the Company to redeem the Issuer’s Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project) (the “**Refunded Bonds**”).

The payment by the Issuer of the proceeds of the Bonds to or as directed by the Company is provided for by the provisions of the Loan Agreement, dated as of [●], 2020 (the “**Loan Agreement**”), between the Issuer and the Company, and the obligations thereunder to repay the principal amount of the Bonds when due at maturity and interest on the Bonds when due shall be evidenced by a note of the Company dated the date of issuance of the Bonds (the “**Note**”). The Note will be in the form specified in the Supplemental Indenture (as hereinafter defined) and the Loan Agreement and will be an Obligation secured under the Indenture, dated as of July 1, 2009, between the Company and U.S. Bank National Association, as trustee (the “**Mortgage Indenture Trustee**”) as supplemented by the [Tenth] Supplemental Indenture, dated as of [●], 2020 (the “**Supplemental Indenture**”), between the Company and the Mortgage Indenture Trustee (as heretofore supplemented and amended and as supplemented and amended by the Supplemental Indenture, the “**Mortgage Indenture**”).

In order to enable the Underwriters to comply with paragraph (b)(5) of Rule 15c2-12, the Company will enter into a Continuing Disclosure Agreement, effective as of the Closing Date, substantially in the form set forth as [Appendix H] to the Preliminary Offering Statement (the “**Continuing Disclosure Agreement**”).

The Bond Indenture, this Purchase Contract, the Bonds, the Loan Agreement and the Tax Certificate and Agreement, dated [●], 2020, between the Issuer and the Company (the “**Tax Certificate and Agreement**”), are hereinafter collectively referred to as the “**Issuer Documents**.” The Issuer Documents, the Letter of Representation, the Continuing Disclosure Agreement, the Mortgage Indenture, the Supplemental Indenture and the Note are hereinafter collectively referred to as the “**Financing Documents**.”

4. **Public Offering.** The Underwriters intend to make an initial bona fide public offering of all of the Bonds at the price or prices set forth in the Pricing Supplement; provided, however, the Underwriters reserve the right to change such initial offering prices as the Underwriters deem necessary or desirable, in its sole discretion, in connection with the marketing of the Bonds (but in all cases subject to the requirements of Section 11 hereof), and may offer and sell the Bonds to certain dealers, unit investment trusts and money market funds, certain of which may be sponsored or managed by one or more of the Underwriters, at prices lower than the public offering prices or yields greater than the yields set forth therein (but in all cases subject to the requirements of Section 11 hereof). *[Subject to tax review.]*

5. **Delivery of Offering Statement and Other Documents.** As soon as practicable after the execution of this Purchase Contract by the Issuer, but no later than the Closing Date or such earlier date if set forth herein, the Issuer shall deliver or cause to be delivered to the Underwriters manually executed originals of the documents listed below (provided, however, that the final Offering Statement shall be delivered no later than the earlier of seven business days from the date hereof or two business days prior to the Closing Date and that the documents

set forth in paragraphs (k) and (l) of this Section 5 shall have been provided prior to the date of execution of this Purchase Contract):

(a) the Offering Statement, containing as part of the appendices thereto the financial statements of the Company, which shall be provided in such quantity as described below in order for the Underwriters to comply with the rules of the MSRB and paragraph (b)(4) of Rule 15c2-12 and which the Representative agrees to file promptly with EMMA upon receipt by the Representative;

(i) *Quantity of Offering Statements to be Delivered.* The Company shall supply, or cause to be supplied, to the Underwriters no later than seven business days from the date hereof and, in any event, not later than two business days prior to the Closing Date, the Offering Statement in “designated electronic format” (as such term is defined in MSRB Rule G-32) and an amount of conformed copies sufficient to permit the Underwriters to comply with Rule 15c2-12, and other applicable rules of the SEC and the MSRB. The Issuer and the Company shall supply (upon at least three business days prior written notice from the Representative) additional copies of the Offering Statement in an amount sufficient to enable the Representative (X) to send a single copy of the Offering Statement to any potential customer upon request until the earlier of (1) ninety days following the End of the Underwriting Period (as defined below) or (2) the time when the Offering Statement is available to any person from the MSRB, but in the case of this clause (2) no less than twenty-five days following the End of the Underwriting Period and (Y) to comply with any applicable rules of the MSRB. The Preliminary Offering Statement and/or the Offering Statement may be delivered in printed and/or electronic form to the extent permitted by applicable rules of the MSRB and as may be agreed by the Issuer, the Company and the Representative. If the Offering Statement is prepared for distribution in electronic form, the Issuer hereby confirms that it does not object to distribution of the Offering Statement in electronic form.

(ii) *Amendments and Notifications by the Issuer.* During the period commencing on the date hereof and ending on the earlier of (A) ninety days following the End of the Underwriting Period or (B) the time when the Offering Statement is available to any person from the MSRB, but in the case of this clause (B) no less than twenty-five days following the End of the Underwriting Period (the “**Update Period**”), if any event shall occur as a result of which it may be necessary to supplement or amend the Offering Statement so that it does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, the Issuer shall forthwith notify the Representative of any such event of which it has knowledge, and the Issuer will amend or supplement the Offering Statement in such a manner so that the Offering Statement, as so supplemented or amended, does not contain any untrue statement of a material fact or omit to state a material fact necessary to be stated therein, in the light of the circumstances under which they were made, not misleading, and will furnish the Representative as many written and electronic copies as the Representative may from time to time reasonably request of the

Offering Statement as amended or supplemented; provided, however, that all expenses incurred in connection with any such supplement or amendment will be paid by the Company.

The “**End of the Underwriting Period**” shall have the definition set forth under Rule 15c2-12.

(b) the resolutions of the Issuer authorizing the issuance of the Bonds and the execution and delivery of the other Issuer Documents, certified by the County Judge/Executive of the Issuer as having been duly adopted by the Issuer, as being in full force and effect and as constituting a valid and binding action of the Issuer (collectively, the “**Resolution**”);

(c) the Bond Indenture;

(d) [Reserved]

(e) the Loan Agreement;

(f) the Note;

(g) the Mortgage Indenture;

(h) the Supplemental Indenture;

(i) the Continuing Disclosure Agreement;

(j) the Tax Certificate and Agreement;

(k) a letter, with regard to certain procedures performed through a specified date not more than five business days prior to the date of such letter, dated the date hereof and addressed to the Underwriters, from KPMG LLP (“**KPMG**”), the Company’s independent auditor, in the form agreed to by KPMG and the Representative; and

(l) a letter from KPMG, dated a date not more than three business days prior to the date of the Preliminary Offering Statement, stating that KPMG consents to the use in the Preliminary Offering Statement and the Offering Statement of its reports on the financial statements of the Company for the fiscal years ended December 31, 2018 and December 31, 2019.

By its execution of this Purchase Contract, the Issuer ratifies, confirms and consents to the use and distribution by the Underwriters before the date hereof of the Issuer Documents, the Disclosure Package and the Offering Statement (in printed form and electronic form) and hereby authorizes and consents to the use by the Underwriters of the Offering Statement and the Bond Indenture in connection with the public offering and sale of the Bonds and ratifies the Company having deemed final the Preliminary Offering Statement on its behalf.

6. During the period commencing on the date hereof and ending on the Closing Date, the Issuer shall not modify, amend or supplement in any respect, or permit any

modification, amendment or supplement to, any Issuer Document without the prior written consent of the Representative.

7. **Representations, Warranties and Covenants of the Issuer.** The Issuer represents, warrants, and covenants to and with the Underwriters that:

(a) The Issuer is a political subdivision and body politic and corporate duly created and validly existing within the Commonwealth of Kentucky under the laws and Constitution of the Commonwealth of Kentucky and is authorized and empowered by law, including particularly the provisions of Title IX (*Counties, Cities, and Local Units*), Chapter 103 (*Revenue Bonds for Miscellaneous City or County Projects*), Sections 103.200 through 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the “**Act**”):

(i) to adopt the Resolution;

(ii) to issue, sell and deliver the Bonds to the Underwriters on the terms described in the Issuer Documents and the Offering Statement;

(iii) to execute, deliver and perform its obligations under each of the Issuer Documents;

(iv) to pay or cause to be paid the proceeds of the sale of the Bonds to the Company;

(v) to accept and confirm the Letter of Representation;

(vi) to assign to the Bond Trustee, pursuant to the Loan Agreement, its interest in the Note; and

(vii) to carry out and consummate all other transactions contemplated by each of the aforesaid documents and the Offering Statement.

(b) The Issuer has duly authorized by all appropriate action, and complied (and at the Closing Date will have complied) with all provisions of law with respect to, each of the actions set forth in clauses (i) through (vii) of paragraph (a) of this Section 7. The Resolution is in full force and effect and has not been amended or repealed and the Issuer will not amend, terminate, or rescind, and will not agree to any amendment, termination, or rescission of the Resolution prior to the Closing Date or undertake any other course of action inconsistent with satisfaction of the requirements applicable to the Issuer as set forth in this Purchase Contract.

(c) When delivered to and paid for by the Representative in accordance with the terms of this Purchase Contract and the Bond Indenture and authenticated in accordance with the terms of the Bond Indenture, the Bonds will have been duly and validly authorized, executed, authenticated, issued and delivered and will constitute legal, valid and binding limited obligations of the Issuer enforceable in accordance with their terms (except as the enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting enforcement of creditors’ rights and by equitable rights where



equitable remedies are sought), and will be entitled to the benefits of the Bond Indenture. This Purchase Contract does, and the other Issuer Documents when executed and delivered will, constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms (except as the enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting enforcement of creditors' rights and by equitable rights where equitable remedies are sought). This Purchase Contract has been duly and validly authorized, executed and delivered by the Issuer. The Issuer Documents will conform to the descriptions thereof in the Disclosure Package and the Offering Statement and will be in substantially the form previously delivered to the Underwriters.

(d) The acceptance of the Letter of Representation and the execution and delivery of the Issuer Documents and compliance with the provisions thereof, do not and will not conflict with, or constitute on the part of the Issuer a violation of, breach of or default under, any constitutional provision or statute of the Commonwealth of Kentucky or the United States or any indenture, mortgage, deed of trust, resolution, note agreement or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound, or, to the knowledge of the Issuer, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties; and all consents, approvals, authorizations, and orders of or filings or registrations with any governmental authority, board, agency or commission of the Commonwealth of Kentucky or the United States having jurisdiction required in connection with, or the absence of which would materially adversely affect, the execution and delivery by the Issuer of the Issuer Documents, the performance by the Issuer of its obligations thereunder, or the issuance or sale of the Bonds by the Issuer have been obtained or made and are in full force and effect; provided, however, that no representation is made concerning compliance with the federal securities laws or the securities or "blue sky" laws of the various jurisdictions of the United States of America.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the best of its knowledge, threatened against or affecting the Issuer or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds, or the application of the proceeds thereof in accordance with the Bond Indenture, or the collection and pledge of the Trust Estate (as defined in the Bond Indenture) to pay the principal of, redemption premium, if any, and interest on the Bonds, or in any way contesting or affecting the validity of the Bonds or the Bond Indenture, or contesting the powers of the Issuer to issue the Bonds or to enter into the Bond Indenture, or contesting or affecting the validity of any of the Issuer Documents or contesting the powers of the Issuer to enter into or to execute and deliver or to accept the Letter of Representation or any of the Issuer Documents, or contesting the completeness or accuracy of the Disclosure Package, or the Offering Statement, or any amendment or supplement thereto, or contesting the exclusion from gross income of interest on the Bonds for federal income tax purposes, nor to the best of its knowledge is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by each of the Issuer Documents, or which, in any way, would adversely affect the validity or enforceability of any of the Issuer Documents, or any agreement or instrument to which the Issuer is a party, used or contemplated for

use in the consummation of the transactions contemplated by each of the Issuer Documents.

(f) The Issuer will cause the proceeds from the sale of the Bonds to be applied as provided for in the Bond Indenture and the Loan Agreement, as contemplated in the Offering Statement. The facilities refinanced with the proceeds of the Refunded Bonds constitute and will constitute “pollution control facilities” within the meaning of the Act.

(g) The Issuer has reviewed the statements made in each of the Preliminary Offering Statement and the Offering Statement under the caption “SUMMARY—County of Ohio”, under the caption “COUNTY OF OHIO, KENTUCKY” and under the caption “LITIGATION—Litigation Involving the County” and such statements under such captions solely as they relate to the Issuer (the “**Issuer Covered Sections**”), did not as of the date of the Preliminary Offering Statement and do not as of the date hereof, and the Issuer Covered Sections in the Offering Statement as of its date do not and as of the Closing Date (as defined below) will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(h) Any certificate signed by an authorized officer of the Issuer and delivered to the Underwriters shall be deemed a representation and warranty of the Issuer to the Underwriters as to the statements made therein.

8. **Closing.** At [10:00 A.M.], New York time, on [●], 2020, or on such other date and time as shall have been mutually agreed upon by the Issuer, the Company and the Representative (the “**Closing Date**”), the Issuer, subject to the terms and conditions hereof, shall deliver or cause to be delivered the Bonds to the Bond Trustee, as custodial agent for The Depository Trust Company (the “**Securities Depository**”), 55 Water Street, New York, New York, for the accounts designated by the Representative, or such other place as may be mutually agreed upon by the Issuer, the Company and the Representative, in definitive form, bearing CUSIP numbers, duly executed and authenticated, registered in the name of Cede & Co., as nominee for the Securities Depository, and shall deliver to the Underwriters the documents set forth in Section 9 at the offices of Bond Counsel. The Closing will be held via the Fast Automated Securities Transfer program (“**FAST**”) of the Securities Depository and the Bonds will be held by the Bond Trustee, as custodial agent for the Securities Depository. The Bonds shall be made available to the Underwriters at least one business day before the Closing Date for purposes of inspection. The Representative shall, subject to the terms and conditions hereof, accept such delivery and pay the purchase price of the Bonds as set forth in Section 2 hereof by wire transfer of federal funds to the order of the Administrative Agent as directed by the Issuer and the Company. This payment and delivery is herein called the “**Closing**.”

9. **Certain Conditions to Underwriters’ Obligations.** The Underwriters have entered into this Purchase Contract in reliance upon the representations, warranties and agreements of the Issuer contained herein, in reliance upon the representations, warranties and agreements of the Company contained in the Letter of Representation, in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer of its obligations hereunder and upon the performance by the Company of its obligations under the Letter of Representation,

in each case as of the date hereof and as of the Closing Date. Accordingly, the Underwriters' obligation under this Purchase Contract to purchase, to accept delivery of and to pay for the Bonds shall be subject to the performance by the Issuer of its obligations to be performed by it hereunder at or prior to the Closing, to the performance by the Company of the obligations and agreements to be performed by it under the Letter of Representation at or prior to the Closing, and to the accuracy in all respects of the representations and warranties of the Issuer and of the Company contained herein and in the Letter of Representation, respectively, as of the date hereof and to the accuracy in all material respects of such representations and warranties as of the Closing as if made on the Closing Date, and shall also be subject to the following additional conditions:

(a) At the time of the Closing, (i) the Resolution shall be in full force and effect and each of the Financing Documents (other than the Bonds) shall have been duly authorized, executed and delivered and shall not have been amended, modified, or supplemented, except as may have been agreed to in writing by the Representative; and (ii) the Issuer shall perform or have performed all of its obligations required under or specified in this Purchase Contract and the Offering Statement to be performed at or prior to the Closing.

(b) The Bonds shall have been duly authorized, executed, authenticated and delivered in accordance with the provisions of the Bond Indenture. The Note shall have been authenticated by the Mortgage Indenture Trustee in accordance with the provisions of the Mortgage Indenture.

(c) [As of the date hereof and] at the time of Closing, all necessary official action of the Issuer relating to the Financing Documents and the Offering Statement shall have been taken and shall be in full force and effect. *[Subject to SM confirmation that all actions will be taken by the date hereof.]*

(d) After the date hereof, up to and including the time of the Closing, there shall not have occurred any change in or particularly affecting the Issuer, the Company or the Financing Documents as the foregoing matters are described in the Disclosure Package and the Offering Statement, which in the reasonable judgment of the Representative materially adversely affects the market price or marketability of the Bonds.

(e) At or prior to the Closing, the Underwriters shall receive the following documents (in each case with only such changes as the Representative shall approve):

(1) The documents identified in Section 5 hereof;

(2) An opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel ("**Bond Counsel**"), addressed to the Issuer and accompanied by a letter to the Underwriters stating that the Underwriters may rely upon such opinion as if it were addressed to the Underwriters, dated the Closing Date, substantially in the form attached as Appendix G to the Preliminary Offering Statement;

(3) Opinions, dated the Closing Date and addressed to the Underwriters, of (i) Justin S. Keown, Esq., Counsel to the Issuer; (ii) Sullivan Mountjoy, PSC, Counsel to the Company; (iii) Bond Counsel; and (iv) Eversheds Sutherland (US) LLP, Counsel to the Underwriters (“**Counsel to the Underwriters**”), in each case in form and substance satisfactory to the Representative and covering such matters incident to the transactions contemplated hereby as such Representative or Counsel to the Underwriters may reasonably request;

(4) [Reserved];

(5) A certificate, dated the Closing Date, executed by the County Judge/Executive of the Issuer to the effect that:

(i) each of the representations and warranties set forth in Section 7 hereof is true, accurate and complete in all material respects on and as of the Closing Date as if made on the Closing Date;

(ii) each of the agreements of the Issuer, as set forth in this Purchase Contract to be complied with at or prior to the Closing, has been complied with;

(iii) the Resolution has not been amended, modified, superseded or repealed, except for any amendments thereto that were approved in writing by the Representative, and is in full force and effect on the Closing Date; and

(iv) to his knowledge, no event affecting the Issuer has occurred since the date of the Disclosure Package which would cause the Disclosure Package or the Offering Statement to contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading;

(6) A certificate, dated the Closing Date, of the President & CEO and the Chief Financial Officer of the Company, providing as follows:

(i) certifying that each of the representations and warranties set forth in Section 1 of the Letter of Representation is true and correct in all material respects as if made on the Closing Date and that the Company has complied with all its agreements therein contained to be performed at or prior to the Closing Date;

(ii) certifying that as of the Closing Date there has been no material adverse change in the general affairs or in the financial position or net assets of the Company as a whole, as shown in the Preliminary Offering Statement, other than changes disclosed by or contemplated in

the Preliminary Offering Statement or in an amendment or supplement thereto; and

(iii) stating that they have examined the Disclosure Package and the final Offering Statement and that, other than, in each case, the Excluded Material (as defined in the Letter of Representation), (A) the Preliminary Offering Statement did not, as of its date, (B) the Disclosure Package did not, as of the Initial Sale Time, and (C) the Offering Statement did not, as of its date, and does not, as of the Closing Date, include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(7) A “bring-down” letter with regard to certain procedures performed through a specified date not more than five business days prior to the date of such letter, dated the Closing Date and addressed to the Underwriters, from KPMG, as the Company’s auditor, in the form agreed to by KPMG and the Representative;

(8) A certificate of a duly authorized officer of the Bond Trustee, dated the Closing Date and in form and substance satisfactory to the Representative, to the effect that:

(i) it is duly organized and validly existing in good standing under the laws of the United States and has full corporate right, power and authority to execute the Bond Indenture;

(ii) the Bond Indenture has been duly authorized, executed and delivered by the Bond Trustee;

(iii) the Bond Indenture is a valid, legal and binding obligation of the Bond Trustee, enforceable in accordance with its terms;

(iv) the Bonds have been duly authenticated and delivered by the Bond Trustee;

(v) the execution and delivery of the Bond Indenture and compliance with the provisions on the Trustee’s part contained therein, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, note, resolution, agreement or other instrument to which the Bond Trustee is a party or is otherwise subject (except that no representation, warranty or agreement is made with respect to any federal or state securities or blue sky laws or regulations, or any laws relating to an air and water pollution control and sewage and solid waste disposal facility), which conflict, breach or default would materially impair the ability of the Bond Trustee to perform its obligations under the Bond Indenture, nor will any such execution, delivery or compliance result in the creation or imposition of

any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets held by the Bond Trustee pursuant to the lien created by the Bond Indenture under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided by the Bond Indenture; and

(vi) to the best of the knowledge of the Bond Trustee, it has not been served with any action, suit, proceeding, inquiry or investigation in law or in equity, before or by any court, governmental agency, public board or body, nor is any such action or other proceeding threatened against the Bond Trustee, affecting the existence of the Bond Trustee, or the titles of its officers to their respective offices or seeking to prohibit, restrain, or enjoining the execution and delivery of the Bonds or the receipt of payment under the Notes to be applied to pay the principal, premium, if any, and interest with respect to the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bond Indenture, or contesting the powers of the Bond Trustee or its authority to enter into, adopt or perform its obligations under any of the foregoing to which it is a party, wherein an unfavorable decision, ruling or funding would materially adversely affect the validity or enforceability of the Bond Indenture or the power and authority of the Bond Trustee to enter into and perform its duties under the Bond Indenture and to authenticate and deliver the Bonds to or upon the order of the Underwriters.

(9) Other certificates as to arbitrage and other federal tax matters executed by the Issuer and the Company, in form and substance satisfactory to Bond Counsel, including an Information Return for Tax-Exempt Bond Issues (the Internal Revenue Service form 8038-G) in a form satisfactory to Bond Counsel for filing; *[Subject to tax review.]*

(10) An opinion, dated the Closing Date, addressed to the Underwriters and the Company, of Shipman & Goodwin LLP, Counsel to the Bond Trustee, in form and substance satisfactory to the Representative and covering such matters incident to the transactions contemplated hereby as the Representative or Counsel to the Underwriters may reasonably request;

(11) An executed counterpart or photocopy thereof of the Issuer's Blanket Issuer Letter of Representations (the "**DTC Letter of Representation**");

(12) Evidence satisfactory to the Representative that, as of the Closing Date, the Bonds are rated "[●]" by Moody's Investors Service, Inc. and "[●]" by Fitch Ratings; and

(13) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Representative or Bond Counsel or Counsel to the Underwriters may reasonably request to evidence compliance by

the Issuer and the Company with legal requirements, the truth and accuracy, as of the Closing Date, of all representations herein contained and the due performance or satisfaction by the Issuer and the Company at or prior to such date of all agreements then to be performed and all conditions then to be satisfied as contemplated under this Purchase Contract.

## **10. Termination**

(a) If the Issuer or the Company shall be unable to satisfy on the Closing Date the conditions to the obligations of the Underwriters contained in this Purchase Contract, or if the obligations of the Underwriters shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract may be terminated by the Representative, and upon such termination, the Underwriters and the Issuer shall not have any further obligations hereunder, except for the respective obligations set forth in Section 13 hereof. The performance by the Issuer and the Company of any and all conditions contained in this Purchase Contract for the benefit of the Underwriters may be waived by the Representative.

(b) The Representative shall also have the right, before the Closing, to cancel its obligations to purchase the Bonds, by notification to the Issuer and the Company if at any time subsequent to the date hereof and at or prior to the Closing:

(i) Any event or circumstance occurs or information becomes known, which, in the reasonable judgment of the Representative, makes untrue any statement of a material fact set forth in the Preliminary Offering Statement or the Offering Statement or results in an omission to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the Issuer or the Company refuses to supplement the Offering Statement to correct such statement; or

(ii) The market for the Bonds or the market prices of the Bonds or the ability of the Underwriters to enforce contracts for the sale of the Bonds shall have been materially and adversely affected, in the reasonable judgment of the Representative, by:

(1) An amendment to the Constitution of the United States shall have been passed or legislation shall have been introduced in or enacted by the Congress of the United States or the legislature of any state having jurisdiction of the subject matter or legislation pending in the Congress of the United States shall have been amended or legislation shall have been recommended to the Congress of the United States or to any state having jurisdiction of the subject matter or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, or the Internal Revenue Service, or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or a decision shall have been rendered by a court of the United States or the Tax Court of the United States, or a ruling shall have been made or a regulation or temporary regulation shall have been proposed or made or any other release or announcement shall have been made by the Treasury Department of the United

States, the Internal Revenue Service or other federal authority, with respect to federal taxation upon revenues or other income of the general character to be derived by the Issuer under the Loan Agreement or upon interest received on obligations of the general character of the Bonds which, in the reasonable judgment of the Representative, may have the effect, directly or indirectly, of affecting the federal income tax consequences of interest on securities of the general character of the Bonds in the hands of the holders thereof;

(2) The declaration of war or engagement in or escalation of military hostilities by the United States or the occurrence of any other national emergency or calamity or terrorism affecting the operation of the government of, or the financial community in, the United States; or

(3) The declaration of a general banking moratorium by federal, New York or Kentucky authorities; or

(4) The occurrence of a major financial crisis, a material disruption in commercial banking or securities settlement or clearance services, or a material disruption or deterioration in the fixed income or municipal securities market not existing on the date hereof; or

(5) Additional material restrictions not in force or being enforced as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority having jurisdiction of the subject matter or by any national securities exchange; or

(6) The general suspension of trading on any national securities exchange; or

(iii) Legislation enacted, introduced in the Congress or recommended for passage (whether or not then introduced) by the President of the United States, or a decision rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed) or official statement issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter shall have been made or issued to the effect that the Bonds, other comparable securities of the Issuer or obligations of the general character of the Bonds are not exempt from registration under the Securities Act, or that the Bond Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”); or

(iv) Any material adverse change in or particularly affecting the affairs of the Company, the Act or the Financing Documents, as the foregoing matters are described in the Disclosure Package or the Offering Statement, as supplemented or amended, which in the reasonable judgment of the Representative materially and adversely affects the market for the Bonds or the market prices of the Bonds or the ability of the Underwriters to enforce contracts for the sale of the Bonds; or



(v) An order, decree or injunction of any court of competent jurisdiction, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including any or all underlying obligations, as contemplated hereby or by the Disclosure Package or the Offering Statement, is or would be in violation of any applicable law, rule or regulation, including (without limitation) any provision of applicable federal securities laws as amended and then in effect; or

(vi) A decision of any federal or state court having jurisdiction of the subject matter or ruling or regulation of the SEC or any other governmental agency having jurisdiction of the subject matter shall have been made or issued, or legislation shall be enacted to the effect that (1) either (A) the Bonds as contemplated by this Purchase Contract and the Letter of Representation, or (B) the Note are subject to the registration requirements of the Securities Act (and there is no applicable exemption); or (2) the qualification of the Bond Indenture or any other agreement in respect of the Bonds or any such securities is required under the Trust Indenture Act; or

(vii) A stop order, ruling, regulation or official statement by the SEC or any other governmental agency having jurisdiction of the subject matter shall have been issued or made or any other event occurs, the effect of which is that the issuance, offering or sale of the Bonds, or the execution and delivery of any Financing Documents, as contemplated hereby or by the Disclosure Package or the Offering Statement, as supplemented and amended, is or would be in violation of any applicable law, rule or regulation, including (without limitation) any provision of applicable federal securities laws, including the Securities Act, the Securities Exchange Act of 1934 or the Trust Indenture Act, each as amended and as then in effect; or

(viii) Any change or any development involving a prospective change in or affecting the business, properties or financial condition of the Company, except for changes which the Disclosure Package and Offering Statement, as supplemented and amended, discloses are expected to occur, and which requires a supplement or amendment to the Offering Statement that the Company or the Issuer refuses to permit and is deemed by the Representative in its reasonable judgment to materially and adversely affect the market for the Bonds or the market prices of the Bonds or the ability of the Underwriters to enforce contracts for the sale of the Bonds; or

(ix) Any litigation shall be instituted or be pending at the time of the Closing to restrain or enjoin the issuance, sale or delivery of the Bonds, or in any way contesting or affecting any authority for or the validity of the proceedings authorizing and approving the Act, the Financing Documents or the existence or powers of the Issuer or the Company with respect to either party's obligations under any of the Financing Documents; or

(x) (A) a downgrading shall have occurred in the Bonds or any rating accorded any of the Company's unenhanced secured debt securities by any "nationally recognized statistical rating organization," as that term is defined by the SEC for purposes of Rule 436(g)(2) under the Securities Act, or (B) any such organization shall

have publicly announced that it has under surveillance or review, with negative outlook, its rating of any of the Company's unenhanced secured debt securities.

**11. Issue Price Certification. [Subject to tax review.]**

(a) The Representative, on behalf of the Underwriters, agrees to assist the Issuer in establishing the issue price of the Bonds and shall execute and deliver to the Issuer at Closing an "issue price" or similar certificate, substantially in the form attached hereto as Exhibit [ ], together with the supporting pricing wires or equivalent communications, with such modifications as may be deemed appropriate or necessary, in the reasonable judgment of the Representative, the Issuer and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds.

(b) [Except for the maturities set forth in Schedule [ ] attached hereto,] the Issuer represents that it will treat the first price at which 10% of each maturity of the Bonds (the "**10% Test**") is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% Test). [If, as of the date hereof, the 10% Test has not been satisfied as to any maturity of the Bonds for which the Issuer has elected to utilize the 10% Test, the Representative agrees to promptly report to the Issuer the prices at which Bonds of that maturity or maturities have been sold by the Underwriters to the public. That reporting obligation shall continue until the earlier of the date upon which the 10% Test has been satisfied as to the Bonds of that maturity or maturities or the Closing Date.]

(c) The Representative confirms that the Underwriters have offered the Bonds to the public on or before the date of this Purchase Contract at the offering price or prices (the "**initial offering price**"), or at the corresponding yield or yields, set forth in Schedule [ ] attached hereto, except as otherwise set forth therein. Schedule [ ] also sets forth, as of the date of this Purchase Contract, the maturities, if any, of the Bonds for which the 10% Test has not been satisfied and for which the Issuer and the Representative, on behalf of the Underwriters, agrees that the restrictions set forth in the next sentence shall apply (the "hold-the-offering-price rule"). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriters will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (i) the close of the fifth (5<sup>th</sup>) business day after the sale date; or
- (ii) the date on which the Underwriters have sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.]

[c][d)]The Representative confirms that:

(i) any agreement among underwriters, any selling group agreement and each third-party distribution agreement (to which the Representative is a party) relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter, each dealer who is a member of the

selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(A)(i) to report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it until either all Bonds of that maturity allocated to it have been sold or it is notified by the Representative that the 10% Test has been satisfied as to the Bonds of that maturity and (ii) to comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Representative and as set forth in the related pricing wires, and

(B) to promptly notify the Representative of any sales of Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below),

(C) to acknowledge that, unless otherwise advised by the Underwriter, dealer or broker-dealer, the Representative shall assume that each order submitted by the Underwriter, dealer or broker-dealer is a sale to the public.

(ii) any agreement among underwriters and any selling group agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it until either all Bonds of that maturity allocated to it have been sold or it is notified by the Representative or such Underwriter that the 10% Test has been satisfied as to the Bonds of that maturity and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Representative or the Underwriter and as set forth in the related pricing wires.

The Issuer acknowledges that, in making the representations set forth in this section, the Representative will rely on (i) the agreement of each Underwriter to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an Underwriter is a party to a third-party distribution agreement that was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in the third-party distribution agreement and the related pricing wires. The Issuer further acknowledges that each Underwriter shall be solely liable for its failure to comply with its agreement to comply with its agreement to comply with the requirements for

establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, and that no Underwriter shall be liable for the failure of any other Underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds.

[d][e)]The Underwriters acknowledge that sales of any Bonds to any person that is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

- (i) “**public**” means any person other than an underwriter or a related party to an underwriter,
- (ii) “**underwriter**” means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the public),
- (iii) a purchaser of any of the Bonds is a “**related party**” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and
- (iv) “**sale date**” means the date of execution of this Purchase Contract by all parties.

12. **Blue Sky Qualification.** The Issuer covenants with the Underwriters to cooperate with the Representative and the Company and their counsel in qualifying the Bonds for offer and sale under the securities or “blue sky” laws of such jurisdictions of the United States of America as the Representative may request; provided that in no event shall the Issuer be obligated to take any action which would subject it to general service of process in any jurisdiction where it is not now so subject. It is understood that the Issuer is not responsible for compliance with or the consequences of failure to comply with applicable “blue sky” laws. The Issuer will notify the

Representative immediately of receipt by the Issuer of any written notification with respect to the suspension of the qualification of Bonds for sale in any jurisdictions or the initiation or threat of any proceeding for that purpose.

13. **Expenses.** The Underwriters shall be under no obligation to pay any fees or expenses incident to the performance of the Issuer's obligations hereunder, including, but not limited to, (i) the cost of printing and preparation for printing or other reproduction of each of the Financing Documents, the Disclosure Package, the Offering Statement and the cost of preparing the definitive Bonds; (ii) the fees and disbursements of Bond Counsel, Counsel to the Underwriters, accountants, and any other experts, attorneys or consultants retained by the Issuer or the Company; (iii) the fees of bond rating agencies in connection with the Bonds; (iv) the fees and expenses of the Bond Trustee and any agent of the Bond Trustee and the fees and disbursements of counsel for the Bond Trustee in connection with the Bond Indenture and the Bonds; (v) the fees of any municipal or financial advisors to the Company; (vi) expenses incurred by the Underwriters on behalf of the Issuer's or Company's employees and representatives which are incidental to implementing this Purchase Contract; and (vii) all other costs and expenses incident to the performance of the Company's obligations under the Letter of Representation or hereunder which are not otherwise specifically provided for in this Section. The fees, costs and expenses set forth in the immediately preceding sentence will be paid by the Company pursuant to the Letter of Representation. All other expenses and costs of the Underwriters incurred under or pursuant to this Purchase Contract, including, without limitation, the cost of preparing this Purchase Contract and other Underwriter documents and travel expenses, shall be paid by the Underwriters (which may be included as an expense component of the Underwriters' discount).

14. **Underwriters Not Fiduciaries.** The Issuer acknowledges and agrees that (i) the Underwriters are not acting as a municipal advisor within the meaning of Section 15B of the Securities Exchange Act, as amended; (ii) the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm's length commercial transaction among the Issuer, the Company and the Underwriters and the Underwriters have financial or other interests that differ from those of the Issuer; (iii) the Underwriters are acting solely as principals and are not acting as municipal advisors, financial advisors or fiduciaries to any party with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or is currently providing services to the Issuer on other matters); (iv) the only obligations the Underwriters have to the Issuer with respect to the transaction contemplated hereby are expressly set forth in this Purchase Contract; and (v) the Issuer has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

15. **Notices.** Any notice or other communication to be given to the Issuer under this Purchase Contract may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested, (such notice or communication to be deemed effective when received), to Ohio County Fiscal Court, 301 South Main, Hartford, Kentucky 42347, Attention: County Judge/Executive, and any such notice or other communication to be given to the Underwriters may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received) to BofA Securities, Inc. at One Bryant Park, 12<sup>th</sup> Floor, New York, New York, 10036, or by facsimile (such notice to be deemed effective when sent) to the attention of Andrew

Hildreth at 646-743-1607. All notices or communications hereunder by any party shall be given and served upon each other party. Any notice or communication to be given to the Company under this Purchase Contract may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested, (such notice or communication to be deemed effective when received), to the Company at 201 Third Street, Henderson, Kentucky 42420, Attention: Chief Financial Officer or by facsimile (such notice to be deemed effective when sent) to the attention of the Chief Financial Officer at [270-827-2101].

16. **Miscellaneous.** This Purchase Contract shall constitute the entire agreement between the Issuer and the Underwriters with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties regarding the transactions contemplated by this Purchase Contract and the process leading thereto. All representations and agreements of the Issuer in this Purchase Contract shall survive the Closing and shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of the Underwriters, (b) delivery of and payment for the Bonds pursuant to this Purchase Contract, and (c) any termination of this Purchase Contract but only to the extent provided by Section 10 hereof.

17. **Benefit.** This Purchase Contract is made solely for the benefit of the Issuer, the Underwriters (including the successors or assigns of the Underwriters) and the Company. The Company is an intended third-party beneficiary hereof and shall have any rights afforded to a party hereof. No person, partnership or corporation other than the Issuer, the Underwriters and the Company shall acquire or have any right hereunder or by virtue hereof.

18. **Amendments.** This Purchase Contract may not be amended or supplemented without the written consent of the Company, the Issuer and the Representative.

19. **Counterparts; Electronic Signature.** This Purchase Contract may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be one and the same instrument. A signature to this Purchase Contract delivered by facsimile, e-mail in portable document format (.pdf) or DocuSign electronic signature system shall be deemed to be an original manual signature and shall be binding upon the executing party and have the same legal effect as an original manual signature.

20. **Waiver of Right to Jury Trial.** Each of the Issuer and the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Purchase Contract or the transactions contemplated hereby.

21. **Governing Law.** The validity, interpretation and performance of this Purchase Contract shall be governed by and construed in accordance with the laws of the State of New York without regard to choice of law rules (other than New York General Obligations Laws Section 5-1401 and 5-1402).

[Signatures begin on the following page.]

**BofA Securities, Inc., as Representative of  
the Underwriters listed in Schedule 1**

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Andrew K. Hildreth

Accepted by County of Ohio, Kentucky pursuant to a resolution  
of the County of Ohio, Kentucky adopted at  
Hartford, Kentucky on [●], 2020.

By: \_\_\_\_\_  
*County Judge/Executive  
of County of Ohio, Kentucky*



**SCHEDULE 1**

**UNDERWRITERS**

BofA Securities, Inc.

[Co-manager]

\$[83,300,000]<sup>2</sup>  
County of Ohio, Kentucky  
Pollution Control Refunding Revenue Bonds, Series 2020B  
(Big Rivers Electric Corporation Project)

**LETTER OF REPRESENTATION**

[●], 2020

Fiscal Court of the County of Ohio  
Hartford, Kentucky

BofA Securities, Inc.  
One Bryant Park, 12<sup>th</sup> Floor  
New York, New York 10036

Ladies and Gentlemen:

Big Rivers Electric Corporation (the “**Company**”), in order to induce BofA Securities, Inc. (the “**Representative**”), acting on its own behalf and on behalf of the other underwriter listed in Schedule 1 to the Purchase Contract (the Representative and such other underwriter being collectively called the “**Underwriters**”) and County of Ohio, Kentucky (the “**Issuer**”) to enter into a Purchase Contract dated the date hereof (the “**Purchase Contract**”) relating to the purchase by the Underwriters from the Issuer of \$[83,300,000] aggregate principal amount of County of Ohio, Kentucky Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project) (the “**Bonds**”) does hereby execute and deliver this Letter of Representation. Capitalized terms used herein, if not otherwise defined herein, shall have the meanings assigned to such terms in the Purchase Contract, and, if not defined therein, in the Preliminary Offering Statement.

The Bonds will be issued under and pursuant to a Trust Indenture dated as of [●], 2020 (the “**Bond Indenture**”), by and between the Issuer and U.S. Bank National Association, as trustee (the “**Bond Trustee**”). On behalf of and at the direction of the Issuer, the proceeds of the Bonds shall be transferred to or at the direction of the Company.

The payment by the Issuer of a portion of the proceeds of the Bonds to or as directed by the Company is provided for by the provisions of the Loan Agreement, dated as of [●], 2020 (the “**Loan Agreement**”), between the Issuer and the Company, and the obligations thereunder to repay the principal amount of the Bonds when due at maturity and interest on the Bonds when due shall be evidenced by a note of the Company dated the date of issuance of the Bonds (the

<sup>2</sup> Subject to adjustment for premium issuance.

“**Note**”). The Note will be in the form specified in the Supplemental Indenture (as hereinafter defined) and the Loan Agreement and will be an Obligation secured under the Indenture, dated as of July 1, 2010, between the Company and U.S. Bank National Association, as trustee (the “**Mortgage Indenture Trustee**”), as heretofore supplemented or amended, including as supplemented by the [Tenth] Supplemental Indenture, dated as of [●], 2020 (the “**Supplemental Indenture**”), between the Company and the Mortgage Indenture Trustee (as supplemented and amended, the “**Mortgage Indenture**”).

The Company and the Issuer have caused to be prepared the following information: (i) a Preliminary Offering Statement, dated [●], 2020 (together with the appendices thereto, the “**Preliminary Offering Statement**”), (ii) the Pricing Supplement attached as Appendix B to the Purchase Contract (the “**Pricing Supplement**”), and (iii) the electronic road show made available to investors via the Internet (not including telephone question and answer sessions with investors) (the “**Electronic Road Show**”). The Preliminary Offering Statement, together with the Pricing Supplement, is referred to herein as the “**Disclosure Package**.”

1. **Representations, Warranties, and Covenants of the Company.** In consideration of the execution and delivery of the Purchase Contract, the Company represents, warrants and covenants to and with the Underwriters and the Issuer as follows:

(a) The Company has been duly incorporated and is now validly existing and in good standing as a rural electric cooperative corporation under the laws of the Commonwealth of Kentucky. The Company has been duly qualified as a foreign corporation in each jurisdiction in which such qualification is required and is in good standing under the laws of each such jurisdiction or is not subject to any material liability or disability by reason of the failure to be so qualified in any such jurisdiction.

(b) Except for the information which is permitted to be omitted pursuant to Rule 15c2-12(b)(1), the Preliminary Offering Statement, as of its date, and the Disclosure Package, as of [\_\_\_ P.M.], New York City time, on [●], 2020 (the “**Initial Sale Time**”), did not, and the Offering Statement, as of its date and as of the Closing Date, will not, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; as of the Initial Sale Time, the Electronic Road Show, when considered together with the Disclosure Package, did not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations or warranties in this Section 1(a) shall not apply to information contained in or omitted from the Preliminary Official Statement, the Official Statement or the Disclosure Package (or any supplement or amendment thereto) (i) in reliance upon information furnished to the Company in writing by or on behalf of the Representative expressly for use in the Preliminary Offering Statement and the Offering Statement under the heading “**UNDERWRITING**” (the “**Underwriter Covered Section**”), (ii) the DTC-related sections, (iii) the Issuer Covered Sections, and (iii) under the heading “**TAX MATTERS**” (collectively, the “**Excluded Material**”). The Company agrees to provide the Underwriters electronic versions of the Disclosure Package and print copies and electronic versions of the Offering Statement in “designated electronic format” (as

defined in MSRB Rule G-32) in sufficient quantity to permit the Underwriters to comply with Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (“**Rule 15c2-12**”), and other applicable rules of the SEC and the MSRB, within seven business days of the date hereof and in sufficient time to accompany any confirmation requesting payment from any customer. The Company has duly authorized the Underwriters to use the Disclosure Package and the Offering Statement in connection with the public offering and sale of the Bonds and transactions contemplated by the Preliminary Offering Statement and Offering Statement and hereby authorizes the Representative to file the Preliminary Offering Statement and Offering Statement with EMMA.

(c) The Company has full legal right, power and authority to, and has taken all corporate action necessary to, execute, deliver, and perform its obligations under this Letter of Representation, the Mortgage Indenture, the Supplemental Indenture, the Loan Agreement, the Continuing Disclosure Agreement, the Tax Certificate and Agreement and the Note (together, the “**Company Documents**”). As of the date hereof, this Letter of Representation and the Mortgage Indenture (excluding the Supplemental Indenture) are, and as of the Closing, the Supplemental Indenture, the Loan Agreement, the Continuing Disclosure Agreement, the Tax Certificate and Agreement and the Note will have been, duly authorized, executed and delivered by the Company (and in the case of the Note, will be duly authenticated by the Mortgage Indenture Trustee pursuant to the terms of the Mortgage Indenture) and will be in or are in full force and effect and will or do constitute the legal, valid and binding obligations of the Company enforceable in accordance with their respective terms (except as to enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting enforcement of creditors’ rights and by equitable rights where equitable remedies are sought and except that rights to indemnity and remedies for breach of representations and warranties relating to the Disclosure Package or the Offering Statement may be limited under the federal securities laws or other applicable laws), and performance by the Company thereunder will not conflict with, violate, or result in a breach of any of the provisions of, or constitute a default under (i) the Company’s Articles of Incorporation, as amended, or its Bylaws, as amended, or (ii) any agreement or instrument to which, or any law, administrative regulation or court decree by which, the Company is bound, except in the case of clause (ii) above, for any such violation, breach or default that would not individually or in the aggregate, be reasonably expected to have a material adverse effect on the business, properties, operations or current or future financial position, patronage capital, margins or results of operations of the Company or on the performance by the Company of its obligations under the Financing Documents (a “**Material Adverse Effect**”). To the extent described therein, the Company Documents conform to the descriptions thereof contained in the Disclosure Package and the Offering Statement.

(d) The Company agrees to assist the Issuer in providing to the Underwriters the Offering Statement in the quantities and at the times required by Section 5(a)(1) of the Purchase Contract.

(e) During the Update Period, if any event shall occur which in the reasonable opinion of the Representative would cause the Offering Statement, as then supplemented

or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and if in the reasonable opinion of the Representative such event requires the preparation and publication of a supplement or amendment to the Offering Statement, the Company will amend or supplement the Offering Statement in a form and manner approved by the Issuer, the Representative and Bond Counsel so that the Offering Statement, as so supplemented or amended, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided, however, that all expenses incurred in connection with any such supplement or amendment will be paid by the Company. The Company agrees to notify the Representative of any event of the type described in this paragraph of which it has knowledge.

(f) If the Offering Statement is supplemented or amended, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended) at all times subsequent thereto up to and including that date that is 25 days from the “end of the underwriting period” (as defined in Rule 15c2-12), the Offering Statement as so supplemented or amended will be true and correct in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) Except as contemplated herein or as contemplated or set forth in the Disclosure Package, or as the result of operations in the ordinary course of business as described in the Disclosure Package, the Company, subsequent to the dates as of which information is given in the Disclosure Package and as of the date on which the representation with respect to this paragraph is being made (being the date of this Letter of Representation and, pursuant Section 9 of the Purchase Contract, the Closing Date), has not incurred, and will not incur without the written consent of the Representative, any material liabilities or obligations for borrowed money or for the deferred purchase of goods or services, direct or contingent.

(h) [Other than as described in the Disclosure Package,] there is no action, suit, proceeding, or inquiry or investigation of which the Company has notice, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or known to the Company to be threatened against the Company, wherein an unfavorable decision, ruling or finding would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(i) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending that is (1) contesting the exclusion from gross income of interest on the Bonds for federal income tax purposes or (2) contesting in any way the completeness or accuracy of the Disclosure Package or the Offering Statement or any supplement or amendment thereto, or to the Company’s actual knowledge, no such action, suit or proceeding, inquiry or investigation is threatened.

(j) The Company will cause the proceeds from the sale of the Bonds to be applied as provided for in the Bond Indenture and the Loan Agreement.

(k) All consents, licenses, approvals, authorizations, permits and orders of any governmental authority, board, agency or commission or filings or registrations with any governmental authority of the Commonwealth of Kentucky or the United States of America required in connection with, or the absence of which would materially adversely affect the execution and delivery by the Company of, the Loan Agreement, the Continuing Disclosure Agreement, the Mortgage Indenture, the Supplemental Indenture, the Tax Certificate and Agreement, the Note and this Letter of Representation, the performance by the Company of its obligations thereunder and hereunder and of the transactions contemplated in the Disclosure Package, except as described in the Disclosure Package, and the issuance and sale of the Bonds, have been obtained or made and are in full force and effect or will be obtained prior to the Closing; provided, however, that no representation is made concerning compliance with the federal securities laws or the securities or “blue sky” laws of the various jurisdictions of the United States of America.

(l) The Company will notify the Representative if, prior to the Closing Date, any event occurs which, in the judgment of the Company, makes the Disclosure Package or the Offering Statement contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading, and the Company will change the Disclosure Package or the Offering Statement so that it does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements, in the light of the circumstances under which they were made, not misleading.

(m) The Company will diligently cooperate with the Representative to qualify the Bonds for offer and sale under the securities or “blue sky” laws of such jurisdictions as the Representative may request; provided that in no event shall the Company be obligated to qualify to do business in any jurisdictions where it is not now so qualified or to take any action which would subject it to the general service of process in any jurisdictions where it is not now so subject. The Company will not be responsible for compliance with or the consequences of failure to comply with applicable “blue sky” laws. The Company will notify the Representative immediately of receipt by the Company of any written notification with respect to the suspension of the qualification of Bonds for sale in any jurisdictions or the initiation or threat of any proceeding for that purpose.

(n) The Company will pay the reasonable expenses to be paid by it pursuant to Section 13 of the Purchase Contract (subject to the terms and conditions set forth therein). [In addition, as compensation to the Underwriters for their commitments and obligations under the Purchase Contract, the Company will pay to the Representative by wire transfer in immediately available funds, an amount equal to \$[●] (such fee being inclusive of the Underwriters’ out-of-pocket expenses).] Such payment shall be made simultaneously with the payment by the Representative of the purchase price of the Bonds as provided in the Purchase Contract.

(o) The Preliminary Offering Statement was, as of its date, “deemed final,” within the meaning of Rule 15c2-12 by the Company on behalf of the Issuer as of the date thereof and as of the date hereof, except for the omission of such information as is specified in paragraph (b)(1) of Rule 15c2-12 and the Issuer Covered Sections, and is deemed to be a “final official statement” within the meaning of Rule 15c2-12.

(p) The Company is in compliance with all of its continuing disclosure undertakings entered into pursuant to Rule 15c2-12 and has not failed to comply with any such undertakings during the last five years.

(q) The audited financial statements of the Company for the fiscal years ended December 31, 2019 and December 31, 2018 contained in Appendix A to the Preliminary Offering Statement and the Offering Statement and the unaudited financial statements as of June 30, 2020 and June 30, 2019 contained in the Preliminary Offering Statement and Offering Statement present fairly the consolidated financial position of the Company as of the dates indicated and the results of operations and changes in cash flows for the periods specified, and such financial statements have been prepared in conformity with generally accepted accounting principles consistently applied. There has been no material adverse change in the condition, financial or otherwise, of the Company since [June 30, 2020], from that set forth in the financial statements, as of and for the period ended that date, except as disclosed in the Preliminary Offering Statement and the Offering Statement.

(r) The Company has taken all action required to perfect the security interest created by the Mortgage Indenture wherever such security interest can be perfected by the filing of financing statements under the Uniform Commercial Codes of the jurisdictions where such filings are made, including any recording or re-recording of the Mortgage Indenture in all counties where the Company owns substantial assets, as security for the Obligations referred to therein, including the Note.

(s) The Company has good and marketable title to the mortgaged property (as described and defined in the Mortgage Indenture) subject to Permitted Exceptions and Prior Liens permitted by Section 13.6 the Mortgage Indenture, all as such terms are defined in the Mortgage Indenture.

(t) Each of the Wholesale Power Contracts (each, a “**Wholesale Power Contract**” and, collectively, the “**Wholesale Power Contracts**”), between the Company and those Members identified in the Preliminary Offering Statement as parties to such Wholesale Power Contracts, have been duly authorized, executed and delivered by the Company and constitute legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject, as to enforcement, to bankruptcy, insolvency reorganization and other laws of general applicability relating to or affecting creditors’ rights and to general equity principles.

(u) [In the last ten years,] the Company, to the best of its knowledge, has never been and is not in default in the payment of principal of, premium, if any, or interest on, or otherwise is not nor has it been in default with respect to any bonds, notes,

or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest.

(v) Any certificate signed by an authorized officer of the Company and delivered to the Underwriters shall be deemed a representation and warranty of the Company to the Underwriters as to the statements made therein.

2. **Acceptance by the Issuer.** The acceptance and confirmation of this Letter of Representation by the Issuer shall constitute a representation and warranty by the Issuer to the Company that the representations and warranties contained in Section 7 of the Purchase Contract are true as of the date hereof and will be true in all material respects as of the Closing Date, as if made on the Closing Date.

3. **Indemnification.**

(a) The Company shall indemnify and hold harmless, to the extent permitted by law, the Underwriters and their respective directors, officers, and employees and each person who controls any Underwriter within the meaning of Section 15 of the Securities Act of 1933, as amended (the “**Securities Act**”) (any such person being therein sometimes called an “**Underwriter Indemnitee**”) and the Issuer, against any and all losses, claims, damages or liabilities, joint or several, (a) to which any such Underwriter Indemnitee or the Issuer may become subject, under any statute or regulation at law or in equity or otherwise, insofar as such losses claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement of a material fact set forth in the Disclosure Package or the Offering Statement or any amendment or supplement to either, or the Electronic Road Show, or arise out of or are based upon the omission to state therein a material fact which is necessary in order to make the statements made therein, in the light of the circumstances in which they were made, not misleading, except such indemnification shall not extend to statements in the Disclosure Package, the Preliminary Offering Statement or the Offering Statement under the Underwriter Covered Section and (b) to the extent of the aggregate amount paid in any settlement of any litigation commenced or threatened arising from a claim based upon any such untrue statement or omission if such settlement is effected with the written consent of the Company (which consent shall not be unreasonably withheld); and will reimburse any legal or other expenses reasonably incurred by any such Underwriter Indemnitee or the Issuer in connection with investigating or defending any such loss, claim, damage, liability or action. This indemnity agreement shall not be construed as a limitation on any other liability which the Issuer may otherwise have to any Underwriter Indemnitee or the Issuer.

(b) The Underwriters shall indemnify and hold harmless, to the extent permitted by law, the Company and its directors, officers, members, and employees and each person who controls the Company within the meaning of Section 15 of the 1933 Act (any such person being therein sometimes called a “**Company Indemnitee**”) and the Issuer, against any and all losses, claims, damages or liabilities, joint or several, to which such Company Indemnitee or the Issuer may become subject under any statute or at law or in equity or otherwise, and shall promptly reimburse any such Company Indemnitee or



the Issuer for any reasonable legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, but only to the extent that such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement of a material fact contained in, or the omission to state therein a material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, the Disclosure Package or the Offering Statement, or any amendment or supplement thereof, under the Underwriter Covered Section. This indemnity agreement shall not be construed as a limitation on any other liability which the Underwriters may otherwise have to any Issuer Indemnitee. The liability of any Underwriter obligations under this Section 3 shall not exceed the amount of its *pro rata* compensation under the Purchase Contract.

(c) For purposes of subsection (a) or (b) above, an “**Indemnified Party**” means an Underwriter Indemnitee, an Issuer Indemnitee or the Issuer as the context dictates and an “**Indemnifying Party**” means the Company or the Underwriter who is under the obligation to indemnify an Indemnified Party under this Section 3. An Indemnified Party shall, promptly after the receipt of notice of the commencement of any action against such Indemnified Party in respect of which indemnification may be sought against an Indemnifying Party, notify the Indemnifying Party in writing of the commencement thereof, but the omission to notify the Indemnifying Party of any such action shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party otherwise than under the indemnity agreement contained herein. In case any such action shall be brought against an Indemnified Party and such Indemnified Party shall notify the Indemnifying Party of the commencement thereof, the Indemnifying Party may, or if so requested by such Indemnified Party shall, participate therein or assume the defense thereof, with counsel satisfactory to such Indemnified Party, and after notice from the Indemnifying Party to such Indemnified Party of an election so to assume the defense thereof, the Indemnifying Party will not be liable to such Indemnified Party under this paragraph for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof other than reasonable costs of investigation. If the Indemnifying Party shall not have employed counsel to manage the defense of any such action or if the Indemnified Party shall have reasonably concluded that there may be defenses available to it or them that are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of such Indemnified Party), such Indemnified Party shall have the right to retain legal counsel of its own choosing and the reasonable legal and other expenses incurred by such Indemnified Party shall be borne by the Indemnifying Party.

An Indemnifying Party shall not be liable for any settlement of any such action effected without its consent by any Indemnified Party, which consent shall not be unreasonably withheld, but if settled with the consent of the Indemnifying Party or if there be a final judgment for the plaintiff in any such action against the Indemnifying Party or any Indemnified Party, with or without the consent of the Indemnifying Party, the Indemnifying Party agrees to indemnify and hold harmless such Indemnified Party to the extent provided herein.

(d) If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an Indemnified Party under subsection (a) or (b) above, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of the losses, claims, damages, liabilities or expenses referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Bonds or (ii) if the allocation provided by clause (i) above is not permitted by applicable law in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriter. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an Indemnified Party as a result of the losses, claims, damages, liabilities or expenses referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any action or claim which is the subject to this subsection (d). Notwithstanding the provisions of this subsection (d), each Underwriter shall not have any obligation under this subsection (d) to contribute an amount in excess of the amount of its *pro rata* compensation under the Purchase Contract. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The indemnity agreements contained in this Section 3 shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the Underwriters or any person so controlling an Underwriter or by or on behalf of the Company or by or on behalf of the Issuer. A successor of any Underwriter or the Company or of the Issuer, as the case may be, shall be entitled to the benefits of the indemnity and reimbursement agreements contained in this Section 3; the term "successor" shall not include any purchaser of Bonds from an Underwriter merely because of such purchase.

4. **Termination by Underwriters.** The Representative agrees that, if the Purchase Contract is terminated pursuant to Section 10 thereof, the Company shall not have any further obligations to the Underwriters under this Letter of Representation other than as set forth in Section 1(n) and the agreements set forth in Section 3 hereof.

5. **Parties.** This Letter of Representation is made solely for the benefit of the Issuer and its directors, officers and agents, the Underwriters, persons controlling any Underwriter, and the Company and its directors and officers or any person who controls the Company within the meaning of Section 15 of the Securities Act, and their respective successors and assigns, and no other person, partnership, association or corporation shall acquire or have any right under or by virtue hereof. The terms “successors” and “assigns” shall not include any purchaser of Bonds from an Underwriter merely because of such purchase.

6. **Authorization of Transactions.** The execution and delivery of this Letter of Representation by the Company shall constitute the Company’s approval of and consent to the Issuer’s entering into, acceptance and execution of the Purchase Contract and performance thereunder.

7. **Notices.** Any notice or other communication to be given to the Company under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received) to the Company at 201 Third Street, Henderson, Kentucky 42420, Attention: Chief Financial Officer, or by facsimile (such notice to be deemed effective when sent) to the attention of the Chief Financial Officer of the Company at 270-827-2101. Any notice or other communication to be given to the Underwriters under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received) to BofA Securities, Inc. at One Bryant Park, 12<sup>th</sup> Floor, New York, New York, 10036, or by facsimile (such notice to be deemed effective when sent) to the attention of [generic reference] at [646-743-1607], and any notice or communication to be given to the Issuer under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received), at Ohio County Fiscal Court, 301 South Main, Hartford, Kentucky 42347, Attention: County Judge/Executive. The Company, the Issuer and the Underwriters shall each be fully entitled to rely upon notice given pursuant to this paragraph and to act thereon.

8. **Effectiveness; Termination Generally; Survival.** This Letter of Representation shall become effective upon execution hereof and the effectiveness of the Purchase Contract. It shall terminate upon termination of the Purchase Contract. The Company’s representations and warranties and agreements (including, without limitation, the Company’s agreements in Section 3) contained herein shall survive the Closing and shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of the Underwriters, (b) delivery of and payment for the Bonds, and (c) any termination of the Purchase Contract or this Letter of Representation but, in the case of this clause (c), as provided by Section 1(n) hereof.

9. **Underwriters Not Fiduciaries.** The Company acknowledges and agrees that (i) the Underwriters are not acting as a municipal advisor within the meaning of Section 15B of the Securities Exchange Act, as amended; (ii) the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm’s length commercial transaction among the Issuer, the Company and the Underwriters and the Underwriters have financial or other interests that differ from those of the Company; (iii) the Underwriters are acting solely as principals and are not acting as municipal advisors, financial advisors or fiduciaries to any party

with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or is currently providing services to the Company on other matters); (iv) the only obligations the Underwriters have to the Company with respect to the transaction contemplated hereby are expressly set forth in the Purchase Contract and this Letter of Representation; and (v) the Company has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate. The Company agrees that it will not claim that the Underwriters have rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

10. **Waiver of Right to Jury Trial.** The Company and the Underwriters hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Letter of Representation, the Purchase Contract or the transactions contemplated hereby.

11. **Counterparts; Electronic Signature.** This Letter of Representation may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be one and the same instrument. A signature to this Letter of Representation delivered by facsimile, e-mail in portable document format (.pdf) or DocuSign electronic signature system shall be deemed to be an original manual signature and shall be binding upon the executing party and have the same legal effect as an original manual signature.

12. **Entire Agreement.** This Letter of Representation supersedes all prior agreements and understandings between the parties.

13. **Amendments.** This Letter of Representation may not be amended or supplemented without the written consent of the parties hereto.

14. **Governing Law.** The validity, interpretation and performance of this Letter of Representation shall be governed by and construed in accordance with the laws of the State of New York without regard to choice of law rules (other than New York General Obligations Laws Section 5-1401 and 5-1402).

[Signatures begin on the following page.]

Very truly yours,

**BIG RIVERS ELECTRIC CORPORATION**

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

Name:

Title:

Accepted and confirmed as of the  
date first above written

**BofA Securities, Inc., as Representative of  
the Underwriters listed in Schedule 1**

\_\_\_\_\_  
Andrew K. Hildreth

Accepted by County of Ohio, Kentucky pursuant to a resolution  
of the County of Ohio, Kentucky adopted at  
Hartford, Kentucky on [●], 2020.

By: \_\_\_\_\_  
*County Judge/Executive  
of County of Ohio, Kentucky*

## APPENDIX B

### Pricing Supplement

<b>Issuer:</b>	County of Ohio, Kentucky
<b>Obligor:</b>	Big Rivers Electric Corporation
<b>Date:</b>	[●], 2020
<b>Security Type:</b>	Pollution Control Refunding Revenue Bonds, Series 2020B (Big Rivers Electric Corporation Project)
<b>Principal Amount:</b>	[\$83,300,000]
<b>Maturity Date:</b>	July 15, 2031
<b>Interest Rate:</b>	[●]%
<b>Price:</b>	[●]
<b>CUSIP Number:</b>	[●]
<b>Ratings on the Bonds:</b>	The Bonds have ratings of “[●]” from Moody’s and “[●]” from Fitch.
<b>Total Underwriters’ Compensation:</b>	[\$●]
<b>Underwriters:</b>	BofA Securities, Inc., [Co-manager]

## EXHIBIT B

THIS FIRST MORTGAGE NOTE, SERIES 2010A IS NONTRANSFERABLE EXCEPT AS MAY BE REQUIRED TO EFFECT ANY TRANSFER TO ANY SUCCESSOR TRUSTEE UNDER THE TRUST INDENTURE, DATED AS OF JUNE 1, 2010, BETWEEN THE COUNTY OF OHIO, KENTUCKY AND U.S. BANK NATIONAL ASSOCIATION, AS BOND TRUSTEE.

No. R-

\$83,300,000

### **BIG RIVERS ELECTRIC CORPORATION FIRST MORTGAGE NOTE, SERIES 2010A**

**BIG RIVERS ELECTRIC CORPORATION** ("Big Rivers"), a cooperative corporation organized under the laws of the Commonwealth of Kentucky, for value received, promises to pay to U.S. Bank National Association, as trustee (the "Bond Trustee"), or its successors in trust, the principal sum of \$83,300,000 and interest thereon as follows: Big Rivers shall pay, during the term of the Loan Agreement, dated as of June 1, 2010 (the "Financing Agreement"), between the County of Ohio, Kentucky (the "County") and Big Rivers, for deposit into the Bond Fund, (i) on or prior to each date on which interest is due on the County's Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project), (the "Series 2010A Bonds") issued by the County under the Trust Indenture, dated as of June 1, 2010 (the "Bond Indenture"), between the County and the Bond Trustee, as the same may be amended and supplemented from time to time, the amount of interest due on the Series 2010A Bonds on such date, computed in the manner described in the Bond Indenture, (ii) on the stated maturity date of the Series 2010A Bonds (or earlier date to which the maturity of the Series 2010A Bonds has been accelerated as a result of an event of default), a sum which will equal the principal amount of the Series 2010A Bonds which will become due on such date and (iii) on or prior to any redemption date for the Series 2010A Bonds, an amount equal to the principal of (premium, if any) and interest on the Series 2010A Bonds which are to be redeemed on such date.

This First Mortgage Note, Series 2010A is issued under, is described in and is subject to the Financing Agreement, and is secured by an Indenture, dated as of July 1, 2009 (the "Big Rivers Indenture"), between Big Rivers and U.S. Bank National Association, as trustee (the "Indenture Trustee"), as supplemented and amended.

All payments required pursuant hereto shall be made to the Bond Trustee at its principal office in St. Paul, Minnesota, in lawful money of the United States of America. As set forth in Section 5.7 of the Financing Agreement, the obligation of Big Rivers to make the payments required hereunder shall be absolute and unconditional.

This First Mortgage Note, Series 2010A may be prepaid upon the terms and conditions set forth in Article X of the Financing Agreement.



Big Rivers shall be entitled to credits against payments required hereby as provided in Section 5.2 of the Financing Agreement.

If the maturity date of the Series 2010A Bond shall be accelerated as a result of an event of default, the principal of this First Mortgage Note, Series 2010A shall become due and payable in the manner and with the effect provided in the Financing Agreement. The Financing Agreement provides that, under certain conditions, such acceleration shall be rescinded.

No recourse shall be had for the payments required hereby or for any claim based herein or on the Financing Agreement or on the Big Rivers Indenture against any officer, director or stockholder, past, present or, future, of Big Rivers as such, either directly or through Big Rivers, or under any constitution and provision, statute or rule of law or by the enforcement of any assessment or by any legal or equitable proceedings or otherwise.

This First Mortgage Note, Series 2010A shall not be entitled to any benefit under the Big Rivers Indenture and shall not become valid or obligatory for any purpose until the Indenture Trustee shall have signed the form of authentication certificate endorsed hereon.

All terms use in this First Mortgage Note, Series 2010A which are not defined herein shall have the meanings assigned to them in the Financing Agreement or the Bond Indenture.

IN WITNESS WHEREOF, Big Rivers has caused this First Mortgage Note, Series 2010A to be duly executed, attested and delivered the 8th day of June, 2010.

(SEAL)

**BIG RIVERS ELECTRIC CORPORATION**

---

Mark A. Bailey  
President and Chief Executive Officer

Attest:

---

C. William Blackburn  
Senior Vice President of Financial  
& Energy Services and Chief Financial Officer

This is one of the Obligations of the series designated therein referred to in within-mentioned Big Rivers Indenture.

U.S. BANK NATIONAL ASSOCIATION, as  
Indenture Trustee

By: \_\_\_\_\_  
Philip G. Kane, Jr.  
Vice President

Date of Authentication: June 8, 2010

<b>REFERENCES FOR COMPLIANCE WITH STATUTORY AND REGULATORY FILING REQUIREMENTS</b>		
<u>Law/Regulation</u>	<u>Filing Requirement</u>	<u>Location in Application</u>
	<b>IN GENERAL</b>	
807 KAR 5:001 Section 14(1)	The full name, mailing address, and electronic mail address of the Applicant	¶ 19
807 KAR 5:001 Section 14(1)	A request for the order, authorization, permission or certificate desired	Page 13
807 KAR 5:001 Section 14(1)	A reference to the particular provision of law authorizing the relief requested	¶ 21 and Page 13
807 KAR 5:001 Section 14(2)	State and date of incorporation; attest to good standing in state	¶ 19
	<b>APPROVAL TO ISSUE EVIDENCES OF INDEBTEDNESS</b>	
807 KAR 5:001 Section 18(1)(b)	A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant	Exhibit 12
807 KAR 5:001 Section 18(1)(c)	The amount and kinds of stock, if any, which the utility desires to issue, and if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and if and how to be secured	¶ 22

807 KAR 5:001 Section 18(1)(d)	The use to be made of the proceeds of the issue, with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding obligations	¶¶ 1, 5, and 23
807 KAR 5:001 Section 18(1)(e)	The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the petition;	¶ 23
807 KAR 5:001 Section 18(1)(f)	If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, a statement showing the date, amount time, rate of interest, and payee of each and the purpose for which their proceeds were expended	¶¶ 1 and 9 and Exhibit 10 2010A Note
807 KAR 5:001 Section 18(2)(a)	Financial exhibit	Exhibit 13
807 KAR 5:001 Section 18(2)(b)	Copies of trust deeds or mortgages, or reference to case number in which they were filed	Footnote 9, Page 6

<p>807 KAR 5:001 Section 18(2)(c)</p>	<p>Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the commission-prescribed uniform system of accounts for the various classes of utilities.</p>	<p>¶ 23</p>
<p>807 KAR 5:001 Section 12</p>	<p>Financial exhibit covering operations for a twelve month period ending not more than ninety days prior to the date the application is filed:</p> <ul style="list-style-type: none"> <li>-Amount and kinds of stock authorized;</li> <li>-Amount and kinds of stock issued and outstanding;</li> <li>-Terms of preference of preferred stock</li> <li>-Brief description of each existing mortgage of property, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with sinking fund provisions, if applicable;</li> <li>-Amount of bonds authorized and amount issued giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year;</li> <li>-Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year;</li> <li>-Other indebtedness giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year;</li> </ul>	<p>Exhibit 13</p>

	<p>-Rate and amount of dividends paid during the five previous fiscal years, and the amount of capital stock on which dividends were paid each year; and</p> <p>-Detailed income statement and balance sheet which cover operations for a twelve month period, said period ending not more than ninety days prior to the date the Application is filed.</p>	
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BIG RIVERS ELECTRIC CORPORATION'S  
DESCRIPTION OF PROPERTY  
As of March 31, 2020

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2  
3           Big Rivers Electric Corporation (“Big Rivers” or the “Corporation”) is a  
4 generation and transmission (“G&T”) cooperative headquartered in Henderson,  
5 Kentucky. The Corporation meets the electric power needs of three member distribution  
6 cooperatives, which, in turn, sell electricity to approximately 118,000 residential,  
7 commercial, and industrial consumers in 22 western Kentucky counties.

- 8  
9           1. Big Rivers’ utility plant-in-service, materials and supplies, and fuel inventory  
10 as of March 31, 2020, consisted of intangible plant, electric power generating  
11 plants, land right-of-ways, transmission stations and lines, land, buildings,  
12 office furniture and equipment, transportation equipment, storage equipment,  
13 tools, shop and garage equipment, laboratory equipment, power operated  
14 equipment, communication equipment, materials and supplies inventory, and  
15 fuel inventory. The original cost of these properties as of March 31, 2020,  
16 was \$2,124,194,822.
- 17  
18           2. As of March 31, 2020, Big Rivers’ intangible plant included organizational  
19 and franchise costs of \$66,895.
- 20  
21           3. Big Rivers owns and operates 1,444 megawatts (MW) of electric generating  
22 capacity from four power stations: Kenneth C. Coleman (443 MW), Robert A.  
23 Reid (130 MW), Robert D. Green (454 MW), and D.B. Wilson (417 MW).  
24 As of March 31, 2020 the original cost of Big Rivers’ generation assets was  
25 \$1,713,593,273 with a net book (i.e. depreciated) value of \$685,334,536.
- 26  
27           a. The Kenneth C. Coleman Station is a multiple unit generation plant  
28 consisting of three coal-fired units designed to burn Illinois Basin coal.  
29 The units were commercialized in 1969, 1970, and 1972, respectively,  
30 with a combined net output rating of 443 MW. As a result of the  
31 Century Aluminum Hawesville smelter contract termination in 2013  
32 and the Alcan Primary Products Corporation (now Century Aluminum  
33



BIG RIVERS ELECTRIC CORPORATION'S  
DESCRIPTION OF PROPERTY  
As of March 31, 2020

1                   Sebree) smelter contract termination in 2014, the three generating units  
2                   that make up the Coleman Station were idled in May 2014 and are  
3                   proposed to be retired in 2020  
4

5                   b. The Robert A. Reid Station is a multiple unit generation plant  
6                   consisting of one coal-fired unit ("Reid Unit 1") designed to burn  
7                   Illinois Basin coal and one combustion turbine unit ("Reid CT") with  
8                   the ability to burn either fuel oil or natural gas. The units were  
9                   commercialized in 1966 and 1976, respectively, with a combined net  
10                  output rating of 130 MW (65 MW per unit). Reid Unit 1 was idled in  
11                  April 2016 and is proposed to be retired in 2020.  
12

13                  c. The Robert D. Green facility is a multiple unit generation plant  
14                  consisting of two coal-fired units designed to burn Illinois Basin coal.  
15                  The units were commercialized in 1979 and 1981, respectively, with a  
16                  combined net output rating of 454 MW.  
17

18                  d. The D.B. Wilson Station is a single coal-fired unit designed to burn  
19                  Illinois Basin coal. The unit was commercialized in 1986 with a net  
20                  output rating of 417 MW.  
21

22                  4. Big Rivers has interconnections with six utilities: Southern Illinois Power  
23                  Cooperative, Louisville Gas & Electric, Kentucky Utilities, Vectren, Hoosier  
24                  Energy Cooperative, and the Tennessee Valley Authority. However, Big  
25                  Rivers currently cannot purchase power from the Tennessee Valley Authority.  
26

27                  5. Transmission Facilities, as of March 31, 2020, included land, right-of-ways,  
28                  station equipment, and lines costing \$294,473,324 with a net book  
29                  (depreciated) value of \$146,697,994. The miles of transmission line by size  
30                  are as follows: 851 miles of 69 kV, 14 miles of 138 kV, 366 miles of 161 kV,  
31                  and 68 miles of 345 kV. The substation capacity consists of 1,879,800 kVA  
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BIG RIVERS ELECTRIC CORPORATION'S  
DESCRIPTION OF PROPERTY  
As of March 31, 2020

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generation plant step up transformation and 4,045,000 kVA transmission substation transformation.

6. Big Rivers owns general plant assets costing \$55,003,317 as of March 31, 2020, with a net book (depreciated) value of \$25,412,808. General plant assets consist of land, structures and improvements, office furniture and equipment, transportation equipment, storage equipment, tools, shop and garage equipment, laboratory equipment, power operated equipment, communication equipment, and other miscellaneous equipment used to provide service to member cooperatives.

7. As of March 31, 2020, Big Rivers had materials and supplies inventory of \$24,066,908 and fuel inventory of \$36,991,105.

8. Big Rivers' investment in construction work in progress as of March 31, 2020 was \$41,056,666.

9. As of March 31, 2020, Big Rivers did not own any non-utility property.

BIG RIVERS ELECTRIC CORPORATION  
FINANCIAL EXHIBIT  
As of March 31, 2020

1  
2 Big Rivers states that:

- 3 a. No amounts or kinds of stock have been authorized.
- 4
- 5
- 6 b. No amounts or kinds of stock have been issued, and none are outstanding.
- 7
- 8
- 9 c. No amounts or kinds of preferred stock have been authorized, and none are
- 10 outstanding.
- 11
- 12
- 13 d. Effective with the close of the “Unwind” Transaction on July 16, 2009, all
- 14 previously existing mortgages were permanently extinguished with the Third
- 15 Restated Mortgage and Security Agreement (successor to the Restated Mortgage
- 16 and Security Agreement [the New RUS Mortgage] and Second Restated
- 17 Mortgage and Security Agreement) and replaced with Big Rivers’ Mortgage
- 18 Indenture (the “Indenture”). The Indenture secures on a *pro rata, pari passu* basis
- 19 all of the indebtedness owed by Big Rivers to its existing senior secured creditors
- 20 as well as future senior secured creditors. A principal feature of the Indenture is
- 21 the use of a lien and security interest in favor of an institutional trustee rather than
- 22 in favor of each individual creditor as mortgagee. The Indenture creates a lien
- 23 and security interest on most of Big Rivers’ real and personal property.

24  
25  
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28  
29 Additional debt obligations can be secured under the Indenture on a *pari*

30 *passu* basis with Big Rivers’ existing senior secured creditors without obtaining

31

32

33

BIG RIVERS ELECTRIC CORPORATION  
FINANCIAL EXHIBIT  
As of March 31, 2020

1 the existing senior secured creditors' approvals, provided such debt obligations  
2 meet certain objective tests.

3  
4 The Indenture, dated July 1, 2009, was made by and between Big Rivers  
5 Electric Corporation, as Grantor, and U.S. Bank National Association, as Trustee.  
6 As of March 31, 2020, the Indenture secured the following Obligations:

- 7
- 8 • RUS 2009 Promissory Note Series B, dated July 16, 2009, made by the  
9 Company to the United States of America, in the amount at final maturity  
10 of \$245,530,257, maturing on December 31, 2023. This is an Existing  
11 Obligation under the Indenture.  
12
  - 13 • Big Rivers Electric Corporation First Mortgage Note, Series 2010A, dated  
14 July 8, 2010, made by the Company to U.S. Bank Trust National  
15 Association, as trustee, in an amount equal to the principal and interest  
16 due on the \$83,300,000 County of Ohio, Kentucky, Pollution Control  
17 Refunding Revenue Bonds, Series 2010A. This is an Additional  
18 Obligation under the Indenture.  
19
  - 20 • Big Rivers Electric Corporation First Mortgage Note, Series 2012A, dated  
21 July 24, 2012, made by the Company to CoBank, ACB, in the original  
22 principal amount of \$235,000,000, maturing on June 30, 2032. This is an  
23 Additional Obligation under the Indenture.  
24
  - 25 • Big Rivers Electric Corporation First Mortgage Note, Series 2012B, dated  
26 July 27, 2012, made by the Company to National Rural Utilities  
27 Cooperative Finance Corporation, in the original principal amount of  
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BIG RIVERS ELECTRIC CORPORATION  
FINANCIAL EXHIBIT  
As of March 31, 2020

1                   \$302,000,000, maturing on May 31, 2032. This is an Additional  
2                   Obligation under the Indenture.

- 3
- 4                   • Big Rivers Electric Corporation First Mortgage Notes, Series 2015A,  
5                   dated March 5, 2015, and amended September 19, 2017, made by the  
6                   Company to National Rural Utilities Cooperative Finance Corporation,  
7                   Regions Bank, KeyBank National Association, Fifth Third Bank, and  
8                   CoBank, ACB (collectively, the “Lenders”) in the aggregate principal  
9                   amount of \$100,000,000 to secure the loans made by the Lenders to Big  
10                  Rivers under the Senior Secured Credit Agreement, maturing on  
11                  September 19, 2020. This is an Additional Obligation under the  
12                  Indenture.

- 13
- 14                  • Big Rivers Electric Corporation First Mortgage Notes, RUS 2018 W8 FFB  
15                  Loan, dated January 02, 2018, made by the Company through the United  
16                  States of America to the Federal Financing Bank, in the original aggregate  
17                  principal amount of \$25,630,000, maturing on January 3, 2033. This is an  
18                  Existing Obligation under the Indenture.

- 19
- 20                  • Big Rivers Electric Corporation First Mortgage Notes, RUS 2018 X8 FFB  
21                  Loan, dated January 02, 2018, made by the Company through the United  
22                  States of America to the Federal Financing Bank, in the original aggregate  
23                  principal amount of \$17,965,000, maturing on December 31, 2043. This  
24                  is an Existing Obligation under the Indenture.

25                   The Indenture provides that a maximum of \$3,000,000,000 of Additional  
26                   Obligations may be issued and secured. As noted above, the Big Rivers Electric  
27

BIG RIVERS ELECTRIC CORPORATION  
FINANCIAL EXHIBIT  
As of March 31, 2020

1 Corporation First Mortgage Notes, Series 2010A, 2012A, 2012B, and 2015A,  
2 RUS 2018 W8 FFB Loan, RUS 2018 X8 FFB Loan are Additional Obligations  
3 under the Indenture.  
4

- 5  
6 e. Big Rivers has financed certain pollution control facilities at its D.B. Wilson  
7 Station with pollution control bonds issued by the County of Ohio, Kentucky.  
8 Big Rivers Electric Corporation has one issue outstanding.  
9

10 On June 30, 1983, the County of Ohio, Kentucky, issued \$58,800,000 of  
11 Pollution Control Floating Rate Demand Bonds, Series 1983 (“Series 1983  
12 Bonds”), with a stated maturity date of June 1, 2013. These bonds bore interest at  
13 a variable rate and, prior to July 15, 1998, were supported by an irrevocable  
14 standby letter of credit. On July 15, 1998 the standby letter of credit was replaced  
15 by a liquidity facility issued by Credit Suisse First Boston (subsequently assigned  
16 to Dexia Credit Local effective May 1, 2006) and municipal bond insurance and  
17 security policies issued by Ambac Assurance Corporation. A Remarketing Agent  
18 was responsible for determining the stated rate (Base Rate) of interest to be  
19 applied to the Series 1983 Bonds necessary to remarket the bonds at par plus  
20 accrued interest in a secondary market transaction. The Base Rate so determined  
21 could not be less than 40 percent or more than 110 percent of a variable interest  
22 index. This variable interest index was the weighted average per annum discount  
23 rate for direct obligations of the United States with maturities of 13 weeks,  
24 expressed as a bond equivalent on the basis of a 365 or 366 day year, as  
25 appropriate, and applied on a daily basis, set on the latest auction date of such  
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BIG RIVERS ELECTRIC CORPORATION  
FINANCIAL EXHIBIT  
As of March 31, 2020

1 obligations. The Base Rate could not exceed 13 percent and was subject to Big  
2 Rivers' approval.

3  
4 If the Remarketing Agent was unable to remarket the Bonds, they were  
5 tendered to the Liquidity Provider (Dexia Credit Local) under the terms of the  
6 Standby Bond Purchase Agreement and became "Bank Bonds" with interest paid  
7 at the "Bank Rate". The Bank Rate was the higher of (a) the base commercial  
8 lending rate announced from time to time by the Liquidity Provider in effect on  
9 such date, or (b) the rate quoted by the Liquidity Provider on such date to dealers  
10 in the New York Federal funds market for the overnight offering of dollars by the  
11 Liquidity Provider for deposit, plus one half of one percent. The Bank Rate  
12 could not exceed the lesser of 18 percent per annum and the maximum rate of  
13 interest permitted by applicable law.  
14  
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18 The Series 1983 Bonds were supported by two promissory notes  
19 (AMBAC Municipal Bond Insurance Policy Series 1983 Note and Standby Bond  
20 Purchase Agreement Note) from Big Rivers, which bore the same interest rate as  
21 the bonds. Big Rivers' Indenture secured the promissory notes issued in support  
22 of the Series 1983 Bonds equally and ratably with all other Obligations secured  
23 under the Indenture.  
24  
25

26 Big Rivers refunded the Series 1983 Bonds by purchase on May 31, 2013.  
27 The interest paid on the Series 1983 Bonds during the fiscal year ending  
28 December 31, 2013 (the last fiscal year during which the bonds were outstanding)  
29 was \$955,500, and the effective interest rate of the bonds was 3.25%. No interest  
30  
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BIG RIVERS ELECTRIC CORPORATION  
FINANCIAL EXHIBIT  
As of March 31, 2020

1 was paid on the Series 1983 Bonds during the fiscal year ending December 31,  
2 2016.

3  
4 On June 8, 2010, the County of Ohio, Kentucky, Pollution Control  
5 Refunding Revenue Bonds, Series 2010A (“Series 2010A Bonds”), with a  
6 maturity date of July 15, 2031 were issued in the amount of \$83,300,000.  
7  
8 Proceeds from the Series 2010A Bonds were used to refund the Series 2001A  
9 Bonds. The Series 2010A Bonds bear interest at a fixed rate of 6.00%.

10  
11  
12 The Series 2010A Bonds are supported by a promissory note from Big  
13 Rivers, which bears the same interest rate as the bonds. Big Rivers’ Indenture  
14 secures the promissory note issued in support of the Series 2010A Bonds equally  
15 and ratably with all other Obligations issued under the Indenture. The interest  
16 paid on the Series 2010A Bonds during the fiscal year ending December 31, 2016,  
17 was \$4,998,000.  
18  
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22 f. As of March 31, 2020, Big Rivers’ notes outstanding consisted of the RUS 2009  
23 Promissory Note Series B (“RUS 2009 Series B Note”); Big Rivers Electric  
24 Corporation First Mortgage Notes, Series 2010A, Series 2012A, Series 2012B,  
25 Series 2015A, RUS 2018 W8 FFB Loan, RUS 2018 X8 FFB Loan ; and the  
26 Capital Term Certificates Promissory Note dated July 27, 2012, (associated with  
27 borrowings secured by Big Rivers Electric Corporation First Mortgage Notes,  
28 Series 2012B).  
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BIG RIVERS ELECTRIC CORPORATION  
FINANCIAL EXHIBIT  
As of March 31, 2020

1           The RUS 2009 Series B Note, dated July 16, 2009, was issued in favor of  
2 the United States of America, acting through the United States Department of  
3 Agriculture, Rural Utilities Services, (the “RUS”), in the original principal  
4 amount of \$245,530,257, with a maturity date of December 31, 2023. The RUS  
5 2009 Series B Note has no stated interest rate and an outstanding stated principal  
6 balance of \$245,530,257 as of March 31, 2020. No interest amount is paid on this  
7 note.  
8  
9

10           Big Rivers Electric Corporation First Mortgage Note, Series 2010A  
11 (associated with the Series 2010A Bonds), dated June 1, 2010, was issued in favor  
12 of U.S. Bank National Association, as trustee, in the original principal amount of  
13 \$83,300,000, with a maturity date of July 15, 2031. The First Mortgage Note,  
14 Series 2010A, has a fixed interest rate of 6.00% and an outstanding principal  
15 balance of \$83,300,000 as of March 31, 2020. The interest paid on the Series  
16 2010A Bonds during the fiscal year ending December 31, 2019, was \$4,998,000.  
17  
18

19           Big Rivers Electric Corporation First Mortgage Note, Series 2012A, dated  
20 July 24, 2012, was issued in favor of CoBank, ACB, in the original principal  
21 amount of \$235,000,000, with a maturity date of June 30, 2032. The First  
22 Mortgage Note, Series 2012A, has a fixed interest rate of 4.30% and an  
23 outstanding principal balance of \$ \$168,910,732 as of March 31, 2020. The  
24 interest paid on the First Mortgage Note, Series 2012A during the fiscal year  
25 ending December 31, 2019, was \$7,741,613.  
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BIG RIVERS ELECTRIC CORPORATION  
FINANCIAL EXHIBIT  
As of March 31, 2020

1           Big Rivers Electric Corporation First Mortgage Note, Series 2012B, dated  
2 July 27, 2012, was issued in favor of National Rural Utilities Cooperative Finance  
3 Corporation, in the original principal amount of \$302,000,000, with a maturity  
4 date of May 31, 2032. The First Mortgage Note, Series 2012B, bears serial  
5 interest rate pricing, with interest rates ranging from 3.05% to 5.35%, and had an  
6 outstanding principal balance of \$ \$211,423,549 as of March 31, 2020. The  
7 interest paid on the First Mortgage Notes, Series 2012B during the fiscal year  
8 ending December 31, 2019, was \$ \$10,056,712.

9           The Capital Term Certificates (CTCs) Promissory Note (the “Equity  
10 Note” associated with the financing of the CTCs which Big Rivers was obligated  
11 to purchase in connection with the borrowings secured by Big Rivers Electric  
12 Corporation First Mortgage Note, Series 2012B), dated July 27, 2012, was issued  
13 in favor of National Rural Utilities Cooperative Finance Corporation, in the  
14 original principal amount of \$43,155,800, with a maturity date of May 31, 2032.  
15 The Equity Note has a fixed interest rate of 5.35% and an outstanding principal  
16 balance of \$ \$31,772,22 as of March 31, 2020. The interest paid on the Equity  
17 Note, during the fiscal year ending December 31, 2019, was \$1,783,797.

18           Big Rivers Electric Corporation First Mortgage Notes, Series 2015A, dated  
19 March 5, 2015, and amended September 19, 2017, (“Series 2015A Notes”) were  
20 issued in connection with the 2015 Senior Secured Credit Agreement, dated  
21 March 5, 2015, (“2015 Credit Agreement”) in favor of National Rural Utilities  
22 Cooperative Finance Corporation, Regions Bank, KeyBank National Association,  
23 Fifth Third Bank, and CoBank, ACB (collectively, the “Lenders), in the aggregate

BIG RIVERS ELECTRIC CORPORATION  
FINANCIAL EXHIBIT  
As of March 31, 2020

1 principal amount of \$100,000,000, with a maturity date of September 19,2020.

2 The interest rate applicable to loans under the 2015 Credit Agreement are  
3 determined based on the type of loan selected (i.e. LIBO Loan or Alternate Base  
4 Rate (ABR) Loan). For LIBO Loans, the applicable interest rate is equal to the  
5 LIBOR Rate for such Interest Period plus the LIBO Applicable Margin, based on  
6 the Secured Credit Rating of Big Rivers per the terms of the credit agreement.  
7 For ABR loans, the applicable interest rate is equal to the Alternate Base Rate  
8 plus the ABR Applicable Margin, as defined in the credit agreement. As of  
9 March 31,2020, there were no loans outstanding under the 2015 Senior Secured  
10 Credit Agreement. No interest was paid on the Series 2015A Notes during the  
11 fiscal year ended December 31, 2019.  
12  
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16           Big Rivers Electric Corporation First Mortgage Note, RUS 2018 W8 FFB  
17 Loan, dated January 02, 2018, was issued in favor of the Federal Financing Bank  
18 and administered through the Rural Utilities Service, in the original principal  
19 amount of \$25,630,000, with a maturity date of January 3, 2033. The First  
20 Mortgage Note, RUS 2018 W8 FFB Loan, has a fixed stated interest rate of  
21 2.703% with an effective interest rate of 2.828% and had an outstanding principal  
22 balance of \$ \$25,630,000 as of March 31, 2020. The interest paid on the First  
23 Mortgage Notes, RUS 2018 W8 FFB Loan, during the fiscal year ending  
24 December 31, 2019, was \$ \$542,123.  
25  
26  
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29           Big Rivers Electric Corporation First Mortgage Note, RUS 2018 X8 FFB  
30 Loan, dated January 02, 2018, was issued in favor of the Federal Financing Bank  
31 and administered through the Rural Utilities Service, in the original principal  
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BIG RIVERS ELECTRIC CORPORATION  
FINANCIAL EXHIBIT  
As of March 31, 2020

1 amount of \$25,630,000, with a maturity date of January 3, 2033. The First  
2 Mortgage Note, RUS 2018 W8 FFB Loan, has a fixed stated interest rate of  
3 2.810% with an effective interest rate of 2.935% and had an outstanding principal  
4 balance of \$ \$17,704,745 as of March 31, 2020. The interest paid on the First  
5 Mortgage Notes, RUS 2018 X8 FFB Loan, during the fiscal year ending  
6 December 31, 2019, was \$ \$527,273.  
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11  
12 g. The Company has no other indebtedness.  
13

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15 h. No dividends have been paid.  
16

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18 i. Big Rivers Electric Corporation's statement of operations and balance sheet for  
19 the twelve months ending March 31, 2020, are attached hereto.  
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