

SULLIVAN, MOUNTJOY, STAINBACK & MILLER, PSC  
ATTORNEYS AT LAW

Ronald M. Sullivan  
Jesse T. Mountjoy  
Frank Stainback  
James M. Miller  
Michael A. Fiorella  
Allen W. Holbrook  
R. Michael Sullivan  
Bryan R. Reynolds  
Tyson A. Kamuf  
Mark W. Starnes  
C. Ellsworth Mountjoy  
Susan Montalvo-Gesser

January 9, 2009

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

RECEIVED

JAN 12 2009

PUBLIC SERVICE  
COMMISSION

2009-00018

Re: Big Rivers Electric Corporation  
Request for Disclaimer of Jurisdiction

Dear Mr. Derouen:

This letter is written on behalf of Big Rivers Electric Corporation ("Big Rivers") to request affirmation by the Public Service Commission ("Commission") that the issuance by Big Rivers to the National Rural Utilities Cooperative Finance Corporation ("CFC") of the Letter of Credit Application and Agreement ("2009 Letter of Credit Agreement"), appended to this letter as **Attachment A**, and the Line of Credit Reserve Authorization, appended to this letter as **Attachment B**, do not require Commission approval. For your convenience, we enclose an original and five copies of this letter and attachments.

Background

Big Rivers sought Commission waiver of jurisdiction or approval for a \$15 million, ten-year renewal of a revolving credit facility with CFC in 2003.<sup>1</sup> The Commission issued its order on June 24, 2003 (the "2003 Order," a copy of which is appended to this letter as **Attachment C**)<sup>2</sup>, finding certain aspects of the transaction to be non-jurisdictional, and approving other aspects of the transaction which it found to be jurisdictional.

More specifically, the Commission found that the (renewed) CFC credit facility "requires all loans to CFC to be paid off every twelve months and prohibits the renewal or rolling-over of those loans. Consequently, the Commission finds that the renewed credit facility for a maximum aggregate amount outstanding of \$15 million qualifies for the exemption under KRS 278.300(8) and does not require Commission approval."<sup>3</sup>

<sup>1</sup> *Big Rivers Electric Corporation's Application for Approval to Amend Evidences of Indebtedness*, PSC Case No. 2003-00240.

<sup>2</sup> Order of June 24, 2003, in Case No. 2003-00240.

<sup>3</sup> 2003 Order, at 2.

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The Commission did find that the five financing documents filed by Big Rivers in connection with the request were not exempt from Commission jurisdiction. Those documents, listed below showing the exhibit numbers given them in the 2003 filing by Big Rivers in Case No. 2003-00240, are:

- Exhibit 1: First Amendment to Third Restated Mortgage and Security Agreement;
- Exhibit 2: Second Amendment to Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement;
- Exhibit 3: First Amended and Restated Revolving Credit Agreement;
- Exhibit 4: First Amended and Restated Secured Promissory Note; and
- Exhibit 5: First Amended and Restated Letter of Credit Application and Agreement (Master Facility).

For your convenience, the First Amended and Restated Revolving Credit Agreement (“2003 Revolving Credit Agreement”) is appended hereto as **Attachment D**, the First Amended and Restated Secured Promissory Note is appended hereto as **Attachment E**, and the First Amended and Restated Letter of Credit Application and Agreement (“2003 Letter of Credit Agreement”) is appended hereto as **Attachment F**.

#### Reasons Big Rivers Continues to Need a Letter of Credit Agreement

As entered into by Big Rivers on July 14, 2003, the 2003 Revolving Credit Agreement and the 2003 Note established a \$15 million line of credit with CFC on which Big Rivers could make “draws,” subject to certain limitations, for a period of ten years. The 2003 Letter of Credit Agreement, entered into on the same date, established a facility by which Big Rivers could require issuance by CFC of a letters of credit to provide the credit support that Big Rivers might require in connection with its wholesale power trading activities for a period of five years. This was the principal purpose for establishment of the entire revolving credit arrangement, as was represented by Big Rivers in a letter to the Rural Utilities Service (“RUS”) dated July 14, 2003.<sup>4</sup>

The 2003 Revolving Credit Agreement provides a source of funds to back up a letter of credit issued by CFC at Big Rivers’ direction under the 2003 Letter of Credit Agreement. If CFC issues a letter of credit to a Big Rivers power marketing

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<sup>4</sup> Letter dated July 14, 2003, from Michael H. Core to Victor T. Vu, appended as **Attachment G**, at 2.

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counterparty, and that counterparty exercises its rights to draw on the letter of credit, that draw would become a draw on Big Rivers' line of credit established under the 2003 Revolving Credit Agreement, if Big Rivers did not otherwise pay CFC the amount of the draw on the day it is made. As noted in the 2003 Order, all draws under the 2003 Revolving Credit Agreement are required to be paid off by Big Rivers annually.

Big Rivers has a critical need for access to a line of credit to purchase power daily and hourly, enter into forward trades and meet its reserve sharing obligations in connection with its wholesale power market activities. Big Rivers actively trades in the wholesale power markets on a daily and hourly basis and at times enters into forward trades for power to be delivered in future weeks or months. In addition Big Rivers is part of a MISO administered reserve sharing group.

Due to Big Rivers' balance sheet negative equity and lack of a credit rating, counterparties do not generally extend unsecured credit to Big Rivers. And due to restrictions in its creditor agreements, Big Rivers is not allowed to post cash to satisfy margin calls. Therefore, Big Rivers can only post a letter of credit to satisfy a counterparty margin call.

Without the ability to post a letter of credit most counterparties will not sell power to Big Rivers on a daily or hourly basis. If Big Rivers were unable to purchase power on the wholesale market, under existing arrangements LG&E Energy Marketing, Inc. ("LEM") would effectively become a supplier of last resort via imbalance charges, at a minimum price of \$100/MW.

Whether Big Rivers sells or buys power for future delivery, changes in the market prior to delivery can put its counterparty at risk should Big Rivers default. When market prices move in a way that puts that counterparty at risk, the counterparty will require Big Rivers to post a letter of credit to cover its exposed position. Without a letter of credit facility, Big Rivers would not be able to take advantage of favorable forward markets for maximizing sales revenues and minimizing purchase costs.

Big Rivers is part of a reserve sharing group that is administered by MISO. While LEM is ultimately responsible for most reserve sharing charges, these charges are billed by MISO to Big Rivers. Reserve sharing charges that have not been paid for are backed by a letter of credit Big Rivers has in place with MISO. Loss of that letter of credit would likely result in Big Rivers being barred from transacting with MISO, and losing access to the reserve sharing group. Without membership in a reserve sharing group Big Rivers, would be in violation of NERC standards and subject to substantial fines amounting to hundreds of thousands, if not millions of dollars.

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Expiration of Existing Letter of Credit Agreement

The five-year term of the 2003 Letter of Credit Agreement was scheduled to expire July 13, 2008.<sup>5</sup> Big Rivers had contemplated that the entire CFC revolving credit arrangements approved by the Commission in 2003 would be terminated before July 13, 2008, in conjunction with the closing of the “unwind” of various transactions between Big Rivers and subsidiaries or affiliates of E.ON U.S. LLC (the “Unwind Transaction”), which is the subject of another proceeding pending before the Commission.<sup>6</sup> When it became apparent to Big Rivers that the Unwind Transaction would not close before July 13, 2008, on June 5, 2008, Big Rivers extended the term of the 2003 Letter of Credit Agreement by signing the documents appended to this letter as **Attachment H**. Big Rivers did not seek Commission approval of that extension because the extension was for a term of less than eight months (until March 1, 2009)<sup>7</sup>, Big Rivers would not incur indebtedness which was not already authorized under the 2003 Revolving Credit Agreement approved by the Commission, and any indebtedness incurred would have a maturity of less than two years. Big Rivers believed these facts brought the renewal within the exemption of KRS 278.300(8).

Because the 2003 Letter of Credit Agreement, as extended in 2008, expires March 1, 2009, Big Rivers now anticipates entering into the 2009 Letter of Credit Agreement (**Attachment A**) as soon as possible, but no later than February 28, 2009 (including signing the Line of Credit Reserve Authorization appended to this letter as **Attachment B**), which will replace the expiring 2003 Letter of Credit Agreement (as amended), and enable Big Rivers to continue requiring CFC to issue letters of credit in support of Big Rivers wholesale power marketing activities. Big Rivers needs to execute the 2009 Letter of Credit Agreement and associated Line of Credit Reserve Agreement as soon as possible because it cannot require CFC to issue a letter of credit with a term beyond March 1, 2009. This substantially impedes Big Rivers’ ability to carry on the market activities described above. The 2009 Letter of Credit Agreement will only be signed if the Unwind Transaction has not closed by the date on which it is signed.<sup>8</sup>

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<sup>5</sup> See 2003 Letter of Credit Agreement, **Attachment F**, at 1.

<sup>6</sup> *The Applications of Big Rivers Electric Corporation for: (I) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (II) Approval of Transactions, (III) Approval to Issue Evidences of Indebtedness, and (IV) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc., for Approval of Transactions*, PSC Case No. 2007-00455.

<sup>7</sup> See **Attachment H**, document titled “First Amendment to First Amended and Restated Letter of Credit Application and Agreement,” at 1.

<sup>8</sup> If the Unwind Transaction is approved by the Commission and closes, no additional letters of credit can be issued under the 2009 Letter of Credit Agreement, the 2003 Line of Credit Agreement will be terminated, and Big Rivers will enter into a \$50 million revolving credit arrangement with CFC (for

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The terms of the 2009 Letter of Credit Agreement are relatively unchanged from the 2003 Letter of Credit Agreement, except for minor changes in the fee structure. The amount of the Annual Facility Fee and the Issuance Fee in the 2009 Letter of Credit Agreement will be determined in accordance with CFC credit policies and practices in effect on the effective date of the 2009 Letter of Credit Agreement, as stated in Section 12 of the 2009 Letter of Credit Agreement (**Attachment A**). As of December 29, 2008, the Annual Facility Fee (which is a one-time fee for this one-year agreement) would have been 100 basis points or \$15,000, and the Issuance Fee would have been 10 basis points times the amount of the letter of credit issued. The Annual Facility Fee under the 2003 Letter of Credit Agreement was 35 basis points, and the Issuance Fee was 65 basis points times the amount of a letter of credit issued.<sup>9</sup>

Request for Finding of No Jurisdiction

Big Rivers believes that Commission approval of the documents appended as **Attachments A and B** is not required under KRS 278.300(8) because (i) the term of the 2009 Letter of Credit Agreement is only one year, (ii) Big Rivers will not incur indebtedness which is not already authorized under the 2003 Revolving Credit Agreement approved by the Commission, and (iii) any indebtedness incurred by Big Rivers would have a maturity of less than two years. Big Rivers therefore requests that the Commission find that issuance by Big Rivers of the 2009 Letter of Credit Agreement (**Attachment A**), along with the associated Line of Credit Reserve Authorization (**Attachment B**), does not require Commission approval.

The ability to issue letters of credit to support wholesale electricity market activities is very critical to Big Rivers' ability to participate in the wholesale electricity market. Accordingly, if the Commission finds that issuance by Big Rivers of the 2009 Letter of Credit Agreement, along with the associated Line of Credit Reserve Authorization by March 1, 2009, does require Commission approval, Big Rivers requests that the Commission accept this letter as its application pursuant to KRS 278.300, and related regulations, for approval to issue those documents, and for approval to ratify issuance of the 2008 extension of the 2003 Letter of Credit Agreement.

Big Rivers further requests an informal conference to discuss this letter, if the Commission believes an informal conference would be helpful in expediting its review of these requests. Please copy any correspondence on these requests to: David A. Spainhoward, V.P. External Relations and Interim Chief Production Officer, Big Rivers

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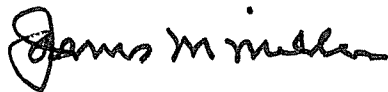
which Big Rivers is seeking approval in the pending Unwind Transaction case, PSC Case No. 2007-00455) that will take the place of the existing CFC revolving credit arrangements.

<sup>9</sup> See **Attachment F**, at 6.

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Electric Corporation, 201 Third Street, Henderson, KY 42420. The affidavit of C. William Blackburn, Vice President and Chief Financial Officer of Big Rivers Electric Corporation, affirming the accuracy of the facts stated in this letter is appended as **Attachment I**.

Sincerely yours,

A handwritten signature in black ink that reads "James M. Miller". The signature is written in a cursive style with a prominent initial "J" and a dot above the "i" in "Miller".

James M. Miller  
Counsel for Big Rivers Electric Corporation



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- Attachment C: Order dated June 24, 2003, issued in *Big Rivers Electric Corporation's Application for Approval to Amend Evidences of Indebtedness*, PSC Case No. 2003-00240.
- Attachment D: First Amended and Restated Revolving Credit Agreement ("2003 Revolving Credit Agreement").
- Attachment E: First Amended and Restated Secured Promissory Note.
- Attachment F: First Amended and Restated Letter of Credit Application and Agreement ("2003 Letter of Credit Agreement").
- Attachment G: Letter dated July 14, 2003, from Michael H. Core to Victor T. Vu.
- Attachment H: 2008 Documents Extending 2003 Letter of Credit Agreement.
- Attachment I: Affidavit of C. William Blackburn.





**LETTER OF CREDIT APPLICATION AND AGREEMENT  
(Master Facility)**

**Name and Address of Applicant:**

BIG RIVERS ELECTRIC CORPORATION  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and Chief Executive Officer

Fax Number: 270-827-2558

**Name and Address of Beneficiary:**

To be determined as requested by Applicant from time to time as provided hereunder.

**Date of this Application and Agreement:** \_\_\_\_\_

A. Applicant hereby requests National Rural Utilities Cooperative Finance Corporation ("CFC") to issue one or more irrevocable letters of credit for its own account in favor of the beneficiary or beneficiaries requested by Applicant from time to time as provided hereunder under the terms and conditions stated herein.

B. In consideration of the issuance by CFC of a Letter of Credit (as hereinafter defined), Applicant hereby agrees with CFC to the following terms and conditions which constitute a valid and binding agreement between Applicant and CFC.

**Definitions:** For purposes of this Agreement, the following capitalized terms shall have the following meanings (such definitions to be equally applicable to the singular and the plural form thereof). All terms not otherwise defined herein shall have the meaning ascribed to them in the First Amended and Restated Revolving Credit Agreement, dated July 14, 2003, by and between Applicant and CFC bearing CFC loan designation KY062-R-5101 (as amended, the "Line of Credit Agreement").

**"DSC Ratio"** shall mean the ratio determined as follows: for any calendar year add: (1) net income (after taxes and after eliminating any gain or loss on sale of assets or other extraordinary gain or loss), plus depreciation expense, amortization expense, and interest expense, minus capitalized interest not paid from operating cash flow, non-cash patronage and non-cash income from subsidiaries and/or joint ventures; and divide the sum so obtained by the sum of (2) all principal payments due within the period on all Long Term Debt plus interest expense (all as calculated on a consolidated basis for the applicable period in accordance with GAAP consistently applied or the appropriate standards of the regulatory agency having jurisdiction over the company) minus capitalized interest not paid from operating cash flow.

**"TIER"** shall mean the ratio determined as follows: for any calendar year add: (1) net income (after taxes and after eliminating any gain or loss on sale of assets or other extraordinary gain or loss), plus interest expense; and divide the sum so obtained by the sum of (2) interest expenses (all as calculated on a consolidated basis for the applicable period in accordance with GAAP

ATTACHMENT A

consistently applied or the appropriate standards of the regulatory agency having jurisdiction over the company) minus capitalized interest not paid from operating cash flow.

**1. Letter of Credit Facility:** The maximum aggregate amount of letters of credit which may be issued hereunder is Fifteen Million Dollars (\$15,000,000.00) ("Letter of Credit Facility"). Within this amount and subject to the limitation set forth in Section 3, Applicant may request, and National Rural Utilities Cooperative Finance Corporation ("CFC") shall issue, letters of credit to such beneficiary or beneficiaries as may be requested by Applicant from time to time under the terms and conditions of this Letter of Credit Application and Agreement (the "Agreement").

Each such request shall be in writing and substantially in the form of Exhibit A hereto. Each such letter is referred to herein as a "Letter of Credit". Each Letter of Credit shall be substantially in the form of Exhibit B hereto and shall reflect the amount available for draw thereunder (the "Letter of Credit Amount").

The Letter of Credit Amount reflected on any expired Letter of Credit shall be added back into the Letter of Credit Facility and be available for issuance of additional Letters of Credit during the term of this Agreement. The amount of any Draw that has been repaid shall also be added back into the Letter of Credit Facility and be available for issuance of additional Letters of Credit during the term of this Agreement.

**2. Amendment to Existing Letter of Credit Facility.** On and after the Effective Date no additional letters of credit shall be issued under the terms of that certain First Amended and Restated Letter of Credit Application and Agreement (Master Facility) bearing CFC loan designation, KY062-L-9001, dated July 14, 2003 with an effective date of July 15, 2003, as amended (the "Prior Facility"). Letters of credit issued under the Prior Facility shall remain outstanding and subject to the terms, conditions and provisions of the Prior Facility until their expiration or until they are otherwise terminated, at which time the Prior Facility shall be deemed canceled, with no further action required of either CFC or Borrower to effect such termination.

For purposes of the Prior Facility, the execution of this Agreement shall be deemed a writing executed by the parties hereto that is required to amend the Prior Facility.

### **3. Limitation on Letter of Credit Issuances.**

The amount at any time available for Borrower to Advance under the Line of Credit Agreement or the line of credit agreement which is to replace the Line of Credit Agreement upon the termination of Borrower's lease, power purchase agreement and other arrangements with subsidiaries of E.ON U.S. LLC (formerly LG&E Energy LLC) (such replacement agreement, is referred to herein as the "Replacement Credit Agreement), shall be referred to herein as the "Available Amount".

Applicant agrees that it shall not request the issuance of, nor shall CFC be obligated to issue, a Letter of Credit hereunder unless the Available Amount is equal to or greater than the sum of (i) the total Letter of Credit Amounts of all issued and outstanding Letters of Credit, plus (ii) the Letter of Credit Amount requested, *provided, however*, that so long the Prior Facility has not been cancelled pursuant to Section 2 hereof, Applicant agrees that it shall not request the issuance of, nor shall CFC be obligated to issue, a Letter of Credit hereunder unless the Available Amount is equal to or greater than the sum of (i) the total Letter of Credit Amounts of all issued and outstanding Letters of Credit, plus (ii) the aggregate amount of letters of credit issued and then

outstanding under the Prior Facility, plus (iii) the aggregate amount of unpaid Draws (as defined in the Prior Facility) under any letter of credit issued under the Prior Facility and plus (iv) the Letter of Credit Amount requested

Applicant hereby agrees not to request any Advance (as defined in the Line of Credit Agreement until replaced by the Replacement Credit Agreement, then upon such replacement, as defined in the Replacement Credit Agreement) under the Line of Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) if the effect of any such Advance would be to reduce the Available Amount below the sum of the Letter of Credit Amounts reflected in all issued and outstanding Letters of Credit plus the sum of the letter of credit amounts reflected in all issued and outstanding letters of credit issued under the Prior Facility.

**4. Letter of Credit Expiration Date; Termination of Agreement:**

Each Letter of Credit issued hereunder shall expire on the date indicated thereon, but in no event shall such date be later than February 28, 2010. Provided that no default hereunder by the Applicant has occurred and is continuing, CFC's obligation to issue any Letter of Credit under this Agreement shall remain in effect until the date that is the earlier of a) the date the Replacement Credit Agreement becomes effective and b) February 27, 2010.

**5. Effective Date:** The Effective Date of this Agreement is set forth on the signature page hereof.

**6. CFC Letter of Credit Designation:** The first Letter of Credit issued hereunder shall bear CFC designation KY062-L-9002-001. Each subsequent Letter of Credit issued hereunder shall be numbered consecutively thereafter.

**7. Draws.** On any day that CFC is open for business, CFC hereby agrees to advance funds under a Letter of Credit to the Beneficiary in such amounts as the Beneficiary may from time to time request (each such advance is referred to herein as a "Draw"), provided that: (a) on the date of each such request, the outstanding unpaid balance of all Draws shall not exceed the amount of the Letter of Credit Facility stated above; (b) each Draw request is accompanied by the documentation specified in a Letter of Credit, the authenticity, form and substance of which shall be satisfactory to CFC; and (c) no Draw request will be honored after CFC's close of business on the Letter of Credit Expiration Date set forth in the respective Letter of Credit.

**8. Documents.** CFC's obligation to issue a Letter of Credit is conditioned upon CFC's receipt of the following documents, in form and substance satisfactory to CFC: (a) an executed copy of this Agreement and any collateral security documents required herein; (b) certified copies of all such corporate documents and proceedings of the Applicant as CFC may require authorizing the transactions hereby contemplated; (c) true and correct copies of all certificates, authorizations and consents of any regulatory authority necessary for the execution, delivery or performance by the Applicant of this Agreement; (d) an executed line of credit reservation authorization executed in favor of CFC; and (e) an opinion of counsel for the Applicant addressing such legal matters as CFC shall reasonably require.

**9. Irrevocable Instruction.** Applicant hereby irrevocably instructs CFC to honor drafts presented in accordance with the terms hereof and contained in a Letter of Credit. It is expressly agreed that CFC may honor such drafts without requiring any documentation or information other

than expressly stated in a Letter of Credit, and without regard to any contrary instructions Applicant may hereafter give to CFC.

**10. Legal Representatives.** Applicant agrees that CFC shall have no liability to the Applicant or to any other person for honoring drafts presented in accordance with the terms hereof and contained in a Letter of Credit which may be presented by the administrator, trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other legal representative of the Beneficiary.

**11. No Liability.** CFC shall have no liability for, and the Applicant's repayment and other obligations hereunder shall not be affected by (a) the use which may be made of the funds drawn under a Letter of Credit or for the acts or omissions of the Beneficiary or any other person, (b) the validity, accuracy, sufficiency or genuineness of drafts, required statements or documents, even if such drafts, statements or documents should in fact prove to be in any or all respects invalid, inaccurate, insufficient, fraudulent or forged, (c) errors, omissions, interruptions or delays in transmission or delivery of any message by mail, telephone, facsimile or otherwise, or (d) any consequences arising from causes beyond CFC's control.

## **12. Fees.**

**A. Annual Facility Fee.** On the Effective Date set forth below, and at each anniversary date thereof ("Anniversary Date") for so long as this Agreement is in effect, there shall be due and payable to CFC a nonrefundable facility fee ("Facility Fee"). Applicant shall pay the Facility Fee to CFC promptly upon receipt of an invoice from CFC relating thereto. The initial Facility Fee shall be expressed in a number of basis points (hundredths of a percentage point) of the aggregate amount of the Letter of Credit Facility. The amount of the Facility Fee shall be determined as of the Effective Date set forth below in accordance with CFC's credit policies and practices as of said date. Subsequent Facility Fees shall be expressed in the same manner, in amounts determined in accordance with CFC's credit policies and practices in effect as of each applicable Anniversary Date. Any increase in the Facility Fee shall be effective only as of an Anniversary Date. The Facility Fee shall be prorated for any year in which this Agreement is not in effect for the entire year. It is a precondition to the issuance of any Letter of Credit that Applicant is current in its payment of the Facility Fee.

**B. Issuance Fee.** For each Letter of Credit issued hereunder, Applicant shall pay to CFC a nonrefundable fee ("Issuance Fee"). The Issuance Fee shall be in an amount determined in accordance with CFC's credit policies and practices as of the date of issuance. In the event the Letter of Credit is outstanding for more than one year, then the Issuance Fee shall be due and payable annually and shall be in an amount determined in accordance with CFC's credit policies and practices in effect as of each anniversary of the date of issuance. Applicant shall pay the Issuance Fee to CFC promptly upon receipt of an invoice from CFC relating thereto. The Issuance Fee shall be prorated for any year in which the Letter of Credit is not outstanding for the entire year.

In addition to the above fees, Borrower shall pay, as and when due, such additional fees as may be charged from time to time by CFC for issuing amendments to or transferring any Letter of Credit issued hereunder, and any fees that may be imposed by a confirming bank or other financial institution in the event that a Letter of Credit issued hereunder is confirmed by such other bank or financial institution.

### **13. Repayment.**

A. CFC shall notify Applicant promptly of each (i) Draw request that it receives under a Letter of Credit, (ii) Draw that is made, and (iii) each Advance under the Line of Credit Agreement or Replacement Credit Agreement that is made to pay a Draw referred to in clause C of this Paragraph 13.

B. Upon receipt of notice by Applicant from CFC that a Draw has been made, Applicant shall pay, in lawful money of the United States, without setoff, deduction, recoupment or counterclaim, to the order of NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION, at its office in Herndon, Virginia or such other offices as CFC may designate, the principal sum of the aggregate unpaid principal amount of such Draw (the "Draw Amount"), and interest as hereinafter provided on all amounts remaining unpaid hereunder from the date of such Draw in like money at said office (the "Interest Amount"). The Interest Amount shall be due and payable in accordance with CFC's regular billing cycles as may be in effect from time to time. CFC shall send a payment notice to Applicant at least five days prior to the due date of such Interest Amount.

C. If, prior to the close of business on the day that any Draw has been made, Applicant has not paid the Draw Amount to CFC, Applicant hereby authorizes CFC to make an Advance under the Line of Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) in an amount equal to the Draw Amount to apply such Advance to pay the Draw Amount on behalf of Applicant. If such day is not a day that both CFC and the depository institution CFC uses for funds transfers are open for business, then the Advance shall be made on the next day that both CFC and the depository institution CFC uses for funds transfers are open for business.

D. In the event that for any reason, a Draw is not repaid with the proceeds of an Advance under the Line of Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) as described herein, Applicant shall pay such Draw and the Interest Amount no later than one year from the date of such Draw.

**14. Interest.** The interest rate on all Draws will be equal to the total rate per annum as published by CFC as its line of credit rate and in effect from time to time. Interest will be computed on the basis of a 365 day year for the actual number of days that any Draw is outstanding. The effective date of an interest rate adjustment will be determined from time to time by CFC, and shall remain in effect until any subsequent change in the interest rate occurs.

**15. Prepayment.** Applicant may, at any time, make prepayments of the principal amount of any Draw, together with any interest accrued thereon.

**16. Default; Remedies.** Applicant shall be in default if (i) it fails to pay any Draw Amount or Interest Amount, or fails to pay any other sum due hereunder, in full, when due, (ii) it fails to comply with clause C of Paragraph 13 or if it fails to comply with Paragraphs 19 and 20 of this Agreement. Upon default, Applicant agrees that (a) CFC's obligation to issue Letters of Credit hereunder shall terminate without liability to CFC, (b) all amounts outstanding under this Agreement shall become immediately due and payable in full with accrued interest, (c) CFC may exercise rights of setoff or recoupment and apply any and all amounts held, or hereby held, by

CFC or owed to the Borrower or for the credit or account of the Borrower, including, but not limited to, patronage capital allocations and retirements, money due to Borrower from equity certificates purchased from CFC, and any membership or other fees that would otherwise be returned to Borrower; and (d) CFC may, in addition thereto, exercise any other remedies available to it under applicable law. Applicant hereby expressly waives demand, presentment for payment, notice of dishonor, protest, notice of protest, and notice of non-payment, and all other notices that m

**17. Required Notices.** Applicant agrees that, so long as any amount due is outstanding under this Agreement, Applicant shall promptly notify CFC (a) of any delinquency or default on any of its debt, including but not limited to money borrowed, debt evidenced by securities issued, or any indebtedness directly or indirectly guaranteed by Applicant, or (b) if there is a material adverse change in Applicant's financial condition. Applicant further agrees that if CFC shall determine, in its sole and absolute discretion, that such delinquency or default, or such inaccurate financial information materially increases CFC's risk of repayment hereunder, CFC may exercise all remedies available to it under applicable law, including but not limited to acceleration of all amounts due hereunder.

**18. Right of Setoff.** If Applicant fails to pay any amount hereunder when due, then CFC is hereby authorized at any time and from time to time, without prior notice to the Applicant, to exercise rights of setoff or recoupment and apply any and all amounts held, or hereafter held, by CFC or owed to the Applicant or for the credit or account of the Applicant against any and all of the obligations of the Applicant hereunder. CFC agrees to notify the Applicant promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. The rights of CFC under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which CFC may have. Applicant waives all rights of setoff, deduction, recoupment or counterclaim.

**19. Financial Ratios; Design of Rates.** The Borrower shall achieve a DSC Ratio of not less than 1.0 and a TIER of not less than 1.05. The Borrower shall not decrease its rates for electric service if it has failed to achieve a DSC Ratio of 1.0 for the calendar year prior to such reduction subject only to an order from a governmental authority properly exercising jurisdiction over the Borrower.

**20. Financial Information.** Applicant will cause to be prepared and furnished to CFC a full and complete report of its financial condition and operations as of the end of the Applicant's fiscal year in form and substance satisfactory to CFC, audited by independent certified public accountants nationally recognized or otherwise satisfactory to CFC and accompanied by a report of such audit in form and substance satisfactory to CFC. Such report shall be furnished within 120 days of the end of such fiscal year. Applicant also agrees that, so long as any amount due to CFC is outstanding under this Agreement, Applicant shall deliver to CFC a copy of Applicant's monthly and quarterly financial statements, and a copy of Applicant's annual audit report. Monthly statements shall be furnished within thirty (30) days after the end of the month and quarterly statements shall be furnished within thirty (30) days after the end of the quarter. The foregoing requirements shall survive the making of Draws hereunder and the expiration of a Letter of Credit until all sums due under this Agreement have been paid in full.

**21. Late Fee; Collection Costs.** If payment of any principal and/or interest due under the terms of this Agreement is not received at CFC's offices in Herndon, Virginia, or such other place as CFC may designate, within 5 business days after the due date thereof, Applicant will pay to CFC,

in addition to all other amounts due under the terms of this Agreement, a late payment charge as may then be in effect pursuant to CFC's policies of general application. Applicant further agrees to pay the costs of collection, including reasonable attorneys' fees, of any amount due under this Agreement.

**22. GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.**

THE PERFORMANCE AND CONSTRUCTION OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF VIRGINIA.

APPLICANT HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES COURTS LOCATED IN VIRGINIA AND OF ANY STATE COURT SO LOCATED FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. APPLICANT IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE ESTABLISHING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

EACH OF THE APPLICANT AND CFC 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 AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**23. Notices:** All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the Applicant at the address and telecopy number stated above, and to CFC at:

National Rural Utilities Cooperative Finance Corporation  
2201 Cooperative Way  
Herndon, Virginia 20171-3025  
Fax: (703) 709-6776

Either party may designate another address by notice as provided herein. All communications shall be deemed to have been duly given when personally delivered or, in the case of a telecopied or mailed notice, upon receipt, in each case given or addressed as provided for herein.

**24. Miscellaneous.** No modification or waiver of any provision of this Agreement, and no consent to any departure by Applicant therefrom, shall in any event be effective unless the same shall be in writing by the party granting such modification, waiver or consent. This Agreement and any schedules or exhibits together contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby. If any term, provision or condition of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.



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

(SEAL)

BIG RIVERS ELECTRIC CORPORATION

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

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

Attest: \_\_\_\_\_

Secretary

(SEAL)

NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

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

Assistant Secretary-Treasurer

Attest: \_\_\_\_\_

Assistant Secretary-Treasurer

**Effective Date (to be filled in by CFC):** \_\_\_\_\_

EXHIBIT A  
FORM OF LETTER OF CREDIT REQUEST

National Rural Utilities Cooperative Finance Corporation  
2201 Cooperative Way  
Herndon, VA 20171-3025  
Attn: Nazir Rostom

Re: National Rural Utilities Cooperative Finance Corporation ("CFC")  
Master Letter of Credit Facility No. KY062-L-9002

BIG RIVERS ELECTRIC CORPRORATION hereby requests CFC to issue a letter of credit under the above-referenced master facility with the following terms:

Letter of Credit Amount:

Beneficiary Name and Address:

Letter of Credit Effective Date:

Expiry Date:

Conditions of Draw:

Please issue the letter of credit directly to the beneficiary, with a copy to the undersigned.

Very truly yours,  
BIG RIVERS ELECTRIC CORPRORATION

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

EXHIBIT B  
FORM OF LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NUMBER «LoanNumber»

Date: «LetterDate»

Amount: «AmountText» Dollars (\$«AmountNumber».00)

Letter of Credit Expiration Date: «ExpiryDate»

Beneficiary Name and Address:

«BeneficiaryName»  
«BenefAddressLine1»  
«BenefAddressLine2»

Name of Applicant:

«ApplicantName»  
«AppAddressLine1»  
«AppAddressLine2»

Issuer: National Rural Utilities Cooperative Finance Corporation  
Woodland Park, 2201 Cooperative Way  
Herndon, Virginia 20171-3025 Attention: «AVPName»

To the above-named Beneficiary:

We hereby issue our irrevocable Letter of Credit in your favor for the account of the above-named Applicant up to the aggregate amount stated above.

Funds under this Letter of Credit, in an amount not to exceed the amount stated above, will be made available to you in accordance with the terms and conditions herein against sight drafts presented at the above address, bearing the clause "Drawn under National Rural Utilities Cooperative Finance Corporation Letter of Credit No. «LoanNumber», dated «LetterDate»", and accompanied by the following documents:

1. A notarized certificate sworn to and executed by an authorized officer of the Beneficiary reading as follows: "The amount claimed under this Letter of Credit as represented by the sight draft enclosed herewith is due and payable because (a) payment is due to «BeneficiaryName» from «ApplicantName» pursuant to [REASON FOR PAYMENT], (b) «ApplicantName» has not made such payment, (c) «BeneficiaryName» has made written demand upon «ApplicantName» for payment, and (d) payment pursuant thereto has not been received within five days of the receipt of said demand."
2. This original Letter of Credit.

We hereby agree with you that sight drafts drawn under this Letter of Credit will be honored in accordance with the terms and conditions stated herein provided the sight draft and required documents are presented to us at the above address on or before the Letter of Credit Expiration Date stated above. Payment of any draft drawn under this Letter of Credit in an amount less than the maximum amount available hereunder shall be recorded by us on the reverse side hereof and this Letter of Credit shall then be returned to you.

This Letter of Credit is governed by the provisions of the Uniform Customs and Practice for Documentary Credits (1993 Version), International Chamber of Commerce Publication No. 500 ("UCP"). As to matters not governed by the UCP, this Letter of Credit is governed by the laws of the Commonwealth of Virginia. This Letter of Credit is not transferable.

NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

By: \_\_\_\_\_  
Assistant Secretary-Treasurer



## LINE OF CREDIT RESERVE AUTHORIZATION

In consideration of the issuance of one or more letters of credit by NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION ("CFC") on behalf of BIG RIVERS ELECTRIC CORPORATION ("Borrower"), pursuant to the Letter of Credit Application and Agreement (Master Facility) dated as of even date herewith, by and between Borrower and CFC (the "Letter of Credit Agreement"), the undersigned Borrower hereby authorizes CFC as follows:

Capitalized terms that are not defined herein shall have the meanings as set forth in the Letter of Credit Agreement.

If, prior to the close of business on the day that any Draw under a Letter of Credit has been made, Borrower has not paid the Draw Amount to CFC, Borrower hereby authorizes CFC to make an Advance (as defined in the Line of Credit Agreement, until replaced by the Replacement Credit Agreement, then upon such replacement, as defined in the Replacement Credit Agreement) under the Line of Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) in an amount equal to the Draw Amount and to apply such Advance to pay the Draw Amount on behalf of Borrower.

Borrower agrees that, so long as any amounts are outstanding under the Letter of Credit Agreement, Borrower shall maintain the line of credit with CFC provided for in the Line of Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, the line of credit provided for in the Replacement Credit Agreement) in an amount that is at all times at least equal to \$15,000,000.00. The amount available at any time and from time to time under the Line of Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) shall be referred to herein as the "Reserve Amount". Borrower hereby agrees not to request any Advance (as defined in the Line of Credit Agreement until replaced by the Replacement Credit Agreement, then upon such replacement, as defined in the Replacement Credit Agreement) under the Line of Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) if the effect of any such Advance would be to reduce the Reserve Amount below the sum of the Letter of Credit Amounts reflected in all issued and outstanding Letters of Credit.

Borrower hereby agrees that CFC shall not incur any liability to Borrower as a result of following the instructions set forth herein, or for the exercise of the rights, remedies and obligations hereunder with respect to the Reserve Amount, except in cases of gross negligence or willful misconduct by CFC.

This authorization shall remain in effect and shall be irrevocable until terminated by mutual agreement of Borrower and CFC, or until such time as all of the Borrower's obligations under the Letter of Credit Agreement have been paid in full, whichever is earlier.

The undersigned agrees to pay such fees in connection with this Line of Credit Reserve Authorization as may be imposed by CFC pursuant to its policies of general application.

The undersigned represents and warrants to CFC that the undersigned has the appropriate authority on behalf of the Cooperative to execute this authorization and to instruct CFC with respect to the Cooperative's line of credit as set forth herein.

ATTACHMENT B

This authorization shall not be modified by the Cooperative without CFC's written consent.

BIG RIVERS ELECTRIC CORPORATION

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Date]





COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S )  
APPLICATION FOR APPROVAL TO ) CASE NO. 2003-00240  
AMEND EVIDENCES OF INDEBTEDNESS )

O R D E R

Big Rivers Electric Corporation ("Big Rivers") filed a letter, which the Commission will treat as an application, requesting affirmation that neither its 10-year renewal of a revolving credit facility with the National Rural Utilities Cooperative Finance Corporation ("CFC") nor the financing documents necessary to effectuate that renewal require Commission approval. Big Rivers states that its existing 5-year revolving credit facility with CFC was entered into in July 1998 as part of the transaction to implement its bankruptcy plan of reorganization, and that the Commission's July 14, 1998 Order in Case No. 1998-00267<sup>1</sup> found that the revolving credit facility was exempt from Commission approval under KRS 278.300(8).

Under the terms of Big Rivers' proposed 10-year revolving credit facility, CFC will provide Big Rivers a maximum aggregate principal amount outstanding of \$15 million. Big Rivers will be required to annually reduce to zero for at least five consecutive business days all amounts outstanding under the revolving credit facility. The first

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<sup>1</sup> Case No. 1998-00267, The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson (final Order dated July 14, 1998).

reduction to zero is due within 360 days of CFC's first advance, and similar reductions are required in each 12-month period that the revolving credit agreement is in effect. Thus, any loan under the revolving credit facility cannot be renewed from year to year but must be retired within 365 days, and no new loan can be issued for at least five consecutive business days thereafter.

Big Rivers also filed the following five financing documents that need to be executed in connection with the renewed credit facility:

- Exhibit 1: First Amendment to Third Restated Mortgage and Security Agreement;
- Exhibit 2: Second Amendment to Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement;
- Exhibit 3: First Amended and Restated Revolving Credit Agreement;
- Exhibit 4: First Amended and Restated Secured Promissory Note; and
- Exhibit 5: First Amended and Restated and Restated Letter of Credit Application and Agreement.

Big Rivers also filed highlighted copies of the five exhibits showing the specific changes to each.

Based on a review of the application and being otherwise sufficiently advised, the Commission finds that the renewed credit facility requires all loans to CFC to be paid off every 12 months and prohibits the renewal or rolling-over of those loans. Consequently, the Commission finds that the renewed credit facility for a maximum aggregate amount outstanding of \$15 million qualifies for the exemption under KRS 278.300(8) and does not require Commission approval. However, the Commission finds that the five financing documents are not exempt. These documents were originally approved in Case No. 1998-00267, and do not qualify for any exemption under KRS Chapter 278.

Thus, any revisions must also be approved. Based on a review of the five revised financing documents, the Commission finds that the proposed changes are intended to properly reflect the renewed credit facility or other financing changes previously approved by the Commission. All the proposed changes appear to be reasonable and the five financing documents should be approved.

The Commission's approval of the financing documents is based upon the documents as filed by Big Rivers with the Commission on June 20, 2003. Any revisions to these documents should be promptly filed, clearly identified, and supported by a narrative explanation of each change so that the Commission can review the revisions expeditiously and, if necessary, modify this Order.

IT IS THEREFORE ORDERED that:

1. Big Rivers' revised revolving credit facility with CFC in a maximum aggregate principal amount outstanding of \$15 million is exempt from Commission approval under KRS 278.300(8).

2. Big Rivers' revised financing documents, enumerated in the findings above as Exhibits 1-5, are approved.

3. Within 7 days of receipt of the last approval by the parties to each of the five exhibits referenced above, Big Rivers shall notify the Commission in writing that all requisite approvals have been obtained for that exhibit.

4. In the event that any revisions are made to the financing documents as approved herein, Big Rivers shall file the revisions within 7 days of obtaining concurrence by all parties and shall reference each revision and include an explanation for each.

Done at Frankfort, Kentucky, this 24<sup>th</sup> day of June, 2003.

By the Commission

ATTEST:

  
Executive Director

Case No. 2003-00240



**FIRST AMENDED AND RESTATED  
REVOLVING CREDIT AGREEMENT**

FIRST AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT (this "Agreement"), dated July 14, 2003 between Big Rivers Electric Corporation, (herein called the "Borrower"), an electric cooperative organized and existing under the laws of the Commonwealth of Kentucky (the "State"), and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION (herein called "CFC"), a cooperative association incorporated and existing under the laws of the District of Columbia.

**RECITALS**

WHEREAS, the Borrower and CFC are currently parties to that certain Revolving Credit Agreement, dated as of July 15, 1998 (the "Original Agreement"); and CFC has agreed to amend, restate and supersede in its entirety the Original Agreement in accordance with the terms and conditions hereof;

WHEREAS, the Borrower's obligations under this Agreement and the Note (as defined below) are to be secured by a security interest in certain of the Borrower's properties granted to the mortgagees named in that certain Third Restated Mortgage and Security Agreement (as amended, the "Mortgage"), dated as of August 1, 2001, to be amended by the First Amendment thereto, and dated as of July 15, 2003 (the "Mortgage Amendment"), among the Borrower, CFC, the United States of America acting through the Rural Utilities Service ("RUS"), Ambac Assurance Corporation ("Ambac"), Credit Suisse First Boston acting through its New York Branch ("CSFBNYB"), U.S. Bank National Association, as Trustee (the "Series 2001A Trustee"), PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust and Ambac Credit Products, LLC (such parties collectively, the "Mortgagees"), as the same has been or may be further amended, supplemented, restated or consolidated; and

WHEREAS, the Borrower and CFC are currently parties to that certain Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement (as amended, the "Nondisturbance Agreement"), dated as of August 1, 2001, as amended by the First Amendment thereto dated as of August 22, 2002, and to be amended by the Second Amendment thereto and dated as of July 15, 2003 (the "Second Amendment"), by and among the Borrower, the Mortgagees, Western Kentucky Energy Corp., LG&E Energy Marketing Inc., WKE Station Two Inc., WKE Corp., PBR-1 OP Statutory Trust, PBR-2 OP Statutory Trust, PBR-3 OP Statutory Trust, FBR-1 OP Statutory Trust, and FBR-2 OP Statutory Trust, Bluegrass Leasing, Fleet Real Estate, Inc., AME Investments, LLC and CoBank, ACB (all such parties collectively, the "Lenders"), as the same has been or may be further amended, supplemented, restated or consolidated.

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

**ATTACHMENT D**

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

Section 1.1. The Borrower represents and warrants that:

(a) Good Standing. The Borrower is a corporation duly incorporated and validly existing under the laws of the State, is duly qualified in those states in which it is required to be qualified to conduct its business and has corporate power to make and perform this Agreement, the Note (as hereinafter defined), the Nondisturbance Agreement and the Mortgage, to borrow hereunder and to give security as provided for herein and therein.

(b) Authority. The execution, delivery and performance of the Borrower of this Agreement, the Note (as hereinafter defined), the Nondisturbance Agreement and the Mortgage and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action and will not violate any provision of law or regulation or the Articles of Incorporation or By-Laws of the Borrower or result in a breach of or constitute a default under, any order, decree, agreement, indenture or other instrument to which the Borrower is a party or by which it may be bound. This Agreement, the Note (as hereinafter defined), the Nondisturbance Agreement and the Mortgage constitute the legal, valid and binding obligations of the Borrower.

(c) Litigation. Except with respect to or in connection with litigation disclosed on Schedule 1 hereto, there are no suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or its properties which, if adversely determined, would have a material adverse effect upon the financial condition or the business of the Borrower. The Borrower is not, to its knowledge, in default with respect to any judgment, order, rule or regulation of any court, governmental agency or other instrumentality which would have a material adverse effect on the Borrower.

(d) Financial Statements. (i) The Borrower has no contingent obligation or unusual forward or long-term commitments except as specifically stated in the financial statements of the Borrower as at December 31, 2002 or otherwise disclosed on Schedule 1 hereto. (ii) There has been no material adverse change in the financial condition, operations or (other than matters generally affecting generation and transmission cooperatives) business prospects of the Borrower from that set forth in the financial statements of the Borrower as at December 31, 2002 or disclosed on Schedule 1 hereto.

(e) Location of Office. The principal place of business of the Borrower and the office where its records concerning accounts and the contract rights are kept is identified in Schedule 1 hereto.

(f) Location of Properties. All counties in which the recordation of the Mortgage in the real estate records and/or the filing of the Mortgage in the UCC records is necessary in order to perfect a security interest in all of the Mortgaged Property (as defined in the Mortgage) are identified on Schedule 1 hereto.

(g) No Other Liens. As to the property which is presently included in the description of Mortgaged Property (as the term is defined in the Mortgage and exclusive of property released from the lien thereof in accordance with the terms thereof, including any property released under the Mortgage Amendment), the Borrower has not signed any security agreement or filed or permitted to be filed any financing statement with respect thereto, other than (i) security agreements and financing statements described in and contemplated by the Mortgage, (ii) any Permitted Encumbrances (as defined in the Mortgage), and (iii) the LEM Mortgage and the LG&E Subordinated Mortgage (each as defined in the Nondisturbance Agreement).

(h) Required Approvals. No license, consent or approval of any governmental agency or authority is required to enable the Borrower to make or enter into this Agreement, the Note, the Nondisturbance Agreement or the Mortgage, or to perform any of its obligations provided for herein or therein except (i) those consents or approvals, received prior to the date hereof, from the Mortgagees, and (ii) the additional consents or approvals set forth in Schedule 1 hereto.

(i) Survival. All representations and warranties made by the Borrower herein or made in any certificate delivered pursuant hereto shall survive the making of the Advances (as hereinafter defined) and the execution and delivery to CFC of the Note.

Section 1.2. CFC represents and warrants that:

(a) Good Standing. CFC is a cooperative association incorporated and validly existing under the laws of the District of Columbia, is duly qualified in those states in which it is required to be qualified to conduct its business and has corporate power to make and perform this Agreement, the Nondisturbance Agreement and the Mortgage.

(b) Authority. The execution, delivery and performance by CFC of this Agreement, the Nondisturbance Agreement and the Mortgage, and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action and will not violate any provision of law or regulation or the Articles of Incorporation or By-Laws of CFC or result in a breach of, or constitute a default under, any order, decree, agreement, indenture or other instrument to which CFC is a party or by which it may be bound. This Agreement, the Nondisturbance Agreement and the Mortgage constitute the legal, valid and binding obligations of CFC.

## ARTICLE II

### LOAN

Section 2.1. Advances.

(a) CFC agrees to advance funds to the Borrower pursuant to the terms and conditions hereof (each such advance of funds is referred to herein as an "Advance"), *provided, however*, that the amount at any time outstanding under this line of credit shall not exceed the CFC Commitment (as defined in Schedule 1 hereto). The Borrower may borrow, repay and reborrow funds at any time or from time to time for a period up to one hundred twenty (120) months from the date hereof; provided, however, that CFC may, in its sole discretion, terminate this Agreement effective as of the date that is sixty (60) months after the date hereof so long as CFC shall have delivered written notice thereof to Borrower at least six (6) months prior to such date.

(b) The obligation of the Borrower to repay the Advances shall be evidenced by that certain First Amended and Restated Secured Promissory Note of the Borrower dated as of the date hereof (herein called the "Note") in the principal amount of the CFC Commitment.

(c) Any Advances outstanding under the Original Agreement as of the date hereof shall be transferred to and deemed to be Advances under this Agreement, with the obligations of the Borrower to repay such Advances evidenced by the Note.



Section 2.2. Interest Rate and Payments.

(a) The Borrower unconditionally promises and agrees to pay, as and when due, Interest on all amounts advanced hereunder from the date of each Advance and to repay all amounts advanced hereunder with interest on the date this Agreement terminates as provided herein. Interest shall be due and payable in accordance with CFC's regular quarterly billing cycles as may be in effect from time to time. CFC shall send a payment notice to the Borrower at least five (5) days prior to the due date of any interest or principal payment, including any principal payment due at maturity. All amounts shall be payable at CFC's main office at 2201 Cooperative Way, Herndon, Virginia 20171-3025 or at such other location as designated by CFC from time to time. The interest rate on all Advances will be equal to the total rate per annum as may be fixed by CFC from time to time, which shall not exceed the Prevailing Bank Prime Rate (as defined herein), plus one percent per annum. Interest will be computed on the basis of a 365 day year for the actual number of days that any Advance is outstanding. The effective date of an interest rate adjustment will be determined from time to time by CFC, provided that no such adjustment may be effective on a date other than the first or sixteenth day of any month, and any such adjustment shall remain in effect until any subsequent change in the interest rate occurs.

The "Prevailing Bank Prime Rate" is that bank prime rate published in the "Money Rates" column of *The Wall Street Journal* on the publication day immediately preceding the day on which an adjustment in the interest rate hereof shall become effective. If *The Wall Street Journal* shall cease to be published, then the Prevailing Bank Prime Rate shall be determined by CFC by reference to another publication reporting bank prime rates in a similar manner.

(b) Notwithstanding anything contained in this Section 2.2 to the contrary, the entire outstanding principal amount of the Note shall mature on the date ("Maturity Date") that is one hundred twenty (120) months from the date hereof; provided, however, that CFC may, in its sole discretion, terminate this Agreement effective as of the date that is sixty (60) months after the date hereof so long as CFC shall have delivered written notice thereof to Borrower at least six (6) months prior to such date, and the Borrower shall pay the outstanding principal amount of the Note, together with interest accrued and unpaid thereon, and all other amounts due hereunder, in full, on the Maturity Date. The Borrower shall have the right, at any time and at its discretion, to repay Advances from time to time on one (1) Business Day's notice to CFC, without premium or penalty.

(c) Each payment in respect of the Note shall be applied first to fees, if any, then to interest, if any, due on the date of such payment and the balance to the reduction of principal due on such date.

(d) Borrower agrees that for each 12-month period while this Agreement is in effect, Borrower shall, for a period of at least five consecutive business days, reduce to zero all amounts outstanding hereunder. Borrower shall make the first balance reduction within 360 days of the first Advance hereunder. Each subsequent balance reduction shall be made within 360 days of the last day of such five-day period.

ARTICLE III

CONDITIONS OF LENDING

Section 3.1. Initial Advance. The obligation of CFC to make the initial Advance hereunder is subject to satisfaction of the following conditions:

(a) Documents. CFC shall have been furnished with executed copies satisfactory to CFC of this Agreement, the Note, the Mortgage, the Nondisturbance Agreement and certified copies, reasonably

satisfactory to CFC, of all such corporate documents and proceedings of the Borrower authorizing the transactions hereby and thereby contemplated as CFC or its counsel shall require including, without limitation, certified copies of the Borrower's Articles of Incorporation and By-Laws, certificates setting forth the resolutions of the Borrower's Board of Directors adopted in respect of the transactions contemplated hereby and thereby and a certificate of the Borrower in respect of each of the officers who is authorized to sign this Agreement, the Note, the Mortgage, and the Nondisturbance Agreement on its behalf. CFC shall have received an opinion of counsel for Borrower addressing such legal matters as CFC or its counsel shall reasonably require.

(b) Government Approvals. The Borrower shall have furnished to CFC originals, or true and correct copies, certified to CFC's satisfaction, of the consents referred to in Section 1.1(h) hereof necessary for the execution, delivery or performance by Borrower of this Agreement, the Note and the Mortgage.

(c) Representations and Warranties. (i) The representations and warranties contained in Section 1.1 hereof shall (except as affected by the transactions contemplated by this Agreement) be true on the date of the making of the initial Advance hereunder with the same effect as though such representations and warranties had been made on such date; (ii) no Event of Default specified in Article V hereof and no event specified in Article V hereof which, with the lapse of time or the giving of notice or both would become such an Event of Default, shall have occurred and be continuing or will have occurred after giving effect to the Advance on the books of the Borrower, and (iii) the Borrower shall have delivered to CFC, if requested, a certificate of its chief financial officer as to the matters referred to in clauses (i) and (ii) above.

(d) Mortgage Filing. (i) The Mortgage Amendment shall have been duly recorded as a mortgage on real property, (ii) the Second Amendment shall have been duly recorded, and (iii) appropriate UCC financing statements, shall have been duly filed, recorded or indexed to perfect a security interest in all personal property encumbered by the Mortgage wherever CFC shall have requested, all in accordance with applicable law, and the Borrower shall have caused satisfactory evidence thereof to be furnished to CFC.

(e) Requisitions. The Borrower will requisition Advances by notifying CFC in writing of the date on which CFC is to make such Advance (which, unless waived by CFC, shall be at least two (2) days after the delivery of such notice to CFC), the amount of the Advance and the date on which such Advance is proposed to be repaid to CFC (it being understood and acknowledged that such proposed date of repayment shall constitute a non-binding, good faith estimate by the Borrower, and that Borrower's obligation for repayment of Advances shall be governed by Article II, above).

(f) Special Conditions. Any special conditions set forth in Schedule 1 hereto.

Section 3.2. Subsequent Advances. CFC's obligation to make Advances to the Borrower subsequent to the initial Advance is subject to (i) fulfillment by the Borrower of all of the conditions contained in Section 3.1, (ii) the representations and warranties contained in Section 1.1 hereof shall be true on and as of the date of the making of each Advance with the same force and effect as if made on and as of such date; and (iii) no Event of Default specified in Article V hereof and no event specified in Article V hereof which, with the lapse of time or the giving of notice or both would become such an Event of Default, shall have occurred and be continuing or will have occurred after giving effect to such Advance on the books of the Borrower.

## ARTICLE IV

### AFFIRMATIVE COVENANTS

From the date hereof and until payment in full of the Note and performance of all obligations of the Borrower hereunder, the Borrower agrees that it will:

- (a) Membership. Remain a member of CFC.
- (b) Annual Certificate. Within 60 days after the close of each calendar year, commencing with the year following the year in which the initial Advance hereunder shall have been made, deliver to CFC a written statement signed by its President or Chief Executive Officer, stating that said person has furnished to the governing board of the Borrower a report of the activities of the Borrower, and of its performance under this Agreement, the Note and the Mortgage during such year, and that to the best of said person's knowledge, the Borrower has fulfilled all of its obligations under this Agreement, the Note and the Mortgage throughout such year or, if there has been a default in the fulfillment of any such obligations, specifying each such default known to said person and the nature and status thereof.
- (c) Special Affirmative Covenants. Comply with any and all special affirmative covenants set forth in Schedule 1 hereto.
- (d) Location of Office and Properties. Advise CFC promptly of any changes in the information furnished in Schedule 1 hereto pursuant to Sections 1.1 (e) and (f) hereof.

## ARTICLE V

### EVENTS OF DEFAULT

Each of the following shall be an Event of Default under this Agreement:

- (a) Representations and Warranties. Any representation or warranty made by the Borrower in Section 1.1 hereof or in any certificate furnished to CFC hereunder shall prove to have been untrue or incorrect in any material respect at the time made or deemed made hereunder, be untrue or incorrect in any material respect and remain uncured;
- (b) Payment. Default shall be made in the payment of or on account of interest on or principal of the Note when and as the same shall be due and payable, whether in connection with a prepayment, by acceleration or otherwise, and such payment default shall have continued for a period of five (5) days;
- (c) Bankruptcy. A court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 90 consecutive days or the Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors;

(d) Corporate Existence. The Borrower shall forfeit or otherwise be deprived of its corporate charter, franchises, permits, easements, or licenses required to carry on any material portion of its business and, to the extent that the loss or termination of such corporate charter franchises, permits, easements or licenses is involuntary, Borrower shall (i) fail to promptly contest such loss or termination and seek to reinstate such charter, franchises, permits, easements or licenses, or (ii) fail to cause such or such charter, franchises, permits, easements or licenses to be reinstated within ninety (90) days after the date of such loss or termination; or

(e) Cross Default. There shall occur an Event of Default, as such term is defined in the Mortgage, and, in the case of the Mortgage, any Mortgagee thereunder shall exercise any right or remedy available to such Mortgagee pursuant to the Mortgage; *provided* that this clause (e) of Article V shall not apply to any such Event of Default that is existing as of the date of execution of this Agreement and disclosed on Schedule 1 hereto.

## ARTICLE VI

### REMEDIES

If any of the Events of Default listed in Article V hereof shall occur after the date of this Agreement and shall not have been remedied, then CFC may cancel the CFC Commitment and decline to make any further Advances hereunder, declare the unpaid principal amount of the Advances and interest thereon and all other amounts payable hereunder or under the Note due and payable (whereupon such amounts shall immediately become due and payable) and/or pursue all rights and remedies available to CFC that are contemplated by the Mortgage in the respective manner, upon the conditions and with the effect provided in the Mortgage, including, without limitation, a suit for specific performance, injunctive relief or damages. Nothing herein shall be construed to limit the right of CFC to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default listed in clause (e) of Article V hereof. Each right, power and remedy of CFC shall be cumulative and concurrent and not exclusive of any remedies provided by law, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

## ARTICLE VII

### MISCELLANEOUS

Section 7.1. Notices. All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given if personally delivered or upon receipt by telecopier or mail, in each case given or addressed as provided for herein. The Address for Notices of the respective parties are as follows:

National Rural Utilities Cooperative Finance Corporation  
2201 Cooperative Way  
Herndon, Virginia 20171-3025  
Attention: General Counsel  
Fax number: (703) 709-6774

Big Rivers Electric Corporation

201 Third Street  
Henderson, Kentucky 42420  
Attention: President and Chief Executive Officer  
Fax number: (270) 827-2558

Section 7.2. Expenses. To the extent permitted by the Mortgage, the Borrower will pay promptly upon receipt of an invoice therefor all costs and expenses of CFC, including reasonable fees of outside counsel, incurred in connection with the enforcement of this Agreement, the Note, the Mortgage, and the other instruments provided for herein or with the preparation for such enforcement if CFC has reasonable grounds to believe that such enforcement may be necessary.

Section 7.3. Late Payment Charges. If payment of any principal and/or interest due under the terms of the Note is not received by CFC within five (5) calendar days of when due, the Borrower will pay to CFC, in addition to all other amounts due under the terms of the Note and this Agreement, any late payment charge as may be fixed by CFC from time to time, which shall not exceed the average late payment charge CFC charges its other borrowers.

Section 7.4. Filing Fees. To the extent permitted by law, the Borrower agrees to pay all expenses of CFC (including the reasonable fees and reasonable expenses of its outside counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by CFC in connection with this Agreement, including, without limitation, all documentary stamps, recordation of any document or instrument in connection herewith. Borrower agrees to save harmless and indemnify CFC from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses reasonably incurred by CFC in connection with this Agreement. The provisions of this Section and of Section 7.2 shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder.

Section 7.5. Setoff. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon and after the occurrence of any Event of Default listed in Article V hereof, CFC is hereby authorized by the Borrower, at any time or from time to time, subject to the terms of the Mortgage and the Nondisturbance Agreement, to the extent applicable, without notice to the Borrower or to any other person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including but not limited to, indebtedness evidenced by commercial paper, whether matured or unmatured) and any other indebtedness at any time held or owing by CFC to or for the credit or the account of the Borrower against and on account of the obligations and liabilities of the Borrower to CFC under this Agreement and the Note, including, but not limited to, all claims of any nature or description arising out of or connected with this Agreement, regardless of whether or not CFC shall have made any demand hereunder or CFC shall have declared the principal of and interest on the Note and other amounts due hereunder to be due and payable as permitted by Article VI and although said obligations and liabilities, or any of them, shall be contingent or unmatured, and pending any such setoff or appropriation or application, to hold amounts of all deposits as collateral.

Section 7.6. No Waiver. No failure on the part of CFC to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by CFC of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 7.7. GOVERNING LAW; JURISDICTION; WAIVER OF JURY TRIAL.

(a) THE PERFORMANCE AND CONSTRUCTION OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF VIRGINIA.

(b) BORROWER HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES COURTS LOCATED IN VIRGINIA AND OF ANY STATE COURT SO LOCATED FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE ESTABLISHING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH OF THE BORROWER AND CFC 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 AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 7.8. Holiday Payments. If any payment to be made by the Borrower hereunder shall become due on a day which is not a Business Day such payment shall be made on the immediately preceding Business Day and such reduction of time shall be included in computing any interest in respect of such payment,

Section 7.9. Modifications. No modification or waiver of any provision of this Agreement or the Note and no consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be in writing. The Borrower may not assign its rights hereunder or under the Note.

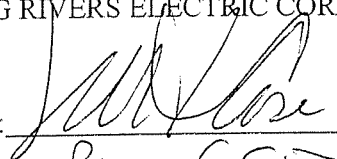
Section 7.10. Merger and Integration. This Agreement, the attached exhibits and schedules, and matters incorporated by reference contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby.

Section 7.11. Headings. The headings and subheadings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

Section 7.12. Schedule 1. Schedule 1 attached hereto is an integral part of this Agreement.

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

BIG RIVERS ELECTRIC CORPORATION

By: 

Title: Pres / CEO

(SEAL)

Attest: \_\_\_\_\_

NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

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

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

(SEAL)

Attest: \_\_\_\_\_

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

BIG RIVERS ELECTRIC CORPORATION

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

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

(SEAL)

Attest: \_\_\_\_\_

NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

By: *Krishna Murthy*

Title: ASSISTANT SECRETARY TREASURER

KRISHNA S. MURTHY

(SEAL)

Attest: *Ronit Kimbrough*

RONIT KIMBROUGH



## SCHEDULE 1

1. The purpose of this revolving credit facility is to finance the Borrower's short term working capital needs.
2. The litigation referred to in Section 1.1(c) is described on Exhibit A hereto.
3. The financial obligations/changes referred to in Section 1.1(d) are as follows (\$ in Thousands):

- Based upon a letter from Western Kentucky Energy Corp. (WKE), an affiliate of LG&E Energy Corp. (LEC), dated August 16, 2001, wherein WKE waived all residual value claims for certain ordinary capital expenditures (described and defined in the LEC lease documents as Non-Incremental Capital Costs) in excess of the approved annual capital budget, Big Rivers recorded \$4,232 of lease revenue and \$158 of depreciation expense in 2001. The associated balance sheet impact was to increase net utility plant \$4,353 and other deferred credits \$279. Pursuant to a Big Rivers' September 19, 2002, letter to the RUS, and the response dated November 4, 2002, it was determined that any capital asset of this nature should not be reflected on Big Rivers' financial statements. Accordingly, the accompanying financial statements as of and for the year ended December 31, 2001, have been restated to reduce previously reported lease revenue, net utility plant, depreciation expense and other deferred credits. A summary of the effects of the restatement follows:

|                               |    | <u>As Previously<br/>Reported</u> |    | <u>As Restated</u> |
|-------------------------------|----|-----------------------------------|----|--------------------|
| December 31, 2001:            |    |                                   |    |                    |
| Utility plant, net            | \$ | 875,990                           | \$ | 871,637            |
| Other deferred credits        |    | 45,415                            |    | 45,136             |
| Equities (deficit)            |    | (324,611)                         |    | (328,685)          |
| Year ended December 31, 2001: |    |                                   |    |                    |
| Lease revenue                 | \$ | 57,904                            |    | 53,672             |
| Depreciation expense          |    | 27,607                            |    | 27,449             |
| Electric operating margin     |    | 80,625                            |    | 76,551             |
| Net margin                    |    | 20,870                            |    | 16,796             |

- Included with their letter to Big Rivers dated January 15, 2003, LG&E Energy Marketing invoiced Big Rivers for certain generation-based ancillary services (spinning and supplemental operating reserves) they claim WKEC provided Big Rivers in connection with Big Rivers' SEPA power purchases and other non-LEM power purchases from July 1998 through December 2002 in the amount of \$2,717. While the LG&E Transaction documents require Big Rivers to pay the invoiced amount, Big Rivers disputes this billing and will seek reimbursement of most, if not all, of such amount. As the amount for which Big Rivers is ultimately liable cannot yet be determined or reasonably estimated, the accrual has been made in the balance sheet as of December 31, 2002, but has not impacted the statement of operations for the year then ended.
4. The principal place of business of the Borrower referred to in Section 1.1(e) is 201 Third Street, Henderson Kentucky 42420.

5. The counties referred to in Section 1.1(f) are: Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Meade, McCracken, Ohio, Union and Webster in the State of Kentucky.
6. The term "CFC Commitment" as used shall mean fifteen million dollars (\$15,000,000) in maximum aggregate principal amount outstanding under the loan to the Borrower at any one time under this Agreement, *provided, however* that the amount available for Advances shall be reduced by the aggregate amount of any letters of credit issued by CFC at the request of the Borrower under the terms, conditions and provisions of (i) that certain First Amended and Restated Letter of Credit Application and Agreement between the Borrower and CFC, dated as of even date herewith, as the same may be amended or restated from time to time and (ii) that certain Line of Credit Reserve Authorization, executed and delivered by the Borrower to CFC, dated as of even date herewith, as the same may be amended or restated from time to time.
7. The term "Business Day" as used herein shall mean any day that both CFC and the depository institution it utilizes for funds transfers hereunder are open for business.
8. The entities referred to in Section 1.1(h) are: (i) the Kentucky Public Service Commission and (ii) RUS, the approval of each of which has been received prior to the date hereof.
9. The special conditions referred to in Section 3.1(f) are as follows: Borrower shall have granted to CFC a lien on the Mortgaged Property (as defined in the Mortgage) that is (i) a first priority lien on a *pari passu* basis with Ambac, CSFBNYB and the Series 2001A Trustee, and (ii) prior in right to the lien of the Government and the 2000 Mortgagees (as defined in the Mortgage). Said conditions shall be deemed satisfied upon recordation of the Mortgage Amendment as provided in Section 3.1(d) hereof.
10. The Special Affirmative Covenant(s) referred to in clause (c) of Article IV are as follows: None
11. The existing Event(s) of Default (as defined in the Mortgage) referred to in clause (e) of Article V are as follows: None.

## LITIGATION

1. **In Re: Big Rivers Electric Corporation**, Case No. 96-41168, United States Bankruptcy Court, Western District of Kentucky, Owensboro Division; Case No. 4:01CV-49, United States District Court, Western District of Kentucky, Owensboro Division.

On September 25, 1996, Big Rivers filed a petition under Chapter 11 of the Bankruptcy Code. Big Rivers remained in possession of its assets and continued to operate its business as a debtor in possession. On June 9, 1997, the Bankruptcy Court confirmed Big Rivers' plan of reorganization, and on June 1, 1998, the Bankruptcy Court approved modifications thereto. The plan was consummated July 17, 1998. The United States District Court for the Western District of Kentucky subsequently withdrew the reference of Big Rivers' bankruptcy case, and on November 14, 2002 the District Court entered a Final Decree closing the case.

Numerous proofs of claim were filed by creditors of Big Rivers in the bankruptcy proceeding. Except for the claims discussed below, all such claims were resolved prior to January 1, 2002:

(a) **J. Baxter Schilling Claim:** Following consummation of the modified plan of reorganization, J. Baxter Schilling, the examiner appointed in the case (the "Examiner"), filed his final fee application covering the period from October 18, 1996 through October 12, 1998 (the "Final Application"). The Final Application requested total compensation of \$4.41 million, with credit for fees previously paid to the Examiner on an hourly rate basis, plus reimbursement of out-of-pocket expenses. For services rendered from October 18, 1996 through October 12, 1998, Big Rivers paid the Examiner hourly fees of \$530,928.75. Thus, the Examiner sought a \$3,879,071.25 enhancement of the amount paid to him on an hourly basis. Big Rivers objected to the Final Application. In addition to objecting to the fee enhancement, Big Rivers objected to approval of the hourly fees and expenses charged by the Examiner for pursuing that enhancement (the "Enhancement Fees").

On March 26, 1999, the Bankruptcy Court entered an order and supporting memorandum awarding the Examiner base compensation of \$527,641 and an enhancement of \$2,110,564, for total compensation of \$2,638,205 (the "Fee Order"). The base compensation approved by the Bankruptcy Court included the Enhancement Fees to which Big Rivers had objected.

By order entered August 24, 2000, the District Court reversed the Bankruptcy Court's award of a fee enhancement to the Examiner. *Big Rivers Electric Corporation v. J. Baxter Schilling*, Case Number 4:99CV-118-M, United States District Court, Western District of Kentucky. The District Court also held that the Examiner must refund the Enhancement Fees to Big Rivers, and remanded the Examiner's Final Application to the Bankruptcy Court to determine the amount of those fees (the "Partial Disgorgement Proceeding"). The District Court also remanded the Examiner's Final Application to the Bankruptcy Court to determine whether

the Examiner should be required to refund to Big Rivers all fees previously paid to him because of certain improper fee agreements with certain creditors (the "Total Disgorgement Proceeding").

The Examiner had also appealed from the Bankruptcy Court's fee enhancement order, claiming that he was entitled to interest on the award and that he was not required to credit against the award fees which Big Rivers was required to pay him on a monthly basis for the period after October 12, 1998. The District Court ruled that, since no portion of the allowable fee remained unpaid, the Examiner was not entitled to interest on his fee award. The District Court also found that the Bankruptcy Court intended that the Examiner not be paid any additional fees for work performed after October 12, 1998. However, since it reversed the fee enhancement awarded by the Bankruptcy Court, the District Court held that the Examiner may be entitled to additional compensation for certain services performed after that date. Big Rivers has paid those fees monthly except for approximately \$5,700 which remains unpaid at this time.

The Examiner appealed the decision of the District Court to the Sixth Circuit Court of Appeals. By order entered January 12, 2001, the Court of Appeals dismissed the appeal because the District Court's order was not yet final and appealable. *Big Rivers Electric Corporation v. J. Baxter Schilling*, Case No. 00-6560, United States Court of Appeals for the Sixth Circuit.

After October 12, 1998, Big Rivers continued to pay the Examiner monthly interim compensation as required by previous orders of the Bankruptcy Court. When the Bankruptcy Court entered the Fee Order awarding the Examiner "final compensation", Big Rivers ceased making monthly payments to the Examiner. On July 15, 1999, the Bankruptcy Court entered an order requiring Big Rivers to continue paying the hourly rate fees of the Law Firm of J. Baxter Schilling (the "Examiner's Counsel") on a monthly basis for the period after October 12, 1998. Big Rivers appealed that order. The District Court affirmed the order, but held that in considering any final application for compensation, the Bankruptcy Court should disallow any fees charged by the Examiner's Counsel for pursuing or defending the Examiner's fee enhancement or for other services not beneficial to the bankruptcy estate. *Big Rivers Electric Corporation v. J. Baxter Schilling*, Case No. 4:99CV-175-M, United States District Court, Western District of Kentucky. Neither party appealed that ruling of the District Court and the ruling is now final.

After it remanded the Examiner's Final Application to the Bankruptcy Court to conduct the Partial Disgorgement Proceeding and the Total Disgorgement Proceeding, the District Court withdrew the reference of Big Rivers' entire bankruptcy case to conduct those proceedings itself. Big Rivers subsequently moved the District Court to modify the Bankruptcy Court's July 15, 1999 order to relieve Big Rivers of the obligation to pay the Examiner's Counsel on a monthly basis. By order entered April 12, 2001, that motion was granted. Except for approximately \$5,766.32 in fees for the period August 18, 2000 through November 21, 2000, Big Rivers has not paid the Examiner's Counsel's fees for the period since August 18, 2000. If the Examiner succeeds, or if the Examiner prevails in the appeals to the Sixth Circuit Court of Appeals described below, the Examiner's Counsel may seek additional fees for the period after August 18, 2000.

In the Total Disgorgement Proceeding and the Partial Disgorgement Proceeding, the District Court held that the Examiner must disgorge all fees paid to him. On September 6, 2002, the District Court entered a judgment granting the total disgorgement motions of the Rural Utilities Service and the U.S. Trustee and the partial disgorgement motion of Big Rivers, and denying the final fee applications the Examiner and the Examiner's Counsel. The judgment provided that Big Rivers recover from the Examiner and the Examiner's Counsel the sum of \$931,075.50, with interest thereon at the legal rate from the date of the judgment until paid. (This was the amount recoverable by Big Rivers on the total disgorgement motions of the Rural Utilities Service and the U.S. Trustee. The amount recoverable by Big Rivers on its partial disgorgement motion was subsumed within this amount.) The District Court subsequently awarded Big Rivers \$3,452.38 in costs incurred in the Partial Disgorgement Proceeding.

The Examiner and the Examiner's Counsel appealed the reversal of his fee enhancement and the disgorgement ruling. In re: Big Rivers Electric Corporation, United States Court of Appeals for the Sixth Circuit, Consolidated Case Nos. 02-6212, 02-6213, 02-6338, 02-6340, 02-6341, and 02-6344; and In re: Big Rivers Electric Corporation, United States Court of Appeals for the Sixth Circuit, Case No. 02-6347. The parties are in the process of briefing the issues on appeal, and final briefs are due April 21, 2003. The Court of Appeals' decision on the disgorgement issue may involve the exercise of the Court's discretion with respect to the scope of disgorgement. Its decision on the fee enhancement issue may turn on vigorously disputed facts. For these reasons, we are unable to evaluate the risk of an unfavorable outcome in these appeals. In the event of an unfavorable outcome, the potential loss to Big Rivers would be the \$2,110,564 enhancement, plus possible interest and additional hourly fees of the Examiner and the Examiner's Counsel.

(b) **Monte Hatfield Claim:** Mr. Hatfield pursued a claim against the disability insurance carrier (Fortis) which terminated his disability benefits. Mr. Hatfield's counsel indicated that Mr. Hatfield did not desire to pursue any action against Big Rivers until the conclusion of his action against Fortis. On February 18, 2000, a final judgment was entered in that suit (Monte C. Hatfield v. Fortis Benefits Insurance Company, Case No. 4:97-CV-17-M, U.S. District Court, Western District of Kentucky, Owensboro Division.). All of the claims of Hatfield were denied. No appeal was taken. The bankruptcy court previously entered an agreed order between Mr. Hatfield and Big Rivers allowing claim number 68 as amended by claim number 114 to the extent that a non-bankruptcy court may, in the future, determine Big Rivers to be liable on the claim. To date, no further action has been taken by Mr. Hatfield regarding the claim in any non-bankruptcy court or by bringing on for hearing his union grievance filed in 1995 that he was wrongfully terminated.

## 2. **Green River Disposal Superfund Site.**

The United States Environmental Protection Agency ("EPA") informed Big Rivers Electric Corporation by letter dated October 23, 1991, that Big Rivers has been identified as one of approximately 150 parties potentially liable for damages under federal law with respect to the Green River Disposal Superfund Site. The federal law under which EPA is proceeding is the

Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601, et seq., as amended (“CERCLA”). As applied to the Green River Disposal Superfund Site, the basic purpose of CERCLA is to provide funding and enforcement authority for cleaning up hazardous waste sites created in the United States in the past.

Pursuant to a CERCLA §106 order issued by EPA on April 13, 1990, four companies (General Electric Corporation, W. R. Grace & Company, Athlone Industries, Inc., and Commonwealth Aluminum Company) formed the Green River Disposal Site Coordinating Committee (the “Committee”), which undertook activities at the site to mitigate immediate threats purportedly posed by the release or threatened release of hazardous substances into the environment. The Committee expended approximately \$4.65 million to stabilize the site and to develop a remedial investigation/ feasibility study at the site.

Big Rivers joined a second group of potentially responsible parties, known as the Green River Review Committee, which negotiated a settlement with the Committee regarding the extent of its participation in the site costs incurred through the remedial investigation/feasibility study. Big Rivers’ share through the remedial investigation/ feasibility study stage was approximately \$16,000, and the Green River Review Committee has been dissolved.

The Environmental Protection Agency issued its Record of Decision (ROD) in this matter on December 14, 1994. The ROD prescribes the remedies which EPA has found appropriate for the site. Although there has been no significant activity in its litigation since 1997, the next step in connection with the site will likely be the issuance by EPA of orders requiring potentially responsible parties to accept responsibility for the costs of implementing the chosen remedy. Those costs are estimated in excess of \$12 million. Although EPA was put on notice of Big Rivers’ bankruptcy filing, it did not file a proof of claim. Therefore, Big Rivers’ liability to EPA may have been discharged.

Big Rivers is vigorously defending its position in this administrative action. The latest estimate of the volume of waste contributed to the total site waste by Big Rivers is less than one percent, making Big Rivers a de minimis PRP. However, liability under CERCLA is joint and several. Because the cost of implementing a remedy at the site and Big Rivers’ ultimate share in that cost are unknown and undeterminable, we cannot evaluate the amount or range of Big Rivers’ potential liability.

### 3. **LG&E Energy Corp. Matters**

a. By letter dated July 15, 1999, Western Kentucky Energy Corp., a subsidiary of LG&E Energy Corp., (“WKEC”) notified Big Rivers of claims arising from the alleged breach by Big Rivers of certain representations and warranties, as set forth in the agreements among Big Rivers, WKEC, and other LG&E Energy Corp. subsidiaries or affiliates entered into in connection with the LG&E Transaction.

The letter alleges that the condition of the Wilson Station storm water runoff pond and the condition of the Reid combustion turbine generator were not as represented by Big Rivers

under the warranties and representations contained in the LG&E Transaction agreements. The claim of misrepresentation regarding the Reid combustion turbine generator has been waived by WKEC.

Big Rivers and WKEC exchanged correspondence and met on several occasions regarding the alleged breach of warranties and representations about the condition of the Wilson Station storm water runoff pond. WKEC estimated that its total claim would be \$1,616,222.23. If WKEC were awarded this amount after arbitration with Big Rivers under the dispute resolution procedures of the Participation Agreement, Big Rivers would also be responsible for the costs of the arbitration, including the reasonable attorney's fees of WKEC. Management has vigorously defended against this claim.

In accordance with the contractual dispute resolution process applicable to this dispute, Big River paid WKEC the portion of its claim that had been demanded, and then began proceedings to recover those amounts. A verbal settlement of this claim has been reached that fixed Big Rivers' liability at \$1.20 million, which is less than the amount already paid to WKEC. Big Rivers and WKEC are negotiating the detail of the agreement settling this matter.

b. By letter dated January 15, 2003, LG&E Energy Marketing, Inc. ("LEM") asserted that Big Rivers owed it \$2,716,560.00 for generation-based ancillary services LEM contends that it provided Big Rivers since July 1998 under the terms of its tariff and the July 15, 1998, Power Purchase Agreement between Big Rivers and LEM. Big Rivers and LEM have reached a verbal settlement of this dispute, in accordance with which Big Rivers will pay LEM \$2,223,860 for the ancillary services in dispute for the period from July 15, 1998, through May 31, 2003, and will pay monthly for such services incurred in the future. The parties are negotiating the details of the settlement agreement that will incorporate these terms.

**4. Kenneth Neal and Sandra Neal v. The Babcock & Wilcox Company, Babcock & Wilcox Construction Co. Inc., Big Rivers Electric Corporation, Western Kentucky Energy Corp., LG&E Energy Corp., and The Unknown Defendant(s), Civil Action No. 02-CI-00053, Webster Circuit Court**

This personal injury action arises out of an injury that occurred to Kenneth Neal on March 17, 2001 while he was working for an independent contractor at Big Rivers' Green Station. The action was filed on March 5, 2002. Western Kentucky Energy Corp. ("WKE") maintains general liability insurance coverage, subject to certain levels of self-insurance by WKE, on Big Rivers' generating facilities, including Green Station, under the New Participation Agreement Among Big Rivers Electric Corporation, LG&E Energy Marketing, Inc., Western Kentucky Leasing Corp., WKE Station 2, Inc., And Western Kentucky Energy Corp. Dated April 6, 1998 (the "New Participation Agreement"). The New Participation Agreement provides for Big Rivers to be an additional insured. Big Rivers has a right of contractual indemnification from WKE for claims, liabilities, damages, costs and expenses arising from WKE's operation of Big Rivers' plants, including Green Station, pursuant to Section 18.2 of the New Participation Agreement.

The case is in the discovery stage. Management intends to vigorously defend the action for as long as it remains a party. Big Rivers, WKE and LG&E previously moved for summary judgment on the ground that the plaintiffs' claims are barred by the exclusivity provisions of the Kentucky Workers' Compensation Act. The court denied these motions, but Big Rivers, WKE and LG&E intend to renew the motions after further discovery is conducted. Plaintiffs' claims are primarily based on the theory of product liability. Mr. Neal sustained serious injuries, including partial amputation of a leg, but there are significant issues regarding liability, comparative negligence and apportionment of liability among the defendants. No party has, at this time, disclosed any expert witness.

5. *James Clark and E. June Clark vs. ABB, Inc., et al.*, Cause No. 49D02-9601-MI-0001-798, Marion, Indiana Superior Court.

On or about February 4, 2003, Big Rivers was joined as a defendant with numerous other entities in this suit for damages sustained as a result of allegations that James Clark, age 82, was diagnosed with terminal malignant pleural mesothelioma in November 2002. The plaintiffs claim this medical condition to be due to exposure to asbestos products primarily while James was employed as a field service engineer for Westinghouse Electric Corporation from 1946 to 1986 when he retired. Mr. Clark claims exposure to asbestos at Big Rivers' plants in Hawesville from 1970-1972; Henderson from 1973-1974; and Livermore from 1982-1983. On February 4, 2002, the Clarks filed their complaint, which is now a claim within a Master Complaint as numbered above. Big Rivers' insurance carrier has assumed defense of this matter under a reservation of rights.

6. **Industrial Contractors, Inc v. FLS miljo, Inc., Western Kentucky Energy Corp., Big Rivers Electric Corporation, United States of America, acting through the Administrator of the Rural Utilities Services, as successor to the Administrator of the Rural Electrification Administration, Ambac Assurance Corporation, National Rural Utilities Cooperative Finance Corporation, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust, Ambac Credit Products, LLC, Credit Suisse First Boston, LG&E Energy Marketing, Inc., WKE Station Two, Inc. and WKE Corporation**, Hancock Circuit Court, Civil Action No. 03-CI-31.

In late January and early February of 2003, Industrial Contractors, Inc. and PSP Industries asserted mechanic's and materialman's liens in the amounts of \$2,808,596.97 and \$534,671.90, respectively, against property owned by Big Rivers in Hancock County, Kentucky, on which Big Rivers' Coleman generating station is located. Industrial Contractors, Inc. subsequently filed the above-captioned action to enforce the mechanics' lien, and joined in the action Big Rivers and all of Big Rivers' creditors. The principal parties to this action have entered into a settlement agreement, and counsel for Big Rivers has been advised by counsel for Industrial Contractors, Inc. that the mechanics' liens will be released, and this action will be dismissed within a matter of days.





**FIRST AMENDED AND RESTATED  
SECURED PROMISSORY NOTE**

\$15,000,000.00

July 14, 2003

FOR VALUE RECEIVED, Big Rivers Electric Corporation, a Kentucky rural electric cooperative (the "Borrower"), hereby promises to pay, without setoff, deduction, recoupment or counterclaim, to the order of NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION (the "Payee"), at the Payee's main office, or such other place as may be designated by Payee, in lawful money of the United States and in immediately available funds, the principal sum of FIFTEEN MILLION DOLLARS (\$15,000,000), or such lesser amount as shall equal the sum of the aggregate unpaid principal amount of all Advances made by the Payee pursuant to the Credit Agreement (as defined below) on the dates provided therein (except that if not sooner paid, any balance shall be due and payable on the Maturity Date, as defined below) with interest thereon in like money from the respective dates of each Advance (as defined in the Credit Agreement), at the interest rate and dates provided for in said Credit Agreement, together with any other amount payable under the Credit Agreement. The Maturity Date hereof shall be the earlier of the date that is (a) one hundred twenty (120) months after the date hereof, and (b) sixty (60) months after the date hereof, but only if Payee shall have terminated the Credit Agreement effective as of such date in accordance with Section 2.1(a) of the Credit Agreement.

This Note is secured under that certain Third Restated Mortgage and Security Agreement dated as of August 1, 2001, to be amended by the First Amendment thereto, dated as of July 15, 2003, among the Borrower, the Payee, the United States of America acting through the Rural Utilities Service, Ambac Assurance Corporation, Credit Suisse First Boston acting through its New York Branch, U.S. Bank National Association, as Trustee, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust and Ambac Credit Products, LLC, as the same has been or may be further amended, supplemented, restated or consolidated (the "Mortgage"). This Note is the Note referred to in the First Amended and Restated Revolving Credit Agreement dated as of the date hereof, between the Payee and the Borrower, as amended from time to time (the "Credit Agreement"), and evidences Advances thereunder. Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement.

Upon the occurrence of an Event of Default, the principal hereof and accrued interest hereon may be declared to be forthwith due and payable in the respective manner, upon the conditions and with the effect provided for in the Credit Agreement and the Mortgage.

The Borrower waives demand, presentment for payment, notice of dishonor, protest, notice of protest, and notice of non-payment of this Note, and all other notices which under applicable law the Borrower may waive, except as otherwise expressly provided in the Credit Agreement.

This First Amended and Restated Secured Promissory Note is intended to amend, restate and supersede in its entirety that certain Secured Promissory Note dated as of July 15, 1998, executed by Borrower in favor of Payee.

ATTACHMENT E

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed in its corporate name and its corporate seal to be hereunto affixed and to be attested by its duly authorized officers, all as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: 

Title: President

(SEAL)

Attest: \_\_\_\_\_

(Secretary)

Date: July 14, 2003



**FIRST AMENDED AND RESTATED  
LETTER OF CREDIT APPLICATION AND AGREEMENT  
(Master Facility)**

**Name and Address of Applicant:**

BIG RIVERS ELECTRIC CORPORATION  
201 Third Street  
Henderson, Kentucky 42420  
Attention: President and Chief Executive Officer  
Fax Number: (502) 827-2558

**Original Letter of Credit Facility:**

Applicant and National Rural Utilities Cooperative Finance Corporation ("CFC") are currently parties to that certain Letter of Credit Application and Agreement (Master Facility), dated as of September 27, 2002 (the "Original Agreement"). Applicant and CFC desire to amend, restate and supersede in its entirety the Original Agreement in accordance with the terms and conditions hereof. All Letters of Credit issued and outstanding under the Original Agreement as of the date of execution hereof, shall be deemed to be issued and outstanding hereunder as of the date hereof, and the Beneficiaries of such Letters of Credit shall be entitled to all of the same rights and benefits that each such Beneficiary held under its Letter of Credit issued under the Original Agreement.

**First Amended and Restated Letter of Credit Facility:**

This First Amended and Restated Letter of Credit Facility (the "Letter of Credit Facility") is Fifteen Million Dollars (\$15,000,000) in the aggregate. Subject to Paragraph 7 below, within this amount, Applicant may request, and CFC shall issue, letters of credit to such Beneficiary or Beneficiaries (as defined below) as may be requested by Applicant from time to time under the terms and conditions of this First Amended and Restated Letter of Credit Application and Agreement (Master Facility) (the "Agreement"). Each such request is referred to herein as a "Letter of Credit Request," and shall be in writing and substantially in the form of Exhibit A hereto. Each such letter is referred to herein as a "Letter of Credit". Each Letter of Credit shall be substantially in the form of Exhibit B hereto and shall reflect the amount available for draw thereunder (the "Letter of Credit Amount"). The Letter of Credit Amount reflected on any expired Letter of Credit shall be added back into the Letter of Credit Facility and be available for issuance of additional Letters of Credit during the term of this Agreement.

**Name and Address of Beneficiary:**

To be determined as requested by Applicant from time to time as provided hereunder.

**Letter of Credit Expiration Date; Termination of Agreement:**

Each Letter of Credit issued hereunder shall expire on the date indicated thereon, but in no event shall such date be later than July 14, 2008. Provided that no default hereunder by Applicant has occurred and is continuing, CFC's obligation to issue any Letter of Credit under this Agreement shall remain in effect until July 13, 2008.

ATTACHMENT F

**Date of this Application and Agreement:** July 14, 2003.

**CFC Letter of Credit Designation:** The first Letter of Credit issued hereunder shall bear CFC designation KY062-L-9001-001. Each subsequent Letter of Credit issued hereunder shall be numbered consecutively thereafter.

A. Applicant hereby requests CFC to issue one or more irrevocable letters of credit in favor of the Beneficiary or Beneficiaries designated by Applicant under the terms and conditions stated herein.

B. In consideration of the issuance by CFC of a Letter of Credit, Applicant hereby agrees with CFC to the following terms and conditions which, together with the terms stated above, constitute a valid and binding agreement between Applicant and CFC.

**1. Draws.** On any day that CFC is open for business, CFC hereby agrees to advance funds under a Letter of Credit to the Beneficiary in such amounts as the Beneficiary may from time to time request (each such advance is referred to herein as a "Draw"), provided that: (a) on the date of each such request, the outstanding unpaid balance of all Draws shall not exceed the amount of the Letter of Credit Facility stated above; (b) each Draw request is accompanied by the documentation specified in a Letter of Credit, the authenticity, form and substance of which shall be satisfactory to CFC; and (c) no Draw request will be honored after CFC's close of business on the Letter of Credit Expiration Date set forth in the respective Letter of Credit.

**2. Documents.** CFC's obligation to issue a Letter of Credit is conditioned upon CFC's receipt of the following documents, in form and substance satisfactory to CFC: (a) an executed copy of this Agreement; (b) an executed line of credit reserve authorization executed in favor of CFC; (c) certified copies of all such corporate documents and proceedings of Applicant as CFC may require authorizing the transactions hereby contemplated; (d) an opinion of counsel for Applicant addressing such legal matters as CFC shall reasonably require; and (e) true and correct copies of all certificates, authorizations and consents of any regulatory authority necessary for the execution, delivery or performance by Applicant of this Agreement.

**3. Irrevocable Instruction.** Applicant hereby irrevocably instructs CFC to honor drafts presented in accordance with the terms hereof and contained in a Letter of Credit. It is expressly agreed that CFC may honor such drafts without requiring any documentation or information other than expressly stated in a Letter of Credit, and without regard to any contrary instructions Applicant may hereafter give to CFC.

**4. Legal Representatives.** Applicant agrees that CFC shall have no liability to Applicant or to any other person for honoring drafts presented in accordance with the terms hereof and contained in a Letter of Credit which may be presented by the administrator, trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other legal representative of the Beneficiary.

**5. No Liability.** CFC shall have no liability for, and Applicant's repayment and other obligations hereunder shall not be affected by (a) the use which may be made of the funds drawn under a Letter of Credit or for the acts or omissions of the Beneficiary or any other person, (b) the validity, accuracy, sufficiency or genuineness of drafts, required statements or documents, even if such drafts, statements or documents should in fact prove to be in any or all respects invalid, inaccurate, insufficient, fraudulent or forged, (c) errors, omissions, interruptions or delays in

transmission or delivery of any message by mail, telephone, facsimile or otherwise, or (d) any consequences arising from causes beyond CFC's control.

**6. Fees.**

(a) Upon approval of this Letter of Credit Facility, and annually thereafter for so long as this Letter of Credit Facility is outstanding, the applicant shall pay to CFC a fee (the "Facility Fee") equal to thirty-five basis points (35/100 of 1%) of the amount of the Letter of Credit Facility. The Facility Fee shall be due and payable quarterly in arrears. The Facility Fee is nonrefundable, shall be billed and payable quarterly in arrears, and shall be prorated for any year in which this Letter of Credit Facility is not outstanding for the entire year.

(b) For each Letter of Credit issued hereunder, Applicant shall also pay to CFC a nonrefundable fee (the "Letter of Credit Fee"), calculated for each twelve-month period (or such shorter period if the Letter of Credit expires in less than one year) that the Letter of Credit is outstanding. The Letter of Credit fee shall be an amount equal to (i) sixty-five basis points (65/100 of 1%) of Letter of Credit Amount if the Borrower's reimbursement obligation thereon is supported by the Line of Credit Reserve Authorization executed in connection with this Agreement, or (ii) thirty-five basis points (35/100 of 1%) of Letter of Credit Amount if the Borrower's reimbursement obligation thereon is fully collateralized by cash or an investment in commercial paper issued by CFC in an amount equal to the Letter of Credit Amount. If the Borrower's reimbursement obligation is collateralized by cash or commercial paper, Borrower shall execute a pledge and security agreement in form and substance satisfactory to CFC in order to create and perfect a first priority lien on such collateral in favor of CFC. The Letter of Credit Fee shall be due and payable quarterly in arrears. The Letter of Credit Fee is nonrefundable, shall be billed and payable quarterly in arrears, and shall be prorated for any year in which the related Letter of Credit is not outstanding for the entire year.

In addition to the above fees, Applicant shall pay such additional fees as may be imposed by a confirming bank or other financial institution in the event that a Letter of Credit issued hereunder is confirmed by such other bank or financial institution at the request of Applicant or the Beneficiary.

**7. Available Amount.**

(a) As of the date of this Agreement, Applicant and CFC have entered into that certain First Amended and Restated Revolving Credit Agreement, dated as of the date hereof (the "Revolving Credit Agreement"), pursuant to which Applicant may, subject to the terms and conditions thereof, borrow, repay, and reborrow an aggregate amount up of to \$15,000,000. The amount available at any time and from time to time under the Revolving Credit Agreement shall be referred to herein as the "Available Amount."

(b) Applicant agrees that it shall not request the issuance of, nor shall CFC be obligated to issue, a Letter of Credit hereunder unless the Available Amount is equal to or greater than the sum of (i) the total of the Letter of Credit Amounts of all issued and outstanding Letters of Credit, plus (ii) the Letter of Credit Amount requested. Applicant shall certify in each Letter of Credit Request that the Available Amount is equal to or greater than the sum of such amounts.

(c) Applicant hereby agrees not to request any Advance (as defined in the Revolving Credit Agreement) under the Revolving Credit Agreement if the effect of any such Advance

would be to reduce the Available Amount below the sum of the Letter of Credit Amounts reflected in all issued and outstanding Letters of Credit.

## **8. Repayment.**

(a) CFC shall notify Applicant promptly of each (i) Draw request that it receives under a Letter of Credit, (ii) Draw that is made under a Letter of Credit, and (iii) each Advance under the Revolving Credit Agreement that is made to pay a Draw referred to in clause (a)(ii) of this Paragraph 8.

(b) Upon receipt of notice by Applicant from CFC that a Draw has been made under a Letter of Credit, Applicant shall pay, in lawful money of the United States, without setoff, deduction, recoupment or counterclaim, to the order of NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION, at its office in Herndon, Virginia or such other offices as CFC may designate, the aggregate principal amount of such Draw (the "Draw Amount"), and interest as hereinafter provided on all amounts remaining unpaid hereunder from the date of such Draw in like money at said office (the "Interest Amount"). The Interest Amount shall be due and payable in accordance with CFC's regular billing cycles as may be in effect from time to time. CFC shall send a payment notice to Applicant at least five days prior to the due date of such Interest Amount.

(c) If, prior to the close of business on the day that any Draw under a Letter of Credit has been made, Applicant has not paid the Draw Amount to CFC, Applicant hereby authorizes CFC to make an Advance under the Revolving Credit Agreement in an amount equal to the Draw Amount and to apply such Advance to pay the Draw Amount on behalf of Applicant.

**9. Interest.** The interest rate on all Draws will be equal to the total rate per annum as may be fixed by CFC from time to time, which shall not exceed the Prime Rate (as defined herein), plus one percent per annum. Interest will be computed on the basis of a 365 day year for the actual number of days that any Draw is outstanding. The effective date of an interest rate adjustment will be determined from time to time by CFC, provided that no such adjustment may be effective on a date other than the first or sixteenth day of any month, and any such adjustment shall remain in effect until any subsequent change in the interest rate occurs.

**10. Prime Rate.** The "Prime Rate" is that bank prime rate published in the "Money Rates" column of the Wall Street Journal on the publication day immediately preceding the day on which an adjustment in the interest rate shall become effective. If such preceding day is not a publication day for The Wall Street Journal, then the prevailing bank prime rate shall be established by reference to such "Money Rates" column as of the last publication day next preceding the day on which such adjustment shall become effective; *provided that* if The Wall Street Journal shall cease to be published, then the prevailing bank prime rate shall be determined by CFC by reference to another publication reporting bank prime rates in a similar manner.

**11. Default; Remedies.** Applicant shall be in default if (i) it fails to pay any Draw Amount or Interest Amount, or fails to pay any other sum due hereunder, in full, when due or (ii) it fails to comply with clause (c) of Paragraph 7 hereof. Upon default, Applicant agrees that (a) CFC's obligation to issue any Letters of Credit hereunder shall terminate without liability to CFC, (b) all amounts outstanding under this Agreement shall become immediately due and payable in full with accrued interest, and (c) CFC may, in addition thereto, exercise any other remedies available to it under applicable law. Applicant hereby expressly waives demand, presentment for payment,



notice of dishonor, protest, notice of protest, and notice of non-payment, and all other notices that may be applicable to acceleration of payment under and enforcement of this Agreement.

**12. Required Notices.** Applicant agrees that, so long as any amount due is outstanding under this Agreement, Applicant shall promptly notify CFC (a) of any delinquency or default on any of its debt, including but not limited to money borrowed, debt evidenced by securities issued, or any indebtedness directly or indirectly guaranteed by Applicant, or (b) if there is a material adverse change in Applicant's financial condition. Applicant further agrees that if CFC shall determine, in its sole and absolute discretion, that such delinquency or default, or such inaccurate financial information materially increases CFC's risk of repayment hereunder, CFC may exercise all remedies available to it under this Agreement and applicable law, including but not limited to acceleration of all amounts due hereunder.

**13. Right of Setoff.** If Applicant fails to pay any amount hereunder when due, then CFC is hereby authorized at any time and from time to time, without prior notice to Applicant, to exercise rights of setoff or recoupment and apply any and all amounts held, or hereafter held, by CFC or owed to Applicant or for the credit or account of Applicant against any and all of the obligations of Applicant hereunder. CFC agrees to notify Applicant promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. The rights of CFC under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which CFC may have. Applicant waives all rights of setoff, deduction, recoupment or counterclaim.

**14. Financial Information.** Applicant agrees that, so long as any amount due to CFC is outstanding under this Agreement, Applicant shall deliver to CFC a copy of Applicant's monthly financial statements prepared on RUS Form 12. Monthly statements shall be furnished within thirty (30) days after the end of the month. Applicant will also cause to be prepared and furnished to CFC a full and complete report of its financial condition and operations as of the end of the calendar year in form and substance satisfactory to CFC, audited by independent certified public accountants nationally recognized or otherwise satisfactory to CFC and accompanied by a report of such audit in form and substance satisfactory to CFC. Such report shall be furnished within 120 days of the end of such calendar year. The foregoing requirements shall survive the making of Draws hereunder and the expiration of a Letter of Credit until all sums due under this Agreement have been paid in full.

**15. Late Fee; Collection Costs.** If payment of any Draw Amount and/or Interest Amount due under the terms of this Agreement is not received at CFC's offices in Herndon, Virginia, or such other place as CFC may designate, within 5 business days after the due date thereof, Applicant will pay to CFC, in addition to all other amounts due under the terms of this Agreement, a late payment charge as may then be in effect pursuant to CFC's policies of general application. Applicant further agrees to pay the costs of collection, including reasonable attorneys' fees, of any amount due under this Agreement.

**16. GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.**

THE PERFORMANCE AND CONSTRUCTION OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF VIRGINIA.

APPLICANT HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES COURTS LOCATED IN VIRGINIA AND OF ANY STATE COURT SO LOCATED FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. APPLICANT IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE ESTABLISHING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

EACH OF THE APPLICANT AND CFC 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 AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**17. Notices:** All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to Applicant at the address and telecopy number stated above, and to CFC at:

National Rural Utilities Cooperative Finance Corporation  
2201 Cooperative Way  
Herndon, Virginia 20171-3025  
Fax: (703) 709-6776

Either party may designate another address by notice as provided herein. All communications shall be deemed to have been duly given when personally delivered or, in the case of a telecopied or mailed notice, upon receipt, in each case given or addressed as provided for herein.

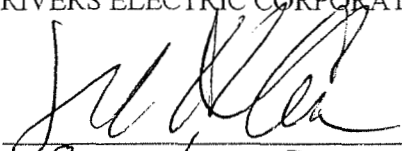
**18. Miscellaneous.** No modification or waiver of any provision of this Agreement, and no consent to any departure by Applicant therefrom, shall in any event be effective unless the same shall be in writing by the party granting such modification, waiver or consent. This Agreement and any schedules or exhibits together contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby. If any term, provision or condition of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

[Signatures begin on the following page]

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

(SEAL)

BIG RIVERS ELECTRIC CORPORATION

By:   
Title: Pres/CEO

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

NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

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

(SEAL)

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

Effective Date (to be filled in by CFC): \_\_\_\_\_

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

(SEAL)

BIG RIVERS ELECTRIC CORPORATION

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

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

Attest: \_\_\_\_\_

Secretary

NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

By:           Krishna Murthy          

Title:           ASSISTANT SECRETARY TREASURER          

(SEAL)

**KRISHNA S. MURTHY**

Attest:           Ronit Kimbrough          

Secretary  
**RONIT KIMBROUGH**

Effective Date (to be filled in by CFC):           7-15-03

EXHIBIT A  
FORM OF LETTER OF CREDIT REQUEST

National Rural Utilities Cooperative Finance Corporation  
2201 Cooperative Way  
Herndon, VA 20171-3025  
Attn: (AVPName)

(Date)

Re: National Rural Utilities Cooperative Finance Corporation ("CFC")  
Master Letter of Credit Facility No. (LoanNumber) (the "Master Facility")

BIG RIVERS ELECTRIC CORPORATION ("Big Rivers") hereby requests CFC to issue a letter of credit under the above-referenced Master Facility with the following terms:

Letter of Credit Amount:

Beneficiary Name and Address:

Letter of Credit Effective Date:

Letter of Credit Expiration Date:

Conditions of Draw:

Big Rivers hereby certifies that the Available Amount (as defined in the Master Facility) is equal to or greater than the sum of (i) the total of the Letter of Credit Amounts of all issued and outstanding Letters of Credit, plus (ii) the Letter of Credit Amount requested.

Please issue the letter of credit directly to the beneficiary, with a copy to the undersigned.

Very truly yours,

BIG RIVERS ELECTRIC CORPORATION

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

EXHIBIT B  
FORM OF LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NUMBER (LoanNumber)

Date: (LetterDate)  
Amount: (AmountText) Dollars (\$(AmountNumber).00)  
Letter of Credit Expiration Date: (ExpiryDate)

Beneficiary Name and Address:

(BeneficiaryName)  
(BenefAddressLine1)  
(BenefAddressLine2)

Name of Applicant:

BIG RIVERS ELECTRIC CORPORATION  
201 Third Street  
Henderson, Kentucky 42420  
Attention: President and Chief Executive Officer  
Fax Number: (270) 827-2558

Issuer: National Rural Utilities Cooperative Finance Corporation  
Woodland Park, 2201 Cooperative Way  
Herndon, Virginia 20171-3025

Attention: (AVPName)

To the above-named Beneficiary:

We hereby issue our irrevocable Letter of Credit in your favor for the account of the above-named Applicant up to the aggregate amount stated above.

Funds under this Letter of Credit, in an amount not to exceed the amount stated above, will be made available to you in accordance with the terms and conditions herein against sight drafts presented at the above address, bearing the clause "Drawn under National Rural Utilities Cooperative Finance Corporation Letter of Credit No. (LoanNumber), dated (LetterDate)", and accompanied by the following documents:

1. A notarized certificate sworn to and executed by an authorized officer of the Beneficiary reading as follows: "The amount claimed under this Letter of Credit as represented by the sight draft enclosed herewith is due and payable because (A) an [Event of Default/Early Termination

Date] (as defined in the Master Purchase and Sale Agreement dated as of \_\_\_\_\_ between Beneficiary and Applicant, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Applicant under the Master Agreement and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit; (B) Applicant has not made such payment, (C) Beneficiary has made written demand upon Applicant for payment, and (D) payment pursuant thereto has not been received within five days of the receipt of said demand."

2. This original Letter of Credit.

We hereby agree with you that sight drafts drawn under this Letter of Credit will be honored in accordance with the terms and conditions stated herein provided the sight draft and required documents are presented to us at the above address on or before the Letter of Credit Expiration Date stated above. Payment of any draft drawn under this Letter of Credit in an amount less than the maximum amount available hereunder shall be recorded by us on the reverse side hereof and this Letter of Credit shall then be returned to you.

This Letter of Credit is governed by the provisions of the Uniform Customs and Practice for Documentary Credits (1993 Version), International Chamber of Commerce Publication No. 500 ("UCP"). As to matters not governed by the UCP, this Letter of Credit is governed by the laws of the Commonwealth of Virginia. This Letter of Credit is not transferable.

NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

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







201 Third Street  
P.O. Box 24  
Henderson, KY 42419-0024  
270-827-2561  
www.bigrivers.com

July 14, 2003

Mr. Victor T. Vu  
Director, Power Supply Division  
Rural Utilities Service  
U.S. Department of Agriculture  
Room 0270, South Building, Stop 1568  
1400 Independence Avenue, SW  
Washington, D.C. 20250-1500

Re: Letter of Credit Usage

Dear Mr. Vu:

Reference is made to the Revolving Credit Agreement (the "Revolving Credit Agreement"), dated as of July 15, 1998 between Big River Electric Corporation ("Big Rivers") and National Rural Utilities Cooperative Finance Corporation ("CFC"), pursuant to which Big Rivers executed in favor of CFC a secured promissory note in the aggregate principal amount of \$15 million (the "Revolving Credit Note"), each of which documents is to be amended and restated as of the date hereof by the First Amended and Restated Revolving Credit Agreement (the "New Revolving Credit Agreement"), dated July 14, 2003, between Big Rivers and CFC and the First Amended and Restated Secured Promissory Note, dated July 14, 2003, in the aggregate principal amount of \$15 million (the "New Revolving Credit Note").

Reference is also made to the Letter of Credit Application and Agreement (Master Facility) (the "Master LC Agreement"), dated as of September 27, 2002, between Big Rivers and CFC, under which CFC has agreed to issue on behalf of Big Rivers letters of credit (each, a "Letter of Credit") in an aggregate amount not to exceed \$15 million. Big Rivers has requested that CFC issue one or more Letters of Credit under the Master LC Facility in favor of one or more third parties to support Big Rivers' power trading activities arranged by Big Rivers' agent, ACES Power Marketing (the "Power Trading Activities"). The Master LC Agreement is to be amended and restated as of the date hereof by the First Amended and Restated Letter of Credit Application and Agreement (Master Facility) (the "New Master LC Agreement"), dated July 14, 2003, between Big Rivers and CFC, under which CFC will agree, when executed, to issue on behalf of Big Rivers new letters of credit (each, a "New Letter of Credit") in an aggregate amount not to exceed \$15 million. Big Rivers intends to request that CFC issue one or more New Letters of Credit under the New Master LC Facility in favor of one or more third parties to support its Power Trading Activities.

ATTACHMENT G

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Mr. Victor Vu  
July 14, 2003  
Page Two

In connection with the execution and delivery of the New Revolving Credit Agreement, the New Revolving Credit Note, and the New Master LC Agreement (collectively the "New CFC Documents"), Big Rivers has requested that The United States of America acting by and through the Rural Utilities Service ("RUS") execute and deliver each of (i) the Second Amendment to Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement dated as of July 15, 2003, among Big Rivers, CFC, RUS and certain other secured creditors of Big Rivers (the "Second Amendment to Intercreditor Agreement") and (ii) the First Amendment to Third Restated Mortgage and Security Agreement dated as of July 15, 2003, among Big Rivers, CFC, RUS and certain other secured creditors of Big Rivers (the "Second Amendment to Mortgage," and together with the Second Amendment to Intercreditor Agreement, the "Amendments").

In consideration of the execution and delivery of the Amendments by RUS and for other valuable consideration, the receipt of which is hereby acknowledged:

a. Big Rivers hereby acknowledges that its current intention is to request New Letters of Credit under the New Master LC Facility only to support its Power Trading Activities; and

b. Big Rivers hereby agrees that if at any time Big Rivers requests that a New Letter of Credit be issued for a purpose other than the Power Trading Activities, Big Rivers shall promptly inform RUS of such request and the purpose for which such New Letter of Credit shall be used.

Very truly yours,

**BIG RIVERS ELECTRIC CORPORATION**

By: 

Name: Michael H. Core

Title: President and CEO



**FIRST AMENDMENT TO FIRST AMENDED AND RESTATED  
LETTER OF CREDIT APPLICATION AND AGREEMENT**

**FIRST AMENDMENT TO FIRST AMENDED AND RESTATED LETTER OF CREDIT APPLICATION AND AGREEMENT** (this "Amendment"), dated as of June 5, 2008, between BIG RIVERS ELECTRIC CORPORATION ("Borrower"), a corporation organized and existing under the laws of the State of Kentucky, and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION ("CFC"), a cooperative association organized and existing under the laws of the District of Columbia.

**RECITALS**

**WHEREAS**, the Borrower and CFC are parties to that certain First Amended and Restated Letter of Credit Application and Agreement dated as of July 14, 2003, with respect to CFC Loan No. KY062-L-9001 (the "Original Agreement");

**WHEREAS**, the Borrower has requested an extension in the period during which letters of credit can be issued under the Original Agreement and the final date upon which all such letters of credit must expire and CFC has agreed to such modification subject to Borrower's agreement to extend its current line of credit reservation to the line of credit that will replace the line of credit provided for in the Revolving Credit Agreement (as defined in the Original Agreement), upon the termination thereof (the "Replacement Line of Credit");

**WHEREAS**, the Borrower and CFC have agreed to modify the Original Agreement as set forth herein to reflect the terms of such agreement;

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

**Section 1. Recitals.** The foregoing recitals are incorporated herein by reference.

**Section 2. Definitions.** Capitalized terms that are not defined herein shall have the meanings assigned to them as set forth in the Original Agreement.

**Section 3. Amendment.**

**A.** The section of the Original Agreement titled "Letter of Credit Expiration Date; Termination of Agreement:" is hereby deleted in its entirety and is hereby amended to read as follows:

**"Letter of Credit Expiration Date; Termination of Agreement:**

Each Letter of Credit issued hereunder shall expire on the date indicated thereon, but in no event shall such date be later than March 1, 2009. Provided that no default hereunder by Applicant has occurred and is continuing, CFC's obligation to issue any Letter of Credit under this Agreement shall remain in effect until February 28, 2009."

ATTACHMENT H

**B.** Section 7(a) of the Original Agreement is hereby deleted in its entirety and is hereby amended to read as follows:

“(a) As of the date of this Agreement, Applicant and CFC have entered into that certain First Amended and Restated Revolving Credit Agreement, dated as of the date hereof (the “Revolving Credit Agreement”), pursuant to which Applicant may, subject to the terms and conditions thereof, borrow, repay, and reborrow an aggregate amount up to \$15,000,000. The amount available at any time and from time to time under the Revolving Credit Agreement, or the line of credit agreement which is to replace the Revolving Credit Agreement upon the termination of Borrower’s lease, power purchase agreement and other arrangements with subsidiaries of E.ON U.S. LLC (formerly LG&E Energy LLC) (such replacement agreement, is referred to herein as the “Replacement Credit Agreement), shall be referred to herein as the “Available Amount”.”

**C.** Section 7(c) of the Original Agreement is hereby deleted in its entirety and is hereby amended to read as follows:

“(c) Applicant hereby agrees not to request any Advance (as defined in the Revolving Credit Agreement until replaced by the Replacement Credit Agreement, then upon such replacement, as defined in the Replacement Credit Agreement) under the Revolving Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) if the effect of such Advance would be to reduce the Available Amount below the sum of the Letter of Credit Amounts reflected in all issued and outstanding Letters of Credit.

**C.** Section 8(c) of the Original Agreement is hereby deleted in its entirety and is hereby amended to read as follows:

“(c) If, prior to the close of business on the day that any Draw under a Letter of Credit has been made, Applicant has not paid the Draw Amount to CFC, Applicant hereby authorizes CFC to make an Advance under the Revolving Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) in an amount equal to the Draw Amount to apply such Advance to pay the Draw Amount on behalf of Applicant.”

**Section 4. Conditions.** This Amendment shall become effective upon CFC’s receipt of this Amendment and an amendment to the Line of Credit Reserve Authorization dated July 14, 2003 made by Borrower in favor of CFC to extend such reservation to the Replacement Line of Credit.

**Section 5. Representations and Warranties.** The Borrower represents and warrants that:

**5.1 Good Standing.** The Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, is duly qualified to do business and is in good standing in those states in which it is required to be qualified to conduct its business.

**5.2 Authority.** The execution, delivery and performance by the Borrower of this Amendment and the performance hereof have been duly authorized by all necessary corporate action and will not violate any provision of law or of the Articles of Incorporation or bylaws of the

Borrower or result in a breach of, or constitute a default under, any agreement, indenture or other instrument to which the Borrower is a party or by which it may be bound.

**5.3 Material Adverse Change.** There has been no material adverse change in the financial condition or operations of the Borrower since the date of the Original Agreement, except as set forth in the most recent financial statements submitted to CFC or as otherwise disclosed in writing to CFC prior to the date hereof.

**5.4 REQUIRED APPROVALS.** NO LICENSE, CONSENT OR APPROVAL OF ANY GOVERNMENTAL AGENCY OR AUTHORITY IS REQUIRED TO ENABLE THE BORROWER TO ENTER INTO THIS AMENDMENT, OR TO PERFORM ANY OF THE OBLIGATIONS PROVIDED FOR HEREIN, EXCEPT AS HAVE BEEN OBTAINED BY THE BORROWER AND DELIVERED TO CFC PRIOR TO THE DATE HEREOF.

**5.5 Prior Representations and Warranties.** All representations and warranties made by the Borrower in the Original Agreement are true and correct as of the date hereof.

## **Section 6. Miscellaneous.**

**6.1 Modifications.** No modification or waiver of any provision of this Amendment, and no consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing by the party granting such modification, waiver or consent.

**6.2 Merger and Integration.** This Amendment, the Original Agreement and the matters incorporated by reference contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby.

**6.3 Incorporation; Inconsistency with Original Agreement.** Except as specifically waived by CFC or otherwise amended or modified herein, the terms, conditions and provisions of the Original Agreement are incorporated herein by reference as if set forth in full herein and remain in full force and effect. In the event of any conflict or inconsistency between the terms of this Amendment and the Original Agreement, the terms of this Amendment shall control.

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

(SEAL)

BIG RIVERS ELECTRIC CORPORATION

By: [Signature]

Title: President/CEO

Attest: [Signature]

Title: Vice President of Financial Services/CFO

(SEAL)

NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

By: [Signature]

Assistant Secretary-Treasurer  
**Nazir Rostom**

Attest: [Signature]  
Assistant Secretary-Treasurer

**Krishna S. Murthy**

## FIRST AMENDMENT TO LINE OF CREDIT RESERVE AUTHORIZATION

This **FIRST AMENDMENT TO LINE OF CREDIT RESERVE AUTHORIZATION** (this "Amendment"), dated as of June 5, 2008, is by and between BIG RIVERS ELECTRIC CORPORATION ("Borrower"), a corporation organized and existing under the laws of the State of Kentucky, and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION ("CFC"), a cooperative association organized and existing under the laws of the District of Columbia.

### RECITALS

**WHEREAS**, in consideration of CFC's issuance of letters of credit under that certain First Amended and Restated Letter of Credit Application and Agreement dated as of July 14, 2003, with respect to CFC Loan No. KY062-L-9001 (the "Letter of Credit Agreement"), the Borrower executed that certain Line of Credit Reserve Authorization dated July 14, 2003 in favor of CFC ("Original Reservation");

**WHEREAS**, the Borrower and CFC are entering into an amendment to the Letter of Credit Agreement to extend the period during which letters of credit can be issued and the final date upon which all such letters of credit must expire (the "Letter of Credit Amendment"); and

**WHEREAS**, the Letter of Credit Amendment is subject to Borrower's agreement to extend the Original Reservation to the line of credit that will replace the line of credit provided for in the Revolving Credit Agreement, upon the termination thereof (the "Replacement Line of Credit").

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

**Section 1. Recitals.** The foregoing recitals are incorporated herein by reference.

**Section 2. Definitions.** Capitalized terms that are not defined herein shall have the meanings assigned to them as set forth in the Original Reservation.

**Section 3. Amendment.** The third and fourth paragraphs of the Original Reservation are hereby deleted in their entirety and are hereby amended to read as follows:

"If, prior to the close of business on the day that any Draw under a Letter of Credit has been made, Borrower has not paid the Draw Amount to CFC, Borrower hereby authorizes CFC to make an Advance (as defined in the Revolving Credit Agreement until replaced by the Replacement Credit Agreement, then upon such replacement, as defined in the Replacement Credit Agreement) under the Revolving Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) in an amount equal to the Draw Amount and to apply such Advance to pay the Draw Amount on behalf of Borrower.

Borrower agrees that, so long as any amounts are outstanding under the Letter of Credit Agreement, Borrower shall maintain the line of credit with CFC provided for in the Revolving



Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, the line of credit provided for in the Replacement Credit Agreement) in an amount that is at all times at least equal to \$15,000,000. The amount available at any time and from time to time under the Revolving Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) shall be referred to herein as the "Reserve Amount". Borrower hereby agrees not to request any Advance (as defined in the Revolving Credit Agreement until replaced by the Replacement Credit Agreement, then upon such replacement, as defined in the Replacement Credit Agreement) under the Revolving Credit Agreement (until replaced by the Replacement Credit Agreement, then upon such replacement, under the Replacement Credit Agreement) if the effect of any such Advance would be to reduce the Reserve Amount below the sum of the Letter of Credit Amounts reflected in all issued and outstanding Letters of Credit."

**Section 4. Miscellaneous.**

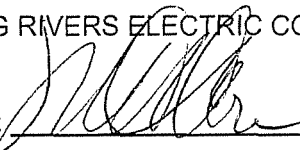
**4.1 Modifications.** CFC's signature hereon reflects the written consent required of CFC for modifications of the Original Reservation. No modification of any provision of this Amendment shall in any event be effective unless the same shall be consented to in writing by the parties hereto.

**4.2 Merger and Integration.** This Amendment, the Original Reservation and the matters incorporated by reference contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby.

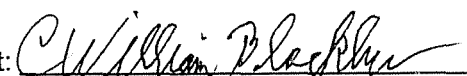
**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be duly executed as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

(SEAL)

By: 

Title: President/CEO

Attest: 

Title: Vice President of Financial Services/CFO

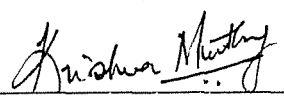
NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION

(SEAL)

By: 

Assistant Secretary-Treasurer

**Nazir Rostom**

Attest:   
Assistant Secretary-Treasurer

**Krishna S. Murthy**



201 Third Street  
P.O. Box 24  
Henderson, KY 42419-0024  
270-827-2561  
www.bigrivers.com

April 15, 2008

Mr. Nazir Rostom  
AVP, Structured Finance  
National Rural Utilities Cooperative Finance Corporation (NRUCFC)  
2201 Cooperative Way  
Herndon, VA 20171

Dear Nazir:

Based on a conversation you had with Mark Hite of Big Rivers regarding the First Amended Restated Letter of Credit Application and Agreement, dated as of July 13, 2003, maturing July 14, 2008, generally referred to as master letter of credit facility KY062-L-9001 ("Current Facility"), please note the following:

1. The Current Facility is hereby extended to March 1, 2009 ("Modified Facility").
2. All newly issued letters of credit under the Modified Facility will expire no later than March 1, 2009.
3. After February 28, 2009, the Modified Facility will not issue any letters of credit.
4. Upon termination of the secured line of credit, R-5101, any existing line of credit reservation will be terminated and replaced by a new line of credit reservation on the new unsecured line of credit, R-5102.

We sincerely appreciate the effort you put forth in meeting the needs of Big Rivers. It's always a pleasure to work with you and the other folks at CFC.

Sincerely yours,

BIG RIVERS ELECTRIC CORPORATION

A handwritten signature in black ink that reads "C. William Blackburn".

C. William Blackburn

Vice President of Financial Services and CFO


c: ✓ Mr. Mike Core  
Mr. Mark Bailey  
Mr. Mark Hite



**National Rural Utilities  
Cooperative Finance Corporation**

C: Mark Hite  
Bill Blackburn

2201 Cooperative Way  
Herndon, Virginia 20171-3025  
703-709-6700 | www.nrucfc.coop

A Touchstone Energy® Cooperative 

June 6, 2008

RECEIVED JUN 10 2008

Mr. Michael H. Core  
President and CEO  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42420

RE: LOAN DESIGNATION KY062-L-9001  
Loan Amendment Documentation

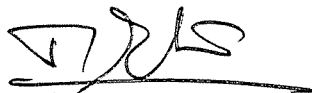
Dear Mr. Core:

Big River Electric Corporation has executed and returned all required CFC documents and supporting papers in connection with an amendment to the CFC loan agreement for the loan designated above. These documents have been reviewed and found legally acceptable and satisfactory to CFC and thus constitute a binding amendment to the loan agreement between CFC and your system.

Enclosed for your records is an original of the amendment, executed by CFC, which is effective as of the date, stated therein.

We at CFC appreciate the opportunity to serve your system and look forward to our continued business relationship.

Sincerely,



Nazir Rostom  
Associate Vice President

**EXCERPT FROM THE MINUTES OF REGULAR MEETING  
OF THE BOARD OF DIRECTORS  
OF BIG RIVERS ELECTRIC CORPORATION  
HELD IN HENDERSON, KENTUCKY, ON  
JUNE 20, 2008**

After an explanation by Bill Blackburn, Director Sills moved, seconded by Director Butler, that management's action in executing the First Amendment to First Amended and Restated Letter of Credit Application and Agreement with CFC and the First Amendment to Line of Credit Reserve Authorization with CFC be ratified. The motion was unanimously adopted.

I, Paula Mitchell, Executive Secretary of the Board of Directors of Big Rivers Electric Corporation, hereby certify that the above is a true and correct excerpt from the minutes of the Regular Meeting of the Board of Directors of said Corporation held on 6-20-08.

Paula Mitchell




**AFFIDAVIT OF C. WILLIAM BLACKBURN**

The affiant, C. William Blackburn, after first being duly sworn, states as follows:

1. I am the Vice President and Chief Financial Officer of Big Rivers Electric Corporation.


2. I do state and affirm that the facts contained in the letter dated January 8, 2009, from James M. Miller to Jeff Derouen, are true and correct to the best of my knowledge and belief.

Further, the affiant saith not.

  
C. William Blackburn

STATE OF KENTUCKY    )  
                                  ) SCT.  
COUNTY OF HENDERSON)

Subscribed and sworn to before me by C. William Blackburn on this 8<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
Notary Public, Ky. State at Large  
My commission expires: 03/03/2010