

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC  
ATTORNEYS AT LAW

May 27, 2010

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

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

RECEIVED  
MAY 28 2010  
PUBLIC SERVICE  
COMMISSION

Re: Application of Big Rivers Electric Corporation for Approval to Issue  
Evidences of Indebtedness, P.S.C. Case No. 2009-00441

Dear Mr. Derouen:

The March 31, 2010 order of the Public Service Commission in this matter, which authorizes Big Rivers Electric Corporation ("Big Rivers") to issue certain evidences of indebtedness in connection with the refunding of \$83.3 million of pollution control bonds, states on page 9:

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

The pre-closing for the 2010A Bonds is set for Monday, June 7, 2010, and the closing is set for the following day, Tuesday, June 8, 2010. Final comments and information required to finalize the documents presented to the Commission in this matter in draft form were received today.

For your information, the 2010A Bonds were priced and sold this morning at par, with an interest rate of 6.0% per annum. Big Rivers determined at the close of the pricing of the 2010A Bonds this morning that the CFC Guaranty authorized by the Commission in its order would not result in a sufficient economic benefit to Big Rivers to justify using it in this transaction. The revised documents reflect the changes required to remove references to the CFC Guaranty. Big Rivers has authorized us to state that there are no substantial changes in the forms of these documents. Accordingly, and consistent with the representations Big Rivers made as noted above, we enclose two copies of the following documents, which are marked against the corresponding documents previously filed with the Commission:

Telephone (270) 926-4000  
Telecopier (270) 683-6694

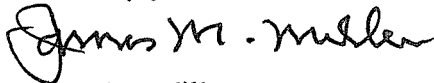
100 St. Ann Building  
PO Box 727  
Owensboro, Kentucky  
42302-0727

Mr. Jeff DeRouen  
May 27, 2010  
Page 2

- Loan Agreement between County of Ohio, Kentucky, and Big Rivers Electric Corporation;
- First Supplemental Indenture (to that certain Indenture dated as of July 1, 2009) dated as of June 1, 2010, from Big Rivers Electric Corporation to U.S. Bank National Association, Trustee;
- Big Rivers Electric Corporation First Mortgage Note, Series 2010A Note (attached as Exhibit B to the First Supplemental Indenture);
- Escrow Deposit Agreement among County of Ohio, Kentucky, U.S. Bank National Association, as Trustee and Escrow Deposit Trustee and Big Rivers Electric Corporation;
- Continuing Disclosure Agreement;
- Bond Purchase Contract between Goldman, Sachs & Co. and Fiscal Court of Ohio County.
- Letter of Representation from Big Rivers Electric Corporation to Fiscal Court of the County of Ohio and Goldman, Sachs & Co. (attached as Appendix A to the Bond Purchase Contract);
- Trust Indenture between County of Ohio, Kentucky and U.S. Bank National Association, as Trustee dated as of June 1, 2010 Authorizing \$83,300,000 COUNTY OF OHIO, KENTUCKY Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project); and

I certify that a copy of this letter and attachment have been served on each person shown on the attached service list. Please feel free to contact me with any questions you may have.

Sincerely yours,



James M. Miller  
Counsel for Big Rivers Electric Corporation

Enclosures

cc: C. William Blackburn (without attachments)  
Albert Yockey  
Service List

**SERVICE LIST**  
**PSC CASE NO. 2009-00441**

David C. Brown, Esq.  
STITES & HARBISON  
1800 Providian Center  
400 West Market Street  
Louisville, Kentucky 40202

**Counsel for Alcan Primary Products Corporation**

Michael L. Kurtz, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

**Counsel for Alcan Primary Products Corporation  
and Century Aluminum of Kentucky General Partnership**

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LOAN AGREEMENT

Between

COUNTY OF OHIO, KENTUCKY

and

BIG RIVERS ELECTRIC CORPORATION

Dated as of ~~\_\_\_\_\_~~, June 1, 2010

Relating to

\$83,300,000  
COUNTY OF OHIO, KENTUCKY  
Pollution Control Refunding Revenue Bonds, Series 2010A  
(Big Rivers Electric Corporation Project)



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## LOAN AGREEMENT

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

### WITNESSETH:

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

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

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

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

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

**WHEREAS**, Big Rivers has requested the County to issue \$83,300,000 aggregate principal amount of its "Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project)" (the "Bonds") and to loan the proceeds thereof to Big Rivers for the purpose of providing funds to refund by redemption the 2001 Bonds; and

**WHEREAS**, the County and Big Rivers propose that the County so refund the 2001 Bonds by depositing into escrow the proceeds of the Bonds and certain other funds provided by

Big Rivers in sufficient amounts to effect such refunding by redemption of the 2001 Bonds ~~on~~ ~~\_\_\_\_\_~~ June 22, 2010 in accordance with the terms of the 2001 Indenture and an Escrow Deposit Agreement, dated as of ~~\_\_\_\_\_~~ June 1, 2010 (the "Escrow Deposit Agreement"), among the County, Big Rivers and the trustee named therein; and

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

~~WHEREAS, Big Rivers has entered into the Guaranty Agreement (the "Guaranty") with the National Rural Utilities Cooperative Finance Corporation (the "Guarantor"), pursuant to which the Guarantor will guarantee, subject to certain limitations, the payment of principal of and interest on the Bonds when due; and~~

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

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

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

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

## ARTICLE I

### DEFINITIONS

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

“*Act*” means the Industrial Building Revenue Bond Act (Sections 103.200 through 103.285, inclusive) of the Kentucky Revised Statutes, as amended, and all acts supplemental thereto or amendatory thereof.

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

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

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

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

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

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

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

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

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

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

“*Escrow Deposit Agreement*” shall mean the Escrow Deposit Agreement dated as of ~~[\_\_\_\_\_]~~June 1, 2010 among Big Rivers, the County and the Escrow Deposit Trustee.

“*Escrow Deposit Trustee*” shall mean U.S. Bank National Association, in its capacity as trustee under the Escrow Deposit Agreement.

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

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

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

~~“*Guarantor*” shall mean the National Rural Utilities Cooperative Finance Corporation, a District of Columbia cooperative association.~~

~~“*Guaranty*” shall mean the Guaranty Agreement, dated as of [\_\_\_\_\_], 2010, between the Guarantor and the Bond Trustee, guaranteeing when due the timely payment of scheduled principal of and interest on the Bonds as provided therein.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

(b) Big Rivers has the corporate power to enter into, and to perform and observe the covenants and agreements on its part contained in, this Agreement, the Big Rivers Indenture, the First Supplemental Indenture, the Escrow Deposit Agreement and the Note, and by proper corporate action has duly authorized the execution and delivery of this Agreement, the Big Rivers Indenture, the First Supplemental Indenture, the Escrow Deposit Agreement and the Note. The execution and delivery of this Agreement, the Big Rivers Indenture, the First Supplemental

Indenture and the Escrow Deposit Agreement do not, and the execution and delivery of the Note and the consummation of the transactions contemplated hereby and thereby and the fulfillment of the terms hereof and thereof will not, conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which Big Rivers is now a party or by which it is bound, or constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Big Rivers under the terms of any instrument or agreement.

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

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

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

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

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

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

### ARTICLE III

#### TERM OF AGREEMENT

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

## ARTICLE IV

### ISSUANCE OF BONDS AND LOAN OF PROCEEDS

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

(a) The County agrees to deposit with the Escrow Deposit Trustee pursuant to the Escrow Deposit Agreement funds necessary, together with funds provided by Big Rivers, to refund by redemption the 2001 Bonds on ~~\_\_\_\_\_~~, June 22, 2010, resulting in a prepayment of the 2001 Note relating to the 2001 Bonds. In order to provide funds for such purpose, the County agrees to sell and cause to be delivered to the initial purchasers thereof the Bonds.

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

(c) Simultaneously with the issuance and delivery of the Bonds to the purchasers thereof, Big Rivers will cause to be transferred to the Escrow Deposit Trustee such amounts as Big Rivers shall be required to provide to effect the refunding of the 2001 Bonds.

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

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

## ARTICLE V

### PROVISION FOR REPAYMENT OF LOAN BY BIG RIVERS

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

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

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

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

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

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

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

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

**SECTION 5.7.** *Obligations Of Big Rivers Unconditional.* The obligations of Big Rivers to make the payments pursuant to this Agreement and the Note shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of setoff, counterclaim or recoupment arising out of any breach by the County of any obligation to Big

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

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

## ARTICLE VI

### MAINTENANCE; INSURANCE; CONDEMNATION

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

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

the provisions of the Big Rivers Indenture, such moneys shall be deposited by the Bond Trustee into the Bond Fund and applied in accordance with the Indenture.

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

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

## ARTICLE VII

### SPECIAL COVENANTS

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 7.9.** *The Guaranty.* ~~If the Guaranty is in effect and the Guarantor is not in breach of any of the provisions thereof, (i) Big Rivers will permit the Guarantor to discuss the affairs, finances and accounts of Big Rivers or any information the Guarantor may reasonably request regarding the security for the Bonds with appropriate officers of Big Rivers, (ii) as soon as practicable following the end of each fiscal year, Big Rivers will furnish to the Guarantor a copy of its annual report (which shall include its annual audited financial statements) accompanied by a balance sheet of Big Rivers as at the end of such fiscal year and the related statements of operations, patronage capital, changes in financial position and changes in components of working capital for such fiscal year, (iii) as soon as practicable~~

~~following the end of each month of each fiscal year, Big Rivers will furnish to the Guarantor a copy of its monthly unaudited financial reports, (iv) Big Rivers will forward to the Guarantor a copy of any notices or certificates which it shall give to the Bond Trustee, the County or any Bondowner pursuant to the provisions of the Indenture or this Agreement, and (v) Big Rivers will permit the Guarantor to have access to the Plant at reasonable times; provided, that Big Rivers reserves the right to restrict access to the Plant in accordance with reasonable procedures relating to safety and security.~~Reserved.

## ARTICLE VIII

### ASSIGNMENT

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

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

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

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

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

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE X

### PREPAYMENT OF THE NOTE

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

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

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

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

## ARTICLE XI

### MISCELLANEOUS

**SECTION 11.1.** *Notices.* All notices, certificates, requests or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows: if to the County, to: Ohio County Fiscal Court, 301 South Main, Hartford, Kentucky 42347, Attention: County Judge/Executive; if to Big Rivers, to: Big Rivers Electric Corporation, 201 Third Street, Henderson, Kentucky 42420, Attention: President and Chief Executive Officer; and if to the Bond Trustee, to: U.S. Bank National Association, Corporate Trust Services, 225 Asylum Street, 23rd Floor, Hartford, Connecticut 06103, Attention: Philip G. Kane, Jr. (Big Rivers 2010 Indenture); ~~if to the Guarantor: National Rural Utilities Cooperative Finance Corporation, 2201 Cooperative Way, Herndon, Virginia 20171, Attention: General Counsel.~~ A duplicate copy of each notice, certificate, request or other communication given hereunder by the County or Big Rivers shall also be given to the Bond Trustee, the County and Big Rivers. A party may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

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

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

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

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

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

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

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

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

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

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

**SECTION 11.12.** *Guarantor As Third Party Beneficiary.* ~~To the extent that this Agreement confers upon or gives or grants to the Guarantor any right, remedy or claim under or by reason of this Agreement, the Guarantor is hereby explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.~~Reserved.

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

{(SEAL)}

COUNTY OF OHIO, KENTUCKY

By: \_\_\_\_\_  
County Judge/Executive

Attest:

By: \_\_\_\_\_  
County Court Clerk

{(SEAL)}

BIG RIVER ~~RIVERS~~ ELECTRIC CORPORATION

By: \_\_\_\_\_  
Mark A. Bailey  
\_\_\_\_\_President and Chief Executive  
Officer

Attest:

By: \_\_\_\_\_  
C. William Blackburn  
Senior Vice President of Financial  
& Energy Services and Chief  
\_\_\_\_\_Financial Officer

## THE FACILITIES

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

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



STATE OF {NEW YORK} )  
 ) ss  
COUNTY OF {NEW YORK}

I, the undersigned Notary Public in and for the State and County aforesaid, do hereby certify that on the \_\_\_8th day of {\_\_\_\_\_}June, 2010, the foregoing instrument was produced to me in said County by {\_\_\_\_\_} and {\_\_\_\_\_}Mark A. Bailey and C. William Blackburn, personally known to me and personally known by me to be {\_\_\_\_\_} and {\_\_\_\_\_}President and Chief Executive Officer and Senior Vice President of Financial & Energy Services and Chief Financial Officer, respectively, of BIG RIVERS ELECTRIC CORPORATION, a nonprofit rural electric cooperative corporation incorporated under the laws of the Commonwealth of Kentucky, who being by me duly sworn, did say that {the seal affixed to said instrument is the corporate seal of said corporation, and that} said instrument was signed {and sealed} in behalf of said corporation by authority of its Board of Directors and said respective persons acknowledged before me said instrument to be the free act and deed of said corporation and to be their free act and deed as such officers of such corporation.

WITNESS my hand and seal this \_\_\_8th day of {\_\_\_\_\_}June, 2010. My commission expires \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_, {New York}



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**FIRST SUPPLEMENTAL INDENTURE**  
(to that certain Indenture dated as of July 1, 2009)  
dated as of ~~June 1, 2010~~ June 1, 2010

Relating to the Big Rivers Electric Corporation  
First Mortgage Note, Series 2010A  
Authorized by this First Supplemental Indenture

**BIG RIVERS ELECTRIC CORPORATION**

to

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

**FIRST MORTGAGE OBLIGATIONS**

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

STATE TAXPAYER'S IDENTIFICATION NUMBER: 25757

FEDERAL TAXPAYER'S IDENTIFICATION NUMBER: 61-0597287

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

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

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

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

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

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

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

**WHEREAS**, Section 12.1 of the Original Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company,

when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1; and

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

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

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Original Indenture or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Trust Estate, all the Excepted Property described or referred to in Paragraphs A through H, inclusive, of "Excepted Property" in the Original Indenture then owned or thereafter acquired by the Company, shall immediately, and, in the case of any Excepted Property described or referred to in Paragraphs I, J and L of "Excepted Property" in the Original Indenture, upon demand of the Trustee or such other trustee or

receiver, become subject to the lien of the Indenture to the extent permitted by law, and the Trustee or such other trustee or receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and whenever all Events of Default shall have been cured and the possession of all or substantially all of the Trust Estate shall have been restored to the Company, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

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

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

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

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

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

revenues, products and proceeds from the Trust Estate or the operation of the property constituting part of the Trust Estate.

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

**AND IT IS HEREBY COVENANTED AND DECLARED** that the First Mortgage Note, Series 2010A is to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Original Indenture, and the Company does hereby covenant and agree to and with the Trustee, for the equal and proportionate benefit of all Holders of the Outstanding Secured Obligations, as follows:

## ARTICLE I

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

#### SECTION 1.01. Definitions.

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

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

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

The First Mortgage Note, Series 2010A shall be dated the date of its authentication and shall mature on [\_\_\_\_\_] July 15, 2031. The First Mortgage Note, Series 2010A shall bear interest computed in the same manner and payable at the same time as the interest on the Series 2010A Bonds is computed and paid as described and computed in accordance with the terms of the 2010 Indenture. The First Mortgage Note, Series 2010A shall be subject to optional prepayment as more particularly set forth in such First Mortgage Note, Series 2010A. The First Mortgage Note, Series 2010A shall be authenticated and delivered to, and made payable to, U.S.

Bank National Association, as trustee for the Series 2010A Bonds (in such capacity, the "Bond Trustee"), as assignee and pledgee of the County pursuant to the 2010 Indenture.

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

**SECTION 1.03. Form of the First Mortgage Note, Series 2010A.**

The First Mortgage Note, Series 2010A and the Trustee's authentication certificate to be executed on the First Mortgage Note, Series 2010A shall be substantially in the form of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Original Indenture.

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

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

**ARTICLE II**

**MISCELLANEOUS**

**SECTION 2.01. Supplemental Indenture.**

This First Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. Except to the extent inconsistent with the express terms of this First Supplemental Indenture, the 2010 Indenture, the 2010 Financing Agreement and the Series 2010A Bonds, all of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Note, Series 2010A to the same extent as if specifically set forth herein.

**SECTION 2.02. Recitals.**

All recitals in this First Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full.



**SECTION 2.03. Successors and Assigns.**

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

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

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

**SECTION 2.05. Counterparts.**

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

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

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

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

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

U.S. Bank National Association  
225 Asylum Street  
Hartford, Connecticut 06103

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

[Signatures on Next Page.]

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

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Name: [ ] Mark A. Bailey  
Title: [ ] President and Chief  
Executive Officer

(SEAL)

Attest: \_\_\_\_\_  
Name: [ ]  
Title: [ ]

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF [ ] )

THE FOREGOING instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by [ ], [ ] 2010, by Mark A. Bailey, President and Chief Executive Officer of Big Rivers Electric Corporation, a corporation, for and on behalf of said corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public's Signature

(Notarial Seal)

Trustee:

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

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

Name: \_\_\_\_\_ Philip G. Kane, Jr.

Title: \_\_\_\_\_ Vice President

COMMONWEALTH OF KENTUCKY )

STATE OF CONNECTICUT )

COUNTY OF { HARTFORD )

THE FOREGOING instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_]2010, by Philip G. Kane, Jr., Vice President of U.S. Bank National Association, a national banking association, for and on behalf of said association.

WITNESS my hand and official seal.

\_\_\_\_\_

(Notarial Seal)

EXHIBIT A

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

EXHIBIT B

THIS FIRST MORTGAGE NOTE, SERIES 2010A IS NONTRANSFERABLE EXCEPT AS MAY BE REQUIRED TO EFFECT ANY TRANSFER TO ANY SUCCESSOR TRUSTEE UNDER THE TRUST INDENTURE, DATED AS OF [\_\_\_\_\_] 20[09], JUNE 1, 2010, BETWEEN THE COUNTY OF OHIO, KENTUCKY AND U.S. BANK NATIONAL ASSOCIATION, AS BOND TRUSTEE.

No. R-

\$[\_\_\_\_\_] 83,300,000

**BIG RIVERS ELECTRIC CORPORATION  
FIRST MORTGAGE NOTE, SERIES 2010A**

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

This First Mortgage Note, Series 2010A is issued under, is described in and is subject to the Financing Agreement, and is secured by an Indenture, dated as of July 1, 2009 (the "Big Rivers Indenture"), between Big Rivers and U.S. Bank National Association, as trustee (the "Indenture Trustee"), as supplemented and amended.

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

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

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

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

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

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

All terms use in this First Mortgage Note, Series 2010A which are not defined herein shall have the meanings assigned to them in the Financing Agreement or the Bond Indenture.





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

U.S. BANK NATIONAL ASSOCIATION, as  
Indenture Trustee

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

Date of Authentication: [ ] June  
8, 2010

**ESCROW DEPOSIT AGREEMENT**

among

**COUNTY OF OHIO, KENTUCKY**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee and Escrow Deposit Trustee**

and

**BIG RIVERS ELECTRIC CORPORATION**

Dated as of           , June 1, 2010

**THIS ESCROW DEPOSIT AGREEMENT** made and entered into as of ~~\_\_\_\_\_~~ June 1, 2010, by and among **COUNTY OF OHIO, KENTUCKY** (the "County"), **U.S. BANK TRUST NATIONAL ASSOCIATION**, as trustee under the 2001 Indenture hereinafter referred to (the "Trustee" and in its capacity as escrow deposit trustee hereunder, the "Escrow Deposit Trustee"), and **BIG RIVERS ELECTRIC CORPORATION** ("Big Rivers"):

**WITNESSETH:**

**WHEREAS**, the County has heretofore issued its Pollution Control Refunding Revenue Bonds, Series 2001A (Big Rivers Electric Corporation Project), Periodic Auction Reset Securities (PARS) (the "2001 Bonds") pursuant to the Trust Indenture, dated as of August 1, 2001, between the County and the Trustee (the "2001 Indenture"); and

**WHEREAS**, Article VIII of the 2001 Indenture provides that all or any portion of the 2001 Bonds shall be deemed paid and no longer outstanding upon certain conditions, including the deposit with the Trustee, of either moneys in an amount which shall be sufficient, or obligations of or guaranteed as to principal and interest by the United States of America, or certificates of an ownership interest in the principal or interest of obligations of or guaranteed as to principal and interest by the United States of America, which shall not contain provisions permitting the redemption thereof at the option of the issuer (such obligations are referred to herein as Government Securities), the principal of, premium, if any, and interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Trustee or the Co-Paying Agent under the 2001 Indenture at the same time, shall be sufficient to pay when due the principal of and premium, if any, and interest due and to become due on such 2001 Bonds on and prior to the redemption date or maturity date thereof; and

**WHEREAS**, concurrently with the execution and delivery of this Agreement, in order to refund the 2001 Bonds currently outstanding (the "Defeased Bonds"), the County is issuing its Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project) (the "Refunding Bonds") pursuant to a Trust Indenture, dated as of ~~\_\_\_\_\_~~ June, 2010, between the County and U.S. Bank National Association, as bond trustee; and

**WHEREAS**, the total amount to be deposited in the Escrow Fund created by this Agreement is \$~~\_\_\_\_\_~~ \$84,466,200.00, which amount includes \$83,300,000 from the proceeds of the Refunding Bonds and \$~~\_\_\_\_\_~~ 1,166,200.00 from available funds of Big Rivers}; and

**WHEREAS**, such total amount deposited in such Escrow Fund is sufficient without any reinvestment thereof, to pay when due the principal of, premium, if any, and interest on the Defeased Bonds; and

**WHEREAS**, in order to provide for the investment of moneys placed with the Trustee, in its capacity as Escrow Deposit Trustee, in investments permitted by the 2001 Indenture and to provide for the proper and timely application of such investments, and investment income and

earnings derived therefrom, to the payment of the principal of and interest on all Defeased Bonds, the County wishes to enter into this Agreement with the Trustee, in its capacity as Trustee and Escrow Deposit Trustee, on behalf of the holders from time to time of the Defeased Bonds, and Big Rivers.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants herein set forth and in order to secure the payment of the principal of and interest on all of the Defeased Bonds, according to their tenor and effect, the County, the Trustee, in its capacity as Trustee and Escrow Deposit Trustee, and Big Rivers agree as follows:

**SECTION 1. Pledge of Refunding Bond Proceeds.** To provide for the payment of the redemption price of the Defeased Bonds which redemption price is equal to the principal amount of the Defeased Bonds, plus accrued interest on the Defeased Bonds to the redemption date thereof, the County hereby irrevocably deposits with the Trustee, in its capacity as Escrow Deposit Trustee, in trust, and irrevocably appropriates and sets aside exclusively for such payment, subject to the terms and conditions hereinafter set forth, the following amounts:

(a) \$83,300,000 derived from the proceeds of the sale of the Refunding Bonds to be used to pay the redemption price of the Defeased Bonds in an amount equal to the principal amount of the Defeased Bonds; and

(b) \$~~\_\_\_\_\_~~ 1,166,200 from Big Rivers to pay accrued interest on the Defeased Bonds to the redemption date thereof.

The foregoing total amount of \$~~\_\_\_\_\_~~ 84,466,200 shall be deposited by the Trustee, in its capacity as Escrow Deposit Trustee, in the Escrow Fund hereinafter referred to, and the Trustee, in its capacity as Escrow Deposit Trustee, acknowledges receipt of the foregoing amounts.

**SECTION 2. Establishment of Escrow Fund; Deposits of Moneys.** There is hereby created and established with the Trustee, in its capacity as Escrow Deposit Trustee, a special and irrevocable trust fund designated the "County of Ohio, Kentucky 2001 Bonds Escrow Fund" (the "Escrow Fund") to be held in the custody of the Trustee, in its capacity as Escrow Deposit Trustee, as a trust fund separate and apart from all other funds of the County or of the Trustee, for the benefit of the holders of the Defeased Bonds. All moneys and Government Securities (as hereinafter defined) set aside and held in trust in the Escrow Fund shall be applied to and used solely for the payment of the Defeased Bonds (including the redemption price thereof and interest on the principal amount thereof).

**SECTION 3. Purchase of Government Securities.** The Trustee, in its capacity as Escrow Deposit Trustee, acknowledges receipt of the moneys described in Section 1 and agrees immediately to invest \$~~\_\_\_\_\_~~ of the moneys described in clauses (a) and (b) of Section 1 hereof in the direct, non-callable United States Treasury Securities set forth in Exhibit I hereto and to deposit such Treasury to hold such moneys in the Escrow Fund in cash, uninvested, and to apply such moneys to the payment of the redemption price of, and interest on, the Defeased Bonds on the redemption date, as provided in Section 4 hereof; provided, however, that if the Trustee receives written directions from a Big Rivers Representative (as defined in the 2001 Indenture) to invest all

or a portion of such moneys in Government Securities which mature no later than the redemption date, the Escrow Agent shall purchase such Government Securities and deposit such Government Securities in the Escrow Fund. The securities described in Exhibit I hereto are herein referred to collectively as the "Government Securities", but only if the amount payable at the maturity of such Government Securities shall be at least equal to the purchase price thereof, in which case, the Escrow Agent shall apply the maturing proceeds of such Government Securities to the payment of the redemption price of, and interest on, the Defeased Bonds on the redemption date, as provided in Section 4 hereof.

**SECTION 4. Payment of Redemption Price of and Accrued Interest on Defeased Bonds.** On the redemption date for the Defeased Bonds, the Trustee shall cause sufficient moneys from the matured principal of and interest on the Government Securities held in the Escrow Fund, or other moneys held in such Fund, to be applied to the payment of the redemption price of and interest on the Defeased Bonds becoming due on such date.

**SECTION 5. Irrevocable Deposits; Express Lien.** The deposit of the moneys and Government Securities in the Escrow ~~Account~~ Fund shall constitute an irrevocable deposit in trust solely for the payment of the Defeased Bonds (including the redemption price thereof and accrued interest to the date of redemption thereof) pursuant to the terms of the 2001 Indenture and this Agreement. The holders of the Defeased Bonds shall have an express lien on the principal and interest on the Government Securities, and on any moneys on deposit in the Escrow Fund, until the proceeds thereof are paid out, used or applied in accordance with this Agreement.

**SECTION 6. Redemption.** Big Rivers, in accordance with Section 9.1 and 9.2 of the Financing Agreement (as defined in the 2001 Indenture) hereby notifies the County and the Trustee of its election to optionally prepay all the unpaid balance of the Note (as defined in the 2001 Indenture) by taking the actions required by the 2001 Indenture to discharge the lien thereof through payment of the Defeased Bonds under Section 3.01 of the 2001 Indenture. The Defeased Bonds will be redeemed in their entire outstanding principal amount on ~~\_\_\_\_\_~~ June 22, 2010 in accordance with Sections 3.01 and 3.03 of the 2001 Indenture. Big Rivers, pursuant to Sections 3.03 and 8.01 of the 2001 Indenture, hereby irrevocably instructs the Trustee to call the Defeased Bonds for redemption on ~~\_\_\_\_\_~~ June 22, 2010, in accordance with Article III of the 2001 Indenture. The Trustee acknowledges receipt of irrevocable instructions of Big Rivers delivered pursuant to Section 8.01 of the 2001 Indenture calling the Defeased Bonds for redemption on ~~\_\_\_\_\_~~ June 22, 2010. The Trustee agrees to cause proper notice of such redemption to be given in accordance with the requirements of the 2001 Indenture, including, without limitation, Sections 3.01 and 3.03 thereof.

**SECTION 7. Transfer of Funds after all Payments Required by this Agreement are Made.** After all principal of and interest on the Defeased Bonds have been paid, all remaining moneys and Government Securities, together with any income and interest thereon, in the Escrow Fund shall be transferred by the Trustee, in its capacity as Escrow Deposit Trustee, to Big Rivers or as directed in writing by Big Rivers, in accordance with Section 7.01 of the 2001 Indenture.

**SECTION 8. Fees.** Big Rivers agrees to pay the Trustee a mutually agreeable fee for the Trustee's performance under this Agreement.

**SECTION 9. Defeasance.** The County and the Trustee, in its capacity as Trustee and Escrow Deposit Trustee, agree that the obligations of the County under the 2001 Indenture and the pledges, charges, trusts, covenants and agreements of the County made or provided for in the 2001 Indenture have been fully discharged and satisfied as to each Defeased Bond and the Defeased Bonds shall no longer be deemed to be outstanding within the meaning and with the effect expressed in the 2001 Indenture.

**SECTION 10. Incorporation by Reference.** The applicable and necessary provisions of the 2001 Indenture (including without limitation Article VIII thereof) and the immunities, rights, exculpations, indemnities and standard of care of the Trustee as set forth therein, are incorporated herein by reference. Reference herein to or citation herein of any provisions of the 2001 Indenture shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

**SECTION 11. Amendments to this Agreement.** This Agreement is made for the benefit of the County and the holders from time to time of the Defeased Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such holders, the Trustee, in its capacity as Trustee or Escrow Deposit Trustee, as applicable, the County and Big Rivers; provided, however, that the County, the Trustee and Big Rivers may, without the consent of or notice to, such holders, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Agreement;
- (b) to grant to, or confer upon, the Trustee, for the benefit of the holders of the Defeased Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Trustee; and
- (c) to subject to this Agreement additional funds, securities or properties.

The Trustee shall be entitled to rely exclusively upon an unqualified opinion of nationally recognized attorneys on the subject of municipal bonds with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the holders of the Defeased Bonds or that any instrument executed hereunder complies with the conditions and provisions of this Section.

**SECTION 12. Indemnity.** Big Rivers will indemnify and hold harmless the Escrow Deposit Trustee to the same extent and with the same limitations as it has agreed to indemnify and hold harmless the County and the Trustee pursuant to the Section 5.4 of the Financing Agreement (as defined in the 2001 Indenture).

**SECTION 13. Severability.** If any one or more of the covenants or agreements provided in this Agreement on the part of the County, the Trustee, in its capacity as Trustee or Escrow Deposit Trustee, as applicable, or Big Rivers to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

**SECTION 14. Agreement Binding.** All the covenants, promises and agreements in this Agreement contained by or on behalf of the County, by or on behalf of the Trustee, in its capacity as Trustee or Escrow Deposit Trustee, as applicable, or by or on behalf of Big Rivers shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

**SECTION 15. Termination.** This Agreement shall terminate when all transfers and payments required to be made by the Trustee under the provisions hereof shall have been made.

**SECTION 16. Governing Law.** This Agreement shall be governed by the applicable law of the Commonwealth of Kentucky.

**SECTION 17. Notices.** Except as otherwise provided in this Agreement, all notices, certificates, requests or other communications by the Escrow Deposit Trustee, the Trustee or Big Rivers pursuant to this Agreement shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows: If to the County, to: Ohio County Fiscal Court, 301 South Main, Hartford, Kentucky 42347, Attention: County Judge/Executive; if to Big Rivers, to: Big Rivers Electric Corporation, 201 Third Street, Henderson, Kentucky 42420, Attention: President and Chief Executive Officer; if to the Bond Trustee or the Escrow Deposit Trustee, to: U.S. Bank National Association, 225 Asylum Street, 23rd Floor, Hartford, Connecticut 06103, Attention: Philip G. Kane, Jr. (Big Rivers 2010 Indenture). Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

**SECTION 18. Execution by Counterparts.** This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers and attested as of the date first above written.

**COUNTY OF OHIO, KENTUCKY**

By: \_\_\_\_\_  
County Judge/Executive

Attest:

\_\_\_\_\_  
County Court Clerk

**U.S. BANK TRUST NATIONAL  
ASSOCIATION,**  
as Trustee and, to the extent set forth herein, as  
Escrow Deposit Trustee

By: \_\_\_\_\_  
[Vice President]

**BIG RIVERS ELECTRIC CORPORATION**

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

Attest:

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

**EXHIBIT I**

**United States Treasury Securities**

**EXH. I-1**



<u>Type of Security</u>	<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Purchase Price</u>
{State and Local Government Securities}				
{Cash Deposit}				
{Total Escrow Cost}				

## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the "~~Disclosure Agreement~~")<sub>3</sub> dated as of ~~June 1, 2010~~; ~~is executed and delivered by June 1, 2010, by and between~~ Big Rivers Electric Corporation ("Big Rivers") and U.S. Bank Trust National Association (the "~~Trustee~~"). ~~This Disclosure Agreement relates to the \$83,300,000 aggregate National Association, as trustee (the "Trustee") under the Trust Indenture, dated as of June 1, 2010 (the "Indenture"), between the County of Ohio, Kentucky (the "Issuer") and the Trustee, is executed and delivered in connection with the issuance of the Issuer's \$83,300,000 principal amount of Ohio County of Ohio, Kentucky's Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project) (the "Bonds"). The Bonds have been issued by said County (the "County") pursuant to a Trust Indenture dated as of [ ] 2010 (the "Indenture") between the County and the Trustee and the proceeds thereof have been loaned to Big Rivers. proceeds of the sale of the Bonds will be used to refund the entire outstanding principal amount of the Issuer's Pollution Control Refunding Revenue Bonds, Series 2001A (Big Rivers Electric Corporation Project), Periodic Auction Rate Securities. In connection therewith, the Issuer and Big Rivers have entered into a Loan Agreement dated as of June 1, 2010 (the "Financing Agreement"), pursuant to which the Issuer has loaned to Big Rivers the aggregate principal amount of the Bonds. Capitalized terms used in this Agreement shall have the meanings given to them in the Indenture; capitalized terms used in this Agreement which are not otherwise defined in the Indenture shall have the respective meanings specified in Article IV hereof.~~

The parties hereto covenant and agree as follows:

### ARTICLE I The Undertaking

~~SECTION 1. Purpose of the Disclosure Agreement~~Section 1.1. Purpose: No Issuer Responsibility or Liability. ~~This Disclosure Agreement is being executed and delivered by Big Rivers for the benefit of the Owners and Beneficial Owners of the Bonds and in order solely to assist the Participating Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5) paragraph (b)(5) of the Rule. Big Rivers and the Trustee acknowledge~~acknowledges that the ~~County~~Issuer has undertaken no responsibility, and shall not be required to undertake any responsibility, with respect to any reports, notices or disclosures required by or provided pursuant to this ~~Disclosure Agreement~~, and shall have no liability to any person, including any holder, owner or Beneficial Owner of the Bonds, with respect to any such reports, notices or disclosures.

#### Section 1.2. Annual Financial Information.

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

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

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

Section 1.4. Material Events Notices.

(a) If a Material Event occurs, Big Rivers shall provide, in a timely manner, a Material Event Notice to (i) the MSRB and (ii) the Issuer (with copies to the Trustee).

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

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

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

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

ARTICLE II  
Operating Rules

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

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

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

Section 2.4. Transmission of Information and Notices. Unless otherwise required by law and, in Big Rivers' sole determination, subject to technical and economic feasibility, Big Rivers shall employ such methods of information and notice transmission as shall be requested or recommended by the herein-designated recipients of Big Rivers' information and notices. Notwithstanding the foregoing, all documents provided to the MSRB shall be in electronic format, accompanied by such identifying information as is prescribed by the MSRB.

Section 2.5. Fiscal Year. Annual Financial Information shall be provided at least annually notwithstanding any fiscal year longer than twelve calendar months. Big Rivers' current fiscal

year is January 1 - December 31, and Big Rivers shall promptly notify (i) the MSRB and (ii) the Issuer, of each change in its fiscal year.

### ARTICLE III

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

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

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

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

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

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

##### Section 3.2. Amendment.

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

(b) In addition to subsection (a) above, this Agreement may be amended by written agreement of the parties, without the consent of the holders of the Bonds, if all of the following conditions are satisfied: (1) an amendment to the Rule is adopted, or a new or modified official interpretation of the Rule is issued, after the effective date of this Agreement which is applicable to this Agreement, (2) Big Rivers shall have delivered to the Trustee an opinion of Counsel, addressed to Big Rivers, the Issuer and the Trustee, to the effect that performance by Big Rivers under this Agreement as

so amended will not result in a violation of the Rule and (3) Big Rivers shall have delivered copies of such opinion and amendment to (i) the MSRB, and (ii) the Issuer.

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

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

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

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

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

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

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

ARTICLE IV  
Definitions

~~SECTION 2. Section 4.1. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term, the following terms used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following respective meanings:~~

~~“Annual Report” shall mean any Annual Report provided by Big Rivers pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.~~

~~“Beneficial Owner” shall mean any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).~~

~~“Dissemination Agent,” shall mean Big Rivers, or any successor Dissemination Agent designated in writing by Big Rivers and which has filed with Big Rivers and the Trustee a written acceptance of such designation.~~

~~“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.~~

~~“Offering Statement” shall mean Big Rivers’s final Offering Statement relating to the Bonds.~~

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

~~“Participating Underwriter” shall mean the original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.~~

~~“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.~~

~~SECTION 3. *Provision of Annual Reports.*~~

~~(a) Big Rivers shall, or shall cause the Dissemination Agent to, not later than 6 months after the end of Big Rivers’s fiscal year (which shall be June 30 of each year, so long as Big Rivers’ fiscal year ends on December 31), commencing with the report for the 2009 fiscal year (which is due not later than June 30, 2010), provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement, with a copy to the Trustee. The Annual Report must be submitted in electronic format, accompanied by such identifying information as is prescribed by the MSRB, and may cross reference other information as provided in Section 4 of this Disclosure Agreement; provided, that the audited~~

financial statements of Big Rivers may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If Big Rivers's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(c). The Annual Report shall be submitted on a standard form in use by industry participants or other appropriate form and shall identify the Bonds by name and CUSIP number.

(b) ~~Not later than fifteen (15) Business Days prior to said date, Big Rivers shall provide the Annual Report to the Dissemination Agent (if other than Big Rivers). If Big Rivers is unable to provide to the MSRB an Annual Report by the date required in subsection (a), Big Rivers shall send a notice to the MSRB in substantially the form attached as Exhibit A.~~

(c) ~~The Dissemination Agent shall (if the Dissemination is other than Big Rivers) file a report with Big Rivers certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided to the MSRB.~~

~~SECTION 4. *Content of Annual Reports.* Big Rivers's Annual Report shall contain or include by reference the following:~~

~~1. The audited financial statements of Big Rivers for the preceding fiscal year, prepared in accordance with generally accepted accounting principles. If Big Rivers' audited financial statements are not available by the time the Annual Report is required to be provided to the MSRB pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the Offering Statement, and the audited financial statements shall be provided to the MSRB in the same manner as the Annual Report when they become available.~~

~~2. [Updated versions of the (1) "Annual Financial Information" means, collectively, (i) the following financial information and operating data contained under the indicated captions with respect to Big Rivers and the Members, updated on an annual basis (capitalized terms used in this definition of Annual Financial Information and not otherwise defined in this Agreement shall have the meanings set forth in the Offering Statement as follows:]] **[TO BE UPDATED BASED ON OFFERING STATEMENT]]:**~~

~~a. ["SECURITY AND SOURES OF PAYMENT FOR THE 2010 BONDS — 2010 Note Secured by the Mortgage": the numbers set forth in the first paragraph thereof;~~

~~• b. "BIG RIVERS ELECTRIC CORPORATION – Introduction – General": the numbers set forth in the second and ~~third~~fourth paragraphs thereof;~~

~~• c. "BIG RIVERS ELECTRIC CORPORATION – Introduction – The Members": the numbers set forth in the second paragraph thereof;therein;~~

~~d. "BIG RIVERS ELECTRIC CORPORATION — Income Tax Status": the numbers set forth in the third paragraph thereof;~~

e. \_\_\_\_\_

- “SELECTED BIG RIVERS’ FINANCIAL DATA—Statement of Revenue and Expenses and Balance Sheet”;
- “CAPITALIZATION”;
- ~~f. “SELECTED BIG RIVERS’ FINANCIAL DATA—Management’s Discussion and Analysis of Financial Condition and Results of Operations”:~~ all of the information contained therein other than forecasted capital expenditures;
- ~~g. “SELECTED BIG RIVERS’ FINANCIAL DATA—Capitalization”;~~
  - h. \_\_\_\_\_ ~~“SELECTED BIG RIVERS’ FINANCIAL DATA—Big Rivers’ Debt”:~~ the numbers set forth under this caption; QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK – Interest Rate Risk and Commodity Price Risk”: the numbers or percentages set forth;
- ~~i. “GENERATION FACILITIES AND THE STATION TWO FACILITY AND TRANSMISSION ASSETS – Generating Resources – General”:~~ the table set forth therein;
- ~~j. “GENERATION FACILITIES AND THE STATION TWO FACILITY AND TRANSMISSION ASSETS – Generating Resources – Kenneth C. Coleman Plant, Robert D. Green Plant, Robert A. Reid Plant, D. B. Wilson Unit No. 1 Plant and Station Two Facility”:~~ the numbers set forth under such captions;
- ~~k. “GENERATION FACILITIES AND THE STATION TWO FACILITY—Other Power Supply Resources—SEPA Allocation AND TRANSMISSION ASSETS – Transmission”:~~ the numbers set forth under such caption;
- ~~l. “GENERATION FACILITIES AND THE STATION TWO FACILITY—Forecast of Member Load and Big Rivers’ Resources”:~~ the numbers set forth in the second paragraph under such caption and information for the prior fiscal year for the information contained under the table “Power Resources and Member Load”;
  - m. \_\_\_\_\_ ~~“GENERATION FACILITIES AND THE STATION TWO FACILITY—Big Rivers’ Wholesale Rates to the Members”:~~ the table set forth therein;
  - n. \_\_\_\_\_ ~~“TRANSMISSION FACILITIES—Transmission Systems”:~~ the numbers set forth under such caption;
  - o. \_\_\_\_\_ ~~“TRANSMISSION FACILITIES—Transmission Capital Expenditures”;~~ the information for the prior fiscal year for capital expenditures for transmission facilities;
  - p. \_\_\_\_\_ ~~“THE MEMBERS—Competition and Rate Comparisons”:~~ the numbers set forth in the table under such caption; and



~~4. — “THE MEMBERS APPENDIX B – Member Financial and Statistical Information”: the tables set forth therein.~~

~~Any or all of the items listed above may be set forth in one or a set of documents or may be included by specific reference to other documents, including disclosure documents relating to security issues of Big Rivers, which have been made available to the public on the MSRB’s website. Big Rivers shall clearly identify each such other document so included by reference.~~

~~SECTION 5. — *Reporting of Significant Events.*~~

- ~~• “APPENDIX E-1 – SUMMARY OF MORTGAGE INDENTURE – Additional Mortgage Indenture Obligations”: the numbers set forth in the second paragraph thereof;~~

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

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

~~(a) — Pursuant to the provisions of this Section 5,(2) “Audited Financial Statements” means (i) the annual financial statements, if any, of Big Rivers, audited by such auditor as shall then be required or permitted by State law or the Indenture and (ii) audited financial statements of each of the Members for the prior fiscal year. Audited Financial Statements shall be prepared in accordance with GAAP; provided, however, that, pursuant to Section 3.2(a) hereof, Big Rivers shall give, or cause to be given, notice of the occurrence of for the Members, as the case may be, may from time to time, if required by federal or State legal requirements, modify the basis upon which its financial statements are prepared. Written notice of any such modification shall be provided by Big Rivers to the Trustee, pursuant to Section 3.2(d) hereof, and shall include a reference to the specific federal or State law or regulation describing such accounting basis.~~

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

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

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

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

- ~~4-(i) principal and interest payment delinquencies;~~

- ~~2. (ii)~~ non-payment related defaults;
  - ~~3. (iii)~~ unscheduled draws on debt service reserves reflecting financial difficulties;
  - ~~4. (iv)~~ unscheduled draws on credit enhancements reflecting financial difficulties;
  - ~~5. (v)~~ substitution of credit or liquidity providers, or their failure to perform;
  - ~~6. (vi)~~ adverse tax opinions or events affecting the tax-exempt status of the ~~Bonds~~security;
  - ~~7. (vii)~~ modifications to rights of ~~Bond~~security holders;
  - ~~8. —~~ unscheduled or contingent ~~Bond~~(viii) bond calls;
  - ~~9. (ix)~~ defeasances;
  - ~~10. (x)~~ release, substitution, or sale of property securing repayment of the ~~Bonds~~or securities;
- and
- ~~11. (xi)~~ rating changes.

~~(b) — Whenever Big Rivers obtains knowledge of the occurrence of a Listed Event, Big Rivers shall as soon as possible determine if such event would be material under applicable federal securities laws.~~

~~(c) — If Big Rivers determines that knowledge of the occurrence of a Listed Event would be material under applicable federal securities laws, Big Rivers shall promptly file a notice of such occurrence with the MSRB in electronic format, accompanied by such identifying information as is prescribed by the MSRB. Notwithstanding the foregoing, notice of the Listed Events described in subsection (a)(8) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Owners of affected Bonds pursuant to the Indenture.~~

~~SECTION 6. — *Termination of Reporting Obligation.* Big Rivers's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, Big Rivers shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).~~

~~SECTION 7. — *Dissemination Agent.* Big Rivers may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by Big Rivers pursuant to this Disclosure Agreement. The initial Dissemination Agent shall be Big Rivers.~~

~~SECTION 8. — *Amendment; Waiver.* Notwithstanding any other provision of this Disclosure Agreement, Big Rivers may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:~~

~~(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;~~

~~(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and~~

~~(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of the Trustee or nationally recognized bond counsel, materially impair the interests of the Owners or Beneficial Owners of the Bonds.~~

~~In the event of any amendment or waiver of a provision of this Disclosure Agreement, Big Rivers shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by Big Rivers. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(e), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.~~

~~SECTION 9. *Additional Information.* Nothing in this Disclosure Agreement shall be deemed to prevent Big Rivers from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If Big Rivers chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, Big Rivers shall have no obligation under this Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.~~

~~SECTION 10. *Default.* In the event of a failure of Big Rivers to comply with any provision of this Disclosure Agreement the Trustee may (and, at the request of any Participating Underwriter or the Owners of at least 50% aggregate principal amount of Outstanding Bonds, shall), or any Owner or Beneficial Owner of the Bonds may (unless Big Rivers has so complied within 20 days after written notice from the Trustee of its failure to comply) take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause Big Rivers to comply with its obligations under this Disclosure Agreement. The Trustee shall not be required to take any enforcement action unless the Trustee has been furnished with security and indemnity satisfactory to the Trustee. A default under this Disclosure Agreement shall not be deemed a default or an Event of Default under the Indenture;~~

~~and the sole remedy under this Disclosure Agreement in the event of any failure of Big Rivers to comply with this Disclosure Agreement shall be an action to compel performance.~~

~~SECTION 11. *Beneficiaries.* This Disclosure Agreement shall inure solely to the benefit of Big Rivers, the Trustee, the Dissemination Agent, the Participating Underwriter and Owners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.~~

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

(8) “Members” means the Members.

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

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

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

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

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

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

(15) “Underwriter” means Goldman, Sachs & Co.

ARTICLE V  
Miscellaneous

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

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

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

BIG RIVERS ELECTRIC CORPORATION

By Attest:

\_\_\_\_\_  
~~President and Chief Executive Officer~~ U.S.  
BANK ~~TRUST~~ NATIONAL ASSOCIATION

By: \_\_\_\_\_  
— An Authorized Representative

Attest:

By: \_\_\_\_\_  
— Counsel to U.S. Bank Trust  
— National Association

**EXHIBIT A**

**FORM OF NOTICE TO THE MUNICIPAL SECURITIES RULEMAKING BOARD  
OF FAILURE TO FILE ANNUAL REPORT**

Name of Provider: Big Rivers Electric Corporation  
Name of Bond Issue: Ohio County, Kentucky "Pollution Control Refunding Revenue Bonds,  
Series 2010A (Big Rivers Electric Corporation Project)"  
Date of Issuance: [\_\_\_\_], 2010

NOTICE IS HEREBY GIVEN that Big Rivers has not provided an Annual Report with respect to the above named Bonds as required by Section 3 of the Continuing Disclosure Agreement dated [\_\_\_\_], 2010. [Big Rivers anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_, \_\_\_\_\_

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
— Name: ee:  
ASSOCIATION, as Trustee

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



\$83,300,000  
County of Ohio, Kentucky  
Pollution Control Refunding Revenue Bonds, Series 2010A  
(Big Rivers Electric Corporation Project)

PURCHASE CONTRACT

\_\_\_\_\_, May 27, 2010

Fiscal Court of the County of Ohio  
Hartford, Kentucky

Ladies and Gentlemen:

1. Goldman, Sachs & Co. (the “**Underwriter**”) hereby offers to enter into this Purchase Contract with County of Ohio, Kentucky (the “**Issuer**”), for the purchase by the Underwriter, and the sale by the Issuer, of \$83,300,000 aggregate principal amount of County of Ohio, Kentucky Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project) (the “**Bonds**”). This offer is made subject to the acceptance of this Purchase Contract by the Issuer by (i) due adoption of a resolution of the Issuer authorizing and approving the execution and delivery of this Purchase Contract and (ii) execution and delivery of this Purchase Contract by authorized representatives of the Issuer, in each case on the date hereof. Upon such acceptance, this Purchase Contract shall be in full force and effect in accordance with its terms and binding upon the Issuer and the Underwriter. Delivered to the Issuer herewith is ~~(i) a Letter of Representation, dated the date hereof, substantially in the form of Appendix A hereto, under which Big Rivers Electric Corporation (the “**Company**”) undertakes certain obligations in order to induce the Underwriter and the Issuer to enter into this Purchase Contract (the “**Company Letter of Representation**”) and (ii) the Letter of Representation, dated the date hereof, substantially in the form of Appendix B hereto, under which National Rural Utilities Cooperative Finance Corporation (“**CFC**”) undertakes certain obligations in order to induce the Underwriter and the Issuer to enter into this Purchase Contract (the “**CFC Letter of Representation**,” and together with the Company Letter of Representation, the “**LettersLetter of Representation**”).~~ Capitalized terms used herein, if not otherwise defined herein, shall have the meanings assigned to such terms in the Preliminary Offering Statement as defined and described in Section 2 hereof.

2. Upon the terms and conditions and in reliance on the representations, warranties and covenants set forth herein and in the ~~Letters~~Letter of Representation, the Underwriter hereby agrees to purchase from the Issuer for offering to the public, and the Issuer hereby agrees to sell to the Underwriter for such purpose, all, but not less than all, of the Bonds. The purchase price for the Bonds shall be \$ \_\_\_\_\_ 83,300,000 (equal to at the par amount of \$83,300,000, less an underwriter’s discount of \$ \_\_\_\_\_ the Bonds), payable by the Underwriter at the time and in the manner set forth in Section 8 hereof.



The Bonds shall be dated their date of delivery. The Bonds shall mature on the date, and shall bear interest at the rate, set forth in the Pricing Supplement (as hereinafter defined).

The Company and the Issuer have caused to be prepared the following information: (i) a Preliminary Offering Statement, dated \_\_\_\_\_, May 20, 2010 (together with the appendices thereto, the "**Preliminary Offering Statement**"), (ii) the Pricing Supplement attached as Appendix ~~B~~ hereto (the "**Pricing Supplement**"), and ~~(iii) the Supplement to the Preliminary Offering Statement distributed to investors on May 26, 2010 attached as Appendix C hereto (the "**May 26 Supplement**"),~~ and (iv) the electronic road show made available to investors via the Internet (not including telephone question and answer sessions with investors) (the "**Electronic Road Show**"). The Preliminary Offering Statement, together with the Pricing Supplement ~~and the May 26 Supplement~~, is referred to herein as the "**Disclosure Package**." The Company agrees to furnish the Underwriter with a final Offering Statement in form and substance satisfactory to the Underwriter (the "**Offering Statement**") within seven (7) business days of the date hereof but in no event later than three (3) business days prior to the Closing Date (as defined in Section 8 hereof). The Company, on behalf of the Issuer, "deemed final" the Preliminary Offering Statement as of the date thereof for purposes of Rule 15c2-12 ("**Rule 15c2-12**") promulgated by the Securities and Exchange Commission (the "**SEC**") under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**").

3. The Bonds shall be as described in, and shall be issued and secured under and pursuant to, a Trust Indenture, dated as of \_\_\_\_\_, June 1, 2010 (the "**Bond Indenture**"), by and between the Issuer and U.S. Bank National Association, as trustee (the "**Bond Trustee**"). The Bond proceeds shall be paid by the Issuer to U.S. Bank National Association, the current trustee, as successor (the "**2001 Trustee**"), under the Trust Indenture between the Issuer and the 2001 Trustee, dated as of August 1, 2001 (the "**2001 Trust Indenture**"), and shall be used by the 2001 Trustee, together with other moneys provided by the Company, to refund by redemption the Issuer's Pollution Control Revenue Refunding Bonds, Series 2001A (Big Rivers Electric Corporation Project), Periodic Auction Reset Securities (PARS) (the "**Refunded Bonds**"). The Bond proceeds and such other moneys shall be deposited with the 2001 Trustee pursuant to the Escrow Deposit Agreement, dated as of \_\_\_\_\_, June 1, 2010 (the "**Escrow Deposit Agreement**"), among the Issuer, the Company and U.S. Bank National Association, in its capacity as 2001 Trustee and as Escrow Deposit Trustee (as defined in the Escrow Deposit Agreement).

The payment by the Issuer of the proceeds of the Bonds to the Company is provided for by the provisions of the Loan Agreement, dated as of \_\_\_\_\_, June 1, 2010 (the "**Financing Agreement**"), between the Issuer and the Company, and the obligations thereunder to repay the principal amount of the Bonds when due at maturity and interest on the Bonds when due shall be evidenced by a note of the Company dated the date of issuance of the Bonds (the "**Note**"). The Note will be in the form specified in the Supplemental Indenture (as hereinafter defined) and the Financing Agreement and will be an Obligation secured under the Indenture, dated as of July 1, 2009, between the Company and U.S. Bank National Association, as trustee (the "**Mortgage Indenture Trustee**") as supplemented by the First Supplemental Indenture, dated as of \_\_\_\_\_, June 1, 2010 (the "**Supplemental Indenture**"), between the Company and the Mortgage Indenture Trustee (the "**Mortgage Indenture**"). ~~In connection with the issuance of the Bonds, principal and interest due on the Bonds will be unconditionally guaranteed by CFC pursuant to that certain Guaranty Agreement, dated as of \_\_\_\_\_;~~

~~2010 (the “Guaranty”), between CFC and the Bond Trustee. In addition, the Company and CFC will enter into that certain Reimbursement Agreement, dated as of \_\_\_\_\_, 2010 (the “Reimbursement Agreement”), establishing the rights and obligations between CFC and the Company with respect to matters involving the Bonds.~~

~~In order to enable the Underwriter to comply with paragraph (b)(5) of Rule 15c2-12, (i) the Company and the Bond Trustee will enter into a Continuing Disclosure Agreement, effective as of the Closing Date, substantially in the form set forth as Appendix H-1 to the Preliminary Offering Statement (the “**Company Continuing Disclosure Agreement**”), and (ii) CFC and the Bond Trustee will enter into a Continuing Disclosure Agreement, effective as of the Closing Date, substantially in the form set forth as Appendix \_\_\_\_\_ to the Preliminary Offering Statement (the “**CFC Continuing Disclosure Agreement**,” and together with the Company Continuing Disclosure Agreement, the “**Continuing Disclosure Agreements**”).~~

The Bond Indenture, this Purchase Contract, the Bonds, the Escrow Deposit Agreement, the Financing Agreement and the Tax Certificate and Agreement, dated June 8, 2010, between the Issuer and the Company (the “**Tax Certificate and Agreement**”), are hereinafter collectively referred to as the “**Issuer Documents.**” The Issuer Documents, the Letters of Representation, the Continuing Disclosure Agreements, the Mortgage Indenture, the Supplemental Indenture, and the Note, ~~the Guaranty and the Reimbursement Agreement~~ are hereinafter collectively referred to as the “**2010 Financing Documents.**”

4. The Underwriter shall make a bona fide public offering of all of the Bonds at not in excess of the initial public offering price set forth in the Pricing Supplement, plus accrued interest, if any. The Bonds may be offered and sold by the Underwriter to certain dealers (including dealers depositing such Bonds into investment trusts) at a price lower than such initial public offering price.

5. As soon as practicable after the execution of this Purchase Contract by the Issuer, but no later than the Closing Date, the Issuer shall deliver or cause to be delivered to the Underwriter manually executed originals of the documents listed below (provided, however, that the final Offering Statement shall be delivered no later than the earlier of seven (7) business days from the date hereof or three (3) business days prior to the Closing Date and that the documents set forth in paragraphs ~~(m)~~ through ~~(o)~~ (l) of this Section 5 shall have been provided prior to the date of execution of this Purchase Contract):

(a) the Offering Statement, containing as part of the appendices thereto the financial statements of the Company, which shall be provided in such quantity as described below in order for the Underwriter to comply with the rules of the Municipal Securities Rulemaking Board and paragraph (b)(4) of Rule 15c2-12 and which the Underwriter agrees to file promptly upon receipt by the Underwriter with a nationally recognized municipal securities information repository;

(1) *Quantity of Offering Statements to be Delivered.* The Company shall supply to the Underwriter no later than seven (7) business days from the date hereof and, in any event, not later than three (3) business days prior to the Closing Date, an amount of conformed copies of a final Offering Statement (or such lesser amount agreed to by the Underwriter) sufficient to permit the Underwriter to

comply with Rule 15c2-12, and other applicable rules of the SEC and the Municipal Securities Rulemaking Board. The Issuer and the Company shall supply (upon at least three (3) business days prior written notice from the Underwriter) additional copies of the Offering Statement in an amount sufficient to enable the Underwriter (X) to send a single copy of the Offering Statement to any potential customer upon request until the earlier of (1) ninety (90) days following the End of the Underwriting Period (as defined below) or (2) the time when the Offering Statement is available to any person from a nationally recognized municipal securities information repository, but in the case of this clause (2) no less than twenty-five (25) days following the End of the Underwriting Period and (Y) to comply with any applicable rules of the Municipal Securities Rulemaking Board.

(2) *Amendments and Notifications by the Issuer.* During the period commencing on the date hereof and ending on the earlier of (i) ninety (90) days following the End of the Underwriting Period or (ii) the time when the Offering Statement is available to any person from a nationally recognized municipal securities information repository, but in the case of this clause (ii) no less than twenty-five (25) days following the End of the Underwriting Period, if any event shall occur as a result of which it may be necessary to supplement the Offering Statement so that it does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, the Issuer shall forthwith notify the Underwriter of any such event of which it has knowledge, and the Issuer will amend or supplement the Offering Statement in such a manner so that the Offering Statement, as so supplemented or amended, does not contain any untrue statement of a material fact or omit to state a material fact necessary to be stated therein, in the light of the circumstances under which they were made, not misleading, and will furnish the Underwriter as many written and electronic copies as the Underwriter may from time to time reasonably request of the Offering Statement as amended or supplemented; provided, however, that all expenses incurred in connection with any such supplement or amendment will be paid by the Company.

The “**End of the Underwriting Period**” means the later of: (i) the delivery of the Bonds by the Issuer to the Underwriter or (ii) such time when the Underwriter no longer retains an unsold balance of the Bonds for sale to the public; *provided*, that the “End of the Underwriting Period” shall be deemed to be the Closing Date, *unless* the Underwriter otherwise notifies the Issuer and the Company in writing prior to such date that there is an unsold balance of the Bonds, in which case the End of the Underwriting Period shall be deemed to be extended for thirty (30) days. The deemed End of the Underwriting Period may be extended for two additional periods of thirty (30) days each upon receipt of an additional written notification from the Underwriter containing the same information as required in the initial written notice.

(b) the resolutions of the Issuer authorizing the issuance of the Bonds and the execution and delivery of the other Issuer Documents, certified by the County

Judge/Executive of the Issuer as having been duly adopted by the Issuer, as being in full force and effect and as constituting a valid and binding action of the Issuer (collectively, the “**Resolution**”);

- (c) the Bond Indenture;
- (d) the Escrow Deposit Agreement;
- (e) the Financing Agreement;
- (f) the Note;
- (g) the Mortgage Indenture;
- (h) the Supplemental Indenture;
- (i) the Continuing Disclosure ~~Agreements~~Agreement;
- (j) the Tax Certificate and Agreement;
- ~~(k) the Guaranty;~~
- ~~(l) the Reimbursement Agreement;~~

(k) ~~(m)~~ a letter, with regard to certain procedures performed through a specified date not more than five (5) business days prior to the date of such letter, dated the date of delivery thereof and addressed to the Underwriter, from Deloitte & Touche LLP (“**Deloitte**”), the Company’s independent auditor, in the form agreed to by Deloitte and the Underwriter; and

(l) ~~(n)~~ a letter from Deloitte, dated a date not more than three (3) business days prior to the date of the Preliminary Offering Statement, stating that Deloitte consents to the use in the Preliminary Offering Statement and the Offering Statement of its reports on the financial statements of the Company for the fiscal years ended December 31, ~~2007~~2008 and December 31, ~~2008~~; and 2009.

~~(o)~~ a letter from \_\_\_\_\_, CFC’s independent auditor, dated a date not more than three (3) business days prior to the date of the Preliminary Offering Statement, stating that \_\_\_\_\_ consents to the use in the Preliminary Offering Statement and the Offering Statement of its report on the financial statements of CFC for the fiscal year ended December 31, 20\_\_\_\_.

By its execution of this Purchase Contract, the Issuer consents to the use by the Underwriter of the Issuer Documents, the Disclosure Package and the Offering Statement in connection with the public offering and sale of the Bonds and ratifies the Company having deemed final the Preliminary Offering Statement on its behalf.

6. During the period commencing on the date hereof and ending twenty-five (25) days following the End of the Underwriting Period, the Issuer shall not modify, amend or

supplement in any respect, or permit any modification, amendment or supplement to, any Issuer Document without the prior written consent of the Underwriter.

7. The Issuer represents and warrants to the Underwriter that:

(a) The Issuer is a political subdivision and body politic and corporate duly created and validly existing within the State of Kentucky under the laws and Constitution of the State of Kentucky and is authorized and empowered by law, including particularly the provisions of the Industrial Building Revenue Bond Act (*Sections 103.200 through 103.285, inclusive*) of the Kentucky Revised Statutes, as amended, and all acts supplemental thereto or amendatory thereof (the “Act”):

(i) to adopt the Resolution;

(ii) to issue, sell and deliver the Bonds to the Underwriter;

(iii) to execute and deliver each of the Issuer Documents;

(iv) to pay the proceeds of the sale of the Bonds to the 2001 Trustee to refund by redemption, together with moneys provided by the Company, the Refunded Bonds;

(v) to accept and confirm the ~~Letters~~Letter of Representation;

(vi) to assign to the Bond Trustee, pursuant to the Financing Agreement, its interest in the Note; and

(vii) to carry out and consummate all other transactions contemplated by each of the aforesaid documents.

(b) The Issuer has duly authorized by all appropriate action, and complied (and at the Closing Date will have complied) with all provisions of law with respect to, each of the actions set forth in clauses (i) through (vii) of paragraph (a) of this Section 7.

(c) When delivered to and paid for by the Underwriter in accordance with the terms of this Purchase Contract and the Bond Indenture and authenticated in accordance with the terms of the Bond Indenture, the Bonds will have been duly and validly authorized, executed, authenticated, issued and delivered and will constitute legal, valid and binding limited obligations of the Issuer enforceable in accordance with their terms (except as the enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting enforcement of creditors’ rights and by equitable rights where equitable remedies are sought), and will be entitled to the benefits of the Bond Indenture. This Purchase Contract does, and the other Issuer Documents when executed and delivered will, constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms (except as the enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting enforcement of creditors’ rights and by equitable rights where equitable remedies are sought). This Purchase Contract has been duly and validly authorized, executed and delivered by the Issuer.

(d) The acceptance of the ~~Letters~~Letter of Representation and the execution and delivery of the Issuer Documents and compliance with the provisions thereof, do not and will not conflict with, or constitute on the part of the Issuer a violation of, breach of or default under, any constitutional provision or statute of the State of Kentucky or the United States or any indenture, mortgage, deed of trust, resolution, note agreement or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound, or, to the knowledge of the Issuer, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties; and all consents, approvals, authorizations, and orders of or filings or registrations with any governmental authority, board, agency or commission of the State of Kentucky or the United States having jurisdiction required in connection with, or the absence of which would materially adversely affect, the execution and delivery by the Issuer of the Issuer Documents, the performance by the Issuer of its obligations thereunder, or the issuance or sale of the Bonds by the Issuer have been obtained or made and are in full force and effect; provided, however, that no representation is made concerning compliance with the federal securities laws or the securities or “blue sky” laws of the various jurisdictions of the United States of America.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the best of its knowledge, threatened against or affecting the Issuer or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds, or the application of the proceeds thereof in accordance with the Bond Indenture, or the collection and pledge of the Trust Estate (as defined in the Bond Indenture) to pay the principal of, redemption premium, if any, and interest on the Bonds, or in any way contesting or affecting the validity of the Bonds or the Bond Indenture, or contesting the powers of the Issuer to issue the Bonds or to enter into the Bond Indenture, or contesting or affecting the validity of any of the Issuer Documents or contesting the powers of the Issuer to enter into or to execute and deliver or to accept the ~~Letters~~Letter of Representation or any of the Issuer Documents, or contesting the completeness or accuracy of the Disclosure Package, nor to the best of its knowledge is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by each of the Issuer Documents, or which, in any way, would adversely affect the validity or enforceability of any of the Issuer Documents, or any agreement or instrument to which the Issuer is a party, used or contemplated for use in the consummation of the transactions contemplated by each of the Issuer Documents.

(f) The Issuer will cause the proceeds from the sale of the Bonds to be applied as provided for in the Bond Indenture and the Financing Agreement. The facilities financed with the proceeds of the Refunded Bonds constitute and will constitute “pollution control facilities” within the meaning of the Act.

(g) The Issuer has reviewed the statements made in the Preliminary Offering Statement under the caption “SUMMARY–County of Ohio” and under the caption “THE COUNTY OF OHIO, KENTUCKY” and such statements under such captions solely as they relate to the Issuer are, and at all times from the date hereof to and including the

Closing Date will be, true and correct and fairly summarize the matters encompassed thereby to the extent such matters are described therein.

8. At 10:00 A.M., New York time, on \_\_\_\_\_, June 8, 2010, or on such other date and time as shall have been mutually agreed upon by the Issuer, the Company and the Underwriter (the “**Closing Date**”), the Issuer, subject to the terms and conditions hereof, shall deliver the Bonds to the Underwriter at The Depository Trust Company (the “**Securities Depository**”), 55 Water Street, New York, New York, or such other place as may be mutually agreed upon by the Issuer, the Company and the Underwriter, in typewritten form, bearing CUSIP numbers, duly executed and authenticated, registered in the name of Cede & Co., as nominee for the Securities Depository, and shall deliver to the Underwriter the documents set forth in Section 9 at the offices of Bond Counsel. The Underwriter shall, subject to the terms and conditions hereof, accept such delivery and pay the purchase price of the Bonds as set forth in Section 2 hereof by wire transfer of federal funds to the order of the Company. This payment and delivery is herein called the “**Closing**.”

9. The Underwriter has entered into this Purchase Contract in reliance upon the representations, warranties and agreements of the Issuer contained herein, in reliance upon the representations, warranties and agreements of the Company contained in the ~~Company~~ Letter of Representation, in reliance upon the representations, warranties and agreements of ~~CFC~~ contained in the ~~CFC~~ Letter of Representation, in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer of its obligations hereunder and upon the performance by the Company of its obligations under the ~~Company~~ Letter of Representation and by ~~CFC~~ of its obligations under the ~~CFC~~ Letter of Representation, in each case as of the date hereof and as of the Closing Date. Accordingly, the Underwriter’s obligation under this Purchase Contract to purchase, to accept delivery of and to pay for the Bonds shall be subject to the performance by the Issuer of its obligations to be performed by it hereunder at or prior to the Closing, to the performance by the Company of the obligations and agreements to be performed by it under the ~~Company~~ Letter of Representation at or prior to the Closing, to the performance by ~~CFC~~ of the obligations and agreements to be performed by it under the ~~CFC~~ Letter of Representation at or prior to the Closing, and to the accuracy in all respects of the representations and warranties of the Issuer, and of the Company and ~~CFC~~ contained herein and in the ~~Letters~~Letter of Representation, respectively, as of the date hereof and to the accuracy in all material respects of such representations and warranties as of the Closing as if made on the Closing Date, and shall also be subject to the following additional conditions:

(a) At the time of the Closing, (i) the Resolution shall be in full force and effect and each of the 2010 Financing Documents (other than the Bonds) shall have been duly authorized, executed and delivered and shall not have been amended, modified, or supplemented, except as may have been agreed to in writing by the Underwriter; and (ii) the Issuer shall perform or have performed all of its obligations required under or specified in this Purchase Contract and the Offering Statement to be performed at or prior to the Closing.

(b) The Bonds shall have been duly authorized, executed, authenticated and delivered in accordance with the provisions of the Bond Indenture. The Note shall have

been authenticated by the Mortgage Indenture Trustee in accordance with the provisions of the Mortgage Indenture.

(c) The Underwriter may terminate this Purchase Contract by notification to the Issuer and the Company if at any time subsequent to the date hereof and at or prior to the Closing (i) legislation shall have been introduced in or enacted by the Congress of the United States or introduced in or reported out of a committee of or adopted by either House thereof, or legislation pending in the Congress of the United States shall have been amended, or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairmen or Ranking Members of the U.S. Senate Committee on Finance or the U.S. House of Representatives Committee on Ways and Means, or legislation shall have been proposed for consideration by either such Committee by any member thereof, or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or a decision by a court of the United States of America or the Tax Court of the United States shall be rendered, or a ruling, regulation or official statement by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed to be made, with respect to federal taxation of revenues or other income of the general character expected to be derived by the Issuer under the Financing Agreement or upon interest received on securities of the general character of the Bonds or which would have the effect of changing directly or indirectly the federal income tax consequences of interest on securities of the general character of the Bonds in the hands of the holders thereof, which, in the reasonable opinion of the Underwriter, would materially adversely affect the market price or marketability of the Bonds; (ii) there shall have occurred any outbreak of hostilities or escalation of existing hostilities involving the United States or the declaration by the United States of a national emergency or war, any material disruption in financial markets, or any national or international calamity or crisis or an escalation thereof or any change in financial, political or economic conditions in the United States or elsewhere, the effect of such outbreak, escalation, disruption, declaration, calamity, crisis, escalation or change, or the effect of the continuations of any such event existing on the date hereof, being such as, in the reasonable judgment of the Underwriter, would make it impracticable for the Underwriter to market any of the Bonds or to enforce contracts for the sale of any of the Bonds on the terms and in the manner contemplated by the Offering Statement; (iii) there shall be in force a suspension or material limitation in trading in the Company's or the Issuer's securities or a general suspension or material limitation in trading in securities generally on or by the New York Stock Exchange or other national securities exchange as a result of an event affecting the national economy, or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on or by, as the case may be, the foregoing entity, whether by virtue of a determination by such exchange or by order of the SEC or any other governmental authority having jurisdiction; (iv) a general banking moratorium shall have been declared by federal, New York or Kentucky authorities having jurisdiction or a material disruption in commercial banking or securities settlement or clearance services in the United States shall have occurred; (v) there shall have been a



material adverse change in the general affairs or in the financial position or net assets of the Company ~~as a whole or CFC~~ as a whole, as described in the Offering Statement, except as set forth in or contemplated by the Offering Statement which, in the reasonable judgment of the Underwriter, materially adversely affects the market price or marketability of the Bonds; (vi) a stop order, ruling or regulation by the SEC shall hereafter be issued or made, or legislation shall be enacted, or a decision by a court of competent jurisdiction shall be rendered, the reasonable effect of which is that the issuance, offering or sale of the Bonds, as contemplated herein or in the Offering Statement, or of obligations of the general character of the Bonds, is in violation of any provisions of the Securities Act of 1933, as amended and as then in effect (the "**Securities Act**"), the Exchange Act, the Trust Indenture Act of 1939, as amended and as then in effect (the "**Trust Indenture Act**"), or any rule or regulation promulgated under any such Acts; (vii) (A) a downgrading shall have occurred in the rating accorded any of the Company's ~~or CFC's~~ unenhanced debt securities by any "nationally recognized statistical rating organization," as that term is defined by the SEC for purposes of Rule 436(g)(2) under the Securities Act, or (B) any such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's ~~or CFC's~~ unenhanced debt securities; or (viii) in the reasonable judgment of the Underwriter, the market for the Bonds or of obligations of the general character of the Bonds shall be adversely affected because: (A) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental issuer or by any national securities exchange or (B) the New York Stock Exchange or other national securities exchange, or any governmental issuer, shall have imposed, as to the Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge of the net capital requirements of underwriters or broker-dealers; (ix) any litigation shall be instituted, pending or to the Company's or the Issuer's knowledge, threatened to restrain or enjoin the issuance or sale of the Bonds or the validity thereof or materially adversely affecting the existence or powers of the Issuer; (x) any event shall have occurred or shall exist which, in the reasonable opinion of the Underwriter, causes the Offering Statement to contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading; or (xi) a supplement or amendment shall have been made to the Offering Statement subsequent to the date hereof which, in the reasonable judgment of the Underwriter, materially adversely affects the marketability of the Bonds or the market price thereof. For purposes of clauses (x) and (xi) of the immediately preceding sentence, "Offering Statement" shall mean the Offering Statement as initially prepared in definitive form and delivered on the date thereof and prior to any amendments or supplements thereto.

(d) At or prior to the Closing, no decision of any federal or state court and no ruling or regulation (final, temporary or proposed) of the SEC or any other governmental agency shall have been made or issued, and no legislation shall be enacted or actively considered for enactment, to the effect that (i) the Bonds or any other securities of the Issuer or of any similar body of the type contemplated by this Purchase Contract, the LettersLetter of Representation or the Note are subject to the registration requirements of the Securities Act (and there is no applicable exemption); or (ii) the qualification of the

Bond Indenture or any other agreement in respect of the Bonds or any such securities is required under the Trust Indenture Act.

(e) At or prior to the Closing, the Underwriter shall receive the following documents:

(1) The documents identified in Section 5 hereof;

(2) An opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel ("**Bond Counsel**"), addressed to the Issuer and accompanied by a letter to the Underwriter stating that the Underwriter may rely upon such opinion as if it were addressed to the Underwriter, dated the Closing Date, substantially in the form attached as Appendix —G to the Preliminary Offering Statement;

(3) Opinions, dated the Closing Date and addressed to the Underwriter, of (i) Gregory Hill, Counsel to the Issuer; (ii) Sullivan, Mountjoy, Stainback & Miller, P.S.C., Counsel to the Company; (iii) Bond Counsel; and (iv) Sutherland Asbill & Brennan LLP, Counsel to the Underwriter ("**Counsel to the Underwriter**"); (v) ~~John J. List, General Counsel to CFC; and~~ (vi) \_\_\_\_\_, Counsel to CFC, in each case in form and substance satisfactory to the Underwriter and covering such matters incident to the transactions contemplated hereby as such Underwriter or Counsel to the Underwriter may reasonably request;

(4) A certificate, dated the Closing Date, executed by the County Judge/Executive of the Issuer to the effect that:

(i) each of the representations and warranties set forth in Section 7 hereof is true, accurate and complete in all material respects on and as of the Closing Date as if made on the Closing Date;

(ii) each of the agreements of the Issuer, as set forth in this Purchase Contract to be complied with at or prior to the Closing, has been complied with;

(iii) the Resolution has not been amended, modified, superseded or repealed, except for any amendments thereto that were approved in writing by the Underwriter, and is in full force and effect on the Closing Date; and

(iv) to the best of his knowledge, no event affecting the Issuer has occurred since the date of the Disclosure Package which would cause the Disclosure Package or the final Offering Statement to contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading;

(5) A certificate, dated the Closing Date, of the President & CEO and the Senior Vice President, Financial/Energy Services & CFO of the Company, providing as follows:

(i) certifying that each of the representations and warranties set forth in paragraph 1 of the ~~Company~~ Letter of Representation is true, accurate and correct as if made on the Closing Date and that the Company has complied with all its agreements therein contained to be performed at or prior to the Closing Date;

(ii) certifying that as of the Closing Date there has been no material adverse change in the general affairs or in the financial position or net assets of the Company as a whole, as shown in the Preliminary Offering Statement, other than changes disclosed by or contemplated in the Preliminary Offering Statement or in an amendment or supplement thereto; and

(iii) stating that they have examined the Disclosure Package and the final Offering Statement and that, in their opinion, the Disclosure Package and the final Offering Statement as of their respective dates did not, and the final Offering Statement as of the Closing Date does not, include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

~~(6) A certificate, dated the Closing Date, of the \_\_\_\_\_ of CFC, providing as follows:~~

~~(i) certifying that each of the representations and warranties set forth in paragraph 1 of the CFC Letter of Representation is true, accurate and correct as if made on the Closing Date and that CFC has complied with all its agreements therein contained to be performed at or prior to the Closing Date;~~

~~(ii) certifying that as of the Closing Date there has been no material adverse change in the general affairs or in the financial position or net assets of CFC as a whole, as shown in the Preliminary Offering Statement, other than changes disclosed by or contemplated in the Preliminary Offering Statement or in an amendment or supplement thereto; and~~

~~(iii) stating that [he/she] has examined the information contained under the heading "CFC GUARANTY AGREEMENT" in the Disclosure Package and the final Offering Statement and that, in [his/her] opinion, the information contained under the heading "CFC GUARANTY AGREEMENT" in the Disclosure Package and the final Offering Statement as of their respective dates did not, and the information contained under the heading "CFC GUARANTY AGREEMENT" in the~~

~~final Offering Statement as of the Closing Date does not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;~~

(6) ~~(7)~~—A “bring-down” letter with regard to certain procedures performed through a specified date not more than five (5) business days prior to the date of such letter, dated the Closing Date and addressed to the Underwriter, from Deloitte, as the Company’s auditor, in the form agreed to by Deloitte and the Underwriter;

(7) ~~(8)~~—A certificate of a duly authorized officer of the Bond Trustee, dated the Closing Date and in form and substance satisfactory to the Underwriter, to the effect that:

(i) it is duly organized and validly existing in good standing under the laws of the United States and has full corporate right, power and authority to execute the Bond Indenture;

(ii) the Bond Indenture has been duly authorized, executed and delivered by the Bond Trustee;

(iii) the Bond Indenture is a valid, legal and binding obligation of the Bond Trustee, enforceable in accordance with its terms; and

(iv) the Bonds have been duly authenticated and delivered by the Bond Trustee;

(8) ~~(9)~~—An opinion, dated the Closing Date, addressed to the Underwriter and the Company, of \_\_\_\_\_ Shipman & Goodwin LLP, Counsel to the Bond Trustee, in form and substance satisfactory to the Underwriter and covering such matters incident to the transactions contemplated hereby as such Underwriter or Counsel to the Underwriter may reasonably request;

(9) ~~(10)~~—An executed counterpart or photocopy thereof of the Issuer’s Blanket Issuer Letter of Representations (the “**DTC Letter of Representation**”);

(10) ~~(11)~~—Evidence satisfactory to the Underwriter that, as of the Closing Date, the Bonds are rated “—Baa1” by Moody’s Investors Service, Inc., “—BBB-” by Standard & Poor’s Rating Service, a division of The McGraw-Hills Companies, and “—BBB-” by Fitch Ratings;

(11) ~~(12)~~—Evidence that the 2001 Trustee shall have received instructions to call the Refunded Bonds in whole for redemption, payment and discharge on \_\_\_\_\_, 20—June 22, 2010; and

~~(13)~~ (12)—Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriter or Bond Counsel or Counsel to the Underwriter may reasonably request to evidence compliance by the Issuer; and the Company ~~and CFC~~ with legal requirements, the truth and accuracy, as of the Closing Date, of all representations herein contained and the due performance or satisfaction by the Issuer; and the Company ~~and CFC~~ at or prior to such date of all agreements then to be performed and all conditions then to be satisfied as contemplated under this Purchase Contract.

10. If the Issuer; or the Company ~~or CFC~~ shall be unable to satisfy on the Closing Date the conditions to the obligations of the Underwriter contained in this Purchase Contract in Section 9, or if the obligations of the Underwriter shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract may be terminated by the Underwriter, and upon such termination, the Underwriter and the Issuer shall not have any further obligations hereunder, except for the respective obligations set forth in Section 12 hereof.

11. The Issuer covenants with the Underwriter to cooperate with it and the Company in qualifying the Bonds for offer and sale under the securities or “blue sky” laws of such jurisdictions of the United States of America as the Underwriter may request; provided that in no event shall the Issuer be obligated to take any action which would subject it to general service of process in any jurisdiction where it is not now so subject. It is understood that the Issuer is not responsible for compliance with or the consequences of failure to comply with applicable “blue sky” laws.

12. The Underwriter shall be under no obligation to pay any fees or expenses incident to the performance of the Issuer’s obligations hereunder, including, but not limited to, (i) the cost of printing and preparation for printing or other reproduction of each of the 2010 Financing Documents, the Disclosure Package, the Offering Statement and the cost of preparing the definitive Bonds; (ii) the fees and disbursements of Bond Counsel, Counsel to the Underwriter, accountants, and any other experts, attorneys or consultants retained by the Issuer; or the Company ~~or CFC~~; (iii) the fees of bond rating agencies in connection with the Bonds; (iv) the fees and expenses of the Bond Trustee and any agent of the Bond Trustee and the fees and disbursements of counsel for the Bond Trustee in connection with the Bond Indenture and the Bonds; and (v) all other costs and expenses incident to the performance of the Company’s obligations hereunder which are not otherwise specifically provided for in this Section. The fees, costs and expenses set forth in the immediately preceding sentence will be paid by the Company pursuant to the ~~Company~~ Letter of Representation. The Underwriter shall pay all advertising expenses in connection with the public offering of the Bonds, and all other expenses incurred by it in connection with the public offering and distribution of the Bonds.

13. Any notice or other communication to be given to the Issuer under this Purchase Contract may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested, (such notice or communication to be deemed effective when received), to Ohio County of Ohio Fiscal Court, 301 South Main, Hartford, Kentucky, [Address], 42347, Attention: County Judge/Executive, ~~or by facsimile (such notice to be deemed effective when sent) to the attention of the County Judge/Executive of County of Ohio, Kentucky at [fax number]~~, and any such notice or other communication to be given to the Underwriter may be given by delivering the same in writing, in person or by certified or registered mail, return receipt

requested (such notice or communication to be deemed effective when received) to Goldman, Sachs & Co. at 200 West Street, 31<sup>st</sup>~~33<sup>rd</sup>~~ Floor, New York, New York 10282-2198, or by facsimile (such notice to be deemed effective when sent) to the attention of Mark Glotfelty at ~~{646-835-3244}~~3244. All notices or communications hereunder by any party shall be given and served upon each other party. Any notice or communication to be given to the Company under this Purchase Contract may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested, (such notice or communication to be deemed effective when received), to the Company at 201 Third Street, Henderson, Kentucky 42420, Attention: Senior Vice President, Financial/Energy Services & CFO or by facsimile (such notice to be deemed effective when sent) to the attention of the Senior Vice President, Financial/Energy Services & CFO at 270-827-2101 ~~{fax number}~~. ~~Any notice or communication to be given to CFC under this Purchase Contract may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested, (such notice or communication to be deemed effective when received), to CFC at 2201 Cooperative Way, Herndon, Virginia 20171, Attention: General Counsel or by facsimile (such notice to be deemed effective when sent) to the attention of the General Counsel at 703-709-6774.~~

14. This Purchase Contract shall constitute the entire agreement between the Issuer and the Underwriter and is made solely for the benefit of the Issuer, the Underwriter (including the successors or assigns of the Underwriter), and the Company ~~and CFC~~. The Company ~~and CFC~~ are ~~is~~ an intended third-party beneficiaries beneficiary hereof and shall have any rights afforded to a party hereof. No person, partnership or corporation other than the Issuer, the Underwriter, and the Company ~~and CFC~~ shall acquire or have any right hereunder or by virtue hereof. All representations and agreements of the Issuer in this Purchase Contract shall survive the Closing and shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of the Underwriter, (b) delivery of and payment for the Bonds pursuant to this Purchase Contract, and (c) any termination of this Purchase Contract but only to the extent provided by Section 12 hereof.

15. This Purchase Contract may not be amended without the written consent of the Company, the Issuer, and the Underwriter ~~and CFC~~.

16. This Purchase Contract may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be one and the same instrument.

17. Each of the Issuer and the Underwriter hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Purchase Contract or the transactions contemplated hereby.

18. The validity, interpretation and performance of this Purchase Contract shall be governed by the laws of the State of New York.

[Signatures begin on the following page.]

**Goldman, Sachs & Co.**

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Goldman, Sachs & Co.

Accepted by County of Ohio, Kentucky pursuant to a resolution  
of the County of Ohio, Kentucky adopted at  
Hartford, Kentucky on \_\_\_\_\_, 20\_\_\_\_. May 4, 2010.

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



\$83,300,000  
County of Ohio, Kentucky  
Pollution Control Refunding Revenue Bonds, Series 2010A  
(Big Rivers Electric Corporation Project)

COMPANY LETTER OF REPRESENTATION

\_\_\_\_\_, May 27, 2010

Fiscal Court of the County of Ohio  
Hartford, Kentucky

Goldman, Sachs & Co.  
200 West Street, ~~31<sup>st</sup>~~ 33<sup>rd</sup> Floor  
New York, New York 10282-2198

Ladies and Gentlemen:

1. Big Rivers Electric Corporation (the “**Company**”), in order to induce Goldman, Sachs & Co. (the “**Underwriter**”) and County of Ohio, Kentucky (the “**Issuer**”) to enter into a Purchase Contract dated the date hereof (the “**Purchase Contract**”) relating to the purchase by the Underwriter from the Issuer of \$83,300,000 aggregate principal amount of County of Ohio, Kentucky Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project) (the “**Bonds**”) does hereby execute and deliver this Letter of Representation.

The Bonds will be issued under and pursuant to a Trust Indenture dated as of \_\_\_\_\_, June 1, 2010 (the “**Bond Indenture**”), by and between the Issuer and U.S. Bank National Association, as trustee (the “**Bond Trustee**”). The Bond proceeds shall be paid by the Issuer to U.S. Bank National Association, the current trustee, as successor (the “**2001 Trustee**”), under the Trust Indenture between the Issuer and the 2001 Trustee, dated as of August 1, 2001 (the “**2001 Trust Indenture**”), and shall be used by the 2001 Trustee, together with other moneys provided by the Company, to refund by redemption the Issuer’s Pollution Control Revenue Refunding Bonds, Series 2001A (Big Rivers Electric Corporation Project), Periodic Auction Reset Securities (PARS) (the “**Refunded Bonds**”). The Bond proceeds and such other moneys shall be deposited with the 2001 Trustee pursuant to the Escrow Deposit Agreement, dated as of \_\_\_\_\_, June 1, 2010 (the “**Escrow Deposit Agreement**”), among the Issuer, the Company and U.S. Bank National Association, in its capacity as 2001 Trustee and as Escrow Deposit Trustee (as defined in the Escrow Deposit Agreement).

The payment by the Issuer of a portion of the proceeds of the Bonds to the Company is provided for by the provisions of the Loan Agreement, dated as of \_\_\_\_\_, June 1, 2010 (the “**Financing Agreement**”), between the Issuer and the Company, and the obligations

thereunder to repay the principal amount of the Bonds when due at maturity and interest on the Bonds when due shall be evidenced by a note of the Company dated the date of issuance of the Bonds (the “**Note**”). The Note will be in the form specified in the Supplemental Indenture (as hereinafter defined) and the Financing Agreement and will be an Obligation secured under the Indenture, dated as of July 1, 2009, between the Company and U.S. Bank National Association, as trustee (the “**Mortgage Indenture Trustee**”) as supplemented by the First Supplemental Indenture, dated as of \_\_\_\_\_, June 1, 2010 (the “**Supplemental Indenture**”), between the Company and the Mortgage Indenture Trustee (the “**Mortgage Indenture**”).

~~In connection with the issuance of the Bonds, principal and interest due on the Bonds will be unconditionally guaranteed by CFC pursuant to that certain Guaranty Agreement, dated as of \_\_\_\_\_, 2010 (the “**Guaranty**”), between CFC and the Bond Trustee. In addition, the Company and CFC will enter into that certain Reimbursement Agreement, dated as of \_\_\_\_\_, 2010 (the “**Reimbursement Agreement**”), establishing the rights and obligations between CFC and the Company with respect to matters involving the Bonds.~~

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

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

In consideration of the execution and delivery of the Purchase Contract, the Company represents, warrants and covenants to and with the Underwriter and the Issuer as follows:

(a) The Preliminary Offering Statement, as of its date, and the Disclosure Package, as of 12:00 p.m., New York city time, on \_\_\_\_\_, May 27, 2010 (the “**Initial Sale Time**”), did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; as of the Initial Sale Time, the Electronic Road Show, when considered together with the Disclosure Package, did not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations or warranties in this Section 2(a) shall not apply to information contained in or omitted from the Disclosure Package (or any supplement or amendment thereto) in reliance upon information furnished to the Company in writing by or on behalf of the Underwriter expressly for use in the Preliminary Offering Statement under the heading “**UNDERWRITING**” ~~or by or on~~

behalf of CFC expressly for use in the Preliminary Offering Statement under the heading “~~CFC GUARANTY AGREEMENT~~.” The Company authorizes the Underwriter to use the Disclosure Package and the Offering Statement in connection with the public offering and sale of the Bonds.

(b) The Company has full legal right, power and authority to execute and deliver this Letter of Representation, the Mortgage Indenture, the Supplemental Indenture, the Financing Agreement, the ~~Company~~ Continuing Disclosure Agreement (in substantially the form attached as an Appendix ~~—H-1~~ to the Preliminary Offering Statement), the Tax Certificate and Agreement, the Escrow Deposit Agreement, and the Note ~~and the Reimbursement Agreement~~. As of the date hereof, this Letter of Representation is, and as of the Closing, the Mortgage Indenture, the Supplemental Indenture, the Financing Agreement, the ~~Company~~ Continuing Disclosure Agreement (in substantially the form attached as an Appendix ~~—H-1~~ to the Preliminary Offering Statement), the Tax Certificate and Agreement, the Escrow Deposit Agreement, and the Note ~~and the Reimbursement Agreement~~ will have been, duly authorized, executed and delivered by the Company and will be in or are in full force and effect and will or do constitute the valid and binding obligations of the Company enforceable in accordance with their respective terms (except as to enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting enforcement of creditors’ rights and by equitable rights where equitable remedies are sought and except that rights to indemnity and remedies for breach of representations and warranties relating to the Disclosure Package or the Offering Statement may be limited under the federal securities laws or other applicable laws), and performance by the Company thereunder will not violate, or result in a breach of any of the provisions of, or constitute a default under (i) the Company’s Articles of Incorporation, as amended, or its Bylaws, as amended, or (ii) any agreement or instrument to which, or any law, administrative regulation or court decree by which, the Company is bound, except in the case of clause (i) above, for any such violation, breach or default that would not individually or in the aggregate, be reasonably expected to have a material adverse effect on the business or operations or current or future financial position, patronage capital, margins or results of operations of the Company or on the performance by the Company of its obligations under the 2010 Financing Documents (a “**Material Adverse Effect**”).

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

(d) During the period commencing on the date hereof and ending on the earlier of (i) ninety (90) days following the End of the Underwriting Period (as defined in the Purchase Contract), or (ii) the time when the Offering Statement is available to any person from a nationally recognized municipal securities information repository, but in the case of this clause (ii), no less than twenty-five (25) days following the End of the Underwriting Period, if any event shall occur which in the reasonable opinion of the Underwriter would cause the Offering Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were

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

(e) Except as contemplated herein or as contemplated or set forth in the Disclosure Package, or as the result of operations in the ordinary course of business as described in the Disclosure Package, the Company, subsequent to the dates as of which information is given in the Disclosure Package and as of the date on which the representation with respect to this paragraph is being made (being the date of this Letter of Representation and, pursuant to clause 5(i) of paragraph (e) of Section 9 of the Purchase Contract, the Closing Date), has not incurred any material liabilities or obligations, direct or contingent; and, except as contemplated or set forth in the Disclosure Package, subsequent to the dates as of which information is given in the Disclosure Package and as of the date on which the representation with respect to this paragraph is being made, there has been no material adverse change in the condition, financial or otherwise, of the Company.

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

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

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

(i) All consents, approvals, authorizations and orders of any governmental authority, board, agency or commission or filings or registrations with any governmental authority of the State of Kentucky or the United States of America required in connection with, or the absence of which would materially adversely affect the execution and delivery by the Company of, the Financing Agreement, the ~~Company~~ Continuing Disclosure Agreement, the Mortgage Indenture, the Supplemental Indenture, the Tax

Certificate and Agreement, the Escrow Deposit Agreement, the Note, ~~the Reimbursement Agreement~~ and this Letter of Representation, the performance by the Company of its obligations thereunder and hereunder and of the transactions contemplated in the Disclosure Package, except as described in the Disclosure Package, and the issuance and sale of the Bonds, have been obtained or made and are in full force and effect; provided, however, that no representation is made concerning compliance with the federal securities laws or the securities or “blue sky” laws of the various jurisdictions of the United States of America.

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

(k) The Company will diligently cooperate with the Underwriter to qualify the Bonds for offer and sale under the securities or “blue sky” laws of such jurisdictions as the Underwriter may request; provided that in no event shall the Company be obligated to qualify to do business in any jurisdictions where it is not now so qualified or to take any action which would subject it to the general service of process in any jurisdictions where it is not now so subject. The Company will not be responsible for compliance with or the consequences of failure to comply with applicable “blue sky” laws.

(l) The Company will pay the reasonable expenses to be paid by it pursuant to Section 12 of the Purchase Contract (subject to the terms and conditions set forth therein). In addition, as compensation to the Underwriter for its commitments and obligations under the Purchase Contract, the Company will pay to the Underwriter by wire transfer or a check or checks payable in immediately available funds, an amount equal to \$941,505.50 (such fee being inclusive of the Underwriter’s out-of-pocket expenses). Such payment shall be made simultaneously with the payment by the Underwriter of the purchase price of the Bonds as provided in the Purchase Contract.

(m) The Preliminary Offering Statement was, as of its date, deemed “final,” within the meaning of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (“**Rule 15c2-12**”), by the Company on behalf of the Issuer as of the date thereof and as of the date hereof, and is deemed to be a “final official statement” within the meaning of Rule 15c2-12.

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

(o) The consolidated audited financial statements of the Company for the fiscal years ended December 31, ~~2007~~2008 and December 31, ~~2008~~2009 contained in Appendix —A to the Preliminary Offering Statement present fairly the consolidated

financial position of the Company as of the dates indicated and the results of operations and changes in cash flows for the periods specified, and such financial statements have been prepared in conformity with generally accepted accounting principles. There has been no material adverse change in the condition, financial or otherwise, of the Company since December 31, ~~2008~~, 2009, from that set forth in the financial statements, as of and for the period ended that date, except as disclosed in the Disclosure Package.

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

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

(r) Each of the Wholesale Power Contracts (each, a “**Wholesale Power Contract**” and, collectively, the “**Wholesale Power Contracts**”), between the Company and those Members identified in the Preliminary Offering Statement as parties to such Wholesale Power Contracts, have been duly authorized, executed and delivered by the Company and constitute legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, subject, as to enforcement, to bankruptcy, insolvency reorganization and other laws of general applicability relating to or affecting creditors’ rights and to general equity principles. ~~{We will need to discuss an additional rep re: the enforceability of Smelter Contracts.}~~

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

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

3. (a) The Company agrees to indemnify and hold harmless the Underwriter, and each person, if any, who controls the Underwriter within the meaning of Section 15 of the Securities Act of 1933, as amended (the “**Securities Act**”), and the Issuer, to the extent permitted under applicable law, against any and all losses, claims, damages, liabilities and expenses (including reasonable costs of investigation) arising out of or based on (i) the failure to register

any security under the Securities Act or to qualify any indenture under the Trust Indenture Act of 1939, as amended, in connection with the offering of the Bonds or (ii) any untrue statement or alleged untrue statement of a material fact contained in the Disclosure Package or the Offering Statement, or in any amendment or supplement thereto, arising out of or based on any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except insofar as such losses, claims, damages, liabilities or expenses arising out of or based on any such untrue statement or omission or allegation thereof in reliance upon and in conformity with written information furnished to the Company by the Underwriter expressly for use in the Disclosure Package and the Offering Statement under the heading "UNDERWRITING" ~~or by CFC expressly for use in the Disclosure Package and the Offering Statement under the heading "CFC GUARANTY AGREEMENT."~~

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

claims that are the subject matter of such proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of the Underwriter.

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

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



actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim (which shall be limited as provided in subsection (b) above if the indemnifying party has assumed the defense of any such action in accordance with the provisions thereof). Notwithstanding the provisions of this subsection (d), the Underwriter shall not be required to contribute any amount in excess of the amount by which the total price at which the Bonds were offered to the public exceeds the amount of any damages which the Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

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

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

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

6. The execution and delivery of this Letter of Representation by the Company shall constitute the Company's approval of and consent to the Issuer's entering into, acceptance and execution of the Purchase Contract and performance thereunder.

7. Any notice or other communication to be given to the Company under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received) to the Company at 201 Third Street, Henderson, Kentucky 42420, Attention: Senior Vice President, Financial/Energy Services & CFO, or by facsimile (such notice to be deemed effective when sent) to the attention of the Senior Vice President, Financial/Energy Services & CFO of the Company at ~~{fax number}~~ 270-827-2101. Any notice or other communication to be given to the Underwriter under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt

requested (such notice or communication to be deemed effective when received) to Goldman, Sachs & Co. at 200 West Street, 31<sup>st</sup> 33<sup>rd</sup> Floor, New York, New York 10282-2198, Attention: Mark Glotfelty, or by facsimile (such notice to be deemed effective when sent) to the attention of Mark Glotfelty at [646-835-3244], 3244, and any notice or communication to be given to the Issuer under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received), at Ohio County of Ohio Fiscal Court, 301 South Main, Hartford, Kentucky, [Issuer address], 42347, Attention: County Judge/Executive, or by facsimile (such notice to be deemed effective when sent) to the attention of the County Judge/Executive of County of Ohio, Kentucky at [fax number]. The Company, the Issuer and the Underwriter shall each be fully entitled to rely upon notice given pursuant to this Paragraph and to act thereon.

8. This Letter of Representation shall become effective upon execution hereof and the effectiveness of the Purchase Contract referred to herein. It shall terminate upon termination of the Purchase Contract. The Company's representations and warranties contained herein shall survive the Closing and shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of the Underwriter, (b) delivery of and payment for the Bonds, and (c) any termination of the Purchase Contract or this Letter of Representation but only to the extent provided by subsection (l) of Section 1 hereof.

9. The Company acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to the Purchase Contract is an arm's-length commercial transaction between the Company and the Issuer on one hand, and the Underwriter on the other hand, (ii) in connection therewith and with the process leading to such transaction the Underwriter is acting solely as a principal and not the agent or fiduciary of the Company, (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether the Underwriter has advised or is currently advising the Company on other matters) or any other obligation to the Company except the obligations expressly set forth in the Purchase Contract or this Letter of Representation and (iv) the Company has consulted its own legal and financial advisors to the extent it deemed appropriate. The Company agrees that it will not claim that the Underwriter has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

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

11. The validity, interpretation and performance of this Letter of Representation shall be governed by the laws of the State of New York.

[Signatures begin on the following page.]

Very truly yours,

**BIG RIVERS ELECTRIC CORPORATION**

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

{Name}

{Title}

Mark A. Bailey

President and Chief Executive Officer

Accepted and confirmed as of the  
date first above written

**GOLDMAN, SACHS & CO.**

\_\_\_\_\_  
Goldman, Sachs & Co.



## Schedule 1

### Smelter Agreements

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

~~§83,300,000~~  
~~County of Ohio, Kentucky~~  
~~Pollution Control Refunding Revenue Bonds, Series 2010A~~  
~~(Big Rivers Electric Corporation Project)~~

CFC LETTER OF REPRESENTATION

\_\_\_\_\_, 2010

Fiscal Court of the County of Ohio  
Hartford, Kentucky

Goldman, Sachs & Co.  
200 West Street, 31<sup>st</sup> Floor  
New York, New York 10282-2198

Ladies and Gentlemen:

1. ~~I, \_\_\_\_\_ National Rural Utilities Cooperative Finance Corporation (“CFC”), in order to induce Goldman, Sachs & Co. (the “Underwriter”) and County of Ohio, Kentucky (the “Issuer”) to enter into a Purchase Contract dated the date hereof (the “Purchase Contract”) relating to the purchase by the Underwriter from the Issuer of \$83,300,000 aggregate principal amount of County of Ohio, Kentucky Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project) (the “Bonds”) does hereby execute and deliver this Letter of Representation.~~

~~The Bonds will be issued under and pursuant to a Trust Indenture dated as of \_\_\_\_\_, 2010 (the “Bond Indenture”), by and between the Issuer and U.S. Bank National Association, as trustee (the “Bond Trustee”). The Bond proceeds shall be paid by the Issuer to U.S. Bank National Association, the current trustee, as successor (the “2001 Trustee”), under the Trust Indenture between the Issuer and the 2001 Trustee, dated as of August 1, 2001 (the “2001 Trust Indenture”), and shall be used by the 2001 Trustee, together with other moneys provided by Big Rivers Electric Corporation (the “Company”), to refund by redemption the Issuer’s Pollution Control Revenue Refunding Bonds, Series 2001A (Big Rivers Electric Corporation Project), Periodic Auction Reset Securities (PARS) (the “Refunded Bonds”). The Bond proceeds and such other moneys shall be deposited with the 2001 Trustee pursuant to the Escrow Deposit Agreement, dated as of \_\_\_\_\_, 2010 (the “Escrow Deposit Agreement”), among the Issuer, the Company and U.S. Bank National Association, in its capacity as 2001 Trustee and as Escrow Deposit Trustee (as defined in the Escrow Deposit Agreement).~~

~~The payment by the Issuer of a portion of the proceeds of the Bonds to the Company is provided for by the provisions of the Loan Agreement, dated as of \_\_\_\_\_, 2010 (the “Financing Agreement”), between the Issuer and the Company, and the obligations thereunder~~

~~to repay the principal amount of the Bonds when due at maturity and interest on the Bonds when due shall be evidenced by a note of the Company dated the date of issuance of the Bonds (the "Note"). The Note will be in the form specified in the Supplemental Indenture (as hereinafter defined) and the Financing Agreement and will be an Obligation secured under the Indenture, dated as of July 1, 2009, between the Company and U.S. Bank National Association, as trustee (the "Mortgage Indenture Trustee") as supplemented by the First Supplemental Indenture, dated as of \_\_\_\_\_, 2010 (the "Supplemental Indenture"); between the Company and the Mortgage Indenture Trustee (the "Mortgage Indenture").~~

~~In connection with the issuance of the Bonds, principal and interest due on the Bonds will be unconditionally guaranteed by CFC pursuant to that certain Guaranty Agreement, dated as of \_\_\_\_\_, 2010 (the "Guaranty"), between CFC and the Bond Trustee. In addition, the Company and CFC will enter into that certain Reimbursement Agreement, dated as of \_\_\_\_\_, 2010 (the "Reimbursement Agreement"), establishing the rights and obligations between CFC and the Company with respect to matters involving the Bonds.~~

~~The Company and the Issuer have caused to be prepared the following information: (i) a Preliminary Offering Statement, dated \_\_\_\_\_, 2010 (together with the appendices thereto, the "Preliminary Offering Statement"); (ii) the Pricing Supplement attached as Appendix C to the Purchase Contract (the "Pricing Supplement"); and (iii) the electronic road show made available to investors via the Internet (not including telephone question and answer sessions with investors). The Preliminary Offering Statement, together with the Pricing Supplement, is referred to herein as the "Disclosure Package."~~

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

~~In consideration of the execution and delivery of the Purchase Contract, CFC represents, warrants and covenants to and with the Underwriter and the Issuer as follows:~~

~~(a) The information contained in the Preliminary Offering Statement (including information incorporated by reference therein), as of its date, and the information contained in the Disclosure Package (including information incorporated by reference therein), as of 12:00 p.m., New York city time, on \_\_\_\_\_, 2010 (the "Initial Sale Time"), under the heading "CFC GUARANTY AGREEMENT" (such information is collectively referred to herein as the "CFC Information") did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. CFC authorizes the Underwriter to use the CFC Information contained in the Disclosure Package and the Offering Statement in connection with the public offering and sale of the Bonds.~~

~~(b) CFC has full legal right, power and authority to execute and deliver this Letter of Representation, the CFC Continuing Disclosure Agreement (in substantially the form attached as an Appendix \_\_\_ to the Preliminary Offering Statement), the Guaranty and the Reimbursement Agreement. As of the date hereof, this Letter of Representation~~

~~is, and as of the Closing, the CFC Continuing Disclosure Agreement (in substantially the form attached as an Appendix \_\_\_\_\_ to the Preliminary Offering Statement), the Guaranty and the Reimbursement Agreement will have been, duly authorized, executed and delivered by CFC and will be in or are in full force and effect and will or do constitute the valid and binding obligations of CFC enforceable in accordance with their respective terms (except as to enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting enforcement of creditors' rights and by equitable rights where equitable remedies are sought and except that rights to indemnity and remedies for breach of representations and warranties relating to the Disclosure Package or the Offering Statement may be limited under the federal securities laws or other applicable laws), and performance by CFC thereunder will not violate, or result in a breach of any of the provisions of, or constitute a default under (i) CFC's Articles of Incorporation, as amended, or its Bylaws, as amended, or (ii) any agreement or instrument to which, or any law, administrative regulation or court decree by which, CFC is bound, except in the case of clause (i) above, for any such violation, breach or default that would not individually or in the aggregate, be reasonably expected to have a material adverse effect on the business or operations or current or future financial position, patronage capital, margins or results of operations of CFC or on the performance by CFC of its obligations under the 2010 Financing Documents (a "Material Adverse Effect").~~

~~(e) — CFC will cooperate with the Issuer and the Underwriter in the preparation of any amendment of or supplement to the CFC Information contained in the Disclosure Package or the Offering Statement which may be required pursuant to the provisions of Section 5(a)(2) of the Purchase Agreement.~~

~~(d) — Except as contemplated herein or as contemplated or set forth in the CFC Information contained in the Disclosure Package, or as the result of operations in the ordinary course of business as described in the CFC Information contained in the Disclosure Package, CFC, subsequent to the dates as of which information is given in the CFC Information contained in the Disclosure Package and as of the date on which the representation with respect to this paragraph is being made (being the date of this Letter of Representation and, pursuant to clause 6(i) of paragraph (e) of Section 9 of the Purchase Contract, the Closing Date), has not incurred any material liabilities or obligations, direct or contingent; and, except as contemplated or set forth in the CFC Information contained in the Disclosure Package, subsequent to the dates as of which information is given in the CFC Information contained in the Disclosure Package and as of the date on which the representation with respect to this paragraph is being made, there has been no material adverse change in the condition, financial or otherwise, of CFC.~~

~~(e) — CFC has been duly incorporated and is now validly existing and in good standing as a cooperative association under the laws of the District of Columbia. CFC has been duly qualified as a foreign corporation in each jurisdiction in which such qualification is required and is in good standing under the laws of each such jurisdiction or is not subject to any material liability or disability by reason of the failure to be so qualified in any such jurisdiction.~~



~~(f) — There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending, other than as described in the CFC Information contained in the Disclosure Package, or known to CFC to be threatened against or affecting CFC, nor to the best of CFC's knowledge is there any basis therefor, wherein an unfavorable decision, ruling or finding would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.~~

~~(g) — All consents, approvals, authorizations and orders of any governmental authority, board, agency or commission or filings or registrations with any governmental authority of the District of Columbia or the United States of America required in connection with, or the absence of which would materially adversely affect the execution and delivery by CFC of, the CFC Continuing Disclosure Agreement, the Guaranty, the Reimbursement Agreement and this Letter of Representation, the performance by CFC of its obligations thereunder and of the transactions contemplated in the Disclosure Package, except as described in the CFC Information contained in the Disclosure Package, and the issuance and sale of the Bonds, have been obtained or made and are in full force and effect; provided, however, that no representation is made concerning compliance with the federal securities laws or the securities or "blue sky" laws of the various jurisdictions of the United States of America.~~

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

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

~~(j) — The consolidated audited financial statements of CFC for the fiscal year ended December 31, 20\_\_ incorporated by reference in the Disclosure Package present fairly the consolidated financial position of CFC as of the date indicated and the results of operations and changes in cash flows for the period specified, and such financial statements have been prepared in conformity with generally accepted accounting principles. There has been no material adverse change in the condition, financial or otherwise, of CFC since December 31, 20\_\_, from that set forth in the financial statements, as of and for the period ended that date, except as disclosed in the CFC Information contained in the Disclosure Package.~~

~~2. — The acceptance and confirmation of this Letter of Representation on behalf of the Issuer shall constitute a representation and warranty by the Issuer to CFC that the representations~~

and warranties contained in Section 7 of the Purchase Contract are true as of the date hereof and will be true in all material respects as of the Closing Date, as if made on the Closing Date.

3. ~~(a) CFC agrees to indemnify and hold harmless the Underwriter, and each person, if any, who controls the Underwriter within the meaning of Section 15 of the Securities Act of 1933, as amended (the "Securities Act"), and the Issuer, to the extent permitted under applicable law, against any and all losses, claims, damages, liabilities and expenses (including reasonable costs of investigation) arising out of or based on any untrue statement or alleged untrue statement of a material fact contained in the CFC Information in the Disclosure Package or the Offering Statement, or in any amendment or supplement thereto, arising out of or based on any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.~~

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

are the subject matter of such proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of the Underwriter.

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

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

~~indemnified party in connection with investigating or defending any such action or claim (which shall be limited as provided in subsection (b) above if the indemnifying party has assumed the defense of any such action in accordance with the provisions thereof). Notwithstanding the provisions of this subsection (d), the Underwriter shall not be required to contribute any amount in excess of the amount by which the total price at which the Bonds were offered to the public exceeds the amount of any damages which the Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.~~

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

~~4. — The Underwriter agrees that, if the Purchase Contract is terminated pursuant to Section 10 thereof, CFC shall not have any further obligations to the Underwriter under this Letter of Representation other than as set forth in clause (1) of Section 1 hereof.~~

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

~~6. — The execution and delivery of this Letter of Representation by CFC shall constitute CFC’s approval of and consent to the Issuer’s entering into, acceptance and execution of the Purchase Contract and performance thereunder.~~

~~7. — Any notice or other communication to be given to the Company under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received) to CFC at 2201 Cooperative Way, Herndon, Virginia 20171, Attention: General Counsel, or by facsimile (such notice to be deemed effective when sent) to the attention of the General Counsel of CFC at 703 709 6774. Any notice or other communication to be given to the Underwriter under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received) to Goldman, Sachs & Co. at 200 West Street, 31<sup>st</sup> Floor, New York, New York 10282 2198, Attention: Mark Glotfelty, or by facsimile (such notice to be deemed effective when sent) to the attention of Mark Glotfelty at [646 835-~~

~~3244], and any notice or communication to be given to the Issuer under this Letter of Representation may be given by delivering the same in writing, in person or by certified or registered mail, return receipt requested (such notice or communication to be deemed effective when received), at County of Ohio, Kentucky, [Issuer address], Attention: County Judge/Executive, or by facsimile (such notice to be deemed effective when sent) to the attention of the County Judge/Executive of County of Ohio, Kentucky at [fax number]. CFC, the Issuer and the Underwriter shall each be fully entitled to rely upon notice given pursuant to this Paragraph and to act thereon.~~

~~8. This Letter of Representation shall become effective upon execution hereof and the effectiveness of the Purchase Contract referred to herein. It shall terminate upon termination of the Purchase Contract. CFC's representations and warranties contained herein shall survive the Closing and shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of the Underwriter, (b) delivery of and payment for the Bonds, and (c) any termination of the Purchase Contract or this Letter of Representation but only to the extent provided by subsection (f) of Section 1 hereof.~~

~~9. CFC acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to the Purchase Contract is an arm's length commercial transaction between CFC and the Issuer on one hand, and the Underwriter on the other hand, (ii) in connection therewith and with the process leading to such transaction the Underwriter is acting solely as a principal and not the agent or fiduciary of CFC, (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of CFC with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether the Underwriter has advised or is currently advising CFC on other matters) or any other obligation to CFC except the obligations expressly set forth in the Purchase Contract or this Letter of Representation and (iv) CFC has consulted its own legal and financial advisors to the extent it deemed appropriate. CFC agrees that it will not claim that the Underwriter has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to CFC, in connection with such transaction or the process leading thereto.~~

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

~~11. The validity, interpretation and performance of this Letter of Representation shall be governed by the laws of the State of New York.~~

~~{Signatures begin on the following page.}~~

Very truly yours,

NATIONAL ~~\_\_\_\_\_~~ RURAL ~~\_\_\_\_\_~~ UTILITIES  
COOPERATIVE FINANCE CORPORATION

By: \_\_\_\_\_  
[Name]  
[Title]

Accepted and confirmed as of the  
date first above written

~~GOLDMAN, SACHS & CO.~~

\_\_\_\_\_  
Goldman, Sachs & Co.

Accepted by County of Ohio, Kentucky pursuant to a resolution of the County of Ohio, Kentucky adopted at \_\_\_\_\_, Kentucky on \_\_\_\_\_, 20\_\_\_\_.

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

**APPENDIX C**

**Pricing Supplement**

<b>Issuer:</b>	County of Ohio, Kentucky
<b>Obligor:</b>	Big Rivers Electric Corporation
<b>Date:</b>	_____, <u>May 27, 2010</u>
<b>Security Type:</b>	Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project)
<b>Principal Amount:</b>	\$83,300,000
<b>Maturity Date:</b>	<u>July 15, 2031</u>
<b>Interest Rate:</b>	____ <u>6.000%</u>
<b>Price:</b>	100.000
<b>CUSIP Number:</b>	<u>677288AG7</u>
<b>Optional Redemption</b>	After _____, <u>July 15, 2020</u> , the Bonds may be redeemed, in whole or in part, prior to their stated maturity at Big Rivers Electric's option.
<b>Ratings on the Bonds:</b>	The Bonds have ratings of "____" from S&P, " <u>____Baa1</u> " from Moody's, " <u>BBB-</u> " from S&P and " <u>____BBB-</u> " from Fitch.
<b>Total Underwriters' Compensation:</b>	\$ _____ <u>941,505.50</u>
<b>Underwriter:</b>	Goldman, Sachs & Co.

SUPPLEMENT DATED MAY 26, 2010 TO  
PRELIMINARY OFFERING STATEMENT DATED MAY 20, 2010

\$83,300,000  
COUNTY OF OHIO, KENTUCKY  
Pollution Control Refunding Revenue Bonds, Series 2010A  
(Big Rivers Electric Corporation Project)

The purpose of this Supplement is to supplement certain information contained in the Preliminary Offering Statement dated May 20, 2010 (the "Preliminary Offering Statement") with respect to the above-referenced bonds (the "Bonds"). This Supplement should be read in conjunction with the Preliminary Offering Statement.

The information set forth below supplements the information contained in the Preliminary Offering Statement under the captions "USE OF PROCEEDS" on page 1 and "Debt and Lease Obligations" on page 31:

On May 25, 2010, a regularly scheduled auction for our outstanding series of periodic auction reset securities (PARs), having a total principal amount of \$83.3 million, failed as the par amount of sell orders in the auction exceeded the par amount of buy orders by approximately \$4.3 million. As a result, the annual interest rate on the PARs reset from 1.7% for the prior 28-day period to 18% for the current 28-day period, which is the maximum rate required under the terms of the PARs in the event of a failed auction. At the end of the current period, the auction rate securities will be redeemed from the proceeds of this refunding issue.

This Supplement is dated May 26, 2010.



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**TRUST INDENTURE**

Between

**COUNTY OF OHIO, KENTUCKY**

and

**U.S. BANK NATIONAL ASSOCIATION**

as Bond Trustee

Dated as of ~~\_\_\_\_\_~~, June 1, 2010

Authorizing

**\$83,300,000**  
**COUNTY OF OHIO, KENTUCKY**  
**Pollution Control Refunding Revenue Bonds, Series 2010A**  
**(Big Rivers Electric Corporation Project)**

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## TRUST INDENTURE

This **TRUST INDENTURE** (this "Indenture"), is made and entered into as of ~~June 1, 2010~~, by and between **COUNTY OF OHIO, KENTUCKY**, a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky (together with any successor to its duties and functions, the "County"), acting by and through its Fiscal Court which is the governing body of the County, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States of America and authorized to accept and execute trusts of the character herein set out (together with any successor to its duties and functions, the "Bond Trustee").

### WITNESSETH:

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

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

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

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

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

**WHEREAS**, Big Rivers has requested the County to issue \$83,300,000 aggregate principal amount of its "Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project)" (the "Bonds") and to loan the proceeds thereof to Big Rivers for the purpose of providing funds to refund by redemption the 2001 Bonds; and

**WHEREAS**, the County and Big Rivers propose that the County so refund the 2001 Bonds by depositing into escrow the proceeds of the Bonds and certain other funds in sufficient

amounts} to effect such refunding by redemption of the 2001 Bonds }on {~~\_\_\_\_\_~~} June 22, 2010 in accordance with the terms of the 2001 Indenture and an Escrow Deposit Agreement, dated as of {~~\_\_\_\_\_~~} June 1, 2010 (the "Escrow Deposit Agreement"), among the County, Big Rivers and the trustee named therein; and

**WHEREAS**, the County will issue the Bonds under this Indenture and loan the proceeds thereof to Big Rivers under a Loan Agreement, dated as of {~~\_\_\_\_\_~~} June 1, 2010 (the "Financing Agreement"), pursuant to which (i) the County will loan to Big Rivers the proceeds of the Bonds and (ii) Big Rivers will agree to repay such loan by paying to the County an amount sufficient to pay the principal of the Bonds when due at maturity, the interest on the Bonds when due and any other expenses incurred by the County in connection with the Bonds, and the Bonds shall be secured by, among other things, a pledge of the Financing Agreement, certain revenues of the County received pursuant to the Financing Agreement and a note issued by Big Rivers to evidence its payment obligations under the Financing Agreement (the "Note"), which Note will be issued pursuant to the First Supplemental Indenture, dated as of {~~\_\_\_\_\_~~} June 1, 2010, supplemental to the Indenture, dated as of July 1, 2009, between Big Rivers and U.S. Bank National Association, as trustee (the "Big Rivers Indenture"), and secured on a parity basis with all other obligations secured thereunder; and

**WHEREAS**, the refunding by redemption of the 2001 Bonds shall also result in the prepayment of the 2001 Note issued to evidence Big Rivers' obligation to repay the loan made by the County to Big Rivers under the 2001 Financing and Loan Agreement; and

**WHEREAS**, Big Rivers, by executing and delivering the Financing Agreement, has consented to the issuance of the Bonds and the loan of the proceeds thereof to Big Rivers; and

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

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

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



of the Bonds and the refunding of the 2001 Bonds, and (h) the issuance of the Bonds, the refunding of the 2001 Bonds, the loan of the proceeds of the Bonds to Big Rivers for this purpose and the execution, delivery and performance of the Bonds, this Indenture and the Financing Agreement are, in all respects, permitted by the Act and conform to the requirements of the Act.

**WHEREAS**, all other things necessary to make the Bonds, when issued, executed and delivered by the County and authenticated by the Bond Trustee pursuant to this Indenture, the valid and binding obligations of the County, and to constitute this Indenture a valid pledge of certain income and revenues derived from the Financing Agreement and the Note for the payment of the principal of and interest on the Bonds authenticated and delivered under this Indenture, have been performed, and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have all been duly authorized;

**NOW, THEREFORE:**

The County, in consideration of the premises and the acceptance by the Bond Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Owners thereof and of the sum of One Dollar (\$1.00), lawful money of the United States of America, to it duly paid by the Bond Trustee at or before the execution and delivery of these presents and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and the performance and observance by the County of all the obligations and covenants expressed or implied herein and in the Bonds, does hereby grant, convey, pledge, transfer and assign to the Bond Trustee, and to its successors in trust, the following (herein called the "Trust Estate"):

*First*, the amounts required from time to time to be deposited in or credited to the account of the Bond Fund in accordance with this Indenture and the Financing Agreement and the Note from time to time held by the Bond Trustee or a Co-Paying Agent for the benefit of the Owners of the Bonds pursuant to this Indenture, together, as provided herein, with any investments and reinvestments made with such amounts and moneys and the proceeds thereof; and

*Second*, all of the County's right, title and interest in and to the Note, and payments made thereon, delivered by Big Rivers to the Bond Trustee pursuant to the Financing Agreement; and

*Third*, all of the County's right, title and interest in and to the Receipts and Revenues of the County from the Financing Agreement and all of the County's right, title and interest in and to the Financing Agreement together with all powers, privileges, options and other benefits of the County contained in the Financing Agreement which are not specifically described in the First Granting Clause above other than the rights of the County set forth in Sections 5.4, 5.6 and 9.4 of the Financing Agreement; *provided, however*, that nothing in this clause shall impair, diminish or otherwise affect the County's obligations under the Financing Agreement or, except as otherwise provided in this Indenture, impose any such obligations on the Bond Trustee; and

*Fourth*, any and all property of every kind or description which may from time to time hereafter be sold, transferred, conveyed, assigned, hypothecated, endorsed, deposited, pledged, mortgaged, granted or delivered to, or deposited with, the Bond Trustee as additional security

hereunder by the County or anyone on its behalf or with its written consent, or which pursuant to any of the provisions hereof or of the Financing Agreement may come into the possession or control of the Bond Trustee, or of a lawfully appointed receiver, as such additional security; and the Bond Trustee is hereby authorized to receive any and all such property as and for additional security for the payment of the Bonds and to hold and apply all such property subject to the terms hereof.

**TO HAVE AND TO HOLD** the said Trust Estate, whether now owned or held or hereafter acquired, unto the Bond Trustee, its successors and assigns, forever.

**IN TRUST NEVERTHELESS**, upon the terms and trusts herein set forth for the equal and proportionate benefit and security of all present and future Owners of the Bonds without preference of any Bond over any other, and for enforcement of the payment of the Bonds, in accordance with their terms, and all other sums payable hereunder or on the Bonds and for the performance of and compliance with the obligations, covenants and conditions of this Indenture, as if all the Bonds at any time outstanding had been authenticated, executed and delivered simultaneously with the execution and delivery of this Indenture, all as herein set forth.

**IT IS HEREBY COVENANTED, DECLARED AND AGREED** that this Indenture creates a continuing lien to secure equally and ratably the payment in full of the principal of and interest on all Bonds which may, from time to time, be outstanding hereunder, and that the Bonds are to be issued, authenticated and delivered, and that the Trust Estate is to be held, dealt with and disposed of by the Bond Trustee, upon and subject to the terms, covenants, conditions, uses, agreements and trusts set forth in this Indenture, as follows:

## ARTICLE I

### DEFINITIONS

The terms defined in this Article I shall, for all purposes of this Indenture, have the meanings herein specified, unless the context clearly requires otherwise:

“*Act*” shall mean the Industrial Building Revenue Bond Act (Sections 103.200 through 103.285, inclusive) of the Kentucky Revised Statutes, as amended, and all acts supplemental thereto or amendatory thereof.

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

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

“*Big Rivers Indenture*” shall mean the Indenture, dated as of July 1, 2009, between Big Rivers and U.S. Bank National Association, as trustee, as supplemented or amended from time to

time, including as supplemented by the First Supplemental Indenture, providing for the issuance of the Note, and as also amended and supplemented by any alternate indenture or mortgage.

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

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

“*Bond Trustee*” shall mean U.S. Bank National Association, and its successor or successors hereunder, as trustee and Paying Agent under this Indenture.

“*Bondowner*” or “*Owner*” shall mean the person in whose name a Bond of any series is registered upon the registration books maintained by the Registrar.

“*Bonds*” or “*Bond*” shall mean the County’s “Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project),” authorized under Section 2.02 hereof.

“*Book Entry Bond*” shall mean a Bond of any series authorized to be issued hereunder and issued to and, except as provided in Section 2.11(d) hereof, restricted to being registered in the name of, a Securities Depository for the participants in such Securities Depository or the beneficial owners of such Bond.

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

“*Co-Paying Agent*” shall mean any co-paying agent appointed in accordance with Sections 9.20 and 9.21 hereof.

“*County*” shall mean County of Ohio, Kentucky, a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky.

“*Escrow Deposit Agreement*” shall mean the Escrow Deposit Agreement dated as of ~~June 1, 2010~~ June 1, 2010 among Big Rivers, the County and the Escrow Deposit Trustee.

“*Escrow Deposit Trustee*” shall mean U.S. Bank National Association, in its capacity as trustee under the Escrow Deposit Agreement.

“*Event of Default*” shall have the meaning specified in Section 8.01 hereof.

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

“*Financing Agreement*” shall mean the Loan Agreement, dated as of ~~\_\_\_\_\_~~, June 1, 2010, between the County and Big Rivers, as amended or supplemented by any and all Supplemental Financing Agreements.

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

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

~~“*Guarantor*” shall mean the National Rural Utilities Cooperative Finance Corporation, a District of Columbia cooperative association.~~

~~“*Guaranty*” shall mean the Guaranty Agreement, dated as of ~~\_\_\_\_\_~~, 2010, between the Guarantor and the Bond Trustee, guaranteeing when due the timely payment of scheduled principal of and interest on the Bonds as provided therein.~~

“*Indenture*” shall mean this Trust Indenture of the County, as amended or supplemented by any and all Supplemental Indentures.

“*Interest Payment Date*” shall mean ~~{January #15} and {July #15}~~ of each year, commencing ~~\_\_\_\_\_~~, January 15, 2011.

“*Investment Securities*” shall mean the following obligations or securities (only to the extent investment therein would not violate the laws of the Commonwealth of Kentucky), maturing or redeemable at the option of the holder thereof at such time or times as to enable disbursements to be made from the Bond Fund in accordance with the terms hereof, or which shall be marketable prior to the maturities thereof:

(i) Direct obligations of, or obligations guaranteed by, the United States of America;

(ii) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America:

- Export-Import Bank,
- Farm Credit System Financial Assistance Corporation,
- Farmers Home Administration,
- General Services Administration,
- U.S. Maritime Administration,
- Small Business Administration,
- Government National Mortgage Association (GNMA),

- U.S. Department of Housing & Urban Development (PHA's), and
- Federal Housing Administration;

(iii) U.S. dollar denominated certificates of deposit (whether negotiable or non-negotiable), demand deposits, time deposits and banker's acceptances with any bank or trust company organized under the laws of any state of the United States of America or any national banking association whose deposit obligations on the date of purchase are rated either "A-1" or better by Standard & Poor's Rating Group, a division of The McGraw-Hill Companies, Inc. ("S&P") and "P-1" or better by Moody's Investors Service, Inc. ("Moody's") (provided that a rating on a holding company shall not be deemed to be such rating on a subsidiary bank);

(iv) Commercial paper which is rated at the time of purchase either "A-1" or better by S&P and "P-1" or better by Moody's and which matures not more than 270 days after the date of purchase;

(v) Senior debt obligations rated "AAA" by S&P and "Aaa" by Moody's issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

(vi) Investments in a money market fund rated "AAAm" or "AAAm-G" or better by S&P;

(vii) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

- (1) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's or any successors thereto; or
- (2) (A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (a) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate and (B) which escrow is sufficient, as verified by a nationally recognized firm of independent certified public accountants, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate.

"Maturity Date" shall mean, with respect to the Bonds, [ ] July 15, 2031.

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

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

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

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

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

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

“Offering Statement” shall mean the Offering Statement, dated [redacted], May 27, 2010, relating to the Bonds.

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

“Outstanding under this Indenture,” “Outstanding hereunder,” or “Outstanding” when used in reference to the Bonds shall mean, as at any particular date, the aggregate of all Bonds authenticated and delivered under this Indenture except:

- (a) Bonds cancelled at or prior to such date or delivered to or acquired by the Bond Trustee at or prior to such date for cancellation or, in the case of Book Entry Bonds, to the extent provided in Section 2.11(f) hereof, portions of Bonds deemed to have been cancelled;
- (b) Bonds (or, in the case of Book Entry Bonds, as provided in Section 2.11(f) hereof, portions thereof) for the payment of which cash shall have been theretofore deposited with the Bond Trustee in an amount equal to the principal amount thereof and interest thereon to maturity;
- (c) Bonds otherwise deemed to be paid in accordance with Article VII hereof; and
- (d) Bonds in lieu of or in exchange or substitution for which other Bonds shall have been authenticated and delivered pursuant to this Indenture, unless proof

satisfactory to the Bond Trustee and Big Rivers is presented that such Bonds are held by a bona fide holder in due course.

~~provided, however, that Bonds paid with proceeds of the Guaranty will remain Outstanding for all purposes under this Indenture.~~

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

“Principal Office” shall mean, (i) for the Bond Trustee and Registrar, the principal corporate trust office of the Bond Trustee, which office at the date of acceptance by the Bond Trustee of the duties and obligations imposed on the Bond Trustee by this Indenture is located at 225 Asylum Street, 23rd Floor, Hartford, Connecticut 06103, Attention: Philip G. Kane, Jr. (Big Rivers 2010 Indenture), and (ii) for a Co-Paying Agent, the office of such Co-Paying Agent designated in writing to the Bond Trustee.

“Purchase Contract” shall mean that certain Purchase Contract providing for the purchase by Goldman, Sachs & Co., as underwriter, of the Bonds from the County.

“Receipts and Revenues of the County from the Financing Agreement” shall mean all moneys paid to the County by Big Rivers pursuant to Section 5.1 of the Financing Agreement, and pursuant to the Note, and all receipts of the Bond Trustee credited under the provisions of this Indenture against such payments.

“Record Date” shall mean the fifteenth (15th) day (whether or not a Business Day) next preceding an Interest Payment Date.

“Registrar” shall mean the Bond Trustee acting in its capacity as Registrar of the Bonds.

“Securities Depository” shall mean, with respect to a Book Entry Bond, the person, firm, association or corporation specified to serve as the securities depository for such Book Entry Bond, or its nominee, and its successor or successors and any other person, firm, association or corporation which may at any time be substituted in its place pursuant to this Indenture.

“Supplemental Financing Agreement” shall mean any agreement between the County and Big Rivers amending or supplementing the Financing Agreement in accordance with the terms of this Indenture.

“Supplemental Indenture” shall mean any Indenture of the County modifying, altering, amending, supplementing or confirming this Indenture.

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

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

“2001 Financing And Loan Agreement” shall mean that certain Financing And Loan Agreement dated as of August 1, 2001 between the County and Big Rivers relating to the 2001 Bonds.

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

“2001 Trustee” shall mean U.S. Bank Trust National Association, the current trustee (as successor) under the 2001 Indenture.

## ARTICLE II

### THE BONDS

**SECTION 2.01** *Limited Obligations Of County; Payment And Security.* All Bonds issued under this Indenture and at any time Outstanding shall in all respects be equally and ratably secured hereby, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds, so that all Bonds at any time issued and Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture. The Bonds shall not be payable from or charged upon any funds other than the revenues pledged to the payment thereof, nor shall the County be subject to any liability thereon. No holder or holders of any of the Bonds shall ever have the right to compel any exercise of the taxing power of the County to pay any such Bonds or the interest thereon, nor to enforce payment thereon against any property of the County. The Bonds shall not constitute a charge, lien nor encumbrance, legal or equitable, upon any property of the County. Each Bond shall recite in substance that the Bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof, as authorized in the Act, and that the Bond does not constitute a debt of the County within the meaning of any constitutional or statutory limitation.

**SECTION 2.02** *Authorization And Terms Of Bonds.* The Bonds entitled to the benefit, protection and security of this Indenture are hereby authorized in the aggregate principal amount of \$83,300,000 and shall be designated “Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project).” The Bonds shall be dated their date of issuance and shall mature (subject to provisions for prior redemption upon the terms and conditions hereinafter set forth) on the Maturity Date. The Bonds shall bear interest (computed on the basis of a 360-day year consisting of twelve 30-day months) from the date of delivery thereof, or from the most recent Interest Payment Date to which interest has been paid, and shall be payable on ~~{January #15}~~ and ~~{July #15}~~ of each year, commencing ~~{\_\_\_\_\_}~~, 2010 January 15, 2011 until the Maturity Date or until the date fixed for redemption, and until payment of the principal or redemption price thereof shall have been made or provided for in accordance with the provisions of this Indenture, at the rate of ~~{\_\_\_\_\_}~~ 6.00% per annum.



The Bonds shall be issued as fully registered bonds without coupons in the denomination of \$5,000 and integral multiples thereof and shall be numbered from 1 consecutively upwards prefixed by the letter "R".

For the payment of interest on the Bonds, the County shall cause to be deposited in the Bond Fund, at the Principal Office of the Bond Trustee on or prior to each Interest Payment Date, out of the Receipts and Revenues of the County from the Financing Agreement and other moneys pledged therefor, an amount sufficient to pay the interest to become due on such Interest Payment Date. Any amount in the Bond Fund available for the payment of interest on such Bonds shall be credited against any amount required to be caused to be so deposited in the Bond Fund.

For the payment of the principal of the Bonds upon maturity, the County shall cause to be deposited in the Bond Fund, at the Principal Office of the Bond Trustee on or prior to the Maturity Date of the Bonds, out of the Receipts and Revenues of the County from the Financing Agreement and other moneys pledged therefor, an amount sufficient to pay the principal of the Bonds on the Maturity Date. Any amount in the Bond Fund available for the payment of the principal of the Bonds shall be credited against any amount required to be caused to be so deposited in the Bond Fund.

Subject to Section 2.11 hereof with respect to Book Entry Bonds, principal of and interest on the Bonds shall be payable at the Principal Office of the Bond Trustee or, at the option of the Owner, at the Principal Office of the Co-Paying Agent. Payment as aforesaid shall be made in such coin or currency of the United States of America as, at the respective times of payment, shall be legal tender for the payment of public and private debts; *provided, however*, that, subject to Section 2.11 hereof, interest may be payable, at the option of the Bond Trustee, by check or draft drawn upon the Bond Trustee and mailed to the registered address of the Owner as it shall appear on the registration books maintained by the Registrar as of the close of business on the Record Date for a particular Interest Payment Date, or, at the written request of any Owner of Bonds in an aggregate principal amount greater than or equal to \$1,000,000 delivered to the Bond Trustee on or prior to such Record Date prior to such Interest Payment Date, by wire transfer per the instructions of such Owner as set forth in such request.

Any Bond issued on or subsequent to the first Interest Payment Date thereon shall be dated as of the Interest Payment Date next preceding the date of authentication thereof, unless such date of authentication shall be an Interest Payment Date to which interest on such Bond has been paid in full or duly provided for, in which case it shall be dated as of such date of authentication; *provided, however*, that if, as shown by the records of the Bond Trustee, interest on such Bond shall be in default, the Bond issued in exchange for such Bond surrendered for transfer or exchange shall be dated as of the date to which interest has been paid in full on the Bond surrendered.

**SECTION 2.03** *Application Of Proceeds Of The Bonds.* The proceeds from the sale of the Bonds shall be transferred to the Escrow Deposit Trustee for deposit pursuant to the Escrow Deposit Agreement and used to pay the principal of the 2001 Bonds on the date fixed for their redemption.

**SECTION 2.04 *Execution Of Bonds; Signatures.***

(a) The Bonds shall be executed on behalf of the County by the County Judge/Executive of the County and {shall have affixed, impressed or reproduced thereon the seal of the County,} attested by the County Court Clerk. Each of such officers of the County may execute or cause to be executed the Bonds with a facsimile signature in lieu of his or her manual signature provided that the signature of such officer, certified by such officer under oath, is on file with the Auditor of the County. Except as provided in the preceding sentence, the signatures of the said officers of the County on Bonds shall be manual signatures.

(b) In case any officer of the County whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the authentication by the Bond Trustee and delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery; and any Bond may be signed on behalf of the County by such persons as, at the time of execution of such Bond or coupon, shall be the proper officers of the County, even though at the date of such Bond or of the adoption of this Indenture any such person was not such officer.

**SECTION 2.05 *Authentication of Bonds by Bond Trustee.*** Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form hereinafter set forth manually executed by the Bond Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Bond Trustee, and such executed certificate of the Bond Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Bond Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed with an authorized signature of the Bond Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder.

**SECTION 2.06 *Prerequisites to Authentication of Bonds.*** The County shall execute and deliver to the Bond Trustee and the Bond Trustee shall authenticate the Bonds and deliver the Bonds to the initial purchasers thereof as may be directed hereinafter pursuant to this Section 2.06. Prior to the delivery by the Bond Trustee of any authenticated Bonds, there shall be or have been delivered to the Bond Trustee:

- (a) A duly certified copy of this Indenture.
- (b) A duly certified copy of the Financing Agreement.
- (c) The Note in an aggregate principal amount equal to the aggregate principal amount of the Bonds.
- (d) A duly certified copy of the Big Rivers Indenture.
- (e) ~~A duly certified copy of the Guaranty.~~ Reserved.

(f) A duly certified copy of the Escrow Deposit Agreement executed by the Escrow Deposit Trustee, the County and Big Rivers.

(g) A request and authorization to the Bond Trustee on behalf of the County and signed by Big Rivers Representative to authenticate and deliver the Bonds to the purchaser or purchasers therein identified upon payment to the Bond Trustee, but for the account of the County, of a sum specified in such request and authorization, in the aggregate principal amount determined by this Indenture.

(h) A copy of the notice from Big Rivers instructing the 2001 Trustee under the 2001 Indenture to redeem the 2001 Bonds and establishing the redemption date therefor.

(i) A written statement on behalf of Big Rivers, executed by a Big Rivers Representative, (i) approving the issuance and delivery of the Bonds and (ii) consenting to each and every provision of this Indenture.

(j) A copy of the Opinion of Bond Counsel addressed to the County in the form set forth as Appendix ~~F~~G to the Offering Statement, together with a reliance letter addressed to the Bond Trustee solely for the benefit of the Bond Trustee as if the Bond Trustee were one of the Owners of the Bonds.

(k) A copy of the opinion of counsel to Big Rivers addressed to the underwriter for the Bonds as described ~~in the form set forth in Appendix ~~F~~~~ of the Purchase Contract.

(l) A copy of the opinion of counsel to the County addressed to the underwriter for the Bonds as described ~~in the form set forth in Appendix ~~F~~~~ of the Purchase Contract.

**SECTION 2.07 *Bonds Mutilated, Lost, Stolen Or Destroyed.*** In the event any Bond is mutilated, lost, stolen or destroyed, the County may execute and the Bond Trustee may authenticate a new Bond of like date, maturity and denomination and bearing the same number (supplemented to permit specific identification of such new Bond) as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Bond Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Bond Trustee evidence of such loss, theft or destruction satisfactory to the Bond Trustee, together with indemnity satisfactory to the Bond Trustee and Big Rivers. Upon the issuance of any substitute Bond, the County and the Bond Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto. In the event any such Bond shall have matured or is about to mature, or has been called for redemption, instead of issuing a substitute Bond the County may, with the consent of the Bondowner, pay the same without surrender thereof if there shall be first furnished to the Bond Trustee evidence of such loss, theft or destruction satisfactory to the Bond Trustee, together with indemnity satisfactory to the Bond Trustee and Big Rivers. The Bond Trustee may charge the Owner of such Bond with the Bond Trustee's reasonable fees and expenses in connection with any transaction described in this Section 2.07. Every substitute Bond issued pursuant to the provisions of this Section 2.07 by virtue of the fact that any Bond is lost, stolen or

destroyed shall constitute an additional contractual obligation of the County, whether or not the lost, stolen or destroyed Bond shall be at any time enforceable, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder.

**SECTION 2.08 *Transfer, Registration And Exchange.*** All the Bonds issued under this Indenture shall be negotiable, subject to the provisions for registration and transfer contained in this Indenture and in the Bonds. The Bond Trustee shall be the Registrar for the Bonds. So long as any of the Bonds shall remain Outstanding, the Registrar shall, on behalf of the County, maintain and keep, at its Principal Office, books for the registration and transfer of Bonds; and, upon presentation thereof for such purpose at said Principal Office, the Registrar shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Registrar may prescribe, any Bond entitled to registration or transfer. So long as any of the Bonds remain Outstanding, the Registrar shall make all necessary provisions to permit the exchange of Bonds at its Principal Office.

Each Bond shall be transferable only upon the books of the Registrar, which shall be kept for that purpose at the Principal Office of the Registrar, at the written request of the Owner thereof or its attorney duly authorized in writing, upon surrender thereof at said office, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Owner or its duly authorized attorney. Upon the transfer of any Bond or Bonds, the County shall issue in the name of the transferee, in authorized denominations, a new Bond or Bonds of the same series, aggregate principal amount, maturity and interest rate as the surrendered Bond or Bonds.

The County, the Bond Trustee and any Co-Paying Agent may deem and treat the Owner of any Bond as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such Owner or upon its order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and none of the County, the Bond Trustee or any Co-Paying Agent shall be affected by any notice to the contrary.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the County shall execute and the Bond Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled and destroyed by the Bond Trustee. Counterparts of the certificates of destruction evidencing such destruction shall be furnished by the Bond Trustee to the County and Big Rivers. For every such exchange or transfer of Bonds, whether temporary or definitive, the County, the Registrar or the Bond Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding an Interest Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the mailing of notice of such

redemption. The Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption.

**SECTION 2.09 *Temporary Bonds.*** Pending the preparation of definitive Bonds, the County may execute and the Bond Trustee shall authenticate and deliver temporary Bonds (printed, lithographed or typewritten). Temporary Bonds shall be issuable as registered Bonds without coupons, of any authorized denomination, and substantially in the form of the definitive Bonds but with such omissions, insertions and variations as may be appropriate for temporary Bonds, all as may be determined by the County. Temporary Bonds may be issued without specific redemption prices and may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the County and be authenticated by the Bond Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds. As promptly as practicable the County shall execute and shall furnish definitive fully registered Bonds and thereupon temporary Bonds may be surrendered in exchange therefor without charge at the Principal Office of the Bond Trustee, and the Bond Trustee shall authenticate and deliver in exchange for such temporary Bonds a like aggregate principal amount of definitive Bonds of authorized denominations and of the same series. Until so exchanged the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds.

**SECTION 2.10 *Bonds Or Other Obligations Under Other Indentures.*** The County expressly reserves the right to issue, to the extent permitted by law, additional or refunding bonds or other obligations under another indenture to provide for additional costs of construction or for additional facilities or to refund any of the Outstanding Bonds, or any combination thereof.

**SECTION 2.11 *Book Entry Bonds.***

(a) Anything in this Indenture to the contrary notwithstanding, the Bonds shall be issued as Book Entry Bonds.

(b) For all purposes of this Indenture, the Owner of a Book Entry Bond shall be the Securities Depository therefor and none of the County, the Bond Trustee, the Registrar or any Co-Paying Agent shall have any responsibility or obligation to the beneficial owner of such Bond or to any direct or indirect participant in such Securities Depository. Without limiting the generality of the foregoing, none of the County, the Bond Trustee, the Registrar or any Co-Paying Agent shall have any responsibility or obligation to any such participant or to the beneficial owner of a Book Entry Bond with respect to (i) the accuracy of the records of the Securities Depository or any participant with respect to any beneficial ownership interest in such Bond, (ii) the delivery to any participant of the Securities Depository, the beneficial owner of such Bond or any other person, other than the Securities Depository, of any notice with respect to such Bond, including any notice of the redemption thereof, or (iii) the payment to any participant of the Securities Depository, the beneficial owner of such Bond or any other person, other than the Securities Depository, of any amount with respect to the principal or redemption price of, or interest on, such Bond. The County, the Registrar, the Bond Trustee and any Co-Paying Agent may treat the Securities Depository as the absolute owner of a Book Entry Bond for all purposes whatsoever, including, but not limited to, (w) payment of the principal or redemption price of, and interest on, such Bond, (x) giving notices of redemption and of other matters with respect to

such Bond, (y) registering transfers with respect to such Bond and (z) giving to the County or the Bond Trustee any notice, consent, request or demand pursuant to this Indenture for any purpose whatsoever. The Bond Trustee and any Paying Agent shall pay the principal or redemption price of, and interest on, a Book Entry Bond only to or upon the order of the Securities Depository therefor, and all such payments shall be valid and effective to satisfy fully and discharge the County's obligations with respect to such principal or redemption price, and interest, to the extent of the sum or sums so paid. Except as otherwise provided in subsection (d) of this Section 2.11, no person other than the Securities Depository shall receive a Bond or other instrument evidencing the County's obligation to make payments of the principal thereof and interest thereon.

(c) Subject to Section 2.12 hereof, the County, in its sole discretion and without the consent of any other person, may, by notice to the Bond Trustee and a Securities Depository, terminate the services of such Securities Depository with respect to the Book Entry Bonds for which such Securities Depository serves as securities depository if the County determines that (i) the Securities Depository is unable to discharge its responsibilities with respect to such Bonds or (ii) a continuation of the requirement that all of the Bonds issued as Book Entry Bonds be registered in the registration books of the County in the name of the Securities Depository is not in the best interests of the beneficial owners of such Bonds or of the County.

(d) Upon the termination of the services of a Securities Depository with respect to a Book Entry Bond pursuant to clause (ii) of subsection (c) of this Section 2.11, such Bond no longer shall be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository. Upon the termination of the services of a Securities Depository with respect to a Book Entry Bond pursuant to clause (i) of subsection (c) of this Section 2.11, the County may within 90 days thereafter appoint a substitute securities depository which, in the opinion of the County, is willing and able to undertake the functions of Securities Depository under this Indenture upon reasonable and customary terms. If no such successor can be found within such period, such Book Entry Bond shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository. In the event that a Book Entry Bond shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository, (i) the County shall execute and the Bond Trustee shall authenticate and deliver, upon presentation and surrender of the Book Entry Bond, Bond certificates as requested by the Securities Depository so terminated of like series, principal amount, maturity and interest rate, in authorized denominations, to the identifiable beneficial owners in replacement of such beneficial owners' beneficial ownership interests in such Book Entry Bond and (ii) the Bond Trustee shall notify the Registrar and any Co-Paying Agents that such Bond is no longer restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository.

(e) Anything in this Indenture to the contrary notwithstanding, payment of the redemption price of a Book Entry Bond, or portion thereof, called for redemption prior to maturity may be paid to the Securities Depository by check or draft mailed to the Securities Depository or by wire transfer. Anything in this Indenture to the contrary notwithstanding, such redemption price may be paid without presentation and surrender to the Bond Trustee of the Book Entry Bond, or portion thereof, called for redemption; *provided, however*, that payment of

(i) the principal payable at maturity of a Book Entry Bond and (ii) the redemption price of a Book Entry Bond as to which the entire principal amount thereof has been called for redemption shall be payable only upon presentation and surrender of such Book Entry Bond to the Bond Trustee; and *provided, further*, that no such redemption price shall be so payable without presentation and surrender unless such Book Entry Bond shall contain or have endorsed thereon a legend substantially to the following effect (provided that such legend may be modified as may be determined necessary or desirable by the County or a particular Securities Depository):

“AS PROVIDED IN THE INDENTURE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH [NAME OF SECURITIES DEPOSITORY] (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE INDENTURE, “THE SECURITIES DEPOSITORY”), AND NOTWITHSTANDING ANY OTHER PROVISION OF THE INDENTURE TO THE CONTRARY, (A) THIS BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO A NOMINEE OF THE SECURITIES DEPOSITORY, OR BY A NOMINEE OF THE SECURITIES DEPOSITORY TO THE SECURITIES DEPOSITORY OR A NOMINEE OF THE SECURITIES DEPOSITORY TO ANY SUCCESSOR SECURITIES DEPOSITORY OR ANY NOMINEE THEREOF AND (B) A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE TRUSTEE. THE SECURITIES DEPOSITORY OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF THE SECURITIES DEPOSITORY OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE INDENTURE.”

Anything in this Indenture to the contrary notwithstanding, upon any such payment to the Securities Depository without presentation and surrender, for all purposes of (i) the Book Entry Bond as to which such payment has been made and (ii) this Indenture, the unpaid principal amount of such Book Entry Bond Outstanding shall be reduced automatically by the principal amount so paid. In such event, the Bond Trustee shall notify forthwith the Registrar as to the particular Book Entry Bond as to which such payment has been made, and the principal amount of such Bond so paid, the Registrar shall note such payment on the registration books maintained by it, but failure to make any such notation shall not affect the automatic reduction of the principal amount of such Book Entry Bond Outstanding as provided in this subsection (e).

(f) For all purposes of this Indenture authorizing or permitting the purchase of Bonds, or portions thereof, by, or for the account of, the County for cancellation, and anything in this Indenture to the contrary notwithstanding, a portion of a Book Entry Bond may be deemed to

have been purchased and cancelled without surrender thereof upon delivery to the Registrar of a certificate executed by the County and a participant of the Securities Depository therefor to the effect that a beneficial ownership interest in such Bond, in the principal amount stated therein, has been purchased by, or for the account of, the County through the participant of the Securities Depository executing such certificate; *provided, however*, that any purchase for cancellation of the entire principal amount of a Book Entry Bond shall be effective for purposes of this Indenture only upon surrender of such Book Entry Bond to the Bond Trustee; and *provided, further*, that no portion of a Book Entry Bond may be deemed to have been so purchased and cancelled without surrender thereof unless such Book Entry Bond shall contain or have endorsed thereon the legend(s) referred to in subsection (e) of this Section 2.11. Anything in this Indenture to the contrary notwithstanding, upon delivery of any such certificate to the Registrar, for all purposes of (i) the Book Entry Bond to which such certificate relates and (ii) this Indenture, the unpaid principal amount of such Book Entry Bond Outstanding shall be reduced automatically by the principal amount so purchased. In such event, the Registrar shall notify forthwith the Bond Trustee as to the particular Book Entry Bond as to which a beneficial ownership interest therein has been so purchased, and the principal amount of such Bond so purchased, and the Registrar shall note such reduction in principal amount of such Book Entry Bond Outstanding on the registration books maintained by it, but failure to make any such notation shall not affect the automatic reduction of the principal amount of such Book Entry Bond Outstanding as provided in this subsection (f).

(g) Anything in this Indenture to the contrary notwithstanding, a Securities Depository may make a notation on a Book Entry Bond (i) redeemed in part or (ii) purchased by, or for the account of, the County in part for cancellation, to reflect, for informational purposes only, the date of such redemption or purchase and the principal amount thereof redeemed or deemed cancelled, but failure to make any such notation shall not affect the automatic reduction of the principal amount of such Book Entry Bond Outstanding as provided in subsection (e) or (f) of this Section 2.11 as the case may be.

(h) Anything in this Indenture to the contrary notwithstanding, in the case of a Book Entry Bond, the County shall be authorized to redeem or purchase (by or for the account of the County), or issue additional or refunding bonds or other obligations to refund, all or less than all of the entire Outstanding principal amount thereof (in portions thereof of \$5,000 or integral multiples thereof), and in the event of such partial defeasance, redemption, purchase or refunding, the provisions of this Indenture relating to the defeasance, redemption or purchase refunding of a Bond or Bonds shall be deemed to refer to the redemption, purchase or refunding of a portion of a Bond.

**SECTION 2.12 *The Depository Trust Company As Initial Securities Depository For The Bonds.***

(a) The Depository Trust Company, New York, New York (“DTC”), is hereby appointed as the initial Securities Depository for the Bonds.

(b) The Bonds shall be initially issued in the form of a single fully registered bond in the aggregate principal amount thereof. So long as DTC serves as Securities Depository for the Bonds, the registered holder of all Bonds shall be, and each of the Bonds shall be



registered in the name of, Cede & Co. (“Cede”), as nominee of DTC. Upon delivery by DTC to the Bond Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions of this Indenture, the word “Cede” in this Indenture shall refer to such new nominee of DTC. So long as any Bonds are registered in the name of Cede, as nominee of DTC in its capacity as Securities Depository for the Bonds, all payments with respect to the principal or redemption price of, and interest on, such Bonds and all notices with respect to such Bonds shall be made or given, as the case may be, to DTC as provided in the representation letter of the County and the Bond Trustee, dated the date of the issuance of such Bonds and addressed to DTC, with respect to such Bonds, as such representation letter may be amended and supplemented from time to time.

(c) (i) DTC may determine to discontinue providing its services as Securities Depository for the Bonds at any time by giving reasonable notice thereof to the County or the Bond Trustee, which notice shall include a certification that DTC has discharged its responsibilities with respect to the Bonds under applicable law. Upon the discontinuance of the services of DTC as Securities Depository for the Bonds pursuant to the immediately preceding sentence of this paragraph, the County may within 90 days thereafter appoint a substitute securities depository which, in the opinion of the County, is willing and able to undertake the functions of Securities Depository under this Indenture upon reasonable and customary terms. If no such successor can be found within such period, the Bonds shall no longer be restricted to being registered in the registration on books kept by the Registrar in the name of a Securities Depository.

(ii) If the Bonds no longer shall be restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository as provided in paragraph (i) of this subsection (c), (A) the County shall execute and the Bond Trustee shall authenticate and deliver, upon presentation and surrender of the Bonds, the applicable Bond certificates as requested by the Securities Depository therefor of like series, aggregate principal amount, maturity and interest rate, in authorized denominations, to the identifiable beneficial owners in replacement of such beneficial owners’ beneficial ownership interests in such Bonds, if applicable and (B) the Bond Trustee shall notify the Registrar and any Paying Agent that the Bonds are no longer restricted to being registered on the books kept by the Registrar in the name of a Securities Depository.

### ARTICLE III

#### REDEMPTION

**SECTION 3.01 *Optional Redemption.*** The Bonds are subject to redemption in whole or in part (and if less than all of the Bonds are to be redeemed, by lot or in such manner as shall be determined by the Bond Trustee) prior to maturity at any time on or after ~~\_\_\_\_\_~~ July 15, 2020 by the County, upon the exercise by Big Rivers of its option to prepay all or a part of the unpaid balance of the Note, at a redemption price of 100 percent of the principal amount thereof, together with interest accrued thereon to the date fixed for redemption.

**SECTION 3.02 *Selection of Bonds To Be Redeemed.*** If less than all of the Bonds shall be called for redemption pursuant to Section 3.01 hereof, the applicable Bonds or portions

of registered Bonds of such maturity to be redeemed shall be selected by the Bond Trustee by lot or in such manner as the Bond Trustee in its discretion may deem proper; *provided, however*, that the portion of any such Bonds to be redeemed shall be in the principal amount of \$5,000 or any integral multiple thereof and that, in selecting the applicable Bonds for redemption, the Bond Trustee shall treat each such Bond as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by \$5,000. Subject to Section 2.11 hereof, if it is determined that one or more, but not all of the \$5,000 units of principal amount represented by any such Bonds is to be called for redemption, then upon notice of intention to redeem such \$5,000 unit or units, the Owner of any such Bonds shall forthwith surrender such Bond or Bonds to the Bond Trustee for (1) payment of the redemption price (including the interest to the date fixed for redemption) of the \$5,000 unit or units of principal amount called for redemption and (2) exchange for a new Bond or Bonds, of the aggregate principal amount of the unredeemed balance of the principal amount of such Bonds and of like maturity and interest rate, and such new Bond or Bonds shall be numbered corresponding to the numbers of the \$5,000 units of principal amount not called for redemption. New Bonds representing the unredeemed balance of the principal amount of such Bonds shall be issued to the registered Owner thereof, without charge therefor. Subject to Section 2.11 hereof, if the Owner of any such a denomination greater than \$5,000 shall fail to present such Bonds to the Bond Trustee for payment and exchange as aforesaid, such Bonds shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the \$5,000 unit or units of principal amount called for redemption (and to that extent only).

### **SECTION 3.03 *Procedure for Redemption.***

(a) Any Bonds may be called for redemption pursuant to Section 3.01 hereof only upon the written notice of Big Rivers, and from amounts representing prepayment of the Note in accordance with the terms of the Note and the Financing Agreement. Such notice shall be given by Big Rivers to the County and the Bond Trustee at any time during the period beginning with (and including) the 45th day prior to the date of redemption and ending with (and including) the 30th day prior to the date of redemption. Such notice shall specify that Big Rivers is electing to prepay the Note and have the amount of such prepayment applied to the redemption of the principal amount of the Bonds specified in the notice (together with any required premium) on the date for their redemption specified in such notice (which must be a date permitted by Section 3.01 hereof). If, at the time Big Rivers gives this notice, the Bond Trustee does not have on deposit sufficient available funds to pay the principal of, premium, if any, and interest accrued and to accrue through the redemption date on the Bonds so called for redemption, then Big Rivers' notice of redemption is conditional and revocable; that is, Big Rivers is under no obligation to provide, or cause to be provided, to the Bond Trustee funds to effect such redemption and, if it does not elect to do so by 12:00 noon, New York City time, on the redemption date, then the Bonds called for redemption shall not be redeemed pursuant to the above-mentioned notice of redemption or the notice of redemption given by the Bond Trustee pursuant to subsection (b) of this Section 3.03. Neither Big Rivers nor the County shall be liable to any Bondowner if Big Rivers does not provide, or cause to be provided, funds sufficient to effect redemption of any such Bonds with the result that such Bonds are not redeemed on the redemption date specified in such notices. If, at the time Big Rivers gives this notice, the Bond Trustee has on deposit sufficient funds to effect such redemption, then Big Rivers' notice is unconditional and irrevocable and the Bonds specified in the notice of Big Rivers and given by

the Bond Trustee pursuant to subsection (b) of this Section 3.03 shall become due and payable at the specified redemption price on the specified redemption date.

(b) In the event any Bonds are called for redemption, the Bond Trustee shall give notice to the Bondowners of those Bonds subject to redemption, in the name of the County, of the redemption of such Bonds, which notice shall specify the Bonds to be redeemed, the redemption date and the place or places where amounts due upon such redemption will be payable, which shall be the Principal Office of the Bond Trustee as Paying Agent for the Bonds, and the Principal Office of any Co-Paying Agent for such Bonds, and, if less than all of the Bonds are to be redeemed, the numbers of such Bonds to be redeemed. Such notice shall be given by mailing a copy of the redemption notice by first-class, postage prepaid, mail at least thirty (30) days prior to the date fixed for redemption to the Bondowners of the Bonds to be redeemed at the addresses shown on the registration books maintained by the Bond Trustee, as Registrar; *provided, however*, that failure duly to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds. If Big Rivers' notice of redemption for such Bonds given pursuant to subsection (a) of this Section 3.03 is conditional and revocable, then the notice of redemption given by the Bond Trustee pursuant to this subsection (b) shall so state and shall further state (i) that the redemption of such Bonds is conditional upon Big Rivers providing, or causing to be provided, to the Bond Trustee, by 12:00 noon, New York City time, on the redemption date, funds sufficient to effect such redemption, (ii) that if such funds are not so provided, such Bonds will not be redeemed on such date and the Bond Trustee's notice of the redemption of such Bonds given pursuant to this subsection (b) will be of no force or effect, (iii) that Big Rivers is under no obligation to provide, or cause to be provided, such funds and, (iv) that neither Big Rivers nor the County shall be liable to any Bondowner if Big Rivers does not provide, or cause to be provided, funds sufficient to effect such redemption with the result that such Bonds are not redeemed on the redemption date specified in such notice. If the Big Rivers notice is unconditional and irrevocable, then the Bond Trustee's notice shall so state, and shall also state (i) that the Bond Trustee has on deposit sufficient funds to effect such redemption and (ii) that such Bonds shall become due and payable at the specified redemption price (plus accrued interest) on the redemption date specified in the notice. If such moneys shall not have been so received, the Bond Trustee shall give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. Subject to Section 2.11 hereof, on presentation and surrender of such Bonds so called for redemption at the place or places of payment, such Bonds shall be paid and redeemed.

(c) Any Bonds so called for redemption which are deemed to be not Outstanding under the provisions of Section 7.01 hereof, will cease to bear interest on the specified redemption date and shall no longer be protected under this Indenture.

(d) On or prior to the date the Bond Trustee first gives to the Bondowners any notice of redemption of Bonds, the Bond Trustee shall provide the County and Big Rivers a copy of such notice.

**SECTION 3.04 *Cancellation and Destruction Of Bonds.*** All Bonds which have been redeemed or delivered to or acquired by the Bond Trustee for cancellation shall be cancelled and

destroyed by the Bond Trustee and shall not be reissued. Counterparts of the certificates of destruction evidencing such destruction shall be furnished by the Bond Trustee to Big Rivers.

**SECTION 3.05 *Partial Redemption after Default; Minimum Sum.*** No redemption of less than all of the Bonds at the time Outstanding shall be made pursuant hereto unless the total amount of funds available and to be used for such partial redemption is equal to or more than \$50,000. Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing an Event of Default defined in clause (a) or (b) of Section 8.01 hereof, there shall be no redemption of less than all of the Bonds at the time Outstanding, except in the case of any Bonds notice of the redemption of which has been given pursuant to Section 3.02 hereof and moneys or obligations for the payment of which have been deposited with or paid to the Bond Trustee prior to the occurrence of such Event of Default.

**SECTION 3.06 *Payment to Bond Trustee upon Redemption.*** For the redemption of any Bonds, the County shall cause to be deposited in the Bond Fund, before 12:00 noon, New York City time, at the Principal Office of the Bond Trustee on the redemption date, but only out of the Receipts and Revenues of the County from the Financing Agreement (and subject to the right of Big Rivers to elect not to provide funds sufficient for such redemption as provided in Section 3.02 hereof), an amount sufficient to pay the principal of, premium, if any, and interest to become due on such redemption date. Any amount in the Bond Fund available to pay such redemption price shall be credited against any amount required to be caused to be so deposited in the Bond Fund.

## ARTICLE IV

### THE BOND FUND

**SECTION 4.01 *Creation Of Bond Fund.*** There is hereby created and established with the Bond Trustee a trust fund in the name of the County to be designated "County of Ohio, Kentucky, Pollution Control Refunding Revenue Bonds, Bond Fund (Big Rivers Electric Corporation Project)," which shall be used by the Bond Trustee to pay the principal of the Bonds when due at maturity and interest on the Bonds when due.

**SECTION 4.02 *Receipts And Revenues To Be Remitted To Bond Trustee.*** The Receipts and Revenues of the County from the Financing Agreement are to be remitted directly to the Bond Trustee for the account of the County and deposited in the Bond Fund as provided in this Indenture. Said payments shall be sufficient in amount to pay the principal of the Bonds when due at maturity and interest on the Bonds when due. The entire amount of Receipts and Revenues of the County from the Financing Agreement are pledged to the payment of the principal of the Bonds when due at maturity and interest on the Bonds when due. The County hereby covenants and agrees that it will not create any lien upon the Receipts and Revenues of the County from the Financing Agreement other than the lien hereby created.

**SECTION 4.03 *Deposits Into Bond Fund.*** There shall be paid into the Bond Fund:

- (a) all payments by Big Rivers on the Note; and

(b) all other moneys received by the Bond Trustee under and pursuant to any of the provisions of the Financing Agreement when accompanied by written directions by Big Rivers that such moneys are to be paid into the Bond Fund. The County hereby covenants and agrees that so long as any of the Bonds issued hereunder are Outstanding, it will deposit, or cause to be deposited, in the Bond Fund sufficient sums from the Receipts and Revenues of the County from the Financing Agreement promptly to meet and pay the principal of the Bonds when due at maturity and interest on the Bonds when due.

**SECTION 4.04 *Use Of Moneys In Bond Fund.***

(a) Except as provided in this Section 4.04, moneys in the Bond Fund shall be used solely for the payment of the principal of the Bonds when due at maturity and interest on the Bonds when due. Notwithstanding anything to the contrary contained herein, if moneys have been deposited into the Bond Fund sufficient to pay the principal of, premium, if any, and interest due on the Bonds to the date such Bonds had been called for redemption in accordance with the terms of this Indenture, and are at the time available for such purpose, then such moneys shall be applied to the redemption of such Bonds.

(b) Any amounts remaining in the Bond Fund after payment in full of the principal of and interest on all Bonds (or provision for payment thereof as provided in this Indenture), the fees, charges and expenses of the Bond Trustee and the Co-Paying Agent, and the fees and expenses of the Registrar, and all other amounts required to be paid hereunder, shall be paid to Big Rivers.

**SECTION 4.05 *Custody And Application Of Bond Fund.*** The Bond Fund shall be in the custody of the Bond Trustee but in the name of the County and the County hereby authorizes and directs the Bond Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of the Bonds when due at maturity, the interest on the Bonds when due and any other amounts payable from the Bond Fund as the same shall become due and payable.

**SECTION 4.06 *Bonds Not Presented When Due.***

(a) Subject to Section 2.11 hereof, in the event any Bonds shall not be presented for payment when the principal thereof and premium, if any, becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if moneys sufficient to pay such Bonds are on deposit in the Bond Fund for the benefit of the Owners thereof, all liability of the County to the Owners thereof for the payment of such Bonds shall forthwith cease, terminate and be completely discharged, and it shall be the duty of the Bond Trustee to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of Owners of such Bonds, who shall thereafter be restricted exclusively to such fund or funds for the satisfaction of any claim of whatever nature on their part under this Indenture or relating to such Bonds. Such segregated funds shall not be subject to investment.

(b) Any money deposited with the Bond Trustee or any Co-Paying Agent in trust for the payment of the principal of or interest on any Bond and remaining unclaimed for two years and eleven months after such principal or interest has become due and payable shall, upon Big Rivers' request to the Bond Trustee, be paid to Big Rivers; *provided, however,* that before

the Bond Trustee or such Co-Paying Agent shall be required to make any such repayment, the Bond Trustee may at the written request and expense of Big Rivers cause to be mailed by first class mail, postage prepaid, to each of the Bondowners at the addresses thereof as listed on the registration books kept by the Registrar, a notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such mailing, any unclaimed balance of such money then remaining will be repaid to Big Rivers. After the payment of such unclaimed moneys to Big Rivers, the Owner of such Bond shall thereafter look only to Big Rivers for the payment thereof, and all liability of the Bond Trustee or such Co-Paying Agent with respect to such money shall thereupon cease.

## ARTICLE V

### INVESTMENTS

**SECTION 5.01 *Investment Of Moneys Held In Bond Fund.*** The moneys in the Bond Fund shall be invested and reinvested by the Bond Trustee in such Investment Securities as Big Rivers shall direct in writing by a Big Rivers Representative; *provided, however,* that such moneys shall not be invested in such manner as will violate the provisions of Section 6.09 hereof. All income or other gain from such investments shall be carried to the credit of the Bond Fund, and any loss resulting from such investments shall be charged to the Bond Fund.

As and when any amounts thus invested may be needed for disbursements from the Bond Fund, the Bond Trustee shall cause a sufficient amount of Investments Securities to be sold or otherwise converted into cash to the credit of the Bond Fund. So long as no Event of Default (as defined in Section 8.01 hereof) shall have occurred and be continuing, Big Rivers shall have the right to designate the investments to be sold and to otherwise direct the Bond Trustee in writing with respect to the sale or conversion to cash of the investments made with the moneys in the Bond Fund.

Moneys credited to any account or fund maintained hereunder which are uninvested pending disbursement or receipt of proper investment directions or as directed herein, may be deposited to and held in a non-interest bearing demand deposit account established with the commercial banking department of the Bond Trustee or with any bank affiliated with the Bond Trustee, without the pledge of securities to or other collateralization of such deposit accounts. The Bond Trustee may invest in Investment Securities through its own trust department and such moneys may be deposited in time deposits, or certificates of deposit issued by the Bond Trustee or its affiliates.

## ARTICLE VI

### GENERAL COVENANTS

**SECTION 6.01 *No General Obligation, Pecuniary Liability, Or Charge Against General Credit Or Taxing Powers Of County.*** Each and every covenant herein made, including all covenants made in the various sections of this Article VI, is predicated upon the condition that any obligation for the payment of money incurred by the County shall not be the general obligation of the County and shall never constitute nor give rise to a pecuniary liability of the

County or a charge against its general credit or taxing powers, but shall be payable solely from the Receipts and Revenues of the County from the Financing Agreement, which are required to be set apart and transferred to the Bond Fund, and which, along with the balance of the Trust Estate, are hereby specifically pledged to the payment thereof in the manner and to the extent in this Indenture specified, and nothing in the Bonds or in this Indenture shall be considered as pledging any other funds or assets of the County.

The Bonds shall not constitute an indebtedness of the County within the meaning of the Constitution of Kentucky, but shall be payable as to principal and interest solely from the revenues derived from the payments made by Big Rivers under the Note and from the other Receipts and Revenues of the County from the Financing Agreement.

The County will promptly cause to be paid solely from the sources stated herein the principal of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in said Bond, according to the true intent and meaning thereof.

**SECTION 6.02 *County Will Perform Obligations; Due Authorization And Enforceability Thereof.*** The County will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder, and in all proceedings pertaining thereto. The County covenants that it is duly authorized under the Constitution and laws of the Commonwealth of Kentucky to issue the Bonds authorized hereby, to enter into the Financing Agreement, and to pledge to the Bond Trustee the Receipts and Revenues of the County from the Financing Agreement and to pledge and assign to the Bond Trustee all the County's right, title and interest under the Financing Agreement, and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the County according to the import thereof.

**SECTION 6.03 *Corporate Existence Of County; Compliance With Laws.*** The County will at all times maintain its corporate existence or assure the assumption of its obligations under this Indenture by any public body succeeding to its powers under the Act, and it will use its best efforts to maintain, preserve and renew all the rights and powers provided to it by the Act; and it will comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the Financing Agreement.

**SECTION 6.04 *County Will Enforce And Not Amend Obligations Of Big Rivers.*** So long as any Bonds are Outstanding, upon receipt of written notification from the Bond Trustee the County will enforce the obligation of Big Rivers to pay, or cause to be paid, all the payments and other costs and charges payable by Big Rivers under the Financing Agreement and the Note. The County will not enter into any agreement with Big Rivers amending the Financing Agreement or the Note without the prior written consent of the Bond Trustee and compliance with Sections 11.06 and 11.07 hereof.

**SECTION 6.05 *Execution And Delivery Of Instruments By County.*** The County will, upon the reasonable request of the Bond Trustee, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Indenture; *provided, however,* that no such instruments or actions

shall pledge the credit or taxing power of the Commonwealth of Kentucky, the County, or any other political subdivision of said State.

**SECTION 6.06 *No Other Disposition Of Receipts And Revenues.*** Except for the pledge and assignment to the Bond Trustee, the County will not sell, lease, pledge, assign or otherwise dispose of or encumber its interest in the Receipts and Revenues of the County from the Financing Agreement or any interest in the Note, or its rights and interest under the Financing Agreement or the Note; and will promptly pay or cause to be discharged or make adequate provision to satisfy and discharge any lien or charge on any part thereof.

**SECTION 6.07 *Bond Trustee's Access To County Books.*** All books and documents in the possession of the County relating to the Facilities and the Financing Agreement and the moneys, revenues and receipts derived from the Financing Agreement shall at all reasonable times be open to inspection by such accountants or other agencies as the Bond Trustee may from time to time designate.

**SECTION 6.08 *Filing Of Financing Statements By County.*** In order to perfect the interest of the Bond Trustee in the Receipts and Revenues of the County from the Financing Agreement, the County will cause appropriate financing statements, naming the Bond Trustee as pledgee of the Receipts and Revenues of the County from the Financing Agreement and of the other moneys pledged under this Indenture for the payment of the principal of and interest on the Bonds, and as pledgee and assignee of certain of the County's rights and interest under the Financing Agreement, to be duly filed and recorded in the appropriate state and county offices as required by the provisions of the Uniform Commercial Code or other similar law as adopted in the Commonwealth of Kentucky and any other applicable jurisdiction, as from time to time amended. The Bond Trustee, at the sole expense of Big Rivers, will file and record, with such assistance as necessary from the County, such necessary continuation statements from time to time as may be required pursuant to the provisions of said Uniform Commercial Code or other similar law to protect the interest of the Bond Trustee.

**SECTION 6.09 *Tax Covenants Of The County.***

(a) The County covenants to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes pursuant to Section 103(a) of the 1954 Code, and will take, or require to be taken, such acts as may from time to time be required under applicable law and regulation to continue the exclusion of the interest on the Bonds from gross income for federal income tax purposes; and in furtherance of such covenants, the County agrees to comply with the Tax Certificate and Agreement executed in connection with the Bonds and the provisions of the 1954 Code as amended by the 1986 Act.

(b) The County covenants that it will not take any action or fail to take any action with respect to the Bonds which would cause the Bonds to be "arbitrage bonds" within the meaning of such term as used in Section 148 of the 1986 Code, as incorporated into the 1954 Code by the 1986 Act.

(c) The County shall make any and all payments required to be made to the United States Department of the Treasury in connection with the Bonds pursuant to Section



148(f) of the 1986 Code, as incorporated into the 1954 Code by the 1986 Act, from amounts on deposit in the funds and accounts established under this Indenture and available therefor.

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

(e) Notwithstanding any other provisions of this Indenture to the contrary, so long as necessary in order to maintain the exclusion of interest on the Bonds from gross income under Section 103(a) of the 1954 Code, the covenants in this Section 6.09 shall survive the payment of the Bonds and the interest thereon, including any payment or defeasance thereof pursuant to Section 7.01 hereof.

**SECTION 6.10 *Supplemental Indentures; Recordation Of Indenture And Supplemental Indentures.*** The County will execute and deliver all Supplemental Indentures, and will cause this Indenture, the Financing Agreement and all supplements thereto as well as all security instruments as may be required at all times to be recorded, registered, filed and to be kept recorded, registered and filed in such manner and in such places as may be required by law in order fully to preserve and protect the security of the Bondowners and all rights of the Bond Trustee hereunder.

**SECTION 6.11 *Notices By Bond Trustee.*** The Bond Trustee shall give the same notices to the County that it is required to give to Big Rivers pursuant to any of the terms of this Indenture.

## ARTICLE VII

### DEFEASANCE

#### **SECTION 7.01 *Defeasance.***

(a) If and when the Bonds secured hereby shall become due and payable in accordance with their terms or through redemption proceedings as provided in this Indenture, or otherwise, and the whole amount of the principal of, premium, if any, and interest so due and payable upon all of the Bonds shall be paid, or provision shall have been made for the payment of the same, together with all other sums payable hereunder by the County, including the payment of the fees and expenses of the Bond Trustee, then and in that case, the right, title and interest of the Bond Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the County to the Bondowners shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, upon request of the County or Big Rivers, the Bond Trustee shall assign and transfer to Big Rivers all property and funds then held by the Bond Trustee pursuant to this Indenture and shall execute and deliver such documents as may be reasonably required by the County or Big Rivers for such purpose. If and when the Bond Trustee

shall hold sufficient moneys hereunder to provide for payment of the whole amount of the principal of, premium, if any, and interest due and payable and thereafter to become due and payable upon all the Bonds, together with all other sums payable or which may thereafter become payable hereunder by the County, notwithstanding that all the Bonds have not yet become due and payable and that consequently the right, title and interest of the Bond Trustee in and to the Trust Estate shall not have ceased, terminated and become void pursuant to the foregoing provisions of this Section 7.01, the Bond Trustee, on demand of the County or Big Rivers, shall turn over to Big Rivers any surplus in the Bond Fund and in any other fund created under this Indenture in excess of the sum sufficient to pay the whole amount of the principal of, premium, if any, and interest due and payable and thereafter to become due and payable upon all the Bonds, together with all other sums payable or which may thereafter become payable hereunder by the County, including the payment of the fees and expenses of the Bond Trustee.

(b) Any Bond shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in this Section 7.01 if (i) in case such Bond is to be redeemed on any date prior to its maturity, Big Rivers and the County shall have given to the Bond Trustee in form satisfactory to it unconditional and irrevocable instructions and notice to give on a date in accordance with the provisions of Section 3.03 hereof notice of redemption of such Bond on said redemption date, such notice to be given in accordance with the provisions of Section 3.03 hereof, (ii) there shall have been deposited with the Bond Trustee either moneys in an amount which shall be sufficient, or obligations of or guaranteed as to principal and interest by the United States of America, or certificates of an ownership interest in the principal of or interest on obligations of or guaranteed as to principal and interest by the United States of America, which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of, premium, if any, and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Bond Trustee or any Co-Paying Agent at the same time, shall be sufficient to pay when due the principal of and interest due and to become due on such Bond on and prior to the redemption date or maturity date thereof, as the case may be, and (iii) in the event such Bond does not mature or is not by its terms subject to redemption within the next succeeding 60 days, Big Rivers and the County shall have given the Bond Trustee in form satisfactory to it irrevocable instructions to give, as soon as practicable in the same manner as a notice of redemption is given pursuant to Section 3.03 hereof, a notice to the Owners of such Bond that the deposit required by (ii) above has been made with the Bond Trustee and that said Bond is deemed to have been paid in accordance with this Section 7.01 and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of and interest on such Bond. Neither the obligations nor moneys deposited with the Bond Trustee pursuant to this Section 7.01 nor principal or interest payments on any such obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, premium, if any, and interest on such Bond; provided that any cash received from such principal or interest payments on such obligations deposited with the Bond Trustee, (x) to the extent such cash will not be required at any time for such purpose, shall be paid over to Big Rivers as received by the Bond Trustee, free and clear of any trust, lien or pledge, and (y) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in obligations or certificates of the type described in clause (ii) of this subsection (b) maturing at times and in amounts sufficient to pay when due the principal of and interest to become due on such Bond on and prior to such redemption date or

maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to Big Rivers, as received by the Bond Trustee, free and clear of any trust, lien or pledge.

(c) Any release of the obligations of the County under this Section 7.01 shall be without prejudice to the right of the Bond Trustee to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and other disbursements and those of its attorneys, agents and employees, incurred on and about the administration of the trusts hereby created and the performance of its powers and duties hereunder.

## ARTICLE VIII

### DEFAULTS AND REMEDIES

**SECTION 8.01 “Events Of Default” Enumerated; Acceleration.** Each of the following events shall constitute and is referred to in this Indenture as an “Event of Default”:

(a) payment of the principal of any of the Bonds (whether by maturity, upon a call for redemption or otherwise) or interest on any of the Bonds shall not be made within one ~~day~~ Business Day of when due with the result that such principal or interest remains unpaid as of such date; or

(b) an “event of default” as defined in Section 9.1(a) of the Financing Agreement shall have occurred and be continuing; or

(c) acceleration of payment of any Obligation (as defined in the Big Rivers Indenture) secured by the Big Rivers Indenture pursuant to an “event of default” as such term is defined in Section 8.1 of Article VIII of the Big Rivers Indenture; or

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

Upon the occurrence and continuance of an Event of Default described in clause (c) of this Section 8.01, and subject to Section 9.05 hereof, the Bond Trustee shall, and upon the occurrence and continuance of any other Event of Default, the Bond Trustee may, and ~~(i) so long as the Guaranty is in effect and the Guarantor is not in breach of any of the provisions thereof, at the written direction of the Guarantor, or (ii) upon the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding and with the written consent of the Guarantor,~~ the Bond Trustee shall, declare the principal amount of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable and said principal and interest shall thereupon become immediately due and payable, and the Bond

Trustee shall give notice thereof in writing to the County, ~~and Big Rivers and the Guarantor~~, and notice to Bondowners in the same manner as a notice of redemption under Section 3.03 hereof. Upon any declaration of acceleration hereunder, the County and the Bond Trustee shall immediately declare all payments due on the Note to be immediately due and payable as provided in Section 9.2 of the Financing Agreement.

If at any time after such declaration, but before the Bonds shall have matured by their terms, all overdue installments of principal and interest upon the Bonds, together with interest on such overdue installments of principal and interest to the extent permitted by law and the reasonable and proper charges, expenses and liabilities of the Bond Trustee, and all other sums then payable by the County under this Indenture (except the principal of and interest accrued since the next preceding Interest Payment Date on the Bonds due and payable solely by virtue of such declaration) shall either be paid by or for the account of the County or provision satisfactory to the Bond Trustee ~~and the Guarantor~~ shall be made for such payment, and all defaults under the Bonds or under this Indenture (other than the payment of principal and interest due and payable solely by reason of such declaration) shall be made good or be secured to the satisfaction of the Bond Trustee or provision deemed by the Bond Trustee to be adequate shall be made therefor, then ~~(i) so long as the Guaranty is in effect and the Guarantor is not in breach of any of the provisions thereof, by the written notice of the Guarantor, or (ii) by written notice of the Owners of 50% in aggregate principal amount of the Bonds Outstanding and with the consent of the Guarantor,~~ to the County and to the Bond Trustee, the Bond Trustee shall rescind such declaration and annul such default in its entirety. In such event, the Bond Trustee shall rescind any declaration of acceleration of the maturity of the Note and the interest thereon as provided in Section 9.5 of the Financing Agreement.

As set forth in Section 9.7 of the Financing Agreement, if at any time following a declaration of acceleration pursuant to an Event of Default under Section 8.01(c) hereof, and prior to payment of the Bonds pursuant to such acceleration, the Bond Trustee shall receive written notice that the acceleration of the Obligations under the Big Rivers Indenture has been rescinded, then the Bond Trustee shall rescind any declaration of acceleration of the maturity of principal of and interest on the Bonds. In the event of such rescission of a declaration of acceleration of the Bonds, the Bond Trustee shall also rescind any declaration of acceleration of the maturity of the Note.

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

**SECTION 8.02 *Exercise Of Remedies By Bond Trustee.*** - Upon the happening of any Event of Default or upon the failure by the County to observe and perform any covenant, condition, agreement or provision contained in the Bonds or this Indenture, then and in every such case the Bond Trustee in its discretion may, and upon the written request of the Bondowners

of not less than 25% in principal amount of the Bonds then Outstanding and receipt of indemnity to its satisfaction, shall, in its own name and as the Bond Trustee of an express trust:

(i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondowners, and require the County or Big Rivers to carry out any agreements with or for the benefit of the Bondowners and to perform its or their duties under the Act, the Financing Agreement, the Note and this Indenture;

(ii) bring suit upon the Bonds;

(iii) by action or suit in equity require the County to account as if it were the trustee of an express trust for the Bondowners; or

(iv) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondowners.

~~(b) Anything in this Indenture to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default as defined herein or an event of default under the Financing Agreement, the Guarantor shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bondowners or the Bond Trustee for the benefit of the Bondowners under this Indenture or the Financing Agreement, including, without limitation: (i) the right to accelerate the principal of the Bonds as described in this Indenture, and (ii) the right to annul any declaration of acceleration, and the Guarantor shall also be entitled to approve all waivers of events of default.~~

**SECTION 8.03 Restoration To Former Position.** In case any proceeding taken by the Bond Trustee to enforce any right under this Indenture shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Bond Trustee, then and in every case the County, the Bond Trustee and the Bondowners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Bond Trustee shall continue as though no such proceeding had been taken.

**SECTION 8.04 Bondowner Direction Of Remedial Proceedings.** Anything in this Indenture to the contrary notwithstanding, so long as the Guaranty is in effect and the Guarantor is not in breach of any of the provisions thereof, the Guarantor shall have the right alone or, with the written consent of the Guarantor, the Holders of a majority in aggregate principal amount of the Bonds then Outstanding hereunder shall have the right, by an instrument in writing executed and delivered to the Bond Trustee, to direct the time, method and place of conducting all remedial proceedings available to the Bond Trustee under this Indenture or exercising any trust or power conferred on the Bond Trustee by this Indenture: ~~provided, however, the Guarantor shall have no rights in respect of remedies against the Guarantor.~~

**SECTION 8.05 Limitations On Proceedings By Bondowners.** No Bondowner shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust or power hereunder, or any other remedy hereunder or on said Bonds, unless such Bondowner previously shall have given to the Bond Trustee written notice of an Event of Default as hereinabove provided and unless the Bondowners of not less than 25% in principal amount of the Bonds then Outstanding shall have made written request of the Bond Trustee so to do, after

the right to institute said suit, action or proceeding shall have accrued, and shall have afforded the Bond Trustee a reasonable opportunity to proceed to institute the same in either its or their name, and unless there also shall have been offered to the Bond Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Bond Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Bond Trustee, to be conditions precedent to the institution of said suit, action or proceeding; it being understood and intended that no one or more of the Bondowners shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided, and that all suits, actions and proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Bondowners.

**SECTION 8.06 *No Impairment Of Certain Rights Of Bondowners.*** Notwithstanding any other provision in this Indenture, the right of any Bondowner to receive payment of the principal of and interest on any Bond on or after the respective due dates expressed therein, or to institute suit for the enforcement of any such payment on or after such respective date, shall not be impaired or affected without the consent of such Bondowner.

**SECTION 8.07 *Bond Trustee May Act Without Possession Of Bonds.*** All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Bond Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof on the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Bond Trustee shall be brought in its name for the equal and ratable benefit of the Bondowners and the Guarantor, subject to the provisions of this Indenture.

**SECTION 8.08 *No Remedy Exclusive.*** No remedy herein conferred upon or reserved to the Bond Trustee or to Bondowners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**SECTION 8.09 *No Waiver Of Remedies.*** No delay or omission of the Bond Trustee or of any Bondowner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article VIII to the Bond Trustee and to the Bondowners may be exercised from time to time and as often as may be deemed expedient.

**SECTION 8.10 *Application Of Moneys Recovered.*** Any moneys received by the Bond Trustee, by any receiver or by any Bondowner pursuant to any right given or action taken under the provisions by this Article VIII, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Bond Trustee, shall be deposited in the Bond Fund and all moneys so deposited in the Bond Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds that have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default) shall be applied as follows:

(i) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied (i) first, to the payment to the persons entitled thereto of all installments of interest then due on the Bonds, with interest on overdue installments, if lawful, at the same rate or rates per annum as specified in the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment with such interest, then to the payment ratably, according to the amounts due on such installment, and (ii) second, to the payment to the persons entitled thereto of the unpaid principal of the Bonds which shall have become due at maturity (other than Bonds called for redemption for the payment of which money is held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds at their respective rates from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, in each case to the persons entitled thereto, without any discrimination or privilege.

(ii) If the principal of all the Bonds shall have become due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, with interest on overdue interest and principal, as aforesaid, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

(iii) If the principal of all the Bonds shall have become due and payable, and if such event shall thereafter have been rescinded and annulled under the provisions of this Article VIII then, subject to the provisions of paragraph (ii) of this Section 8.10 which shall be applicable in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be applied in accordance with the provisions of paragraph (i) of this Section 8.10.

Whenever moneys are to be applied pursuant to the provisions of this Section 8.10, such moneys shall be applied at such times, and from time to time, as the Bond Trustee shall determine having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Bond Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal, premium and interest to be paid on such dates shall cease to accrue. The Bond Trustee shall give such notice by mailing as it may deem appropriate of the deposit with it of any such moneys and of the filing of any such date to any Bondowner until such Bond shall be presented to the Bond Trustee for appropriate endorsement or for cancellation if fully paid.

**SECTION 8.11 *Severability Of Remedies.*** It is the purpose and intention of this Article VIII to provide rights and remedies to the Bond Trustee and Bondowners which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted

be held to be unlawful, the Bond Trustee and the Bondowners shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

## ARTICLE IX

### TRUSTEE AND CO-PAYING AGENTS

**SECTION 9.01** *Acceptance Of Trusts By Bond Trustee.* By executing the certificate of authentication endorsed upon the Bonds, the Bond Trustee shall signify its acceptance and agree to execute the trusts hereby created, but only upon the additional terms set forth in this Article IX, to all of which the County agrees and the respective Bondowners agree by their acceptance of delivery of any of the Bonds. The Bond Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Bond Trustee.

**SECTION 9.02** *Bond Trustee Not Responsible For Recitals, Statements And Representations In Indenture.* The recitals, statements and representations contained in this Indenture or in the Bonds, other than the Bond Trustee's authentication upon the Bonds, shall be taken and construed as made by and on the part of the County, and not by the Bond Trustee and the Bond Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof. The Bond Trustee makes no representations as to the validity or condition of the Trust Estate or any part thereof, or as to the title of the County thereto or as to the security afforded thereby or hereby, or as to the validity or genuineness of any securities at any time pledged and deposited with the Bond Trustee hereunder or as to the validity or sufficiency of this Indenture or any of the Bonds.

**SECTION 9.03** *Bond Trustee Not Liable Except For Own Negligence Or Bad Faith.* The Bond Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Bond Trustee shall not be answerable for the default or misconduct of any such attorney, agent, or employee selected by it with reasonable care and the written advice of such counsel selected by the Trustee with due care or any Opinion of Bond Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon. The Bond Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatever in connection with the trust except only for its own negligence or bad faith.

**SECTION 9.04** *Compensation And Reimbursement Of Bond Trustee.* The Bond Trustee shall be entitled to reasonable compensation for its services rendered hereunder and to reimbursement for its actual out-of-pocket expenses (including counsel fees) necessarily incurred in connection therewith except as a result of its negligence or bad faith. In the Financing Agreement, Big Rivers has agreed that it will pay to the Bond Trustee such compensation and reimbursement but Big Rivers may, without creating a default hereunder, contest in good faith the necessity for and reasonableness of any such fees or expenses.



**SECTION 9.05** *Limitations On Required Notice By Bond Trustee.* The Bond Trustee shall not be required to take notice, or be deemed to have notice, of any Event of Default under subsection (c) of Section 8.01 hereof, unless specifically notified in writing of such Event of Default by the Bondowners of at least 25% in principal amount of the Bonds then Outstanding. The Bond Trustee shall be required to take notice, or be deemed to have notice, of any Event of Default under subsections (a) of Section 8.01 hereof. The Bond Trustee may, however, at any time, in its discretion, require of the County full information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

In the event the Bond Trustee does not timely receive any payment on the Note in accordance with Section 5.1 of the Financing Agreement, the Bond Trustee shall immediately give telephonic or electronic notice thereof to Big Rivers, but the Bond Trustee shall incur no liability for failure to give such notice and such failure shall have no effect on the rights of the Bond Trustee or the Bondowners set forth in this Indenture or any Bond.

**SECTION 9.06** *Limitations On Obligations Of Bond Trustee.* The Bond Trustee shall be under no obligation to take any action in respect of any default, Event of Default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested so to do by Owners of at least 25% in principal amount of the Bonds then Outstanding, and if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and indemnity satisfactory to it; but the foregoing provisions are intended only for the protection of the Bond Trustee, and shall not affect any discretion or power given by any provisions of this Indenture to the Bond Trustee to take action in respect of any default without such notice or request from the Bondowners, or without such security or indemnity.

**SECTION 9.07** *Bond Trustee Protected In Relying Upon Communications And Actions Believed Genuine.* The Bond Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Financing Agreement, and the Bond Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Bond Trustee shall not be bound to recognize any person as a Bondowner or to take any action at its request unless such person's Bond shall be deposited with the Bond Trustee or satisfactory evidence of the ownership of such Bond shall be furnished to the Bond Trustee.

**SECTION 9.08** *Bond Trustee May Deal In Bonds And With County And Big Rivers.* The Bond Trustee may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Bondowner may be entitled to take with like effect as if the Bond Trustee were not a party to this Indenture. The Bond Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the County or Big Rivers, and may act as depository, trustee or

agent for any committee or body of Bondowners secured hereby or other options of the County as freely as if it were not Bond Trustee hereunder.

**SECTION 9.09 Construction Of Indenture By Bond Trustee.** The Bond Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof, and any construction of any such provisions hereof by the Bond Trustee in good faith shall be binding upon the Bondowners.

**SECTION 9.10 Resignation Of Bond Trustee.** No resignation of the Bond Trustee will be effective until the appointment of, and acceptance of such appointment by, a successor Bond Trustee. The Bond Trustee may resign and be discharged of the trusts created by this Indenture at any time by executing any instrument in writing resigning such trust, and filing the same with the Clerk of the County, and by giving notice of such resignation mailed by first class mail, postage prepaid, to Big Rivers, ~~the Guarantor~~ and the Bondowners at their addresses as they appear on the registration books maintained by the Registrar. If an instrument of acceptance by a successor Bond Trustee is not delivered to the resigning Bond Trustee with 45 days after the giving of such notice of resignation, the resigning Bond Trustee may petition any court of competent jurisdiction for the appointment of a successor Bond Trustee.

**SECTION 9.11 Removal Of Bond Trustee.** (a) The Bond Trustee may be removed at any time by filing with the Bond Trustee so removed, with the County and with Big Rivers an instrument in writing, appointing a successor, executed by the Bondowners of not less than a majority in principal amount of the Bonds then Outstanding.

(b) At any time other than during the continuance of an Event of Default, the Bond Trustee may be removed for any reason by an instrument in writing, executed by an authorized officer of the County, removing the Bond Trustee and appointing a successor, filed with the Bond Trustee so removed and Big Rivers, provided that prior to the appointment of such successor Bond Trustee, the County shall consult in good faith with Big Rivers regarding such appointment. Other than during the continuance of an Event of Default, the Bond Trustee may also be removed for any reason by Big Rivers with the approval of the County ~~and the Guarantor~~ (which consent shall not be unreasonably withheld), by an instrument in writing, executed by a Big Rivers Representative, removing the Bond Trustee and designating a successor Bond Trustee, filed with the Bond Trustee so removed and the County.

~~(c) If the Guaranty is in effect and the Guarantor is not in breach of any provision thereof, during the continuance of an Event of Default, the Bond Trustee may be removed for any reason by filing with the Bond Trustee so removed, with the County and with Big Rivers an instrument in writing executed by the Guarantor.~~

**SECTION 9.12 Appointment Of Successor Bond Trustee.** In case at any time the Bond Trustee shall be removed, or be dissolved, or if its property or affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or for any other reason, then a vacancy shall forthwith and ipso facto exist in the office of Bond Trustee and a successor may be appointed, and in case at any time the Bond Trustee shall resign, then or may be appointed, by filing with the County and Big Rivers an instrument in writing, executed by the Bondowners of not less than a majority in principal amount of Bonds then outstanding. Copies of

such instrument shall be promptly delivered by the County to the predecessor Bond Trustee and to the Bond Trustee so appointed.

Until a successor Bond Trustee shall be appointed by the Bondowners as herein authorized, Big Rivers may appoint a successor Bond Trustee. After any appointment by Big Rivers, it shall cause notice of such appointment to be mailed by first class mail, postage paid, to the County, ~~the Guarantor~~ and the Bondowners at their addresses as they appear on the registration books maintained by the Registrar. Any successor Bond Trustee so appointed by Big Rivers shall immediately and without further act be superseded by a Bond Trustee appointed by the Bondowners in the manner above provided.

~~If the Guaranty is in effect and the Guarantor is not in breach of any provision thereof, any successor Bond Trustee so appointed by the Bondowners or Big Rivers shall be reasonably acceptable to the Guarantor.~~

**SECTION 9.13 *Qualifications Of Successor Bond Trustee.*** Every successor Bond Trustee shall be a bank or trust company or a national bank with trust powers, having a combined capital stock, undivided profits and surplus of at least \$100,000,000 if there be such a trust company, bank and trust company or national bank willing and able to accept the trust on reasonable and customary terms.

**SECTION 9.14 *Acceptance Of Trusts By Successor Bond Trustee.*** Any successor appointed hereunder shall execute, acknowledge and deliver to the County an instrument accepting such appointment hereunder, and thereupon such successor Bond Trustee, without any further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Bond Trustee herein. Upon request of such Bond Trustee, such predecessor Bond Trustee and the County shall execute and deliver an instrument transferring to such successor Bond Trustee all the estates, property, rights, powers and trusts hereunder of such predecessor Bond Trustee and such predecessor Bond Trustee shall pay over to the successor Bond Trustee all moneys and other assets at the time held by it hereunder.

**SECTION 9.15 *Successor Bond Trustee Upon Merger, Consolidation Or Succession.*** Any corporation into which any Bond Trustee hereunder may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Bond Trustee hereunder shall be a party or any corporation succeeding to all or substantially all of the corporate trust business of the Bond Trustee, shall be the successor Bond Trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 9.16 *Standard Of Care In Exercise Of Rights And Power.*** Notwithstanding any other provisions of this Article IX, the Bond Trustee shall, during the existence of an Event of Default as to which the Bond Trustee has actual notice, exercise such of the rights and powers vested in it by this Indenture and use the same degree of skill and care in their exercise as a prudent man would use and exercise under the circumstances in the conduct of his own affairs.

**SECTION 9.17** *Bond Trustee To Notify Registered Owners Of Event Of Default.* If an Event of Default occurs of which the Bond Trustee by Section 9.05 hereof is required to take notice and deemed to have notice, or any other Event of Default as so defined occurs of which the Bond Trustee has been specifically notified in accordance with Section 9.05 hereof, and any such Event of Default shall continue for at least two Business Days after the Bond Trustee acquires actual notice thereof, the Bond Trustee shall give written notice thereof by first-class mail ~~to the Guarantor and~~ to the last known Owners of all registered Bonds then Outstanding addressed to such Owners at their addresses appearing on the registration books maintained by the Registrar.

**SECTION 9.18** *Intervention By Bond Trustee In Certain Litigation.* In any judicial proceeding to which the County is a party and which in the opinion of the Bond Trustee and its counsel has a substantial bearing on the interests of Bondowners, the Bond Trustee may intervene on behalf of the Bondowners ~~and the Guarantor (so long as the Guaranty is in effect and the Guarantor is not in breach of any provision thereof),~~ and shall, upon receipt of indemnity satisfactory to it, do so if requested in writing by the Owners of at least 25% in principal amount of Bonds then Outstanding if permitted by the court having jurisdiction in the premises.

**SECTION 9.19** *Bond Trustee; The Paying Agent; Co-Paying Agents.* The Bond Trustee shall be the Paying Agent for the Bonds. The County may at any time or from time to time, with the approval of Big Rivers, appoint one or more Co-Paying Agents for the Bonds, in the manner and subject to the conditions set forth in Section 9.20 hereof for the appointment of a Co-Paying Agent. Each Co-Paying Agent shall designate to the Bond Trustee its Principal Office and signify its acceptance of the duties and obligations imposed upon it by written instrument of acceptance deposited with the County and the Bond Trustee under which such Co-Paying Agent will agree with the Bond Trustee that such Co-Paying Agent will:

- (i) hold all sums held by it for the payment of the principal of and premium, if any, or interest on Bonds in trust for the benefit of the Bondowners until such sums shall be paid to such Bondowners or otherwise disposed of as herein provided; and
- (ii) upon the written request of the Bond Trustee, forthwith pay to the Bond Trustee all sums so held in trust by such Co-Paying Agent.

The County hereby covenants and agrees to cooperate with the Bond Trustee to cause the necessary arrangements to be made through the Bond Trustee and to be thereafter continued whereby funds derived from the sources specified in Section 4.03 hereof will be made available for the payment of such of the Bonds as are presented when due at the appropriate offices of the Co-Paying Agents.

**SECTION 9.20** *Qualifications Of Co-Paying Agent; Resignation; Removal.* Any Co-Paying Agent appointed by the County, with the approval of Big Rivers, shall be a bank or trust company duly organized under the laws of the United States of America or any state or territory thereof, having a combined capital stock, surplus and undivided profits of at least \$100,000,000 and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture. Any Co-Paying Agent may at any time resign and be discharged of the duties and obligations created by

Indenture by giving at least sixty (60) days written notice to the County, Big Rivers and the Bond Trustee. Any Co-Paying Agent may be removed at any time with the consent of Big Rivers by an instrument filed with such Co-Paying Agent and the Bond Trustee and signed by the County. In the event of the resignation or removal of any Co-Paying Agent, such Co-Paying Agent shall pay over, assign and deliver any moneys held by it as Co-Paying Agent to its successor, or if there be no successor, to the Bond Trustee.

**SECTION 9.21** *Moneys Held by Trustee.* Money and investments held in trust by the Bond Trustee or any paying agent hereunder shall be held in one or more trust accounts hereunder but need not be segregated from other funds except to the extent required in this Indenture or required by law. The Bond Trustee or any paying agent shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the County or otherwise specifically provided in this Indenture.

## ARTICLE X

### EXECUTION OF INSTRUMENTS BY BONDOWNERS AND PROOF OF OWNERSHIP OF BONDS

**SECTION 10.01** *Execution Of Instruments By Bondowners And Proof Of Ownership Of Bonds.*

(a) Any request, direction, consent or other instrument in writing whether or not required or permitted by this Indenture to be signed or executed by Bondowners, may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Bond Trustee with regard to any action taken by it under such instrument if the fact and date of the execution by any person of any such instrument shall be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution. Nothing contained in this Article X shall be construed as limiting the Bond Trustee to such proof, it being intended that the Bond Trustee may accept any other evidence of matters herein stated which to it may seem sufficient.

(b) The ownership of Bonds, the amount, number and other identification thereof and the date of ownership shall be proved by the registration books maintained by the Registrar.

(c) Any request or consent of any Bondowner shall bind every future Owner of the same Bond or any Bond or Bonds issued in lieu thereof in respect of anything done by the Bond Trustee or the County in pursuance of such request or consent.

## ARTICLE XI

### MODIFICATION OF THIS INDENTURE, THE FINANCING AGREEMENT, THE BIG RIVERS INDENTURE AND THE NOTE

**SECTION 11.01** *No Modification Except Pursuant To Article XI.* Neither this Indenture, the Financing Agreement, nor the Note shall be modified or amended in any respect subsequent to the first issuance of the Bonds except as provided in and in accordance with and subject to the provisions of this Article XI.

#### **SECTION 11.02** *Supplemental Indenture Without Bondowner Consent.*

(a) The County and the Bond Trustee may, from time to time and at any time, without the consent of or notice to Bondowners, enter into Supplemental Indentures as follows:

(i) To specify and determine any matters and things relative to the Bonds which are not contrary to or inconsistent with this Indenture and which shall not adversely affect the interests of the Bondowners; or

(ii) To cure any ambiguity, or to cure, correct or supplement any defect, omission or inconsistent provisions contained in this Indenture, the Financing Agreement, the Big Rivers Indenture or the Note or to make any provisions with respect to matters arising under this Indenture or for any other purpose if such provisions are necessary or desirable and if such action does not in the sole opinion of the Bond Trustee adversely affect the interests of the Bondowners; or

(iii) To grant to or confer upon the Bond Trustee for the benefit of the Bondowners any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as theretofore in effect; or

(iv) To add to the covenants and agreements of the County in this Indenture, other covenants and agreements to be observed by the County which are not contrary to or inconsistent with this Indenture as theretofore in effect; or

(v) To add to the limitations and restrictions in this Indenture, other limitations and restrictions to be observed by the County which are not contrary to or inconsistent with this Indenture as theretofore in effect; or

(vi) To confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by, this Indenture, of the Receipts and Revenues of the County from the Financing Agreement or of any other moneys, securities or funds; or

(vii) To comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended; or

(viii) To subject to this Indenture additional revenues; or

(ix) To make any other changes which do not in the sole opinion of the Bond Trustee materially adversely affect the interests of the Bondowners.

The Bond Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment the interests of any Bondowners would be adversely affected by any modification or amendment of this Indenture and any such determination shall be binding and conclusive on the County, Big Rivers and all Bondowners, and the Bond Trustee shall have no liability as a result of any such determination made in good faith. The interests of a Bondowner shall be deemed to be adversely affected by any modification or amendment of this Indenture if such modification or amendment adversely affects or diminishes the rights of such Bondowner.

(b) Before the County shall enter into any Supplemental Indenture pursuant to this Section 11.02 there shall have been filed with the Bond Trustee an Opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and that it will be valid and binding upon the County in accordance with its terms; *provided, however*, that such opinion may take exception for limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization or other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights or contractual obligations generally.

#### **SECTION 11.03 *Supplemental Indentures With Bondowner Consent.***

(a) Except for any Supplemental Indenture entered into pursuant to Section 11.02 hereof, subject to the terms and provisions contained in this Section 11.03 and not otherwise, (i) the Bondowners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, and (ii) in case of a change in the terms of any sinking fund installment (except as provided in clause (A) of the proviso of this Section 11.03(a) below), the Bondowners of not less than a majority in aggregate principal amount of each maturity of Bonds so affected and Outstanding shall have the right, from time to time, to consent to and approve the execution by the County and the Bond Trustee of any Supplemental Indenture as shall be deemed necessary or desirable by the County for the purposes of modifying, altering, amending, supplementing or rescinding in any particular, any of the terms or provisions contained in this Indenture; *provided, however*, that, unless approved in writing by the Bondowners of all affected Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitting, (A) a change in the times, amounts or currency of payment of the principal of and interest on any Outstanding Bond, or a reduction in the principal amount or redemption price of any Outstanding Bond or the rate of interest thereon or in any maturity with respect thereto or any sinking fund payment with respect to any Bond, or (B) the creation of a claim or lien upon, or a pledge of, the Receipts and Revenues of the County from the Financing Agreement ranking prior to or on a parity with the claim, lien or pledge created by this Indenture, or (C) a preference or priority of any Bonds over any other Bonds, or (D) a reduction in the aggregate principal amount of Bonds the consent of the Bondowners of which is required for any such Supplemental Indenture.

(b) If at any time the County shall determine to enter into any Supplemental Indenture for any of the purposes of this Section 11.03, it shall cause notice of the proposed Supplemental Indenture to be mailed, postage prepaid, to all Owners of the Bonds ~~and the Guarantor~~. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that a copy thereof is on file at the Principal Office of the Bond Trustee for inspection by all Bondowners.

(c) Within one year after the date of such notice, the County may enter into such Supplemental Indenture in substantially the form described in such notice only if there shall have first been filed with the Bond Trustee (i) the written consents of Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding or, if required hereunder, all Bondowners and (ii) an Opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and that upon execution and delivery it will be valid and binding upon the County in accordance with its terms; *provided, however,* that such opinion may take exception for limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization or other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights or contractual obligations generally.

(d) If the Bondowners of not less than the percentage of Bonds required by this Section 11.03 shall have consented to and approved the execution thereof as herein provided, no Bondowner shall have any right to object to the execution and delivery of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution and delivery thereof, or to enjoin or restrain the County from executing and delivering the same or from taking any action pursuant to the provisions thereof.

**SECTION 11.04 *Effect Of Supplemental Indenture.*** Upon the execution and delivery of any Supplemental Indenture pursuant to the provisions of this Article XI, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the County, the Bond Trustee and all Owners of Bonds then Outstanding shall thereafter be determined, exercised, and enforced under this Indenture subject in all respects to such modifications and amendments.

**SECTION 11.05 *When Big Rivers Consent Required.*** Anything herein to the contrary notwithstanding, any Supplemental Indenture under this Article XI which affects any rights, powers and authority of Big Rivers under this Indenture or the Financing Agreement or the Note or requires a revision of the Financing Agreement, the Note or the Big Rivers Indenture shall not become effective unless and until Big Rivers shall have consented in writing to such Supplemental Indenture.

**SECTION 11.06 *Amendment Of Financing Agreement Or The Note without Bondowner Consent.*** Without the consent of or notice to the Bondowners, the County and the Bond Trustee may consent to any amendment, change or modification of the Financing Agreement or the Note as may be required (i) by the provisions of the Financing Agreement, the Note and this Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission, (iii) to conform to any modifications to or alterations permitted by the Big Rivers Indenture or this Indenture, if such provisions are necessary or desirable and do not in the sole



opinion of the Bond Trustee materially adversely affect the interests of the Bondowners, or (iv) in connection with any other change therein which, in the judgment of the Bond Trustee, is not to the prejudice of the Bond Trustee, or materially adverse to the interests of the Bondowners. The Bond Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment the interests of the Owners of the Bonds would be adversely affected by any such modification or amendment, and any such determination by the Bond Trustee shall be binding and conclusive on the County, Big Rivers and all Bondowners; and the Bond Trustee shall have no liability as a result of any such determination made in good faith.

**SECTION 11.07 *Other Amendments Of Financing Agreement.*** Except in the case of amendments, changes or modifications referred to in Section 11.06 hereof, the County and the Bond Trustee shall not consent to any amendment, change or modification of the Financing Agreement, without first giving notice and receipt of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding given and procured as in Section 11.03 hereof provided. If at any time the County or Big Rivers shall request the consent of the Bond Trustee to any such proposed amendment, change or modification of the Financing Agreement, the Bond Trustee shall cause notice of such proposed amendment, change or modification to be given in the same manner as provided by Section 11.03 hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Bond Trustee for inspection by all Bondowners.

**SECTION 11.08 *Amendments To Big Rivers Indenture.*** The Bond Trustee shall not exercise any of the rights of a holder of the Note under the Big Rivers Indenture to permit any amendment, modification, supplement or consolidation of the Big Rivers Indenture or said Note, whereby any such amendment, modification, supplement or consolidation results in changing the times, amounts or currency of payment of the payments due, on the Note, without the prior consent of the Bondowners adversely affected thereby. The Bond Trustee may otherwise consent to the amendment or modification of the Big Rivers Indenture or exercise any other rights thereunder of a holder of the Note either (i) without notice to or consent of any Bondowner if the Bond Trustee, in its sole discretion, deems the effects of such exercise, taken as a whole, to be not materially adverse to the interests of the Bondowners or (ii) in any event, upon notice by the Bond Trustee to the Bondowners of the action proposed to be taken and the consent thereto of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding; *provided, however,* that no such notice to or consent of the Bondowners shall be required in connection with any supplemental Indenture or other instrument as may be required by the provisions of the Big Rivers Indenture. The Bond Trustee hereby agrees to execute and deliver all such further instruments as may be required by the provisions of the Big Rivers Indenture. The Bond Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment the interests of the Owners of the Bonds would be adversely affected by any such modification or amendment, and any such determination by the Bond Trustee shall be binding and conclusive on the County, Big Rivers and all Bondowners; and the Bond Trustee shall have no liability as a result of any such determination made in good faith.

ARTICLE XII  
THE GUARANTY

~~SECTION 12.01 *Demands under the Guaranty.* As long as the Guaranty shall be in full force and effect, Big Rivers, the Bond Trustee and any Paying Agent agree to comply with the following provisions:~~

~~(a) At least one (1) Business Day prior to any date for payment of principal or interest on the Bonds (excluding any payment of principal of the Bonds due upon redemption pursuant to Article III hereof) the Bond Trustee or Paying Agent, if any, will determine whether there will be sufficient funds in the Bond Fund to pay the principal of or interest on the Bonds due on such date. If the Bond Trustee or Paying Agent, if any, determines that there will be insufficient funds in the Bond Fund, then the Bond Trustee or Paying Agent, if any, shall so notify the Guarantor. Such notice shall specify the amount of the deficiency, the Bonds to which such deficiency is applicable and whether such Bonds will be deficient as to principal or interest, or both. If the Bond Trustee or Paying Agent, if any, has so notified the Guarantor, then the Guarantor will make payments of principal and interest due on the Bonds on or before the date for payment of principal or interest thereon. If the Bond Trustee or Paying Agent, if any, has not so notified the Guarantor, then the Guarantor will make payments of principal and interest due on the Bonds the first (1st) Business Day next following the date on which the Guarantor shall have received notice of nonpayment from the Bond Trustee or Paying Agent, if any.~~

~~(b) The Bond Trustee or Paying Agent, if any, shall, after giving notice to the Guarantor as provided in (a) above, make available to the Guarantor the registration books maintained by the Registrar and all records relating to the Bond Fund.~~

~~(c) The Bond Trustee or Paying Agent, if any, shall provide the Guarantor with a list of registered owners of Bonds entitled to receive principal and interest payments from the Guarantor under the terms of this Indenture. The Guarantor shall transfer funds by wire to the Bond Trustee in an amount equal to the full or partial principal payments, if any, and the full or partial interest payments then due and owing to the registered owners of Bonds.~~

~~(d) The Bond Trustee or Paying Agent, if any, shall, at the time it provides notice to the Guarantor pursuant to (a) above, notify registered owners of Bonds entitled to receive the payment of principal and interest thereon from the Guarantor (i) as to the fact of such entitlement, (ii) that the Bond Trustee on behalf of the Guarantor will remit to them all of the interest payments coming due upon proof of Holder entitlement thereto and delivery to the Bond Trustee, in form satisfactory to the Bond Trustee and the Guarantor, of an appropriate assignment of the registered owner's right to payment to the Guarantor, (iii) that should they be entitled to receive full payment of principal from the Guarantor, they must surrender their Bonds (along with an appropriate instrument of assignment in form satisfactory to the Bond Trustee and the Guarantor to permit ownership of such Bonds to be registered in the name of the Guarantor) for payment to the Bond Trustee or Paying Agent, if any, and (iv) that should they be entitled to receive partial payment of principal from the Guarantor, they must surrender their Bonds for payment to the Bond Trustee or Paying Agent, if any, who shall note on such Bonds (or on its books in the case of book entry bonds) the portion of the principal paid by the Bond Trustee or Paying Agent, if any, and the Bond Trustee on behalf of the Guarantor will remit to them such~~

~~partial principal payments coming due upon delivery to the Bond Trustee, in form satisfactory to the Bond Trustee and the Guarantor, of an appropriate assignment of the registered owner's right to such partial principal payment.~~

~~(c) In the event that the Bond Trustee or Paying Agent, if any, has notice that any payment of principal of or interest on a Bond which has become due for payment and which is made to a Bondowner by or on behalf of the County has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Bond Trustee or Paying Agent, if any, shall, at the time the Guarantor is notified pursuant to (a) above, notify all registered owners that in the event that any registered owner's payment is so recovered, such registered owner will be entitled to payment from the Guarantor to the extent of such recovery if sufficient funds are not otherwise available, and the Bond Trustee or Paying Agent, if any, shall furnish to the Guarantor its records evidencing the payments of principal of and interest on the Bonds which have been made by the Bond Trustee or Paying Agent, if any, subsequently recovered from registered owners and the dates on which such payments were made.~~

~~(f) In addition to those rights granted the Guarantor under this Indenture and notwithstanding any other provision of this Indenture, the Guarantor shall, to the extent it makes payment of principal of or interest on all or part of the Bonds, become subrogated to the rights of the Holders and Owners of the Bonds in respect of which such payments were made in accordance with the terms of the Guaranty, the amounts of principal and interest due and owing shall not be existing but shall remain as obligations to the Guarantor bearing interest at a rate equal to the higher of (1) the prevailing per annum rate on the Bond, and (2) the rate equal to the per annum rate established by the Guarantor as its standard line of credit rate in effect from time to time, and to evidence such subrogation (i) in the case of subrogation as to claims for past due interest, the Registrar, if any, shall note the Guarantor's rights as subrogee on the registration books maintained by the Registrar upon receipt from the Guarantor of proof of the payment of the interest thereon to the Holders of the Bonds, and (ii) in the case of subrogation as to claims for past due principal, the Registrar shall note the Guarantor's rights as subrogee on the registration books maintained by the Registrar or Paying Agent, if any, upon surrender of the Bonds by the registered owners thereof together with proof the payment of principal thereof.~~

~~(g) The Paying Agent or Bond Trustee is hereby irrevocably designated, appointed, directed and authorized to act as attorney in fact for Holders of the Bonds as follows:~~

~~(i) If and to the extent there is a deficiency in amounts required to pay interest on the Bonds, the Paying Agent or Bond Trustee shall (i) recognize and agree that the Guarantor shall act on behalf of such Holders in any legal proceeding related to the payment of such interest, (ii) execute and deliver to the Guarantor, in a form satisfactory to the Guarantor, an assignment to Guarantor of the claims for interest to which such deficiency relates and which are paid by Guarantor, (iii) receive as designee of the respective Holders (and not as Paying Agent) in accordance with the tenor of the Guaranty payment from Guarantor with respect to the claims for interest so assigned, and (iv) disburse the same to such respective Holders; and~~

~~(ii) If and to the extent of a deficiency in amounts required to pay principal of the Bonds, the Paying Agent or Bond Trustee shall (i) recognize and agree that the Guarantor shall act on behalf of such Holders in any legal proceeding related to the payment of such principal, (ii) execute and deliver to the Guarantor, in a form satisfactory to the Guarantor, an assignment to Guarantor of the Bond surrendered to Guarantor in an amount equal to the principal amount thereof as has not previously been paid or for which moneys are not held by the Paying Agent or Bond Trustee and available for such payment (but such assignment shall be delivered only if payment from Guarantor is received), (iii) receive as designee of the respective Holders (and not as Paying Agent) in accordance with the tenor of the Guaranty payment therefor from Guarantor, and (iv) disburse the same to such Holders.~~

~~(iii) Irrespective of whether any such assignment is executed and delivered, the County, the Bond Trustee and the Paying Agent hereby agree for the benefit of Guarantor that:~~

- ~~(1) They recognize that to the extent Guarantor makes payments directly or indirectly (e.g., by paying through the Paying Agent), on account of principal of or interest on the Bonds, Guarantor will be subrogated to the rights of such Holders to receive the amount of such principal and interest from the County, with interest thereon as provided and solely from the sources stated in the financing documents and the Bonds; and~~
- ~~(2) They will accordingly pay to Guarantor the amount of such principal and interest, with interest thereon as provided in the financing documents and the Bonds, but only from the sources and in the manner provided herein for the payment of principal of and interest on the Bonds to Holders, and will otherwise treat Guarantor as the owner of such rights to the amount of such principal and interest.~~

~~**SECTION 12.02** *Actions Under Indenture.* Notwithstanding any other provision of this Indenture, in determining whether the rights of the Holders will be adversely affected by any action taken pursuant to the terms and provisions of this Indenture, the Bond Trustee shall consider the effect on the Bondowners as if there were no Guaranty.~~

~~**SECTION 12.03** *Written Consent of the Guarantor Required.* Any provision of this Indenture expressly recognizing or granting rights in or to the Guarantor may not be amended in any manner which affects the rights of the Guarantor hereunder without the prior written consent of the Guarantor. The Guarantor reserves the right to charge Big Rivers a fee for any consent or amendment to the Indenture while the Guaranty is outstanding.~~

~~So long as the Guaranty is in effect and the Guarantor is not in breach of any of the provisions thereof, the Guarantor's consent shall be required in lieu of Holder consent, when required, for the following purposes: (i) execution and delivery of any Supplemental Indenture or any amendment, supplement or changes to or modification of the Financing Agreement or the Big Rivers Indenture; (ii) removal of the Bond Trustee or Paying Agent and selection and appointment of any successor trustee or paying agent; and (iii) initiation or approval of any action~~

~~not described in (i) or (ii) above, including any actions required under Article VIII hereof, which requires consent of all or part of the Holders. The Guarantor shall receive prior written notice of any name change of the Bond Trustee or Paying Agent, if any, or the resignation or removal of the Bond Trustee or Paying Agent, if any. No removal, resignation or termination of the Bond Trustee or Paying Agent, if any, shall take effect until a successor, acceptable to the Guarantor, shall be appointed.~~

~~SECTION 12.04 *Materials to be Provided to the Guarantor.* While the Guaranty is in effect, the Bond Trustee shall furnish to the Guarantor:~~

~~(a) as soon as practicable after the filing thereof with the Bond Trustee, a copy of any financial statement of Big Rivers and a copy of any audit and annual report of Big Rivers;~~

~~(b) a copy of any notice to be given to the registered owners of the Bonds, including, without limitation, notice of any redemption or defeasance of Bonds, and any certificate rendered pursuant to this Indenture relating to the security for the Bonds; and~~

~~(c) such additional information it may reasonably request, provided that such information is available to the Bond Trustee.~~

~~Big Rivers will permit the Guarantor to discuss the affairs, finances and accounts of Big Rivers or any information the Guarantor may reasonably request regarding the security for the Bonds with appropriate officers of Big Rivers. The Bond Trustee or Big Rivers, as appropriate, will permit the Guarantor to have access to the Plant and have access to and make copies of all books and records relating to the Bonds at any reasonable time.~~

~~The Guarantor shall have the right to direct an accounting at Big Rivers's expense and Big Rivers's failure to comply with such direction within thirty (30) days after receipt of written notice of the direction from the Guarantor shall be deemed a default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any registered owner of the Bonds.~~

~~SECTION 12.05 *No Other Third Party Beneficiaries.* Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than Big Rivers, the Bond Trustee, the Registrar, the County, the Guarantor, the Paying Agent, if any, and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of Big Rivers shall be for the sole and exclusive benefit of the County, Big Rivers, the Bond Trustee, the Guarantor, the Registrar, the Paying Agent, if any, and the registered owners of the Bonds.~~

~~To the extent that this Indenture confers upon or grants to the Guarantor any right, remedy or claim under or by reason of this Indenture, the Guarantor is hereby explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder, as long as the Guarantor is not in breach of the Guaranty.~~

~~SECTION 12.06 *Guarantor Owner of Bonds.* So long as the Guarantor has not defaulted in respect of its payment obligations under the Guaranty, the Guarantor shall be deemed to be the sole Owner and Holder of the Bonds in connection with Events of Default, acceleration, waivers and direction, and exercise of control over all remedies and other matters, including without limitation, for purposes of Articles VII, VIII and XI of this Indenture. For purposes of considering the effect of any action (or inaction) on the Owners or Holders of the Bonds, the Bond Trustee shall not take into account that payment when due of principal of and interest on the Bonds are guaranteed by the Guarantor.~~

~~SECTION 12.07 *Guarantor's Consent to Big Rivers Indenture and Note.* So long as the Guarantor is not in default in respect of its payment obligation under the Guaranty, (a) except with respect to the waivers, amendments, modifications, supplements, consolidations or substitutions described in this Indenture, the Bond Trustee shall not consent to any proposed amendment, change, modification, direction, waiver or consent (hereinafter referred to as a "course of action") under or with respect to Big Rivers Indenture or the Note without the written consent of the Guarantor; (b) the Bond Trustee shall notify the Guarantor as soon as practicable of any notice which the Bond Trustee receives with respect to Big Rivers Indenture or the Note and of any other proposed course of action; (c) the Guarantor shall be entitled to exercise all rights (including voting rights) in respect of Big Rivers Indenture granted to the Bond Trustee as the holder of the Note or otherwise, and the Bond Trustee shall be required to accept notice from, and the direction of, the Guarantor in connection with any such exercise of rights; and (d) the Bond Trustee shall, if requested by the Guarantor, take any action that the Bond Trustee may be entitled to take as a holder of an obligation secured by Big Rivers Indenture.~~

RESERVED

ARTICLE XIII

MISCELLANEOUS

**SECTION 13.01 *Indenture To Bind and Inure To Benefit Of Successors To County.***  
In the event of the termination of the existence of the County, all the covenants, stipulations, promises and agreements contained in this Indenture, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the County shall be transferred.

**SECTION 13.02 *Indenture To Benefit Only County, Bond Trustee And Bondowners.***  
Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the County, the Bond Trustee, ~~the Guarantor~~ and the Bondowners, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the County, the Bond Trustee, ~~the Guarantor~~ and the Bondowners.

**SECTION 13.03 Severability.** In case any one or more of the provisions of this Indenture or of the Financing Agreement or of the Bonds issued hereunder shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Indenture or of the Financing Agreement or of said Bonds and this Indenture and the Financing Agreement and the Bonds shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

**SECTION 13.04 No Personal Liability Of County Officials Under Indenture.** No covenant or agreement contained in the Bonds or in this Indenture shall be deemed to be the covenant or agreement of any official, officer, agent, or employee of the County in its individual capacity, and neither the members of the Board of County Commissioners of the County nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**SECTION 13.05 Bonds Owned By County Or Big Rivers Disregarded For Certain Purposes.** In determining whether the Bondowners of the requisite aggregate principal amount of Bonds have concurred in any direction, consent or waiver under this Indenture, Bonds which are owned by the County or Big Rivers or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with Big Rivers shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Bond Trustee shall be protected in relying on any such direction, consent or waiver, only Bonds which the Bond Trustee knows are so owned shall be so disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Bond Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the County or Big Rivers or any person directly or indirectly controlling or controlled by or under direct or indirect common control with Big Rivers. In case of a dispute as to such right, any decision by the Bond Trustee taken upon the advice of counsel shall be full protection to the Bond Trustee.

**SECTION 13.06 Counterparts.** This Indenture may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**SECTION 13.07 Kentucky Law to Govern.** **THE LAWS OF THE COMMONWEALTH OF KENTUCKY SHALL GOVERN THE CONSTRUCTION OF THIS INDENTURE AND OF ALL BONDS, WITHOUT REFERENCE TO THE CHOICE OF LAW PROVISIONS OF THE COMMONWEALTH OF KENTUCKY.**

**SECTION 13.08 Notices.** Except as otherwise provided in this Indenture, all notices, certificates, requests or other communications by the County, the Bond Trustee or Big Rivers pursuant to this Indenture shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows: If to the County, to: Ohio County Fiscal Court, 301 South Main, Hartford, Kentucky 42347, Attention: County Judge/Executive; if to Big Rivers, to: Big Rivers Electric Corporation, 201 Third Street, Henderson, Kentucky 42420, Attention: President and Chief Executive Officer; if to the Bond Trustee, to: U.S. Bank National Association, 225 Asylum Street, 23rd Floor, Hartford, Connecticut 06103, Attention: Philip G. Kane, Jr. (Big Rivers 2010 Indenture); if to the Guarantor: National Rural Utilities Cooperative

~~Finance Corporation, 2201 Cooperative Way, Herndon, Virginia 20171, Attention: General Counsel.~~ A duplicate copy of each notice, certificate, request or other communication given hereunder by the County or the Bond Trustee shall also be given to Big Rivers ~~and the Guarantor.~~ Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

**SECTION 13.09 *Holidays.*** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall be a legal holiday or a day on which banking institutions in the city in which is located the Principal Office of the Bond Trustee are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Indenture, and no interest shall accrue for the period after such nominal date.

**SECTION 13.10 *Captions.*** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

#### ARTICLE XIV FORMS OF BONDS AND TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Subject to the provisions of this Indenture, the Bonds and the certificate of authentication to be executed thereon by the Bond Trustee are to be in substantially the following forms, with necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture.

(Form of Legends for All Bonds)

THIS BOND IS NOT A GENERAL OBLIGATION OF THE COUNTY AND DOES NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

THIS BOND SHALL NOT CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF KENTUCKY, BUT SHALL BE PAYABLE AS TO PRINCIPAL AND INTEREST SOLELY FROM THE REVENUES DERIVED FROM THE PAYMENTS MADE BY BIG RIVERS ELECTRIC CORPORATION UNDER THE NOTE (AS DEFINED HEREIN) AND FROM THE OTHER RECEIPTS AND REVENUES OF THE COUNTY FROM THE FINANCING AGREEMENT (AS DEFINED HEREIN). THE BONDS ARE ISSUED UNDER THE PROVISIONS OF SECTIONS 103.200 THROUGH 103.285, INCLUSIVE, OF THE KENTUCKY REVISED STATUTES, AS AMENDED.

[Until such time as the Bonds are no longer restricted to being registered in the registration books kept by the Registrar in the name of a Securities Depository, each Bond shall contain or have endorsed thereon the following legends:]



AS PROVIDED IN THE INDENTURE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK, TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE INDENTURE (“DTC”), AND NOTWITHSTANDING ANY OTHER PROVISION OF THE INDENTURE TO THE CONTRARY, (A) THIS BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO A NOMINEE OF DTC, OR BY A NOMINEE OF DTC TO DTC OR NOMINEE THEREOF AND (B) A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE TRUSTEE. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT NOT THERETOFORE PAID AS DETERMINED IN THE MANNER PROVIDED IN THE INDENTURE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE PAYING AGENT FOR PAYMENT OF PRINCIPAL OR REDEMPTION PRICE, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC OR ITS NOMINEE OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, CEDE & CO., AS NOMINEE OF DTC, HAS AN INTEREST HEREIN.

[FORM OF BOND]

No. R-

§

**COUNTY OF OHIO, KENTUCKY**  
**POLLUTION CONTROL REFUNDING REVENUE BONDS, SERIES 2010A**  
**(BIG RIVERS ELECTRIC CORPORATION PROJECT)**

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**BOND DATE:**

**INTEREST RATE:**

**CUSIP:**

**DOLLARS**

County of Ohio, Kentucky, a public body corporate and politic duly created and existing as a county and political subdivision under the Constitution and laws of the Commonwealth of Kentucky, United States of America (together with any successor to its duties and functions, the “County”), for value received hereby promises to pay (but only out of the “Receipts and

Revenues of the County from the Financing Agreement” as herein defined and out of the other security pledged therefor) to the registered owner named above or registered assigns, on ~~\_\_\_\_\_~~, 201~~0~~ July 15, 2031 upon the presentation and surrender hereof, the principal sum set forth above and to pay (but only out of the Receipts and Revenues of the County from the Financing Agreement and out of the other security pledged therefor) interest on said principal sum from the date hereof until payment of said principal sum has been made or duly provided for, at the rate of ~~\_\_\_\_\_~~ 6.00% per annum (computed on the basis of a 360-day year consisting of twelve 30-day months), semiannually on ~~January 15~~ and ~~July 15~~ each year, commencing on ~~\_\_\_\_\_~~, 201~~0~~ January 15, 2011. The principal of and interest on this Bond are payable at the principal corporate trust office of U.S. Bank National Association (the “Bond Trustee”), or of its successor as Bond Trustee, or, at the option of the owner of this Bond, at the principal office of any co-paying agent appointed in accordance with the Indenture (as hereinafter defined); *provided, however*, that, subject to the next succeeding paragraph, interest may be payable, at the option of the Bond Trustee, by check or draft drawn upon the Bond Trustee and mailed to the registered address of the registered owner of this Bond as of the close of business on the fifteenth (15th) day prior to the applicable interest payment date, or, at the written request of the registered owner of Bonds (as defined herein) in an aggregate principal amount greater than or equal to \$1,000,000 delivered to the Bond Trustee on or prior to such fifteenth (15th) day prior to such payment date, by wire transfer per the instructions of such registered owner as set forth in such request. Payment of the principal of and interest on this Bond shall be in any coin or currency of the United States of America as, at the respective times of payment, shall be legal tender for the payment of public and private debts.

Notwithstanding any other provision of this Bond to the contrary, so long as this Bond shall be restricted to being registered on the registration on books of the County kept by the Registrar in the name of the Securities Depository (as defined in the hereinafter defined Indenture) for this Bond, the provisions of the Indenture governing Book Entry Bonds (as defined in the Indenture) shall govern the manner of payment of the principal of and interest on this Bond.

This Bond is one of a duly authorized series of the County’s revenue bonds designated as “Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project)” (the “Bonds”) aggregating in outstanding principal amount upon original issuance of \$83,300,000 issued or to be issued under and pursuant to the Constitution and laws of the Commonwealth of Kentucky, particularly the Industrial Building Revenue Bond Act (Sections 103.200 through 103.285, inclusive) of the Kentucky Revised Statutes, as amended (the “Act”), and the Trust Indenture, dated as of ~~\_\_\_\_\_~~ June 1, 2010 (the “Indenture”; capitalized terms used herein and not otherwise defined herein are as defined in the Indenture) between the County and the Bond Trustee. The Bonds are being issued to refund bonds previously issued by the County to refund bonds previously issued by the County to finance certain pollution control facilities (the “Facilities”) for Big Rivers Electric Corporation, a nonprofit rural electric cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky (“Big Rivers”). The Facilities are located at Big Rivers’ D.B. Wilson Plant Unit No. 1, a coal-fired steam electric generating plant located within the geographic boundaries of the County and wholly-owned by Big Rivers (the “Plant”).

The Bonds are equally and ratably secured, to the extent provided in the Indenture, by the pledge thereunder of the "Receipts and Revenues of the County from the Financing Agreement," which term is used herein as defined in the Indenture and which as therein defined means all payments to the County by Big Rivers under the Loan Agreement, dated as of [\_\_\_\_\_] June 1, 2010, between the County and Big Rivers (the "Financing Agreement") and the corresponding note (the "Note") of Big Rivers delivered pursuant to the Financing Agreement to the County, and all receipts of the Bond Trustee credited by the provisions of the Indenture against such payments and by the other security pledged therefor under the Indenture. The County has also pledged and assigned to the Bond Trustee as security for the Bonds other rights and interests of the County under the Financing Agreement. The Note is secured, on a parity basis with certain outstanding indebtedness of Big Rivers, by assets of Big Rivers under the Indenture, dated as of July 1, 2009, between Big Rivers and U.S. Bank National Association, as trustee, as supplemented and amended.

As more fully provided in the Indenture, this Bond does not constitute an obligation to which the full faith and credit of the County is pledged but is a limited obligation of the County, which is obligated to pay the principal of and interest on this Bond only out of the Receipts and Revenues of the County from the Financing Agreement and the other security pledged therefor under the Indenture. No holder of this Bond shall ever have the right to compel any exercise of the taxing power of the County to pay this Bond or interest thereon, nor to enforce payment thereon against any property of the County. This Bond shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the County. This Bond, including interest hereon, is payable solely from the revenue pledged to the payment hereof, as authorized in the Act, and does not constitute a debt of the County within the meaning of any constitutional or statutory limitation.

The Bonds shall not constitute an indebtedness of the County within the meaning of the Constitution of Kentucky, but shall be payable as to principal and interest solely from the revenues derived from the payments made by Big Rivers under the Note and from the other Receipts and Revenues of the County from the Financing Agreement.

~~National Rural Utilities Cooperative Finance Corporation (the "Guarantor") has entered into a Guaranty Agreement dated as of [\_\_\_\_\_] 20[10] (the "Guaranty") with the Bond Trustee, pursuant to which the Guarantor has unconditionally guaranteed to the Bond Trustee for the benefit of the County and the Holders of the Bonds (i) the full regularly scheduled payment of the principal on the Bonds when and as the same become due (excluding any payment of principal on the Bonds due upon redemption pursuant to Article III of the Indenture) and (ii) the full payment of the interest on the Bonds when and as the same become due.~~

Reference is hereby made to the Indenture and the Financing Agreement, copies of which are on file with the Bond Trustee, for the provisions, among others, with respect to the nature and extent of the rights, duties and obligations of the County, Big Rivers, the Bond Trustee and the owner of this Bond, the terms upon which this Bond is issued and secured, and the modification or amendment of the Indenture or the Financing Agreement, to all of which the registered owner of this Bond assents by the acceptance of this Bond.

This Bond is transferable, as provided in the Indenture, only upon the registration books maintained by the Registrar, which shall be the Bond Trustee, kept at its principal office, upon presentation at said office of this Bond with the written request of the registered owner hereof or its attorney duly authorized in writing, and a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its duly authorized attorney. The Registrar shall not be obliged to make any exchange or transfer of this Bond during the fifteen (15) days next preceding an interest payment date or, in the case of any proposed redemption of the Bonds, next preceding the date of the mailing of the notice of such redemption. The Registrar shall not be required to make any exchange or transfer of this Bond if it has been called for redemption.

The Bonds are issuable in the form of fully registered Bonds without coupons in the denomination of \$5,000 each or integral multiples thereof. Upon payment of any required tax or other governments charge and subject to such conditions, Bonds, upon the surrender thereof at the principal office of the Registrar, with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its duly authorized attorney, may, at the option of the registered owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same interest rate and in any other authorized denominations.

The Bonds are subject to redemption in whole or in part (and if less than all of the Bonds are to be redeemed, by lot or in such manner as shall be determined by the Bond Trustee) prior to maturity at any time on or after [\_\_\_\_], [\_\_\_\_] July 15, 2020 by the County, upon the exercise by Big Rivers of its option to prepay all or a part of the unpaid balance of the Note, at a redemption price of 100 percent of the principal amount thereof, together with interest accrued thereon to the date fixed for redemption.

In the manner and with the effect provided in the Indenture, upon any prepayment of the Note by Big Rivers under the provisions of Article X of the Financing Agreement, the Bonds shall be redeemed out of the amounts received in prepayment of the Note, prior to maturity as a whole, or in part, at any time at the principal amount thereof plus accrued interest to the redemption date.

In the event any Bonds are called for redemption, the Bond Trustee shall give notice, in the name of the County, of the redemption of such Bonds, which notice shall specify the Bonds to be redeemed, the redemption date and the place or places where amounts due upon such redemption will be payable, which shall be the principal corporate trust office of the Bond Trustee as paying agent for the Bonds, and the principal office of any co-paying agent for such Bonds, and, if less than all of the Bonds are to be redeemed, the numbers of such Bonds to be redeemed. Such notice shall be given by mailing a copy of the redemption notice by first-class mail, postage prepaid, at least thirty (30) days prior to the date fixed for redemption to the owners of the Bonds to be redeemed at the addresses shown on the registration books maintained by the Bond Trustee, as Registrar; *provided, however*, that failure duly to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds. All Bonds so called for redemption shall be deemed not to be outstanding under the provisions of the Indenture from the date upon which there shall have been deposited with the Bond Trustee moneys or obligations as specified by the Indenture sufficient to pay when due the principal of, premium, if any, and interest due and to become due on or prior to the redemption date. All Bonds so deemed to be not outstanding will cease to bear interest on the specified

redemption date. On presentation and surrender of Bonds so called for redemption at the place or places of payment, such Bonds shall be paid and redeemed.

The Bonds may be redeemed by the County only at the direction of Big Rivers. Big Rivers may elect to exercise such direction on a conditional and revocable basis, or on an unconditional and irrevocable basis. If the direction and call for redemption is on a conditional and revocable basis, then Big Rivers is under no obligation to provide the funds necessary to effect such redemption and, if it elects not to do so, then the Bonds called for redemption will not be redeemed, and neither Big Rivers nor the County shall be liable to any Bondowner for this failure to redeem, all as provided for in the Indenture.

Pursuant to the Financing Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid to the Bond Trustee for the account of the County and deposited in a special account created by the County and have been pledged for that purpose.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

All acts, conditions and things required by the Constitution and statutes of the Commonwealth of Kentucky, the governing rules and procedures of the County and the Indenture to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed.

No covenant or agreement contained in this Bond or the Indenture shall be deemed to be a covenant or agreement of any official, officer, agent or employee of the County in his or her individual capacity, and neither the members of the Board of County Commissioners of the County nor any official executing this Bond shall be liable personally on this Bond or be subject to any personal liability or accountability by reason of the issuance of this Bond.

This Bond shall not be entitled to any benefit under the Indenture or be valid until this Bond shall have been authenticated by the execution by the Bond Trustee, or its successor as Bond Trustee, of the Certificate of Authentication inscribed hereon.

IN WITNESS WHEREOF, County of Ohio, Kentucky, has caused this Bond to be executed by the Judge/Executive of the County by his or her signature[, and has caused the corporate seal of the County to be affixed, impressed or reproduced hereon] and attested by the Court Clerk of the County with his or her signature.

COUNTY OF OHIO, KENTUCKY

By: \_\_\_\_\_  
County Judge/Executive

[SEAL]

ATTEST:

By: \_\_\_\_\_  
County Court Clerk

(Form of Bond Trustee's Certificate of Authentication)

This is to certify that this Bond is one of the Bonds described in the within mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,  
as Bond Trustee

By: \_\_\_\_\_  
*Authorized Officer*

Date of Authentication:

IN WITNESS WHEREOF, as of [\_\_\_\_\_] June 8, 2010, County of Ohio, Kentucky, has caused these presents to be signed in its name and behalf by the Judge/Executive of the County [and its official seal to be hereunto affixed] and attested by the County Court Clerk, and to evidence its acceptance of the trusts hereby created, U.S. Bank National Association has caused these presents to be signed in its name and on its behalf by one of its Trust Officers and the same to be attested by its Secretary or an Assistant Secretary.

Attest:

COUNTY OF OHIO, KENTUCKY

By: \_\_\_\_\_  
[NAME]  
*County Court Clerk, County of Ohio,  
Kentucky*

By: \_\_\_\_\_  
[NAME]  
*Judge/Executive*

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
*Authorized Officer*





