



**Big Rivers**  
Electric Corporation

**Procedure Documentation**

# **INTERCONNECTION AND OPERATING AGREEMENT TEMPLATE**

**PL-FAC-5**

<b>Document Information</b>		
<b>Current Revision</b>	<b>Review Cycle</b>	<b>Subject to External Audit</b>
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<b>Big Rivers Corporate Approvals</b>		
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Approval - Supervisor	N/A	
Approval - Dept. Manager	Glen Thweatt	
Approval - Vice President	David Crockett	



**INTERCONNECTION AND OPERATING AGREEMENT**

**by and between**

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**and**

**BIG RIVERS ELECTRIC CORPORATION**

**Dated as of, \_\_\_\_\_, 2008**

## INTERCONNECTION AND OPERATING AGREEMENT

THIS AGREEMENT (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, sometimes hereinafter referred to as “Customer”, and Big Rivers Electric Corporation, a cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky, sometimes hereinafter referred to as “Company” or “Big Rivers”. Customer and Company each may be referred to as a “Party,” or collectively as the “Parties.”

WITNESSETH:

WHEREAS, Company owns electric facilities and is engaged in the purchase, transmission, and wholesale delivery of electric energy in the Commonwealth of Kentucky; and

WHEREAS, Customer intends to construct, and/or own and/or operate an \_\_\_\_ MW electric generating facility located in \_\_\_\_\_, \_\_\_\_\_; and,

WHEREAS, the Facility is located adjacent to the transmission facilities of Company; and,

WHEREAS, Company and Customer will, from time to time, enter into Transmission Service Agreement(s) pursuant to the Big Rivers Transmission Tariff, for the purpose, among others, of defining the terms and conditions applicable to the provision of transmission and ancillary services by Company to Customer, and;

WHEREAS, Customer has requested, and Company has agreed to enter into, an interconnection agreement with Customer to interconnect the Facility with the Big Rivers Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, the Parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

1.0 Whenever used in this Agreement, appendices, and attachments hereto, the following terms shall have the following meanings:

1.01 "Big Rivers Transmission System" shall mean all the facilities owned or controlled by the Company on the Company's side of the Points of Interconnection for the purpose of providing wholesale transmission service under the Big Rivers Transmission Tariff.

1.02 "Big Rivers Transmission Tariff" shall mean the open access transmission tariff of Company filed with the Federal Energy Regulatory Commission in Docket No. NJ98-5-000, as it may be amended or superseded by either the Federal Energy Regulatory Commission or the Kentucky Public Service Commission, under which wholesale transmission service is provided on the Big Rivers Transmission System.

1.03 "Confidential Information" shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as Confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this Agreement. Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the

information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

1.04 “SERC” shall mean the SERC Reliability Coordination, or its successor.

1.05 “Emergency” shall mean any abnormal system condition that requires automatic or immediate manual action to prevent or limit loss of transmission facilities or generation supply that could adversely affect the reliability of the Big Rivers Transmission System or the systems to which the Big Rivers Transmission System is directly or indirectly connected.

1.06 “Facility” shall mean the Customer’s electric generating facility identified generally in the first “Whereas” clause herein and more specifically identified in the “as built” drawings provided to the Company in accordance with Section 8.4, together with the other property, facilities, and equipment owned and/or controlled by the Customer on the Customer’s side of the Points of Interconnection

1.07 “FERC” shall mean the Federal Energy Regulatory Commission, or its successor.

1.08 “Force Majeure” shall mean an event or occurrence or circumstance beyond the reasonable control of, and without the fault or negligence of, the Party claiming Force Majeure, including, but not limited to, any act of God, labor disturbance (including strikes), act of the public enemy, war, insurrection, riot, fire, storm or flood, earthquakes, lightning, epidemics, civil disturbances, sabotage, explosions, curtailments, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, or any other event or cause which is beyond the claiming Party’s reasonable control, and which

wholly or in part prevents the claiming Party from performing its obligations under this Agreement. Mere economic hardship of a Party does not constitute Force Majeure.

1.09 “Hazardous Substances” shall mean any chemicals, materials or substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “hazardous constituents”, “restricted hazardous materials”, “extremely hazardous substances”, “toxic substances”, “contaminants”, “pollutants”, “toxic pollutants” or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law. For purposes of this Agreement, the term “Environmental Law” shall mean Federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to pollution or protection of the environment, natural resources or human health and safety

1.10 “Interconnection Facilities” shall mean all facilities presently in place or presently proposed to be installed, as identified in Appendix A, or facilities which are later installed, in order to interconnect and deliver energy from the Facility to the Big Rivers Transmission System including, but not limited to, connection, distribution, engineering, administrative, transformation, switching, metering and safety equipment.

1.11 “Interconnection Service” shall mean the services provided by the Company to interconnect the Facility with the Big Rivers Transmission System pursuant to the terms of this Agreement.

1.12 "KPSC" shall mean the Kentucky Public Service Commission, or its successor.

1.13 “Metering Equipment” shall mean all metering equipment currently installed at the Facility and/or other metering equipment to be installed at the metering points designated in Appendix C.

1.14 “NERC” shall mean the North American Electric Reliability Council, or its successor.

1.15 “Operation Date” shall mean the day commencing at 00:01 hours on the day following the day during which Interconnection Facilities and equipment of the Facility have been completed to Company’s and Customer’s mutual satisfaction and energized in parallel operation of Company’s and Customer’s systems as confirmed in a writing substantially in the form shown in Appendix E.

1.16 “Points of Interconnection” shall mean the point or points, shown in Appendix A, where the facilities of Customer interconnect with the facilities of Company.

1.17 “Prudent Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant proportion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods or acts generally accepted in the region.

1.18 “RUS” shall mean the Rural Utilities Service, or its successor.

1.19 “Secondary Systems” shall mean control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective

devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers.

1.20 "System Disturbance" shall mean the generation, transmission, distribution, or use of power which directly or indirectly results in a risk of harm to human beings or material damage to or substantial interference with the functioning of the Big Rivers generating plants, the Henderson Municipal Power & Light Company Station Two, the Big Rivers Transmission System, the distribution system of any of Big Rivers' distribution cooperatives, or the plant, facility, equipment or operations of any customer of one of Big Rivers' distribution cooperatives. A System Disturbance includes but is not limited to: (a) Harmonic Distortion: a level of current harmonic total demand distortion ("TDD") measured at a customer's point of delivery that exceeds the limits on TDD described in IEEE Standard 519, Section 10; and (b) Phase Imbalance: a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at a customer's point of delivery.

1.21 "System Protection Facilities" shall mean the equipment required to protect (1) the Big Rivers Transmission System, the systems of others connected to the Big Rivers Transmission System, and Company's customers (including retail customers of Company's three distribution cooperatives) from faults occurring at the Facility, and (2) the Facility from faults occurring on the Big Rivers Transmission System or on the systems of others to which the Big Rivers Transmission System is directly or indirectly connected.

1.22 "System Upgrades" shall mean modifications or improvements to the Big Rivers Transmission System required in order to interconnect the Facility with the Big Rivers Transmission System, as identified as, "Required System Upgrades" in Appendix B.

**ARTICLE 2**  
**TERM OF AGREEMENT**

2.1 Effective Date. Subject to required regulatory authorizations, including, without limitation, approval by the KPSC and the RUS, this Agreement shall become effective when executed by the Parties.

2.2 Term.

2.2.1 General. This Agreement shall become effective upon its execution, subject to the regulatory approvals contained in Section 2.1, and shall continue in full force and effect for an initial term of \_\_\_\_\_ years, and thereafter for successive periods of one year. The Parties may mutually agree to terminate this Agreement at any time. After the initial term of this Agreement has ended, either Party may call for termination of this Agreement as of the anniversary date of the end of said initial term by giving the other Party at least one year's prior written notice. Notwithstanding the above, the Agreement shall terminate on the date on which the Facility ceases commercial operations.

2.2.2 Termination Upon Default. This Agreement may be terminated upon a Party's Default in accordance with the provisions of Article 17.

2.2.3 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected adversely to affect, either Party's performance under this Agreement, the Parties will negotiate in good faith any amendment or amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and the Company shall file such amendment or amendments with the KPSC as required. If the Parties are unable to reach agreement on any such amendments, Company shall have the right to make a unilateral filing with the KPSC or any

other applicable regulatory agency with jurisdiction over this Agreement to modify this Agreement, and to the extent allowed by the KPSC or other applicable regulatory agency, Customer shall have the right to make a unilateral filing with the KPSC or other regulatory agency to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding in which such modifications may be considered. For the purposes of this section, the term “material” or “materially” shall not include any change to a tariff or rate schedule accepted or approved by the KPSC, FERC, or another applicable regulatory agency.

2.3 Regulatory Filing. The Company shall file this Agreement with the KPSC to the extent required to do so by Kentucky law, taking into consideration the KPSC assumption of jurisdiction over Big Rivers' Open Access Transmission Tariff. The Company shall also file this Agreement with the RUS. The Customer agrees reasonably to cooperate with the Company with respect to any such filings and to provide any information, including the rendering of testimony reasonably requested by the Company, as needed to comply with applicable regulatory requirements.

2.4 Survival and Obligations Regarding Interconnection Facilities Upon Termination. The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect. In addition, at such time, before or after the Interconnection Facilities are ready to begin parallel operation, that the Interconnection Facilities are no longer required for the commercial operation of the Facility, then the retirement of the Interconnection Facilities concerned shall be the responsibility of the

Party owning such Interconnection Facilities. When this Agreement is terminated for any reason, each Party shall be responsible for any costs incurred in retiring its Interconnection Facilities, including without limitation (a) dismantling, demolition, and removal of equipment, facilities, and structures, (b) security, (c) maintenance, and (d) disposing of debris.

### **ARTICLE 3 INTERCONNECTION SERVICE**

3.1 Service. Under this Agreement, Company shall provide Customer with Interconnection Service for the Facility for the term of this Agreement subject to the limitations, terms, and conditions contained in this Article 3.

3.2 Scope of Service. Company shall provide Interconnection Service for the Facility at the Points of Interconnection once the conditions precedent to such Interconnection Service contained in Section 3.3 have been satisfied. In the event of an increase in the output of the Facility or other material change or modification to the configuration and/or operation of the Facility during the term of this Agreement, the Parties shall negotiate appropriate revisions to this Agreement, including as necessary the specifications or requirements set forth in the Appendices to this Agreement, as necessary to permit the Company to provide Interconnection Service to the Facility under this Agreement in a secure and reliable manner.

3.2.1 Except as otherwise provided under Section 4.6 of this Agreement, Company shall have no obligation under this Agreement to pay Customer any wheeling or other charges for electric power and/or energy transferred through the Customer's equipment or for power or ancillary services provided by Customer under this Agreement for the benefit of the Big Rivers Transmission System.

3.2.2 Except as otherwise provided under this Agreement, Company shall have no obligation under this Agreement to make arrangements or pay under applicable tariffs for transmission and ancillary services associated with the delivery of electricity and ancillary electrical products produced by the Facility.

3.2.3 Except as otherwise provided under this Agreement, Company shall have no obligation under this Agreement to procure electricity and ancillary electrical products to satisfy the Customer's station service or other requirements.

3.2.4 Except as otherwise provided under this Agreement, Company shall have no obligation under this Agreement to make arrangements under applicable tariffs for transmission, losses, and ancillary services associated with the use of the Big Rivers Transmission System for the delivery of electricity and ancillary electrical products to Customer's Facility. All such responsibility to procure needed services under applicable tariffs lies with Customer.

3.2.5 Company makes no representations to Customer regarding the availability of transmission service on the Big Rivers Transmission System, and Customer agrees that the availability of transmission service on the Big Rivers Transmission System may not be inferred or implied from Company's execution of this Agreement. If Customer wishes to obtain transmission service on the Big Rivers Transmission System, Customer must request such service in accordance with the provisions of the Big Rivers Transmission Tariff.

3.3 Conditions Precedent to Big Rivers' Obligation to Provide Interconnection Service. Connection of Customer's Facility to Big Rivers' system may be made only after the following conditions precedent have been satisfied:

3.3.1 Big Rivers has declared its Interconnection Facilities described in Appendix A to be ready for service.

3.3.2 Customer has met the design, specifications, installation, and construction requirements of Section 8.2.2 with respect to the Facilities and any Interconnection Facilities and Metering Equipment to be owned by Customer.

3.3.3 Customer has provided adequate System Protection Facilities to protect the equipment and service of Big Rivers and its three distribution cooperative owners from danger or interruption from electrical faults occurring at the Facility.

3.3.4 Customer has executed Big Rivers' System Disturbance Agreement.

3.3.5. Big Rivers has tested and accepted the Metering Equipment required by Appendix C, including any necessary communications equipment.

3.4 Suspension of Big Rivers' Obligation to Provide Interconnection Service for the Facility. Big Rivers shall not be obligated to continue to provide Interconnection Service at times when it is entitled to disconnect its facilities under Section 4.9 of this Agreement.

3.5 Reporting. Each Party shall notify the other Party when it becomes aware of its inability to comply with the provisions of this Agreement. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply.

3.6 Third Party Actions. Customer acknowledges and agrees that from time to time during the terms of this Agreement other persons may develop, construct and operate, or acquire and operate generating facilities in Company's service territory, and that construction or acquisition and operation of any such facilities, and reservations by any such other persons of

transmission service under the Big Rivers Transmission Tariff may adversely affect the Facility and the availability of transmission service for the Facility's electric output. Customer acknowledges and agrees that Company has no obligation under this Agreement to disclose to Customer any information with respect to third party developments or circumstances, including the identity or existence of any such person or other facilities, except as may be required under Article 4 of this Agreement and elsewhere in this Agreement. Customer and Company make no guarantees to the other under this Agreement with respect to transmission service that is available under the Big Rivers Transmission Tariff or any other tariff under which transmission service may be available in the region.

3.7 Ancillary Services. Except as otherwise provided under Section 4.6 of this Agreement with regard to Customer's obligation to provide reactive power for system reliability purposes, Customer specifically reserves unto itself, its successors, and assigns, the right and option, but not the obligation, to provide ancillary services into the market, whether or not such ancillary services are addressed in this Agreement.

## **ARTICLE 4 OPERATIONS**

4.1 General. The Company and Customer agree that their respective performances of this Agreement shall comply with the then-existing (or amended) manuals, standards, and guidelines of NERC, SERC, or any successor agency assuming or charged with similar responsibilities related to the operation and reliability of the North American electric interconnected transmission grid. To the extent that this Agreement does not specifically address or provide the mechanisms necessary to comply with such NERC or SERC manuals, standards, or guidelines, the Company and Customer hereby agree that both Parties shall provide to the

other Party all such information as may reasonably be required to comply with such manuals, standards, or guidelines and shall operate, or cause to be operated, their respective facilities in accordance with such manuals, standards, or guidelines. Additional information regarding these requirements is spelled out in the Big Rivers “Requirements for Connection of Generation Facilities” document in Appendix F.

4.2 Company Obligations The Company shall operate and control the Big Rivers Transmission System and other Company facilities (1) in a safe and reliable manner; (2) in accordance with Prudent Utility Practice; (3) in accordance with applicable operational and/or reliability criteria, protocols, and directives, including those of NERC and SERC; and (4) in accordance with the provisions of this Agreement.

4.3 Customer Obligations. The Customer shall operate and control the Facility (1) in a safe and reliable manner; (2) in accordance with Prudent Utility Practice; (3) in accordance with applicable operational and/or reliability criteria, protocols, and directives, including those of NERC and SERC; and (4) in accordance with the provisions of this Agreement.

4.4 Access Rights. The Parties shall provide each other such easements and/or access rights as may be necessary for either Party’s performance of their respective operational obligations under this Agreement; provided that, notwithstanding anything stated herein, a Party performing operational work within the boundaries of the other Party’s facilities must abide by the rules applicable to that site. The right of access granted by this section 4.4 shall not be exercised by a Party so as to interfere unreasonably with the other Party's use of its premises.

4.5 Switching and Tagging Procedures. The Parties shall abide by their respective Switching and Tagging Procedures for obtaining clearances for work or for switching operations on equipment on their respective side of the Points of Interconnection. Company’s Switching

and Tagging Procedures shall apply or take precedence for work clearances or switching operations on the Interconnection Facilities.

#### 4.6 Reactive Power.

4.6.1 Obligation to Supply Reactive Power. Customer will supply reactive power to the Big Rivers Transmission System in accordance with Prudent Utility Practice as reasonably requested by Company. Customer shall respond to requests from Company to increase or decrease generator reactive power output in a manner consistent with Customer's obligation to operate the Facility: (1) in a safe and reliable manner, (2) in accordance with Prudent Utility Practice; (3) in accordance with applicable operational and/or reliability criteria, protocols, and directives, including those of NERC and SERC; and (4) in accordance with the provisions of this Agreement. The Facility shall generate such reactive power in accordance with the voltage schedule prescribed by the Company a minimum of one day in advance as necessary to maintain reactive area support, but not in excess of the amount available from the Facility's equipment in service. In the event the Customer supplies reactive power to the Big Rivers Transmission System, Company will pass through to the Customer the allocated amount, if any, the Company receives for the provision of such reactive power under the Big Rivers Transmission Tariff. In the absence of any payment to Big Rivers for such reactive power, no payment shall be owing from Company to Customer for such reactive power. At such time as FERC or another regulatory agency with jurisdiction over the sale or provision of reactive power at market-based rates accepts a tariff, rate schedule, or market mechanism for reactive power services or otherwise permits Customer to charge Company and/or other users for reactive power services provided by Customer, or in the event of any other change in law or regulation that permits Customer to assess market-based charges or otherwise seek reimbursement for its

provision of reactive power services, Customer shall be entitled to compensation for reactive power services at market-based rates from customers using the reactive power services, which may include Company, in accordance with the terms and conditions of such tariff, rate schedule, market mechanism, or other legal or regulatory scheme. In such event, the compensation provisions of this Section 4.6.1 shall no longer apply to the Parties.

4.6.2 Reactive Power Standards. The Facility power factor design limitation minimum requirement shall be a reactive power capability sufficient to maintain a composite power delivery at the Points of Interconnection at a power factor between 0.95 leading and 0.95 lagging. Under normal operating conditions, Customer shall operate the Facility to maintain a voltage schedule at the Points of Interconnection as prescribed by the Big Rivers Transmission System dispatcher (the “Company Dispatcher”) or designated representative within the Facility’s power factor design limitation. In the event that the voltage schedule at the Points of Interconnection cannot be or is not maintained within this requirement, the Company Dispatcher may request the Facility to be operated (within the design limitation of the equipment in service at the time) to produce its maximum available reactive power output (measured in MVAR) in order to achieve the prescribed voltage schedule, provided that the Company Dispatcher has requested other generating facilities and other reactive compensation resources in the affected area (including but not limited to Company’s operated facilities, if any) to produce their maximum available reactive power output (measured in MVAR) in order to achieve the prescribed voltage schedule. Customer shall promptly comply with such requests made by the Company Dispatcher. In the event that under normal Big Rivers Transmission System operating conditions the Facility is unable to consistently maintain a reactive power capability sufficient to maintain a composite power delivery at the Points of Interconnection at a power factor between

0.95 leading and 0.95 lagging, the Customer shall take appropriate other steps to configure the Facility to meet such standards, including, as necessary, the installation of static and/or dynamic reactive power compensating devices. Records of requests made by the Company Dispatcher, and records indicating actual responses to these requests, will be maintained by Company and subject to a third party independent audit at Customer's request and expense. Any such request for an audit will be presented to Company by Customer no later than twenty-four (24) months following a request by the Company Dispatcher that the Facility produce its maximum available reactive power output.

4.6.3 Emergency. During an Emergency as declared by the Company Dispatcher on the Big Rivers Transmission System or on an adjacent transmission system, the Company Dispatcher has the authority to direct the Customer to increase or decrease real power production (measured in MW) and/or reactive power production (measured in MVAR), within the design and operational limitations of the Facility equipment in service at the time, in order to maintain Big Rivers Transmission System security. In the event of such a declaration of an Emergency, determinations: (1) that Big Rivers Transmission System security is in jeopardy, and (2) that there is a need to increase or decrease reactive power production, even if real power production is adversely affected, will be made solely by the Company Dispatcher or his designated representative. The Facility operator will honor the Company Dispatcher's orders and directives concerning Facility real power and/or reactive power output within the design limitations of the Facility's equipment in service at the time, such that the security of the Big Rivers Transmission System is maintained. The Company shall restore Big Rivers Transmission System conditions to normal as quickly as possible to alleviate any such Emergency. Customer will be compensated for its provision of reactive power needed to support the Big Rivers

Transmission System during an Emergency in accordance with Section 4.6.1. The Company Dispatcher will take all reasonable steps to equitably allocate among all generating units and other reactive compensation resources the responsibility to provide reactive power support to the Big Rivers Transmission System. The Company's efforts to allocate such responsibility among all generators and other reactive compensation resources capable of such support shall be subject to the audit provisions of Paragraph 4.6.2.

4.6.4 Voltage Control Services Compensation. Customer will be compensated in accordance with Section 4.6.1 for its provision of reactive power under Sections 4.6.1, 4.6.2, and 4.6.3. Subject to applicable rule, and to the extent Customer has an account with the Company that may be credited, a credit to the charge for reactive supply and voltage control under the Big Rivers Transmission Tariff (Schedule 2) may be applied to the Customer's account to reflect its contribution to reactive supply and voltage support from generation sources made by the Customer, or Company may reimburse the Customer directly if such amounts are greater than the monetary value of the credit offered by Company for application under the Big Rivers Transmission Tariff. In the event that Customer is not the transmission service customer receiving such service or it does not have an account with the Company that may be credited, Company shall pay Customer, within thirty (30) days of receipt of Customer's invoice therefor, an amount equal to the credit that would have otherwise been applied.

#### 4.7 Operating Expenses.

4.7.1 Customer Obligations for Operating Expenses. Customer shall be responsible for all expenses associated with: (1) owning and operating its own property, equipment, facilities, and appurtenances on its side of the Points of Interconnection, (2) owning and operating its

Interconnection Facilities, and (3) Big Rivers' ownership and operation of Big Rivers' Interconnection Facilities.

4.7.1.1 Costs and Expenses Associated with Big Rivers Owned Interconnection Facilities.

With respect to the costs of Company's ownership and operation of Big Rivers' Interconnection Facilities, Customer shall reimburse Company for all direct and indirect costs and expenses (including but not limited to property taxes, and insurance) incurred by Company in owning, and operating the Big Rivers owned Interconnection Facilities from the point in time in which the Big Rivers owned Interconnection Facilities are ready for service. Such costs and expenses shall be determined by Company in accordance with the standard practices and policies followed by Company for the performance of work for others in effect at the time such operation takes place. Payment by Customer of such costs and expenses shall be made in accordance with Section 4.7.1.2. In the event that Company uses any part of the Big Rivers Interconnection Facilities for the benefit of other customers, then the allocation of the ongoing costs and expenses which are due to the ownership and operation of the Big Rivers Interconnection Facilities shall be redetermined with consideration for possible changes in: (a) point of delivery, (b) metering location, (c) operation and maintenance costs to Customer at new point of delivery, if any, and (d) compensation to Company for appropriate operating costs from the new point of delivery, if any. Company shall not be restricted in the use of the Big Rivers Interconnection Facilities while such redetermination is being made.

4.7.1.2 Payments of Costs and Expenses. Payment by Customer of Company's costs and expenses described in Section 4.7.1.1 of this Agreement shall be made in accordance with Article 12 of this Agreement.:

4.7.2 Company's Obligations for Operating Expenses. Other than the Big Rivers' Interconnection Facilities, Company shall be responsible for all expenses associated with operating its own property, equipment, facilities, and appurtenances on its side of the Points of Interconnection.

4.8 Protection and System Quality. It is understood that the Facility normally will remain connected to and be operated in parallel with Company's system. Customer shall, at its sole expense, install, maintain, and operate System Protection Facilities, including such protective and regulating devices as are identified by order, rule or regulation of any duly-constituted regulatory authority having jurisdiction (including SERC or NERC and their successors), or as are otherwise necessary to protect personnel and equipment and to minimize deleterious effects to Company's electric service operation arising from the Facility. Customer also shall provide sufficiently trained personnel to operate and maintain such System Protection Facilities. Any such protective or regulating devices that may be required on Company's facilities (including Company Interconnection Facilities and facilities on the Big Rivers Transmission System) in connection with the operation of the Facility shall be installed by Company at Customer's expense. Customer shall assume any loss, liability, or damage to Customer's system and equipment caused by lack of or failure of such System Protection Facilities.

4.8.1 Requirements for Protection. In compliance with applicable NERC and SERC requirements, Customer shall provide, install, own, and maintain relays, circuit breakers, and all other devices necessary to promptly remove any fault contribution of the Facility to any short circuit occurring on the Big Rivers Transmission System not otherwise isolated by Company equipment. Such protective equipment shall include, without limitation, a

disconnecting device or switch with load interrupting capability to be located between the Facility and the Big Rivers Transmission System at an accessible, protected, and satisfactory site selected upon mutual agreement of the Parties. Customer shall be responsible for protection of the Facility and Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, reverse power, over- or under-voltage, overexcitation, underexcitation, and generator loss-of-field. Customer shall be solely responsible for provisions to disconnect the Facility and Customer's other equipment when any of the above described disturbances occur on the Big Rivers Transmission System. Additional information regarding these requirements is spelled out in the Big Rivers "Requirements for Connection of Generation Facilities" document in Appendix F.

4.8.2. System Quality. Customer's facilities and equipment shall not cause excessive voltage excursions nor cause the voltage to drop below or rise above the range maintained by Company without Customer's generation. Customer's facilities and equipment shall not cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, or any applicable superseding electric industry standard. For voltage flicker in the frequency range of 1 to 25 Hz, voltage flicker levels are unacceptable if either of the following conditions exist: (a) the cumulative RMS voltage flicker at the Points of Interconnection exceeds 0.30% for 1.0% of a representative time period, or (b) the instantaneous voltage flicker level regularly exceeds 0.45% at the Points of Interconnection (this is approximately equal to a cumulative RMS voltage flicker of 0.45% for 0.01% of a representative time period.)

4.8.3. Approval and Inspection. Prior to the commencement of parallel operation, Customer shall obtain the written approval of Company regarding all protective relay

equipment and direct transfer trip equipment it proposes to install for the protection of the Big Rivers Transmission System. Prior to granting or denying such approval, Company or Customer shall inspect and calibrate the System Protection Facilities in accordance with the relay setting data issued by Company. Inspection and calibration must either be performed or witnessed by Company personnel at Customer's expense. Customer shall record the actual settings and inspection data on the relay setting document furnished by Company, and return such document to Company for approval, which approval shall not be unreasonably denied if it meets applicable standards. After commencement of parallel operation, Company shall have the right, but shall have no obligation or responsibility to: i) observe Customer's tests and/or inspection of any of Customer's System Protection Facilities; ii) review the settings of Customer's System Protection Facilities; and iii) review Customer's maintenance records relative to the Facility and/or Customer's System Protection Facilities. The foregoing, rights may be exercised by Company from time to time as deemed necessary by the Company upon reasonable notice to Customer. However, the exercise or non-exercise by Company of any of the foregoing rights of observation, review, or inspection shall be construed neither as an endorsement or confirmation of any aspect, feature, element, or condition of the Facility or Customer's System Protection Facilities or the operation thereof, nor as a warranty as to the fitness, safety, desirability, or reliability of same.

#### 4.9 Outages, Interruptions, and Disconnection.

4.9.1 Outage Authority and Coordination. In accordance with Prudent Utility Practice, each Party may, in close cooperation with the other, remove from service its facilities that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent the existence or imminence of an Emergency, the Party

scheduling a removal of a facility from service will use best efforts to schedule such removal on a date mutually acceptable to both Parties, in accordance with Prudent Utility Practice.

#### 4.9.2 Outage Restoration.

4.9.2.1 Unplanned Outage. In the event of an unplanned outage of a Party's facility that adversely affects the other Party's facilities, the Party that owns or controls the facility out of service will use commercially reasonable efforts to promptly restore that facility to service in accordance with Prudent Utility Practice.

4.9.2.2 Planned Outage. In the event of a planned outage of a Party's facility that adversely affects the other Party's facilities, the Party that owns or controls the facility out of service will use commercially reasonable efforts to promptly restore that facility to service in accordance with Prudent Utility Practice and in accordance with its schedule for the work that necessitated the planned outage.

4.9.3 Interruption. If at any time, in Company's reasonable judgment exercised in accordance with Prudent Utility Practice, the continued operation of the Facility would cause an Emergency, the Company may curtail, interrupt, or reduce energy delivered from the Facility to the Big Rivers Transmission System until the condition which would cause the Emergency is corrected. The Company shall give the Customer as much notice as is reasonably practicable of Company's intention to curtail, interrupt, or reduce energy delivery from the Facility in response to a condition that would cause an Emergency and, where practicable, allow suitable time for the Customer to remove or remedy such condition before any such curtailment, interruption, or reduction commences. In the event of any curtailment, interruption, or reduction, the Company shall promptly confer with the Customer regarding the conditions that gave rise to the curtailment, interruption, or reduction, and the Company shall give the Customer the Company's

recommendation, if any, concerning the timely correction of such conditions. The Company shall promptly cease the curtailment, interruption, or reduction of energy delivery when the condition that causes the Emergency ceases to exist.

#### 4.9.4 Disconnection.

4.9.4.1 Disconnection after Agreement Terminates. Upon termination of the Agreement by its terms, Company may disconnect the Facility from the Company Transmission System in accordance with a plan for disconnection upon which the Parties agree. However, any such plan for disconnection must be developed in accordance with the provisions of Section 2.4 of this Agreement, unless the Parties mutually agree otherwise. Notwithstanding the above, Company shall be entitled unilaterally to disconnect the Facility beginning 90 days after the termination of this Agreement by its terms, whether or a mutually agreeable plan for disconnection has been agreed to by Company.

4.9.4.2 Disconnection in Event of Emergency. Subject to the provisions of Section 4.9.4.3, Company or Customer shall have the right to disconnect the Facility without notice if, in the Company's or Customer's sole opinion, an Emergency exists and immediate disconnection is necessary to protect persons or property from damage or interference caused by Customer's Interconnection or lack of proper or properly operating protective devices. For purposes of this Section 4.9.4.2., protective devices may be deemed by Company to be not properly operating if Company's review under Article 5 discloses irregular or otherwise insufficient maintenance on such devices or that maintenance records do not exist or are otherwise insufficient to demonstrate that adequate maintenance has been and is being performed.

#### 4.9.4.3 Disconnection after Underfrequency Load Shed Event. NERC

Planning Criteria require the interconnected transmission system frequency be maintained between 59.95 Hz and 60.05 Hz. Pursuant to NERC Standards and SERC Supplements in the event of an underfrequency system disturbance, the Big Rivers Transmission System is designed to automatically activate a five-tier load shed program. The five load sheds occur at 59.5, 59.3, 59.1, 58.9, and 58.7 Hz, respectively. To ensure “ride-through” capability of the Big Rivers Transmission System, the Customer shall implement an underfrequency relay set point for the Facility no greater than 58.5 Hz. Interconnected generating facilities receiving power from the Big Rivers Transmission System may implement a higher underfrequency relay set point if necessary to protect their facilities and equipment.

4.9.5 Continuity of Service. Notwithstanding any other provision of this Agreement, Company shall not be obligated to accept, and Company may require Customer to curtail, interrupt or reduce, deliveries of energy if such delivery of energy impairs Company’s ability to construct, install, repair, replace, test, or remove any of its equipment or any part of its system or if Company determines that curtailment, interruption or reduction is necessary because of Emergencies, forced outages, operating conditions on its system, or any reason otherwise permitted by applicable rules or regulations promulgated by a regulatory agency having jurisdiction over such matters. The Parties shall coordinate, and, if necessary, negotiate in good faith, the timing of such curtailments, interruptions, reductions or deliveries with respect to maintenance, investigation, testing, or inspection of Company’s equipment or system.

Except in case of Emergency, in order not to interfere unreasonably with the other Party’s operations, the curtailing, interrupting or reducing Party shall give the other Party reasonable

prior notice of any curtailment, interruption or reduction, the reason for its occurrence, and its probable duration.

4.9.6 Monitoring and Reporting of System Disturbances. Customer shall use its best efforts to report to Company any System Disturbances of which it is aware, and shall comply promptly with any reasonable requests by Company for information necessary to ascertain the sources or causes of System Disturbances. Customer shall comply with disturbance monitoring equipment requirements pursuant to NERC Standards/SERC Supplements or successor.

## **ARTICLE 5 MAINTENANCE**

5.1 Company Obligations. The Company shall maintain its facilities and equipment, to the extent they might reasonably be expected to have an impact on the operation of the Facility: (1) in a safe and reliable manner; (2) in accordance with Prudent Utility Practice; (3) in accordance with applicable operational and/or reliability criteria, protocols, and directives, including those of NERC and SERC; and (4) in accordance with the provisions of this Agreement.

5.2 Customer Obligations. The Customer shall maintain its facilities and equipment, to the extent they might reasonably be expected to have an impact on the operation of the Big Rivers Transmission System and Company's other systems: (1) in a safe and reliable manner; (2) in accordance with Prudent Utility Practice; (3) in accordance with applicable operational and/or reliability criteria, protocols, and directives, including those of NERC and SERC, and (4) in accordance with the provisions of this Agreement.

5.3 Access Rights. The Parties shall provide each other such easements and/or access rights as may be necessary for either Party's performance of their respective maintenance

obligations under this Agreement; provided that, notwithstanding anything stated herein, a Party performing maintenance work within the boundaries of the other Party's facilities must abide by the rules applicable to that site. The right of access granted by this section 5.3 shall not be exercised by a Party so as to interfere unreasonably with the other Party's use of its premises.

#### 5.4 Maintenance Expenses.

5.4.1 Customer Obligations for Maintenance Expenses. Customer shall be responsible for all expenses associated with: (1) maintaining its own property, equipment, facilities, and appurtenances on its side of the Points of Interconnection, (2) maintaining its Interconnection Facilities, and (3) Company's maintenance of Big Rivers' Interconnection Facilities specified in Appendix A of this Agreement.

##### 5.4.1.1 Costs and Expenses Associated with Big Rivers Owned Interconnection Facilities.

With respect to the costs of Company's maintenance of Big Rivers' Interconnection Facilities, Customer shall reimburse Company for all direct and indirect costs and expenses (including but not limited to equipment testing and inspections) incurred by Company in maintaining the Big Rivers owned Interconnection Facilities from the point in time in which the Big Rivers Interconnection Facilities are ready for service. Such costs and expenses shall be determined by Company in accordance with the standard practices and policies followed by Company for the performance of work for others in effect at the time such maintenance work is performed. As used in this Agreement, the term "maintenance" includes inspection, repair and replacement. Payment by Customer of such costs and expenses shall be made in accordance with Section 4.7.1.2. In the event that Company uses any part of the Big Rivers Interconnection Facilities for the benefit of other customers, then the allocation of the ongoing costs and expenses which are due from Customer for the maintenance of the Big Rivers Interconnection Facilities shall be

redetermined with consideration for possible changes in: (a) point of delivery, (b) metering location, (c) maintenance costs to Customer at new point of delivery, if any, and (d) compensation to Company for appropriate maintenance costs from the new point of delivery, if any. Company shall not be restricted in the use of the Big Rivers Interconnection Facilities while such redetermination is being made.

5.4.1.2 Payments of Maintenance Costs and Expenses. Payment by Customer of Company's costs and expenses described in Section 5.4.1.1 of this Agreement shall be made in accordance with Article 12 of this Agreement.

5.4.2 Company's Obligations for Maintenance Expenses. Other than the Big Rivers Interconnection Facilities, Company shall be responsible for all expenses associated with maintaining its own property, equipment, facilities, and appurtenances on its side of the Points of Interconnection.

5.5 Coordination. The Parties agree to confer regularly to coordinate the planning and scheduling of preventative and corrective maintenance. Each Party shall conduct preventive and corrective maintenance activities as planned and scheduled in accordance with this section.

5.6 Inspections and Testing. Each Party shall perform routine inspection and testing of its facilities and equipment in accordance with Prudent Utility Practice as may be necessary to ensure the continued interconnection of the Facility with the Big Rivers Transmission System in a safe and reliable manner. Customer shall comply with the required testing of the Facility pursuant to NERC Standards and SERC Supplements or successor documents.

5.7 Right to Observe Testing. Each Party shall, at its own expense, have the right to observe the testing of any of the other Party's facilities and equipment whose performance may reasonably be expected to affect the reliability of the observing Party's facilities and equipment.

Each Party shall notify the other Party In advance of its performance of tests of its facilities and equipment, and the other Party may have a representative attend and be present during such testing.

5.8 Cooperation. Each Party agrees to cooperate with the other in the inspection, maintenance, and testing of those Secondary Systems directly affecting the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party will provide advance notice to the other Party before undertaking any work in these areas, especially in electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

5.9 Observation of Deficiencies. If a Party observes any deficiencies or defects on, or becomes aware of a lack of scheduled maintenance and testing with respect to, the other Party's facilities and equipment that might reasonably be expected to adversely affect the observing Party's facilities and equipment, the observing Party shall provide notice to the other Party that is prompt under the circumstance, and the other Party shall make any corrections required in accordance with Prudent Utility Practice.

## **ARTICLE 6 EMERGENCIES**

6.1 Obligations. Each Party agrees to comply with NERC and SERC Emergency procedures and Company and Customer Emergency procedures, as applicable, with respect to Emergencies.

6.2 Notice. The Company shall provide the Customer with oral notification that is prompt under the circumstances of an Emergency that may reasonably be expected to affect the Customer's operation of the Facility, to the extent the Company is aware of the Emergency. The

Customer shall provide the Company with oral notification that is prompt under the circumstances of an Emergency which may reasonably be expected to affect the Big Rivers Transmission System, to the extent the Customer is aware of the Emergency. To the extent the Party becoming aware of an Emergency is aware of the facts of the Emergency, such notification shall describe the Emergency, the extent of the damage or deficiency, its anticipated duration, and the corrective action taken and/or to be taken, and shall be followed as soon as practicable with written notice.

6.3 Immediate Action. In the event of an Emergency, the Party becoming aware of the Emergency may, in accordance with Prudent Utility Practice and using its reasonable judgment, take such action as is reasonable and necessary to prevent, avoid, or mitigate injury, danger, and loss. In the event the Customer has identified an Emergency involving the Big Rivers Transmission System, the Customer shall obtain the consent of Company personnel prior to manually performing any switching operations unless, in the Customer's reasonable judgment, immediate action is required.

6.4 Company Authority. The Company may, consistent with Prudent Utility Practice, take whatever actions or inactions with regard to the Big Rivers Transmission System the Company deems necessary during an Emergency in order to: (1) preserve public health and safety; (2) preserve the reliability of the Big Rivers Transmission System; (3) limit or prevent damage; and (4) expedite restoration of service. The Company shall use reasonable efforts to minimize the effect of such actions or inactions on the Facility.

6.5 Customer Authority. The Customer may, consistent with Prudent Utility Practice, take whatever actions or inactions with regard to the Facility the Customer deems necessary during an Emergency in order to: (1) preserve public health and safety; (2) preserve the

reliability of the Facility, (3) limit or prevent damage; and (4) expedite restoration of service.

The Customer shall use reasonable efforts to minimize the effect of such actions or inactions on the Big Rivers Transmission System.

6.6 Audit Rights. Each Party shall keep and maintain record of actions taken during an Emergency that may reasonably be expected to impact the other Party's facilities and make such records available for third party independent audit upon the request and expense of the party affected by such action. Any such request for an audit will be no later than twenty-four (24) months following the action taken.

## **ARTICLE 7 SAFETY**

7.1 General. The Company and the Customer agree that all work performed by either Party that may reasonably be expected to affect the other Party shall be performed in accordance with Prudent Utility Practice and all applicable laws, regulations, and other requirements pertaining to the safety of persons or property. A Party performing work within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site.

7.2 Environmental Releases. Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities, each of which may reasonably be expected to affect the other Party, as soon as possible but not later than twenty-four (24) hours after the Party becomes aware of the occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.

**ARTICLE 8**  
**MODIFICATIONS, CONSTRUCTION, AND SYSTEM UPGRADES**

8.1 Modifications.

8.1.1 General. Either Party may undertake modifications to its facilities. In the event a Party plans to undertake a modification that reasonably may be expected to impact the other Party's facilities, that Party shall provide the other Party with sufficient information regarding such modification, including, without limitation, the notice required in accordance with Article 11 so that the other Party can evaluate the potential impact of such modification prior to commencement of the work. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety, (90) days in advance of the work or such shorter period upon which the Parties may agree, which agreement will not unreasonably be withheld or delayed. Before undertaking such future additions or modifications, the Parties shall use good faith to consult, develop plans, and coordinate schedules of activities so as to ensure continuous and reliable operation of the Interconnection Facilities. In the event the Customer intends to make additions or modification to the Interconnection Facilities, the cost of such future additions or modifications to the Interconnection Facilities shall be borne by Customer, unless agreed otherwise at the time of negotiation. The ownership, operation and maintenance responsibilities for any such future additions or modifications shall be made consistent with the responsibilities allocated in this Agreement.

8.2 Construction.

8.2.1 Land Rights. Each Party shall furnish at no cost to the other Party any necessary access, easements, licenses, and/or rights of way upon, over, under, and across lands owned or controlled by Customer and/or its affiliated interests for the construction and operation

of necessary lines, substations, and other equipment to accomplish interconnection of the Facility with the Big Rivers Transmission System under this Agreement, and shall, at all reasonable times, give the Company, or its agents, free access to such lines, substations, and equipment. An accessible, protected and satisfactory site selected upon mutual agreement by the Parties and located on the Customer's premises shall be provided by and at the Customer's expense for installation of metering devices, unless Company, elects to install meters on poles or other locations controlled by it. Customer grants to Company at all reasonable times and with reasonable supervision, the right of free ingress and egress to Customer's premises for the purpose of installing, testing, reading, inspecting, repairing, operating, altering or removing any of Company's property located on Customer's premises or for other purposes necessary to enable Company to receive electric energy, suspend the receipt thereof, or determine Customer's compliance with this Agreement.

If any part of Company's facilities are to be installed on property owned by other than Customer, Customer shall, if Company is unable to do so without cost to Company, procure from the owners thereof any necessary rights of use, licenses, rights of way and easements, in a form reasonably satisfactory to Company, for the construction, operation, maintenance and replacement of Company facilities upon such property. In the event Customer is unable to secure them (a) by condemnation proceedings or (b) by other means, Customer shall reimburse Company for all reasonable and documented costs incurred by Company in securing such rights.

In connection with Company's exercise of rights under this Section 8.2.1, while on Customer's premises, Company's personnel and agents shall comply with all applicable safety rules or regulations of Customer that are communicated by Customer to Company.

8.2.2 Facility and Equipment Design and Construction. Customer shall, at its sole expense, design, construct, and install the Facility and all equipment needed to interconnect the Facility with the Big Rivers Transmission System, except for any System Upgrades constructed, installed and maintained by Company pursuant to Section 8.3. The Customer's Interconnection Facilities and the Facilities shall satisfy all requirements of applicable safety and/or engineering codes, all requirements for system reliability imposed by NERC and SERC, shall satisfy all requirements of any duly-constituted regulatory authority having jurisdiction and shall comply with provisions of the Big Rivers "Requirements for Connection of Generation Facilities" document in Appendix F.

Customer shall submit all specifications for Customer's Interconnection Facilities and equipment, including System Protection Facilities, to the Company for review at least ninety (90) days prior to interconnecting such Interconnection Facilities and equipment with the Big Rivers Transmission System in order to insure that such interconnection is consistent with operational control, reliability and/or safety standards or requirements of the Company. Within thirty (30) working days after receipt by Company from Customer of such design, plans, and specifications of the Company Interconnection Facilities, Company shall advise Customer in writing whether such design, plans, and specifications are in accordance with standards no less stringent than those now used by Company for its own installations. Consistent with Section 3.3.2 of this Agreement, Company shall be required to interconnect to Customer's Facility if, and only if, the specifications, design, installation, and construction of Customer's Interconnection Facilities are in accordance with standards no less stringent than those now used by Company for its own installations.

Company's review of Customer's specifications shall be construed neither as confirming nor as endorsing the design, nor as any warranty as to fitness, safety, durability or reliability of Customer's Interconnection Facilities or equipment. Company shall not, by reasons of such review or failure to review, be responsible for strength, details of design, adequacy or capacity of Customer's Interconnection Facilities or equipment, nor shall Company's acceptance be deemed to be an endorsement of any facility or equipment. Customer agrees to make changes to its Interconnection Facilities and equipment as may be reasonably required to meet the reasonable changing requirements of the Company.

Company shall have sole authority to manage, design, supervise, construct, procure materials for, control, and shall take all steps which it deems necessary or appropriate for the installation and connection of the Big Rivers Interconnection Facilities. Company shall have no liability to Customer if the Big Rivers Interconnection Facilities cannot be completed due to factors beyond its reasonable control.

8.3 System Upgrades. Company shall perform, and Customer shall bear the reasonable cost of, any System Upgrades. The Parties agree that the cost of any such System Upgrades shall reflect the tax effects to the Company of Customer's payment for the System Upgrades.

8.4 Drawings. Subject to the requirements of Article 19, upon completion of any construction or modification to the Customer's facilities and equipment that may reasonably be expected to affect the Big Rivers Transmission System, but not later than ninety (90) days thereafter, Customer shall issue "as built" drawings to Company, unless the Parties reasonably agree that such drawings are not necessary.

## **ARTICLE 9 METERING**

9.1 General. Company shall provide, install, own and maintain Metering Equipment necessary to meet its obligations under this Agreement. If necessary, Metering Equipment shall be either located or adjusted, at Company's option, in such manner to account for any transformation or interconnection losses between the location of the meter and the Points of Interconnection. Metering quantities, in analog and/or digital form, shall be provided to Customer upon request. All reasonable costs associated with the administration of Metering Equipment and the provision of metering data to Customer shall be borne by Customer. The costs of administration, and of providing metering data shall be separately itemized on Company's invoice to Customer. All reasonable costs associated with either the initial installation of metering, as more fully described in Appendix C, or any changes to Metering Equipment requested by Customer, shall be borne by Customer.

9.2 Ownership of Metering Equipment. Subject to Section 9.1, Company or Customer, as mutually agreed, shall provide and install Metering Equipment, as per Company's specifications, necessary to meter the electrical output of the Facility. Company shall own and maintain Metering Equipment.

9.3 Testing of Metering Equipment. Company shall, at Customer's expense, inspect and test all Company-owned Metering Equipment upon installation and at least once every two years thereafter. If requested to do so by Customer, Company shall inspect or test Metering Equipment more frequently than every two years, at the expense of Customer. Company shall give reasonable notice of the time when any inspection or test shall take place, and Customer may have representatives present at the test or inspection. If Metering Equipment is found to be

defective or inaccurate by not more than one percent (1%), then any previous recordings of such meter shall be deemed accurate, but the meter shall be immediately adjusted, repaired or replaced at Customer's expense in order to provide accurate metering. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than one percent (1%), then the parties shall use their reasonable best efforts, by the best means available, to determine or to estimate amounts delivered during the period affected by such error, service outage or failure to register properly. The appropriate party shall then be paid by the other party the full amount of any under or over payment attributable to the inaccurate metering.

9.4 Metering Data. Unless the Parties have not made other arrangements, if hourly and/or daily energy readings are available and if such data are requested by Company, Customer shall report same to Company's representatives as designated pursuant to Article 22, by telephone or electronically or as the Parties otherwise agree, on a schedule to be agreed upon.

At Customer's expense, Customer's metered data shall be telemetered to the Company Control Center and one or more locations designated by Customer.

9.5 Communications.

9.5.1 At Customer's expense, Customer shall maintain satisfactory operating communications with Company's system dispatcher or representative, as designated by Company. Customer will provide a dedicated voice communication circuit from the Facility control room to the Company Control Center. Customer will provide for a dedicated data circuit(s) extending from the Customer's Facility to the Company Control Center. Any required maintenance of such communications equipment shall be performed at Customer's expense, but may be performed by Customer or by Company. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or

separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

9.5.2. A Remote Terminal Unit (“RTU”) or equivalent data collection and transfer equipment acceptable to both Parties shall be installed by Customer, or by Company at Customer’s expense, to gather accumulated and instantaneous data to be telemetered to the Company Control Center through use of a dedicated point-to-point data circuit(s) as indicated in Section 9.5.1. Customer shall install or facilitate installation of such equipment as soon as practicable, provided that installation shall be accomplished within a time period of no more than 180 days following notice by Company and prior to initial operation of the Interconnection Facilities. The communication protocol for this data circuit(s) will be specified by Company. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Company.

9.5.3 Customer shall contract for or have available to it resources within Big Rivers’ control area that are capable of supplying in real time any deviations between Customer’s generation schedules and the actual deliveries of electricity to the Big Rivers Transmission System by the Facility, as measured by the actual metered output of such Facility. To the extent Customer fails to contract for or provide such generator imbalance service to the satisfaction of Company, Customer shall be deemed to take, and hereby shall acquire and pay for, such generator imbalance service from Company pursuant to the terms and conditions of Service Schedule \_\_ to this Agreement. Service Schedule \_\_ provides the rates terms and conditions under which Company will supply Generator Imbalance Service. [This Service Schedule will be consistent with a yet to be prepared Generator Imbalance Tariff. This tariff, when complete, will be filed with FERC and the KPSC]

**ARTICLE 10  
FORCE MAJEURE**

10.1 Notification. The Party unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing or by telephone within a reasonable time after the occurrence of the cause relied on.

10.2 Obligations. A Party shall not be responsible for any non-performance under the Agreement due to Force Majeure whether occurring on the Big Rivers Transmission System, Company's other systems, the Facility, Interconnection Facilities or any connecting electric system affecting the Party's operations. A Party shall be excused from whatever performance is affected only while a "Force Majeure" situation exists and while the Party attempts in good faith to alleviate such situation, except with respect to any labor disturbance.

**ARTICLE 11  
INFORMATION REPORTING**

11.1 Information Reporting Obligations. Each Party shall, in accordance with Prudent Utility Practice, promptly provide to the other Party all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.

**ARTICLE 12  
PAYMENTS AND BILLING PROCEDURES**

12.1 General. Within a reasonable time after the first day of each month, each Party shall prepare and deliver to the other Party an invoice for those reimbursable services provided to the other Party under this Agreement during the preceding month.

12.2 Invoice. Each invoice shall delineate the month in which the services were provided, shall fully describe the services rendered., and shall be itemized to reflect the services performed or provided.

12.3 Payment. The invoice shall be paid within twenty (20) calendar days of receipt. All payments shall be made in immediately-available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party.

12.4 Disputes. Disputed amounts shall be paid on or before the invoice payment due date. In the event the dispute is resolved in favor of the Party disputing payment, the Party required to pay back disputed amounts shall, within thirty (30) days of resolution of the dispute, make payment with interest as calculated in accordance with Section 12.6.

12.5 Waiver. Payment of an invoice shall not relieve the paying Party from any other responsibilities or obligations it has under this Agreement, nor shall such payment constitute a waiver of any claims arising hereunder.

12.6 Interest. Interest on any unpaid amounts, including disputed amounts, shall be calculated using an interest rate equal to the “Prime Rate” for domestic banks, as published in The Wall Street Journal (Northeast edition) in the “Money Rates” section, in effect on the date payment is due, plus one percent (1%) per annum, not to exceed the maximum rate allowed by applicable law. Interest on unpaid amounts shall be calculated from the due date of the invoice to the date of payment. When payments are made by mail, invoices shall be considered as having been paid on the date of receipt by the other Party.

12.7 Payment During Dispute. In the event of a billing dispute between the Company and the Customer, each Party shall continue to provide services and pay all invoices.

12.8 Collection Expenses. Neither Party shall be responsible for the other Party's costs of collecting amounts due under this Agreement, including attorney fees and expenses and the expenses of arbitration.

### **ARTICLE 13 ASSIGNMENT**

13.1 Assignment with Consent. Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, which consent shall not be unreasonably withheld, except in connection with the sale, merger, or transfer of a substantial portion of its properties (or in the case of Company, its transmission facilities) including the Interconnection Facilities which it owns, so long as the assignee in such a sale, merger, or transfer assumes directly all rights, duties and obligations arising under this Agreement and such assignor shall be, without further action, released from its obligation hereunder. Any such assignment or delegation made without such written consent shall be null and void, In addition, Company shall be entitled to assign the Agreement to any wholly-owned direct or indirect subsidiary of Big Rivers Electric Corporation.

13.2 Assignment without Consent. Notwithstanding the foregoing, Customer may assign this Agreement (and shall be, without further action, released from obligation hereunder) with Company's prior consent to any future owner of the Facility. In addition and notwithstanding the foregoing, Customer or its assignee may assign this Agreement to the persons, entities or institutions providing financing or refinancing for the development, design, construction or operation of the Facility and if Customer provides notice thereof to Company, Company shall provide notice and reasonable opportunity for such lenders to cure any default under this Agreement. Company shall, if requested by such lenders, execute its standard

documents and certificates as may be requested with respect to the assignment and status of this Agreement, provided such documents do not change the rights of Company under this Agreement except with respect to providing notice and reasonable opportunity to cure. In the event of any foreclosure by such lenders, the purchasers at such foreclosure or any subsequent purchaser, shall upon request, be entitled to the rights and benefits of (and be bound by) this Agreement so long as it is an entity entitled to interconnect with the Big Rivers Transmission System.

#### **ARTICLE 14 INSURANCE**

14.1 Customer to Obtain and Maintain Insurance. Customer, at its own expense, shall have in place on the effective date of this Agreement, and thereafter maintain in effect at all times during the term of this Agreement, in accordance with standards prevailing in the electric power industry for assets of similar size and nature, insurance coverage for the Facility and any Interconnection Facilities and Metering Equipment to be owned by Customer, for all risks of direct physical loss or damage to such property, equipment, facilities, and appurtenances (including property and boiler and machinery coverages), to protect and insure against third party liability for bodily injury and property damage, and such other insurance as Customer deems necessary, with reasonable limits and subject to appropriate exclusions and deductibles/retentions. In addition to and not in any way limiting the forgoing or any obligations or liabilities under this Agreement, Customer shall have in place and maintain insurance coverage of the type and in the minimum amounts as follows:

14.1.1 Workers compensation insurance that will pay the benefits required of Customer in accordance with all applicable state, federal, and maritime laws. This policy shall include employers liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident; \$1,000,000 policy limit and \$1,000,000 each employee for bodily injury by disease.

14.1.2 Commercial general liability insurance, including contractual liability coverage for liabilities assumed under this Agreement, to protect against third party liability for bodily injury and/or property damage arising out of the use, ownership, possession, operation, or condition of the Facility and any Interconnection Facilities and Metering Equipment owned by Customer (including all real and personal property used or held exclusively for use in connection with the ownership or operation thereof), with bodily injury and property damage combined single limit of at least \$25,000,000 each occurrence and aggregate.

14.2 Waiver. Customer hereby waives all its rights and any subrogation rights of its insurers against the Company for any loss, damage, or liability insured against under the property and liability insurance provided for in this Article 14. The policies shall be endorsed to allow pre-loss waivers of subrogation as to the Company in this Agreement. To the extent not prohibited by law, Customer also agrees, but only as to the Company, not to use the sole and exclusive remedy doctrine of workers compensation as a defense to preclude enforcement of the indemnification provided the Company in Article 15 of this Agreement.

14.3 Combined Coverage and Self Insurance Rights. Nothing in this Agreement shall prohibit Customer from combining the coverage required by this Agreement with coverage outside the scope of that required by this Agreement as long as such combining of coverage in no way adversely affects the coverage required hereunder. Customer, at its option, may elect

amounts of self insurance, retentions, and/or deductibles not to exceed \$1,000,000 per occurrence. Customer's self insurance, retention, and/or deductible amounts are the responsibility of and shall be borne by the Customer.

14.4 Notices and Certificates. Each of the insurance policies required by this Article 14 shall be endorsed so as to provide that each Party to this Agreement shall be given the same advance notice of cancellation, non-renewal, or material change. Prior to the date the Facility is first operated in parallel with the Big Rivers Transmission System and annually thereafter during the term of this Agreement, the Customer shall cause certificates of insurance evidencing the existence of the insurance required by this Article 14 to be furnished to the Company.

## **ARTICLE 15 INDEMNITY**

15.1 Customer. Customer agrees to fully indemnify and hold Company, its shareholders, directors, partners, stakeholders, officers, managers, employees, agents, representatives, servants, its affiliated and associated companies, their respective shareholders, directors, partners, stakeholders, officers, managers., employees, agents, representatives, servants, and/or their assigns, harmless from and against any and all claims, demands, liability, losses, damage, costs or expenses (including attorneys' fees and other costs of defense), of any nature or kind whatsoever, including, but not limited to, claims, demands and/or liability for bodily injury to (including death of) any person whomever (including payments and awards made to Customer's employees or other under any workers' compensation law or under any plan for employees' disability and death benefits) and for damage to any property whatsoever (including Customer's Facilities and the Big Rivers Transmission System) arising out of or otherwise resulting from the use, ownership, maintenance, or operation of the Facility or

Customer's Interconnection Facilities, regardless of whether such claims, demands or liability are alleged to have been caused by negligence or to have arisen out of Company's status as the owner or operator of facilities involved; provided, however, that the provisions of this Section 15.1. shall not apply to the extent such personal injury or property damage is held to have been caused by the gross negligence or the willful misconduct of Company, its agents or employees.

15.2 **LIMITATION ON LIABILITY**

**NEITHER PARTY SHALL IN ANY EVENT BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOST PROFITS, REVENUE OR GOOD WILL, INTEREST, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION OF EQUIPMENT OR MACHINERY, INCREASED EXPENSE OF OPERATION OF EQUIPMENT OR MACHINERY, COSTS OF PURCHASED OR REPLACEMENT POWER OR SERVICES, OR CLAIMS BY CUSTOMERS FOR ANY SUCH SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER SUCH LOSS IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE.**

**ARTICLE 16**  
**BREACH, CURE AND DEFAULT**

16.1 General. A breach of this Agreement (“Breach”) shall occur upon the, failure by a Party to perform or observe any material term or condition of this Agreement. A default of this Agreement (“ Default”) shall occur upon the failure of a Party in Breach of this Agreement to cure such Breach in accordance with the provisions of Section 16.4.

16.2 Events of Breach. A Breach of this Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty or covenant made in this Agreement;
- (c) If a Party: (1) becomes insolvent; (2) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (3) makes a general assignment for the benefit of its creditors; or (4) consents to the appointment of a receiver, trustee or liquidator;
- (d) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (e) Failure of either Party to provide such access rights, or a Party’s attempt to revoke or terminate such access rights, as provided under this Agreement; or
- (h) Failure of either Party to provide information or data to the other Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

16.3 Continued Operation. In the event of a Breach or Default by either Party, the Parties shall continue to operate and maintain, as applicable, such DC power systems, protection and Metering Equipment, telemetering equipment, SCADA equipment, transformers, secondary systems, communications equipment, building facilities, software, documentation, structural component, and other facilities and appurtenances that are reasonably necessary for the Company to operate and maintain the Big Rivers Transmission System, or for the Customer to operate and maintain the Facility., in a safe and reliable manner.

16.4 Cure and Default. Upon the occurrence of an event of Breach, the Party not in Breach (hereinafter the “Non-Breaching Party”), when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party (the “Breaching Party”) and to any other person a Party to this Agreement identifies in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have thirty (.30) days to cure such Breach. If the Breach is such that it cannot be cured within thirty (30) days, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such thirty (30) day time period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within thirty (30) days of becoming aware of the Breach, the Breaching Party will be in Default of the Agreement.

16.5 Right to Compel Performance. Notwithstanding the foregoing, upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to: (1) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties

and obligations hereunder in accordance with the terms and conditions hereof, and (2) exercise such other rights and remedies as it may have in equity or at law.

## **ARTICLE 17 TERMINATION OF INTERCONNECTION SERVICE**

17.1 Expiration of Term. Except as otherwise specified in this Article 17, Interconnection Service for the Facility terminates at the conclusion of the Term of this Agreement stated in Article 2. of this Agreement.

17.2 Termination. A Party may terminate this Agreement upon the Default of other Party. Subject to the limitations set forth in Section 17.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only, upon the later of:

- (a) Its giving of written notice of termination to the other Party; and
- (b) To the extent required, the filing at the KPSC of a notice of termination for the Agreement, which filing must be accepted for filing by the KPSC.

17.3 Survival of Rights. Termination of this Agreement shall not relieve either Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever Judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder.

## **ARTICLE 18 SUBCONTRACTOR**

18.1 General. Nothing in this Agreement shall prevent a Party from utilizing the services of such subcontractors as is deems appropriate to perform its obligation's under this Agreement-, provided, however, that each Party shall require its subcontractors to comply with

all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

18.2 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. Each Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

18.3 No Third Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

18.4 No Limitation by Insurance. The obligations under this Article 18 will not be limited in any way by any limitation of subcontractor's insurance.

## **ARTICLE 19 CONFIDENTIALITY**

19.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 19, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

19.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the

receiving Party without restriction by a third party, who, to the knowledge of the receiving Party, after due inquiry, was under no obligation to the other Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this Agreement; or (6) is required, in accordance with Section 19.7 of this Agreement, to be disclosed by any federal or state government or agency or is otherwise required to be disclosed by law, or subpoena, or is necessary in any legal proceeding, establishing rights and obligations under this agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

19.3 Release of Confidential Information. Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants or to parties who may be or considering providing financing to or equity participation with Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 19 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 19.

19.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

19.5 No Warranties. By providing Confidential Information, neither Party makes any warranties or, representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular Information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

19.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as that it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this Agreement or its Regulatory Requirements.

19.7 Order of Disclosure. If a Court or a government agency or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use reasonable effort to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

19.8 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten days of receipt of a written request from the other Party, use reasonable efforts to destroy, erase, or delete (with such destruction, erasure and deletion

certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

19.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's breach of its obligations under this Article 19. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party breaches or threatens to breach its obligations under this Article 19, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed to be an exclusive remedy for the breach of this Article, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 19.

## **ARTICLE 20 AUDIT RIGHTS**

Subject to the requirements of confidentiality under Article 19 of the Agreement, either Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit each other's accounts and records pertaining to either Party's performance and/or satisfaction of obligations arising under this Agreement. Said audit shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

## **ARTICLE 21 DISPUTES**

21.1 Submission. Any claim or dispute, which either Party may have against the other, arising out of the Agreement shall be submitted in writing to the other Party not later than the latter of sixty (60) days after the circumstances which gave rise to the claim or dispute have taken place or sixty (60) days of discovery of such circumstances. The submission of any claim or dispute shall include a concise statement of the question or issue in dispute, together with relevant facts and documentation to fully support the claim.

21.2 Alternative Dispute Resolution. If any such claim or dispute arises, the Parties shall use their best efforts to resolve the claim or dispute, initially through good faith negotiations or upon the failure of such negotiations, through mutually agreed to Alternative Dispute Resolution (“ADR”) techniques. All negotiations pursuant to these procedures for the resolution of Disputes will be confidential, and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and State Rules of Evidence.

21.3 ADR Termination. Notwithstanding the provisions of Section 21.2, either Party may terminate its participation in ADR during any stage of ADR prior to the entry of judgment upon the decision of an arbitrator and proceed to submit such claim or dispute for decision by a court or regulatory authority of competent Jurisdiction.

21.4 Rights Under The Federal Power Act. Nothing in this Article shall restrict the rights of any Party to file a complaint with the KPSC as applicable.

**ARTICLE 22  
NOTICES**

Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out below:

**To Company:**

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attention: President and CEO

**To Customer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**ARTICLE 23  
MISCELLANEOUS**

23.1 Waiver. Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent default or other matter.

23.2 Governing Law. The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the applicable laws of the State of Kentucky without regard to the conflicts of law provisions.

23.3 Headings Not To Affect Meaning. The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

23.4 Amendments. This Agreement may be amended by and only by a written instrument duly executed by both of the Parties hereto. Notwithstanding the foregoing, nothing contained herein shall be construed as affecting in any way the right of the Company or Customer to unilaterally make application to an applicable regulatory body for a change in rates, terms or conditions of service. The Company reserves the right to file rate schedules with any applicable regulatory body concerning any services the Company deems necessary for reliable and orderly bulk power system management, including but not limited to any standby or related services that may arise from a failure by Customer to meet its schedule of deliveries across the facilities covered by this Agreement.

23.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with reference to the subject matter hereof and no change or modification as to any of the provisions hereof shall be binding on either Party unless reduced to writing and approved by the duly authorized officer or agent of the Customer and the President or a Vice President of the Company. The terms and conditions of this Agreement and every Appendix referred to herein shall be amended, as mutually agreed to by the Parties, to comply with changes or alterations made necessary by a valid applicable order of any governmental regulatory authority, or any court, having jurisdiction hereof.

23.6 Binding Effect. This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

23.7 Conflicts. In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers on the day and year first above written.

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**BIG RIVERS ELECTRIC CORPORATION**

By \_\_\_\_\_

Title \_\_\_\_\_

## APPENDIX A - INTERCONNECTION FACILITIES

This Appendix A is a part of the Interconnection and Operating Agreement between Customer and Company.

### **Point of Interconnection**

The point of interconnection will be at the point where \_\_\_\_\_  
\_\_\_\_\_. See Drawing No. \_\_\_\_\_,  
dated \_\_\_\_\_, which drawing is attached hereto and made a part hereof.

### **Facilities to be Furnished by Company**

Company shall construct the \_\_\_\_\_.

### **Facilities to be Furnished by Customer**

Customer will construct \_\_\_\_\_.

### **Cost Responsibility**

Customer and Company hereby acknowledge and agree that the cost listed below is only an estimate and that Customer hereby agrees to and shall reimburse Company for all actual costs, including any applicable taxes associated with the Company's construction of Interconnection Facilities, or Company's acquisition of any Interconnection Facilities provided to Company by Customer as set forth in this Appendix A. The cost for the Interconnection Facilities is estimated to be \$\_\_\_\_\_.

Customer hereby agrees to and Customer shall provide reasonable and adequate security, as determined within Company's sole reasonable discretion, for payment and performance of obligations set forth in this Appendix A.

## **APPENDIX B - SYSTEM UPGRADES**

This Appendix B is a part of the Interconnection and Operating Agreement between Customer and Company.

### **Required System Upgrades**

Company shall construct, own, operate and maintain the following as Required System Upgrades: \_\_\_\_\_.

Customer and Company hereby acknowledge and agree that the cost listed below is only an estimate and that Customer hereby agrees to and shall reimburse Company for all actual costs, including an), applicable taxes associated with the Company's construction of Required System Upgrades, as set forth in this Appendix B. The cost for the Required System Upgrades is estimated to be \$\_\_\_\_\_.

Customer hereby agrees to and Customer shall provide reasonable and adequate security, as determined within Company's sole reasonable discretion, for payment and performance of obligations set forth in this Appendix B.

### **Optional System Upgrades**

Company shall construct, own, operate and maintain the following as Optional System Upgrades: \_\_\_\_\_.

Customer and Company hereby acknowledge and agree that the cost listed below is only an estimate and that Customer hereby agrees to and shall reimburse Company for all actual costs, including any applicable taxes associated with the Company's construction of Optional System Upgrades, as set forth in this Appendix B. The cost for the Optional System Upgrades is estimated to be \$\_\_\_\_\_.

Customer hereby agrees to and Customer shall provide reasonable and adequate security, as determined within Company's sole reasonable discretion, for payment and performance of obligations set forth in this Appendix B.

## **APPENDIX C - METERING EQUIPMENT**

This Appendix C is a part of the Interconnection and Operating Agreement between Customer and Company.

The metering facilities are to be located \_\_\_\_\_.

### **Metering Facilities to be Furnished by Company**

Company, at Customer's expense, will provide, own, operate, and maintain metering instrumentation as required for on site metering and telemetering as follows: \_\_\_\_\_.

Customer and Company hereby acknowledge and agree that the cost listed below is only an estimate and that Customer hereby agrees to and shall reimburse Company for all actual costs, including any applicable taxes associated with the Company's construction of Metering Equipment, or Company's acquisition of any Metering Equipment provided to Company by Customer as set forth in this Appendix C. The cost for the Metering Equipment is estimated to be \$\_\_\_\_\_.

Customer hereby agrees to and Customer shall provide reasonable and adequate security, as determined within Company's sole reasonable discretion, for payment and performance of obligations set forth in this Appendix C.

### **Metering Facilities to be Furnished by Customer**

Customer, at Customer's expense, will provide, own, operate, and maintain metering instrumentation as required for metering the generation output and telemetering to a location specified by Company as follows: \_\_\_\_\_.

## **APPENDIX D**

[This Appendix intentionally left blank]

**APPENDIX E- OPERATION DATE**

[Date]

[Customer]  
(Address]  
[Address]  
[Address)

Re: [Facility]

Dear \_\_\_\_\_:

On [Date], Big Rivers Electric Corporation (the “Company”) and \_\_\_\_\_ (the “Customer”) completed to their mutual satisfaction all work on the [Facility] and associated interconnection facilities and related equipment required to interconnect the Facility with Company’s transmission system and have energized the Facility in parallel operation with the Company’s transmission system. This letter confirms that the Facility may commence commercial operation of the Facility and associated interconnection facilities effective as of [Date, plus one day].

Thank you.

[Signature]  
[Company Representative]

**APPENDIX F- REQUIREMENTS FOR CONNECTION OF GENERATION  
FACILITIES TO THE BIG RIVERS TRANSMISSION SYSTEM**