

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF BIG RIVERS)	
ELECTRIC CORPORATION FOR APPROVAL OF)	CASE NO.
PROPOSED CHANGES TO ITS QUALIFIED)	2023-00102
COGENERATION AND SMALL POWER)	
PRODUCTION FACILITIES TARIFFS)	

ORDER

On March 1, 2023, Big Rivers Electric Corporation (BREC) filed a tariff to replace its Tariff QFP, Cogeneration/Small Power Production Purchase Tariff – Over 100 KW, and Tariff QFS, Cogeneration/Small Power Production Sales Tariff – Over 100 KW, with its new Tariff QF, Qualified Cogeneration/Small Power Production Facility Tariff – Over 100 KW. BREC provided notice to its three member cooperatives, Jackson Purchase Energy Cooperative Corporation (Jackson Purchase Energy), Kenergy Corp. (Kenergy), and Meade County R.E.C.C. (Meade RECC), and to the two customers that take service under the existing Tariff QFP, Commonwealth of Kentucky Department of Military Affairs Construction and Facilities Management Office (Department of Military Affairs) and Southern Star Central Gas Pipeline, Inc. (Southern Star). BREC responded to two sets of requests for information from Commission Staff. BREC’s responses are included as Appendix B to this Order. BREC proposed an effective date of April 1, 2023.

KRS 278.030 provides that a utility may collect fair, just and reasonable rates and that the service it provides must be adequate, efficient and reasonable. Having reviewed the proposed tariff and being otherwise sufficiently advised, the Commission finds that an

investigation is necessary to determine the reasonableness of the proposed tariff and that such investigation cannot be completed by April 1, 2023. Pursuant to KRS 278.190(2), the Commission will, therefore, suspend the effective date of the proposed tariff for five months, up to and including August 31, 2023.

The Commission directs BREC to the Commission's July 22, 2021 Order in Case No. 2020-00085¹ in which the Commission mandated the use of electronic filing procedures listed in 807 KAR 5:001E, Section 8. The Commission finds that electronic filing procedures should be used, consistent with the filing procedures set forth in Case No. 2020-00085. The Commission further finds that a procedural schedule should be established to review the reasonableness of the proposed tariff. The procedural schedule is attached as an Appendix to this Order.

Additionally, any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001E, Section 2, if the hearing is not concluded on the designated day, the hearing may be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing. Hearings are held in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky. Witnesses who sponsor schedules, testimony, or responses to requests for information are expected to participate in person at a hearing.

¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate the reasonableness of BREC's proposed tariff revisions.

2. BREC's proposed tariff is suspended for five months from April 1, 2023, up to and including August 31, 2023.

3. BREC shall, by counsel, enter an appearance in this proceeding within seven days of the date of service of this Order. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel.

4. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001E, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.

5. Pursuant to 807 KAR 5:001E, Section 8(9), within seven days of the date of service of this Order, BREC shall file by electronic means a written statement that it waives any right to service of Commission Orders by United States mail and that it or its authorized agent possess the facilities to receive electronic submissions.

6. Unless a party granted leave to intervene states its objection to the use of electronic filing procedures in a motion for intervention, the party shall:

a. Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including Orders of the Commission, by electronic means; and

b. Within seven days of the date of service of an order of the Commission granting intervention, file with the Commission a written statement that:

(1) It or its authorized agent possesses the facilities to receive electronic transmissions; and

(2) Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

7. If a party objects to the use of electronic filing procedures and the Commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001E, Section 4(8).

8. The procedural schedule set forth in Appendix A to this Order shall be followed.

9. All parties shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

10. As set forth in 807 KAR 5:001E, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding, which is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement

regarding the potential impact of possible modification of rates will not be deemed sufficient to establish a special interest.

11. Any motion to intervene after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

12. BREC shall give notice of the hearing in accordance with the provisions set forth in 807 KAR 5:001E, Section 9(2). In addition, the notice of the hearing shall include the following statements: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov" and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listed on the PSC website, psc.ky.gov." At the time publication is requested, BREC shall forward a duplicate of the notice and request to the Commission.

13. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

14. Any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001E, Section 2, if the hearing is not concluded on the designated day, the hearing shall be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing.

15. Witnesses who sponsor schedules, testimony, or responses to requests for information shall participate in person at any hearing scheduled in this matter.

16. Pursuant to KRS 278.360 and 807 KAR 5:001E, Section 9(9), a digital video recording shall be made of the hearing.

17. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of times with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

18. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

19. The Executive Director shall serve a copy of this Order on Jackson Purchase Energy, Kenergy, Meade R.E.C.C., Department of Military Affairs, and Southern Star.

20. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
MAR 31 2023
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00102 DATED MAR 31 2023

Requests for intervention shall be filed no later than 04/07/2023

Initial requests for information to BREC
shall be filed no later than 04/14/2023

BREC shall file responses to
initial requests for information no later than.....04/28/2023

All supplemental requests for information to BREC
shall be filed no later than 05/12/2023

BREC shall file responses to supplemental requests
for information no later than 05/26/2023

Intervenor testimony, if any, in verified prepared
form shall be filed no later than..... 06/05/2023

All requests for information to Intervenors shall
be filed no later than..... 06/19/2023

Intervenors shall file responses to requests for
information no later than..... 07/03/2023

BREC shall file, in verified form, its rebuttal
testimony no later than.....07/10/2023

BREC or any Intervenor shall request either a
hearing or that the case be submitted for decision
based on the record no later than.....07/17/2023

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00102 DATED MAR 31 2023

TEN PAGES TO FOLLOW

Hinton, Daniel E (PSC)

From: Kamuf, Tyson <Tyson.Kamuf@bigrivers.com>
Sent: Thursday, March 23, 2023 3:23 PM
To: Hinton, Daniel E (PSC)
Cc: Santana, Senthia; Rogness, Benjamin (PSC)
Subject: RE: TFS2023-00124 Big Rivers QF Tariff Filing
Attachments: 20210813-3006.PDF

****CAUTION** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

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Yes. The FERC order granting the waiver is attached.

Tyson

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From: Hinton, Daniel E (PSC) <dehinton@ky.gov>
Sent: Thursday, March 23, 2023 12:18 PM
To: Kamuf, Tyson <Tyson.Kamuf@bigrivers.com>
Cc: Santana, Senthia <Senthia.Santana@bigrivers.com>; Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>
Subject: RE: TFS2023-00124 Big Rivers QF Tariff Filing

Thanks. Staff had one other question. Did Big Rivers receive approval from FERC to lower the mandatory purchase obligation for small power production facilities to 5 MW and below?

From: Kamuf, Tyson <Tyson.Kamuf@bigrivers.com>
Sent: Thursday, March 16, 2023 6:12 PM
To: Hinton, Daniel E (PSC) <dehinton@ky.gov>
Cc: Santana, Senthia <Senthia.Santana@bigrivers.com>; Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>
Subject: RE: TFS2023-00124 Big Rivers QF Tariff Filing

Daniel,

Attached please find our responses to Staff's questions on our proposed QF tariff.

Thanks,

Tyson

Tyson Kamuf
General Counsel & VP
Big Rivers Electric Corporation



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From: Hinton, Daniel E (PSC) <dehinton@ky.gov>
Sent: Tuesday, March 14, 2023 12:29 PM
To: Kamuf, Tyson <Tyson.Kamuf@bigrivers.com>
Cc: Santana, Senthia <Senthia.Santana@bigrivers.com>; Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>
Subject: RE: TFS2023-00124 Big Rivers QF Tariff Filing

I've added a subpart (c) to #3 below.

From: Hinton, Daniel E (PSC)
Sent: Tuesday, March 14, 2023 12:21 PM
To: Kamuf, Tyson <tyson.kamuf@bigrivers.com>
Cc: Santana, Senthia <senthia.santana@bigrivers.com>; Rogness, Benjamin (PSC) <benjamin.rogness@ky.gov>
Subject: TFS2023-00124 Big Rivers QF Tariff Filing

Mr. Kamuf,

Commission Staff has the following questions regarding Big Rivers' proposed changes to its QF tariffs. Responses can be emailed back to me at this address. Please provide responses on or before this Friday (March 17, 2023).

1. Refer to P.S.C. KY. No. 27 First Revised Sheet No. 40, Monthly Credits or Payments for Delivery to Big Rivers, Section 1. Capacity and P.S.C. KY. No. 27 First Revised Sheet No. 41, Terms and Conditions #8.
 - a. Explain whether BREC could include any capacity from non-dispatchable qualifying facilities (QF) in the MISO Planning Resource Auction (PRA). If so, explain how the QF's capacity would be included in BREC's auction bid. If not, explain why not.
 - b. Explain whether BREC could include any capacity from non-firm qualifying facilities (QF) in the MISO PRA. If so, explain how the QF's capacity would be included in BREC's auction bid. If not, explain why not.
2. P.S.C. KY. No. 27 First Revised Sheet No. 41, Terms and Conditions #7. Explain why BREC is proposing to change the initial term to 1 year for all QF contracts.
3. Refer to P.S.C. KY. No. 27 Original Sheet Nos. 42-49.
 - a. Explain whether BREC will continue to provide supplementary service, unscheduled back up service, and maintenance service to QF members. If so, provide the tariff under which these members will qualify for these services.
 - b. Refer also to the Direct Testimony of John Wolfram, page 5, lines 15-16. Explain whether any current QF member currently takes service under Standard Rate QFS - Cogeneration/Small Power Production Sales Tariff – Over 100 KW.

- c. Refer also to Case No. 2021-00289, BREC's response to Commission Staff's Post-Hearing Requests for Information, Item 4. Provide each PURPA requirement or Commission regulation regarding the implementation of PURPA which necessitated Rate QFS and explain how BREC will continue to comply with these requirements and regulations in the absence of Rate QFS.

If you have any questions, please let me know.

Thanks.

Daniel

**BIG RIVERS ELECTRIC CORPORATION'S RESPONSES TO COMMISSION
STAFF'S MARCH 14, 2023, QUESTIONS**

1. Refer to P.S.C. KY. No. 27 First Revised Sheet No. 40, Monthly Credits or Payments for Delivery to Big Rivers, Section 1. Capacity and P.S.C. KY. No. 27 First Revised Sheet No. 41, Terms and Conditions #8.
 - a. Explain whether BREC could include any capacity from non-dispatchable qualifying facilities (QF) in the MISO Planning Resource Auction (PRA). If so, explain how the QF's capacity would be included in BREC's auction bid. If not, explain why not.

Big Rivers will not register capacity for non-dispatchable QFs in the MISO resource adequacy process, and therefore it will not be offered in the PRA. Registering capacity in MISO carries with it certain obligations. For example, registering capacity for a non-dispatchable QF would require that the QF offer the energy from its capacity in the Day Ahead market for 4 hours across the peak every day. If a QF is not willing to enter into a binding obligation to offer firm energy, Big Rivers will not register that capacity.

- b. Explain whether BREC could include any capacity from non-firm qualifying facilities (QF) in the MISO PRA. If so, explain how the QF's capacity would be included in BREC's auction bid. If not, explain why not.

For the reason stated above, BREC will not register capacity for non-firm QFs in the MISO resource adequacy process, and therefore it will not be offered in the PRA.

2. P.S.C. KY. No. 27 First Revised Sheet No. 41, Terms and Conditions #7. Explain why BREC is proposing to change the initial term to 1 year for all QF contracts.

Big Rivers will need to register any QFs that are dispatchable and firm into MISO's resource adequacy processes. This registration is an annual event. The one year term in Big Rivers' proposed tariff allows for participation in accordance with MISO requirements.

3. Refer to P.S.C. KY. No. 27 Original Sheet Nos. 42-49.
 - a. Explain whether BREC will continue to provide supplementary service, unscheduled back up service, and maintenance service to QF members. If so, provide the tariff under which these members will qualify for these services.

Wholesale service to the two existing customers taking service under the existing QF tariffs (Southern Star and the Commonwealth of Kentucky (for a Kentucky National Guard facility)) falls under Big Rivers' Rural customer class. For power sales to a Rural class customer, Big Rivers does not provide electric service directly to the customer. Instead, Big Rivers delivers wholesale power to a member distribution cooperative substation owned by

the distribution cooperative that provides the retail electric service for the customer. Because distribution substations generally serve numerous retail customers, Big Rivers provides wholesale service to each distribution substation in the aggregate for all customers taking retail service from that substation. This wholesale service to meet the aggregate retail customer load served by a distribution substation is provided under Big Rivers' Rural Delivery Service (RDS) tariff. Because of this, and because there are currently only two QF customers, there is currently not a need to distinguish between supplemental, back-up, and maintenance power for Rural QF customers, and so, all of the power needs of Rural customers under the proposed QF tariff will be served under generally applicable retail tariffs under Big Rivers' RDS tariff. This is consistent with how retail customers with net metering are served. Those customers are also in the Rural class.

Big Rivers' other customer class is the Large Industrial Customer (LIC) class. There are currently only about 20 LIC customers. These are large industrial customers who take service directly from Big Rivers' transmission system. As such, Big Rivers has a separate tariff (the LICSS tariff) for any of these customers requesting supplemental, back-up, or maintenance service for their qualifying self-generation.

- b. Refer also to the Direct Testimony of John Wolfram, page 5, lines 15-16. Explain whether any current QF member currently takes service under Standard Rate QFS - Cogeneration/Small Power Production Sales Tariff – Over 100 KW.

Both of the existing QF Members take service under special contracts that point to the QFS tariff. The proposed QF tariff (First Revised Sheet No. 39) states that it will be applicable in place of the QFS tariff when the QFS tariff is referenced in a contract.

Under the existing QFS tariff, supplemental sales to the retail customer are provided under generally applicable retail tariffs under Big Rivers' RDS tariff. Under the proposed QF tariff, all sales to the retail customer would be provided under the generally applicable retail tariff under Big Rivers' RDS tariff. Southern Star takes retail service under Kenergy's Schedule 5 and the customer's Power Purchase and Interconnection Agreement; the National Guard facility takes retail service under Jackson Purchase Energy Corporation's Schedule D and the customer's Power Purchase and Interconnection Agreement.

Both of the existing QF Members were provided notice of the filing of the proposed QF tariff.

- c. Refer also to Case No. 2021-00289, BREC's response to Commission Staff's Post-Hearing Requests for Information, Item 4. Provide each PURPA requirement or Commission regulation regarding the implementation of PURPA

which necessitated Rate QFS and explain how BREC will continue to comply with these requirements and regulations in the absence of Rate QFS.

For Commission-regulated utilities, PURPA requirements in Kentucky (specifically PURPA Section 210) are implemented by the Commission. The applicable Commission's regulation is 807 KAR 5:054. With regard to sales to a Qualifying Facility, the applicable sections of 807 KAR 5:054 include Sections 6(3)(b), 6(5), 6(6)(a), and 7(7). Specifically, Section 7(7) requires utilities to provide supplementary power, back-up power, maintenance power, and interruptible power to a qualifying facility requesting such service.

Note that Big Rivers does not provide retail electric service. Big Rivers provides wholesale electric service to its Members who, in turn, provide retail electric service to any qualifying facilities in their territory. For the reasons stated above, Big Rivers currently does not believe it is necessary to distinguish between supplementary, back-up, and maintenance service for Rural QF customers. Big Rivers instead will provide to the relevant Member the wholesale power to meet all of the retail customer's needs under Big Rivers' RDS tariff (which would include power for supplementary, back-up, and maintenance purposes, and Big Rivers' Voluntary Price Curtailable Service Rider). The Member will, in turn, provide the retail electric service to meet all of the retail customer's needs under a generally applicable retail tariff.

As noted above, this is the same arrangement that applies to any retail customers that qualify for net metering.

Rates for supplementary, back-up, and maintenance service to qualifying Large Industrial Customers are provided under Big Rivers' LICSS tariff.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Big Rivers Electric Corporation
Docket No. QM21-21-000

Issued: August 13, 2021

John R. Lilyestrom
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109

Reference: Termination of Mandatory Purchase Obligation

Dear Mr. Lilyestrom:

On May 21, 2021, Big Rivers Electric Corporation (Big Rivers) filed an application pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA)¹ and section 292.310(a) of the Commission's regulations² to terminate the requirement under section 292.303(a) of the Commission's regulations³ to enter into new contracts or obligations to purchase electric energy and capacity from any small power production qualifying facility (QF) with a net capacity in excess of five megawatts (MW)⁴ in Midcontinent Independent System Operator, Inc. (MISO) on a service territory-wide basis (Application).⁵

¹ 16 U.S.C. § 824a-3(m).

² 18 C.F.R. § 292.310(a) (2021).

³ *Id.* § 292.303(a).

⁴ Order No. 872 revised 18 C.F.R. § 292.309(d) such that small power production facilities with a net power production capacity over five MW will be presumed to have nondiscriminatory access to markets. *See Qualifying Facility Rates and Requirements*, Order No. 872, 172 FERC ¶ 61,041, at P 625, *order on reh'g and clarification*, Order No. 872-A, 173 FERC ¶ 61,158 (2020).

⁵ Big Rivers requests that the service territories of its three member-owners,

Big Rivers states that in 2017 the Commission granted its application to terminate, on a service-territory wide basis, the requirement to enter into new contracts or obligations to purchase energy and capacity from qualifying small power production facilities and qualifying cogeneration facilities with a net capacity of greater than 20 MW.⁶ Big Rivers also states that it relies on section 292.309(e) of the Commission's regulations,⁷ which provides that MISO qualifies as a market described in sections 292.309(a)(1)(i) and (ii) of the Commission's regulations,⁸ and asserts that QFs in MISO have nondiscriminatory access to those markets through Commission-approved open access transmission tariffs and interconnection rules. Big Rivers states that, consistent with the requirement in section 292.310 of the Commission's regulations, it identified potentially affected QFs in its service territory, listed in Attachment A of the Application.

Notice of Big Rivers' Application was published in the *Federal Register*, 86 Fed. Reg. 28,827 (May 28, 2021), with interventions and protests due on or before June 18, 2021. Notice of Big Rivers' Application was also mailed by the Commission on May 26, 2021 to the potentially-affected QFs identified in the Application. One Energy Enterprises, LLC (One Energy) filed a timely motion to intervene and comments.⁹ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁰ One Energy's timely motion to intervene serves to make it a party to this proceeding.

Big Rivers' Application to terminate the requirement to enter into new contracts or obligations to purchase electric energy and capacity from small power production QFs in

Jackson Purchase Energy Corporation, Kenergy Corporation, and Meade County Rural Electric Cooperative Corporation, be treated as Big Rivers' service territory for purposes of its application.

⁶ Application at 1 (citing *Big Rivers Electric Corp.*, 160 FERC ¶ 62,109 (2017)).

⁷ 18 C.F.R. § 292.309(e).

⁸ *Id.* § 292.309(a)(1)(i)-(ii).

⁹ One Energy states that it does not have any projects located in the Big Rivers service area, but reserves the right to rebut the presumption that any behind the meter generator developed by One Energy should be treated similarly to a cogeneration QF under the standards in section 292.309(c)(2) of the Commission's regulations. Pursuant to section 292.311 of the Commission's regulations, 18 C.F.R. § 292.311, when and as appropriate, One Energy may petition for reinstatement of Big Rivers' mandatory purchase obligation to purchase electric energy and capacity from a One Energy facility. See *Omaha Pub. Power Dist.*, 164 FERC ¶ 61,238 (2018).

¹⁰ 18 C.F.R. § 385.214.

Docket No. QM21-21-000

- 3 -

MISO with a net capacity in excess of five MW, on a service territory-wide basis, is granted, effective May 21, 2021.

This action is taken pursuant to authority delegated to the Director, Division of Electric Power Regulation – Central under 18 C.F.R. § 375.307(a)(5)(i). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Issued by: Penny S. Murrell, Director, Division of Electric Power Regulation – Central

Document Content (s)

QM21-21-000.docx.....1

*Big Rivers Electric Corporation
710 West 2nd Street
P. O. Box 20015
Owensboro, KY 42304

*Senthia Santana
Big Rivers Electric Corporation
710 West 2nd Street
P. O. Box 20015
Owensboro, KY 42304

*Tyson Kamuf
Corporate Attorney
Big Rivers Electric Corporation
710 West 2nd Street
P. O. Box 20015
Owensboro, KY 42304