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Your Touchstone Energy® Cooperative 

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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)
CORPORATION FOR APPROVAL OF ITS)
2012 ENVIRONMENTAL COMPLIANCE)
PLAN, FOR APPROVAL OF ITS AMENDED)
ENVIRONMENTAL COST RECOVERY)
SURCHARGE TARIFF, FOR CERTIFICATES)
OF PUBLIC CONVENIENCE AND)
NECESSITY, AND FOR AUTHORITY TO)
ESTABLISH A REGULATORY ACCOUNT)

Case No.
2012-00063

Response to the Office of the Attorney General's
Second Request for Information
Dated June 21, 2012

FILED: July 6, 2012

ORIGINAL

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC

ATTORNEYS AT LAW

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JUL 06 2012

PUBLIC SERVICE
COMMISSION

Wald M. Sullivan

Jesse T. Mountjoy

Frank Stainback

James M. Miller

Michael A. Fiorella

Allen W. Holbrook

R. Michael Sullivan

Bryan R. Reynolds

Tyson A. Kamuf

Mark W. Starnes

C. Ellsworth Mountjoy

Susan Montalvo-Gesser

Mary L. Moorhouse

July 6, 2012

Via Federal Express


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

Re: *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, P.S.C. Case No. 2012-00063*

Dear Mr. DeRouen:

Enclosed for filing are an original and ten copies of Big Rivers Electric Corporation's (i) response to the Public Service Commission's second request for information, (ii) response to the Attorney General's second request for information, (iii) response to Kentucky Industrial Utility Customers' second request for information, (iv) response to Sierra Club's second request for information, (v) response to Kentucky Industrial Utility Customers' third request for information, (vi) response to Sierra Club's third request for information, (vii) a petition for confidential treatment for certain documents being filed with the responses, and (viii) a motion to deviate from the requirement that all documents filed in response to requests for information be furnished in paper form. Copies of this letter and all enclosures have been served on each of the persons listed on the attached service list. A copy of the information for which confidential treatment is sought has also been served on each party that has entered into Big Rivers' confidentiality agreement.

Sincerely yours,



Tyson Kamuf

TAK/ej
Enclosures

Telephone (270) 926-4000

Facsimile (270) 683-6694

cc: Mark A. Bailey
Albert Yockey

100 St. Ann Building

PO Box 727

Owensboro, Kentucky

42302-0727

Service List
PSC Case No. 2012-00063

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BIG RIVERS ELECTRIC CORPORATION

**THE APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR
APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN AND
REVISIONS TO ITS ENVIRONMENTAL SURCHARGE TARIFF, FOR
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND FOR
AUTHORITY TO ESTABLISH A REGULATORY ACCOUNT**

CASE NO. 2012-00063


VERIFICATION

I, Robert W. Berry, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.


Robert W. Berry

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

3rd SUBSCRIBED AND SWORN TO before me by Robert W. Berry on this the
day of July, 2012.


Notary Public, Ky. State at Large
My Commission Expires _____

Notary Public, Kentucky State-At-Large
My Commission Expires: July 3, 2014
ID 421951

BIG RIVERS ELECTRIC CORPORATION

**THE APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR
APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN AND
REVISIONS TO ITS ENVIRONMENTAL SURCHARGE TARIFF, FOR
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND FOR
AUTHORITY TO ESTABLISH A REGULATORY ACCOUNT**

CASE NO. 2012-00063

VERIFICATION


I, David G. Crockett, verify, state, and affirm that I prepared or supervised the preparation of my data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



David G. Crockett

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by David G. Crockett on this the 3rd day of July, 2012.



Notary Public, Ky. State at Large
My Commission Expires 1-12-13

BIG RIVERS ELECTRIC CORPORATION

THE APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR
APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN AND
REVISIONS TO ITS ENVIRONMENTAL SURCHARGE TARIFF, FOR
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND FOR
AUTHORITY TO ESTABLISH A REGULATORY ACCOUNT

CASE NO. 2012-00063


VERIFICATION

I, Mark A. Hite, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.


Mark A. Hite

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Mark A. Hite on this the 3rd
day of July, 2012.


Notary Public, Ky. State at Large
My Commission Expires 1-12-13

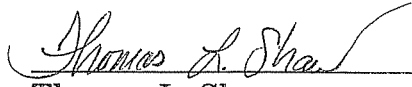
BIG RIVERS ELECTRIC CORPORATION

THE APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR
APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN AND
REVISIONS TO ITS ENVIRONMENTAL SURCHARGE TARIFF, FOR
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND FOR
AUTHORITY TO ESTABLISH A REGULATORY ACCOUNT

CASE NO. 2012-00063

VERIFICATION

I, Thomas L. Shaw, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Thomas L. Shaw

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Thomas L. Shaw on this the
3rd day of July, 2012.



Notary Public, Ky. State at Large
My Commission Expires 1-12-13

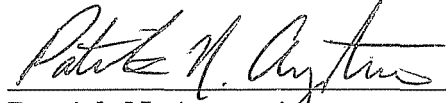
BIG RIVERS ELECTRIC CORPORATION

**THE APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR
APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN AND
REVISIONS TO ITS ENVIRONMENTAL SURCHARGE TARIFF, FOR
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND FOR
AUTHORITY TO ESTABLISH A REGULATORY ACCOUNT**

CASE NO. 2012-00063


VERIFICATION

I, Patrick N. Augustine, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.


Patrick N. Augustine

COMMONWEALTH OF VIRGINIA)
COUNTY OF FAIRFAX)

SUBSCRIBED AND SWORN TO before me by Patrick N. Augustine on this
the 2 day of July, 2012.


Notary Public, Commonwealth of
Virginia
My Commission Expires June 30, 2013
7251149

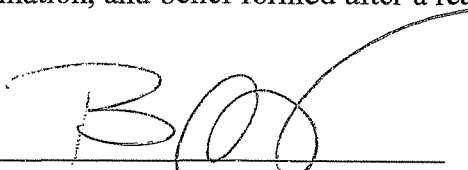
BIG RIVERS ELECTRIC CORPORATION

THE APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN AND REVISIONS TO ITS ENVIRONMENTAL SURCHARGE TARIFF, FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND FOR AUTHORITY TO ESTABLISH A REGULATORY ACCOUNT

CASE NO. 2012-00063

VERIFICATION

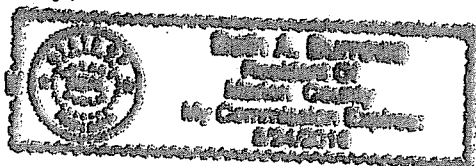
I, Brian J. Azman, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.




Brian J. Azman

STATE OF INDIANA)
)
COUNTY OF HAMILTON)

SUBSCRIBED AND SWORN TO before me by Brian J. Azman on this the 2nd day of July, 2012.





Beth A. Burrows, Notary Public

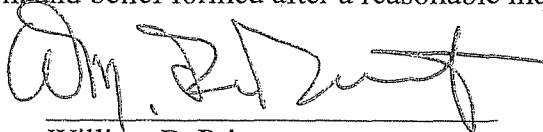
BIG RIVERS ELECTRIC CORPORATION

THE APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN AND REVISIONS TO ITS ENVIRONMENTAL SURCHARGE TARIFF, FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND FOR AUTHORITY TO ESTABLISH A REGULATORY ACCOUNT

CASE NO. 2012-00063

VERIFICATION

I, William DePriest, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



William DePriest

STATE OF ILLINOIS)
COUNTY OF COOK)

SUBSCRIBED AND SWORN TO before me by William DePriest on this the 28th day of June ^(7/5) ~~July~~, 2012.



Notary Public,
State of Illinois
My Commission Expires 5/4/2015


BIG RIVERS ELECTRIC CORPORATION

**THE APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR
APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN AND
REVISIONS TO ITS ENVIRONMENTAL SURCHARGE TARIFF, FOR
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND FOR
AUTHORITY TO ESTABLISH A REGULATORY ACCOUNT**

CASE NO. 2012-00063

VERIFICATION


I, John Wolfram, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



John Wolfram

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by John Wolfram on this the 3rd
day of July, 2012.



Notary Public, Ky. State at Large
My Commission Expires 1-12-13



BIG RIVERS ELECTRIC CORPORATION

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN,
FOR APPROVAL OF ITS AMENDED ENVIRONMENTAL COST
RECOVERY SURCHARGE TARIFF, FOR CERTIFICATES OF PUBLIC
CONVENIENCE AND NECESSITY, AND FOR AUTHORITY TO
ESTABLISH A REGULATORY ACCOUNT
CASE NO. 2012-00063

Response to the Office of the Attorney General's
Second Request for Information
Dated June 21, 2012

July 6, 2012

1 Item 1) *Reference BREC's response to AG DR 1-1, wherein BREC was*
2 *asked to provide "the actual, average usage for BREC's rural class of*
3 *customers for the past five years" [emphasis added]. Provide the amount*
4 *of energy consumed by the average rural customer of the three member*
5 *rural electric cooperatives ("coops"). (Note that the question did not ask*
6 *to provide this information with regard to the average of the three coops'*
7 *kwh sales.)*

8

9 **Response)** Please see the attached table. Big Rivers does not have the data
10 necessary to calculate the average level of consumption for each retail rate class of
11 Big Rivers' three wholesale members. Please see Big Rivers' response to Item 22
12 of these responses.

13

14

15 **Witness)** Mark A. Hite

16

Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Rurals
For the Years 2007 - 2011

		kWh										Average Annual Usage
		2007	% Yrly Usage	2008	% Yrly Usage	2009	% Yrly Usage	2010	% Yrly Usage	2011	% Yrly Usage	
Jackson Purchase Energy Corporation												
Yearly Usage		695,662,146	28.9%	691,948,270	29.0%	639,603,159	28.6%	701,840,419	28.3%	676,059,720	28.5%	681,022,743
Average Monthly Usage		57,971,846		57,662,356		53,300,263		58,486,702		56,338,310		
Kenergy Corp.												
Yearly Usage		1,235,848,654	51.4%	1,218,627,832	51.0%	1,144,106,864	51.0%	1,270,263,388	51.2%	1,214,794,683	51.2%	1,216,728,284
Average Monthly Usage		102,987,388		101,552,319		95,342,239		105,855,282		101,232,890		
Meade County Rural Electric Cooperative Corporation												
Yearly Usage		474,935,520	19.7%	476,339,850	20.0%	455,734,839	20.4%	509,286,126	20.5%	480,251,350	20.3%	479,309,537
Average Monthly Usage		39,577,960		39,694,988		37,977,903		42,440,511		40,020,946		
Total Rurals												
Yearly Usage		2,406,446,320	100.0%	2,386,915,952	100.0%	2,239,444,862	100.0%	2,481,389,933	100.0%	2,371,105,753	100.0%	2,377,060,564
Average Monthly Usage		200,537,194		198,909,663		186,620,405		206,782,495		197,592,146		

BIG RIVERS ELECTRIC CORPORATION

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN,
FOR APPROVAL OF ITS AMENDED ENVIRONMENTAL COST
RECOVERY SURCHARGE TARIFF, FOR CERTIFICATES OF PUBLIC
CONVENIENCE AND NECESSITY, AND FOR AUTHORITY TO
ESTABLISH A REGULATORY ACCOUNT
CASE NO. 2012-00063

Response to the Office of the Attorney General's
Second Request for Information
Dated June 21, 2012

July 6, 2012

1 Item 2) *Reference BREC's response to AG DR 1-2, wherein BREC was*
2 *asked to provide "the actual, average monthly usage for BREC's industrial*
3 *class of customers for the past five years" [emphasis added]. Provide the*
4 *amount of energy consumed by the average industrial customer of the*
5 *three member coops (Note that the question did not ask to provide this*
6 *information with regard to the average of the three coops' kwh sales.)*

7

8 **Response)** Please see the attached schedule. Big Rivers does not have the data
9 necessary to calculate the average level of consumption for each retail rate class of
10 Big Rivers' three wholesale members. Please see Big Rivers' response to Item 22
11 of these responses.

12

13 **Witness)** Mark A. Hite

14

Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Large Industrials

		2007			2008			2009		
		Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	
Jackson Purchase Energy Corporation (Jackson Purchase)	Yearly Usage	23,253,280	2.5%	19,927,410	2.2%	15,170,795	1.6%			
	Average Monthly Usage	1,937,773		1,660,618		1,264,233				
Kenergy Corp										
Accuride	Yearly Usage	27,297,920	3.0%	24,864,500	2.7%	20,254,312	2.2%			
	Average Monthly Usage	2,274,827		2,072,042		1,687,859				
Alcoa	Yearly Usage	975,280	0.1%	1,603,718	0.2%	1,078,220	0.1%			
	Average Monthly Usage	81,273		133,643		89,852				
Aleris	Yearly Usage	186,104,170	20.2%	180,960,030	19.5%	156,145,081	17.0%			
	Average Monthly Usage	15,508,681		15,080,003		13,012,090				
Allied	Yearly Usage	25,540,140	2.8%	27,187,350	2.9%	28,805,152	3.1%			
	Average Monthly Usage	2,128,345		2,265,613		2,400,429				

**Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Large Industrials**

	2010		2011		Average Annual Usage
	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	
	Jackson Purchase Energy Corporation (Jackson Purchase)				
Yearly Usage	14,840,907	1.6%	7,704,116	0.8%	16,179,302
Average Monthly Usage	1,236,742		642,010		
Kenergy Corp					
Yearly Usage	22,751,260	2.4%	26,429,173	2.7%	24,319,433
Average Monthly Usage	1,895,938		2,202,431		
Yearly Usage	1,032,110	0.1%	1,246,442	0.1%	1,187,154
Average Monthly Usage	86,009		103,870		
Yearly Usage	178,901,780	19.2%	173,258,886	17.8%	175,073,989
Average Monthly Usage	14,908,482		14,438,241		
Yearly Usage	31,853,674	3.4%	35,878,745	3.7%	29,853,012
Average Monthly Usage	2,654,473		2,989,895		

Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Large Industrials

	2007		2008		2009	
	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage
Armstrong Big Run	2,194,720	0.2%	6,910,485	0.7%	8,495,440	0.9%
Average Monthly Usage	182,893		575,874		707,953	
Armstrong Dock	0		0		1,809,364	0.2%
Average Monthly Usage	0		0		150,780	
Armstrong Equality	0		0		0	
Average Monthly Usage	0		0		0	
Armstrong Lewis	0		0		0	
Average Monthly Usage	0		0		0	
Armstrong Midway	8,749	0.0%	9,521,552	1.0%	21,674,223	2.4%
Average Monthly Usage	8,749		793,463		1,806,185	

Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Large Industrials

	2010			2011			Average Annual Usage
	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	Yearly Usage		
Armstrong Big Run	Yearly Usage 9,516,780 Average Monthly Usage 793,065	1.0%	6,487,774	0.7%	6,721,040		
Armstrong Dock	Yearly Usage 9,855,169 Average Monthly Usage 821,264	1.1%	21,070,961	2.2%	10,911,831		
Armstrong Equality	Yearly Usage 3,367,731 Average Monthly Usage 336,773	0.4%	14,969,904	1.5%	9,168,818		
Armstrong Lewis	Yearly Usage 0 Average Monthly Usage 0		2,040,060	0.2%	2,040,060		
Armstrong Midway	Yearly Usage 20,235,430 Average Monthly Usage 1,686,286	2.2%	21,135,753	2.2%	14,515,141		

Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Large Industrials

	2007			2008			2009		
	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	
Cardinal River	Yearly Usage	1,771,410	0.2%	31,910	0.0%	0	0.0%		
	Average Monthly Usage	147,618		5,318		0			
Domtar	Yearly Usage	210,306,682	22.8%	216,131,648	23.3%	228,248,780	24.8%		
	Average Monthly Usage	17,525,557		18,010,971		19,020,732			
Dotiki	Yearly Usage	5,786,440	0.6%	5,995,047	0.6%	6,347,075	0.7%		
	Average Monthly Usage	482,203		499,587		528,923			
Dyson Creek	Yearly Usage	196,150	0.0%	262,080	0.0%	0	0.0%		
	Average Monthly Usage	16,346		23,825		0			
Hopkins Co Coal	Yearly Usage	2,333,581	0.3%	2,298,525	0.2%	2,032,740	0.2%		
	Average Monthly Usage	194,465		191,544		169,395			

Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Large Industrials

	2010			2011			Average Annual Usage
	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	Average Annual Usage		
						Yearly Usage	
Cardinal River	Yearly Usage Average Monthly Usage	0 0	0.0% 0	0 0	0.0% 0	901,660	
Domtar	Yearly Usage Average Monthly Usage	171,048,705 14,254,059	18.4% 18.4%	176,834,939 14,736,245	18.2% 18.2%	200,514,151	
Dotiki	Yearly Usage Average Monthly Usage	6,540,650 545,054	0.7% 0.7%	6,662,569 555,214	0.7% 0.7%	6,266,356	
Dyson Creek	Yearly Usage Average Monthly Usage	0 0	0.0% 0.0%	0 0	0.0% 0.0%	229,115	
Hopkins Co Coal	Yearly Usage Average Monthly Usage	2,079,680 173,307	0.2% 0.2%	1,847,750 153,979	0.2% 0.2%	2,118,455	

Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Large Industrials

	2007		2008		2009	
	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage
K B Alloys	Yearly Usage	8,514,880	7,470,320	0.8%	5,861,142	0.6%
	Average Monthly Usage	709,573	622,527		488,429	
Kimberly Clark	Yearly Usage	292,951,470	296,171,240	31.8%	298,824,660	32.5%
	Average Monthly Usage	24,412,623	24,680,937		24,902,055	
KMMC, LLc	Yearly Usage	14,080,000	2,410,571	1.5%	637,724	0.1%
	Average Monthly Usage	1,173,333	200,881		53,144	
Patriot Coal	Yearly Usage	24,689,850	27,160,854	2.7%	25,108,078	2.7%
	Average Monthly Usage	2,057,488	2,263,405		2,092,340	
Roll Coater	Yearly Usage	22,299,530	21,118,473	2.4%	7,013,020	0.8%
	Average Monthly Usage	1,858,294	1,759,873		584,418	

Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Large Industrials

	2010			2011			Average Annual Usage
	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	Average Annual Usage		
						Yearly Usage	
K B Alloys	Yearly Usage	7,087,310	0.8%	8,327,280	0.9%	7,452,186	
	Average Monthly Usage	590,609		693,940			
Kimberly Clark	Yearly Usage	299,883,224	32.2%	295,838,550	30.4%	296,733,829	
	Average Monthly Usage	24,990,269		24,653,213			
KMMC, LLC	Yearly Usage	650,990	0.1%	673,170	0.1%	3,690,491	
	Average Monthly Usage	54,249		56,098			
Patriot Coal	Yearly Usage	25,844,470	2.8%	26,007,165	2.7%	25,762,083	
	Average Monthly Usage	2,153,706		2,167,264			
Roll Coater	Yearly Usage	5,954,210	0.6%	17,668,150	1.8%	14,810,677	
	Average Monthly Usage	496,184		1,472,346			

Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Large Industrials

	2007		2008		2009	
	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage
Southwire	0		0		18,260,283	2.0%
Average Monthly Usage	0		0		3,043,381	
Tyson Foods	64,177,450	7.0%	66,301,476	7.2%	64,027,347	7.0%
Average Monthly Usage	5,348,121		5,525,123		5,335,612	
Valley Grain	8,876,912	1.0%	9,465,906	1.0%	9,793,648	1.1%
Average Monthly Usage	739,743		788,826		816,137	
Subtotal - Kenergy Corp.	898,105,334	100.0%	905,865,685	100.0%	904,416,289	100.0%
<hr/>						
Meade County Rural Electric Cooperative Corporation (MCRECC)						
	0		0		0	
<hr/>						
Total Yearly Usage - Jackson Purchase, Kenergy Corp, and MCRECC. Industrials	921,358,614		925,793,095		919,587,084	

Big Rivers Electric Corporation
Case No. 2012-00063
Historical Average kWh Usage - Large Industrials

	2010		2011		Average Annual Usage
	Yearly Usage	% of Total Yearly Usage	Yearly Usage	% of Total Yearly Usage	
Yearly Usage	43,700,414	4.7%	49,143,120	5.1%	37,034,606
Average Monthly Usage	3,641,701		4,095,260		
Yearly Usage	64,322,440	6.9%	67,771,607	7.0%	65,320,064
Average Monthly Usage	5,360,203		5,647,634		
Yearly Usage	10,701,040	1.2%	12,097,121	1.2%	10,186,925
Average Monthly Usage	891,753		1,008,093		
Subtotal - Kenergy Corp.	915,327,067	100.0%	965,389,119	100.0%	
Meade County Rural Electric Cooperative Corporation (MCRECC)					
	0		0		
Total Yearly Usage - Jackson Purchase, Kenergy Corp, and MCRECC, Industrials	930,167,974		973,093,235		934,000,000

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1 **Item 3)** *Reference BREC's response to AG DR 1-5. Provide the chart*
2 *which was requested.*

3

4 **Response)** Big Rivers did not provide the chart that was requested because it is
5 not possible to determine the data required to produce the requested chart.

6 Because Big Rivers purchases all of the energy needed to meet its load each hour
7 from the MISO wholesale energy market, it is not possible to specifically

8 determine the volume and price of any power purchased in order to replace

9 generation from a specific generating unit. Also, please see Big Rivers' response
10 to Item 11 of the Sierra Club's Second Request for Information.

11

12

13 **Witness)** Robert W. Berry

14

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1 **Item 4)** *Reference BREC's response to AG DR 1-7.*

2

3 *a. BREC failed to state whether the total costs of the \$49.185*
4 *million in gross plant retirement for the Wilson scrubber*
5 *is included in the total costs which are the subject of the*
6 *instant filing. If so, identify exactly and precisely where*
7 *such an entry can be located in the filing materials.*

8 *b. With regard to BREC's response to subpart (a) of this*
9 *question, BREC failed to provide the chart requested, and*
10 *instead stated only "not applicable," without stating why*
11 *such a chart is not applicable. Provide the chart and a*
12 *complete explanation.*

13

14 **Response)**

15 a. The partial retirement of the existing Wilson scrubber,
16 representing \$49.185 million of gross utility plant, is not
17 included in the \$283.49 million that corresponds to Big Rivers'
18 share of the 2012 Environmental Compliance Plan capital
19 projects. Noting that depreciation expense on the existing
20 Wilson scrubber is currently in base rates, Big Rivers plans to
21 reflect the reduction in depreciation expense resulting from this
22 retirement in its Environmental Surcharge. An entry to reflect

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this partial retirement of the existing Wilson scrubber, and the associated reduction in depreciation expense, can be found in cell AI 43 on the ECP tab of the "Build Case" financial model (\$49.185 million X 2.28% = \$1.12 million).

- b. Other than the reduction in depreciation expense associated with the partial retirement of the existing Wilson scrubber that Big Rivers plans to flow through the Environmental Surcharge, as described in a. above, there will be no effect on member rates resulting from the retirement of the Wilson scrubber assets. In accordance with Rural Utilities Service ("RUS") accounting requirements, any loss on retirement is recorded in accumulated depreciation to be addressed in Big Rivers' next depreciation study.

Witness) Mark A. Hite

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- 1 Item 5) *Reference BREC's response to AG DR 1-13 and Hite Testimony,*
2 *Section V. Has BREC consulted with Goldman Sachs and its bond*
3 *counsel, Orrick Herrington & Sutcliffe LLP concerning the opportunities*
4 *available for public financing, including qualified private activity bonds*
5 *pursuant to Internal Revenue Code Section 142(a)(6)?*
6
7 a. *If the answer is in the affirmative, please provide all*
8 *records and related communication concerning the*
9 *analysis of the opportunity for using tax-exempt, qualified*
10 *private activity bonds under Kentucky's 2012 calendar*
11 *year volume cap allocation for private activity bonds. If*
12 *no, why not?*
13 b. *Would BREC consider evaluating whether it could obtain*
14 *financing at a favorable interest rate using tax-exempt*
15 *qualified private activity bonds? If not, why not?*
16 c. *Has BREC or their representative contacted the Finance*
17 *Cabinet about the availability of private activity volume*
18 *cap for qualifying portions of the project? If yes, please*
19 *discuss. If not, why not?*
20
21
22

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1 **Response)** Yes, on a preliminary basis.

2

3 a. The preliminary conclusion is that up to an estimated 15 to 20%
4 of Big Rivers' projected capital cost associated with the 2012
5 Environmental Compliance Plan ("2012 ECP") (\$42.52 to \$56.70
6 million of the \$283.49 million) may constitute property eligible
7 for qualified private activity bond financing under IRC Section
8 142(a), mostly in the solid waste exempt facility category.

9 However, as the individual Big Rivers' 2012 ECP project scopes
10 are not yet clearly defined, and due to the Wilson scrubber
11 project being a partial replacement of the existing Wilson
12 scrubber, it is premature to reach a definitive conclusion (*i.e.*,
13 perform the functional tests), and therefore too early to file the
14 declaration of official intent under Kentucky's volume cap
15 allocation for qualified private activity bonds. No documents
16 regarding the preliminary analysis of or opportunity for eligible
17 tax exempt financing for Big Rivers' 2012 ECP exists. At the
18 appropriate time, Big Rivers intends to further analyze this
19 matter.

20 b. Yes. Note Big Rivers' intent to seek an RUS-guaranteed Federal
21 Financing Bank ("FFB") loan for permanent financing of its

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1 2012 ECP, which currently is likely to be lower cost than tax
2 exempt financing.
3 c. No. For the reasons noted in part a. above, Big Rivers has
4 determined it is premature to contact the Finance Cabinet,
5 preferring to do so once the projects are well defined and
6 detailed analysis is completed.
7
8
9 **Witness)** Mark A. Hite
10

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1 Item 6) *If BREC should attempt to obtain forms of secured financing*
2 *other than through the RUS (e.g., through private placement and public*
3 *capital debt markets, or industry lenders such as CoBank and ACB) would*
4 *it first be required to obtain a lien accommodation from the RUS?*

5
6 a. *If the response is "yes," please provide an estimate of how*
7 *long it would take to obtain such a lien accommodation,*
8 *and any and all other requirements BREC would have to*
9 *meet in order to qualify for the accommodation.*

10
11 **Response)** No. Big Rivers issues all secured financing under its Indenture,
12 dated as of July 1, 2009, wherein U.S. Bank National Association is the Trustee.
13 Accordingly, no RUS lien accommodation is necessary for Big Rivers to issue
14 secured debt.

15
16 a. Not applicable.

17
18
19 **Witness)** Mark A. Hite
20

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1 **Item 7)** *Has BREC considered the option of obtaining a trust*
2 *indenture to finance its ECR costs, similar to that set forth in EKPC's*
3 *application in Case No. 2012-00249?*

4

5 **Response)** Please see Big Rivers response to Item 6 of the Office of the Attorney
6 General's Second Request for Information.

7

8

9 **Witness)** Mark A. Hite

10

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1 **Item 8)** *Reference BREC's response to AG DR 1-14 and 1-21. Please*
2 *provide a copy of the Request for Proposal (RFP) for the Wilson FGD*
3 *replacement project.*

4

5 **Response)** On June 15, 2012, Big Rivers verbally authorized Burns and
6 McDonnell to begin work on developing the specifications for the replacement
7 FGD at the Wilson plant. Big Rivers anticipates the actual RFP for the
8 replacement FGD at the Wilson plant will be completed around October 2012.

9

10

11 **Witness)** Robert W. Berry

12

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1 **Item 9)** *Reference BREC's response to AG DR 1-18. BREC was asked, to*
2 *provide a detailed breakdown of, inter alia, "other costs, identifying fully*
3 *the nature of such other costs." No such description was provided.*
4 *Provide a complete description and detailed breakdown of such costs.*

5

6 **Response)** Please see the attached schedule, which details the breakdown of
7 environmental surcharge costs among the following categories:

8

- 9 a. O&M costs;
10 b. Property taxes;
11 c. Property insurance;
12 d. Depreciation expense;
13 e. "other costs".

14

15 The nature and description of the "other costs" category are noted on the schedule,
16 derived from the associated ACES Power Marketing ("APM") planning model
17 titled "Big Rivers 2012-2026 (CSAPR-MATS by equip) sens 2 exhibits determin
18 Rev 1 (2-12-12).xlsx," previously provided in this case.

19

20

21 **Witness)** Mark A. Hite

22

Big Rivers Electric Corporation
Case No. 2012-00063
Breakdown of Environmental Surcharge Costs
(Millions)

Cost Categories	2012	2013	2014	2015	2016
a. O&M costs [labor and regulatory asset amortization]	\$ -	\$ 0.25	\$ 0.25	\$ 0.45	\$ 0.40
b. Property Taxes	-	-	-	0.00	0.15
c. Property insurance	-	-	0.00	0.18	0.54
d. Depreciation Expense [includes RORB]	-	-	0.11	9.13	26.09
e. "other costs"[see Note below]	29.10	33.19	39.40	40.56	52.96
	\$ 29.10	\$ 33.44	\$ 39.76	\$ 50.31	\$ 80.15

Note: "other costs" are the SO₂, NO_x, SO₃ and Hg variable costs, derived from the ACES production cost model output, consisting of allowance expense, ash and other waste disposal expense, and various SO₂, NO_x and SO₃ reagents, including lime, limestone, sodium bisulfite, diatomic sulfur, ammonia, hydrated lime, activated carbon, dry sorbent.

Big Rivers Electric Corporation
Case No. 2012-00063
Breakdown of Environmental Surcharge Costs
(Millions)

Cost Categories	2017	2018	2019	2020	2021
a. O&M costs [labor and regulatory asset amortization]	\$ 0.42	\$ 0.43	\$ 0.44	\$ 0.45	\$ 0.47
b. Property Taxes	0.44	0.43	0.42	0.41	0.40
c. Property insurance	0.56	0.58	0.59	0.61	0.63
d. Depreciation Expense [includes RORB]	25.63	25.16	24.70	24.23	23.77
e. "other costs"[see Note below]	58.15	58.09	64.81	64.46	68.54
	\$ 85.20	\$ 84.70	\$ 90.97	\$ 90.17	\$ 93.80

Note: "other costs" are the SO₂, NO_x, SO₃ and Hg variable costs, derived from the ACES production cost model output, consisting of allowance expense, ash and other waste disposal expense, and various SO₂, NO_x and SO₃ reagents, including lime, limestone, sodium bisulfite, diabasic acid, sulfur, ammonia, hydrated lime, activated carbon, dry sorbent.

Big Rivers Electric Corporation
Case No. 2012-00063
Breakdown of Environmental Surcharge Costs
(Millions)

Cost Categories	2022	2023	2024	2025	2026
a. O&M costs [labor and regulatory asset amortization]	\$ 0.48	\$ 0.50	\$ 0.51	\$ 0.53	\$ 0.54
b. Property Taxes	0.39	0.38	0.37	0.36	0.35
c. Property insurance	0.65	0.67	0.69	0.71	0.73
d. Depreciation Expense [includes RORB]	23.30	22.84	22.37	21.91	21.45
e. "other costs"[see Note below]	68.94	73.88	73.68	80.57	76.78
	<u>\$ 93.77</u>	<u>\$ 98.27</u>	<u>\$ 97.63</u>	<u>\$ 104.08</u>	<u>\$ 99.85</u>

Note: "other costs" are the SO₂, NO_x, SO₃ and Hg variable costs, derived from the ACES production cost model output, consisting of allowance expense, ash and other waste disposal expense, and various SO₂, NO_x and SO₃ reagents, including lime, limestone, sodium bisulfite, diabasic acid, sulfur, ammonia, hydrated lime, activated carbon, dry sorbent.

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1 **Item 10)** *Reference BREC's response to AG DR 1-26. State who will be*
2 *responsible for providing notice to retail ratepayers: BREC, or the member*
3 *coops?*

4

5 *a. Provide copies of the notice that will be provided to retail*
6 *rural class customers.*

7 *b. How will any such notice referenced in subpart (a), above,*
8 *be provided? If necessary, provide a complete list of any*
9 *and all media outlets who will publish any such notice.*

10 *c. AG DR 1-26 asked the company to identify where in the*
11 *notice to ratepayers the actual dollar amount was listed.*
12 *The question did not ask for how the amounts could be*
13 *calculated. Respond to the question.*

14

15 **Response)** When Big Rivers' members adjust their rates, they are responsible
16 for providing any required notices to their customers/members.

17

18 *a. Not applicable, see above.*

19 *b. Not applicable, see above.*

20 *c. Exhibit Wolfram-6, which was part of the notice provided by Big*
21 *Rivers to its three member distribution cooperatives, shows the*
22 *estimated rates in \$/MWH and the increase in percent for each*

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1 of Big Rivers' rate classes. Also, please see the response to Item
2 22 of these responses.

3

4

5 **Witness)** John Wolfram

6

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1 **Item 11)** *Reference the response to AG 1-33, the Fitch Ratings rating*
2 *report dated June, 2011. Confirm that this report indicates that a rating*
3 *action could be triggered by EPA regulations.*

4

5 **Response)** Confirmed.

6

7

8 **Witness)** Mark A. Hite

9

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1 *Item 12) Reference the Fitch Rating Report attached to BREC's*
2 *response to AG 1-33, p. 7. Confirm that the report states: "Big Rivers*
3 *estimates that full compliance with the regulations could require*
4 *expenditures of \$785 million by 2015, and increase wholesale rates and*
5 *member retail rates by 39% and 20%, respectively."*

6

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11 **Response) Confirmed.**

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a. *Please explain what caused the company to change the
above referenced cost estimate of achieving compliance to
the cost estimate which is set forth in the instant filing.*

a. The information in the Fitch Rating Report was based on an
October 28, 2010 presentation to the Kentucky Public Service
Commission. It included Big Rivers' internal estimates at that
time for compliance with the prospective CATR and HAPS
MACT regulations.

Big Rivers' Environmental Compliance Plan ("ECP") filing's
estimates were based on the CSAPR and MATS regulations that
had been issued in final version, and did not include any costs
for future regulations. In addition, the cost estimates contained
in the instant filing were prepared by an experienced

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1 engineering firm with significant expertise in developing capital
2 cost estimates.

3 Detailed line-item explanations for the differences are
4 shown in the table on the following page.

5

Explanation of Differences (All Dollars in Millions)			
	Big Rivers ECP Filing	July 14, 2011 E-mail	Explanation
CATR		\$138.0	\$30M to convert Green 1 and 2 to natural gas; \$108M to add SCR at Green 1 and 2; No FGD retrofit at Wilson
CSAPR	\$225.0		
HAPS/ MACT		\$410.0	\$338M-\$846M range (\$200 - \$500/kW); Includes baghouses everywhere
MATS	\$58.0		
CCR	0.0	\$237.0	Landfill \$152M; Dry bottom ash \$55M; Dry fly ash \$30M
GHG	0.0	0.0	
Total	\$238.0	\$785.0	

6

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1 **Witness)** Robert W. Berry
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1 **Item 13)** *Reference BREC's response to AG 1-44 (a) and (b), wherein*
2 *BREC states that in 2018, the rural class should experience an increase of*
3 *approximately 6.9%. Provide this figure in terms of actual dollars for the*
4 *monthly bill of the average rural customer for each of the three members.*

5

6 **Response)** Please see Big Rivers' response to Item 22 of these responses. The
7 calculation pertains to the year 2016, but the amount should not materially differ
8 for 2018.

9

10

11 **Witness)** John Wolfram

12

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1 **Item 14)** *Reference BREC's response to AG 1-46, Update to BREC's*
2 *Board, dated February 21, 2012, p. 7. Explain under what circumstances,*
3 *and when, BREC will seek the increase in base rates as set forth in this*
4 *slide.*

5

6 **Response)** Page 7 of the referenced February 21, 2012, presentation to Big
7 Rivers' Board of Directors does not set forth a base rate increase. Rather, page 7
8 sets forth "*estimated percent rate increase from each rate class resulting from*
9 *CSAPR and MATS*" that Big Rivers will recover via the Environmental Surcharge
10 tariff rider as a result of the 2012 Environmental Compliance Plan. As also noted
11 on page 7, "*[T]o the extent the off-system increment isn't realized, the non-smelter*
12 *and smelter rate classes would be required to make up the shortfall*" via a base rate
13 increase. The converse also holds true (*i.e.*, an off-system sales margin surplus
14 could result in a base rate decrease).

15

16

17 **Witness)** Mark A. Hite

18

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN,
FOR APPROVAL OF ITS AMENDED ENVIRONMENTAL COST
RECOVERY SURCHARGE TARIFF, FOR CERTIFICATES OF PUBLIC
CONVENIENCE AND NECESSITY, AND FOR AUTHORITY TO
ESTABLISH A REGULATORY ACCOUNT
CASE NO. 2012-00063**

**Response to the Office of the Attorney General's
Second Request for Information
Dated June 21, 2012**

July 6, 2012

1 *Item 15) Reference BREC's response to AG 1-46, "Environmental*
2 *Compliance Update to Big Rivers Board" at p. 5, wherein a chart indicates*
3 *"Overall CSAPR & MATS Capital Expense" total of \$213.5 million and at*
4 *p. 6, wherein a chart indicates "Overall CSAPR & MATS O & M Expense"*
5 *of \$10.18 million. Reconcile the above-referenced estimates with the*
6 *figures set forth in BREC's application.*

7
8 **Response)** The estimates in the January 2012 board presentation represented
9 high-level order-of-magnitude estimates developed by Big Rivers' personnel to
10 indicate the level of expenditures facing Big Rivers in complying with the Cross
11 State Air Pollution Rule ("CSAPR") and the Mercury and Air Toxics Standard
12 ("MATS"). The estimates in the February 2012 board presentation represent the
13 results of the S&L study which is provided as Exhibit DePriest-2 in the direct
14 testimony of William DePriest. Please see Big Rivers' response to Item 21 of the
15 Kentucky Industrial Utility Customer's Second Request for Information for a
16 reconciliation of capital expenditures.

17 Regarding O&M expenses, the 2012 ECP filing contains expenses
18 related to Dry Sorbent Injection Systems that are not included in the January
19 2012 presentation.

20
21
22 **Witness)** Robert W. Berry

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
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ESTABLISH A REGULATORY ACCOUNT
CASE NO. 2012-00063**

**Response to the Office of the Attorney General's
Second Request for Information
Dated June 21, 2012**

July 6, 2012

1 **Item 16)** *Reference BREC's response to AG 1-46, "Big Rivers Letter to*
2 *Rural Utilities Service" at p. 2, wherein it is stated: "We are unclear about*
3 *whether the term 'generating facilities' includes pollution control*
4 *equipment added to existing generating facilities." Has RUS responded to*
5 *this query? If yes, please provide the responsive communication or*
6 *identify where it has been provided in response to initial requests for*
7 *information.*

8

9 **Response)** No.

10

11

12 **Witness)** Mark A. Hite

13

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN,
FOR APPROVAL OF ITS AMENDED ENVIRONMENTAL COST
RECOVERY SURCHARGE TARIFF, FOR CERTIFICATES OF PUBLIC
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ESTABLISH A REGULATORY ACCOUNT
CASE NO. 2012-00063**

**Response to the Office of the Attorney General's
Second Request for Information
Dated June 21, 2012**

July 6, 2012

1 **Item 17)** *Reference BREC's response to AG 1-64, attachment 1 (letter*
2 *from Mark Hite dated March 6, 2012). At page 2 of this letter, Mr. Hite*
3 *states, "We understand that qualifying for RUS loan funds requires*
4 *compliance with a number of requirements, including compliance with*
5 *the National Environmental Policy Act."*

6

7 *a. Please describe the requirements referenced in Mr. Hite's*
8 *letter, with which BREC will need to comply in order to*
9 *qualify for RUS loans.*

10 *b. If BREC is still learning what these requirements will be,*
11 *does it agree to promptly supplement its response hereto*
12 *in order to provide this information to the Commission*
13 *and to the parties?*

14

15 **Response)**

16 *a. Please see the attachment entitled "Financing Document Loan*
17 *Application Package," pages 7 through 47 of 47, of Big Rivers'*
18 *response to Item 64 of the Office of the Attorney General's*
19 *Initial Requests for Information. The National Environmental*
20 *Policy Act requirements are attached hereto.*

21 *b. Please see the response to Item 17a., above.*

**Case No. 2012-00063
Response to AG 2-17**

**Witnesses: Mark A. Hite (a. [RUS Loan Package only] and b.) and
Thomas L. Shaw (a. [NEPA requirements only])**

Page 1 of 2

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN,
FOR APPROVAL OF ITS AMENDED ENVIRONMENTAL COST
RECOVERY SURCHARGE TARIFF, FOR CERTIFICATES OF PUBLIC
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ESTABLISH A REGULATORY ACCOUNT
CASE NO. 2012-00063**

**Response to the Office of the Attorney General's
Second Request for Information
Dated June 21, 2012**

July 6, 2012

1 **Witnesses)** Mark A. Hite (a. [RUS Loan Package only] and b.) and
2 Thomas L. Shaw (a. [NEPA requirements only])
3

**AG 2-17 - National Environmental Policy Act Requirements for RUS Loans –
RUS Bulletin 1794A-602 – March 2008**

RUS Bulletin 1794A-602

March 2008

Version 1.2

**GUIDE FOR PREPARING
THE ENVIRONMENTAL REPORT
FOR WATER AND ENVIRONMENTAL
PROGRAM PROPOSALS**

**ENGINEERING AND ENVIRONMENTAL STAFF
RURAL UTILITIES SERVICE
U.S. DEPARTMENT OF AGRICULTURE**

The most current version of this document can be downloaded from the environmental section of <http://www.usda.gov/rus/water/ees/index.htm>.

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Abbreviations and Acronyms

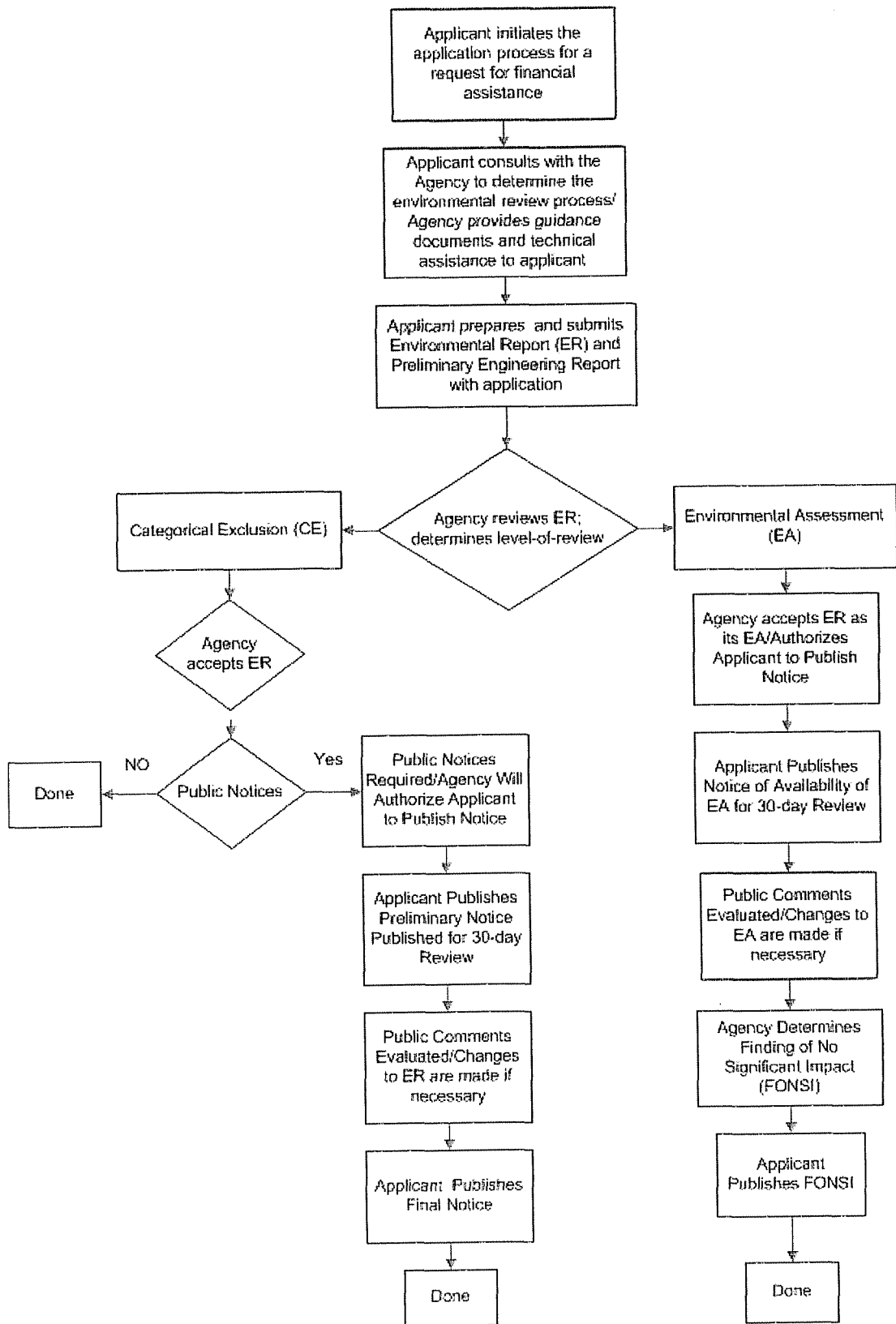
Selected Abbreviations and Acronyms			
ACHP	Advisory Council on Historic Preservation	HUD	U.S. Department of Housing and Urban Development
BACT	Best Available Control Technology	NEPA	National Environmental Policy Act
BIA	Bureau of Indian Affairs	NHPA	National Historic Preservation Act
BLM	Bureau of Land Management	NMFS	National Marine Fisheries Service
CBRS	Coastal Barrier Resources System	NOAA	National Oceanic and Atmospheric Administration
CD	Compact Disk	NPDES	National Pollutant Discharge Elimination System
CE	Categorical Exclusion	NPS	National Park Service
CEQ	Council on Environmental Quality	NRCS	Natural Resources Conservation Service
CFR	Code of Federal Regulations	OSHA	Occupational Safety and Health Administration
CMP	Coastal Management Program	PER	Preliminary Engineering Report
CZMA	Coastal Zone Management Act	ROW	Right-of-Way
DR	Departmental Regulation	Agency	Rural Development, Rural Utilities Service
EA	Environmental Assessment	SIP	State Implementation Plan
EIS	Environmental Impact Statement	§	Section
ER	Environmental Report	SHPO	State Historic Preservation Officer
E.O.	Executive Order	THPO	Tribal Historic Preservation Officer
ESA	Endangered Species Act of 1973	U.S.C.	United States Code
et seq.	<i>et sequentia</i> (and those that follow)	USACE	U.S. Army Corps of Engineers
FAA	Federal Aviation Administration	USDA	U.S. Department of Agriculture
FEMA	Federal Emergency Management Agency	USDOT	U. S. Department of Transportation
FHA	Federal Highway Administration	USEPA	U.S. Environmental Protection Agency
FIRM	Floodplain Insurance Rate Map	USFS	U.S. Forest Service
FONSI	Finding of No Significant Impact	USFWS	U.S. Fish and Wildlife Service
FPPA	Farmland Protection Policy Act	USGS	U.S. Geological Survey
FR	Federal Register	WWW	World Wide Web

1.0 INTRODUCTION

In applying for financial assistance from the Rural Development, Rural Utilities Service's (Agency) Water and Environmental Program's loan and grant programs, applicants shall, in conjunction with preparing a Preliminary Engineering Report (PER) (see 7 CFR 1780.33 (c)), prepare and submit an Environmental Report (ER) (see 7 CFR 1794.10) to support the Agency's environmental review process as required by the National Environmental Policy Act (NEPA) and the Agency's environmental policies and procedures (7 CFR 1794). This Bulletin provides guidance on preparing the ER, specifically:

- The format for the ER.
- The environmental issues that need to be considered during a proposal's planning and design activities.
- The sources for locating the required information.
- Analytical and documentation requirements.
- Methods and information regarding public notices and involvement.

An explanation of the procedure that is normally followed by the applicant and Agency for a proposal is shown in below.



1.1 National Environmental Policy Act

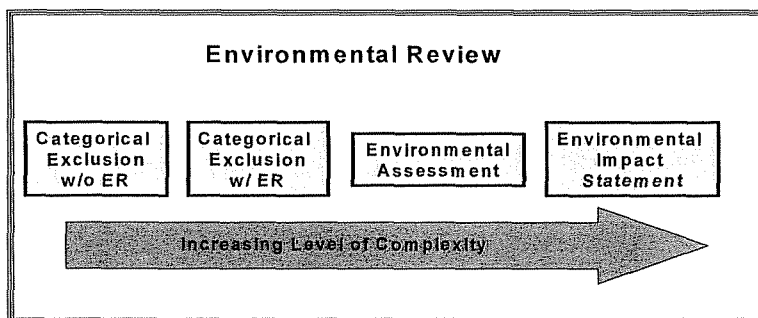
As its name implies, NEPA established the federal government's environmental policies. Its primary goal is to help public officials make decisions that are based on an understanding of the environmental consequences of their actions, and to take actions that protect, restore, and enhance the environment. To accomplish this, NEPA requires federal agencies to either prepare or have prepared written environmental impact assessments or statements that describe the:

- Affected environment and environmental consequences of proposals;
- Reasonable or practicable alternatives to the proposal; and
- Any mitigation measures necessary to avoid or minimize adverse environmental effects.

In accordance with NEPA, the Council on Environmental Quality (CEQ) issued regulations (40 Code of Federal Regulations (CFR) 1500 – 1508) establishing a standard environmental impact assessment and review process for the federal government. Three levels of environmental reviews were established:

- Categorical Exclusions (CE),
- Environmental Assessments (EA), and
- Environmental Impact Statements (EIS).

As required by the CEQ regulations, the Water and Environmental Program has classified its actions, that is to provide financial assistance, within these levels of review with one modification. Certain Agency actions classified as CE are split into those that do not require an ER and those that do require an ER. This documentation is necessary to evaluate whether there are any extraordinary circumstances that would necessitate a higher level of review.



1.2 Environmental Report

The ER prepared by applicants will enable the Agency to evaluate the environmental effects of those proposals that are classified as either CEs or EAs. In addition it will

also enable the Agency to fulfill its obligations under NEPA and other environmental mandates.

An ER must be sufficiently detailed to enable Agency to:

- Clearly establish the purpose and to assess the need for a proposal;
- Determine if all reasonable alternatives to the proposal have been appropriately considered;
- Evaluate the environmental effects of the proposal and any reasonable alternatives considered;
- Assess the significance of those effects;
- Specify mitigation measures where necessary.

As per the CEQ regulations, all planning and other environmental review procedures shall be integrated so that they run concurrently rather than consecutively (see 40 CFR 1500.2 (c)). Therefore, the ER will be prepared with and at the same time as the PER. However, because the ER is a public document it needs to be a stand-alone document including pertinent sections from the PER, such as the Project Planning Area, Need for Project, Alternatives Considered, and Selection of Alternative (see RUS Bulletins 1780-2 through 5). The ER and PER will be reviewed and approved concurrently by the Rural Development State Environmental Coordinator and State Engineer. ERs found to be unacceptable will be returned to applicants for the resolution of outstanding concerns.

Even though applicants are required to integrate and consider environmental values during a proposal's planning and design activities, it is the Agency's responsibility to independently evaluate and verify the accuracy of the information provided in the ER (see 40 CFR 1506.5 (a)). The Agency is ultimately responsible for the scope and content of the resulting environmental document.

In order to expedite the application process and the Agency's review and approval of a proposal, applicants are strongly encouraged to consult early and frequently with Rural Development staff to ensure that all environmental issues are described, evaluated, and impacts appropriately considered.

The information presented and the analyses performed in the ER will allow the Agency to determine the level of significance of a proposal's environmental impacts. The significance of impacts identified will determine whether the impacts can be mitigated or whether a higher level of environmental review is necessary (i.e. from a CE to an EA or from an EA to an EIS). The information provided must be sufficient for Agency to determine that its action (providing financial assistance) will not conflict with other environmental statutes, implementing regulations, policies, procedures, and Executive Orders that are applicable to the proposal.

Key features of an ER:

- Descriptions and discussions of environmental issues must be clear and complete enough so that a person with little previous knowledge of the proposal can make an independent evaluation and easily verify the accuracy of the information and determinations made from the provided information. Maximum

- Where determinations of impacts are made, sufficient documentation must be presented to substantiate them including concurrence of the determinations from appropriate regulatory and natural resource agencies.
- Any environmental concerns that are raised by federal, state, or local agencies or the public must be addressed as completely as possible and resolved before the ER will be considered complete.
- All environmental documentation submitted to or received from federal, state, or local agencies shall be referenced, as appropriate, and included in the ER.
- Agency, can not substitute another federal, state, or local agency's decision for its environmental decision. Agency must still make its own independent decision and when applicable so inform the public. The Agency will inform the applicant when public notices are required; applicants will be expected to publish the public notices in newspapers of local circulation in the project area.

1.3 Relationship of Environmental Report to the Preliminary Engineering Report

The Agency requires that applicants to the Water and Environmental Program's loan and grant programs submit with its application a PER and an ER. The environmental review process is to be performed concurrently with an applicant's preliminary engineering planning and design activities. It is also Agency's policy to minimize duplication of effort and paperwork. Since engineering planning and design activities and the environmental review process are so intricately linked, Agency guidance documents or Bulletins request similar types of information. To minimize duplication of effort, it is sufficient to reference environmental information from the ER in the PER (for example: PER, Section 2, Project Planning Area, (b) Environmental Resources Present can reference the information presented in the ER rather than duplicating the same information). This is necessary because the environmental documentation must be a stand-alone document for public involvement requirements.

1.4 Public Involvement

A key element of the NEPA environmental review process is public involvement. Public involvement activities for certain CEs and EAs normally include publishing public notices for a prescribed length of time in local newspapers. Several of the environmental statutes and Executive Orders considered under Agency's environmental review process also require public notices. See Section 5.0 for specific public notice requirements and sample public notices. In most cases applicants will be authorized by the Agency's Processing Office what and when to publish public notices.

1.5 The Agency's Decision

The Agency's environmental review process must be completed before the Agency can make a decision regarding the approval of an applicant's application. The Agency's

decision to provide financial assistance will conclude by the obligation of loan and grant funds. The Agency's environmental decision will be one of the following:

1. The proposal meets the classification of a CE in the Agency's regulations; the Agency will complete a CE form to document that the proposal does not individually or cumulatively have a significant effect on the human environment and, for which, neither an EA nor an EIS is required.
2. The proposal meets the classification of an EA; the Agency, after appropriate public review periods, will prepare a Finding of No Significant Impact (FONSI) to document that the proposal does not individually or cumulatively have a significant effect on the human environment and that an EIS is not required. The FONSI will be published to notify the public of Agency's decision.
3. The proposal will require an EIS to fully evaluate the potential for significant environmental effects to the human environment or to address substantive public concerns. In accordance with 40 CFR 1506.5, "Agency Responsibility" and to avoid potential conflicts of interest, applicants will not be allowed to prepare environmental documentation for an EIS. If a determination is made that an EIS is necessary, the Agency will be responsible for overseeing the preparation of the document, typically under contract and at the applicant's expense.

1.6 Project Changes Subsequent to Approval

In some cases during the bidding and contracting process of Agency approved projects, facility design and construction activities change from the approved PER and environmental review documentation. If any facility design or construction activities deviate from those contained in the approved engineering and environmental documents, applicants may be required to undertake additional environmental review activities which may include follow-up environmental regulatory or natural resource agency review and concurrence and public notices. If this is the case, applicants shall contact the Rural Development State Environmental Coordinator or Processing Office to determine what additional environmental review requirements would be applicable.

1.7 Sources of Information

Throughout this Bulletin various internet addresses, or websites, are given for sources of information. These websites often provide some useful and current information such as regulatory requirements, guidance suggestions, resource listings, contact addresses, and telephone numbers for information and

CHECK OUR WEBSITE FOR THE MOST
CURRENT VERSION OF THIS DOCUMENT -
<http://www.usda.gov/rus/water/ees/index.htm>

assistance. Often these websites will provide links to other websites that can also be helpful in preparing an ER. You are encouraged to take advantage of these resources.

If, during the preparation of an ER, a question arises concerning what is needed, Rural Development staff should be contacted for advice. Similarly, the applicant should consult with Agency immediately when it appears that a proposal may have significant environmental effects, is controversial for environmental reasons, or if any regulatory

agency raises a concern or does not concur with any determinations as to impacts made during the environmental review process.

Environmental compliance issues can be complex and varied, particularly as they relate to NEPA compliance. In addition to this Bulletin and the guidance it contains, Rural Development has developed a series of interactive multimedia instruction on Compact Disks (CD) that cover most of the environmental statutes, regulations, and Executive Orders considered in its NEPA compliance process. These CDs are available to applicants and their engineering consultants at no charge; for copies contact the Rural Development State Environmental Coordinator or the Director, Engineering and Environmental Staff (for address and telephone numbers see <http://www.usda.gov/rus/water/ees/index.htm>). In addition Agency maintains an Environmental Compliance Library at its web site (<http://www.usda.gov/rus/water/ees/envIRON.htm>) that contains either text copies of or information to links for most of the environmental statutes, regulations, and Executive Orders pertinent to the Agency's NEPA compliance process.

2.0 FORMAT OF THE ENVIRONMENT REPORT

The general format of an ER is as follows:

- 1.0 Purpose and Need of the Proposal
- 2.0 Alternatives to the Proposed Action
- 3.0 Affected Environment/Environmental Consequences
- 4.0 Summary of Mitigation
- 5.0 Correspondence
- 6.0 Exhibits
- 7.0 List of Preparers

Characteristics of the ER are to:

- Minimize repetition and the inclusion of extraneous background information. Reference supporting material, where appropriate.
- Emphasize real environmental issues. Only include information relevant to the proposal and which is useful to Agency decisionmakers and the public in understanding the environmental implications or consequences of the proposal.
- Present the information in a clear, concise manner, minimizing the use of long narratives. Bulleted lists, summary or comparative tables, maps and diagrams are preferable and will expedite Agency's review.

2.1 Level of Detail

The amount of information and level of analysis provided in the ER should be commensurate with the magnitude of construction activities and their potential level of impact. For example, simple statements regarding a particular issue can be made for proposals classified as CEs where minimal environment effects are expected. The statement should assert the determination made from the analysis referencing the information used to support the determination. If a proposal will not construct in or

convert a floodplain, simply state so and provide the number designation and a copy of the Federal Emergency Management Agency (FEMA), Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map(s) (with the facility location located on the map) that was reviewed. If a FEMA map is unavailable, identify whether any alluvial soil units are mapped on the USDA, Natural Resources Conservation Service's (NRCS) soil survey map and provide a copy of the appropriate soil survey sheet again with the facility location plotted on the map. Likewise, a more detailed level of information and analysis will be necessary to support any determinations reached for proposals classified as an EA and where proposed construction activities are more involved and complex.

2.2 Maps

The use of maps, photographs and diagrams will improve the ER's clarity and greatly expedite the Agency's review process. For projects covering large areas and for reference purposes, USGS topographic maps (1:24,000) should be used to show the location of utility lines and appurtenances. For all proposals, NRCS Soil Survey maps (1:15,840 or 1:20,000) should be used to locate all site-specific construction activities, such as facilities or utility lines. The environmental resources that are readily apparent on soil survey maps include: wetlands (hydric soils), floodplains, stream crossings, important farmland, land use trends, geodetic information (Range, Township, section numbers), and vegetative cover. Vegetative cover is potentially useful in critical habitat determinations for threatened and endangered species. Where proposals include construction in or close to floodplains, facility locations should be drawn on FEMA FIRMs; if FEMA maps are unavailable facility locations should be drawn on soil survey maps. All of the above activities can be drawn by hand on the described maps or if available Geographic Information Systems.

2.3 Format of Environmental Report

For a more detailed description of the ER's Table of Contents see Exhibit E. The following section numbers correspond to the appropriate numbers in the ER.

1.0 Purpose and Need for the Proposal

This section will succinctly describe the proposal and establish the underlying purpose and need to which Agency is responding. This section has two subsections and needs to be consistent with information provided in the PER.

1.1 Project Description (Proposed Action)

Provide a description of the proposal summarizing all proposed facilities or improvements and construction activities. Commonly referred to in NEPA and the CEQ regulations as the proposed action.

1.2 Purpose and Need of the Proposal

This subsection shall establish the basis and underlying purpose of the proposal and the need to which Agency is responding.

Therefore it is necessary to clearly and definitively demonstrate the purpose and establish a need for the proposal. The information will also be used to determine what reasonable or practicable alternatives need to be evaluated in the ER. In addition this section should state what would be the consequences of not implementing the proposal; this is referred to in NEPA as the No Action alternative.

2.0 Alternatives to the Proposed Action

In planning and developing a proposal, applicants shall explore all reasonable alternatives that could satisfy and are consistent with the purpose and need of the proposal. Alternatives may include:

- Engineering design alternatives,
- Alternative siting locations of facilities,
- System capacities, reasonable growth concerns, etc.

During the analysis and evaluation of engineering planning and design options and the concurrent environmental review activities, various alternatives may be evaluated and ultimately determined to be unreasonable for various technical or financial reasons. This section needs to outline and document this analytical process by presenting the evaluation factors considered in judging each alternative's ability to meet the proposal's purpose and need. Again the engineering design information can be obtained from the PER.

All relevant factors that contribute to the decisionmaking process of selecting proposal alternatives shall be included, for example, technical and economic feasibility issues, environmental considerations, or any necessary mitigation measures including cost implications. The evaluation and weighting criteria assigned in analyzing the proposal's purpose and need and the alternatives considered should be summarized and presented in a comparative table.

3.0 Affected Environment/Environmental Consequences

This section of the ER will:

- Describe the area under consideration. The proposal's planning area may be larger than a service area determined to be economically feasible.
- Describe and document the environmental resources of the area to be affected by the proposal and each reasonable alternative considered.

- Discuss the environmental consequences of each proposal element and its affect on a specific environmental resource.
- Establish and discuss any mitigation measure(s) necessary to avoid or minimize any adverse impacts or effects to a specific environmental resource; these may require negotiations with applicable regulatory or natural resource agency.

Only alternatives determined to be reasonable need to be analyzed in this section.

The typical process to document and consider effects to environmental resources is:

1. Describe the area(s) to be affected by the proposal and each reasonable alternative considered. Affected areas may correspond to the service area of the proposal or may be larger depending on the proposed effect, e.g. visual impacts of a water tower on historic properties. Alternatives may have different affected areas. Include maps outlining the affected area(s) showing the location of all proposed construction activities.
2. Identify the environmental resources in the described affected area(s). Applicants, as necessary, will be required to consult with appropriate environmental regulatory or natural resource agencies to identify the environmental resources in the affected areas as well as review and concur in any determinations made from evaluating the proposal's impacts on these resources. Agency contacts or websites where preliminary information can be found is discussed in Section 4.0.
3. Discuss the environmental effects or consequences of the proposal and each reasonable alternative considered. All direct, indirect and, if applicable, cumulative effects need to be identified and discussed. Some of the impacts may be viewed as adverse, while others may be viewed as beneficial. For some actions, data may be unavailable or insufficient to make a determination of an effect; if so, clearly state the situation. Otherwise clearly describe all effects or consequences to all environmental resources whatever they may be. For specific guidance of the extent to which effects (direct, indirect and cumulative) need to be discussed, applicants should seek advice from the Rural Development State Environmental Coordinator.
4. Identify potential mitigation measures that may be necessary to avoid or minimize any adverse effects caused by the proposal. Any and all mitigation measures need to be negotiated and concurred with the appropriate environmental regulatory or

natural resource agency and documented, in some cases in a formal agreement, so as to be enforceable.

Section 3.0 in this Bulletin provides more detail on the following environmental resources to be evaluated.

- Land Use/ Important Farmland/ Formally Classified Land
- Floodplains
- Wetlands
- Historic Properties
- Biological Resources
- Water Quality Issues
- Coastal Resources
- Socio-Economic/ Environmental Justice Issues
- Miscellaneous Issues

Each of the above environmental resources shall have its own subchapter in the ER listing the affected environment, environmental consequences and mitigation measures for each resource. For example:

3.1 Land Use/Important Farmland/Formally Classified Lands

3.1.1 Affected Environment

3.1.2 Environmental Consequences

3.1.3 Mitigation

See Exhibit E for a more detailed description of the Table of Contents for the ER.

4.0 Summary of Mitigation

This section of the ER shall summarize all proposed mitigation measures described in Section 3.0 of the ER. Describe implementing criteria of mitigation measures and how each measure will be enforced. A table format is useful in presenting the evaluation.

5.0 Correspondence and Coordination

As specified in this Bulletin, many of the environmental issues evaluated require coordination with state or federal environmental regulatory agencies. All correspondence that is related to this coordination should be included in this section of the ER.

6.0 Exhibits

Attach supporting documents, studies, field investigation, maps, photographs, etc.

7.0 List of Preparers

List the names of all preparers of the ER, including titles, affiliations, and areas of input.

3.0 ENVIRONMENTAL INFORMATION AND REQUIREMENTS

This section provides the following information:

- The environmental resources that must be considered and the basis for the consideration;
- The type of information that must be provided in the ER;
- Potential information sources for each environmental resource.

This information including environmental resource data; evaluation and analyses of the proposal's effect on environmental resources; all determinations of effects; and any negotiated mitigation measures must be documented in the ER:

All included environmental resources in this Bulletin are regulated under federal environmental statutes, regulations, and Executive Orders and the Agency is obligated to consider the effects of its action on these resources prior to taking actions. A list of such statutes, regulations, and Executive Orders has been included in Exhibit D. This listing includes the title and citation for each item. These documents are available or links to websites where these documents can be found are located on the environmental section of the Engineering and Environmental Staff's website (<http://www.usda.gov/rus/water/ees/environ.htm>).

In preparing an ER, there are two distinct actions that are normally necessary. The first action is to collect information and data to determine if any environmental resources occur in the area to be affected by the proposal and any reasonable alternatives considered. If these resources are present, applicants must evaluate whether or not the proposal has the potential to affect these resources. If it is determined that the proposal will directly or indirectly affect any environmental resource, the applicant's second action is to submit a summary of the analyses and a determination regarding the potential effects to the agencies that have regulatory jurisdiction over these resources. If adverse impacts are expected, applicants may need to negotiate and coordinate potential mitigation measures that will avoid or minimize these impacts with these agencies. If at any time the impacts are determined to be significant an EIS may be necessary. Consult with the Rural Development State Environmental Coordinator for a determination of what constitutes "significant".

In order to accomplish the two actions described above, the applicant may need to consult directly with agencies on two different occasions. Depending on the resource in question, the first consultation will be the collection of basic information or data on the presence of environmental resources in the areas affected by a proposal. This effort may be completed directly with agencies or by using information obtained from internet resources. Then, and again depending on the environmental resource, certain agencies must be consulted to concur with any determinations made on whether environmental resources will be directly or indirectly affected by the proposal. If there are no practicable alternative to a conversion or if there is a potential for an adverse effect to a resource, appropriate mitigation measures must be evaluated and negotiated, included as part of the proposal's design and documented in the ER.

If it is determined that during a proposal's preliminary planning and design activities that there are no other practicable alternatives than to convert or adversely impact an environmental resource, the applicant must demonstrate and justify this assertion to Agency's satisfaction. For example, it is the Agency's policy to not directly or indirectly support development in floodplains where there is a practicable alternative. Therefore, Agency will not finance proposals that propose to construct facilities in a floodplain unless it can be determined that there is no other practicable alternative. Applicants asserting the claim of no practicable alternative have the burden of demonstrating and justifying the validity of this claim to Agency's satisfaction.

The ER will not be considered complete until all proper coordination has been completed with the appropriate federal and state environmental regulatory or natural resource agencies. To facilitate the ER, applicants should contact agencies early and follow-up to verify their determinations of effect. Failure to contact applicable agencies will result in the ER's return and will delay the Agency's processing of the applicant's application for financial assistance.

Normally, the best sources for data collection and information are federal, state, and local agencies that have jurisdiction over a specific environmental resource. Documents transmitting or receiving information from these agencies, a record of conversations or meetings with agencies, or printouts from appropriate websites should be included in the ER. More detailed information on agency contacts is presented in Section 4.0.

The above discussion is not meant to imply that the applicant must always contact all listed agencies before Agency will consider the ER's acceptability. In certain instances, a specific environmental law clearly does not apply because of the proposal's geographic location (e.g., the Coastal Zone Management Act (CZMA) does not apply in Idaho). If previous environmental contacts with an agency established that the type of construction in question has no environmental effect, an extensive review may not be necessary; however a statement regarding this fact needs to be documented in the ER. Thus, an applicant need not request data and comment from all of the agencies listed under each issue for every proposal. The Rural Development State Environmental Coordinator or Processing Office can provide detailed guidance on specific proposals.

The ER should indicate the source for data presented, analyses performed using such data, determinations reached, and evidence of proper coordination for each environmental resource identified and evaluated. In performing the analysis, three types of environmental effects or impacts should be evaluated:

- Direct effects;
- Indirect effects; and
- Cumulative effects.

Applicants need to be aware of these three types of impacts when discussing the effects or impacts their proposal has on the environmental issues listed below.

Environmental Information Summary				
Section	Environmental Resource	Primary Contact	Secondary Contact	Type of Information
3.1	Land Use			
3.1.1	General Land Use	Local/Regional/State Planning Agencies		Zoning, land use classifications
3.1.2	Important Farmland	NRCS	State Agencies	Soil surveys
3.1.3	Formally Classified Lands	NPS, BLM, USFS, BIA, State Agencies	USACE	Monuments, landmarks, wild and scenic rivers, wilderness areas, state or national parks, reservations, recreational areas
3.2	Floodplains	FEMA, State Floodplain Managers	Local Agencies, NRCS, USACE,	Flood insurance rate maps, soil surveys
3.3	Wetlands	NRCS, USACE	USFWS	Soil surveys, National Wetland Inventory maps, and Section 404 issues.
3.4	Historic Properties	SHPO, THPO	NPS, BLM, USFS, Local Or State Historical Groups.	Historic and archaeological sites. Visually sensitive areas. Traditional Cultural Properties
3.5	Biological Resources	USFWS, NMFS	State Agencies	Threatened and endangered species, anadromous species, critical habitats, species of special concern
3.6	Water Quality	State Water Quality Agencies, USEPA	USEPA	Discharge permits Water appropriation permits Sole source aquifers
3.7	Coastal Resources	State Coastal Management Program Offices or Agencies, USFWS	NOAA	Coastal barrier resource maps/ coastal zone management planning documents
3.8	Socio- Economic/ Environmental Justice	Census Bureau, Demographics, State/ Local Agencies	Local Civic Organizations	Economic Data, Location of minority and low-income populations
3.9	Miscellaneous Issues			
3.9.1	Air Quality	State Agencies	USEPA	State Implementation Plan
3.9.2	Transportation	FAA, State Highway Department	USDOT, Local/Regional/State Planning Agencies	Airports, highway safety, navigation hazards
3.9.3	Noise	Local/Regional/State Planning Agencies	USEPA, OSHA, FAA	Noise levels/restrictions

Direct effects are caused by the action and occur at the same time and place (e.g. construction activities). Indirect effects are those caused by the action and are later in time or further removed in distance, but are still reasonably foreseeable (e.g. impacts caused by growth induced by a proposal). Cumulative effects result from the incremental impact of a proposal when added to other past, present, and future actions regardless of who undertakes such other actions (e.g. effects of the interaction of a proposal with other past, present, and future activities in the area. (A good example would be the effect of a proposal's well field for ground water appropriations where it is only one of many well fields that utilize an aquifer of limited size or recharge.)

3.1 Land Use

Decisions concerning land use arise from needs to accommodate needed growth and development; prevent unwarranted and costly sprawl; avoid unwarranted conversion of farmland and wetlands from existing uses; encroachment on floodplains; provide or improve community services and facilities; assure appropriate environmental quality; assure adequate supplies of suitable-quality water; and provide for proper waste disposal in rural areas. It is USDA's policy to promote land use objectives responsive to current and long-term economic, social, and environmental needs and discourage the unwarranted conversion of important land resources to other uses. In general, USDA supports and promotes compact community development by discouraging the unwarranted expansion of the peripheral boundaries of existing settlements.

As part of the ER, the compatibility of the proposal and any reasonable alternatives considered with existing land use and land use plans should be discussed, as well as, possible land use changes that may result from implementing the proposal. Land use issues are divided into three categories:

- General land use;
- Important farmland, and
- Formally classified lands.

3.1.1 General Land Use

3.1.1.1 Land Use Information

The types of information that should be provided include (by narrative description and maps):

1. Any existing zoning ordinances and land use plans;
2. Total land area required or proposed for purchase and the amount of land that will be disturbed by construction and operation;
3. Affected land areas classified by type of current land use such as residential, commercial, agricultural, etc;
4. An estimate of the number of homes and population and businesses that are in close proximity to and likely to be directly affected by any proposed wastewater, water treatment, or solid waste facilities. Similar information for any reasonable alternatives considered should be provided.

3.1.1.2 Potential Information Source

1. Local, regional, and state planning agencies/commissions.
2. State Universities

3.1.2 Important Farmland

The Farmland Protection Policy Act (FPPA), the USDA regulation implementing the FPPA (7 CFR Part 658), and USDA Departmental Regulation No. 9500-3, "Land Use Policy", require a consideration of the potential effects a USDA action may have on important farmland.

3.1.2.1 Important Farmland Information

The types of information that should be provided include:

1. Areas of important farmland affected by the proposal and the amount of area to be disturbed;
2. Where a direct and potential indirect conversion of important farmland will occur as a result of the proposal, include a discussion concerning these effects and whether alternatives are available that will avoid or minimize the conversions;
3. For facility and transmission line locations (where line placement can be flexible) in important farmland areas, Form AD-1006 or NRCS-CPA-106, respectively, containing the required input from the NRCS. This requirement is not applicable for distribution or collection utility line networks where the purpose is to provide service to existing populations.

3.1.2.2 Potential Information Sources

1. NRCS – FPPA information (<http://www.nrcs.usda.gov/programs/fppa/>); Farmland Conversion Evaluations (<http://fppa.nrcs.usda.gov/lesa/>); soil survey maps (<http://websoilsurvey.nrcs.usda.gov/app/>), NRCS state and local offices will provide consultation for Important Farmland issues (<http://offices.sc.egov.usda.gov/locator/app>)
2. American Farmland Trust (<http://www.farmland.org/>); Farmland Information Center (<http://www.farmlandinfo.org/>).

For more information see Exhibit F-1.

3.1.3 Formally Classified Lands

There are certain properties that are either administered by federal, state, or local agencies or have been accorded special protection through formal legislative designations. For the purpose of this Bulletin, these properties have been designated as "formally classified lands." Such formally classified lands that may be encountered include, but are not necessarily limited to:

- National parks and monuments;

- National natural landmarks;
- National battlefield park sites;
- National historic sites and parks;
- Wilderness areas;
- Wild and scenic and recreational rivers;
- Wildlife refuges;
- National seashores, lake shores, and trails;
- State parks;
- Bureau of Land Management (BLM) administered lands;
- National forests and grasslands;
- Native American owned lands and leases administered by the Bureau of Indian Affairs (BIA).

Visual impacts to formally classified land from proposals need to be considered as appropriate, see Section 3.4.3.

3.1.3.1 Formally Classified Land Information

The types of information that should be provided include:

1. The amount of each type of such lands that will be affected by the proposal and reasonable alternatives considered;
2. The effects (direct, indirect, and cumulative) to any formally classified land;
3. The views of the agencies and/or Indian tribes administering the potentially affected properties identified in (1) and (2) above; and
4. Correspondence received from all agencies contacted.

3.1.3.2 Potential Information Sources

1. USGS and USFS maps;
<http://www.geocommunicator.gov/GeoComm/index.shtm>
2. National Park Service (NPS) and USFS (where applicable) – national natural landmarks, national parks, national battlefields and monuments, national seashores and lake shores, national historic sites, national recreational areas, national trails, wilderness areas (<http://www.nps.gov/parks.html>); Wild and Scenic (and recreational) Rivers and Nationwide Rivers Inventory (<http://www.rivers.gov/>) or (<http://www.nps.gov/ncrc/portals/rivers/index.htm>); national forest lands, (<http://www.fs.fed.us/maps/forest-maps.shtm>); BLM - administered lands and wilderness areas ; (<http://www.blm.gov/>);
3. U.S. Fish and Wildlife Service (USFWS) - wildlife refuges (<http://www.fws.gov/r9realty/index.html>);
4. State and local land management and planning agencies - state and local parks, and other state owned lands;
5. BIA -Tribal lands (contact with individual tribes is also necessary).

3.2 Floodplains

Continued encroachments on floodplains decreases the natural flood-control capacity of these land areas, creates the need for expensive manmade flood-control measures and disaster-relief activities, and endangers both lives and property. In compliance with Executive Order 11988, "Floodplain Management", and USDA Departmental Regulation 9500-3, "Land Use Policy", it is USDA's policy to avoid to the extent possible:

1. The long and short-term adverse impacts associated with the occupancy and modification of floodplains and
2. Direct or indirect support of floodplain development wherever there is a practicable alternative.

Executive Order 11988, "Floodplain Management" requires federal agencies to avoid actions, to the extent practicable, which will result in the location of facilities in floodplains and/or affect floodplain values. Facilities located in a floodplain may be damaged or destroyed by a flood or may change the flood-handling capability of the floodplain or the pattern or magnitude of the flood flow.

The relevant floodplain for most proposals is an area that has a 1-percent chance of a flood occurrence in a given year. The flood of this interval is referred to as the 100-year flood or the base flood. The floodplain management guidelines further require federal agencies to apply the 0.2 percent or 500-year flood occurrence standard to the location of "critical facilities." Applicants should consider "critical facilities" as facilities whose loss would disrupt utility services to large areas for a considerable period of time or would disrupt utility services to critical facilities such as hospitals. Critical facilities include water treatment plants, wastewater treatment facilities, large pump stations, and centralized operations or communication facilities.

In addition, in accordance with the National Flood Insurance Program (NFIP) a community must be participating in the NFIP if they wish to request financial assistance from the federal government to construct a facility or provide utility services in a special flood hazard area or 100-yr floodplain (there are other related factors if the proposal is to construct a facility in the 500-yr floodplain. i.e., critical actions). If the community is not participating in the NFIP then the Agency is prohibited from providing financial assistance.

3.2.1 Floodplain Information

The types of information that should be provided include:

1. Determine if the proposal or any portion thereof will be located in a 100- or 500-year floodplain, particular attention should be paid to whether the proposal is proposed to be located in the designated floodway (floodways are defined as an area identified on a FIRM or a Flood Boundary Floodway Map that represents the portion of the floodplain that carries the majority of the flood flow and often is associated with high velocity flows and debris impact);
2. Status of local floodplain development requirements and permits;

3. Identify and evaluate practicable alternatives to locating facilities in a 100-year floodplain (include alternative sites or routes located outside the floodplain);
4. Identify and define the area of floodplain to be affected by the proposal and evaluate the impacts to the floodplain;
5. If impacts cannot be avoided or if there is no practicable alternative to locating a facility or portion thereof in the floodplain fully document for submittal to the Agency a justification of this assertion; identify and develop measures to minimize the impacts as well as restore and preserve floodplain values; and
6. Show location of all utility lines, appurtenances, and facilities on appropriate FEMA or other maps as specified in Section 2.0 of the Bulletin.

3.2.2 Potential Information Sources

1. FEMA - FIRMs. Under Executive Order 11988, **these maps must be used** if they are available (FEMA Map Service Center). Telephone requests for maps can be made by calling 1-800-358-9616 or by e-mail at FEMA-MSCservice@dhs.gov. A 6-digit community identification number is needed to get the appropriate map. Community identification numbers can be obtained from (<http://www.fema.gov/fema/csb.shtm>) or from local community or county officials. In addition, applicants should check for map revisions not shown on FIRM maps, such as letters of amendment, change or revisions, and conditional letters of the same – see (http://www.fema.gov/plan/prevent/fhm/st_main.shtm).
2. NRCS Soil Survey maps. - These maps contain soil units that are classified as “alluvial” soils. These soil units are associated with soils that develop in floodplains and represent the best available information if FEMA maps are not available. In addition, soil surveys provide general data indicating the soil unit's frequency for flooding - <http://websoilsurvey.nrcs.usda.gov/app/>.
3. U.S. Army Corps of Engineers (USACE) – may have floodplain information in the absence of FEMA maps; assessment of floodplain impacts, and identification of permits required – contact the local USACE District Office to inquire – see <http://www.usace.army.mil/howdoi/civilmap.htm>

3.3 Wetlands

Executive Order 11990, “Protection of Wetlands” states that it is federal policy to avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modifications of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. Each agency, therefore, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds that:

1. There is no practicable alternative to such construction, and
2. The proposal includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental, and other pertinent factors.

In addition, USDA through DR 9500-3, "Land Use Policy", discourages the unwarranted alteration of wetlands. To meet this objective, consider alternatives to construction in wetlands and limit the potential damage when activity affecting a wetland cannot be avoided. Where wetlands cannot be avoided, permits from the USACE and mitigation measures to minimize adverse impacts to wetlands will be required.

Regulatory oversight of wetland issues fall under Section 404 of the Clean Water Act and is administered by the USACE. Section 404 established a federal permitting program that requires anyone who is proposing to place dredged or fill material into "waters of the United States" which includes wetlands must obtain a permit from the USACE (<http://www.usace.army.mil/howdoi/civilmap.htm>). See Exhibit G.

To be consistent with the Executive Order and DR 9500-3, applicants that propose to construct a facility in a wetland must submit documentation and justification to Agency's satisfaction that demonstrates that there is no other practicable alternative to the proposed conversion.

For planning purposes, applicants will not be required to obtain jurisdictional delineations for wetlands (under the jurisdiction of the Section 404 program) unless a component of a proposal proposes to construct a facility in a wetland. Applicants should consult with the local USACE office to determine specific permitting requirements.

Placement of utility lines should be shown on soil survey maps to determine locations of affected wetlands (hydric soils) and to quantify the number of acres potentially affected. Normally placement of utility lines can utilize the Nationwide Permit no. 12, Utility Line Activities. As long as the general conditions of the nationwide permit are followed then applicants are not required to obtain individual Section 404 permits.

3.3.1 Wetlands Information

The types of information that should be provided include:

1. Location of wetlands in relation to all proposal elements of a proposal;
2. Determine the amount (acreage or linear feet) of wetlands to be physically affected by construction and the status of or requirement for any wetland permits;
3. If applicable, the basis for the applicant's belief that no practicable alternative exists for any conversions of wetland areas;
4. Potential indirect and cumulative impacts to wetlands; and
5. If necessary any proposed mitigation measures to avoid or minimize impacts to wetlands.

3.3.2 Potential Information Sources

1. NRCS Soil Survey Maps (<http://websoilsurvey.nrcs.usda.gov/app/>); NRCS hydric soil lists (<http://soils.usda.gov/use/hydric/>);
2. Nationwide Wetlands Inventory Maps (available for many areas and compatible with the scale of USGS maps). To determine if an area has been mapped or to obtain copies, contact: National Cartographic Information Center; USGS; 507

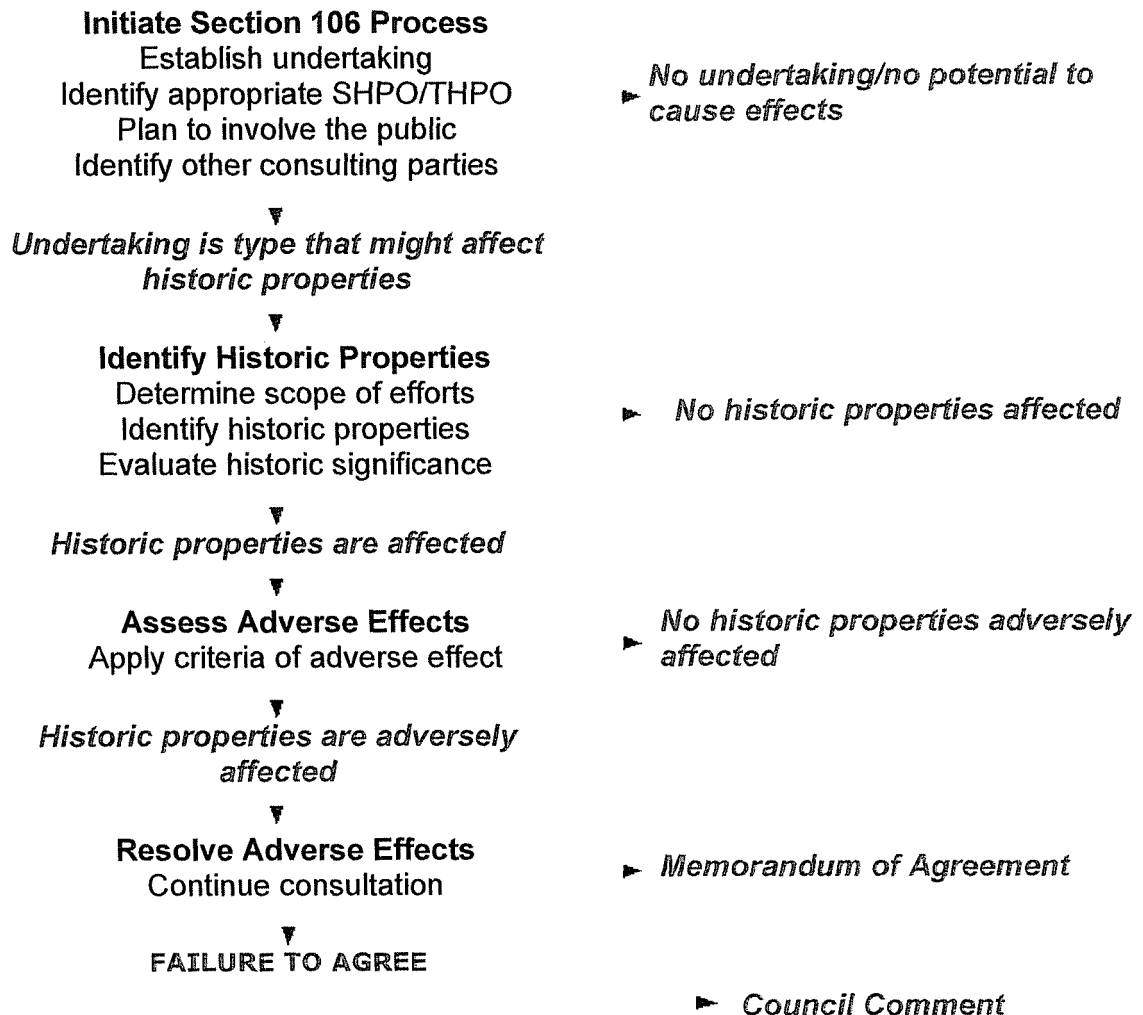
National Center; Reston, Virginia 22092; Telephone: (703) 860-6045
(<http://www.nwi.fws.gov/>);

3. USACE (<http://www.usace.army.mil/cw/cecwo/reg/>); and
4. State agencies wetland programs (<http://aswm.org/swp/index.htm>).

3.4 Historic Properties

The National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. § 470 *et seq.*) and the Advisory Council on Historic Preservation's (ACHP) implementing regulations, 36 CFR Part 800 (Section 106 regulations), requires federal agencies to take into account the effect their actions may have on historic properties that are within a proposal's "area of potential effect." The area of potential effect is the geographic area or areas within which a proposal may cause changes in the character or use of historic properties. Historic properties means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. This term includes, for the purposes of the Section 106 regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register of Historic Properties listing criteria.

A detailed summary of the Section 106 process is included below:



The Section 106 consultation and review process will require particular attention because the process may be different in specific states due to any procedures negotiated by the Rural Development State Environmental Coordinator with the State Historic Preservation Officer (SHPO) and any tribal interests. Prior to initiating any Section 106 activities, applicants are advised to contact the State Environmental Coordinator as to any state-specific procedures.

In general any proposal that proposes construction activities is classified as an “undertaking” in the Section 106 regulations and absent an agreement with the SHPO and any tribal interests, applicants may be required to retain the services of a cultural resource specialist who meets the U.S. Department of the Interior’s Secretary of the Interior’s Professional Qualification Standards (48 FR 44738-9). The contracted consultant will perform an archival search of SHPO records for previously identified historic properties and determine what effect the proposal will have on these properties

and other unidentified properties within the proposal's area of potential effect. Note that some states require a qualified contractor to obtain a permit to conduct field work in those states.

Once historic properties are identified and any effects evaluated and documented, the Agency is required to submit the finding or determination to the SHPO and any effected tribes. The SHPO/tribes have 30 days to comment on the Agency's determination of effect. A lack of an objection to the Agency's determination within the 30 day period means that the Agency has completed its Section 106 responsibilities.

Applicants are advised to avoid adversely affecting any historic property prior to the completion of the environmental review process. Such actions may result in the loss of financial assistance. When an historic property is destroyed or irreparably harmed with the express purpose of circumventing or preordaining the outcome of a Section 106 review (e.g., demolition or removal of all or part of the property) this is called anticipatory demolition. Agency is required to withhold any financial assistance until at such time, in consultation with the Advisory Council of Historic Preservation, it is determined and documented that "circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant."

3.4.1 Historic Property Information

The types of information that should be provided include:

1. Identification and determination of the effect on historic properties within the proposal's area of potential affect;
2. Document methods used to identify historic properties within the proposal's area of potential effect;
3. Document efforts made to identify and solicit the views of Indian tribes and interested persons;
4. If a historic property may be affected, discuss the alternatives that were considered that would avoid or minimizing any effects to the historic property;
5. A copy of all correspondence to and from the SHPO or, if appropriate, the Tribal Historic Preservation Officer (THPO);
6. A discussion of mitigation measures proposed to either avoid or minimize any adverse effects to historic properties; and
7. A copy of any surveys performed (indicate cost of survey and number of acres surveyed). This information will be used by Agency as input into the Annual Archeological Report to Congress compiled by the NPS.

3.4.2 Potential Information Sources

1. National Register of Historic Places (<http://www.cr.nps.gov/nr>);
2. SHPO (<http://www.ncshpo.org/stateinfolist/fulllist.htm> for addresses);
3. THPO (<http://www.nathpo.org/map.html> for addresses);
4. ACHP (<http://www.achp.gov/index.html>);

5. NPS
(http://www.historicpreservation.gov/NPS_Portal/user/home/home.jsp?maximise=&page=1); and
6. State or local historical or archaeological societies
(<http://web.syr.edu/~jryan/infopro/hs.html>).

For more information see Exhibit F-2.

3.4.3 Visual Aesthetics

The visual quality of an area may be affected by the introduction of new buildings or structures. These effects may be significant to historic properties, historic properties, traditional cultural places, and cultural landscapes; in areas of scenic beauty, scenic overlooks, scenic highways, wilderness areas, parks, national forests; or along wild and scenic, recreational, or nationwide inventory rivers (see also Section 3.1.3, Formally Classified Lands). Visual aesthetics should be considered in all proposals. Moreover, for proposals in visually sensitive areas, reasonable efforts should be taken to avoid these areas entirely, or to design, construct and operate the proposal in such a way that aesthetic impacts are minimized.

3.4.3.1 Visual Information

The types of information that should be provided include:

1. Identify all visually sensitive areas that are in the vicinity or area of potential effect (the range of potentially affected areas to consider will vary with a proposal; contact the RD State Environmental Coordinator for guidance) of the proposal;
2. How much of this area will be visually affected by the proposal and from how many viewing locations the proposal may be seen; and,
3. Mitigation efforts that will be taken to minimize impacts. This may include such methods, when appropriate, as vegetative zones around the proposal. Discuss all mitigation proposals with the RD State Environmental Coordinator and the SHPO/TPHO.

3.4.3.2 Potential Information Sources

1. SHPO/THPO;
2. Federal land management agencies;
3. State land management agencies; and,
4. State and local park authorities.

3.5 Biological Resources

Threatened and Endangered Species. There are many plant and animal species that are threatened with extinction or exist in greatly reduced numbers partly as a result of human activities. The Endangered Species Act (ESA) of 1973 establishes a national program for the conservation and protection of threatened and endangered species of

plants and animals and the preservation of habitats upon which they depend. Under Section 7 of the ESA, federal agencies are required to consult with USFWS and/or the National Marine Fisheries Service (NMFS) for all threatened and endangered species. Consultations will be required with NMFS for proposals potentially affecting species that inhabit coastal areas or are anadromous (fish born in freshwater that spend most of their life at sea and return to fresh water to spawn). The consultation is to ensure that Agency's actions do not jeopardize the continued existence of any federally-listed threatened or endangered species or result in the destruction or adverse modification of a critical habitat. When a proposal cannot avoid critical habitat areas, the ESA requires mitigation measures or that reasonable and prudent alternatives be implemented to reduce an impact to minimal levels. Such mitigation measures or proposal alternatives must be negotiated between Agency, the applicant, and the USFWS or NMFS. Therefore, if it appears the proposal may affect (1) a federally-listed threatened or endangered species or its critical habitat or (2) a proposed threatened or endangered species or its proposed critical habitat, the applicant should contact the Rural Development State Environmental Coordinator as soon as possible and Agency will initiate formal consultations with the USFWS or NMFS.

State agencies should be contacted for information on state-listed species and concerns. In some instances, the state may have more detailed information on federally-listed or proposed species and/or critical habitat than the USFWS. This information will help Agency determine a proposal's effect on a particular species.

It should be noted that candidate species have no legal protection under the ESA. However, proposal impacts to these species need to be considered when preparing the ER because candidate species may become listed species and the listing would effect further project actions.

Fish and Wildlife Resources. In addition to the concern for threatened or endangered species, the applicant should take into account impacts that the proposal may have on all fish and wildlife resources. Unnecessary adverse impacts should be avoided, to the extent practicable.

Vegetation provides habitat for a variety of wildlife and acts to stabilize soils and prevent erosion. In addition, information on vegetation can be used in evaluating potential impacts to threatened and endangered species and critical habitats.

3.5.1 Biological Resources Information

Threatened and Endangered Species.

The types of information that should be provided include:

1. A list of federally-listed or proposed threatened or endangered species and candidate species and a delineation of any critical habitat in the proposal and any reasonable alternatives' area of potential effect;
2. Potential impacts of the proposal and reasonable alternatives considered on any federally-listed or proposed threatened or endangered species and candidate species and proximity to a designated critical habitat;

3. Correspondence with the USFWS and NMFS, if necessary, concerning whether or not the proposal is likely to affect a listed or proposed species or its listed critical habitat;
4. Similar information as described in 1 through 3 above for any state listed or proposed threatened or endangered species; and,
5. Mitigation measures, if avoidance is not practicable.

Fish and Wildlife

The types of information that should be provided include:

1. A brief description of the fish and wildlife species in the proposal's area of potential effect; and
2. A discussion of possible impacts to fish and wildlife resources. These impacts may result from sedimentation, ground clearing, stream or river flow impedance, forest fragmentation, and hunting or fishing pressure due to increased access to an area.

Vegetation

The types of information that should be provided include:

1. A brief description of the vegetation in the proposal's area of potential effect, the relative amount of each vegetation type, and the extent to which each type of vegetation will be affected;
2. An estimate of the amount of vegetation clearing required for the proposal and each reasonable alternative considered;
3. The short and long-term effects of proposed vegetative clearing, including those related to the ROW maintenance practices; and,
4. A description of vegetation clearing and future maintenance practices. Special areas of concern such as riparian or wetland areas may require more detailed information.

3.5.2 Potential Information Sources

1. USFWS, Region or Field Office. This office must be contacted for each proposal (<http://www.fws.gov/offices/>);
2. NMFS (for marine/anadromous species or coastal proposals) (<http://www.nmfs.noaa.gov/>)
3. State agencies (for equivalent state species and potential information on federally listed species) (<http://www.fws.gov/offices/statelinks.html>) ;
4. Administering agency on federal, state, and local government managed lands; and,
5. State Conservationist, NRCS area or field office (<http://www.nrcs.usda.gov/about/organization/regions.html>).

3.6 Water Quality Issues

This section is concerned with water quality issues as they relate to discharges from wastewater treatment or solid water facilities; surface or ground water appropriations for potable water treatment facilities; ground water protection programs - sole source aquifers and recharge areas; and water quality degradation from temporary construction activities. Water quality changes can impact other environmental resources such as wetlands, wildlife populations, and others. These impacts can also reach a considerable distance beyond the proposal's location. The possible effects that the proposal and alternatives considered could have on water quality should be addressed in the ER.

3.6.1 Water Quality Information

The types of information that should be provided include:

1. Identification and location of waterways that may be receiving streams for effluent discharges or used for water appropriations for potable water;
2. Handling of wastewater disposal for facilities;
3. Identification of all aquifers utilized as a supply for potable water or that may be impacted from runoff, infiltration by or any operational activities from wastewater and solid waste facilities;
4. Groundwater protection programs for sole source aquifers or recharge areas should be noted;
5. If the watershed that the proposal is located in is under a management plan, the plan and the proposal's compliance with the plan should be noted; and
6. Potential water quality degradation caused by temporary construction activities and any mitigation measures that are proposed to avoid or minimize any adverse environmental effects.

3.6.2 Potential Information Sources

1. National Pollutant Discharge Elimination System (NPDES) - state agencies/U.S. Environmental Protection Act (USEPA) - requirements (<http://www.epa.gov/owm/npdes.htm>);
2. Non-Point Source Pollution (storm water runoff) USEPA. Under the NPDES storm water program (Phase I), a permit is required for land clearing activities that exceed 5 acres. Proposed Phase II NPDES storm water regulations would expand this national program to construction sites that disturb 1 to 5 acres. (<http://www.epa.gov/OWOW/NPS/>);
3. Ground water protection programs/Sole Source Aquifers – (<http://www.epa.gov/OGWDW/ssanp.html>); and for sole source aquifers, the information is hosted at the USEPA regional offices. Use the following website (<http://cfpub.epa.gov/safewater/sourcewater/>) and search under sole source aquifers.
4. State agencies – Best management practices for erosion and sediment control practices for construction activities (http://www.waterwebster.com/state_framebottom.htm)

3.7 Coastal Resources

Coastal areas and barrier systems often provide excellent wildlife habitat and protect inland areas from hurricanes and other storms. Many of this country's coastal areas are experiencing severe developmental pressures for residential, recreational and industrial use. These areas are also prone to storm damage and flooding. To address this condition Congress enacted laws to protect coastal areas.

The CZMA of 1972, as amended applies to all lands on the boundary of any ocean or arm thereof, and the Great Lakes. Applicants should note that the width of the "coastal zone" might vary among the States.

The Coastal Barrier Resources Act (CBRA) and the Coastal Barrier Improvement Act only apply to selected geographic areas designated as "Coastal Barrier Resources System (CBRS) Units." At present such units have been established and delineated along the coasts of the Atlantic Ocean, Gulf of Mexico, and the Great Lakes. Proposed units have been identified but not designated along the coasts of States bordering the Pacific Ocean.

Federal agencies are prohibited from providing financial assistance in CBRS units except for the following activities: the maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system (this does not include financial assistance for the replacement of distribution networks). Prior to approving proposals in CBRS units, applicants and Agency must consult with and gain the approval of the USFWS.

In addition to the prohibitions in the above paragraph, federal law prohibits flood insurance coverage under the National Flood Insurance Program for any new construction or substantial improvements of structures located on any coastal barrier within the CBRS. Agency requires flood insurance under the National Flood Insurance Program for all insurable structures, thereby further limiting financial assistance in CBRS units.

All proposals that are within coastal zone management areas must obtain a "consistency determination" - see (<http://coastalmanagement.noaa.gov/consistency/welcome.html>). Federal consistency is the CZMA's requirement that federal actions that are reasonably likely to affect any land or water use or natural resource in a coastal zone be consistent with the enforceable policies of a coastal state's or territory's federally approved coastal management program ("state CMP" or "CMP"). Federal actions include:

1. Direct federal actions - activities and development projects performed by a federal agency, or a contractor for the benefit of a federal agency; and
2. Indirect federal actions - activities not performed by a federal agency, but requiring federal permits or licenses or other forms of federal approval, and federal financial assistance to states and territories and local governments.

The objective is to ensure that federal agencies and applicants for federal approvals and funding adequately consider and comply with state CMPs. The key to effective and efficient consistency determinations is early coordination and consultation between CMPs, federal agencies, and applicants. It is an important mandatory, but flexible, mechanism to avoid potential conflicts between states, Territories and federal agencies. Federal consistency is more than just a procedural dictate. It is a method of ensuring greater protection of coastal uses and resources through the coastal management policies of states and Territories by assisting states in managing coastal uses and resources.

Federal consistency reviews are the responsibility of the lead state CMP agency. A state CMP reviews the federal action to determine if the proposal will be consistent with the CMP. After working with state CMPs and making any appropriate changes to the proposal, federal agencies and applicants shall provide a consistency statement to the CMP, along with supporting documentation.

3.7.1 Coastal Resource Information

The types of information that should be provided include:

1. Identify portions of the proposal which will be located in the coastal zone or CBRS unit or will otherwise affect these areas;
2. Correspondence with the state coastal management program office concerning the proposal's consistency determination; and,
3. Mitigation measures necessary to achieve consistency with the state's coastal management program, if necessary.

3.7.2 Potential Information Sources

1. State CMP Agency; (<http://coastalmanagement.noaa.gov/mystate/>);
2. USFWS - CBRS information (http://www.fws.gov/habitatconservation/coastal_barrier.htm);
3. CBRS maps are available from through the website identified in item 2 or <http://projects.dewberry.com/FWS/CBRS%20Maps/Forms/AllItems1.aspx>
4. National Oceanic and Atmospheric Administration (NOAA) (<http://www.nos.noaa.gov/>) see coastal resources.

3.8 Socio-economic Issues/Environmental Justice

Proposals funded by or in part by Agency have a potential to affect the socio-economic conditions of the areas being served. Applicants should be aware of potential effects to the socio-economic makeup of the area proposed to be served and document these concerns if the effects are determined to be adverse. Effects could be beneficial or adverse. In addition, applicants need to determine if their proposal has or may have a disproportionately high and adverse human health or environmental effects on minority and low-income populations. Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", dated February 11, 1994, and USDA DR 5600-2 "Environmental Justice", dated December 15,

1997, requires the consideration of environmental justice issues into NEPA environmental reviews. These issues include:

1. Analyzing for the potential of disproportionately high and adverse human health or environmental effects to minority and low-income populations;
2. Providing opportunities for minority and low-income populations to participate in the NEPA process if these populations may be adversely affected; and,
3. Identifying mitigation measures that would reduce adverse human health or environmental effects to minority and low-income populations.

3.8.1 Socio-economic Issues

3.8.1.1 Socio-economic Information

Part of the USDA, Rural Development's mission is to support sound development of rural communities and provide economic opportunities for farm and rural residents. This mission may significantly affect the socio-economic make-up of the area to be served. Applicants should, in conjunction with an analysis of existing land uses and any projected land use changes caused by the proposal, be aware of and be prepared to discuss any potential changes to an area's socio-economic make-up.

3.8.1.2 Potential Information Sources

1. U.S. Department of Commerce, Census Bureau (<http://www.census.gov>);
and
2. State Census Data Centers (<http://www.census.gov/sdc/www/>)

3.8.2 Environmental Justice Issues

3.8.2.1 Environmental Justice Information

Applicants must include an analysis of the potential impact of a proposal, or any part thereof, that may pose disproportionately high and adverse human health or environmental effects to minority and low-income populations. The environmental justice analysis in the ER should determine if the proposal will be located in a minority or low-income community and, if so, analyze if the location of the proposal will have, or be perceived to have, disproportionately high adverse human health or environmental effects to the community. If the proposal will have no disproportionate effects, this should be stated. If the proposal is to be located in a minority or low-income community and will have, or may be perceived to have, disproportionately high or adverse human health or environmental effects to the community, the analysis must include a description of the efforts made to include minority and low-income populations into the NEPA process. These efforts may include public notices and special outreach efforts aimed at these populations. When it is determined that there is no practicable alternative to locating a proposal in a minority or low-income community and if there will be disproportionately high human health or environmental effects, the analysis must

include a discussion of the mitigation measures evaluated that would off-set or minimize these effects.

Applicants should consult with the Rural Development Civil Rights Coordinator to discuss any state-specific issues.

3.8.2.2 Potential Information Sources

1. USEPA (<http://www.epa.gov/oswer/ej/index.html>) and Environmental Justice Geographic Assessment Tool (<http://www.epa.gov/compliance/wherelive/ejtool.html>).
2. Local Elected Officials/agencies;
3. Rural Development Civil Rights Coordinators;
4. U.S. Department of Commerce, Census Bureau (<http://www.census.gov>);
5. Minority Business and Trade Groups;
6. Civic Organizations;
7. Tribal Officials;
8. Religious Groups/Churches;
9. Civil Rights Organizations; and,
10. Senior Citizens Groups.

For more information see Exhibit F-3.

3.9 Miscellaneous Issues

The types of environmental issues that may be related to a proposal's designs and requirements are complex and highly site-specific. The primary issues to be considered are listed in the above sections, however, applicants need to be aware that other less significant issues may arise during a proposal's planning and design activities. The following subsections are some of the more common miscellaneous issues that may come up but is not meant to be an all-inclusive list.

3.9.1 Air Quality

Federal government actions must comply with the Clean Air Act, General Conformity Rule. Established under the Clean Air Act (Section 176(c)(4)), the General Conformity Rule and requirements are meant to prevent air quality impacts of federally approved or funded activities from causing or contributing to violations of the national ambient air quality standards (NAAQS) in an area working to attain or maintain the standards. Under the General Conformity Rule, federal agencies must work with state, tribal and local governments in nonattainment or maintenance areas to ensure that federal actions conform to the initiatives established in their applicable state or tribal implementation plans, i.e., to ensure that emissions from their actions will not exceed emission budgets established in the state implementation plan (SIP), tribal implementation plan (TIP) or federal implementation plan (FIP) or not otherwise interfere with the state's ability to attain and maintain the NAAQS. Only direct or indirect emissions originating in a

nonattainment or maintenance area need to be analyzed for conformity with the applicable implementation plan.

For the purposes of this Bulletin applicable emissions regulated are direct emissions. Direct emissions mean those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and originate in a nonattainment or maintenance area and occur at the same time and place as the action and are reasonably foreseeable. Criteria pollutants are: CO - Carbon monoxide, NO₂ - Nitrogen dioxide, O₃ - Ozone (1-hour), O₃ - Ozone (8-hour), SO₂ - Sulfur dioxide, PM_{2.5} - Particulate matter (diameter <2.5 micrometers), PM₁₀ - Particulate matter (diameter <10 micrometers), and Pb - Lead.

For most if not all Water and Environmental Program proposals, the applicability of this issue would be associated with construction activity emissions. If any of the above apply, applicants, in consultation with the State Environmental Coordinator, will evaluate:

1. Whether the proposal occurs in a nonattainment or maintenance area;
2. In accordance with the applicable implementation plan, whether one of the specific exemptions apply to the action; or
3. Whether the total direct and indirect emissions are below or above the de minimis levels.

This information can be obtained from the designated state or tribal air pollution program administrators within their states.

If the applicant determines that their proposal meets any of the above emission criteria, the applicant will consult with the Agency and in consultation with the applicant the Agency must:

1. Demonstrating that the total direct and indirect emissions are specifically identified and accounted for in the applicable SIP;
2. Obtaining a written statement from the state or local agency responsible for the SIP documenting that the total direct and indirect emissions from the action along with all other emissions in the area will not exceed the SIP emission standards;
3. Obtaining a written commitment from the state to revise the SIP to include the emissions from the action;
4. Obtaining a statement from the metropolitan planning organization (MPO) for the area documenting that any on-road motor vehicle emissions are included in the current regional emission analysis for the area's transportation plan or transportation improvement program;
5. Fully offset the total direct and indirect emissions by reducing emissions of the same pollutant or precursor in the same nonattainment or maintenance area; or
6. Conducting air quality modeling that demonstrates that the emissions will not cause or contribute to new violations of the standards, or increase the frequency or severity of any existing violations of the standards.

Another air quality issue that may apply to Water and Environmental Program proposals would be off-site nuisance or annoyance odors associated with waste water and solid waste facilities. If applicable, this issue must be evaluated with regard to effects on the surrounding and potentially affected public. Ambient standards for odor causing compounds are normally regulated by state air quality permitting agencies.

3.9.1.1 Air Quality Information

The types of information that should be provided include:

1. Sources and types of any air emissions from the proposal;
2. Location of proposal to any nonattainment or maintenance or Class I areas;
3. Compliance with the SIP, either through agency exemption or proposal review;
4. Anticipated effects (including duration) on air quality from construction activities, especially if the enforcement agency has not provided an exemption or project review;
5. Analysis of Best Available Control Technologies, if required for air quality permit application;
6. Anticipated effects on air quality from operation of the facility; and,
7. Sources of odors and mitigation measures necessary to minimize off-site migration of odors.

3.9.1.2 Potential Information Sources

1. State and Local Air Pollution Program Administrators (<http://www.4cleanair.org/>); and
2. USEPA air quality operating permits (<http://www.epa.gov/oar/oaqps/permits/>)
3. USEPA air quality planning and standards (<http://www.epa.gov/oar/oaqps/emission.html>)
4. Attainment/Nonattainment areas (<http://www.epa.gov/air/oaqps/greenbk/index.html>)
5. USEPA Air Quality Datasets including maps (<http://www.epa.gov/air/data/>)

3.9.2 Transportation

Information concerning this issue may be required if the proposal proposes the construction of highway crossings or elevated water storage facilities especially where these facilities are located adjacent to airports (including airport clearance or accident zones), roads, highways, railroads, and navigable waterways. Permits may be required from the applicable agencies prior to construction.

3.9.2.1 Transportation Information

The types of information that should be provided include:

1. Changes or modification of traffic patterns as a result of the proposal;
2. Fuel and chemical delivery requirements for treatment facilities;
3. Potential impairment of highway safety or navigable waterways; and
4. Location of any airports that could be close to proposed water tanks or other potential obstacles. Specify any airport clearance or accident zones.

3.9.2.2 Potential Information Sources

1. U. S. Department of Transportation (USDOT), Federal Highway Administration (<http://www.fhwa.dot.gov/> or <http://www.fhwa.dot.gov/environment/index.htm>);
2. State transportation agencies; see (<http://www.fhwa.dot.gov/webstate.htm>); and
3. Federal Aviation Administration (FAA) offices (http://www.faa.gov/about/office_org/).
4. For any military facilities, contact the FAA (http://www.faa.gov/airports_airtraffic/airports/aip/military_airport_program/) or the DOD facilities' Public Affairs Office.

3.9.3 Noise

Information concerning this issue may be required for the construction and operation of facilities, especially those facilities that may be located in or near noise sensitive developments such as residential areas. The most current noise assessment methodology is contained in the "Noise Guidebook", published by the U.S. Department of Housing and Urban Development, Office of Community and Development.

3.9.3.1 Noise Information

The types of information that should be provided include:

1. Noise levels from construction and operation of facilities at nearby noise sensitive development; and,
2. Sound attenuation or any other mitigation measures to be taken to reduce or eliminate adverse effects from unacceptable noise levels.

3.9.3.2 Potential Information Sources

1. State and local planning or environmental agencies – (<http://www.nonoise.org/lawlib/cities/cities.htm>);
2. Noise Pollution Clearinghouse (<http://www.nonoise.org/index.htm>)
3. USEPA Noise Issues (<http://www.epa.gov/history/topics/noise/index.htm> and http://publicaccess.custhelp.com/cgi-bin/publicaccess.cfg/php/enduser/std_adp.php?p_faqid=1765); and
4. U. S. Department of Housing and Urban Development, Office of Community and Development, Washington D.C. (<http://www.hud.gov/offices/cpd/energyenviron/environment/resources/guidebooks/noise/>);
5. Federal Aviation Administration noise control information (http://www.faa.gov/about/office_org/headquarters_offices/aep/aircraft_noise/)

4.0 AGENCY CORRESPONDENCE

In completing an ER, coordination with appropriate environmental regulatory agencies may require two interactions. The first interaction may involve basic data collection, however much of this effort can be completed using the various Internet websites offered by applicable agencies. The second interaction may be required in order to obtain the concurrence of or agreement with any determinations made from the evaluation of this data for potential environmental effects of the proposal and any reasonable alternatives considered. For example, if the applicant, based on data collected from the USFWS concludes that no threatened and endangered species will be affected by the proposal, the applicant needs to obtain the concurrence in writing from these agencies. If the proposal will affect an endangered species, all documentation regarding coordination with USFWS must be included in the ER.

The applicant should make a reasonable effort to obtain written responses from agencies and others that have specialized information about or regulatory oversight concerning an environmental resource or issue (**copies of emails may be used**). Normally, they should be given a minimum of 30 days to respond to a written request for comments. If no written response is received within the requested time period, the applicant should re-contact the agency by telephone concerning whether it intends to comment on the proposal in writing. In certain cases where time is of the essence, it may be prudent to telephone the agency a few days after sending the written request to determine whether the information has been received. Written documentation of follow-up telephone conversations or meetings with agencies must be included in the ER.

It is recognized that applicants cannot force an agency to comment and that unreasonable requests for time extensions may unduly delay a proposal. It is not intended that an ER be stymied under such circumstances. When an applicant has made reasonable efforts to obtain an agency response and has not received one, the applicant should document its efforts in the ER.

4.1 Reaction to Agency Comments

When an agency raises concerns about a proposal, recommends further studies, or suggests mitigation measures to offset environmental impacts, the applicant should consult with the Rural Development State Environmental Coordinator or Processing Office for advice. **IT IS ESSENTIAL THAT THE APPLICANT ADDRESS ALL SUCH COMMENTS, RECOMMENDATIONS, OR SUGGESTIONS IN THE ER.**

The applicant shall seek to resolve all outstanding concerns with regulatory agencies prior to submitting the ER to Agency. If, subsequent to contacting regulatory agencies, an applicant has unresolved concerns about a particular issue, they shall contact the Rural Development State Environmental Coordinator or Processing Office for assistance. The Rural Development State Environmental Coordinator and Processing Office shall assist the applicant in resolving all concerns with regulatory agencies.

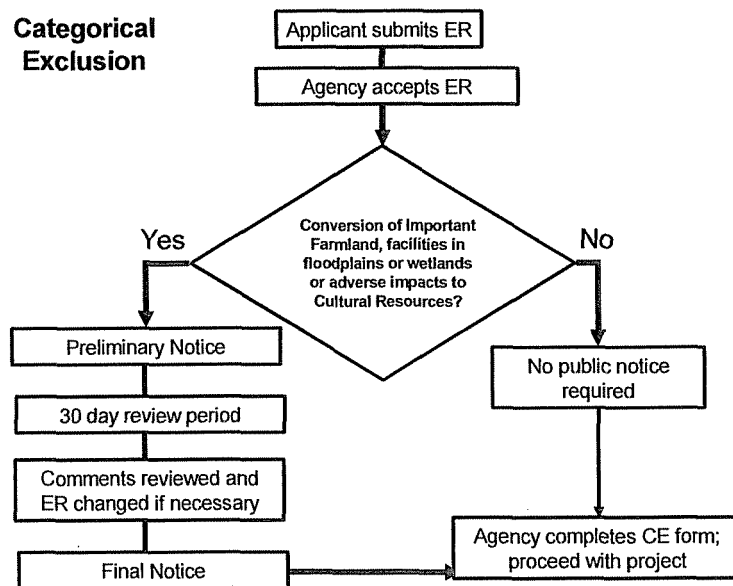
Common Contacts		
Contact	Environmental Resource Information	
	Primary	Secondary
Local/Regional/State Planners	<ul style="list-style-type: none"> • Land Use • Noise • Floodplains (local Floodplain Mgmt. Coordinators) • Environmental Justice 	
State Environmental/Natural Resource Agencies	<ul style="list-style-type: none"> • Water Quality • Air Pollution • Biological Resources 	<ul style="list-style-type: none"> • Formally Classified Land • Wetlands • Aesthetics • Important Farmland • Floodplains
State Coastal Mgmt. Program Agency	<ul style="list-style-type: none"> • Coastal Resources 	
SHPO	<ul style="list-style-type: none"> • Historic Properties • Visual/Aesthetics 	
THPO	<ul style="list-style-type: none"> • Historic Properties • Environmental Justice • Visual/Aesthetics 	
Local/State historic groups		<ul style="list-style-type: none"> • Historic Properties
BLM	<ul style="list-style-type: none"> • Formally Classified Land • Visual/Aesthetics 	
FEMA	<ul style="list-style-type: none"> • Floodplains 	
NRCS	<ul style="list-style-type: none"> • Important Farmland • Wetlands (Soil Surveys) 	<ul style="list-style-type: none"> • Biological Resources • Water Quality • Floodplains (Soil Surveys)
NPS	<ul style="list-style-type: none"> • Formally Classified Land • Visual/Aesthetics 	<ul style="list-style-type: none"> • Historic Properties
NMFS	<ul style="list-style-type: none"> • Biological Resources 	
NOAA	<ul style="list-style-type: none"> • Coastal Resources 	
FAA	<ul style="list-style-type: none"> • Transportation 	
USDOT, FHA	<ul style="list-style-type: none"> • Transportation 	
State DOT	<ul style="list-style-type: none"> • Transportation 	
USEPA	<ul style="list-style-type: none"> • Water Quality (Sole Source Aquifers) 	<ul style="list-style-type: none"> • Water Quality (NPDES) • Air Quality
USFWS	<ul style="list-style-type: none"> • Coastal Barrier Resources • Biological Resources 	<ul style="list-style-type: none"> • Wetlands
USFS	<ul style="list-style-type: none"> • Formally Classified Land 	
USACE	<ul style="list-style-type: none"> • Wetlands 	<ul style="list-style-type: none"> • Formally Classified Land

In certain instances, comments from federal, state, or local agencies may raise environmental issues of concern to state agencies which are not afforded specific protection under federal laws and regulations (*e.g.*, a state listed endangered species which is not on the federal list). Such comments on state and local environmental issues should also be discussed in the ER. Taking such matters into account may be essential in securing state and local permits and approvals. Moreover, in considering the effect of a proposal on the quality of the human environment, NEPA and the CEQ

regulations require federal agencies to consider overall environmental impacts, not merely those environmental resources specifically protected by federal laws, regulations, or Executive Orders.

5.0 PUBLIC NOTICES

Public notices may be required on two occasions for certain proposals. A proposal classified as a CE will require a preliminary notice and a final notice if certain resources will be directly converted (important farmland, wetlands or floodplains) or adversely affected (historic properties) otherwise no public notices are required. A proposal classified as an EA will always require a public notice announcing the availability of the EA for public review and a notice announcing the Agency's environmental decision or a FONSI. To enable the public in easily locating proposals all public notices must include location maps. Templates for public notices are in Exhibit B.



5.1 Categorical Exclusion

Where a proposal proposes to convert important farmland, locate facilities in wetlands or floodplains, or adversely affect a historic property, the public will be provided an opportunity to review and comment on the proposal's effects. In accordance with the applicable Executive Orders, this notice is done in two stages, a preliminary notice announcing the proposal and a final notice where the Agency has considered input from the public and states its decision regarding the proposal.

The purpose of the preliminary notice, as required by specific Executive Orders, is to inform the public of the proposed conversion and request their comments as to alternate sites or actions that could avoid or minimize the conversion (see Exhibit B.1). The preliminary notice is issued after the Agency accepts the ER and has determined the proposal is properly classified as a CE. The public is provided a 30-day period to submit comments. The Agency and applicant will review the comments and make any appropriate changes to the ER.

The purpose of the final notice is a follow-up to the preliminary notice and is intended to inform the public of the Agency's decision on the conversion (see Exhibit B.2). When

the Agency has determined that that there is no practicable alternative to avoiding the conversion, the final notice will inform the public of the Agency's determination and document all pertinent reasons.

The table below summarizes the CE public notice requirements.

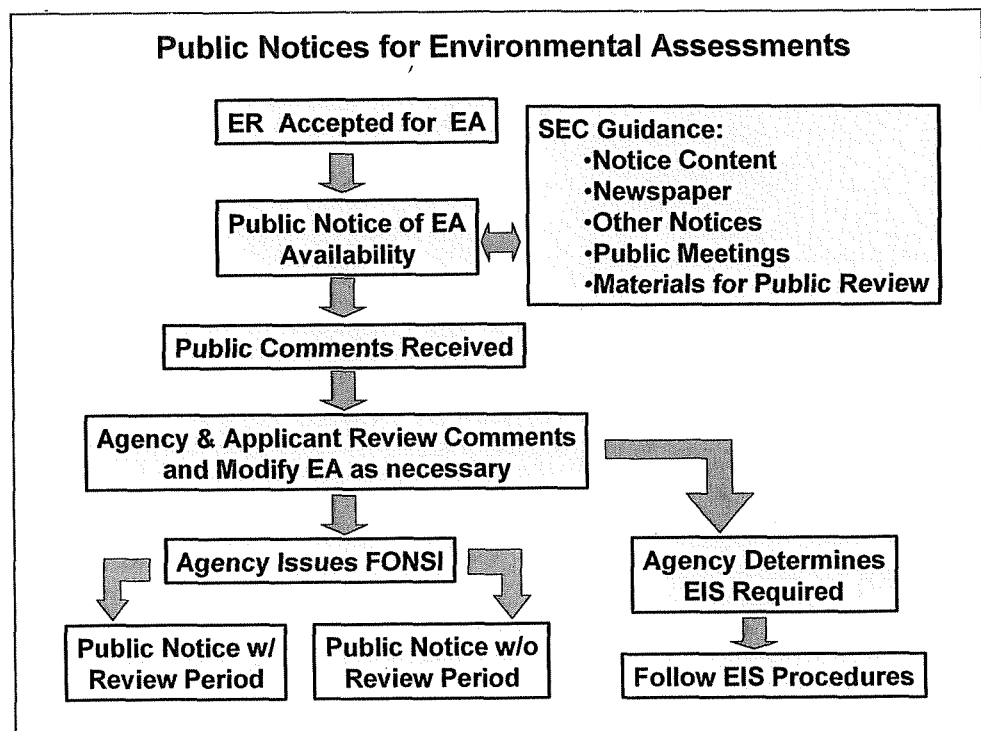
Categorical Exclusion Public Notice Requirements				
Proposed Conversion of Resource	Preliminary Notice	Review Period ³ (days)	Final Notice	Review Period (days)
None	N/A	N/A	N/A	N/A
Important Farmland ¹	Yes	30	Yes	0
Wetlands	Yes	30	Yes	0
Floodplains	Yes	30	Yes	0
Historic Properties ²	Yes	30	Yes	0

1. Includes Important Farmland (as defined by DR 9500-3)
 2. For historic properties in the context of the NHPA, the term "converted" refers to an "adverse effect."
 3. Comment periods are calculated from the date of the first publication.

5.2 Environmental Assessment

When the Agency accepts the ER as its EA, publishing two public notices will be required. The first informs the public of the availability of the EA. The second, a FONSI, informs the public of the Agency's determination that the proposal poses no significant environmental impacts.

The purpose of the first notice is to announce the availability of the EA for a 30-day public comment period. After the Agency has accepted the ER and determined that it will serve as its EA, the Agency will authorize the applicant to publish the public notice in local newspapers of general circulation in the area where the



proposal is located (see B.3). If the proposal proposes to convert important farmland, construct facilities in floodplains or wetlands, or adversely affect a historic property, the information required in Preliminary Notice listed in Exhibit B.1 needs to be integrated in the EA notice. The public is provided a 30-day period to submit comments. The Agency and the applicant will review the comments and make any appropriate changes to the EA.

The purpose of the second notice is to announce that the Agency has reached a FONSI (see B.4). The Agency will authorize the applicant to publish the finding including any project-specific requirements. FONSI notices must summarize whether any public comments were received and if comments were received brief summaries of the Agency's responses to the comments. Normally there are no public comment periods after the FONSI is published. However, where substantive comments are received on or substantive changes have been made to the EA, the Agency may require an additional period (15 days) for public review following the publication of its FONSI determination. Substantive comments and any changes to the EA must be summarized in the FONSI.

This table explains the EA public notice requirements.

Environmental Assessment Public Notice Requirements						
Conversion of, Locating Facilities in, or Adverse Impact to the Listed Resource	Environmental Assessment Notice			FONSI Notice		
	Standard EA Notice	Include Preliminary Notice Information	Review Period ³ (days)	Standard FONSI Notice	Include Final Notice	Review Period ^{4,5} (days)
None of the below	Yes	No	30	Yes	No	0 or 15
Important Farmland ¹	Yes	Yes	30	Yes	Yes	0 or 15
Wetlands ²	Yes	Yes	30	Yes	Yes	0 or 15
Floodplains ²	Yes	Yes	30	Yes	Yes	0 or 15
Historic Properties ³	Yes	Yes	30	Yes	Yes	0 or 15

1 Includes conversion of Important Farmland (as defined by DR 9500-3)
 2 Refers to a proposal to locate a facility in a wetland or floodplain.
 3 An adverse affect on historic properties is defined in the context of the NHPA.
 4 Comment periods are calculated from the date of the first publication.
 5 An additional 15-day review is only necessary if substantive comments have been received and the EA has been significantly amended. This determination is made by the Rural Development State Environmental Coordinator.

5.3 Notifying the Public

It is Agency's responsibility to ensure the adequacy of all public notices. Therefore, prior to publishing public notices applicants should ask the Rural Development Processing Office to review and concur with all notices. When publishing public notices, the applicant should ensure that the notice has a reasonable likelihood of attracting the

attention of individuals or organizations that may be interested in or affected by the proposal.

Normally newspaper advertisements are used to notify the public of applicant and Agency actions. However, other forms of notice may be appropriate depending on the nature of the proposal's potential impacts and the nature of the target audience. The following methods may be appropriate:

- Individual notices mailed to landowners or residents who live or own property adjacent to facilities or are directly affected by the proposed construction of the facilities;
- Radio and television announcements;
- Inserts into utility bills;
- Notices posted in areas frequented by the target audience;
- Public meetings; or,
- Announcements at public activities (schools, place of worship, town meeting, etc.)

Newspaper notices should be of reasonable size and prominence and not be placed in the classified or legal section or an obscure portion of the newspaper. Notices may be placed in sections of the newspaper that are specifically set aside for public notices. All public notices will be published in newspaper(s) of local circulation in the area affected by the proposal. The publication frequency shall be 3 consecutive days for daily newspapers and 2 consecutive weeks in weekly newspapers. **Public review dates shall be computed from the initial publication date of the notice.** Proof of publication shall be provided to Agency either as a copy of the notice or the publisher's affidavit.

Upon approval and acceptance of the ER, the Rural Development State Environmental Coordinator will determine if any unique public notice requirements (beyond the standard public notice language - see Exhibit B) for the proposal are necessary. These may include:

- Content of the notice;
- Public review period;
- Frequency of newspaper advertisements;
- Other forms of public notice;
- Public meeting;
- Materials and information to be made available to the public; or,
- Other actions necessary to obtain sufficient public involvement in the environmental review process.

Copies of all comments received by the applicant, including unsolicited comments, must be submitted to Agency as soon as possible for consideration. The Agency and the applicant will review the comments, address each comment, and make any appropriate changes to the EA. Again summaries of all public comments received during the public

review period and Agency responses must be briefly summarized in either Final Notices or FONSI notices.

5.4 Environmental Justice

If the proposal is to be located in a minority or low-income community and will have, or may be perceived to have, disproportionately high and adverse human health or environmental effects to that community, special efforts may be necessary to include these populations into the public involvement process. These efforts may include public notices, community outreach meetings, and publishing public notices in languages other than English and in non-English newspapers or publications. All special outreach efforts must be fully described in the ER.

Nothing in the foregoing discussion is meant to restrict the applicant's use of other media in publishing public notices. Agency's requirements for public notices are merely establishing a minimum. Other means of communication may be particularly effective in reaching the public in appropriate situations.

6.0 Exhibit A - Agency Correspondence for Information Gathering

Included in this exhibit are sample letters directed to a variety of federal and state agencies that are normally contacted during the preparation of an ER. These examples are designed to provide guidance to applicants in preparing information requests to environmental regulatory or natural resource agencies. Individual letters should be tailored to the nature of the specific proposal and the issues involved. At times a briefer format may be reasonable, while in other instances a more detailed explanation may be necessary. The Rural Development State Environmental Coordinator or Processing Office can provide the appropriate names and addresses of the appropriate agencies to contact.

It is not the intent of this section to require written correspondence with applicable environmental regulatory or natural resource agencies. Applicants are required to gather the appropriate resource data in order to adequately evaluate and document a proposal's potential to affect any of the resources listed in this Bulletin. The gathering of data may be accomplished by any appropriate means but whatever process is used, i.e., telephone inquiries, email, website searches, etc, all data gathering or consultation processes must be thoroughly documented in the ER. This will enable the Agency to determine whether proper and adequate consultation processes with applicable agencies have been followed. Copies of websites or email can be copied and provided in the ER as well as the documenting the date, time and the title and name of agency staff consulted via the telephone. As stated in Section 1.2, it is the Agency's responsibility to independently evaluate and verify the accuracy of the information provided in the ER. In addition, the Agency is ultimately responsible for the scope and content of the resulting environmental document. Providing clear and concise documentation as to the data gathering and consultation process used by applicants will enable the Agency to efficiently review the ER.

A.1 State Historic Preservation Office Letter Requesting Information Regarding Historic Properties

In accordance with Section 3.4, applicant should contact the Rural Development State Environmental Coordinator to inquire into any state-specific procedures or protocols for initiating consultation with the State Historic Preservation Office and any tribal interests. In addition applicants must establish an area of potential effect consistent with the Section 106 regulations, i.e., "Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (see 36 CFR 800.16(d))" and provide this information to the SHPO. Under the Section 106 regulations, applicants may initiate consultation with these parties and request information but it is the Agency's responsibility to submit any findings of effect to the SHPO or tribe.

The (*Applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Utilities Service in order that it may assess the environmental impacts of (*description of the proposal*)¹ in (*county*), (*State*). The project is being proposed to (*give a brief statement supporting project need*). Enclosed is an U.S. Geological Survey map(s) that depicts the proposal's area of potential effect for all construction activities and a description of the work involved².

(*Applicant's name*) requests the assistance of your office in identifying historic properties that are listed or eligible for listing on the National Register of Historic Places and that may be affected by the project. Please provide any recommendations you may have to mitigate or avoid these impacts, to properties that may be affected.

We would appreciate a response within 30 days. If you need any further information or wish to discuss the project, please contact (*name*) at (*telephone number*).

¹Applicants should provide a complete proposal description as an attachment to this letter. In order for the SHPO to provide appropriate feedback as to historic properties in the area of potential of effect, the proposal descriptions submitted need to be explicit in the types and locations of all construction activities being proposed (see footnote 2).

² In order to expedite SHPO request for information, applicant should submit maps of an appropriate scale that will show the proposal's area of potential effect. These areas should cover all proposed construction including easements, staging areas, etc.. Applicants should consider submitting photographs of any suspected historic properties with letters.

A.2 U.S. Fish and Wildlife Service or National Marine Fisheries Service Letter Concerning Endangered Species

The (*Applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Utilities Service in order that it may assess the environmental impacts of (*description of the project*)¹ in (*county*), (*State*). The project is being proposed to (*give a brief statement supporting project need*). Enclosed is an U.S. Geological Survey map(s) that depicts the proposal's construction activities and a description of the work involved.

The proposal should not represent a "major construction activity" as defined in 50 CFR 402.02. We request a list of any Federally-listed or proposed threatened or endangered species and designated or proposed critical habitat that may be present in the project area. In addition, please advise us of any present concerns you may have related to possible effects of the project listed above on such species or critical habitat, as well as any other wildlife concerns.

We would appreciate a response within 30 days. If you need any further information or wish to discuss our project, please contact (*name*) at (*telephone number*).

¹Applicants could provide a complete proposal description as an attachment to this letter. In order for the USFWS to provide appropriate proposal reviews, the proposal descriptions submitted need to be explicit in the types and locations of all construction activities that are being proposed.

A.3 Natural Resources Conservation Service (state or field office) Letter Concerning Important Farmland

Check Exhibit F for the process of submitting NRCS Form AD-1006 with this request; for copies of the form see -

http://www.nrcs.usda.gov/programs/fppa/pdf_files/AD1006.PDF

The (*Applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Utilities Service in order that it may assess the environmental impacts of (*description of the project*)¹ in (*county*), (*State*). The project is being proposed to (*give a brief statement supporting project need*). Enclosed is an U.S. Geological Survey map(s) that depicts the proposal's construction activities and a description of the work involved.

We are requesting information on the possible effects of the proposal on important farmland and any recommendations you have to minimize or avoid these effects. We also seek your assessment of the compatibility of the proposal with State and local government or any private programs and policies to protect important farmland.

We would appreciate a response within 30 days. If you need any further information or wish to discuss our project, please contact (*name*) at (*telephone number*).

¹Applicants could provide a complete proposal description as an attachment to this letter. In order for NRCS to provide appropriate proposal reviews, the proposal descriptions submitted need to be explicit in the types and locations of construction activities that are being proposed.

A.4 Letter to Federal Land Manager

The (*Applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Utilities Service in order that it may access the environmental impacts of (*description of the project*)¹ in (*county*), (*State*). The project is being proposed to (*give a brief statement supporting project need*). Enclosed is an U.S. Geological Survey map(s) that depicts the proposal's construction activities and a description of the work involved.

As is shown on the enclosed map, some of the construction may take place in the (*name of unit*). Although the submittal of a special use permit application at this time would be premature, we are seeking information on environmental effects from the projects as an input to the Rural Utilities Service's decision-making process. We request your review of this project for potential impacts to officially designated areas within the (*name of unit*), and any recommendations you may have to mitigate or avoid these effects. We would also appreciate receiving any information regarding additional review requirements that your agency may have.

We would appreciate a response within 30 days. If you need any further information or wish to discuss the project, please contact (*name*) at (*telephone number*).

¹Applicants could provide a complete proposal description as an attachment to this letter. In order for the agency to provide appropriate proposal reviews, the proposal descriptions submitted need to be explicit in the types and locations of all construction activities that are being proposed.

A.5 State Natural Resource or Environmental Agency Letter

The (*Applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Utilities Service in order that it may access the environmental impacts of (*description of the project*)¹ in (*county*), (*State*). The project is being proposed to (*give a brief statement supporting project need*). Enclosed is an U.S. Geological Survey map(s) that depicts the proposal's construction activities and a description of the work involved.

(*Applicant's name*) requests that your office review the proposal for any State and Federally-listed threatened and endangered species and any other important State natural resources that may occur in the project area. Please provide any recommendations you may have to mitigate or avoid these impacts.

We would appreciate a response within 30 days. If you need any further information or wish to discuss the project, please contact (*name*) at (*telephone number*).

¹Applicants could provide a complete proposal description as an attachment to this letter. In order for the agency to provide appropriate proposal reviews, the proposal descriptions submitted need to be explicit in the types and locations of all construction activities that are being proposed.

A.6 State Coastal Management Program Agency Letter Concerning Coastal Zone Management Issues

The (*Applicant's name*) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the USDA, Rural Utilities Service in order that it may assess the environmental impacts of (*description of the project*)¹ in (*county*), (*State*). The project is being proposed to (*give a brief statement supporting project need*). Enclosed is an U.S. Geological Survey map(s) that depicts the proposal's construction activities and a description of the work involved.

Please advise us if the proposal is within areas of the State's Coastal Management Program and if so performs a federal consistency reviews. We request your review of this project so that you may assist us in ensuring that our construction activities will be consistent with program goals. Any other information you may wish to provide regarding environmental impacts or suggestions for mitigating impacts will be appreciated and taken into consideration.

We would appreciate a response within 30 days. If you need any further information or wish to discuss our project, please contact (*name*) at (*telephone number*).

¹Applicants could provide a complete proposal description as an attachment to this letter. In order for the state CMP agency to provide appropriate proposal reviews, the proposal descriptions submitted need to be explicit in the types and locations of construction activities that are being proposed.

7.0 Exhibit B - Sample Public Notices

B.1 Preliminary Notices for Categorical Exclusions

These notices are required for proposals classified as CEs that propose to convert important farmland, construct facilities in a wetland or floodplain, or adversely affect a historic property.

Preliminary Notice of Potential Conversion of [insert issue(s)]¹

The USDA, Rural Utilities Service has received an application for financial assistance from [insert applicant's name]. The proposal consists of [itemize the project's construction activities and locations]. If implemented, the proposal will convert [insert issue(s)]¹ – include acreage, locations]. The purpose of this notice is to inform the public of this proposed conversion or effect and request comments concerning the proposal, alternative sites or actions that would avoid these impacts, and methods that could be used to minimize these impacts.

The environmental documentation regarding this proposal is available for review at [insert Rural Development office location or applicant locations]. For questions regarding this proposal contact [insert name and telephone number of Rural Development official].

Any person interested in commenting on this proposal should submit comments to the address above by [have newspaper insert a date that is 30 days from the date the notice is first published].

A general location map of the proposal is shown below. [Insert map].

¹ Important Farmland, Wetland, Floodplain, or an adverse effect to a historic property

B.2 Final Notices for Categorical Exclusions

Whenever a preliminary notice is published, the publication of a final notice is required. Below is a sample of a Final Notice.

Final Notice of Potential Conversion of [insert issue(s)]¹

The USDA, Rural Utilities Service has received an application for financial assistance from [insert applicant's name]. The proposal consists of [itemize the project's construction elements and locations]. Rural Development has assessed the environmental impacts of this proposal and determined that the location of [insert construction activity or facility] will convert or effect [insert issue(s)]¹. It has been determined that there is no practicable alternative to avoiding this conversion or effect. The basis of this determination is [summarize the justification and reasons for the conversion or effect].

For information regarding this notice contact [insert Rural Development official's name and telephone number].

A general location map of the proposal is shown below. [Insert map].

¹ Important Farmland, Wetland, Floodplain, or an adverse effect to a historic property.

B.3 Notice of Availability of Environmental Assessment

Upon review and acceptance of the applicant's ER, the ER will serve as Agency's EA and shall be made available for public review and comment for a 30-day review period. If the proposal proposes a conversion of important farmland, construct a facility in a wetland or floodplain, or adversely affect a historic property, the contents of the Preliminary Notice as specified in B.1 need to be integrated into the notice below.

Notice of the Availability of an Environmental Assessment

The USDA, Rural Utilities Service has received an application for financial assistance from *[insert applicant's name]*. As required by the National Environmental Policy Act and agency regulations, the Rural Utilities Service has prepared an Environmental Assessment that evaluated the potential environmental effects and consequences of the proposal. This notice announces the availability of the Environmental Assessment for public review and comment.

The proposal consists of *[itemize the project's construction activities and locations; include information regarding any conversion(s) of [insert issue¹]; and summarize all proposed mitigation measures and locations used to minimize any adverse environmental effects]*. The alternatives considered to the proposal include: *[insert a summary of the alternatives and locations (if applicable) considered and discussed in the Environmental Assessment]*.

Copies of the Environmental Assessment are available for review at *[insert Rural Development and applicant office locations; if the EA is available at any other location(s) give address and telephone number]*. For further information contact *[insert name and telephone number of Rural Development official]*. Any person interested in commenting on this proposal should submit comments to the address above by *[have newspaper insert a date that is 30 days from the first publication date]*.

A general location map of the proposal is shown below *[Insert general location map of the proposal]*.

¹ Important Farmland, Wetland, Floodplain, or an adverse effect to a historic property.

B.4 Finding of No Significant Impact Notice

Subsequent to the notice announcing the availability of an EA and Agency approval, the applicant shall publish a public notice informing the public of Agency's determination of a FONSI for the proposal. Where the proposal proposes to convert important farmland, wetlands, or floodplains or adversely affects a historic property, the content of a Final Notice as specified in B.2 will be integrated in the FONSI notice.

Notice of a Finding of No Significant Impact

The USDA, Rural Utilities Service has received an application for financial assistance from *[insert applicant's name]*. The proposal consists of *[itemize the project's construction activities and locations; include information regarding any conversion(s) of [insert issue¹]*.

As required by the National Environmental Policy Act and agency regulations, the Rural Utilities Service prepared an Environmental Assessment of the proposal that assessed the potential environmental effects of the proposal and the effect of the proposal may have on historic properties. The Environmental Assessment was published on *[insert date]* for a 30-day public comment period. *[Insert a brief summary of the numbers of and content of the comments including brief responses to the pertinent comments]* Upon consideration of the applicant's proposal, federal and state environmental regulatory and natural resource agencies, *[insert all effect determinations to historic properties]* and public input the agency has determined that the proposal will not have a significant effect on the human environment and for which an Environment Impact Statement will not be prepared. The basis of this determination is *[briefly summarize reasons]*.

[Add if necessary] In order to avoid or minimize any adverse environmental impacts, the Rural Utilities Service will require the applicant to incorporate the following mitigation measures into the proposal's design *[briefly summarize all proposed mitigation measures and locations]*.

Copies of the Environmental Assessment can be reviewed or obtained at *[insert the Rural Development and applicant office locations and telephone numbers]*. For further information, please contact *[insert Rural Development official's name and telephone number]*.

*[If additional public review period is required have newspaper insert a date 15 day after the date of the first publication]*² A general location map of the proposal is shown below. *[insert general location map of the proposal]*.

¹ Important Farmland, Wetland, Floodplain, or an adverse effect to a historic property.

² Any person interested in commenting on this FONSI may submit comments to the address above by *[have newspaper insert date that is 15 days from the publication of this notice]*.

Normally, there is no comment period associated with a FONSI Notice; however, where the proposal is controversial or Agency has received substantive environmental comments that required a significant modification of the EA, the FONSI notice may be published with an additional 15-day comment period. Applicants will be informed by the Rural Development State Environmental Coordinator or Processing Office whether this requirement is applicable. If this is the case, information regarding the additional comment period needs to be included in the public notice - see note 2 above.

8.0 Exhibit C - Mitigation

The purpose of mitigation measures is to avoid or minimize adverse environmental impacts of a proposal. When developed as part of an ER, properly applied mitigation measures will allow Agency to determine that its financial support for a proposal will not have a significant effect on the human environment and is therefore not required to prepare an EIS.

Mitigation measures can be characterized as:

Structural. These measures are usually associated with planning, construction, and development activities. For example:

- Limit line sizes to serve only current population in a floodplain or to limit development in areas of important farmland;
- Provide a vegetative buffer zone along creeks, streams, etc.;
- Route construction away from sensitive areas – historic properties, critical habitat, etc.; or,
- Use of existing previously disturbed ROWs.

Restrictive. These measures are usually associated with development and operation. For example:

- Limit construction to certain times of the year – winter for wetland crossings, periods of low wildlife activity – after breeding season or spawning run;
- Halt work if an archaeological resource is uncovered;
- Limit access to utility lines in protected or sensitive resource areas; or,
- Minimize vegetative clearing in a riparian zone.

Regulatory. These measures rely on a third party to monitor for compliance. For example:

- Require USACE individual permit or notification of construction for nationwide permit in wetland areas;
- Evidence of approvals from land management agencies – BLM, USFS, etc.; or,
- Memorandum of agreement with SHPO.

Awareness. These measures rely on a third party to provide evidence of compliance. For example:

- Consultation with expert agencies when a resource may be impacted – NRCS for important farmland or USFWS for critical habitat for threatened and endangered species; or,
- Compatibility with local comprehensive land use plans.

Institutional. These measures rely on local zoning restrictions or applying deed restrictions to parcels of land due to releases of hazardous substances or residual contamination from hazardous wastes.

Mitigation measures can be very effective when applied properly. In reviewing potential mitigation measures give consideration to the following:

- The adverse effect must have a reasonable chance of occurring in the foreseeable future. Mitigation measures are only useful when there is a compelling reason to avoid or minimize adverse effects that have a reasonable expectation of occurring. If an adverse effect has a low expectancy in the foreseeable future, mitigation may not be necessary;
- Mitigation measures must be practicable. There must be a reasonable expectation that the measure can be applied and when applied, will have the desired outcome;
- There must be some motivation behind the mitigation measure. In other words, there must be some assurance that the measure will be implemented. Rural Development often relies on third parties to monitor and enforce implementation. Regulatory agencies are generally in the best position to accomplish this. It should also be expected that when the reason for the mitigation no longer exists, the mitigation would be discontinued;
- A mitigation measure should be in balance with both the potentials for impact on the environmental resource and the resource's relative environmental value. High potential impacts on critical resources would require a strong mitigation measure (e.g. restrictive measure). An awareness type measure would be more appropriate where there is a low potential for impact on a less critical environmental resource;
- Mitigation measures must be tailored to the specific condition of a proposal and its owner's capabilities. Customs and traditions in an area can often determine if a mitigation measure can be carried out to achieve its desired results; and,
- Developing and applying successful mitigation measures is more of an art than a science. There is no "one best solution" to avoiding or minimizing adverse impacts for all proposals. The language of mitigation implies subjective determinations – reasonable, foreseeable, practicable, value, etc. The applicant and Agency must evaluate and balance all of these elements.

C.1 Examples of Mitigation Measures

A list of typical mitigation and monitoring commitments that may be appropriate for certain types of applicant projects has been provided below. The list is by no means complete and is for illustrative purposes only.

Land Use

- Select ROW which supports present and planned land use; or
- Share an established corridor with other utilities.

Formally Classified Lands

- Avoid impacting properties that are owned and administered by federal, state, and local agencies or have been accorded special protection through formal designation.

Floodplains

- Minimize the extent of floodplains to be crossed or impacted by the construction of facilities;
- Locate support structures and facilities to allow for adequate flow of flood waters in the event of flooding;
- Design support structures to minimize accumulation of flood borne debris; and,
- Minimize clearing of riparian vegetation.

Wetlands

- Avoid crossing wetlands where practicable, or minimize the extent of wetlands crossed;
- Consider the purchase of wetlands outside the proposal's corridor to compensate for impacts to wetland resources;
- Avoid routing a permanent access road through wetlands;
- Perform certain construction activities in wetlands during dry conditions or when the ground is frozen; and,
- Minimize clearing of riparian vegetation.

Historic Properties

- Plan to route the utility lines away from historical properties;
- Consider restoration, if avoidance is not practical;
- Use vegetative screens to minimize visual intrusion;
- In consultation with Agency and SHPO, alter proposal if a "no effect" determination can not be readily achieved;
- Halt work if archaeological resources are uncovered and immediately contact SHPO and Agency. Do not resume work in the affected area until clearance has been received from SHPO and Agency; and,
- State that stipulations or agreements developed, as a result of the Section 106 process will be met.

Visual Aesthetics

- Avoid scenic areas, if possible; and
- Commit to thorough cleanup and revegetation of the ROW after project completion.

Threatened and Endangered Species

- Avoid threatened and endangered species and critical habitat;

- Perform construction outside the breeding season or when the species have migrated out of the area; and,
- If critical habitat cannot be avoided, state that stipulations resulting from consultation with the USFWS or NMFS will be met.

Wildlife

- Avoid open expanses of water or wetlands used as flight paths by migrating waterfowl;
- Avoid waterfowl nesting or rearing areas; and,
- Perform construction activities during seasons of low wildlife activity (*e.g.*, after breeding period or spawning run).

Vegetation

- Use an existing ROW to minimize new clearing;
- Use brush blades instead of dirt blades when clearing ROW;
- Coordinate new planting with the NRCS, USFS, BLM, appropriate state agencies, or individual landowners; and,
- Schedule construction in order to minimize earth disturbance during wet seasons.

Water Quality Issues

- Avoid placing utility lines within streambeds;
- Avoid use of herbicides near waterways;
- Avoid storing petroleum products, chemicals, toxic substances or hazardous materials within a floodplain;
- Avoid groundwater contamination through proper handling and storage of petroleum products, chemicals, toxic substances, and hazardous materials;
- Require sedimentation controls when working on water intake or discharge facilities in lakes and stream banks; and,
- Avoid crossing streambeds or waterways except at designated fords, crossing points, or bridges.

Soils

- Minimize soil erosion by mulching, seeding, and replanting or implementing erosion and sedimentation control (if available, include samples of best management practices into the construction contractors' obligations that are part of construction contractual specifications); and
- Describe efforts to restore or replace topsoil that may be disturbed.

Air Pollution

- During construction, dampen access roads to minimize fugitive dust; and
- Avoid burning of slash and debris or burn only within applicable regulations.

Transportation

- Avoid placing structures near airfield runways, approaches and flight paths.

Noise

- Schedule work to avoid evening or weekend shifts that might annoy local residents.

Monitoring

- Schedule periodic inspections of project area (aerial or ground surveillance of facility for damage, fatigue, failure, vandalism, etc.); and,
- Immediately after project is completed and during regular monitoring, inspect for effectiveness of the mitigation program and ensure permit conditions have been met.

9.0 Exhibit D - Regulations, Statutes, and Executive Orders

LISTING	CITATION
Archaeological & Historical Preservation Act	16 U.S.C. 461
Clean Air Act	42 U.S.C. 7401
Clean Water Act	32 U.S.C. 1251
Section 401 Water Quality Certifications	
Section 404 Permits for Discharging Dredged or Fill Material into the Waters of the United States	33 CFR Part 330
Coastal Barrier Improvement Act	42 U.S.C. 4028
Coastal Barrier Resources Act	16 U.S.C. 3501
Coastal Zone Management Act	16 U.S.C. 1451
Comprehensive Environmental Response, Compensation, & Liability Act	42 U.S.C. 9601
Council on Environmental Quality Regulations	40 CFR parts 1500-1508
Endangered Species Act	16 U.S.C. 1531 et seq.
Farmland Protection Policy Act	7 U.S.C. 4201 et seq.
Marine Protection, Research, & Sanctuaries Act	33 U.S.C. 1401
National Environmental Policy Act	42 U.S.C. 4321-4346
National Historic Preservation Act	16 U.S.C. 470 et seq.
National Trails System Act	16 U.S.C. 1241
Native American Graves & Repatriation Act	25 U.S.C. 3001
Noise Control Act	42 U.S.C. 7901
Resource Conservation & Recovery Act	42 U.S.C. 3251
Safe Drinking Water Act	42 U.S.C. 300
Toxic Substances Control Act	15 U.S.C. 2601
Wild and Scenic Rivers Act	16 U.S.C. 1271
Wilderness Act	16 U.S.C. 1131
Executive Order 11514, Protection and Enhancement of Environmental Quality	3 CFR 1970 Comp., pg. 104
Executive Order 11593, Protection and Enhancement of the Cultural Environment	3 CFR 1971 Comp., pg. 154
Executive Order 11988, Floodplain Management	3 CFR 1977 Comp., pg. 117
Executive Order 11990, Protection of Wetlands	3 CFR 1977 Comp., pg. 121

Executive Order 12898, Environmental Justice	3 CFR 1994 Comp., pg. 859
Departmental Regulation, Land Use Policy	DR 9500-3
Departmental Regulation, Fish & Wildlife Policy	DR 9500-4
Departmental Regulation, Policy on Range	DR 9500-5
USDA's National Environmental Policy Act; Final Policies & Procedures	7 CFR Part 1b
USDA, NRCS, Farmland Protection Policy	7 CFR Part 658
USDA's Enhancement, Protection, and Mgmt of the Cultural Environment	7 CFR Part 3100

**10.0 Exhibit E – Example of the Table of Contents for an Environmental Report
Executive Summary (for Environmental Assessments)**

1.0 Purpose and Need of Proposal

1.1 Project Description (Proposed Action)

1.2 Purpose and Need of the Proposal

2.0 Alternatives to the Proposed Action

3.0 Affected Environment/Environmental Consequences

3.1 Land Use/Important Farmland/Formally Classified Lands

3.1.1 Affected Environment*

3.1.2 Environmental Consequences*

3.1.3 Mitigation*

3.2 Floodplains

3.3 Wetlands

3.4 Historic Properties

3.5 Biological Resources

3.6 Water Quality Issues

3.7 Coastal Resources

3.8 Socio-Economic/Environmental Justice Issues

3.9 Miscellaneous Issues

* Sections repeated through all Section 3.0 subsections.

4.0 Summary of Mitigation

5.0 Correspondence

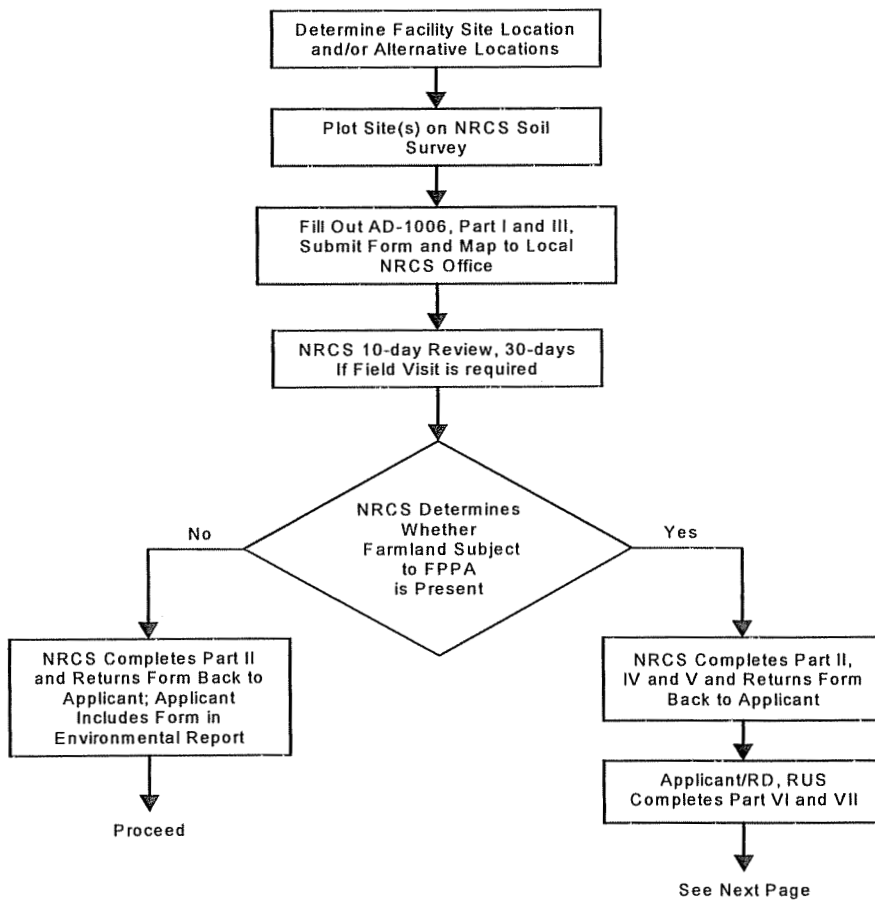
6.0 Exhibits/Maps

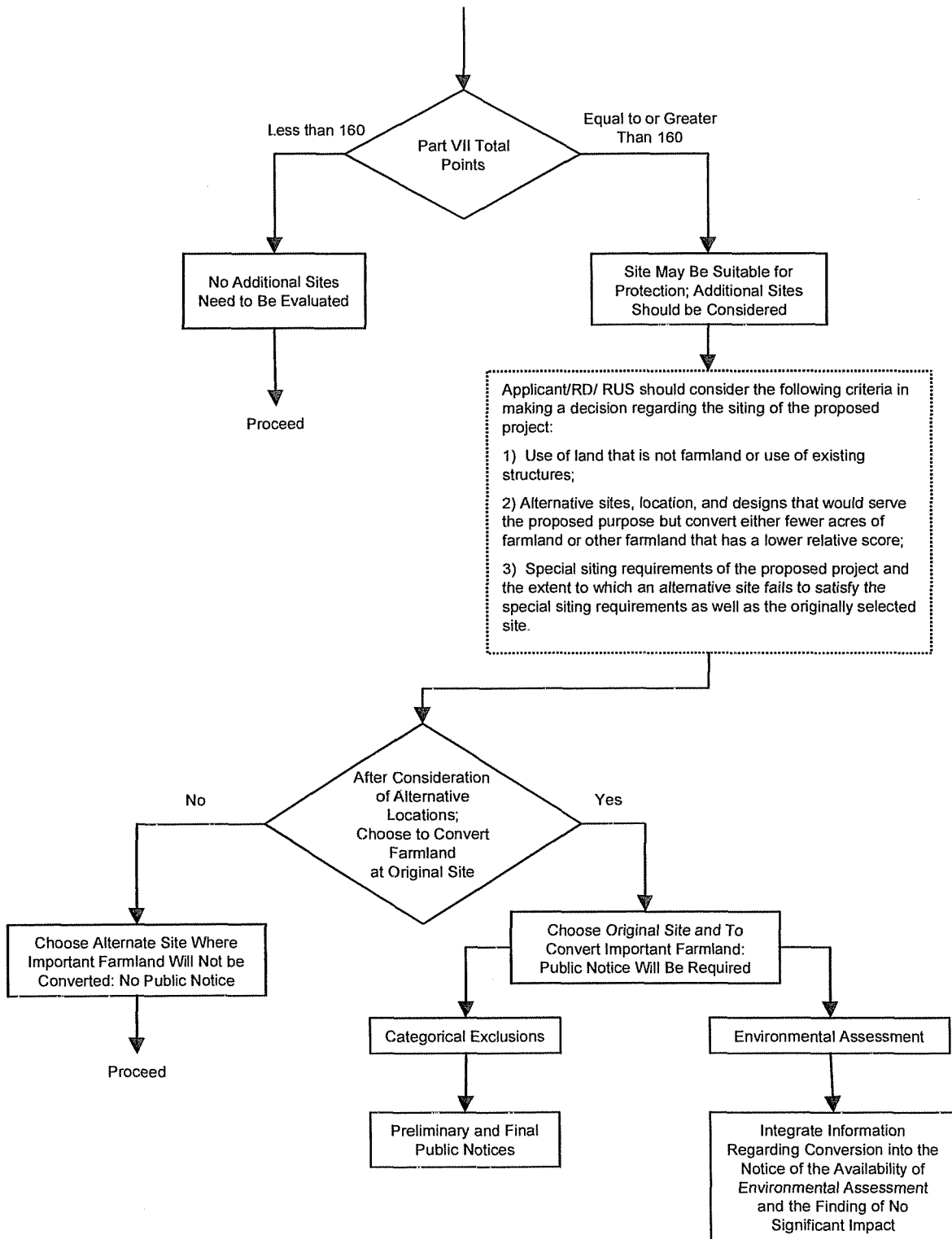
7.0 List of Preparers

11.0 Exhibit F - Regulatory Compliance Flowcharts

F-1 Farmland Protection Policy Act Flowchart (7 CFR Part 658)

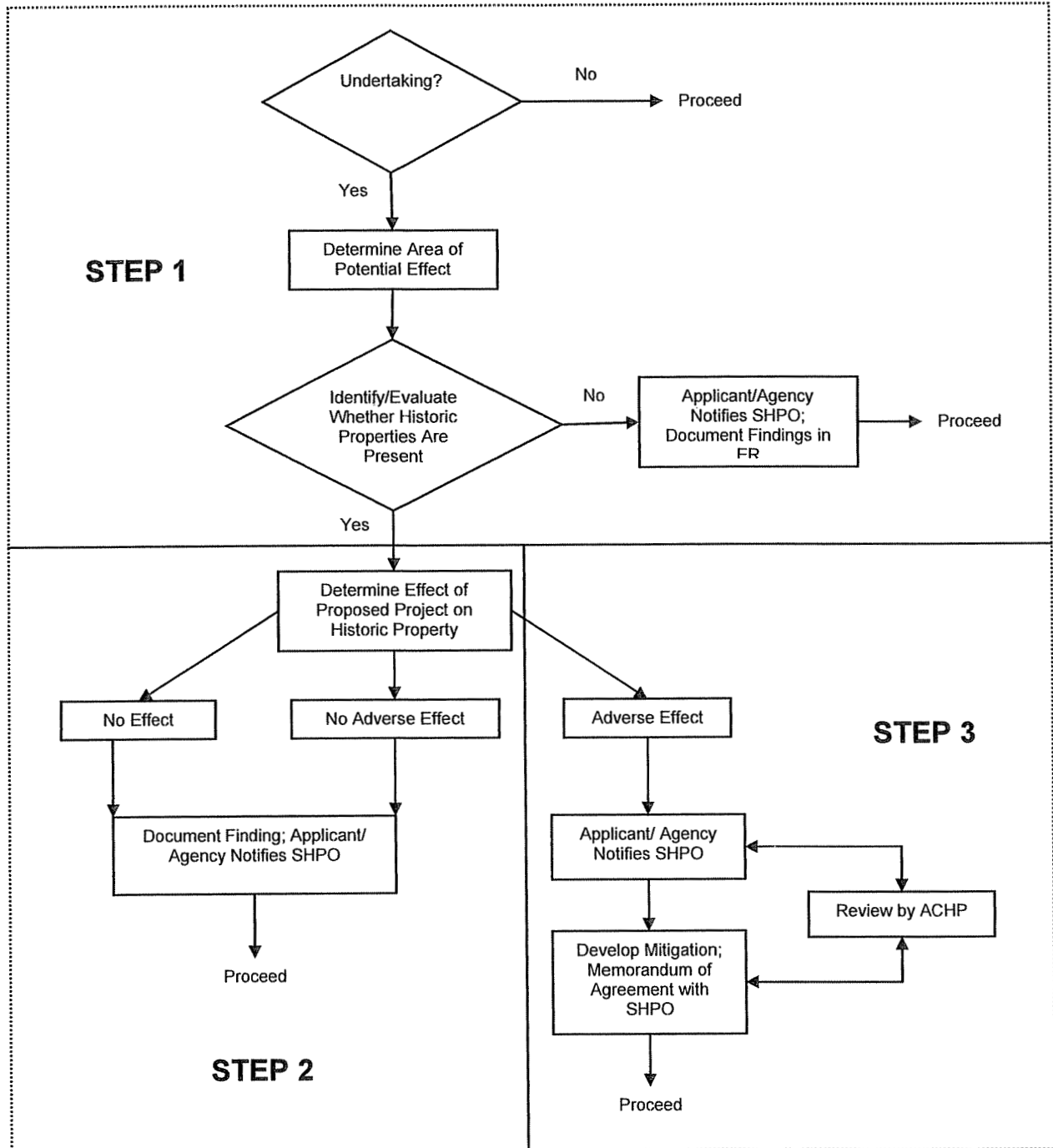
**Farmland Conversion Impact Rating Form (Form AD-1006)
Designed for Site Specific Facility Locations**





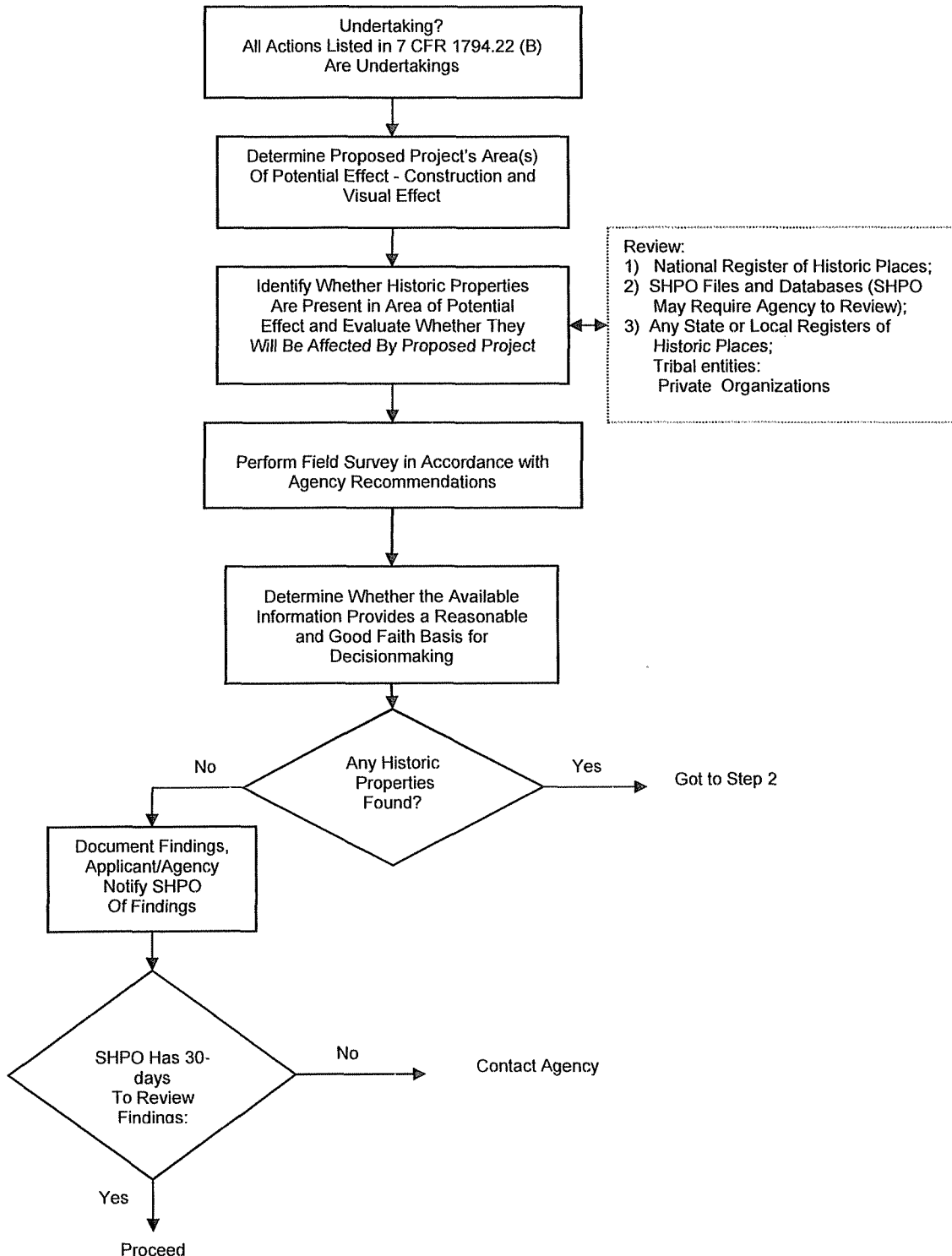
F-2 National Historic Preservation Act - Section 106 Regulations Flowchart

Overview of the Section 106 (36 CFR Part 800) Review Process



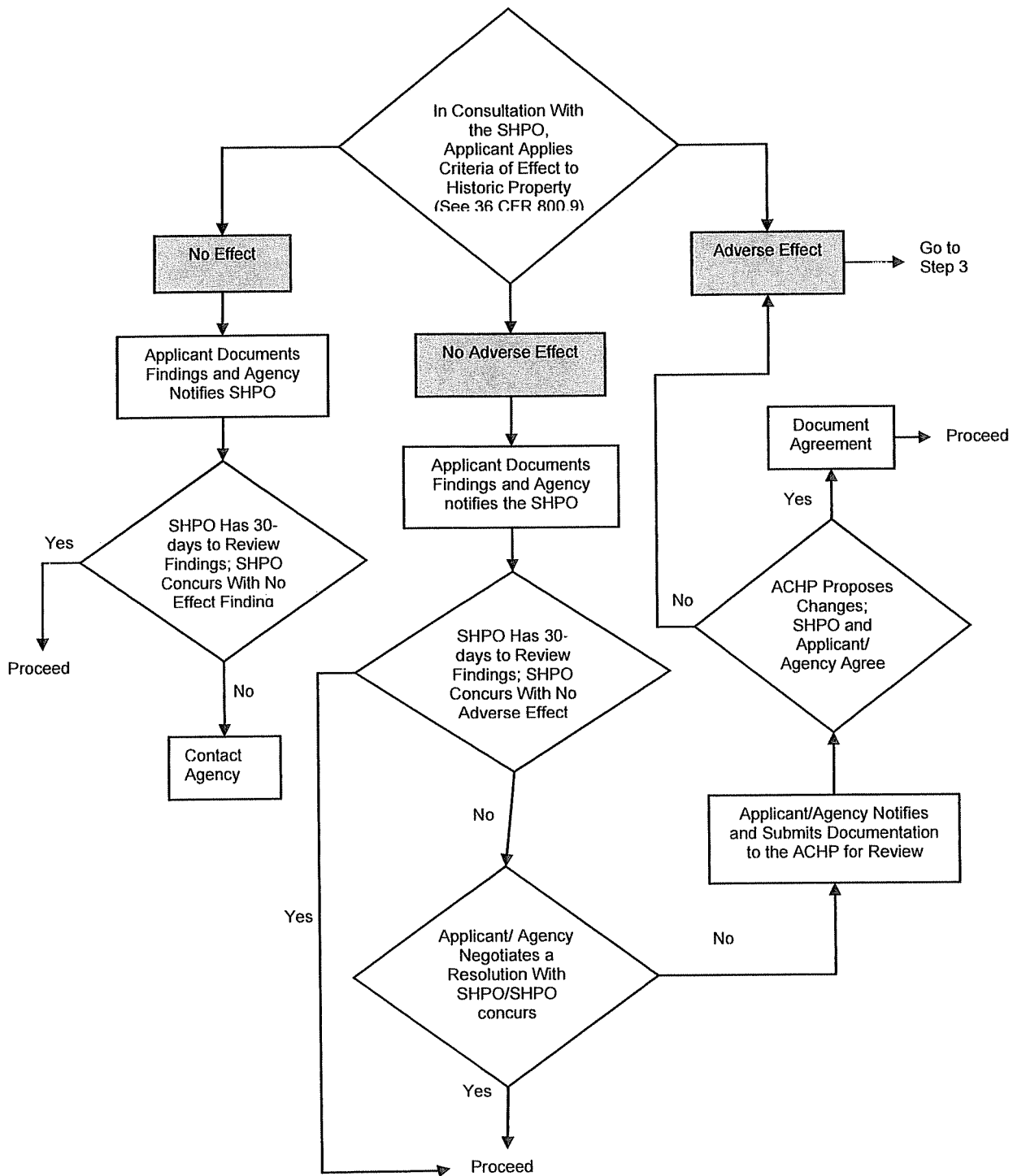
SHPO - State Historic Preservation Officer
 ACHP- Advisory Council on Historic Preservation

Step 1 - Identify/Evaluate Whether Historic Properties are Present

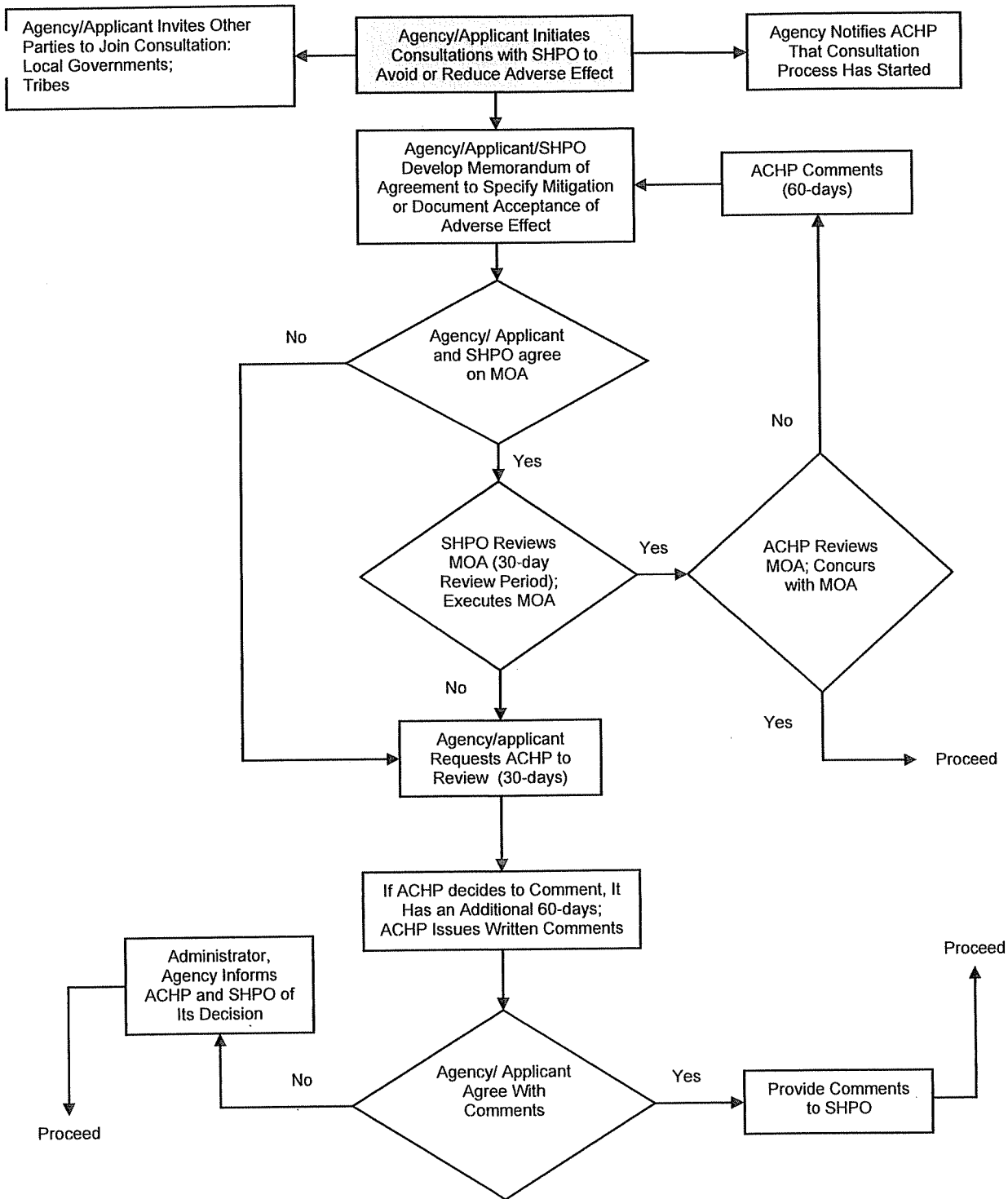


Historic Properties - means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

Step 2 - Assess Effect of Proposed Project to Historic Properties



Step 3 - Consultation for Adverse Effects to Historic Properties



This flowchart represents a simplified version of the consultation process between Agency/Applicant and the SHPO and ACHP. The consultation process can be dynamic involving numerous parties and negotiations. In all cases, Agency will take the lead for Step 3 consultations.

F-3 Environmental Justice

NARRATIVE FOR ENVIRONMENTAL JUSTICE AND NEPA FLOWCHART

The Environmental Justice and NEPA Flowchart has been prepared to identify where and how environmental justice issues can be addressed in the NEPA process, if applicable. The draft CEQ's "Guidance for Environmental Justice under NEPA" (April 4, 1997) contains additional suggestions and should also be consulted.

Note that the flowchart portrays a typical EIS process. Some USDA agencies use this same process in the preparation of EAs and should therefore use this flowchart when conducting these documents.

1. Define the purpose and need and area of potential effect of the proposal

The proposal should be clearly defined so that interested parties understand what is being proposed. The NEPA document should clearly identify the purpose of the proposal and provide justification as to its need. The proposal's area of potential effect should be defined (i.e., physical boundary of area reasonably expected to be affected by the action) so that the applicant and Agency can include the minority and low-income populations within this area in all of its outreach efforts.

2. Initiate scoping.

Consideration of potential environmental justice concerns should begin with this step of the NEPA process. Any minority populations and low-income populations located within the area of potential effects should be identified.

When identifying minority and low-income populations, the following definitions used in the Departmental Regulation on Environmental Justice should be used:

Environmental Justice means that, to the greatest extent practicable and permitted by law, all populations are provided the opportunity to comment before decisions are rendered on, are allowed to share in the benefits of, are not excluded from, and are not disproportionately or adversely affected by, government programs and activities relating to human health or the environment

Minority - A person who is a member of the following population groups: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic Origin; or Hispanic.

Minority population - Any readily identifiable group of minority persons who live in geographic proximity, and, if circumstances warrant, migrant farm workers and other geographically dispersed/transient persons who will be similarly affected by USDA programs or activities.

Low-income population - Any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, migrant farm workers and other geographically dispersed/transient persons who will be similarly affected by USDA programs or activities. Low-income populations may be identified using data collected, maintained, and analyzed by an

agency or from analytical tools such as the annual statistical poverty thresholds from the Bureau of the Census' Current Population Reports, Series P-60 on Income and Poverty.

Once the potentially affected parties have been identified, it will be important to communicate with and understand the concerns of these groups. All interested and/or affected parties should be notified of the proposal. Notification should be accomplished by such means as publishing notices in local newspapers, including those read by potentially impacted minority and low-income groups, and by sending notices out to elected officials, civic organizations, religious organizations, superintendents of schools, local PTAs and other community organizations that can help to facilitate outreach. Announcements should also be made through such vehicles as local radio and television stations and newspapers. Broadcasts and publications made in languages other than English can be particularly helpful in communicating with non-English speakers.

Applicant and Agency should find creative and meaningful ways to facilitate access of information about the proposal and the NEPA process to potentially affected minority and low-income populations. Outreach possibilities would include organizing public meetings at a time and place that is convenient for the potentially affected communities, scheduling meetings with elected officials and/or community organizations, and publishing a newsletter to keep people informed.

The participation of interested or affected parties should be encouraged during scoping as well as throughout the entire NEPA process. To facilitate participation by persons who do not speak or understand English documents, meetings, personal contacts, and written correspondence should be translated. Such translations pertain to each of the steps that follow.

3. Define range of alternatives to be evaluated.

In cases where a proposal might have a disproportionately high and adverse impact on minority or low-income populations, applicants and Agency should make a strong effort to encourage members of those communities to help develop and comment on possible alternatives. Efforts would include organizing meetings to facilitate public input on the alternatives.

4. Analyze effects of the proposal and alternatives considered on the quality of the human environment.

Include an analysis of the extent to which minority and/or low-income populations might be disproportionately affected. The analysis should include potential impacts to subsistence consumption and human health as well as the related economic and social effects of each alternative.

5. Develop mitigation to offset or minimize adverse effects.

The concerns and suggestions of potentially affected minority and/or low-income populations should be carefully considered in the development of mitigation measures.

Once mitigation measures have been developed there should be follow-up to ensure they are implemented and are effective.

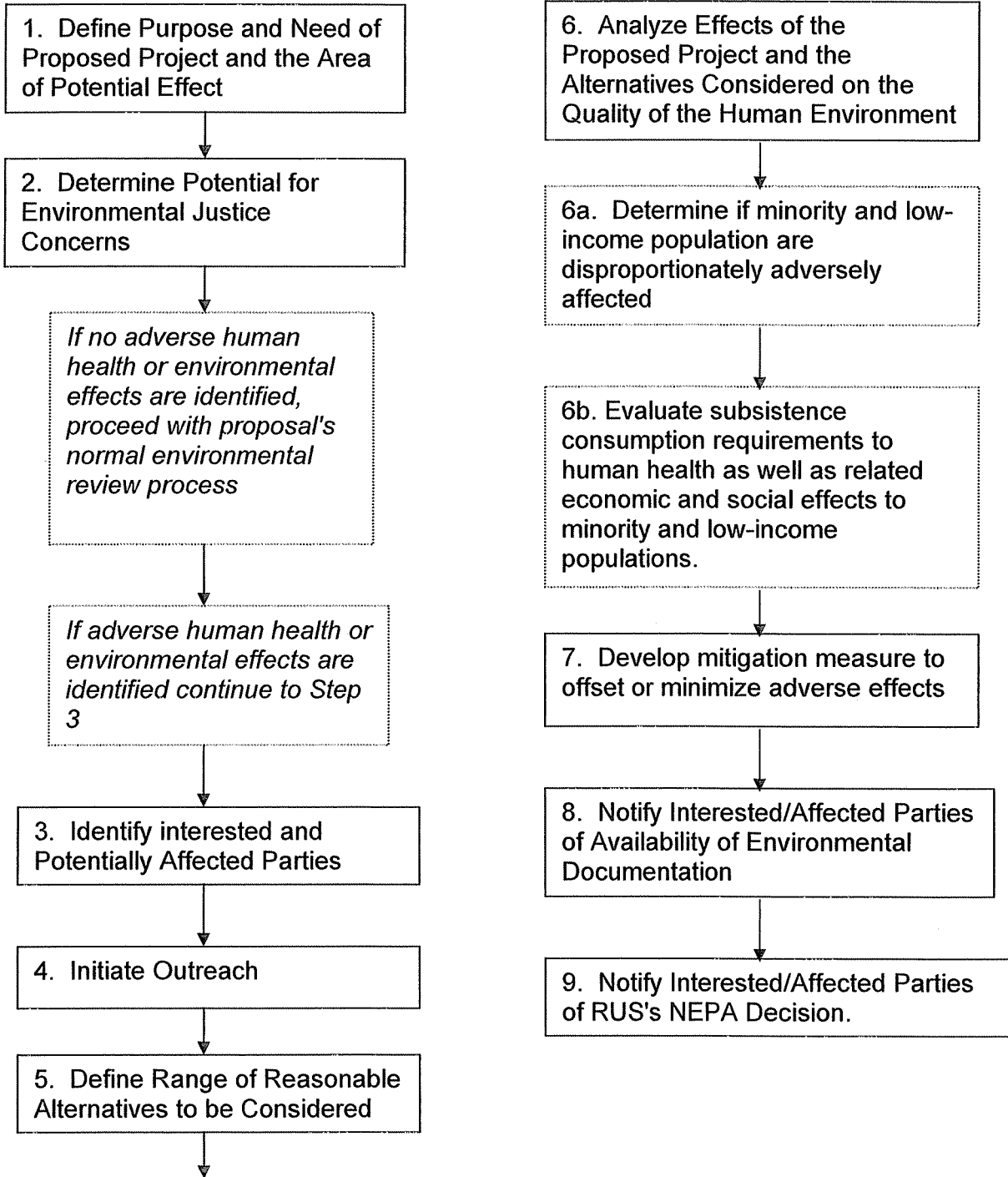
6. Where applicable, notify interested or affected parties of the availability of draft NEPA documents and encourage comment.

The draft provides an important opportunity to demonstrate how concerns raised during the scoping process have been considered in the development of alternatives and to encourage additional input.

7. Notify interested or affected parties of agency decision.

Demonstrate how concerns with the draft NEPA document have been addressed and to address any additional concerns raised before publishing a FONSI. Concerns identified at this time should be incorporated and addressed in the FONSI. Notification should include all parties contacted during the scoping process and those who provided comment on the draft NEPA document. Applicants and Agency are encouraged to meet with any affected populations to discuss and answer questions about the proposal.

Environmental Justice Implementation Flowchart for Environmental Reports



12.0 Exhibit G – Clean Water Act, Section 404 Permits

The Clean Water Act, Section 404 permitting program is applicable to all construction proposals in Agency programs. There are two primary concerns for Agency proposals on wetland areas. The first concern relates to facility placement in areas identified and delineated as wetlands in accordance with the USACE, "1987 Wetlands Delineation Manual" and the other is the routine placement of utility lines through wetland areas.

USACE's permitting program consists of two types of permits – individual permits and nationwide permits. Individual permits will be required for proposals that seek to place fill material in a wetland, such as in proposed facility construction. A nationwide permit is a form of general permit that authorizes a category of activities throughout the nation. Some states have specific state-based general and special conditions attached to nationwide permits. These permits are valid only if the conditions applicable to the permits are met. If the conditions cannot be met, a regional or individual permit will be required. For example, a nationwide permit can be utilized for placement of utility lines in wetlands or waterways provided the general conditions of the permit are followed. Below is Nationwide Permit no. 12, Utility Line Discharges.

12. Utility Line Activities. Discharges of dredged or fill material associated with excavation, backfill or bedding for utility lines, including outfall and intake structures, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. The term "utility line" does not include activities which drain a water of the United States, such as drainage tile; however, it does apply to pipes conveying drainage from another area. This NWP authorizes mechanized land clearing necessary for the installation of utility lines, including overhead utility lines, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained. However, access roads, temporary or permanent, or foundations associated with overhead utility lines are not authorized by this NWP. Material resulting from trench excavation may be temporarily side-cast (up to three months) into waters of the United States, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The DE may extend the period of temporary side-casting not to exceed a total of 180 days, where appropriate. The area of waters of the United States that is disturbed must be limited to the minimum necessary to construct the utility line. In wetlands, the top 6" to 12" of the trench should generally be backfilled with topsoil from the trench. Excess material must be removed to upland areas immediately upon completion of construction. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line. (See 33 CFR Part 322).

Notification: The permittee must notify the district engineer in accordance with the "Notification" general condition, if any of the following criteria are met:

- a. Mechanized landclearing in a forested wetland;
- b. A Section 10 permit is required for the utility line;
- c. The utility line in waters of the United States exceeds 500 feet; or,
- d. The utility line is placed within a jurisdictional area (i.e., a water of the United States), and it runs parallel to a streambed that is within that jurisdictional area. (Sections 10 and 404).

BIG RIVERS ELECTRIC CORPORATION

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1 **Item 18)** *Reference BREC's response to AG 1-64, attachment 4*
2 *("Financing Document RUS Loan Application Package"). At p. 26 of that*
3 *document, BREC states that annual O&M costs are estimated at \$13.230*
4 *million.*

5

6 **a.** *Reconcile this figure with the figure of \$15.73 million for*
7 *annual O&M costs provided in BREC's response to AG 1-*
8 *56.*

9 **b.** *Reconcile the two above-referenced O&M figures with that*
10 *set forth in BREC's response to KIUC 1-43, February 21,*
11 *2012 minutes of RREC's Board of Directors, the attached*
12 *"Environmental Compliance Update," dated February 21,*
13 *2012, p. 6, which indicates annual O&M will be \$11.99*
14 *million.*

15

16 **Response)**

17 **a.** In Big Rivers' response to Item 64 of the Office of the Attorney
18 General's Initial Request for Information ("AG 1-64") the
19 \$13.230 million O&M expense referenced was for year 2016. In
20 Big Rivers' response to Item 56 of the Office of the Attorney
21 General's Initial Request for Information ("AG 1-56") the \$15.73
22 million O&M expense referenced was for year 2023. Please see

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1 page 2 of 2 of Exhibit Berry-2 in the direct testimony of Robert
2 W. Berry in this proceeding for the estimated incremental
3 annual O&M costs for years 2012 through 2023.

4 b. The annual O&M expenses referenced in this question are from
5 three different years. They are summarized in table below.
6

Year – Amount	Item	Description
2012 – \$11.99 Million	KIUC 1-43	February 2012 Presentation to Big Rivers Board of Directors
2016 – \$13.23 Million	AG 1-64	March 12 Presentation to Rural Utilities Service
2023 – \$15.73 Million	AG 1-56	Exhibit Berry-2

7
8 The \$13.23 million and \$15.73 million figures were derived by
9 using the \$11.99 million as a basis and inflating by 2.5% each
10 year into the future.
11

12
13 **Witness)** Robert W. Berry

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1 **Item 19)** *Reference BREC's response to AG 1-39 and (a) wherein BREC*
2 *states: "The additional O&M costs were estimated in 2011 dollars and*
3 *adjusted for inflation at 2.5% each year through 2023." Please provide a*
4 *total sum of estimated O&M costs that BREC is requesting to recover*
5 *between 2012 and 2023, broken down by each year.*

6

7 **Response)** The total sum of estimated incremental O&M costs that Big Rivers is
8 requesting to recover between 2012 and 2023 is \$118.02 million. Please refer to
9 page 2 of 2 of Exhibit Berry-2, in the direct testimony of Robert W. Berry in this
10 proceeding, for the estimated incremental annual O&M costs for years 2012
11 through 2023.

12

13

14 **Witness)** Robert W. Berry

15

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1 **Item 20)** *Reference the company's response to AG 1-77. Provide the*
2 *proposed return on investment in terms of a percentage, over the life span*
3 *of the project. If necessary in order to fully address this question, use*
4 *hypothetical data, but carefully note where any such hypothetical data is*
5 *employed.*

6

7 **Response)** Please see the attached chart titled Return on Rate Base Calculation.
8 The Return on Rate Base ("RORB") is comprised of 5.5%, the estimated 2012
9 environmental compliance plan cost of debt, plus a 1.24 TIER component of 1.3%
10 (5.5% * 0.24), for a Return on Rate Base of 6.8% (5.5% * 1.24).

11

12

13 **Witness)** Mark A. Hite

14

Big Rivers Electric Corporation
Case No. 2012-00063
Return on Rate Base Calculation

	Net Plant (a)	Inventory (b)	Cash Working Capital (c)	Rate Base = (a)+(b)+(c) (d)	ECP Cost of Debt = 5.5 % x (d) (e)	TIER = $\frac{1.24 - 1 \times (e)}{(f)}$ (f)	Total RORB = (e) + (f) (g)	Cost of Debt % = (e) / (d) (d)	TIER % = (f) / (d) (d)	Total RORB % = (g) / (d) (d)
2014	1.19	0.00	0.00	1.19	0.065	0.016	0.081	5.5%	1.3%	6.8%
2015	99.75	0.08	0.30	100.13	5.507	1.322	6.829	5.5%	1.3%	6.8%
2016	296.02	0.50	1.65	298.17	16.399	3.936	20.335	5.5%	1.3%	6.8%
2017	289.14	0.52	1.70	291.36	16.025	3.846	19.871	5.5%	1.3%	6.8%
2018	282.26	0.53	1.74	284.53	15.649	3.756	19.405	5.5%	1.3%	6.8%
2019	275.38	0.55	1.78	277.71	15.274	3.666	18.940	5.5%	1.3%	6.8%
2020	268.50	0.56	1.83	270.89	14.899	3.576	18.475	5.5%	1.3%	6.8%
2021	261.62	0.58	1.87	264.07	14.524	3.486	18.010	5.5%	1.3%	6.8%
2022	254.74	0.60	1.92	257.26	14.149	3.396	17.545	5.5%	1.3%	6.8%
2023	247.85	0.61	1.97	250.43	13.774	3.306	17.080	5.5%	1.3%	6.8%
2024	240.97	0.63	2.02	243.62	13.399	3.216	16.615	5.5%	1.3%	6.8%
2025	234.09	0.65	2.07	236.81	13.025	3.126	16.151	5.5%	1.3%	6.8%
2026	227.21	0.67	2.12	230.00	12.650	3.036	15.686	5.5%	1.3%	6.8%
2027	220.33	0.69	2.17	223.19	12.275	2.946	15.221	5.5%	1.3%	6.8%
2028	213.45	0.71	2.22	216.38	11.901	2.856	14.757	5.5%	1.3%	6.8%
2029	206.57	0.73	2.28	209.58	11.527	2.766	14.293	5.5%	1.3%	6.8%
2030	199.69	0.75	2.34	202.78	11.153	2.677	13.830	5.5%	1.3%	6.8%
2031	192.81	0.77	2.40	195.98	10.779	2.587	13.366	5.5%	1.3%	6.8%
2032	185.93	0.79	2.46	189.18	10.405	2.497	12.902	5.5%	1.3%	6.8%
2033	179.05	0.81	2.52	182.38	10.031	2.407	12.438	5.5%	1.3%	6.8%
2034	172.17	0.83	2.58	175.58	9.657	2.318	11.975	5.5%	1.3%	6.8%
2035	165.29	0.85	2.64	168.78	9.283	2.228	11.511	5.5%	1.3%	6.8%
2036	158.41	0.88	2.71	162.00	8.910	2.138	11.048	5.5%	1.3%	6.8%
2037	151.53	0.91	2.78	155.22	8.537	2.049	10.586	5.5%	1.3%	6.8%
2038	144.65	0.94	2.85	148.44	8.164	1.959	10.123	5.5%	1.3%	6.8%
2039	137.77	0.97	2.92	141.66	7.791	1.870	9.661	5.5%	1.3%	6.8%
2040	130.89	1.00	2.99	134.88	7.418	1.780	9.198	5.5%	1.3%	6.8%
2041	124.01	1.03	3.06	128.10	7.046	1.691	8.737	5.5%	1.3%	6.8%

Big Rivers Electric Corporation
Case No. 2012-00063
Return on Rate Base Calculation

	Net Plant (a)	Inventory (b)	Cash Working Capital (c)	Rate Base = (a)+(b)+(c) (d)	ECP Cost of Debt = 5.5% x (d) (e)	TIER = $1.24 - 1 \times (e)$ (f)	Total RORB = (e) + (f) (g)	Cost of Debt % = (e) / (d)	TIER % = (f) / (d)	Total RORB % = (g) / (d)
2042	117.13	1.06	3.14	121.33	6.673	1.602	8.275	5.5%	1.3%	6.8%
2043	110.25	1.09	3.22	114.56	6.301	1.512	7.813	5.5%	1.3%	6.8%
2044	103.37	1.12	3.30	107.79	5.928	1.423	7.351	5.5%	1.3%	6.8%
2045	96.49	1.15	3.38	101.02	5.556	1.333	6.889	5.5%	1.3%	6.8%
2046	89.61	1.18	3.46	94.25	5.184	1.244	6.428	5.5%	1.3%	6.8%
2047	82.73	1.22	3.55	87.50	4.813	1.155	5.968	5.5%	1.3%	6.8%
2048	75.85	1.26	3.64	80.75	4.441	1.066	5.507	5.5%	1.3%	6.8%
2049	68.97	1.30	3.73	74.00	4.070	0.977	5.047	5.5%	1.3%	6.8%
2050	62.09	1.34	3.82	67.25	3.699	0.888	4.587	5.5%	1.3%	6.8%
2051	55.21	1.38	3.92	60.51	3.328	0.799	4.127	5.5%	1.3%	6.8%
2052	48.33	1.42	4.02	53.77	2.957	0.710	3.667	5.5%	1.3%	6.8%
2053	41.45	1.46	4.12	47.03	2.587	0.621	3.208	5.5%	1.3%	6.8%
2054	34.57	1.50	4.22	40.29	2.216	0.532	2.748	5.5%	1.3%	6.8%
2055	27.69	1.55	4.33	33.57	1.846	0.443	2.289	5.5%	1.3%	6.8%
2056	20.81	1.60	4.44	26.85	1.477	0.354	1.831	5.5%	1.3%	6.8%
2057	13.93	1.65	4.55	20.13	1.107	0.266	1.373	5.5%	1.3%	6.8%
2058	7.05	1.70	4.66	13.41	0.738	0.177	0.915	5.5%	1.3%	6.8%
2059	0.17	1.75	4.78	6.70	0.369	0.089	0.458	5.5%	1.3%	6.8%

BIG RIVERS ELECTRIC CORPORATION

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July 6, 2012

1 Item 21) *Reference the company's response to AG 1-78, regarding the*
2 *proposed deviation (total adjusted revenue) from BREC's ECR*
3 *methodology, in particular the fixed cost recovery component. Express the*
4 *data provided on the attached "Allocation of Environmental Plan Costs"*
5 *in terms of percentages (i.e., the rural class will pay what percentage of*
6 *the total costs, etc.). Provide the same data, again in terms of percentages,*
7 *using the existing ECR methodology (\$/kWh).*

8

9 a. *Explain the statement "... the Rural class has a lower*
10 *load factor than Big Rivers' other customer classes."*

11 b. *Do the rural classes of all three members, when taken as a*
12 *whole, in fact comprise a lower load factor than all of the*
13 *other classes? Explain in complete detail.*

14

15 **Response)** The requested percentages are shown in the table at the top of the
16 following page. Also, for similar data using 2011 actual costs, please see Big
17 Rivers' response to Item 32 of the Commission Staff's First Request for
18 Information.

19

20

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22

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1

#	Rate Class	Current Method (Per-KWH Basis)	Proposed Method (Total Adjusted Rev Basis)
1	Rurals	21 %	24 %
2	Large Industrials	8 %	8 %
3	Smelters	60 %	56 %
4	Off System	12 %	12 %
5	Total	100 %	100 %

2

3

4

a. and b.

5

6

7

8

9

10

Load Factor is defined¹ as the ratio of the average load in kilowatts supplied during a designated period to the peak or maximum load in kilowatts occurring in that period. Load factor may be derived by dividing the kilowatt-hours (kWh) in the period by the product of the maximum demand in kilowatts and the number of hours in the period.

¹ EEI Glossary of Electric Industry Terms, April 2005, page 89.

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When expressed as a formula,

$$\text{Load Factor} = \frac{\text{Energy (kWh)}}{[\text{Demand (kW) x hours}]}$$

Load factor is commonly viewed as an indicator of how steady an electric load is over time. It is also a way to look at how much electricity was used over a set period of time compared with how much power could have been used at peak demand. Typically, industrial customers with 24-hour, energy-intensive operations have the highest load factors, followed by large commercial and general service customers, and then small commercial and residential customers. This can vary by class and by individual customer within a rate class. Seasonal customers (such as ski resorts, grain dryers, and irrigation customers, to name a few) often have the lowest load factors. Customers with the lowest load factors are those whose peak demand is relatively high but whose total energy consumption over time is low.

In Big Rivers' most recent rate case (Case No. 2011-00036), the cost of service study indicated the following average load

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1 factors for Big Rivers' rate classes for the 12 months ended
2 October 2010:

3

Rurals	64%
Large Industrials	73%
Smelters	96%

4

5 Thus, on average, the Rural rate class has a lower load
6 factor than Big Rivers' other customer classes.

7

8

9 **Witness)** John Wolfram

10

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1 Item 22) *Reference BREC's response to AG 1-90. The company failed to*
2 *provide a substantive, meaningful response to AG 1-1, 1-2 and 1-3, and does*
3 *so again in 1-90. Provide a chart, broken down by the three members,*
4 *further broken down by the classes; for each average customer (as defined*
5 *by the average level of consumption for each class, and for each member)*
6 *provide a dollar amount of the percentage increases noted in Wolfram*
7 *exhibit 6. If necessary, contact counsel for the Attorney General if you*
8 *should have any questions.*

9

10 **Response)** Big Rivers does not have the data necessary to calculate or to chart
11 the average level of consumption for each retail rate class of Big Rivers' three
12 wholesale members. However, if one assumed that the average retail residential
13 customer consumes 1,000 kWh per month, and that the average retail industrial
14 customer consumes 4,000 kWh per month, then the average increase of the
15 wholesale portion of their respective bills (consistent with Exhibit Wolfram-6) in
16 dollars are tabulated below.

17

Class	Increase Relative to 2016	Increase Relative to 2012
Rural	\$4.09	\$10.34
Large Industrial	\$12.64	\$37.36

18

19 **Witnesses)** John Wolfram and Mark A. Hite

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1 **Item 23)** *Reference the company's response to AG 1-92. Please provide a*
2 *substantive, meaningful response to the question.*

3

4 **Response)** Please refer to Section 3.2 of Exhibit 2 to the direct testimony of
5 William DePriest, which lists the candidate technologies that were considered and
6 Section 6, which lists the recommended control technologies. Please also refer to
7 the DePriest testimony starting at page 14, line 13 through page 20, line 8. Both
8 of these references clarify the candidates used and those not used. Note also that
9 the study project team conducted a high level technology screening meeting at the
10 beginning of the study that allowed the team to focus on those commercial
11 technologies that could satisfy the emission goals required by the regulations.

12

13

14 **Witness)** William DePriest

15

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FOR APPROVAL OF ITS 2012 ENVIRONMENTAL COMPLIANCE PLAN,
FOR APPROVAL OF ITS AMENDED ENVIRONMENTAL COST
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July 6, 2012

1 Item 24) *Reference BREC's response to KIUC 1-36, file named "Capital*
2 *Cost Estimates" on the CD attached in response thereto. This e-mail from*
3 *Eric Robeson indicates that "Scenario 2 is most likely one," and gives a*
4 *total of \$458 million including HAPS and MACT.*

5

- 6 a. *To what scenario or document(s) does this e-mail make*
7 *reference?*
8 b. *Have any and all such documents already been provided*
9 *by BREC? If so, please provide a specific reference.*
10 c. *How was the \$458 million figure developed, and by whom?*
11 *Upon what plan(s) was or were that figure based?*
12 d. *Has BREC already provided any and all documents,*
13 *memoranda, and workpapers associated with the projects*
14 *which are included within that dollar figure? If not,*
15 *please do so.*

16

17 **Response)**

- 18 a. Scenario 2 was a potential CSAPR and MATS compliance
19 strategy developed by S&L based on information known at that
20 time. This scenario was similar to the final Environmental
21 Compliance Plan which included converting Reid 1 to natural
22 gas operation, operating the Coleman FGD at 98% removal,

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- 1 activated carbon injection systems, dry sorbent injection
2 systems, and precipitator upgrades.
3 b. Yes, in the attachment to the email.
4 c. The cost estimate was developed by S&L based upon the
5 systems described in part a., above.
6 d. Documents associated with the technologies shared by Scenario
7 2 and the 2012 ECP have been provided. Preliminary capital
8 costs for technologies not chosen were provided as part of the
9 original S&L study (Exhibit DePriest-2 accompanying the direct
10 testimony of William DePriest), but detailed estimates and
11 O&M costs were not developed.

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Witness) Robert W. Berry

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1 *Item 25) Reference BREC's response to KIUC 1-36, file named "Capital*
2 *Cost Estimates 0000" on the CD attached in response thereto. Please*
3 *explain the meaning of the sentence: "If scenario 2 is more likely than*
4 *scenario 1, how hard would it be to reverse the numbering of them?"*

5

6 **Response)** In the November 14, 2011, email from Adam Landry of S&L to Eric
7 Robeson of Big Rivers, S&L listed five scenarios to comply with CSAPR on a
8 technical basis. When Big Rivers reviewed this listing, the low cost approach
9 (therefore, most likely to be recommended) was Scenario Two. Consequently, Big
10 Rivers believed it was more appropriate to list Scenario Two first.

11

12

13 **Witness)** Robert W. Berry

14

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1 **Item 26)** *Reference BREC's response to KIUC 1-43, April 20, 2012*
2 *minutes of BREC's Board, the attached "Smelter Mitigation Plan Update*
3 *to the Board of Directors, April 2012," p.8. The document indicates the*
4 *rural class would face rate increases, net of the MSW, ranging from 9.3%*
5 *to 11.8% in the various scenarios. Reconcile this information with the*
6 *Wolfram testimony, and with the company's response to AG 1-87, which*
7 *indicate the rurals would experience no rate impact.*

8

9 **Response)** The referenced Board presentation pertains to the impacts to
10 member rates of the loss of smelter load, not to the impacts to member rates
11 associated with Big Rivers' Environmental Compliance Plan. The Wolfram
12 testimony and Big Rivers' response to AG 1-87 both pertain to the rate impact of
13 the 2012 ECP. Thus, the two sets of values are not comparable.

14

15

16 **Witness)** John Wolfram

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1 **Item 27)** *Reference BREC's Updated Response to KIUC 1-43, "Financial*
2 *Forecast 2012-2026; Presentation June 15, 2012," p. 2. This particular*
3 *model carries the express major assumption that both smelter contracts*
4 *will continue beyond 2023. Explain whether BREC has a financial model*
5 *that utilizes the assumptions that one or both smelters would leave by*
6 *2014. If so, please provide a copy, or if it is already filed of record, please*
7 *identify where. If BREC does not have such a model, please state why not.*

8

9 **Response)** Big Rivers has produced several financial models that utilize the
10 assumption that one or both smelters leave by 2014. In Big Rivers' original filing
11 on April 2, 2012, Big Rivers included two sensitivities, Build-No Smelter and Buy-
12 No Smelter. Big Rivers has also filed numerous smelter loss sensitivities which
13 can be found on the USB Drive filed by Big Rivers under a Petition for
14 Confidential Treatment on June 21, 2012.

15

16

17 **Witness)** Mark A. Hite

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1 Item 28) *Reference the BREC response to AG 1-78, and to the Wolfram*
2 *pre-filed testimony beginning at p. 7. Mr. Wolfram attempts to justify the*
3 *change of methodology for calculating the ECR from the existing \$/kWh to*
4 *the proposed total adjusted revenue methodology based in part upon the*
5 *assertion that the ECR costs for the 2012 plan are all fixed. Reconcile this*
6 *assertion with the company response to KIUC 1-43, February 21, 2012*
7 *minutes of the Board of Directors' meeting, the attached "Big Rivers*
8 *Environmental Surcharge (ES) Rate Formula," dated February 21, 2012, p.*
9 *5, which indicates, inter alia, that 32% of the proposed costs in the 2012*
10 *plan are variable.*

11

12 a. *Has the company considered revising the ECR*
13 *methodology to have two components, one for variable*
14 *costs using the kWh methodology, and the second for fixed*
15 *costs utilizing the total adjusted revenue methodology? If*
16 *not, why not?*

17 b. *Does the company agree that such an approach would*
18 *provide a more just and equitable means of allocating*
19 *costs?*

20 c. *Would the company agree to consider such an option? If*
21 *not, why not?*

22

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1 **Response)** Mr. Wolfram does not assert that the ECR costs for the 2012 plan are
2 all fixed. Mr. Wolfram states the following on page 14 of his direct testimony:

3

4

Q. Why is Big Rivers proposing this change?

5

6

A. The existing Big Rivers environmental compliance
7 plan consists entirely of variable costs, which are
8 appropriately allocated by kWh in the approved ES
9 tariff rider. The 2012 Plan introduces capital
10 projects, *which include both fixed and variable*
11 *costs for Big Rivers. [emphasis added]* It is
12 appropriate for Big Rivers to recover its fixed costs
13 on a demand basis and its variable costs on an
14 energy basis. Because total revenues include both
15 demand-related and energy-related components, it
16 is appropriate to use total revenues as a basis for
17 allocating environmental compliance plan costs.
18 Furthermore, the Commission has approved the
19 allocation of costs on the basis of total revenues for
20 other utilities that include capital projects in their
21 compliance plans; so, the proposed change is
22 consistent with Commission practice and
23 precedent.

24

25

If the Commission approves the 2012 Plan, the projects therein (that
26 have both fixed and variable costs) will be incorporated into the
27 environmental surcharge, along with the existing projects (that have

26

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1 only variable costs). The resultant total costs (using 2016 data for
2 the Build Case, and inclusive of the existing projects from the 2007
3 plan and the proposed projects in the 2012 Plan) are projected as
4 follows:
5

Item	Variable Costs	Fixed Costs	Total Costs
Total \$ (millions)	53.0	27.2	80.2
Total %	66%	34%	100%

- 6
- 7 a. No. The most just and reasonable approach is to use the Total
8 Adjusted Revenue method, because it properly balances the fixed and
9 variable costs (associated with demand and energy, respectively) and
10 is consistent with the methodology approved by the Commission for
11 other utilities. The method proposed in this question deviates from
12 the standard practice and unnecessarily complicates the calculation
13 of the environmental surcharge factor.
- 14 b. No. See the response to part a, above.
- 15 c. No. See the response to part a, above.

16

17 **Witness)** John Wolfram

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1 **Item 29)** *Reference BREC's response to KIUC 1-43, the March 16, 2012*
2 *Board of Directors' minutes, attachment entitled "Smelter Mitigation*
3 *Plan," dated March 2012, p. 4. Please provide a complete explanation of*
4 *what this chart depicts, and explain whether the data referenced therein*
5 *comports in all ways with BREC's application, and all of its responses to*
6 *data requests.*

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*a. Regarding the cost data set forth on the left side of that
page, provide a breakdown in terms of dollars and cents
that will appear on the monthly bills of all three members'
average ratepayers, in all classes. For purposes of this
question, "average ratepayer" is defined as the average
level of consumption.*

Response) The above-referenced chart demonstrates four scenarios which were analyzed by Big Rivers to quantify the potential impact to member rates due to the loss of the smelter load.

The chart depicts Big Rivers' estimated non-smelter wholesale rate in cents per kWh, an estimated Member distribution adder of 3.5 cents per kWh and the Member Rate Stability Mechanism ("MRS M") and Rural Economic Reserve ("RER") credits.

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1 The first scenario, titled "Both Smelters Exit 1/1/2014, All costs
2 remain, NO Off-System Sales" was analyzed to provide an upper bound to the
3 potential impact the loss of smelter load could have on Big Rivers' remaining non-
4 smelter Members. It assumes that Big Rivers makes no adjustments to its fixed
5 costs and assumes that the market price of power is less than Big Rivers' cost of
6 generation, thus no off-system sales occur to help offset Member rate increases.
7 This case is a fictitious case that will never occur because Big Rivers will
8 implement mitigation efforts to help offset the increase to Member rates, as
9 discussed in the Load Concentration Analysis and Mitigation Plan filed by Big
10 Rivers in its June 1, 2012 filing of confidential information.

11 The second scenario, titled "Both Smelters Exit 1/1/2014, Pace Global
12 Pricing, Build" represents the estimated non-smelter rate impact based on the
13 Build – No Smelter case as filed in Big Rivers ECP filing.

14 The third scenario, titled "Both Smelters Exit 1/1/2014, Pace Global
15 Pricing, Buy" represents the estimated non-smelter rate impact based on the Buy
16 – No Smelter case as filed in Big Rivers ECP filing.

17 The fourth scenario, titled "Both Smelters Exit 1/1/2014, ACES
18 Energy Pricing, Build" is a sensitivity Big Rivers performed which is identical to
19 the second scenario discussed above; however, it included a lower market price
20 forecast.

21 All of the above-referenced scenarios, including inputs, assumptions,
22 and outputs have been provided by Big Rivers in response to KIUC's motion to

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1 dismiss and in response to the May 11, 2012 letter from KIUC's counsel to Big
2 Rivers' counsel.

3 Please note that the models and assumptions provided by Big Rivers
4 have been performed based on wholesale rates. When Big Rivers has estimated
5 the retail impact of scenarios, Big Rivers added an estimated distribution adder
6 which was static throughout the years. In this chart, Big Rivers assumed a 3.5
7 cent per kWh adder. Big Rivers later refined its analysis, as demonstrated in the
8 Draft Load Concentration Analysis and Mitigation Plan, to show the impact to
9 both Rural and Industrial customer rate classes. In the Draft Load Concentration
10 Analysis and Mitigation Plan, Big Rivers assumed a 3.3 cent per kWh adder for
11 the Rural class and a 0.2 cent per kWh adder for the Industrial class. These
12 estimated adders were based on the weighted average adder by class for all three
13 of Big Rivers' Members in 2011. The conversion from wholesale to retail rates was
14 made only to aid Big Rivers' management and Board in understanding the
15 estimated retail impact of these scenarios. Big Rivers has not attempted to
16 forecast the retail adders of its Members going forward.

17

18 a. The aforementioned chart was completed to estimate the
19 average non-smelter member rate impacts. Thus, it is not easily
20 translated to rate impacts by class; however, the average
21 estimated impact to Member retail rates net of the Member Rate

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1 Stability Mechanism and Rural Economic Reserve in 2014 is
2 shown in the Load Concentration Analysis.

3

4

5 **Witness)** Robert W. Berry

6

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1 **Item 30)** *Provide an update on Phase 2 of BREC's transmission*
2 *expansion programs.*

3

4 **Response)** Big Rivers has completed or substantially completed six of the seven
5 system improvements identified as Phase 2 transmission expansion projects. Big
6 Rivers has entered into a construction work agreement with the Tennessee Valley
7 Authority ("TVA") under which TVA will complete work on their system at an
8 existing interconnection point with Big Rivers which encompasses the seventh
9 project. TVA has indicated that this work will be completed in the 2014-2015
10 timeframe.

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12

13 **Witness)** David G. Crockett

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1 Item 31) *Reference BREC's Confidential Updated Response to KIUC 1-*
2 *43, {BEGIN CONFIDENTIAL} p. 8 entitled "MWh Sales."*

- 3
- 4 a. *Explain the significant decrease in off-system sales from*
5 *2012 forward, contrasted to the 2011 figure of*
6 *approximately 3.056 million MWh.*
- 7 b. *Explain why the projections indicate that as far out as*
8 *2026, the total off system sales will never approximate the*
9 *level reached in 2011.*
- 10 c. *Explain why off-system sales revenue, which totaled \$102.0*
11 *mil. in 2011, will not reach that level until approximately*
12 *2017.*
- 13 d. *Will any significant new large commercial or industrial*
14 *load(s) be coming on-line, to the best of BREC's*
15 *knowledge?*
- 16 e. *Explain whether congestion is or may be part of the*
17 *reason(s). {END CONFIDENTIAL}*

18
19 Response)

20 a., b. and c.

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1 "Off system sales" is the difference between total generation and
2 load. There are several factors which drove 2011 generation
3 higher than Big Rivers was forecasting in future years:

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1. LMP prices in 2011 were higher than Big Rivers was forecasting for the future years;
2. 2011 experienced a lower than expected EFOR on the generation fleet;
3. 2011 had fewer maintenance outage days than forecasted in future years;
4. Until pollution control is in place, generation was limited by EPA limits;
5. 2011 actual operations were similar to the "must run" setup in the model. Green and HMP&L Station 2 generation in future years are modeled as "economic".

Also, Big Rivers Rural load grows by approximately 500,000 MWh over 2012-2026, decreasing the "off system sales" value. Smelter load and Large Industrial load remained flat across this time period.

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- 1 d. Presently, Big Rivers does not include in its forecast any
2 significant new large commercial or industrial loads coming on-
3 line.
4 e. For these model runs, no congestion between Indiana Hub and
5 Big Rivers generation or load nodes was included. Congestion
6 typically is small, and the goal of the studies was to determine
7 changes in overall costs so congestion was not added.

8
9

10 **Witnesses)** Brian J. Azman (a., b. c. and e.) and
11 Robert W. Berry (d.)

12