



SULLIVAN, MOUNTJOY,
STAINBACK & MILLER, P.S.C.
Attorneys

James M. Miller
Attorney
jmiller@smsmlaw.com

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July 29, 2016

VIA FEDERAL EXPRESS

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JUL 29 2016

PUBLIC SERVICE
COMMISSION

Dr. Talina R. Mathews
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 Declaratory Order, Public Service Commission of Kentucky*
Case No. 2016-00278

Dear Dr. Mathews:

Enclosed for filing on behalf of Big Rivers Electric Corporation ("*Big Rivers*") are the following:

- An original and ten copies of an application ("*Application*") for a declaratory order regarding a dispute between Big Rivers, as applicant, and the Utility Commission of the City of Henderson, and the City of Henderson; and
- An original and ten copies of a petition for confidential treatment of certain confidential information being filed by Big Rivers with the Application, and, in a separate envelope, one copy of the pages containing the confidential information with that confidential information highlighted in yellow transparent ink.

As noted in the Application, Big Rivers has today served courtesy copies of this Application on the Utility Commission of the City of Henderson, the City of Henderson, and the Attorney General of Kentucky, at the addresses shown on the attached service list.

Dr. Talina R. Mathews
Page 2
July 29, 2016

Please feel free to contact me if you have any questions.

Sincerely yours,

A handwritten signature in blue ink that reads "James M. Miller". The signature is written in a cursive style with a large initial "J".

James M. Miller
Counsel for Big Rivers Electric Corporation
jmiller@smsmlaw.com

Enclosures

Copies:
Robert W. Berry
DeAnna Speed

Service List

City of Henderson, Kentucky
222 First Street
Henderson, KY 42420
Attention: Mayor

Hon. Dawn Kelsey
City Attorney
City of Henderson, Kentucky
222 First Street
Henderson, KY 42420

Utility Commission of the City of Henderson, Kentucky
100 Fifth Street
Henderson, KY 42420
Attention: Gary Quick

Attorney General of Kentucky
1024 Capital Center Dr.
Suite 200
Frankfort, KY 40601
Attention: Hon. Rebecca Goodman

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 29 2016

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

APPLICATION OF BIG RIVERS ELECTRIC
CORPORATION FOR A DECLARATORY
ORDER

) Case No.
) 2016-00278
)

APPLICATION

I. Big Rivers Electric Corporation (“Big Rivers”) files this application

(“Application”) pursuant to 807 KAR 5:001 Section 19 and KRS 278.200, seeking an order from the Kentucky Public Service Commission (“Commission”) finding that the rate and service standards under Big Rivers’ existing Power Sales Contract with the City of Henderson, Kentucky and City of Henderson Utility Commission (collectively, “Henderson”), as amended, require Henderson to be responsible for the variable production costs (“Variable Costs”)¹ of any Excess Henderson Energy² generated by Henderson’s Station Two generating station that Big Rivers declines to take and utilize. Alternatively, Big Rivers requests that the Commission enter an order pursuant to KRS 278.030 and KRS 278.200 finding that the Power Sales Contract is unfair, unjust and unreasonable unless Henderson is responsible for the Variable Costs of Excess Henderson Energy that Big Rivers declines to take and utilize, and declaring that Henderson is responsible for the Variable Costs of any Excess Henderson Energy that Big Rivers declines to take and utilize. In support of this Application, Big Rivers states as follows:

¹ The variable production costs of Excess Henderson Energy include fuel, all reagents, and sludge disposal costs. Section 6.7 of the Power Sales Contract provides that each party, at its own cost, must provide the full replacement of all fuels and reagents consumed for that party’s use of electric energy from Station Two. Section 3.8(c) of the Power Sales Contract provides that Big Rivers is responsible for the costs of fuel, reagent and sludge disposal for Excess Henderson Energy that it takes, but this provision does not require Big Rivers to pay these Variable Costs for Henderson’s Excess Henderson Energy that Big Rivers does not take.

² Excess Henderson Energy is described in paragraph 8 of this Application, and is defined in Section 3.8(a) of the Power Sales Contract, as amended, Exhibit 1 to this Application.

1 **Introduction**

2 2. Big Rivers is a rural electric cooperative corporation organized pursuant to KRS
3 Chapter 279. Its full name is Big Rivers Electric Corporation. Its mailing address is P.O. Box
4 24, Henderson, Kentucky 42419. Its street address is 201 Third Street, Henderson, Kentucky
5 42420. Its address for electronic mail service is regulatory@bigrivers.com. 807 KAR 5:001
6 Section 14(1).

7 3. Big Rivers owns and operates generating assets and purchases, transmits, and
8 sells electricity at wholesale. Its principal purpose is to provide the wholesale electricity
9 requirements of its three distribution cooperative members: Jackson Purchase Energy
10 Corporation, Kenergy Corp., and Meade County Rural Electric Cooperative Corporation
11 (collectively, the "Members"). The Members in turn provide retail electric service to
12 approximately 114,000 consumer/retail members located in 22 western Kentucky counties:
13 Ballard, Breckenridge, Caldwell, Carlisle, Crittenden, Daviess, Graves, Grayson, Hancock,
14 Hardin, Henderson, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Meade,
15 Muhlenberg, Ohio, Union, and Webster.

16 4. Big Rivers was incorporated in the Commonwealth of Kentucky on June 14,
17 1961, and hereby attests that it is currently in good standing in Kentucky. 807 KAR 5:001
18 Section 14(2).

19 5. The City of Henderson is a municipality in Western Kentucky with a street
20 address of 222 First Street, Henderson, Kentucky 42420 and a mailing address of P.O. Box 716,
21 Henderson, Kentucky 42419-0716. The City of Henderson Utility Commission, dba Henderson
22 Municipal Power and Light, is a municipal utility organized under the law of Kentucky with an
23 address of 100 Fifth Street, Henderson, Kentucky 42420. Henderson owns two coal-fired

1 electric generating units near Sebree, Kentucky known as “Station Two,” which have a Total
2 Capacity³ of 312 MW. Big Rivers operates and maintains the Station Two units under a series of
3 contracts that were originally executed on August 1, 1970, and that have since been amended
4 (the “Station Two Contracts”). One of the Station Two Contracts is the Power Sales Contract,
5 which is attached hereto as Exhibit 1. Big Rivers also attaches another of the Station Two
6 Contracts, the Power Plant Construction and Operation Agreement, as Exhibit 2, and
7 amendments to the Station Two Contracts that were made in years 1970 (Exhibits 3 and 4),
8 1971(Exhibit 5), 1993 (Exhibit 6), 1998 (Exhibit 7) and 2005 (Exhibit 8). The Station Two
9 Contracts provide that all references in the Station Two Contracts to the City of Henderson shall
10 include its City of Henderson Utility Commission to the extent applicable.

11 6. Big Rivers has served a copy of this Application on the Mayor of the City of
12 Henderson, the Utility Commission of the City of Henderson, and the City Attorney for the City
13 of Henderson. Big Rivers has also sent a copy of this Application to the Attorney General of
14 Kentucky, Office of Rate Intervention.

15 7. Under the Power Sales Contract, Henderson each year elects a portion of the 312
16 MW Total Capacity of Station Two to be reserved to it for serving the City of Henderson and its
17 inhabitants (the “Reserved Capacity”) by way of a rolling five-year reservation methodology.
18 Henderson then allots the balance of the capacity of Station Two to Big Rivers. Big Rivers is
19 then entitled to, and is obligated to take and pay capacity charges for, the allotted Station Two
20 capacity. Henderson’s Reserved Capacity for the 2016-2017 contract year is 115 MW, and Big
21 Rivers’ resulting allotted capacity share is 197 MW. Big Rivers and Henderson are separately
22 responsible for the Variable Costs associated with the energy each of them uses in a given hour,

³ The “Total Capacity” of Station Two is defined in Section 3.6 of the Power Sales Contract as the average of the total continuous net send-out capability of all generating units in Station Two.

1 which includes the obligation that each party must replace at its cost all fuels and reagents
2 consumed for the energy used by that party.

3 **Dispute over Excess Henderson Energy**

4 8. Henderson may take less energy in a given hour than is actually available to
5 Henderson under its Reserved Capacity. The energy associated with Henderson's Reserved
6 Capacity that is not taken by Henderson for purposes of supplying the needs of the City of
7 Henderson and its inhabitants is "Excess Henderson Energy," a concept that was added to the
8 Power Sales Contract in a new Section 3.8 by the 1998 amendments to the Station Two
9 Contracts, a copy of which is attached to this Application as Exhibit 7. Big Rivers and
10 Henderson had a dispute over the entitlement of the parties to Excess Henderson Energy under
11 the Power Sales Contract that culminated in Big Rivers initiating an arbitration proceeding in
12 2009 (the "Arbitration")⁴ to resolve the dispute. The arbitration panel concluded that "the excess
13 energy shall be considered to belong to [Henderson]."⁵ A copy of the award of the arbitration
14 panel is attached to this Application as Exhibit 9.

15 9. As explained in more detail in the Direct Testimony of Robert W. Berry,
16 President and CEO of Big Rivers, which is attached to this Application as Exhibit 10, Henderson
17 requires the Station Two units to be run in continuous operation. Thus, the Station Two units
18 operate even in hours when the marginal cost of producing energy from those units exceeds
19 the price at which power can be purchased in the Midcontinent Independent System Operator,
20 Inc. ("MISO") market. MISO is a regional transmission operator that the Commission

⁴ *Big Rivers Electric Corporation vs. City of Henderson, Kentucky and City of Henderson Utility Commission dba Henderson Municipal Power and Light*, American Arbitration Association Case No. 52 198 00173 10.

⁵ *Id.*, May 31, 2012 award, p. 3.

1 authorized Big Rivers to join, and that has operational control of Big Rivers' transmission
2 system.

3 10. Section 3.8(a) of the Power Sales Contract gives Big Rivers the option, in its
4 discretion, to take and utilize all or any portion of the Excess Henderson Energy under certain
5 circumstances, but it does not require Big Rivers to take and utilize any Excess Henderson
6 Energy. Nevertheless, before June 1, 2016, Big Rivers exercised its option to take and utilize
7 Excess Henderson Energy generated by Station Two.⁶

8 11. By letter dated May 25, 2016, a copy of which is attached to this Application as
9 Exhibit 11, Big Rivers informed Henderson that Big Rivers may from time to time not take all of
10 the available Excess Henderson Energy produced by Station Two. The letter explains that
11 because of market changes, there have been an increasing number of hours in which the cost of
12 producing Excess Henderson Energy exceeds MISO market prices, and Big Rivers plans to no
13 longer take Excess Henderson Energy in such uneconomic hours.

14 12. The Power Sales Contract requires the party using energy to be responsible for the
15 Variable Costs of that energy by replacing, at its cost, all fuels and reagents consumed for the
16 energy used by that party and by paying the sludge disposal costs associated with that energy.

17 13. The Power Sales Contract does not obligate Big Rivers to pay the Variable Costs
18 of Excess Henderson Energy that Big Rivers, in its discretion, elects not to take and utilize, that
19 belongs to Henderson, and that is required by Henderson to be generated. Accordingly, Big
20 Rivers further stated in the May 25 letter that it would not be responsible for the Variable Costs
21 of Excess Henderson Energy that it did not take. In further exchanges of letters, all of which are

⁶ Henderson is currently litigating with Big Rivers over whether Big Rivers' taking of Excess Henderson Energy since 2009 was a breach of contract that entitles Henderson to damages.

1 included in Exhibit 11 to this Application, Henderson made a general objection to Big Rivers'
2 plan and refused to meet to explain and discuss its objections.

3 **Jurisdiction**

4 14. KRS 278.200 grants the Commission jurisdiction to
5 originate, establish, change, promulgate and enforce any rate or service standard
6 of any utility that has been or may be fixed by any contract, franchise or
7 agreement between the utility and any city, and all rights, privileges and
8 obligations arising out of any such contract, franchise or agreement, regulating
9 any such rate or service standard, shall be subject to the jurisdiction and
10 supervision of the commission, but no such rate or service standard shall be
11 changed, nor any contract, franchise or agreement affecting it abrogated or
12 changed, until a hearing has been had before the commission in the manner
13 prescribed in this chapter.

14
15 15. The Power Sales Contract is a contract between a utility and a city over which the
16 Commission has jurisdiction pursuant to KRS 278.200. The Commission has confirmed its
17 jurisdiction over the Station Two Contracts on numerous occasions.⁷

18 **Request for Relief**

19 16. Big Rivers requests the Commission to find that it has the jurisdiction and
20 authority to grant the relief sought by Big Rivers in this Application.

21 17. Big Rivers further requests that the Commission enforce the Power Sales Contract
22 by issuing an order finding that Big Rivers is not responsible for the Variable Costs of any

⁷ See, e.g., order dated October 22, 1970, in Case No. 5406 (approving the Station Two Contracts); order dated July 14, 1998, in Case No. 1998-00267 (approving the 1998 amendments to the Station Two Contracts); order dated February 24, 2006, in Case No. 2005-00532 (approving the 2005 amendments to the Station Two Contracts and stating, "The final lease transaction documents, as well as amendments to the then existing Station Two contracts between Big Rivers and the City, were subsequently approved by the Commission in Case No. 1998-00267. The Commission has previously stated that any modifications or amendments to those documents will similarly need to be approved") (citations omitted); order dated March 31, 1995, in Case No. 94-032 (approving the 1993 amendments to the Station Two Contracts).

1 Excess Henderson Energy that Big Rivers declines to take in accordance with its rights under the
2 Power Sales Contract, and that Henderson is responsible for those Variable Costs.

3 18. If, however, the Commission were to interpret the Power Sales Contract to find
4 that Big Rivers is not excluded from responsibility for the Variable Costs of all of Henderson's
5 Excess Henderson Energy not taken and utilized by Big Rivers, then Big Rivers alternatively
6 requests that the Commission find that this requirement is not fair, just, and reasonable, and
7 exercise its authority under KRS 278.200 and KRS 278.030 to hold that Big Rivers is not
8 responsible under the Station Two Contracts for the Variable Costs of any Excess Henderson
9 Energy not taken and utilized by Big Rivers, and that Henderson is responsible for those costs.

10 WHEREFORE, Big Rivers respectfully requests that the Commission enter an order:

- 11 1. Granting the relief requested by Big Rivers in paragraphs 16, 17 and 18 of this
- 12 Application; and
- 13 2. Granting all other relief to which Big Rivers may be entitled.

14 On this the 28th day of July, 2016.

15 Respectfully submitted,

16
17
18 
19 _____

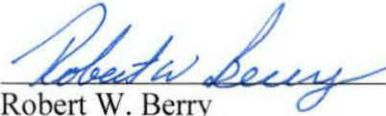
20 James M. Miller
21 R. Michael Sullivan
22 Tyson Kamuf
23 SULLIVAN, MOUNTJOY, STAINBACK
24 & MILLER, P.S.C.
25 100 St. Ann Street
26 P. O. Box 727
27 Owensboro, Kentucky 42302-0727
28 Phone: (270) 926-4000
29 Facsimile: (270) 683-6694
30 jmiller@smsmlaw.com
31 tkamuf@smsmlaw.com

32 *Counsel for Big Rivers Electric Corporation*

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Verification

I, Robert W. Berry, President and Chief Executive Officer for Big Rivers Electric Corporation, hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 28th day of July, 2016.



Robert W. Berry
President and Chief Executive Officer
Big Rivers Electric Corporation

COMMONWEAL TH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN to before me by Robert W. Berry, as President and Chief Executive Officer for Big Rivers Electric Corporation, on this the 28th day of July, 2016.



Notary Public, State at Large Kentucky
My commission expires: 1-12-17
Notary ID: 479863

Table of Contents to Exhibits

- Exhibit 1 Power Sales Contract dated as of August 1, 1970
- Exhibit 2 Power Plant Construction and Operation Agreement dated as of August 1, 1970
- Exhibit 3 Amendment No. 1 to the Power Sales Contract and Amendment dated as of August 1, 1970
- Exhibit 4 No. 1 to the Power Plant Construction and Operation Agreement dated as of August 1, 1970
- Exhibit 5 Amendment No. 2 to the Power Sales Contract and Amendment dated as of March, 1973
- Exhibit 6 Amendments to Contracts dated as of May 1, 1993
- Exhibit 7 Amendments to Contracts dated as of July 15, 1998
- Exhibit 8 Amendments to Contracts dated as of April 1, 2005
- Exhibit 9 Arbitration Award dated May 31, 2012
- Exhibit 10 Testimony of Robert W. Berry
- Exhibit 11 Correspondence between Big Rivers and Henderson

POWER SALES CONTRACT
BETWEEN
CITY OF HENDERSON, KENTUCKY
and
BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION

August 1, 1970

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POWER SALES CONTRACT

THIS AGREEMENT made and entered into as of August 1, 1970 by and between CITY OF HENDERSON, KENTUCKY, hereinafter referred to as CITY, and BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION, a Kentucky Corporation with principal offices in Henderson, Kentucky, hereinafter referred to as BIG RIVERS.

WITNESSETH THAT:

PART I

STIPULATIONS AND DEFINITIONS

SECTION 1 - STIPULATIONS

1.1 City will construct as an addition to its municipal electric system two 175-megawatt coal-fired, steam-electric generators with all necessary auxiliary facilities at a site on the Green River in Henderson County, Kentucky with which it will provide the immediate and future needs of City and its inhabitants for electric power and energy. Such generating station shall be hereinafter referred to as Station Two.

1.2 Upon the completion of Station Two City will have electric power and energy surplus to the immediate needs of City and its inhabitants, which surplus power and energy can, pursuant to the authority of KRS 96.520 as amended, be sold to other public utilities in this state whose rates and services are regulated by the Kentucky Public Service Commission.

1.3 Big Rivers, which is a public utility in this state whose rates and services are regulated by the Kentucky Public Service Commission, is desirous of purchasing the surplus power and energy from time to time available from City's municipal electric system, including its proposed Station Two, and is willing to execute and fulfill the terms of this Agreement entitling it to take, and obligating it to pay for such surplus electric power and energy, subject to the terms and conditions recited herein.

1.4 By its addition of Station Two, City will be able to provide more economical and reliable electric service to itself and its inhabitants, and through its sales of surplus electric power and energy to Big Rivers, as provided by this Agreement, City can assure the economic feasibility of such addition.

SECTION 2 - DEFINITIONS

2.1 Existing System: The electric utility system by which City serves the needs of City and its inhabitants (and some non-inhabitants) at the time of the execution of this Agreement, and all additions, expansions and improvements thereto and renewals and replacements thereof hereafter made, other than Station Two.

2.2 Station Two: City's proposed 350-megawatt generating station and all auxiliary facilities, joint use facilities (provided by City) and other related facilities to be constructed at a site on Green River in Henderson County, Kentucky together with all additions, expansions and improvements thereto and

~~renewals and replacements thereof (which shall not include the City Transmission and Transformation Facilities as herein defined).~~

2.3 Auxiliary Facilities: Power plant facilities which are physically separated from the steam generators, turbines and electric generators comprising the generating station, and which are required for the operation, maintenance and/or control thereof, and/or the delivery of power and energy therefrom, but excluding the City Transmission and Transformation Facilities.

2.4 Joint Use Facilities: Auxiliary facilities which are so constructed and/or arranged as to be useful to City and Big Rivers in the operation, maintenance and control of their respective generating stations.

2.5 Date of Commercial Operation: The date upon which the first unit of City's Station Two has been placed in normal continuous operation so as to produce power and energy in a commercially acceptable manner.

2.6 Contract Year: With respect to the first contract year, the period from Date of Commercial Operation or June 30, 1974, whichever shall first occur, to and including the next succeeding December 31, and thereafter, the successive twelve-month periods beginning January 1 and ending December 31.

2.7 Monthly Billing Period: Each calendar month of any Contract Year.

2.8 Bond Ordinance: The Electric Light & Power Revenue Bond Ordinance adopted by City authorizing the issuance of Station

Two Bonds, together with ordinances supplemental thereto or amendatory thereof.

2.9 Station Two Bonds (the Bonds): The Electric Light & Power Revenue Bonds authorized, sold and issued by City pursuant to the Bond Ordinance, to provide for the costs of acquisition, construction and start-up of City's Station Two and shall include: (i) the Electric Light & Power Revenue Bonds, Station Two Series authorized and issued under the Bond Ordinance; (ii) additional Bonds, if any, authorized and issued under the Bond Ordinance to provide for such costs of Station Two in excess of original estimates; and (iii) subject to the written approval of Big Rivers, additional Bonds, if any, authorized and issued under the Bond Ordinance to finance any Additional Project (as defined in the Bond Ordinance) for Station Two.

2.10 City Transmission and Transformation Facilities: The transmission and transformation facilities to be provided by City connecting Station Two to City's Existing System.

2.11 Trustee: The Trustee appointed pursuant to the Bond Ordinance.

PART II

PLANT CAPACITY AND OUTPUT

SECTION 3 - ALLOCATION OF CAPACITY

3.1 Subject to the allocation of surplus capacity to Big

Rivers as hereinafter provided, the total capacity and output of City's Station Two shall be reserved to and available for use by City for the purpose of supplying the needs of City and its inhabitants for electric power and energy in excess of the capabilities, from time to time, of its Existing System.

3.2 The "needs of City and its inhabitants" as used herein shall mean the needs of City for electric power and energy necessary in the operation of its governmental and proprietary facilities, and the retail sales of electric power and energy by City's Existing System to City's inhabitants, present and future, and those non-inhabitants which City is serving at the time of the execution of this Agreement.

3.3 The surplus capacity of City's Station Two will be allotted to Big Rivers on the basis of five years' advance written notice from City, and Big Rivers shall have the right to receive, and the obligation to take and pay for the capacity of City's Station Two so allotted to it in the manner herein provided. Upon the execution and approval of this Agreement, City will designate in writing Big Rivers' capacity allocation from Station Two for the Contract Years or portions thereof occurring too soon to permit five years' advance notice as hereinabove provided.

3.4 City agrees that it will not, after the execution and approval of this Agreement, (1) make any dispositions to others for resale of its generating capacity, except for the purpose of disposing of any surpluses resulting from good faith

over-estimates of its needs, or (2) add any commercial or industrial customers in excess of ten (10) megawatts each to its electric system, if to do either (1) or (2), as the case may be, would require the withdrawal of additional capacity from its Existing System and/or from Units One and Two of its Station Two. Expansions in the ordinary course of business of any commercial or industrial plants being served by City at the time of the execution of this Agreement shall not be considered added commercial or industrial customers for the purposes of this Agreement. Surplus capacity as referred to in (1) above shall be first offered to Big Rivers at City's cost.

3.5 Big Rivers shall have the right to receive, and the obligation to take and pay for the surplus capacity of City's Station Two allotted to it at any particular date as herein provided. Surplus capacity as herein used shall mean the Total Capacity of City's Station Two as then determined under Section 3.6, less that amount of such capacity at the time reserved to City as herein provided.

3.6 The Total Capacity of Station Two as referred to herein shall be the total continuous net send-out capability of all generating units in Station Two as determined by annual tests, made in the month of August, of at least twenty-four hours' duration under actual load carrying condition, when the equipment is operated at rated pressure and temperature with all auxiliary equipment in service, and at a power factor of

approximately ninety per cent (90%). The measurements will be made at the 161 KV metering points of the Station Two Switchyard.

3.7 The total continuous net send-out capability of each new unit of Station Two shall be tested on or before the Date of Commercial Operation thereof, if operationally possible, and the capacity as thus determined will remain the established Total Capacity of such unit until the first annual August test thereof, but shall not exceed a rating of 175 megawatts. If such test of any unit is deferred, the Total Capacity of such unit will be considered 175 megawatts until such test is made. As of June 30, 1974 the Total Capacity of Station Two shall be considered as 350 megawatts unless otherwise established by actual test with both units operational.

SECTION 4 - ALLOCATION OF ENERGY

4.1 Big Rivers shall be entitled at all times to take from Station Two energy associated with its allotted net capacity. Each party will be charged with its proportionate share of Station Two capacity required to operate Station Two auxiliary facilities.

SECTION 5 - STANDBY CAPACITY

5.1 Big Rivers' right to the use of surplus capacity of City's Station Two as provided in this Agreement shall be subject to the prior right of City to take its reserved capacity.

from either generating unit of its Station Two, and in the event of an emergency or maintenance outage of either generating unit of City's Station Two, City's right to receive its reserved capacity from Station Two shall have priority.

SECTION 6 - PAYMENT FOR CAPACITY; FUEL REQUIREMENTS

6.1 Commencing with the Date of Commercial Operation or June 30, 1974, whichever shall first occur, Big Rivers shall pay to the Trustee, capacity charges as hereinafter defined on the surplus capacity of Station Two allotted to it as provided in Section 3, Allocation of Capacity.

6.2 Capacity charges to Big Rivers for any Monthly Billing Period shall be the same proportion of the total capacity costs of City's Station Two for such Monthly Billing Period as Big Rivers' allocation of surplus capacity of Station Two during such Monthly Billing Period bears to the total capacity of City's Station Two for such Monthly Billing Period as established pursuant to Section 3 of this Agreement.

6.3 The total capacity costs of City's Station Two for each Monthly Billing Period shall be City's total costs resulting from the ownership, operation and maintenance of, and renewals and replacements to its Station Two, except costs of fuels for Station Two. Such costs shall include, but are not limited to:

(a) Debt Service (as defined in the Bond Ordinance) for such Monthly Billing Period with respect to the Station Two Bonds.

(b) One-twelfth (1/12) of all costs associated with the

operation and maintenance of Station Two during such Contract Year, including, without limitation, all costs properly chargeable to F.P.C. Accounts 408, 500, 502, 505, 506, 510, 511, 512, 513, 514 and 924, and fiscal agency costs and expenses allocable to Station Two.

(c) The amount which City is required under the Bond Ordinance to pay during such Monthly Billing Period into (i) the Station Two Account in the Operation and Maintenance Fund (Station Two O. & M. Account), so as to restore the minimum balance required to be maintained therein, and (ii) the Station Two Account in the Renewals and Replacements Fund (Station Two R. & R. Account) so as to restore the minimum balance required to be maintained therein.

(d) Costs of renewals, replacements and additions (when such additions are agreed to by Big Rivers) which are not provided for through (i) funds available in the Station Two R. & R. Account in the Renewals and Replacements Fund, (ii) proceeds of insurance, or (iii) funds available from proceeds of bonds.

(e) One-twelfth (1/12) of all costs of administration and general expense for Station Two during such Contract Year, and including, but not limited to, costs properly includible in F.P.C. Accounts 920, 921, 923, 924, 925, 926, 928 and 930.

(f) Any amounts paid or payable to Big Rivers for such Monthly Billing Period under terms of the parties' Power Plant Construction and Operation Agreement (except any delayed payment penalties as therein provided) not included in the foregoing.

(g) Any other costs associated with Station Two which are not included in Paragraphs (a) through (f) hereof.

In the event any Contract Year shall embrace eleven or fewer months the fraction expressed in the foregoing paragraphs (b) and (e) shall be adjusted by substituting a denominator equal to such number of months.

For the purposes of paragraph (a) of this Section, Station Two Bonds shall not include that principal amount of Bonds determined by the Consulting Engineer under the Bond Ordinance on or prior to the beginning of the first Contract Year to be attributable to the costs of the City's Transmission or Transformation Facilities and other improvements of City's Existing System. The Principal Installments due for any year of such Bonds so excluded shall be deemed to be that amount of the Principal Installments of the Electric Light & Power Revenue Bonds, Station Two Series, due for such year which bears the same proportion to said Principal Installments for the Electric Light & Power Revenue Bonds, Station Two Series, as the principal amount of such Bonds so excluded bears to the aggregate principal amount of Electric Light & Power Revenue Bonds, Station Two Series.

6.4 Net interest earned on the following funds under the Bond Ordinance and paid into the Electric Revenue Fund thereunder shall be applied as an offset to Capacity Costs:

(i) amounts shown in the Debt Service Account in the Debt Service Fund and applicable to the Station Two Bonds; (ii) amounts shown in the Debt Reserve Account in the Debt Service Fund as the

required reserve with respect to the Station Two Bonds, and amounts in the Station Two Accounts in the Operating & Maintenance Fund, Renewals & Replacements Fund, and the General Reserve Fund; (iii) insurance proceeds pending application with respect to Station Two.

6.5 Any tax lawfully imposed upon City in connection with the allocation of Station Two capacity and/or associated energy to Big Rivers shall be paid in its entirety by Big Rivers in addition to the capacity charges hereinabove referred to.

6.6 Additional Payments: In addition to the payments agreed to be made by Big Rivers to City under the terms and provisions of this Agreement, in consideration for City's allocation to Big Rivers of the surplus capacity and energy of City's Station Two as provided in Section 3 hereof, Big Rivers covenants and agrees that during the original term only of this Agreement it will pay monthly to City, to the account of City's Existing System, additional sums, based upon the amount of net capacity from time to time allocated from City's Station Two to Big Rivers, as follows:

(a) for each Monthly Billing Period during which Big Rivers' allocation of net capacity from City's Station Two is equal to or exceeds 250 megawatts, a sum of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33).

(b) for each Monthly Billing Period during which Big Rivers' allocation of net capacity from City's Station Two is

less than 250 megawatts and is equal to or exceeds 150 megawatts, a sum of Five Thousand Five Hundred Fifty-Five Dollars and Fifty-Six Cents (\$5,555.56).

(c) for each Monthly Billing Period during which Big Rivers' allocation of net capacity from City's Station Two is less than 150 megawatts and is equal to or exceeds 50 megawatts, a sum of Two Thousand Seven Hundred Seventy-Seven Dollars and Seventy-Eight Cents (\$2,777.78).

6.7 Fuel Requirements: Big Rivers and City shall each provide, at its own cost, the full replacement of all fuels consumed from the Station Two fuel reserve for the production of electric energy used by it during each month. If at any time during the term of this Contract the Station Two coal reserve shall fall below a full thirty (30) days' supply, then upon written demand by either party or the Consulting Engineer under the Bond Ordinance, both parties shall increase their respective monthly additions to the coal reserve by five per cent (5%) until the coal reserve is restored to the amount specified in such demand, not to exceed forty-five (45) days' supply for City's Station Two. Fuel consumption by each party will be determined on the basis of measured quantities, adjusted for heat content, and attributed to the parties on the basis of their respective uses of electric energy from City's Station Two during each month.

SECTION 7 - CHARACTER OF SERVICE

7.1 Service to Big Rivers from City's Station Two shall

be at 161 KV, 3 phase 60 cycles, unless otherwise agreed upon by the parties.

SECTION 8 - METERING, METER TESTING AND BILLING ADJUSTMENT

8.1 Printing Demand Meters, or equivalent meters, with a sixty (60) minute demand interval, which will meter kilowatts, and suitable watthour meters which will meter kilowatt hours, shall be used to meter the delivery of power and energy from City's Station Two. The metered kilowatt demand of City, Big Rivers and others from City's Station Two shall be the means of measuring the capacity of City's Station Two used by each. The metered kilowatt hours of energy used by City, Big Rivers and others from City's Station Two shall be the basis for fuel replacements to the Station Two fuel reserve as provided in Section 6.7 hereof.

8.2 The meters will be arranged so as to provide a total measurement of kilowatt demand and a total measurement of kilowatt hours delivered to City, Big Rivers and others from City's Station Two.

8.3 Tests and inspections of said meters shall be made as may be necessary to maintain them at the highest practical commercial standard of accuracy, with tests performed at intervals of not more than twelve months. Big Rivers will be advised promptly of the results of all such tests. Big Rivers will be given prior notice of and may have representatives present at such tests and inspections. Additional tests of said meters

will be made at the reasonable request of Big Rivers and in the presence of its representatives.

8.4 If such periodic or additional tests show that a meter used for recording capacity and/or energy uses is accurate within one per cent (1%) slow or fast, no correction shall be made in such recordings. If any such tests show that such meter is inaccurate by more than one per cent (1%) slow or fast, correction shall be made in such recordings for the period during which the parties agree that the inaccuracy existed.

8.5 City's kilowatt demand and energy uses from its Station Two shall be metered at the following points:

(a) at point of City's Station Two switchyard where delivery is taken over City Transmission and Transformation Facilities.

(b) at point of City's Existing System substations where delivery is taken over Big Rivers' transmission system, with appropriate additions for ordinary transmission losses.

8.6 All of City's metering points shall be hourly summarized so as to determine City's aggregate hourly kilowatt demand and total energy uses from Station Two.

8.7 Big Rivers' kilowatt demand and energy uses from City's Station Two shall be metered at point of City's Station Two switchyard.

8.8 All meter readings and/or recordings necessary to provide an accurate report of kilowatt demand and electric energy uses from City's Station Two during each Monthly Billing Period

shall be promptly made. At the end of each Monthly Billing Period a report shall be promptly made to Big Rivers of the kilowatt demand and electric energy uses from City's Station Two by City, Big Rivers and others during such Monthly Billing Period.

SECTION 9 - BILLING AND PAYMENTS

9.1 On or before the twentieth day of each calendar month during each Contract Year Big Rivers shall pay to City's Trustee, appointed under the Bond Ordinance, all capacity charges due from it in accordance with Section 6 hereof for its allotted Station Two capacity during the current Monthly Billing Period. Such payments shall be made on the basis of the Annual Budget in effect for the applicable Monthly Billing Period. Payments shall be deemed complete upon the posting thereof in the regular United States mail, properly addressed and affixed with postage.

9.2 If any such payment or portion thereof is not paid when due as herein provided, a penalty in the amount of one per cent (1%) of the unpaid amount may, at the option of City, be added thereto at the commencement of each thirty-day period thereafter, and due and payable therewith. Provided however, that in the case of a bona fide dispute as to the amount of any such payment, the delayed payment penalty will be applicable only to that unpaid portion of the invoice which is not reasonably in dispute.

9.3 Off-Setting Accounts: Big Rivers shall have the right to off-set accounts payable under this Agreement by any payments due it under Section 13.6 of the parties' Power Plant Construction and Operation Agreement of even date herewith and thereupon shall pay to the Trustee under the Bond Ordinance any remaining balance of the off-set account. Off-setting of accounts shall be employed in determining any delayed payment charges as provided herein.

9.4 On or before one hundred twenty (120) days after the end of each Contract Year there shall be submitted to Big Rivers a detailed statement of the actual capacity costs for all Monthly Billing Periods of such Contract Year, based on the annual audit of accounts provided for in Section 11. If, on the basis of such statement the actual aggregate capacity costs for said Contract Year exceeded the estimate thereof in the Annual Budget on the basis of which Big Rivers has made payments, Big Rivers shall pay promptly to the Trustee appointed under the Bond Ordinance the additional amount to which the City is entitled. If, on the basis of such statement the actual aggregate capacity costs for said Contract Year are less than the estimate thereof in the Annual Budget on the basis of which Big Rivers has made payments, such excess shall be credited against Big Rivers' next monthly payment or payments hereunder, or paid to Big Rivers if no such payments are due from Big Rivers.

SECTION 10 - OBLIGATIONS OF THE PARTIES

10.1 All obligations of City under the terms and provisions of this Agreement shall be the sole obligations of City's

electric utility system, including its Existing System, its Station Two generating plant and such other additions, extensions and facilities that it may from time to time own and/or operate. No debt or obligation of City under this Agreement shall constitute a general obligation of the City.

10.2 City covenants that it will, subject to the approval of any regulatory bodies having jurisdiction thereof, at all times maintain rates for services rendered by its electric utility system which will be sufficient to adequately meet the costs of proper operation and maintenance thereof, to provide for the depreciation thereof through renewals and replacements, or otherwise, and to provide for the full and prompt payment of all obligations of City on all of its outstanding Electric Revenue Bonds, including without limitation its Station Two Bonds.

10.3 All obligations and sums payable by Big Rivers under the terms and provisions of this Agreement shall constitute a general obligation of Big Rivers, and Big Rivers covenants that it will, subject to the approval of any regulatory bodies having jurisdiction thereof, at all times maintain rates for services rendered by its electric utility systems and such other business activities in which it shall engage for compensation, which will be sufficient to adequately make the full and prompt payment and performance of all its obligations to the Trustee for the Bonds under the terms and provisions of this Agreement.

SECTION 11 - ANNUAL AUDIT

11.1 An annual audit of the financial accounts of the City's Station Two shall be made in accordance with the provisions of the Bond Ordinance. Big Rivers shall be entitled to timely receipt of copies of the annual audit report.

11.2 Big Rivers shall have the right, at all reasonable times, to examine the books, accounts and records of City's Station Two in order to determine the accuracy of charges being made to it under the provisions of this Agreement.

PART III

GENERAL PROVISIONS

SECTION 12 - OPERATING STANDARDS

12.1 City will operate and maintain, under the provisions of the Power Plant Construction and Operation Agreement, the generating station, auxiliary facilities, joint use facilities and other related facilities comprising its Station Two, in accordance with standards and specifications equal to those provided by the National Electric Safety Code of the United States Bureau of Standards, and as required by any regulatory authority having jurisdiction thereof.

SECTION 13 - UNCONTROLLABLE FORCES - CONTINUING OBLIGATION FOR PAYMENTS

13.1 Neither party hereto shall be considered in default or breach with respect to any obligation under this

Agreement if prevented from fulfilling such obligation by reason of an Uncontrollable Force. Any party unable to fulfill any obligation by reason of Uncontrollable Forces shall exercise due diligence to remove such disability as soon as reasonably possible.

13.2 The term "Uncontrollable Force" shall mean any force which is not within the control of any party to this Agreement, and which by exercise of due diligence and foresight could not reasonably have been avoided, including, but not limited to, an act of God, fire, flood, earthquake, explosion, strike, sabotage, an act of the public enemy, civil or military authority, including court orders, injunctions, and orders of government agencies having proper jurisdiction, insurrection or riot, an act of the elements, failure of equipment, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers.

13.3 Anything to the contrary in this Contract notwithstanding, Big Rivers shall have a continuing obligation to make payments for capacity as provided in this Agreement, whether or not City's Station Two is inoperable or the operation thereof is interrupted, suspended or interfered with in whole or in part for any cause whatsoever, including Uncontrollable Forces.

SECTION 14 - ARBITRATION

14.1 Any controversy or claim arising out of, or relating to this Agreement or the breach thereof, including disagreements

between the Trustee and either or both parties to this Agreement, may be submitted to Arbitration at the time, in the manner and upon the terms agreed upon by the parties.

14.2 Arbitration shall not be considered the sole or exclusive means of settling controversies which may arise under the terms and provisions of this Agreement, nor shall arbitration be considered a condition precedent to any action in court of law or equity or proceedings before any governmental agency or regulatory body having jurisdiction thereof.

SECTION 15 - DEFAULT

15.1 In the event of a default by either party to this Agreement in the performance of any one or more of the provisions hereof, the aggrieved party or parties shall, in addition to the remedies specified in this Agreement, have the right to use and employ all remedies available through courts of law and/or equity, governmental agencies and/or ~~regulatory bodies having jurisdiction~~ thereof.

SECTION 16 - WAIVER

16.1 The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

SECTION 17 - NOTICES

17.1 Any payment, written notice, demand or request required or permitted under this Agreement shall be deemed properly given to or served upon the recipient when posted through the regular United States mail, properly addressed, and affixed with postage as follows:

to City:

General Manager
Municipal Power and Light
P.O. Box 8
Henderson, Kentucky 42420

to Big Rivers:

Manager
Big Rivers RECC
P.O. Box 24
Henderson, Kentucky 42420

to the Trustee:

as established by the Bond Ordinance.

17.2 The designation of the person to be notified, or the addresses of such persons, may be changed at any time upon written notice to the other parties.

PART IV

OTHER PROVISIONS

SECTION 18 - COMPLIANCE WITH BOND ORDINANCE

18.1 This Agreement shall be subject to the terms and provisions of the Bond Ordinance. City and Big Rivers agree that they will not amend, modify or otherwise alter this Agreement in any manner that will impair or adversely affect the security.

afforded by the provisions of this Agreement to the holders of the City's Electric Revenue Bonds, including Station Two Bonds, for the payment of principal, interest and premium, if any, thereon, so long as any of such Bonds are outstanding and unpaid, or until provision is irrevocably made for the payment thereof.

SECTION 19 - MAINTENANCE OF RESERVES:

19.1 City covenants and agrees that during the term of this Agreement, and any renewals or extensions thereof, it will continue to keep and maintain, in the manner provided in the Bond Ordinance and the supplemental ordinance providing for the Station Two Bonds, as operating facilities of its Station Two, the Station Two O. & M. Account, the Station Two R. & R. Account and the Station Two fuel reserve, all as provided under the terms of this Agreement and the parties' Power Plant Construction and Operation Agreement of even date herewith.

SECTION 20 - CITY INCLUDES UTILITY COMMISSION

20.1 It is recognized by the parties that the City operates, manages and controls its electric utility system through its City of Henderson Utility Commission, appointed pursuant to KRS 96.530. All references to City under the terms and provisions of this Agreement shall include its City of Henderson Utility Commission to the extent applicable.

20.2 The parties agree that all rights and obligations of City under the terms and provisions of this Agreement shall also constitute rights and obligations of the City of Henderson

Utility Commission. By its execution of this Agreement the City of Henderson Utility Commission covenants and agrees that all references to City under the terms and provisions of this Agreement shall include the City of Henderson Utility Commission, and that it shall be obligated under this Agreement accordingly.

SECTION ~~21~~² - TERM AND TERMINATION

~~21~~².1 The term of this Agreement shall commence upon the execution hereof by City and Big Rivers and shall terminate on October 31, 2003 unless otherwise terminated as hereinafter provided.

~~21~~².2 Big Rivers shall have the option of extending the term of this Agreement for two successive five-year terms provided that at least five years' advance written notice of each such extension is given to City. Such extension or extensions shall be upon the same terms and conditions applicable to the original term of this Agreement, except as otherwise provided in Section 6.6 hereof.

~~21~~².3 Notwithstanding the provisions of Sections 21.1 and 21.2, this Agreement and any options herein granted shall terminate as soon as Big Rivers' allocation of capacity from City's Station Two shall be zero.

SECTION ~~22~~³ - AMENDMENTS

~~22~~³.1 No amendments of this Agreement shall be effective unless reduced to writing and executed by all parties hereto.

22.2 It is understood that Big Rivers may not agree to any amendment, modification or alteration of this Agreement without first obtaining approval of the Administrator of the Rural Electrification Administration.

SECTION 23⁴ - SEVERABILITY

23.1 In the event that any part of this Agreement is declared illegal or no longer in force by reason of an order issued by a court or regulatory body of competent jurisdiction, all remaining portions of this Agreement which are not affected by such order shall continue in full force and effect.

SECTION 24⁵ - ASSIGNMENT

24.1 This Agreement shall be binding upon the parties hereto, their respective successors and assigns. Provided however, that this Agreement shall not be assigned by either party (except for an assignment by Big Rivers to the United States of America) without the written consent of the other party.

SECTION 25⁶ - APPROVAL

25.1 This Agreement shall be subject to the approval of all local, state or federal regulatory bodies having jurisdiction thereof and shall become effective only upon the execution thereof by the parties and approval by the Administrator of the Rural Electrification Administration.

SECTION 2⁷ - CONDITIONS PRECEDENT

2⁷.1 This Agreement in its entirety is entered into subject to the following express conditions precedent:

(a) That the parties shall enter into and execute the Power Plant Construction and Operation Agreement, the real estate Purchase-Sale Agreement and the Joint Facilities Agreement, all of even date herewith.

(b) That the parties shall be able to obtain all approvals and authorizations from public authorities and the Administrator of the Rural Electrification Administration necessary to enable them lawfully to enter into and carry out this Agreement.

(c) That the City shall be able to issue and sell its Station Two Bonds with rates of interest and schedule of maturities acceptable to City and Big Rivers, with a final maturity of not less than thirty years from date of issuance, in the principal sum of \$76,000,000.00.

2⁷.2 If all of the said conditions precedent do not occur within one year from the date hereof, this Agreement shall be void and all rights hereunder shall terminate unless the parties agree in writing to extend the time for the happening of said conditions precedent.

SECTION 2⁸ - AUTHORITY TO EXECUTE

2⁸.1 This Agreement is executed by the duly authorized officers or representatives of the parties pursuant to authority granted to each of them by the lawful action of their respective official commissions or boards.

Executed at Henderson, Kentucky this _____ day of

_____, 19____.

CITY OF HENDERSON, KENTUCKY

BY:

William L. Newman
William L. Newman, Mayor

ATTEST:

Pheresa Crafton
City Clerk

(City Seal)

CITY OF HENDERSON UTILITY COMMISSION

BY:

Louis Hatchett
Louis Hatchett, Chairman

ATTEST:

Dudley H. Emerson
Secretary

BIG RIVERS RURAL ELECTRIC
CO-OPERATIVE CORPORATION

BY:

Robert Reid, Sr.
Robert Reid, Sr., President

ATTEST:

D. B. Wilson
D. B. Wilson, Secretary

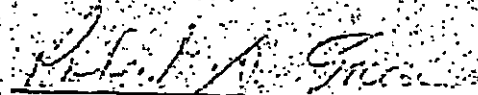
This instrument prepared by:

of WEST MARKWELL & BRYANT
Suite 320 - Imperial Building
110 Third Street
Henderson, Kentucky 42420

EXCERPT FROM MINUTES OF REGULAR MEETING OF BOARD OF DIRECTORS
OF BIG RIVERS RURAL ELECTRIC COOPERATIVE CORPORATION
HELD IN HENDERSON, KENTUCKY, ON AUGUST 21, 1970

After thorough discussion it was moved by Robert D. Green seconded by D. B. Wilson that Big Rivers execute the Power Sales Contract, the Power Plant Construction and Operation Agreement and the Joint Facilities Agreement and to approve the Electric Light and Power Revenue Bond Ordinance to be adopted August 27, 1970. Motion carried.

I, Robert D. Green, Vice President
of Board of Directors of Big Rivers
Rural Electric Cooperative Corporation
hereby certify that the above is a
true and correct excerpt from the
minutes of the regular meeting of said
corporation held on August 21, 1970.

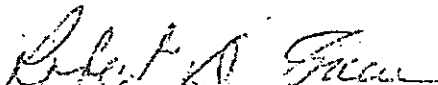

Robert D. Green, Vice President



EXCERPT FROM MINUTES OF REGULAR MEETING OF BOARD OF DIRECTORS
OF BIG RIVERS RURAL ELECTRIC COOPERATIVE CORPORATION
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After thorough discussion it was moved by Robert D. Green seconded by D. B. Wilson that Big Rivers execute the Power Sales Contract, the Power Plant Construction and Operation Agreement and the Joint Facilities Agreement and to approve the Electric Light and Power Revenue Bond Ordinance to be adopted August 27, 1970. Motion carried.

I, Robert D. Green, Vice President
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Rural Electric Cooperative Corporation
hereby certify that the above is a
true and correct excerpt from the
minutes of the regular meeting of said
corporation held on August 21, 1970.



Robert D. Green, Vice President

Approved Copy
116-0-2-7
Contract 219

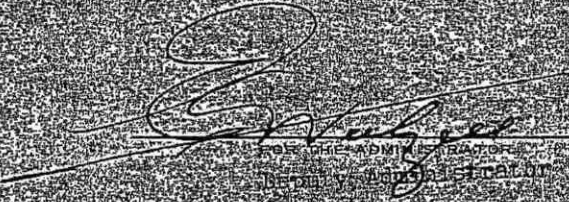
U. S. DEPARTMENT OF AGRICULTURE
RURAL ELECTRIFICATION ADMINISTRATION

REA BORROWER DESIGNATION MEMBERS OF THE Board of Directors

THE WITHIN Agreement No. 1 entered March 12, 1976, for Power Sales
Contract with the City of Henderson, Kentucky.

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE
TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE
PURPOSES OF SUCH CONTRACT.

DATED
MAR 26 1976



DIRECTOR

Amendment #1

POWER SALES CONTRACT
BETWEEN
CITY OF HENDERSON, KENTUCKY
AND
BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION

POWER SALES CONTRACT

Amendment #1

The Power Sales Contract entered into as of August 1, 1970 by and between the City of Henderson, Kentucky and Big Rivers Rural Electric Co-operative Corporation is hereby amended in the following particulars:

1. Section 2.2 is amended so as when amended the same shall read as follows:

2.2 Station Two: City's proposed 350-megawatt generating station and all auxiliary facilities, joint use facilities (provided by City) and other related facilities to be constructed at a site on Green River in Henderson County, Kentucky (which shall not include the City Transmission and Transformation Facilities as herein defined).

2. Section 2.6 is amended so as when amended the same shall read as follows:

2.6 Contract Year: With respect to the first contract year, the period from Date of Commercial Operation or June 30, 1974, whichever shall first occur, to and including the next succeeding December 31, and thereafter, the successive twelve-month periods beginning January 1 and ending

December 31; provided that in the event that City shall exercise its right under the Bond Ordinance to change from a calendar year accounting period, as shall be specified in a Supplemental Ordinance adopted in accordance with the Bond Ordinance, the term Contract Year as used herein shall thereupon refer to the same period as such new fiscal year accounting period with such changes in the accounting and budgeting procedures, including the adoption of a new Annual Budget hereunder, as shall be necessary or appropriate to effect such change in the Contract Year.

3. Section 3.6 is amended so as when amended the same shall read as follows:

3.6 The Total Capacity of Station Two as referred to herein shall be the average of the total continuous net sendout capability of all generating units in Station Two as determined by semi-annual tests, made in the months of August and January, of at least twenty-four hours' duration under actual load carrying condition, when the equipment is operated at rated pressure and temperature with all auxiliary equipment in service, and at a power factor of approximately ninety per cent

(90%). The measurement will be made at the 161 KV metering points of the Station Two Switchyard.

4. SECTION 21 - TERM AND TERMINATION, and subsections 21.1, 21.2, and 21.3 are renumbered so as to be SECTION 22 - TERM AND TERMINATION and subsections 22.1, 22.2 and 22.3. A new Section 21 with subsections 21.1, 21.2 and 21.3 is added to read as follows:

SECTION 21 - HENDERSON-DAVIESS AND CITY ELECTRIC SYSTEMS

21.1 The parties mutually agree that the Henderson-Daviess System and the City Electric System, as described in the City's Revised Request for Ruling, dated December 1970 and filed with the Internal Revenue Service (a copy of which has been delivered to Big Rivers), will be operated in the manner prescribed in said Revised Request for Ruling, so as to preclude any distribution of any of the generating capacity of said Henderson-Daviess System and said City Electric System outside the area of Henderson and Daviess Counties except as described in said Revised Request for Ruling.

21.2 It is understood by the parties, however, that the requirement of Section 21.1 hereof will no longer be effective in the event and to the extent that:

any change in the applicable statute, regulations or rulings of the Internal Revenue Service should occur pursuant to which interest on the Bonds would remain exempt from federal income taxation in the absence of compliance with such requirement.

21.3 Big Rivers covenants and agrees to save harmless and indemnify City for any loss or damage whatsoever arising out of Big Rivers' violations, if any, of the provisions of Section 21 of this contract.

5. SECTION 22 - AMENDMENTS and its subsections 22.1 and 22.2 are renumbered so as to be SECTION 23 - AMENDMENTS and subsections 23.1 and 23.2.

6. SECTION 23 - SEVERABILITY and its subsection 23.1 are renumbered so as to be SECTION 24 - SEVERABILITY and subsection 24.1.

7. SECTION 24 - ASSIGNMENT and its subsection 24.1 are renumbered so as to be SECTION 25 - ASSIGNMENT and subsection 25.1.

8. SECTION 25 - APPROVAL and its subsection 25.1 are renumbered so as to be SECTION 26 - APPROVAL and subsection 26.1.

9. SECTION 26 - CONDITIONS PRECEDENT and its subsections 26.1 and 26.2 are renumbered so as to be SECTION 27 - CONDITIONS PRECEDENT and subsections 27.1 and 27.2.

10. SECTION 27 - AUTHORITY TO EXECUTE and its subsection 27.1 are renumbered so as to be SECTION 28 - AUTHORITY TO EXECUTE and subsection 28.1.

All provisions of the parties' Power Sales Contract of August 27, 1970 not herein amended shall remain in full force and effect as originally adopted.

Executed at Henderson, Kentucky this 2nd day of March, 1971.

CITY OF HENDERSON, KENTUCKY

BY William L. Newman
William L. Newman, Mayor

ATTEST:

Thomas Crafton
City Clerk

(City Seal)

CITY OF HENDERSON UTILITY COMMISSION

BY Louis Hatchett
Louis Hatchett, Chairman

ATTEST:

Dudley H. Everson
Secretary

BIG RIVERS RURAL ELECTRIC
CO-OPERATIVE CORPORATION

BY Robert Reid Sr.
Robert Reid, Sr., President

ATTEST:

D. B. Wilson
D. B. Wilson, Secretary

This instrument prepared by:

C. A. Bryant
of WEST MARKWELL & BRYANT
Suite 380 - Imperial Building
110 Third Street
Henderson, Kentucky 42420

POWER PLANT CONSTRUCTION AND OPERATION AGREEMENT
BETWEEN
CITY OF HENDERSON, KENTUCKY
and
BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION

August 1, 1970

EXHIBIT

2

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POWER PLANT CONSTRUCTION AND OPERATION AGREEMENT

THIS AGREEMENT made and entered into as of August 1, 1970 by and between CITY OF HENDERSON, KENTUCKY, hereinafter referred to as CITY, and BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION, a Kentucky Corporation with principal offices in Henderson, Kentucky, hereinafter referred to as BIG RIVERS.

WITNESSETH THAT:

PART I

STIPULATIONS AND DEFINITIONS

SECTION 1 - STIPULATIONS

1.1 City owns and operates an electric generating and distribution system (Municipal Electric Light & Power System) with total generating capability of forty-eight thousand (48,000) kilowatts and firm system capacity of twenty-two thousand (22,000) kilowatts, with which it serves the needs of City and its inhabitants for electric power and energy.

1.2 Big Rivers owns and operates electric generating stations and related transmission facilities with present generating capacity (including capacity under construction) of five hundred ninety thousand (590,000) kilowatts with which it supplies power and energy to its member Rural Electric Co-operative Corporations, which in turn serve the local consumers in their respective service areas.

1.3 The electric systems of City, Big Rivers, Southern Illinois Power Co-operative, an Illinois Corporation, and Hoosier Energy Division of Indiana Statewide Rural Electric, Inc., an Indiana Corporation, are interconnected to form what is known as the KII Pool under provisions of an interconnection agreement of April 1, 1968.

1.4 City's present system load is in excess of the firm capacity of its Municipal Power & Light System and it provides its deficient needs through the provisions of the KII Pool Agreement.

1.5 City is presently planning a comprehensive annexation program whereby the area of its corporate limits will be increased by approximately three-fold.

1.6 City's consulting engineers have determined that City will require additional generating capabilities by the year 1973 in order to provide for the needs of its electric consumers. Said engineers have further determined and recommended to City that the most feasible and economical plan for providing the City's present and anticipated electric generation needs is the construction by City of a relatively large and more efficient generating station, whereby City can provide adequate, low-cost power and energy for the present and future needs of its Municipal Electric Light & Power System, with interim sales of surplus power and energy: (a) to Big Rivers as provided in the parties' Power Sales Agreement of even date herewith; (b) through the provisions of the KII Pool Agreement; (c) or otherwise.

1.7 City's consulting engineers have reported that the site of City's present generating plant is inadequate for the addition of the required generating facilities and that

space requirements and the growing need and public demand for control of the urban environment make the selection of a remote, rural site most desirable.

1.8 City's consulting engineers have determined and recommended to City that the most feasible and economical plan for the City's addition of such generating station is the establishment of a new generating station, presently consisting of two, one hundred seventy-five (175) megawatt, coal-fired, steam-electric generators, with provisions for the future addition of other generating units, at a site on the Green River in Henderson County Kentucky, adjacent to the Reid Station of Big Rivers, and so arranged as to provide for the joint utilization by City and Big Rivers of auxiliary facilities and operating personnel in such manner as to achieve optimum economies in construction and operation, all as authorized by KRS 96.520, as amended. The addition of such generating station to City's electric facilities would provide City a firm system capacity of two hundred twenty-three thousand (223,000) kilowatts, which is estimated to meet City's needs for electric power and energy for an additional twenty (20) years.

1.9 Big Rivers has agreed, subject to the terms of this Agreement that it will sell and convey such site and all required easements to City, that it will permit City to construct its generating station in the manner so recommended by its consulting engineers, and that it will enter into a power sales agreement with City for the purchase of all surplus capacity and related

energy available from time to time from said generating station.

1.10 City has accepted the determinations and recommendations of its consulting engineers and has determined to proceed with the design, construction, start-up and operation of such electric generating station (hereinafter referred to as Station Two) subject to the terms and provisions of this Agreement and other Agreements referred to herein.

1.11 City has employed the services of a nationally recognized engineering firm to design and supervise construction of its Station Two; has employed the services of financial advisers to assist in the sale of sufficient revenue bonds with which to finance the acquisition, construction and start-up of said Station Two and has employed the services of nationally recognized bond counsel. Upon the execution and approval of this Agreement City will direct its said employees to proceed with the performance of such services.

SECTION 2 - DEFINITIONS

2.1 Existing System: The electric utility system by which City serves the needs of City and its inhabitants (and some non-inhabitants) at the time of the execution of this Agreement, and all additions, expansions and improvements thereto and renewals and replacements thereof hereafter made, other than Station Two.

2.2 Station Two: City's proposed 350-megawatt generating station and all auxiliary facilities, joint use facilities

(provided by City) and other related facilities to be constructed at a site on Green River in Henderson County, Kentucky, together with all additions, expansions and improvements thereto and renewals and replacements thereof (which shall not include the City Transmission and Transformation Facilities as herein defined).

2.3 Auxiliary Facilities: Power plant facilities which are physically separated from the steam generators, turbines and electric generators comprising the generating station, and which are required for the operation, maintenance and/or control thereof, and/or the delivery of power and energy therefrom, but excluding the City Transmission and Transformation Facilities.

2.4 Joint Use Facilities: Auxiliary facilities which are so constructed and/or arranged as to be useful to City and Big Rivers in the operation, maintenance and control of their respective generating stations.

2.5 Date of Commercial Operation: The date upon which the first unit of City's Station Two has been placed in normal continuous operation so as to produce power and energy in a commercially acceptable manner.

2.6 Contract Year: With respect to the first contract year, the period from Date of Commercial Operation or June 30, 1974, whichever shall first occur, to and including the next succeeding December 31, and thereafter, the successive twelve-month periods beginning January 1 and ending December 31.

2.7 Monthly Billing Period: Each calendar month of any Contract Year.

2.8 Bond Ordinance: The Electric Light & Power Revenue Bond Ordinance adopted by City authorizing the issuance of Station Two Bonds, together with ordinances supplemental thereto

or amendatory thereof.

2.9 Station Two Bonds (the Bonds): The Electric Light & Power Revenue Bonds authorized, sold and issued by City pursuant to the Bond Ordinance, to provide for the costs of acquisition, construction and start-up of City Station Two and shall include: (i) the Electric Light & Power Revenue Bonds, Station Two Series authorized and issued under the Bond Ordinance; and (ii) additional Bonds, if any, authorized and issued under the Bond Ordinance to provide for such costs of Station Two in excess of original estimates.

2.10 City Transmission and Transformation Facilities: The transmission and transformation facilities to be provided by City connecting Station Two to City's Existing System.

2.11 Trustee: The Trustee appointed pursuant to the Bond Ordinance.

PART II FACILITIES

SECTION 3 - ACQUISITION OF SITE

3.1 Big Rivers agrees to sell and convey to City a site and necessary easements and rights-of-way for City's construction and operation of its Station Two, all in accordance with the parties Purchase-Sale Agreement of even date herewith.

3.2 Such site, easements and rights-of-way shall be conveyed and/or granted to City free and clear of any encumbrances whatsoever which would have priority over the rights of the holders of City's Electric Revenue Bonds.

SECTION 4 - CONSTRUCTION OF PLANT

4.1 City will direct its employed engineering firm to proceed immediately with the design and development of plans and specifications for the construction of Station Two, consisting of two, one hundred seventy-five (175) megawatt coal-fired, steam-electric generating units, with all necessary auxiliary facilities, with such arrangement as will provide for the joint use by City and Big Rivers of auxiliary facilities and operating personnel so as to result in optimum economies of construction and operation. Such plans and specifications shall be subject to prior approval by City and, to the extent that Big Rivers' Reid Station is affected thereby, by Big Rivers.

4.2 City agrees to obtain all necessary permits for the construction and operation of its Station Two, moorage and associated facilities and further agrees to use its best efforts to cause any and all of such permits to extend for a term equal to the term of this Agreement, or to obtain any new or additional permits required to enable it to operate and maintain its Station Two for such term.

4.3 Upon completion by the engineers of such plans and specifications, and upon approval thereof by City and Big Rivers, as hereinabove provided, City will diligently proceed with the construction of Station Two in the most economical and efficient manner, consistent with good utility practices, and in such manner as to least interfere with the continued operation by Big Rivers of its Reid Station during the period of construction and the start-up of such facilities.

4.4 Big Rivers will provide construction assistance to City during the design, construction and start-up of City's Station Two in accordance with the provisions of Section 11, Construction Assistance, of this Agreement.

SECTION 5 - TRANSMISSION AND TRANSFORMATION FACILITIES

5.1 Adequate switchyard and 161 KV step-up transformers will be provided by City as a part of Station Two.

5.2 City will provide, at its own cost, one 69 KV transmission line and related transformation facilities connecting its Station Two to its Existing System (herein referred to as City Transmission and Transformation Facilities), with provision for increasing of transmission capacity to meet City's future needs.

5.3 Big Rivers will maintain at all times and provide for City's use, at no cost to City, surplus capacity on its two existing 69 KV transmission lines from point of City's Station Two switchyard to points of substations of City's Existing System, and will likewise provide for City's use any surplus capacity on additional transmission facilities which Big Rivers may hereafter construct in such a manner as to permit the transmission of electric energy from City's Station Two to its Existing System. In its use of such transmission facilities, City will not, in any manner, disrupt or adversely affect Big Rivers' service to its own customers.

5.4 Any transmission facilities required by City in addition to those provided as hereinabove recited, shall be provided by City at its own cost.

SECTION 6 - JOINT USE FACILITIES

6.1 City and Big Rivers mutually agree that they will each provide such joint use facilities as are determined by the City's employed engineering firm (and approved by City and Big Rivers) to be furnished by each, respectively, and will each provide, on a best efforts basis, for the continued operation and maintenance thereof for the joint use and benefit of the parties, all as provided in the parties' Joint Facilities Agreement of even date herewith.

SECTION 7 - FUEL SUPPLY

7.1 An initial coal supply will be established out of the proceeds of the Station Two Bonds as a facility of City's Station Two. Bond proceeds in the amount of \$465,000 will be allotted therefore.

7.2 Such coal supply will be maintained as a fuel reserve throughout the term of this Agreement through the addition of replacement fuels as such reserve is from time to time, consumed in the operation of City's Station Two.

7.3 Start-up fuels will be supplied by Big Rivers as provided in Section 12, Start-Up Assistance.

SECTION 8 - GENERAL PLANT EQUIPMENT

8.1 City will acquire out of the proceeds of the Station Two Bonds, as part of the initial facilities of Station Two, general plant equipment sufficient to efficiently operate and maintain Station Two.

SECTION 9 - CAPITAL FUNDS AND ACCOUNTS

9.1 The following capital funds and accounts (among others) will be established out of the proceeds of the Station Two Bonds as facilities of City's Station Two:

(a) a Station Two Account in the Operating & Maintenance Fund (hereinafter referred to as the Station Two O. & M. Account) in the amount of \$500,000.00.

(b) a Debt Reserve Account in the Debt Service Fund, in the amount required therefore under provisions of the Bond Ordinance, hereinafter referred to as the Station Two Debt Reserve Account.

(c) a Station Two Account in the Renewals and Replacements Fund (hereinafter referred to as the Station Two R. & R. Account) in the amount of \$750,000.00.

9.2 Such accounts and funds shall be held, managed, controlled, invested, expended, applied and maintained as provided by the Bond Ordinance and the parties' Power Sales Contract of even date herewith.

SECTION 10 - SALE OF BONDS

10.1 City will authorize, sell and issue its Station Two Bonds bearing an average interest rate and maturity schedule acceptable to City with final maturity of not less than thirty (30) years from date of issuance, in a principal amount of \$75,000,000. The City shall also use its best efforts to sell and issue any additional Bonds required to provide for costs of Station Two in excess of original estimates.

10.2 The proceeds of such Bonds will be held, managed, controlled, invested, expended and applied as provided by the

Bond Ordinance.

PART III

CONSTRUCTION, START-UP AND OPERATION

SECTION 11 - CONSTRUCTION ASSISTANCE

11.1 In connection with the acquisition and construction of City's Station Two, Big Rivers will provide to City, at the costs hereinafter recited, construction services and facilities as follows:

(a) advice on the selection of the most economical and feasible power plant design.

(b) review and recommendation on approval of plans and specifications.

(c) evaluation of all construction and equipment bids and proposals; recommendation on contract awards and purchases.

(d) coordination and supervision of all contractors and/or suppliers engaged in the actual construction of Station Two.

(e) complete accounting services for all phases of acquisition and construction of Station Two.

(f) compilation of a complete and accurate record of all drawings, specifications, contracts, reports, test results, correspondence and other written materials pertinent to the acquisition and construction of Station Two.

(g) witnessing of all testing of materials and/or equipment incorporated into Station Two.

(h) providing water and electric service required in the construction of Station Two.

(i) furnishing, at no charge, space in Big Rivers Reid

Station for City's consulting and construction engineers.

(j) providing such other assistance, services and/or facilities in connection with the acquisition and construction of Station Two as may from time to time be agreed upon by the parties.

11.2 City will reimburse Big Rivers for all its reasonable out-of-pocket expenses in providing the services and facilities enumerated in Section 11.1, plus an additional overhead allowance in the amount of twenty per cent (20%) on all such labor costs and ten per cent (10%) on all such materials and supplies. Such costs will be paid from the proceeds of Station Two Bonds.

11.3 It is understood that the services to be performed by Big Rivers under the provisions of this Section 11 are on an advisory basis, and that City has the right to make all final determinations in connection therewith. However, to the extent that the design and/or construction of Station Two shall have a material effect upon the economical and/or continuous operation of Big Rivers Reid generating plant, Big Rivers shall have the right of approval or disapproval of such determinations by City.

11.4 City will provide adequate Builders Risk Insurance covering the complete construction and installation of its Station Two and shall further provide adequate insurance for protection of Big Rivers Reid Station and related facilities against damages from construction operations. The costs of such insurance will be paid out of the proceeds of the Station Two Bonds.

SECTION 12 - START-UP ASSISTANCE

12.1 Big Rivers will provide to City, at the costs hereinafter recited, technical skills, labor, fuels, materials and other services required for starting up and placing into commercial operation City's Station Two.

12.2 Operating tests of all equipment and auxiliary facilities of Station Two will be performed by or under the direction of Big Rivers, and suitable reports thereof will be made to City. Big Rivers will direct City's engineers, contractors and suppliers in the making of all changes, adjustments, repairs, replacements, alterations or additions required in order to place City's Station Two and its various components into commercial operation and in compliance with the plans and specifications therefore adopted by City. Big Rivers will place Station Two into commercial operation as soon as reasonably possible and will immediately notify City thereof.

12.3 City will reimburse Big Rivers for its reasonable out-of-pocket expenses in providing the start-up assistance, services and/or materials referred to in this Section 12, plus an additional overhead allowance in the amount of twenty per cent (20%) on all such labor costs and ten per cent (10%) on all such materials, except fuels. Fuels will be furnished at cost. Such costs will be paid from the proceeds of the Station Two Bonds.

12.4 Electric energy produced from each unit of City's Station Two during start-up and prior to the Date of Commercial Operation shall be marketed wherever and whenever possible.

All amounts received from such sales of energy shall be for the account of City and shall be applied to the costs of construction of City's Station Two.

SECTION 13 - OPERATION, MAINTENANCE AND CONTROL

13.1 Except as otherwise provided herein, City shall have full ownership, management, operation and control of its Station Two.

13.2 Subject to City's ownership, management and control, during the term of this Agreement Big Rivers will provide, as an independent contractor, all operating personnel, materials, supplies and technical services required for the continuous operation of City's Station Two so as to fulfill City's obligations (a) to provide the needs of City and its inhabitants as defined in the Power Sales Contract, (b) to Big Rivers as provided in the Power Sales Contract, (c) to the KII Pool members, as provided in the KII Pool Agreement and (d) to others to whom City may, from time to time, become contractually obligated in connection with its Station Two.

13.3 Purchases of materials and supplies required in the operation and maintenance of City's Station Two shall be made for City's account, subject to approval and acceptance by City and in compliance with all laws applicable thereto.

13.4 Big Rivers covenants and agrees that during the term of this Agreement it will at all times operate City's Station Two on a best efforts basis, in an efficient and economical manner, and will maintain, preserve and keep said Station Two and every

part and parcel thereof in good repair, working order and condition, and will, from time to time, make all necessary and proper repairs, renewals and replacements thereto so that at all times the business to be carried on by City in connection therewith shall be properly and efficiently conducted.

13.5 Big Rivers will keep and maintain complete and accurate records of its operation and maintenance of City's Station Two, including without limitation: (a) the continued output of Station Two and the uses thereof by City, Big Rivers and others, (b) the continued input of labor, materials, supplies and services to Station Two, (c) records of all maintenance and repairs to Station Two, (d) records of all renewals and replacements of Station Two, (e) records of Station Two fuel consumptions, replacements and reserves, (f) current inventories of all supplies, equipment and replacement parts maintained in connection with Station Two, (g) such other records as shall be of assistance to City in the ownership, operation, maintenance, management and control of Station Two.

13.6 City will pay Big Rivers, on a monthly basis, its reasonable expenditures incurred in the operation and maintenance of City's Station Two under the terms of this Agreement, as defined and allocated to City's Station Two under the provisions of Section 13.8 - Allocation of Costs, plus an additional payment of fourteen and one-half (14 1/2) cents per month, per kilowatt of the total capacity of Station Two, as such total capacity is from time to time determined and established as provided in the parties Power Sales Contract of even date herewith.

13.7 Such payments to Big Rivers by City shall be made monthly on the basis of the Annual Budget then in effect, and in accordance with the provisions of Sections 14 and 18 of this Agreement.

13.8 Allocation of Costs:

It is recognized that Big Rivers will operate and maintain its Reid Generating Station with the same operating personnel and facilities as it will use for the operation of City's Station Two. For purposes of defining and allocating the costs thereof the parties agree as follows:

(a) the following costs of operation and maintenance will be allocated to the particular generating station to which they are applied, and will be charged directly to such generating station:

(1) Costs of materials, supplies and fuels attributable directly to a generating plant.

(2) Costs of repairs, maintenance and spare parts attributable directly to a generating plant.

(3) Costs of renewals, replacements and additions attributable directly to a generating plant.

(4) Costs of emergency and/or maintenance capacity and energy attributable directly to a generating plant.

(5) Property taxes validly imposed upon each party's plant and related facilities.

(6) Costs of insurance attributable to a generating plant.

(b) The following costs of operation and maintenance will be allocated between Big Rivers Reid Station and City's Station

Two on the basis of each generating station's total capacity as related to the sum of such total capacities:

- (1) All operating labor and fuel handling labor.
- (2) All maintenance labor common to both plants.
- (3) All supplies common to both plants.
- (4) All maintenance materials common to both plants.
- (5) All costs of operation, maintenance, repair,

addition, renewal and replacement of joint use facilities as described in Section 6 of this Agreement.

(6) All applicable taxes except property taxes on plant and taxes directly attributable to cost of fuels and/or sales of power and energy.

(7) All administrative costs.

(8) Costs of professional services.

(9) All costs of accounting and records keeping.

(10) All remaining costs of insurance.

(11) All other costs of operation and maintenance not otherwise allocated under the provisions of this Section 13.

(c) Each party will provide its own fuels for the operation of City's Station Two.

(d) Each party will bear its own costs for construction, operation, maintenance and repair of its transmission and transformation facilities beyond points of delivery from the Station Two Switchyard. Big Rivers will make no charge to City for the use of Big Rivers' transmission facilities from point of City's Station Two switchyard to the several substations of City's Existing System.

(e) Big Rivers will keep adequate records of the costs of operating and maintaining City's Station Two and its Reid Station, and the allocation of such costs to City's Station Two, and will make such records available to City and its representatives at all reasonable times and places.

13.9 Right to Intervene

Should Big Rivers at any time during the term of this Agreement fail, for any reason whatsoever, to provide, on a best efforts basis, the continuous and economical operation of City's Station Two as provided in this Agreement, then City shall have the right to immediately take over the complete operation and maintenance of its Station Two and all auxiliary facilities and joint use facilities required in the operation thereof, and to continue the operation and maintenance thereof under the terms and provisions of this Agreement until it shall be determined that Big Rivers is able to properly resume such operation and maintenance in the manner provided in this Agreement.

13.10 Each of the parties hereby grants to the other all reasonable rights of access, ingress and egress to the generating plant, joint use facilities, auxiliary facilities, related facilities, transmission and transformation facilities and such other lands, properties and/or facilities as shall be necessary, advisable or convenient in order to efficiently and continuously carry on the operation of City's Station Two and Big Rivers' Reid Station under the terms and provisions of this Agreement.

PART IV

BUDGETING, ACCOUNTING AND BILLING

SECTION 14 - BUDGETING

14.1 Prior to the commencement of each Contract Year and so as to comply with the provisions of the Bond Ordinance there shall be prepared by Big Rivers and submitted to City a proposed operating budget for such Contract Year. Big Rivers will provide therewith all data and information necessary or convenient for City's review and evaluation of such proposed operating budget.

14.2 The proposed operating budget and all supporting data and information will be reviewed by City and upon approval thereof, including any amendments thereof or additions thereto, by City, City will adopt such budget as the Annual Budget for the coming Contract Year.

14.3 Upon its adoption by City, and its approval by Big Rivers, the Annual Budget will become the basis for payments to Big Rivers for the operating and maintenance of City's Station Two during the Contract Year for which it is adopted.

14.4 The Annual Budget may be amended by the parties as provided in the Bond Ordinance.

SECTION 15 - ACCOUNTING AND AUDITING

15.1 Big Rivers will keep and maintain complete and accurate books, records and accounts of its operation and maintenance of City's Station Two all in accordance with the rules and regulations prescribed by any governmental agency having jurisdiction thereof, the provisions of the Bond Ordinance relating thereto, and in accordance with the uniform system of

accounts prescribed by the Federal Power Commission. All such records shall be available for inspection and utilization by City and its representatives at all reasonable times and places.

15.2 Such books, records and accounts shall be subject to annual audit as provided in the Bond Ordinance.

SECTION 16 - BILLING AND PAYMENTS

16.1 On or before the twentieth day of each calendar month of the Contract Year Big Rivers will present to City a statement of payment due covering the operation and maintenance of City's Station Two for the Monthly Billing Period just ended, such statement showing in detail the costs and charges included therein, with proper vouchers substantiating such charges. Such statements, when approved by the City, will become the basis for actual charges by Big Rivers to City for the operation and maintenance of City's Station Two for such Monthly Billing Period and shall be the basis for adjustments, if any, as provided in Section 16.6 hereof.

16.2 Monthly payments to Big Rivers for the operation and maintenance of City's Station Two shall be made on the basis of the Annual Budget then in effect, and shall be due and payable currently, for each Monthly Billing Period on or before the twentieth day of such month. Payments shall be deemed complete upon the posting thereof in the regular United States Mail, properly addressed and affixed with postage.

16.3 If any such payment or portion thereof is not paid when due as herein provided, a penalty in the amount of one per

cent (1%) of the unpaid amount may, at the option of Big Rivers, be added thereto at the commencement of each thirty (30) day period thereafter, and due and payable therewith. Provided however that in the case of a bona fide dispute as to the amount of any such monthly payment, then the delayed payment charge will be applicable only to that unpaid portion thereof which is not reasonably in dispute.

16.4 Off-Setting Accounts

The City shall have the right to off-set accounts payable to Big Rivers against accounts receivable from Big Rivers under the provisions of the parties Power Sales Contract, or otherwise. Off-setting of accounts shall be employed in determining any delayed payment charges as provided herein.

16.5 Big Rivers shall have the right at any time, and from time to time, to require City to give bond (either cash or with corporate surety acceptable to Big Rivers) for the payment to Big Rivers of operating and maintenance charges as provided in this Agreement, less the amount of any off-setting payments due from Big Rivers to City under the provisions of the parties' Power Sales Contract, for a period of time not exceeding two Monthly Billing Periods during any Contract Year. The amount of any such bond shall be adjusted in order to be applicable to the current Contract Year. The cost of any such surety bond shall be charged as a Station Two operating expense.

16.6 On or before one hundred twenty (120) days after the end of each Contract Year, Big Rivers shall submit to City

a detailed summary of its monthly statements for payment for the operation and maintenance of City's Station Two, showing the actual charges due to be paid to Big Rivers by City for the entire Contract Year based upon the annual audit of accounts provided for in Section 15.2. If, on the basis of such summary the actual aggregate operation and maintenance charges for such Contract Year exceeded the amounts paid to Big Rivers under the Annual Budget, or otherwise, then City shall pay to Big Rivers promptly the amount to which Big Rivers is so entitled. If, on the basis of such summary, the actual aggregate payments made to Big Rivers for operation and maintenance of City's Station Two under provisions of the Annual Budget, or otherwise, exceeded the actual amount due therefore, then such excess shall be credited against City's next monthly payment or payments to Big Rivers due hereunder, or paid to City if no such payments are due to Big Rivers.

SECTION 17 - METERING, METER TESTING AND BILLING ADJUSTMENTS

17.1 Printing Demand Meters, or equivalent meters, with a sixty (60) minute demand interval, which will meter kilowatts, and suitable watthour meters which will meter kilowatt hours shall be used to meter the delivery of power and energy from City's Station Two. The metered kilowatt demand of City, Big Rivers and others from City's Station Two shall be the means of measuring the capacity of City's Station Two used by each. The metered kilowatt hours of energy used by City, Big Rivers and others from City's Station Two shall be the basis for fuel replacements to the Station Two fuel reserve as provided in Section 7 hereof.

17.2 The meters will be arranged so as to provide a

total measurement of kilowatt demand and a total measurement of kilowatt hours delivered to City and others from City's Station Two.

17.3 Big Rivers will make such tests and inspections of said meters as may be necessary to maintain them at the highest practical commercial standard of accuracy, with tests performed at intervals of not more than twelve months. Big Rivers will advise City promptly of the results of all such tests. City will be given prior notice of and may have representatives present at such tests and inspections. Big Rivers will make additional tests of said meters at the reasonable request of City and in the presence of City's representatives.

17.4 Big Rivers will make all meter readings and/or recordings necessary to provide an accurate report of the kilowatt demand and consumption of electric energy by City, Big Rivers and others from City's Station Two during each Monthly Billing Period, and at the end of each Monthly Billing Period will promptly report to City thereon.

17.5 The metered kilowatt hours of energy used by City, Big Rivers and others from City's Station Two shall be the basis for fuel replacements to the Station Two fuel reserve. Big Rivers shall at all times accurately measure and record the heat content and quantity of all fuels consumed in the operation of Section Two, and shall properly allocate and report to City at the end of each Monthly Billing Period the fuels consumed by City, Big Rivers and others through their respective uses of electric energy from City's Station Two.

SECTION 18 - INSURANCE

18.1 Except to the extent that City's Station Two is insured during construction, installation and other acquisition thereof by City, its contractors and/or suppliers, at all times during the term of this Agreement City shall maintain at least the following insurance on its Station Two, the costs thereof prior to Date of Commercial Operation to be paid as a construction cost, and thereafter as an operating expense:

(a) fire, extended coverage and vandalism, broad form, in an amount at least equal to ninety per cent (90%) of the full insurable value of City's Station Two, Twenty-Five Thousand Dollars (\$25,000) deductible, against loss or damage from fire, lightning, tornado, windstorm, flood or wavewash, hail, explosion, riot, riot attending a strike, civil commotion, vandalism and malicious mischief, aircraft, vehicles and smoke. In determining the full insurable value recognition of risks applicable to individual coverages shall be taken into consideration and such value with respect thereto shall be established as would be carried in accordance with sound business practices for electric utilities.

(b) A standard form of comprehensive general liability insurance against claims for personal injury (including wrongful death) and property damage with minimum limits as follows:

- (1) personal injury, \$1,000,000 each person
\$1,000,000 each occurrence
- (2) property damage, \$1,000,000 each occurrence

(c) A standard form of comprehensive automobile liability insurance with minimum limits as follows:

- (1) personal injury, \$ 500,000 each person
\$1,000,000 each occurrence
- (2) property damage, \$ 100,000 each occurrence
100,000 aggregate

(d) Workmen's Compensation Insurance as required by the laws of Kentucky.

(e) Prior to the initial firing of the boiler, broad form boiler and machinery breakdown, in the minimum amount of \$7,000,000 for Unit One and an additional \$7,000,000 for Unit Two, \$200,000 deductible.

(f) Inland Marine Insurance on all off-highway vehicles and Marine Insurance on docks, barges, work boats and other marine items, in amounts equal to maximum insurable values.

18.2 Such insurance shall provide coverage for City, and for Big Rivers to the extent that risk of loss shall be imposed on Big Rivers through the provisions of this Agreement and other agreements herein referred to.

18.3 Such insurance will be obtained by Big Rivers for the account of City, subject to approval and acceptance by City.

18.4 During the term of this Agreement all insurance proceeds from policies obtained pursuant to this Section shall be paid and applied by the City, Big Rivers and/or the insurance company or companies providing same in accordance with the provisions of the Bond Ordinance.

18.5 In case of any damage, destruction, accident, occurrence or other loss covered in part or in full by any such insurance policy or policies, Big Rivers shall give prompt notice thereof to City, the Trustee, and the insurance company or companies providing coverage therefore.

PART V

GENERAL PROVISIONS

SECTION 19 - CONSTRUCTION AND OPERATING STANDARDS

19.1 City's Station Two and its auxiliary facilities, joint use facilities and other related facilities which are the subject of this Agreement shall be constructed, operated and maintained in accordance with standards and specifications equal to those provided by the National Electric Safety Code of the United States Bureau of Standards, and as required by any regulatory authority having jurisdiction thereof.

SECTION 20 - INSPECTIONS, RIGHT OF ACCESS

20.1 Each party hereto shall permit the duly authorized representatives and employees of the other party to enter upon its premises for the purpose of reading or checking meters, inspecting, testing, repairing, renewing or replacing any or all of the facilities and equipment owned by the other party located on such premises, or for the purpose of performing any other work necessary in order to carry out the provisions of this Agreement. Such inspections shall be conducted so as not to interfere with the scheduled operation of such plants.

20.2 Each party shall be responsible for the safety of its own representatives and employees when on the premises of the other pursuant to the right of access granted in this Agreement, and shall hold harmless and indemnify the party granting access from any loss or damage whatsoever by reason of any injury, including death, of such representatives and/or employees, unless ~~the same shall be due to the negligence or willful misconduct of~~ the party granting such access or its authorized agents or employees.

SECTION 21 - RELATIONSHIP OF THE PARTIES

21.1 Except as otherwise specifically provided herein, the terms of this Agreement shall not be construed as an agreement for partnership, joint venture, association or other relationship whereby either party shall be responsible for the obligations and/or liabilities of the other party hereto.

21.2 Except as otherwise specifically provided herein, neither party to this Agreement shall be liable for any act, omission or legal obligation of the other party hereto with respect to: (a) the parties to this Agreement, (b) the agents, servants and/or employees of the parties to this Agreement, or (c) any persons, corporations or other entities not a party to this Agreement.

21.3 Except as otherwise specifically provided herein, neither party to this Agreement shall, by reason of the provisions hereof, be deemed a principal, agent, sub-contractor or employee

of the other party hereto, nor shall either party to this Agreement have the authority to bind the other party to this Agreement to any contract or any other obligation, without specific written authority therefore.

SECTION 22 - INDEMNIFICATION

~~22.1 Big Rivers, as operator of City's Station Two assumes~~
full responsibility and liability for the maintenance and operation of the same, on a best efforts basis, and shall indemnify and save harmless the City from all liability and expense on account of any and all damages, claims or actions, including injury to or death of persons or damage to property arising from any act or accident in connection with the operation and maintenance of City's Station Two and all facilities related thereto, caused by the negligence or any malfeasance or nonfeasance of Big Rivers, its agents, servants and/or employees; and the City shall indemnify and save harmless Big Rivers from all liability and expense on account of any damages, claims or actions including injury to or death of persons or property arising from any act or accident caused by the negligence or any malfeasance or nonfeasance of the City, its agents, servants and/or employees.

SECTION 23 - UNCONTROLLABLE FORCES:

23.1 Neither party hereto shall be considered in default or breach with respect to any obligation under this Agreement if prevented from fulfilling such obligation by

reason of an Uncontrollable Force. Any party unable to fulfill any obligation by reason of Uncontrollable Forces shall exercise due diligence to remove such disability as soon as reasonably possible.

23.2 The term "Uncontrollable Force" shall mean any force which is not within the control of any party to this Agreement, ~~and which by exercise of due diligence and foresight could not~~ reasonably have been avoided, including, but not limited to; an act of God, fire, flood, earthquake, explosion, strike, sabotage, an act of the public enemy, civil or military authority, including court orders, injunctions, and orders of government agencies having proper jurisdiction, insurrection or riot, an act of the elements, failure of equipment, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers.

SECTION 24 - ARBITRATION

24.1 Any controversy or claim arising out of, or relating to this Agreement or the breach thereof, including disagreements between the Trustee and either or both parties to this Agreement, may be submitted to Arbitration at the time, in the manner and upon the terms agreed upon by the parties.

24.2 Arbitrations shall not be considered the sole or exclusive means of settling controversies which may arise under the terms and provisions of this Agreement, nor shall Arbitration be considered a condition precedent to any action in court of law or equity or proceedings before any governmental agency or regulatory body having jurisdiction thereof.

SECTION 25 - DEFAULT

25.1 In the event of a default by either party in the performance of any one or more of the provisions of this Agreement, the aggrieved party shall, in addition to the remedies specified in this Agreement, have the right to use and employ all rights and remedies available through courts of law and/or equity, governmental agencies and/or regulatory bodies having jurisdiction thereof.

SECTION 26 - WAIVER

26.1 The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

SECTION 27 - NOTICES

27.1 Any payment, written notice, demand or request required or permitted under this Agreement shall be deemed properly given to or served upon the recipient when posted through the regular United States mail, properly addressed, and affixed with postage as follows:

to City:	General Manager, Municipal Power & Light P.O. Box 8 Henderson, Kentucky 42420
to Big Rivers:	Manager, Big Rivers R.E.C.C. P.O. Box 24 Henderson, Kentucky 42420

to the Trustee: as established pursuant to the Bond Ordinance.

27.2 The designation of the person to be notified, or the addresses of such persons, may be changed at any time upon written notice to the other parties.

PART VI

OTHER PROVISIONS

SECTION 28 - COMPLIANCE WITH BOND ORDINANCE

28.1 This Agreement shall be subject to the terms and provisions of the Bond Ordinance. City and Big Rivers agree that they will not amend, modify or otherwise alter this Agreement in any manner that will conflict with the provisions of the Bond Ordinance as the same may, from time to time, exist.

SECTION 29 - ADDITIONAL GENERATING UNITS

29.1 It is understood and agreed that, space being available, additional generating units may be added to City's Station Two during the term of this Agreement in order to provide for the future and expanding needs of City and its inhabitants for electric power and energy with sales of surplus power and energy to Big Rivers, subject to mutual agreement of the parties as to the terms and conditions applicable thereto.

SECTION 30 - COMPLIANCE WITH GOVERNMENTAL REGULATIONS

30.1 City and Big Rivers will, at all times, faithfully obey and comply with existing and future laws, rules and reg-

ulations of federal, state or local governmental bodies lawfully affecting the operations and activities of and in connection with City's Station Two.

SECTION 31 - OBLIGATIONS OF THE PARTIES

31.1 All sums payable by the City under the terms and provisions of this Agreement shall be payable and borne solely from the revenues of City's electric utility system, including its Existing System, its Station Two generating plant and such other additions, extensions or facilities as it may from time to time own and/or operate, and from the proceeds of its Electric Revenue Bonds. No debt or obligation of City under this Agreement shall constitute a general obligation of the City.

31.2 City covenants that it will, subject to the approval of any regulatory bodies having jurisdiction thereof, at all times maintain rates for services rendered by its electric utility system which will be sufficient to adequately meet the costs of ownership, proper operation and maintenance thereof, including the costs of operation and maintenance of its Station Two, as provided in this Agreement.

SECTION 32 - CITY INCLUDES UTILITY COMMISSION

32.2 It is recognized by the parties that the City operates, manages and controls its electric utility system through its City of Henderson Utility Commission, appointed pursuant to KRS. 96.530. All references to City under the terms and provisions of this Agreement shall include its City of Henderson Utility Commission to the extent applicable.

32.2 The parties agree that all rights and obligations of City under the terms and provisions of this Agreement shall also constitute rights and obligations of the City of Henderson Utility Commission. By its execution of this Agreement the City of Henderson Utility Commission covenants and agrees that all references to City under the terms and provisions of this Agreement shall include the City of Henderson Utility Commission, and that it shall be obligated under this Agreement accordingly.

SECTION 33 - TERM AND TERMINATION

33.1 The term of this Agreement shall commence upon the execution hereof by City and Big Rivers and shall terminate on October 31, in the year Two Thousand and Three (2003) unless otherwise terminated as hereinafter provided.

33.2 Notwithstanding the provision of Section 33.1, this Agreement shall terminate in event of the termination of the parties Power Sales Agreement of even date herewith, as provided therein.

SECTION 34 - SALE OR OTHER DISPOSITION OF PLANT.

34.1 City and Big Rivers mutually agree that neither will sell or otherwise dispose of its electric generating plant and auxiliary facilities (referring to City's Station Two, Big Rivers' Reid Station, all auxiliary facilities, joint use facilities and alterations and additions thereof) unless the same has been

offered to the other party hereto in writing, and such other party has failed, for a period of one year, after receipt of such offer to accept same and pay the purchase price or other agreed consideration therefor. After such one-year period, or upon written refusal of said offer, whichever first occurs, the selling party may proceed to make such sale or other disposition to others not a party to this Agreement upon at least equal terms or conditions. Provided however, that if such sale or disposition to others, not a party to this Agreement, shall not have occurred within the one-year period immediately following termination of the other parties right to accept said offer, no such sale or other disposition shall thereafter be made by the selling party without again first offering same to the other party to this Agreement as above provided.

34.2 Any sale, assignment or other disposition by either party to others not a party to this Agreement shall be made subject to all of the rights, obligations, terms and conditions of this Agreement, the Joint Facilities Agreement, the parties Power Sales Contract, the parties real estate Purchase-Sale Agreement and any amendments or additions thereto which are then applicable, and it shall be a condition of such sale or other disposition that the purchaser or acquirer thereof assume all of the obligations of the disposing party under the terms of said Agreements.

34.3 The provisions of this Section 34 pertaining to City's sale or other disposition of its Station Two and other facilities mentioned herein shall be subject to all laws applicable thereto.

SECTION 35 - AMENDMENTS

35.1 No amendments of this Agreement shall be effective unless reduced to writing and executed by all parties hereto.

35.2 It is understood that Big Rivers may not agree to any amendment, modification or alteration of this Agreement without first obtaining approval of the Administrator of the Rural Electrification Administration.

SECTION 36 - SEVERABILITY

36.1 In the event that any part of this Agreement is declared illegal or no longer in force by reason of an order issued by a court or regulatory body of competent jurisdiction, all remaining portions of this Agreement which are not affected by such order shall continue in full force and effect.

SECTION 37 - ASSIGNMENT

37.1 This Agreement shall be binding upon the parties hereto, their respective successors and assigns. Provided however, that this Agreement shall not be assigned by either party (except for an assignment by Big Rivers to the United States of America) without the written consent of the other party, and any such assignment shall be subject to the provisions of Section 34.2 of this Agreement.

SECTION 38 - APPROVAL

38.1 This Agreement shall be subject to the approval

of all local, state or federal regulatory bodies having jurisdiction thereof and shall become effective only upon the execution thereof by the parties and approval by the Administrator of the Rural Electrification Administration.

SECTION 39 - CONDITIONS PRECEDENT

~~39.1 This Agreement in its entirety is entered into~~
subject to the following express conditions precedent:

(a) That the parties shall enter into and execute the Power Sales Contract, the real estate Purchase-Sale Agreement and the Joint Facilities Agreement which are referred to in this Agreement.

(b) That the parties shall be able to obtain all approvals and authorizations from public authorities and the Administrator of the Rural Electrification Administration necessary to enable them lawfully to enter into and carry out this Agreement, and other Agreements referred to in Section 39.1 (a).

(c) That the City shall be able to issue and sell its Station Two Bonds bearing a rate of interest and maturity schedule acceptable to City, with a final maturity of not less than thirty years from date of issuance, in the principal sum of \$76,000,000,

(d) That all conditions precedent recited in the parties Power Sales Contract, the real estate Purchase-Sale Agreement and the Joint Facilities Agreement have occurred.

39.2 If all of the said conditions precedent do not occur within one year from the date hereof, this Agreement shall

be void and all rights hereunder shall terminate unless the parties agree in writing to extend the time for the happening of said conditions precedent.

SECTION 40 - AUTHORITY TO EXECUTE

40.1 This Agreement is executed by the duly authorized ~~officers or representatives of the parties pursuant to authority~~ granted to each of them by the lawful action of their respective official commissions or boards.

Executed at Henderson, Kentucky this 27 day of August,
19 70.

CITY OF HENDERSON, KENTUCKY

BY William L. Newman
William L. Newman, Mayor

ATTEST:

Thomas Crafton
City Clerk
(City Seal)

CITY OF HENDERSON UTILITY COMMISSION

BY Louis Hatchett
Louis Hatchett

ATTEST:

Dudley H. Emerson
Secretary

BIG RIVERS RURAL ELECTRIC CO-OPERATIVE
CORPORATION

BY Robert Reid Sr.
Robert Reid, Sr., President

ATTEST:

D.B. Wilson
D.B. Wilson, Secretary

This instrument prepared by:

Frank B. D.
of WEST MARKWELL & BRYANT
Suite 320 - Imperial Building
110 Third Street
Henderson, Kentucky 42420

7-16-0-2.1
3-2-71

Amendment #1

POWER SALES CONTRACT
BETWEEN
CITY OF HENDERSON, KENTUCKY
AND
BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION

POWER SALES CONTRACT

Amendment #1

The Power Sales Contract entered into as of August 1, 1970 by and between the City of Henderson, Kentucky and Big Rivers Rural Electric Co-operative Corporation is hereby amended in the following particulars:

1. Section 2.2 is amended so as when amended the same shall read as follows:

2.2 Station Two: City's proposed 350-megawatt generating station and all auxiliary facilities, joint use facilities (provided by City) and other related facilities to be constructed at a site on Green River in Henderson County, Kentucky (which shall not include the City Transmission and Transformation Facilities as herein defined).

2. Section 2.6 is amended so as when amended the same shall read as follows:

2.6 Contract Year: With respect to the first contract year, the period from Date of Commercial Operation or June 30, 1974, whichever shall first occur, to and including the next succeeding December 31, and thereafter, the successive twelve-month periods beginning January 1 and ending

December 31; provided that in the event that City shall exercise its right under the Bond Ordinance to change from a calendar year accounting period, as shall be specified in a Supplemental Ordinance adopted in accordance with the Bond Ordinance, the term Contract Year as used herein shall thereupon refer to the same period as such new fiscal year accounting period with such changes in the accounting and budgeting procedures, including the adoption of a new Annual Budget hereunder, as shall be necessary or appropriate to effect such change in the Contract Year.

3. Section 3.6 is amended so as when amended the same shall read as follows:

3.6 The Total Capacity of Station Two as referred to herein shall be the average of the total continuous net sendout capability of all generating units in Station Two as determined by semi-annual tests, made in the months of August and January, of at least twenty-four hours' duration under actual load carrying condition, when the equipment is operated at rated pressure and temperature with all auxiliary equipment in service, and at a power factor of approximately ninety per cent

(90%). The measurement will be made at the 161 KV metering points of the Station Two Switchyard.

4. SECTION 21 - TERM AND TERMINATION, and subsections 21.1, 21.2, and 21.3 are renumbered so as to be SECTION 22 - TERM AND TERMINATION and subsections 22.1, 22.2 and 22.3. A new Section 21 with subsections 21.1, 21.2 and 21.3 is added to read as follows:

SECTION 21 - HENDERSON-DAVISS AND CITY ELECTRIC SYSTEMS

21.1 The parties mutually agree that the Henderson-Daviess System and the City Electric System, as described in the City's Revised Request for Ruling, dated December 1970 and filed with the Internal Revenue Service (a copy of which has been delivered to Big Rivers), will be operated in the manner prescribed in said Revised Request for Ruling, so as to preclude any distribution of any of the generating capacity of said Henderson-Daviess System and said City Electric System outside the area of Henderson and Daviess Counties except as described in said Revised Request for Ruling.

21.2 It is understood by the parties, however, that the requirement of Section 21.1 hereof will no longer be effective in the event and to the extent that

any change in the applicable statute, regulations or rulings of the Internal Revenue Service should occur pursuant to which interest on the Bonds would remain exempt from federal income taxation in the absence of compliance with such requirement.

21.3 Big Rivers covenants and agrees to save harmless and indemnify City for any loss or damage whatsoever arising out of Big Rivers' violations, if any, of the provisions of Section 21 of this contract.

5. SECTION 22 - AMENDMENTS and its subsections 22.1 and 22.2 are renumbered so as to be SECTION 23 - AMENDMENTS and subsections 23.1 and 23.2.

6. SECTION 23 - SEVERABILITY and its subsection 23.1 are renumbered so as to be SECTION 24 - SEVERABILITY and subsection 24.1.

7. SECTION 24 - ASSIGNMENT and its subsection 24.1 are renumbered so as to be SECTION 25 - ASSIGNMENT and subsection 25.1.

8. SECTION 25 - APPROVAL and its subsection 25.1 are renumbered so as to be SECTION 26 - APPROVAL and subsection 26.1.

9. SECTION 26 - CONDITIONS PRECEDENT and its subsections 26.1 and 26.2 are renumbered so as to be SECTION 27 - CONDITIONS PRECEDENT and subsections 27.1 and 27.2.

10. SECTION 27 - AUTHORITY TO EXECUTE and its subsection 27.1 are renumbered so as to be SECTION 28 - AUTHORITY TO EXECUTE and subsection 28.1.

All provisions of the parties' Power Sales Contract of August 27, 1970 not herein amended shall remain in full force and effect as originally adopted.

Executed at Henderson, Kentucky this 2nd day of March, 1971.

CITY OF HENDERSON, KENTUCKY

BY William L. Newman
William L. Newman, Mayor

ATTEST:

Thomas Crafton
City Clerk

(City Seal)

CITY OF HENDERSON UTILITY COMMISSION

BY Louis Hatchett
Louis Hatchett, Chairman

ATTEST:

Dudley H. Emerson
Secretary

BIG RIVERS RURAL ELECTRIC
CO-OPERATIVE CORPORATION

BY Robert Reid, Sr.
Robert Reid, Sr., President

ATTEST:

D. B. Wilson
D. B. Wilson, Secretary

This instrument prepared by:

W. A. Bryant
of WEST MARKWELL & BRYANT
Suite 380 - Imperial Building
110 Third Street
Henderson, Kentucky 42420

3-2-71

Amendment #1

POWER PLANT CONSTRUCTION AND OPERATION AGREEMENT
BETWEEN
CITY OF HENDERSON, KENTUCKY
AND
BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION

POWER PLANT CONSTRUCTION AND OPERATION AGREEMENT

Amendment #1

The Power Plant Construction and Operation Agreement entered into as of August 1, 1970 by and between the City of Henderson, Kentucky and Big Rivers Rural Electric Co-operative Corporation is hereby amended in the following particulars:

1. Section 2.6 shall be amended so as when amended the same shall read as follows:

2.6 Contract Year: With respect to the first contract year, the period from Date of Commercial Operation or June 30, 1974, whichever shall first occur, to and including the next succeeding December 31, and thereafter, the successive twelve-month periods beginning January 1 and ending December 31; provided that in the event that City shall exercise its right under the Bond Ordinance to change from a calendar year accounting period to another fiscal year accounting period, as shall be specified in a Supplemental Ordinance adopted in accordance with the Bond Ordinance, the term Contract Year as used herein shall thereupon refer to the same period as such new fiscal year accounting period with such changes in

the accounting and budgeting procedures, including the adoption of a new Annual Budget hereunder, as shall be necessary or appropriate to effect such change in the Contract Year.

2. Section 5.3 shall be amended so as when amended the same shall read as follows:

5.3 Big Rivers shall permit the City to use, at no cost to City, any surplus capacity which it may have on its two existing 69 KV transmission lines from point of City's Station Two switchyard to points of substations of City's Existing System, and will likewise permit the City to use any surplus capacity on additional transmission facilities which

Big Rivers may hereafter construct in such manner as to permit the transmission of electric energy from City's Station Two to its Existing System. In its use of such transmission facilities, City will not, except for reasons beyond its control, disrupt or adversely effect Big Rivers' service to its own customers.

3. Section 18.1 shall be amended so as when amended the same shall read as follows:

18.1 Except to the extent that City's Station Two is

insured during construction, installation and other acquisition thereof by City, its contractors and/or suppliers, at all times during the term of this Agreement City will, to the extent reasonably obtainable, maintain at least the following insurance on its Station Two, the costs thereof prior to Date of Commercial Operation to be paid as a construction cost, and thereafter as an operating expense:

(a) fire, extended coverage and vandalism, broad form, in an amount at least equal to ninety per cent (90%) of the full insurable value of City's Station Two, Twenty-Five Thousand Dollars (\$25,000) deductible, against loss or damage from fire, lightning, tornado, windstorm, flood or wavewash, hail, explosion, riot, riot attending a strike, civil commotion, vandalism and malicious mischief, aircraft, vehicles and smoke. In determining the full insurable value recognition of risks applicable to individual coverages shall be taken into consideration and such value with respect thereto shall be established as would be carried in accordance with sound business practices for electric utilities.

(b) A standard form of comprehensive general liability

insurance against claims for personal injury (including wrongful death) and property damage with minimum limits as follows:

(1) personal injury, \$1,000,000 each person
\$1,000,000 each occurrence.

(2) property damage, \$1,000,000 each occurrence

(c) A standard form of comprehensive automobile liability insurance with minimum limits as follows:

(1) personal injury, \$ 500,000 each person
\$1,000,000 each occurrence

(2) property damage, \$ 100,000 each occurrence
100,000 aggregate

(d) Workmen's Compensation Insurance as required by the laws of Kentucky.

(e) Prior to the initial firing of the boiler, broad form boiler and machinery breakdown, in the minimum amount of \$7,000,000 for Unit One and an additional \$7,000,000 for Unit Two, \$200,000 deductible.

(f) Inland Marine Insurance on all off-highway vehicles and Marine Insurance on docks, barges, work boats and other marine items, in amounts equal to maximum insurable values.

4. Section 29.1 shall be amended so as when amended the same shall read as follows:

29.1 It is understood and agreed that, space being available, additional generating units may be added to City's Station Two during the term of this Agreement in order to provide additional firm capacity for the future and expanding needs of City and its inhabitants for electric power and energy with sales of surplus power and energy to Big Rivers, subject to mutual agreement of the parties as to the terms and conditions applicable thereto.

All provisions of the parties' Power Plant Construction and Operation Agreement of August 27, 1970 not herein amended shall remain in full force and effect as originally adopted.

Executed at Henderson, Kentucky this 3rd day of

March, 1971.

CITY OF HENDERSON, KENTUCKY

BY William L. Newman
William L. Newman, Mayor

ATTEST:

Pherson Crafton
City Clerk

(City Seal)

CITY OF HENDERSON UTILITY COMMISSION

BY *Louis Hatchett*
Louis Hatchett, Chairman

ATTEST:

Dudley H. Emerson
Secretary

BIG RIVERS RURAL ELECTRIC
CO-OPERATIVE CORPORATION

BY *Robert Reid Sr.*
Robert Reid, Sr., President

ATTEST:

D. B. Wilson
D. B. Wilson, Secretary

This instrument prepared by:

Charles B. White
of WEST MARKWELL & BRYANT
Suite 380 Imperial Building
110 Third Street
Henderson, Kentucky 42420

POWER SALES CONTRACT

Amendment #2

The Power Sales Contract entered into as of August 1, 1970, as amended by Amendment #1 entered into as of March 2, 1971 ("Power Sales Contract"), by and between the City of Henderson, Kentucky and Big Rivers Rural Electric Co-Operative Corporation is hereby further amended in the following particulars:

1. Section 2.9 is amended to read as follows:

"2.9. Station Two Bonds (the Bonds): The Electric Light and Power Revenue Bonds authorized, sold and issued by City pursuant to the Bond Ordinance, to provide for the costs of acquisition, construction and start-up of City's Station Two and shall mean and include: (i) the Electric Light and Power Revenue Refunding Bonds, Station Two Series dated March 1, 1973, authorized under the Bond Ordinance to refund the Electric Light and Power Revenue Bonds, Station Two Series dated March 1, 1971, issued under the Bond Ordinance; (ii) additional bonds, if any, authorized and issued under the Bond Ordinance to provide for such costs of Station Two in excess of original estimates; and (iii) subject to the written approval of Big Rivers, additional bonds, if any, authorized and issued under the Bond Ordinance to finance

any Additional Project (as defined in the Bond Ordinance for Station Two."

2. Section 21.2 is amended to read as follows:

"21.2. It is understood by the parties, however, that the requirement of Section 21.1 hereof will no longer be effective in the event and to the extent that any change in the applicable statute, regulations or rulings of the Internal Revenue Service should occur pursuant to which interest on the Bonds, including the Electric Light and Power Revenue Refunding Bonds, Station Two Series dated March 1, 1973 and the Electric Light and Power Revenue Bonds, Station Two Series dated March 1, 1971, issued under the Bond Ordinance, would remain exempt from federal income taxation in the absence of compliance with such requirement."

3. The parties to this Amendment #2 hereby agree that all references to the Power Sales Contract in the Power Plant Construction and Operation Agreement dated August 1, 1970, as amended, and the Joint Facilities Agreement dated August 1, 1970, both by and between the parties hereto, shall be deemed to include and refer to the Power Sales Contract, as amended by this Amendment #2.

4. All provisions of the Power Sales Contract shall remain in full force and effect, except as amended by this Amendment #2.

5. This Amendment #2 to the Power Sales Contract shall take effect upon the issuance of the Electric Light and Power Revenue Refunding Bonds, Station Two Series dated March 1, 1973 in accordance with the terms of the Bond Ordinance, and the payment and discharge of the lien of the Electric Light and Power Revenue Bonds, Station Two Series dated March 1, 1971 in accordance with the provisions of Article XII of the Bond Ordinance.

Executed at Henderson, Kentucky this day of
March , 1973.

CITY OF HENDERSON, KENTUCKY

By William A. Morrison
Mayor

ATTEST:

Dorinda Repton
City Clerk

CITY OF HENDERSON UTILITY COMMISSION

By Louis B. Ketchum
Chairman

[CITY SEAL]

ATTEST:

Dudley P. Emerson

BIG RIVERS RURAL ELECTRIC CO-OPERATIVE
CORPORATION

By Robert D. Green
, President

ATTEST:

John R. Hardin

This instrument prepared by:

Winton Hulburt

AMENDMENTS TO CONTRACTS
AMONG CITY OF HENDERSON, KENTUCKY
CITY OF HENDERSON UTILITY COMMISSION
AND BIG RIVERS ELECTRIC CORPORATION

These Amendments entered into as of May 1, 1993 (the "May 1, 1993 Amendments") by and between City of Henderson, Kentucky, a municipal corporation and city of the second class organized under the laws of Kentucky, of 222 First Street, Henderson, KY 42420, City of Henderson Utility Commission, a public body politic and corporate organized under Kentucky Revised Statutes 96.520 and related statutes, of 100 Fifth Street, Henderson, KY 42420, the said City and Commission being referred to herein collectively as "City", and Big Rivers Electric Corporation, a rural electric cooperative corporation organized under Chapter 279 of the Kentucky Revised Statutes, P.O. Box 24, 201 Third Street, Henderson, KY 42420, known as "Big Rivers" herein.

WITNESSETH:

WHEREAS, the parties hereto are parties to a Power Sales Contract, a Power Plant Construction and Operation Agreement and a Joint Facilities Agreement all dated August 1, 1970 and Big Rivers and City of Henderson Utility Commission are parties to an Agreement For Transmission and Transformation Capacity dated April 11, 1975, the Spare Transformer Agreement dated July 11, 1972, the System Reserves Agreement dated January 1, 1974, the Agreement of April 8, 1980 regarding O&M and R&R Funds, and the Agreement of February 15, 1991 concerning Administrative and General Costs, all of such contracts and agreements as amended being known herein as the "Contracts" and incorporated herein by reference, and

EXHIBIT

6

WHEREAS, pursuant to the Contracts, and to ordinances of the City of Henderson, Kentucky providing for the sale of its electric revenue bonds, an electric generating station consisting of generating Units 1 and 2, each described in the Contracts as having 175-megawatt capacity, and related facilities all known herein as "Station Two", were constructed and are now owned by the City of Henderson, Kentucky and operated under the Contracts with Big Rivers, and

WHEREAS, City and Big Rivers have agreed that Station Two must be equipped with a Flue Gas Desulfurization System ("known herein as the "Station Two FGD System") to comply with the 1990 Amendments to the Clean Air Act (Acid Rain Act), and

WHEREAS, certain facilities now owned by Big Rivers subject to certain mortgage liens, and used in operating the FGD System of Big Rivers' Green Generating Station, can be used jointly by the Green Station and by Station Two, thus greatly reducing the cost of the Station Two FGD System, and

WHEREAS, the Station Two FGD System will require financing in whole or in part by sale of emission allowances granted under the Acid Rain Act, funds from the Station Two Renewal and Replacement Fund and the Station Two Operations and Maintenance Fund, and revenues from the respective electric utility systems of the parties hereto.

NOW, THEREFORE, in order to comply with the Acid Rain Act, and provide for the financing, construction, and operation of the Station Two FGD System as a part of Station Two, and in

consideration of the mutual covenants herein contained, it is covenanted and agreed among the parties hereto as follows:

ALL CONTRACTS

1. The terms of all of the Contracts except the Joint Facilities Agreement and the Agreement for Transmission and Transformation Capacity shall terminate on October 31, 2003, unless otherwise terminated, or extended, as herein provided. Unless otherwise terminated, or extended, as herein provided, the Joint Facilities Agreement shall terminate in accordance with Section 8 of said Agreement, and the Agreement for Transmission and Transformation Capacity shall terminate in accordance with Section 7.2 of said Agreement.

Big Rivers shall have three options for extending the terms of the Contracts, as amended, on the same terms and conditions thereof, as follows:

1.1 By written notice to City on or before October 31, 1998, to extend the terms for the operating life of Station Two, the operating life of which shall be considered to continue for so long as Unit One and Unit Two, or either of them, is operated, or is capable of normal, continuous, reliable operation for the economically competitive production of electricity, temporary outages excepted.

1.2 If Big Rivers does not exercise the option granted in subparagraph 1.1, by written notice to City on or before October 31, 1998, Big Rivers may extend the terms for five years from October 31, 2003 to October 31, 2008.

1.3 If Big Rivers exercises the option granted in 1.2, by written notice to City on or before October 31, 2003, Big Rivers may extend the terms for an additional five year term from October 31, 2008 to October 31, 2013.

1.4 Notwithstanding any other provision in the Contracts, (a) all of them, except the Joint Facilities Agreement and the Agreement for Transmission and Transformation Capacity, and any options for their renewal, shall terminate 90 days after Big Rivers allocation of capacity from City's Station Two shall be zero, and (b) the terms of all of the Contracts shall be extended automatically until all Station Two revenue bonds of the City of Henderson which have been approved by Big Rivers have been paid.

2. The Contract Year of all of the Contracts shall commence on June 1 and end on May 31 of each year to conform to City's fiscal year, except that the Contract Year for the last year of the Contracts shall end on the last day of the term then in effect.

3. The effective date of these May 1, 1993 Amendments shall be the date following their execution upon which the last of all required approvals and creditors' lien subordinations or accommodations satisfactory to the parties hereof have been obtained, including approvals of the Rural Electrification Administration, the Kentucky Public Service Commission, and any other public regulatory body whose approval is required, provided, however, that the effective date shall then be retroactive to February 1, 1993.

4. Nothing herein contained shall constitute general

obligations of the City of Henderson within Kentucky Constitutional restrictions on such obligations. The obligations herein imposed on City of Henderson shall be borne entirely from revenues or other legally available funds of City's electric light and power system.

POWER SALES CONTRACT

5. THE POWER SALES CONTRACT OF AUGUST 1, 1970, AS HERETOFORE AMENDED, IS FURTHER AMENDED AS FOLLOWS:

5.1 SECTION 2.2 IS AMENDED TO READ AS FOLLOWS:

Station Two: City's 350-megawatt generating station (now rated at 315 MW net send out capacity), located at a site on Green River in Henderson County, Kentucky, and, to the extent furnished and owned by City, all auxiliary facilities, joint use facilities and related facilities, additions, expansions and improvements thereto, including the Station Two FGD System added thereto, and renewals and replacements, but excluding the City Transmission and Transformation Facilities as herein defined, and excluding facilities furnished and owned by Big Rivers. The ownership and location of Station Two, and auxiliary, joint use and related facilities thereon as owned or to be owned by City, and those furnished and owned or to be owned by Big Rivers are shown in Exhibits 1 and 2 hereto.

5.2 SECTION 3.3 IS AMENDED TO READ AS FOLLOWS:

The capacity of the Station Two which is surplus to the City's needs will be allotted to Big Rivers on the basis of five years advance written notice from the City, and Big Rivers shall have the right to receive, and the obligation to take and pay for the capacity of Station Two so allotted to it in the manner herein provided. City may adjust its five year projection of capacity needs in an amount not to exceed five (5) megawatts in any one contract year. Any capacity not utilized by City may be used by Big Rivers. The present allocation of Station Two capacity is 82.86% to Big Rivers and 17.14% to City.

5.3 SECTION 3.6 AS AMENDED BY AMENDMENT NUMBER ONE OF MARCH 2, 1971 IS AMENDED TO READ AS FOLLOWS:

The Total Capacity of Station Two as referred to herein shall be the average of the total continuous net send-out

capability of all generating units in Station Two. The parties agree that the present total capacity is 315-megawatts. The parties recognize that Station Two capacity will be reduced by the power required to operate the Station Two FGD System. Either party hereto may request tests from time to time on thirty days prior notice to determine the current Total Capacity. Such tests shall be of at least twenty-four hours duration under actual load carrying conditions, when the equipment is operated at rated pressure and temperature with all auxiliary equipment in service, and at a power factor of approximately ninety percent (90%). The measurement will be made at the 161 KV metering points at the Station Two Switch Yard.

5.4 SECTION 3.7 IS AMENDED TO READ AS FOLLOWS:

The total continuous net send-out capability of any new unit of Station Two shall be tested on or before the date of commercial operation thereof, and the capacity as thus determined will remain the established Total Capacity of such unit until changed by tests requested by either party.

5.5 SECTION 6.2 IS AMENDED TO READ AS FOLLOWS:

Capacity charges to Big Rivers for any Monthly Billing Period shall be the same proportion of the Total Capacity costs of Station Two for such Monthly Billing Period as Big Rivers allocation of surplus net send-out capacity of Station Two during such Monthly Billing Period bears to the total net send-out capacity of Station Two for such Monthly Billing Period as established pursuant to Section 3 of this Agreement.

5.6 SECTION 6.6 IS AMENDED BY ADDING SUBPARAGRAPH (d)

THERE TO AS FOLLOWS:

- (d) The additional payments described in this Section 6.6 and the fourteen and one-half cents per month per kilowatt of the Total Capacity of Station Two charged to the City as described in Section 13.6 of the Power Plant Construction and Operation Agreement between the parties of August 1, 1970, shall both terminate on October 31, 2003, despite changes in the terms of the Contracts.

5.7 THE FIRST SENTENCE OF SECTION 9.4 IS AMENDED TO READ

AS FOLLOWS:

As quickly as is reasonably possible, but in no event later than one hundred twenty (120) days after the end of each Contract Year Big Rivers shall submit to City a detailed statement of the actual capacity costs for all Monthly Billing Periods of such Contract Year, based on the annual audit of accounts provided for in Section 11.

5.8 SECTION 15 IS AMENDED BY ADDING THERETO THE FOLLOWING:

15.2 In addition to and not in substitution for the other remedies of the City provided under this Agreement, or by other legal, equitable, or administrative remedies, if Big Rivers shall default in making any payment properly owing under this Agreement and (a) such default continues for sixty days following written notice thereof by the City to Big Rivers or (b) if an Event of Default occurs under the RESTRUCTURING AGREEMENT dated August 31, 1987 among Big Rivers, the United States of America, acting through the Administrator of Rural Electrification Administration, Manufacturers Hanover Trust Company and Irving Trust Company, and their successors and assigns by reason of which any or all of the creditors therein described declare all debts owing to one or more of such creditors to be due and payable, the City may at any time thereafter have the following additional rights and remedies:

- (1) on 5 days prior written notice to Big Rivers, City may, until such default is corrected, make sales to others of power generated by Station Two and allocated hereunder to Big Rivers and shall collect the proceeds from such sales and, subject to the provisions of the Bond Ordinance, shall apply them as a credit to capacity charges owing by Big Rivers to the City, then to payments to Big Rivers on Big Rivers' cost of operation and maintenance of Station Two, including its fuel and lime costs and any excess to Big Rivers until Big Rivers' payment default is corrected.
- (2) On thirty days written notice by City to Big Rivers, and if Big Rivers defaults to City have not been corrected, City may terminate all contracts with Big Rivers with respect to Station Two and assume immediate possession and operation of Station Two and sell and subject to the crediting procedure of

subparagraph (3), retain the proceeds of all sales of power generated by Station Two thereafter; provided that no such sales shall replace sales made by Big Rivers and/or its distribution co-op members under then existing contracts.

- (3) No rights exercised by City under subparagraphs (1) and (2), or either of them, shall relieve Big Rivers of its continuing obligations to pay that portion of the debt service costs which are allocated to it when such rights were first exercised by City, credited in the case of sales under subparagraph (1) by any revenues provided from the sale of Big Rivers allocated capacity as provided in subparagraph (1) above, and credited in the case of sales under subparagraph (2) by any revenues received from the sale of Big Rivers prior allocation in excess of operation and maintenance costs of Station Two, including fuel and lime costs.
- (4) In the exercise of its rights under the preceding subparagraphs (1) and (2), City shall have the right (a) to use Big Rivers transmission system for transmitting power in performance of off system power sales made by City from Station Two at fair market wheeling charges then prevailing in Indiana and Kentucky and (b) continue the use of Joint Use Facilities by bearing the costs thereof calculated according to the Joint Facilities Agreement.
- (5) City shall make no sales under the preceding subparagraph (1) on any term or condition which would adversely affect the rights or security of holders of Station Two bonds, or impair or adversely affect the eligibility for tax exemption of interest on such bonds or, if notified by Big Rivers prior to any agreement to make such sales, adversely affect the rights, or security of holders of notes of Big Rivers secured by Big Rivers' interest in the Joint Use Facilities or in the Reid and Green Stations. City shall give Big Rivers written notice five (5) business days prior to entering into any agreement for such sales.

15.3 In addition to, and not in substitution for, the other remedies of Big Rivers provided under this

Agreement, or by any other legal, equitable or administrative remedies, if City defaults in making any payments properly owing under the Contracts and such default continues for 60 days following written notice thereof by Big Rivers to City. Big Rivers may at any time thereafter, if all Station Two Revenue Bonds approved by Big Rivers have been paid, on 30 days written notice by Big Rivers to City, and if City's defaults to Big Rivers have not been corrected, then Big Rivers may terminate all contracts with City with respect to Station Two, in which event Big Rivers shall have the continued right to use of Joint Use Facilities by paying the capacity costs thereof calculated in accordance with the Joint Facilities Agreement.

5.10 SECTION 21.1 AS RENUMBERED TO 22.1 IN THE MARCH 2, 1971 AMENDMENT IS AMENDED AS PROVIDED IN SECTION 1 OF THE MAY 1, 1993 AMENDMENTS.

POWER PLANT CONSTRUCTION AND OPERATION AGREEMENT

6. THE POWER PLANT CONSTRUCTION AND OPERATION AGREEMENT OF AUGUST 1, 1970, AS AMENDED, IS FURTHER AMENDED AS FOLLOWS:

6.1 SECTION 1.3 IS AMENDED BY ADDING THERETO THE FOLLOWING:

Such Interconnection Agreement was supplemented and amended by an Amended Agreement dated October 13, 1981 and by a "FIRST AMENDMENT" dated January 10, 1989 which are in effect.

6.2 SECTION 4 IS AMENDED BY ADDING THE FOLLOWING:

4.5 City, with the approval of Big Rivers, has entered into a Contract dated February 5, 1993 with Wheelabrator Air Pollution Control Inc. for the construction and installation of a portion of the Station Two FGD System. City will enter into such further contracts as are necessary, and as are approved by Big Rivers which approval shall not be unreasonably withheld, to complete the design, construction, installation and operation of the Station Two System. City and Big Rivers shall each immediately seek such permits and approvals as are required of each of them.

- 4.6 Big Rivers shall provide one engineering representative and one clerk to work with the engineering firm employed by the City as the owner's representative on the Station Two FGD System project. City will provide one representative already assigned to Station Two. The cost of these three representatives, including salaries, benefits and out-of-pocket expenses, shall be considered capital costs of the project.
- 4.7 All proceeds from the sale of SO₂ allowances allocated to Station Two, from whatsoever source, in excess of those needed for Station Two operation shall be divided between City and Big Rivers in the proportions of 17.14% to City and 82.86% to Big Rivers. The sale of all Station Two allowances shall be approved by the City and Big Rivers.
- 4.8 Until such time as a sum equal to the net proceeds of the sale of Station Two SO₂ allowances has been paid on the costs of the Station Two FGD System, the parties hereto shall bear such scrubber costs in the proportions of 17.14% to the City and 82.86% to Big Rivers. Thereafter costs of the Station Two FGD System shall be borne in the proportion of capacity allocation established under Section 5.2 of the May 1, 1993 Amendments.
- 4.9 Except as otherwise agreed by the parties, all invoices for the design, construction and installation of the Station Two FGD System shall be issued to City and paid by City pursuant to Section 4.11 hereof. City shall bill Big Rivers monthly for its share of such costs as determined by section 4.8 hereof and Big Rivers shall pay such share pursuant to Section 4.10 hereof.
- 4.10 Big Rivers shall pay the amounts billed to it by City under Section 4.9 hereof to the Trustee from time to time in sufficient amounts to satisfy progress payments required on contracts executed by City for the design, construction and installation of said FGD System. City's remaining portion of the costs for the Station Two FGD System shall be paid by City from time to time in sufficient amounts to satisfy progress payments required on said contracts.
- 4.11 City shall instruct the Trustee to remit all sums paid under Section 4.10 hereof for the design, construction, and installation of the Station Two FGD System to City for deposit into the Station Two

account in the Renewals and Replacement Fund, out of which City shall timely pay all costs due on the Station Two FGD System.

JOINT FACILITIES AGREEMENT

7. THE JOINT FACILITIES AGREEMENT IS AMENDED AS FOLLOWS:

7.1 SECTION 3.1 IS AMENDED BY ADDING THE FOLLOWING:

3.1(a) Big Rivers has heretofore allocated for the continuing joint use of the parties the facilities listed on Exhibit 1, Page 2, Part C hereto.

7.2 SECTION 3.2 IS AMENDED BY ADDING THE FOLLOWING AT THE END THEREOF:

The auxiliary facilities which City has previously allocated for the joint use of the parties are listed in Exhibit 1, Pages 1 and 2, Part B.

7.3 NEW SUBPARAGRAPHS SHALL BE ADDED TO SECTION 3 AS FOLLOWS:

3.3 Big Rivers will allocate for the continuing joint use of the parties in the operation of their respective generating stations (Big Rivers Green Station and City's Station Two) those Green Station FGD System Facilities described in Exhibit 1, Page 3, Part C hereto. For such use, Big Rivers shall be paid by City a prorated share of the annual carrying costs, calculated as:

$$\frac{\text{Station Two net capacity}}{\text{Station Two plus Green Station net capacities}}$$

Currently $\frac{315 \text{ MW}}{755 \text{ MW}}$

times the net book value of those facilities as of December 31, 1994, i.e. \$21,675,601.32, further multiplied by a capital carrying charge rate of 11.5 percent.

City's payment to Big Rivers shall be included as a cost under Paragraph (g) of Section 6.3 of the Power Sales Contract between the parties.

3.4 The costs of operating and maintaining the FGD

Joint Facilities described in Exhibit 1, Page 3, Parts B and C hereto, and the cost of sludge stackout and disposal (including haulage and deposit in appropriate landfills) therefrom, shall be allocated to the Green Station and Station Two (except for the cost of coal and lime which shall be provided by each party for its own use) in the proportions in which the stations put sulfur through the Green and Station Two EGD systems, based upon the tonnage of lime and coal and the sulfur and BTU content of the coal, and calculated as shown in the following example:

REAGENT PREPARATION¹

1) Assume lime, power, maintenance and labor costs = \$10,000,000/yr.

2) From additive feed flowmeters - 70,000 Tons Per Year (TPY) of lime went to Green absorbers and 45,000 TPY went to Station Two absorbers.

3) The Station Two portion of the "reagent prep" O&M costs:

$$\$10,000,000 \times \left[\frac{45,000}{70,000 + 45,000} \right] = \$3,913,000/\text{yr}$$

4) Assume BREC coal to Station Two is 4% sulfur and 11,200 BTU/lb. HMPL coal to Station Two is 2.6% sulfur and 12,000 BTU/lb.

$$\frac{4 (19,500)}{11,200} = 6.96 \text{ lb. SO}_2/\text{mmBTU}$$

$$\frac{2.6 (19,500)}{12,000} = 4.22 \text{ lbs. SO}_2/\text{mmBTU}$$

Where 19,500 is the conversion factor for 2 lbs. of SO₂ per lb. of sulfur, assuming 97.5% of the sulfur in the coal is captured in the flue gas stream.

5) The HMPL portion of Station Two "reagent prep" O & M would be:

$$\$3,913,000 \times \left[\frac{(4.22) \times (\text{HMPL coal BTU burn})}{[(4.22) \times (\text{HMPL coal BTU burn}) + (6.96) \times (\text{BREC coal BTU burn})]} \right]$$

² The reagent preparation facilities and the waste treatment facilities are located in separate areas.

if for example: the HMPL coal BTU burn were: $2,977,555 \times 10^6$
the BREC coal BTU burn were: $11,143,418 \times 10^6$

then the HMPL portion comes to \$546,200/yr.

WASTE TREATMENT

The "waste treatment" area power, maintenance and labor costs and the scrubber sludge disposal and storage costs would be split similarly, except that Green and HMPL bleed flowmeters would be used to calculate TPY of waste to be treated and stored. The TPY of waste treated would be used in step (2) instead of TPY lime.

7.4 THE SECOND SENTENCE OF SECTION 4.1 IS AMENDED TO READ AS FOLLOWS:

Title to those joint use facilities or portions thereof provided by Big Rivers, including the FGD Joint Facilities, will remain in Big Rivers, and all such facilities will be clearly and permanently marked as the property of Big Rivers.

7.5 SECTION 5.1 IS AMENDED TO READ AS FOLLOWS:

5.1 The costs of providing City's joint use facilities and of modifying Big Rivers' joint use facilities (other than the FGD Scrubber facilities) as provided herein have been paid out of the proceeds of the Station Two Bonds. The cost of modifying the Joint Use Facilities described in Exhibit 1, Page 3, Parts B & C for use by Big Rivers' Green Station and the City's Station Two shall be allocated to Station Two. The cost of additional modifications shall be allocated between Big Rivers' Green Station and the City's Station Two using the methodology provided in Section 13.8 of the Power Plant Construction and Operation Agreement. The amounts so allocated to City's Station Two shall be further allocated between Big Rivers and City in the proportion of capacity allocation established under Section 5.2 of the May 1, 1993 Amendments. Subject to the provisions of Sections 3.3 and 3.4 of this Agreement, the costs of operating, maintaining, repairing, renewing, replacing, and adding to such joint use facilities shall be allocated to the parties' respective generating stations as provided in Section 13 of the parties' Power Plant Construction and Operation Agreement.

STATION TWO DECOMMISSIONING COSTS

8. If Big Rivers exercises its option under Section 1.1 of

the May 1, 1993 Amendments to extend the life of the Contracts for the operating life of Station Two, as heretofore defined, the parties shall bear decommissioning costs of Station Two in the proportions in which they shared capacity costs during the life of Station Two.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement in multiple counterparts as of the date first herein written.

This 29th day of June, 1993.

CITY OF HENDERSON, KENTUCKY

By William L. Newman
William L. Newman, Mayor

ATTEST:

Journ Roberts
City Clerk
(City Seal)

CITY OF HENDERSON UTILITY COMMISSION

By B. E. Higgins
Chairman

ATTEST:

Dudley H. Everson
Secretary

BIG RIVERS ELECTRIC CORPORATION

By Morton Henshaw
Morton Henshaw, President

ATTEST:

William B. Briscoe
William Briscoe, Secretary

BIG RIVERS ELECTRIC CORPORATION

June 25, 1993

Kendel Bryan, General Manager
City of Henderson Utility Commission
P.O. Box 8, 100 5th Street
Henderson, KY 42420

Dear Kendel:

In accordance with your message to Travis Housley, and in lieu of amending Exhibit 1 to the May 1, 1993 Amendments, this letter is to confirm that the following three items are included within the Etc., Part B, Item 20, as "Joint Use Facilities provided by and owned by the City but located on Big Rivers property":

1. Unit heat and air conditioner units for the substation control building;
2. Outdoor substation lighting and control building lighting; and
3. Prefabricated metal control building, with reinforced concrete foundation.

If this conforms to your understanding, please sign both copies of this letter, keep one for your files and return one to me for my file.

Sincerely yours,

BIG RIVERS ELECTRIC CORPORATION

By: *P.A. Schmitz*
P.A. Schmitz, General Manager

This letter correctly states our understanding and agreement.

Dated this 70 day of June, 1993.

CITY OF HENDERSON UTILITY COMMISSION

By: *Kendel D. Bryan*
Kendel Bryan, General Manager

EXISTING HMP&L STATION TWO FACILITIES

PART A. All Station Two facilities located on City property are owned by the City of Henderson Utility Commission except the BTG control board for Big Rivers' Reid Unit 1. This property is indicated as areas A and B on Exhibit 2. The Reid control board is now located in the Station Two control room. The Station Two facilities are:

1. Two Cooling Towers, Ecodyne Model 670-2-71011, S/N E-70-12783 and E-70-12784
2. Four Circulating Water Pumps, Byron Jackson Model 57RXM S/N 711-C-1621, 711-C-1622, 711-C-1623, and 711-C-1624
3. One Turbine Building including Control Room, Switchgear, Fans, Pumps, Motors, Coal Pulverizers and Other Plant Auxiliary Equipment.
4. Two Steam Generators, Riley Stoker, National Board Nos. 2292 (repair no. 390) and 2379, S/N 3576 and 3675.
5. Two Turbine Generators, One General Electric S/N 178863, One Westinghouse S/N 13A43311/43321
6. Two Electrostatic Precipitators, Research Cottrell, Model No. B11LC52F9X30
7. One Chimney, 350 feet tall, concrete shell with brick liner, serving both units

PART B. Joint Use Facilities Provided By and Owned By the City But Located on Big Rivers' Property.

1. Barge Mooring Cells Nos. 1N, 2N, 3N, 4N, 1S, 2S, 3S and 4S as shown on Burns & Roe Drawing No. 04-3280-S3200
2. One Coal Barge Unloader, McDowell Wellman, 1000 net ton/hr capacity
3. Eight Coal Conveyors 1, 2, 3A, 3B, 4A, 4B, 5B and 6B, as shown on attached Exhibit 2
4. One Reclaim Hopper which feeds coal conveyors 4A and 4B
5. One Crusher House fed by conveyor No. 1
6. One Tugboat - The "William Newman" 37 feet long, 21.27 gross tons, 14.0 net tons, coastguard capacity 350 HP
7. One Water Treatment Plant With Demineralizer Building and associated equipment
8. One 50,000 Gallon Capacity Fuel Oil Storage Tank & Distribution System
9. One Flyash Silo, Sump & System Components
10. One Prefab Metal Warehouse adjacent to Fly Ash Silo
11. Coal Handling Equipment As Listed In Continuous Property Records
12. One Lot of Materials & Spare Parts in Big Rivers Warehouse No. 15 as defined by inventory control records
13. One Ash Pond and Effluent Lines
14. Circulating Water Lines as shown on attached Exhibit 2
15. Station Two Ash Pond Dredgings in Green Station Sludge Disposal Landfill adjacent to Green River south of Green Station
16. Four 161KV Oil Circuit Breakers, General Electric, S/N 0139A7206208, 0139A7206209, 0139A7206212, 0139A7206213, located in Plant Switchyard.
17. Two Step-up Transformers, McGraw Edison, S/N C-04280-5-1, C-04280-5-2, located in Plant Switchyard.
18. Two Auxiliary Transformers, Westinghouse, S/N RCP 37261, RCP 37262, located in Plant Switchyard.

19. One Excitation Transformer; General Electric, S/N D-597562, located in Plant Switchyard.
20. One Lot of Line Terminal Structures, Bus, Relay Panels, Etc., located in Plant Switchyard as shown on attached Exhibit 2.

PART C. Joint Use Facilities Owned by Big Rivers and located on Big Rivers property

1. Reid Intake Structure, Two Pumps, and Circulating Water System to serve Reid Unit 1
2. Coal System Crusher Tower supplied by coal conveyors 4A and 4B
3. Coal Conveyors Number 5A and 6A as shown on attached Exhibit 2
4. Plant Entrance Roads from highways 2096 and 2097 and Two Concrete Block Guardhouses
5. Reid Office Building and Maintenance Shop
6. Reid Grounding Transformer Eastern S/N PMR427988
7. Sewage Treatment Facility for Reid, Green and HMP&L Station Two power plants
8. Fire Water System for Reid Station
9. Switchyard Control House for Breaker Controls as shown on attached Exhibit 2

PART D. Other Facilities Owned by the City of Henderson Utility Commission But Not Classified as Joint Use Facilities, a portion or all of which is located on Big Rivers property

1. One 161KV Line from Reid EHV Substation to City Substation No. 4.
2. One Line Terminal Bay and Associated Equipment in Reid EHV Substation for City 161KV Line to City Substation No. 4.
3. Fifty Percent (50%) Ownership of 161/69 KV Transformer G1, Westinghouse, S/N RLP 15941) at Henderson County Substation, and related substation facilities.
4. Ten Percent (10%) Ownership of Big Rivers 161KV Line from Station Two Switchyard to Henderson County Substation.
5. Forty Percent (40%) Ownership of Spare Step Up Transformer (General Electric S/N K 547026) & Railcar (No. BREX 242).
6. One 69KV Transmission Line from plant switchyard to City Substation No. 2

**PROPOSED HMP&L STATION TWO
FACILITIES FOR FGD SCRUBBER SYSTEM**

PART A. Station Two FGD Facilities To Be Owned by City of Henderson on Big Rivers Property

1. FGD System Chimney, 350' Tall
2. Two Wheelabrator Absorber Modules, Building & Associated Equipment
3. Two Booster Fans
4. Auxiliary Building as shown on attached Exhibit 2 containing Controls and Electrical Equipment, Maintenance, Locker and Shower Facilities
5. One Station Two Slaker Building Enclosing Three Slaking Tanks & Equipment
6. One Station Two Additive Hold Tank
7. Two Lime Feed Conveyors from Big Rivers' Green Station Lime Storage Silos 2C1 & 2C2
8. Two Additive Feed Systems; Station Two Scrubber System Includes Pipe & Pipe Rack
9. Two Bleed Slurry Systems to Big Rivers' Green Station Primary Dewatering System Including Pipe, Pipe Rack & Splitter Boxes
10. Two New Thickener Return Water Tanks & Controls
11. One New Filtrate Surge Tank and Controls
12. One Electrical Power Supply for FGD System, with redundant feeds including power transformer, bus work, relay panels and metering equipment

PART B. FGD Joint Use Facilities To Be Owned by City of Henderson on Big Rivers Property

1. Two Lime Slaking Water Pumps and Lines to Slaking Building
2. Two Pug Mill Mixers (Listed Manufacturer and Serial Nos. when known)
3. One Vacuum Filter and Associated Equipment Including Building Expansion as shown on attached Exhibit 2
4. Two New Thickener Underflow Lines and Two Flow Monitors
5. Two Control Systems on Big Rivers' Green Station Thickener Return Water Tanks

PART C. Existing Facilities Owned By Big Rivers Electric For Green Station FGD System As Shown On Attached Exhibit 2 Which Will Be Jointly Used By Green Station and HMP&L Station Two And Which Are Located On Big Rivers Property

1. One Lime Barge Unloader, Dravo Wellman 200/400 Net Ton/Hr Capacity For Lime, 1500 Net Ton/Hr Capacity For Coal
2. One Lime Conveyor L1 and Transfer Tower As Shown On Exhibit 2
3. Two Lime Silos: 2C1 and 2C2 As Shown On Exhibit 2, and Six Lime Screw Conveyors: 2CW-LFC, 2CE-LFC, 2C1-SC, 2C2-SC, 1CW-LFC, 1CE-LFC
4. Four Thickeners for Primary Dewatering of Bleed Slurry: 1A, 1B, 2A, 2B, Including Tunnels, Pumps, and Ventilation Systems
5. One Secondary Dewatering System and Sludge Stackout System, Including Solid Waste Building and Sludge Stackout Area as Shown on Exhibit 2; Three Vacuum Filters with Feed Systems: FL-1A, FL-1B, FL-1C; Eleven Filter Cake Conveyors and Radial Stackers: CO-1A, CO-1B, CO-1C, CO-2A, CO-2B, CO-3A, CO-3B, CO-6A, CO-6B, CO-7A, CO-7B; and Four Fly-Ash Screw Conveyors
6. Two Ash Silos and Pneumatic Transfer System
7. Two Green Station River Water Clarifiers: CL-101 and CL-102, with Three Slaker Water Pumps: 1A, 1B and 2A
8. One Solid Waste Loader, Hitachi S/N 171-0373
9. One Sludge Haul Road and Two Truck Scales



EMP&L facilities owned by the City
located on City property



City owned joint use facilities located
on Big Rivers property



Big Rivers owned joint use facilities
on Big Rivers property *



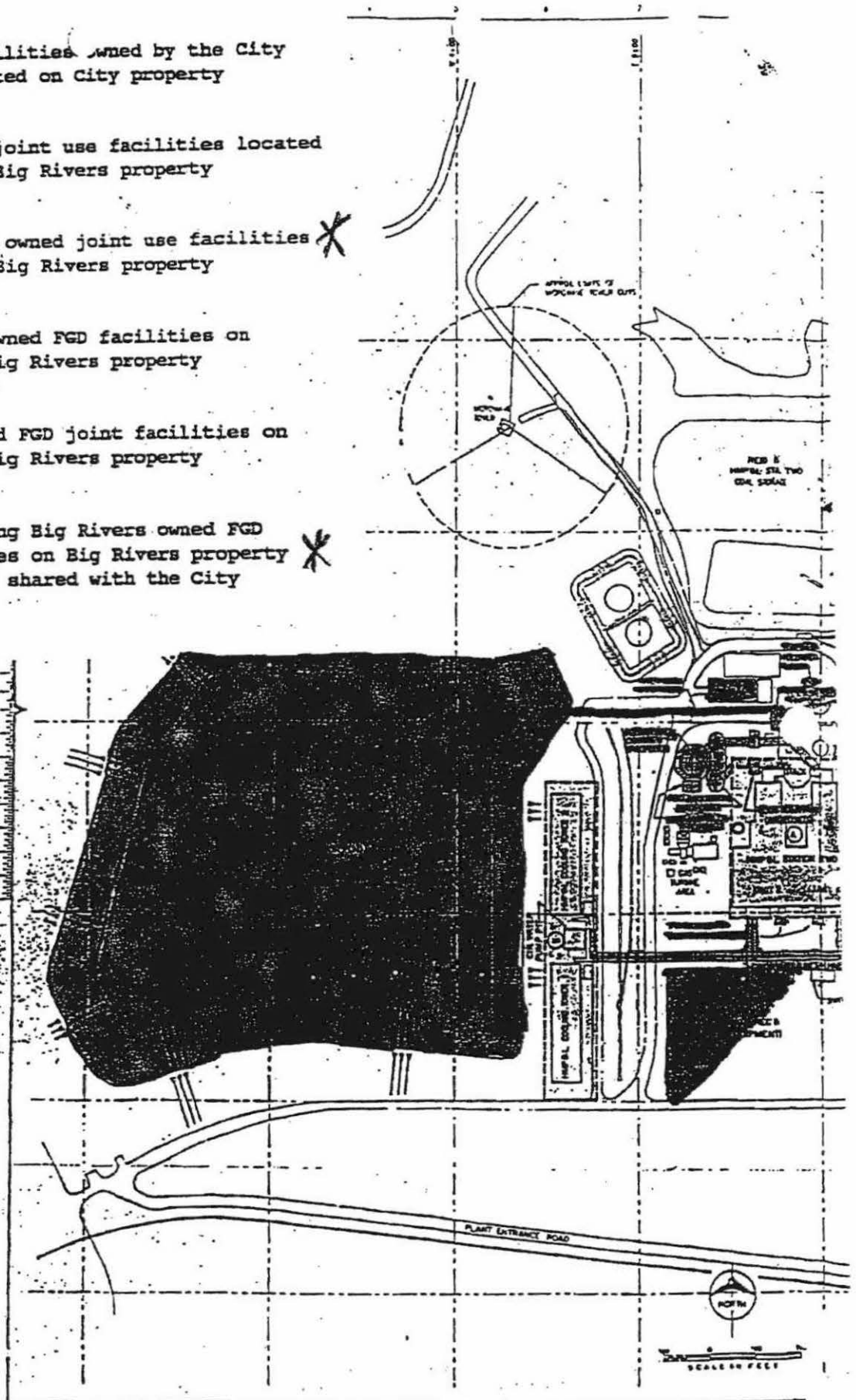
City owned FGD facilities on
Big Rivers property



City owned FGD joint facilities on
Big Rivers property



Existing Big Rivers owned FGD
facilities on Big Rivers property
to be shared with the City *

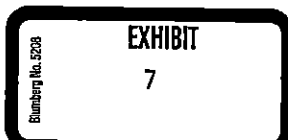


**AMENDMENTS TO CONTRACTS
AMONG CITY OF HENDERSON, KENTUCKY
CITY OF HENDERSON UTILITY COMMISSION
AND BIG RIVERS ELECTRIC CORPORATION**

These Amendments entered into and effective as of July 15, 1998 (the "1998 Amendments") by and between City of Henderson, Kentucky, a municipal corporation and City of the third class organized under the laws of the Commonwealth of Kentucky, of 222 First Street, Henderson, KY 42420, City of Henderson Utility Commission, a public body politic and corporate organized under Kentucky Revised Statutes 96.520 and related statutes, of 100 Fifth Street, Henderson, KY 42420, the said City and Commission being referred to herein collectively as "City," and Big Rivers Electric Corporation, a rural electric cooperative corporation organized under Chapter 279 of the Kentucky Revised Statutes, P.O. Box 24, 201 Third Street, Henderson, KY 42420, known as "Big Rivers" herein.

WITNESSETH:

WHEREAS, the parties hereto are parties to a Power Sales Contract, a Power Plant Construction and Operation Agreement and a Joint Facilities Agreement all dated August 1, 1970 and Big Rivers and City of Henderson Utility Commission are parties to an Agreement for Transmission and Transformation Capacity dated April 11, 1975, the Spare Transformer Agreement dated July 11, 1972, the Systems Reserves Agreement dated January 1, 1974, the Agreement of April 8, 1980 regarding O&M and R&R Funds, and the Agreement of February 15, 1991 concerning Administrative and General Costs, and Amendments to such contracts dated May 1, 1993, all of such contracts and agreements as amended being known herein as the "Contracts" and incorporated herein by reference, and



WHEREAS, pursuant to the Contracts, and to ordinances of the City of Henderson, Kentucky providing for the sale of its electric revenue bonds, an electric generating station consisting of generating Units 1 and 2, each described in the Contracts as having a 175-megawatt capacity, and related facilities all known herein as "Station Two," were constructed and are now owned by the City of Henderson and operated by Big Rivers under the Contracts with Big Rivers, and

WHEREAS, City and Big Rivers now seek to amend the Contracts to reflect new understandings between the parties regarding the Contracts and the business relationship between City and Big Rivers.

NOW THEREFORE, in consideration of the mutual covenants herein contained, it is covenanted and agreed among the parties hereto as follows:

ALL CONTRACTS

1. The terms of all the Contracts except the Joint Facilities Agreement shall be extended for the operating life of Station Two, the operating life of which shall be considered to continue for so long as Unit 1 and Unit 2, or either of them, is operated, or is capable of normal, continuous, reliable operation for the economically competitive production of electricity, temporary outages excepted. Notwithstanding any other provision in the Contracts, all of the Contracts, except the Joint Facilities Agreement and the System Reserves Agreement, shall terminate 90 days after Big Rivers' allocation of capacity from City's Station Two shall be zero; provided, however, that the terms of all the Contracts shall be extended until all Station Two bonds of the City of Henderson which have been approved by Big Rivers have been paid. Notwithstanding the above, the Joint Facilities Agreement shall terminate in accordance with

Section 8 of said Agreement. This section expressly replaces the provisions of Section 1 of the May 1993 Amendments in their entirety.

2. The effective date of these 1998 Amendments shall be the date following their execution upon which the last of the following approvals of the 1998 Amendments is obtained:

2.1 Approval of the Rural Utilities Service; and

2.2 Approval of the Kentucky Public Service Commission.

3. Nothing herein contained shall constitute general obligations of the City of Henderson within Kentucky Constitutional restrictions on such obligations. The obligations herein imposed on City of Henderson shall be borne entirely from revenues or other legally available funds of City's electric light and power system.

POWER SALES CONTRACT

4. The Power Sales Contract of August 1, 1970, as heretofore amended, is further amended as follows:

(a) **SECTION 3.4 IS HEREBY AMENDED TO BE AND READ IN ITS ENTIRETY AS FOLLOWS:**

3.4 City agrees that it will not, after the execution and approval of this Agreement, (1) make any dispositions to others for resale of its generating capacity, other than pursuant to Section 3.8 added by these 1998 Amendments, except for the purpose of disposing of any surpluses resulting from good faith over-estimates of its needs, or (2) add any commercial or industrial customers in excess of thirty (30) megawatts each to its electric system, if to do either (1) or (2), as the case may be, would require the withdrawal of additional capacity from its Existing System and/or from Units One and Two of its Station Two. Expansions in the ordinary course of business of any commercial or industrial plants being served by City at the time of the execution of these 1998 Amendments shall not be considered added commercial or industrial customers subject to the 30 megawatt size limitation for the purposes of this Agreement. Surplus capacity resulting from good faith over estimates as referred to in (1) above shall be first offered to Big Rivers at City's

cost. Big Rivers and City understand that City shall be entitled to meet (in increasing incremental amounts, as necessary) the load of any new commercial or industrial customer (which shall not exceed the 30 megawatt cap per customer established above) through its annual adjustment to its five year capacity reservation forecasts in amounts not exceeding five (5) megawatts per Contract Year (as described in Section 3.3 of this Agreement) and its subsequent capacity reservation forecasts under this Agreement.

(b) A NEW SECTION 28 TO POWER SALES CONTRACT IS HEREBY CREATED AND INCLUDED AS FOLLOWS:

28.1 City shall have the right (subject to the further limitations and provisions of this Section 28) to utilize within the City's service territory as of the date of these 1998 Amendments, including all areas within the existing City limits, capacity and energy from Station Two in excess of its reserved capacity allocations, as adjusted under Section 3.3 of this Agreement (such excess capacity and energy being referred to herein as "Station Two Economic Development Power"), to serve up to 50% of Economic Development Loads (defined below) of customers to the extent such customers are not otherwise served as of the date of commencement of the proposed service by City from reserved capacity allocations under this Agreement (each an "Economic Development Opportunity"); provided, however, that the maximum amount of Station Two Economic Development Power that may be utilized by City at any time shall not exceed 25 megawatts in the aggregate for all such Economic Development Opportunities, collectively. City's right to utilize Station Two Economic Development Power with respect to any Economic Development Opportunity is further conditioned upon City having made a binding written offer to purchase from Big Rivers, at the applicable rate set forth in Exhibit 1, the capacity and energy requirements of such Economic Development Opportunity not supplied by City with its reserved capacity or with Station Two Economic Development Power to meet such Economic Development Load. For purposes hereof, "Economic Development Load" means the demand for capacity and associated energy of (i) a new customer of City within City's service territory (as described above) or (ii) an existing customer of City in that service territory (as described above) created by a substantial expansion of such customer's plant or facility (defined as a projected annual increase in kWh consumption or kW demand of such customer of 20% or more as a result of a plant expansion). Upon utilization by City of Station Two Economic Development Power, such power shall be treated for

purposes of this Agreement, except Section 3.3 and clause (2) of Section 3.4 of this Agreement, as capacity of Station Two reserved to the City hereunder.

- 28.2 For any Economic Development Opportunity of City as to which City exercises its right under Section 28.1 to retain and utilize Station Two Economic Development Power by providing Big Rivers with a binding written offer to purchase, at the applicable rate set forth in Exhibit 1, the capacity and energy in the aggregate required by City for such Economic Development Opportunity in addition to the City's reserved capacity and Station Two Economic Development Power available under Section 28.1, City hereby agrees that Big Rivers shall have a period of fifteen days following receipt of City's written offer to accept the terms of such offer and to agree to supply the power at the applicable rate in Exhibit 1, over an agreed upon term. If Big Rivers rejects such offer or fails to accept such offer within such fifteen-day period, City shall be entitled to retain and utilize Station Two Economic Development Power in accordance with Section 28.1, and shall be entitled to negotiate with third-party suppliers to provide the remainder of the capacity and energy required to serve the Economic Development Load. Prior to entering into a binding contract with any such third-party supplier, City agrees to offer Big Rivers the right to match the price offered by such third-party supplier over the term offered by such third-party supplier, which right Big Rivers must exercise within five days of receipt of such third-party offer from City. If Big Rivers rejects such offer or fails to accept such offer within such five day period, City shall be free to execute a contract with such third-party supplier, provided, however, that if City shall not have contracted for the purchase of such capacity and energy with such third-party supplier within thirty-days after the expiration of that five-day period, no such contract shall be entered into without again first offering Big Rivers the opportunity to serve such remaining Economic Development Load upon the terms described in the preceding sentence.
- 28.3 In the event that Big Rivers fails to provide that portion of capacity and energy required to supply an Economic Development Opportunity that it has agreed to supply from Big Rivers' resources, whether at the specified prices contained in Exhibit 1, or upon terms matching those of a third-party supplier in accordance with Section 28.2, as the case may be, City shall be entitled to take from Station Two capacity and energy, in addition to the Station Two Economic Development Power to which City is already entitled, in such amounts as were to have been provided by Big

Rivers, with subsequent adjustments to the allocation of costs in accordance with this Agreement.

28.4 Big Rivers and City agree that the specified rates for capacity and energy contained in Exhibit 1 shall be fixed for a period of seven years after the date these 1998 Amendments become effective. Rates for periods after the date seven years after these 1998 Amendments become effective shall be subject to future negotiation.

(c) **A NEW SECTION 3.8 TO POWER SALES CONTRACT IS HEREBY CREATED AND INCLUDED AS FOLLOWS:**

3.8 Big Rivers and City hereby agree that the following provisions shall apply to energy from capacity not utilized by City or from capacity in excess of the capacity calculated in accordance with Section 3.6 of this Agreement.

- (a) In the event that at any time and from time to time City does not take the full amount of energy associated with its reserved capacity from Station Two (determined in accordance with this Agreement), Big Rivers may, at its discretion, take and utilize all such energy (or any portion thereof designated by Big Rivers) not scheduled or taken by City (the "Excess Henderson Energy"), in accordance with Section 3.8(c).
- (b) If at any time Station Two capacity is generated in excess of the Total Capacity of Station Two determined in accordance with Section 3.6 of this Agreement ("Excess Henderson Capacity"), Big Rivers shall take and utilize all energy associated with such Excess Henderson Capacity, unless otherwise agreed to by Big Rivers and City, in accordance with Section 3.8(c).
- (c) Following the end of each calendar month, Big Rivers shall notify City of the amount of Excess Henderson Energy and energy associated with Excess Henderson Capacity, if any, taken by Big Rivers during the previous month, and Big Rivers shall pay City prior to the 25th day of the then current month for the amount of Excess Henderson Energy and energy associated with the Excess Henderson Capacity so taken by it at a rate equal to \$1.50 per mWh. In addition, Big Rivers shall provide, at its own cost, the full replacement of all fuels and reagents consumed from the

Station Two fuel and reagent reserves for the production of the Excess Henderson Energy and energy associated with the Excess Henderson Capacity so taken by it. Further, Big Rivers shall pay the portion of sludge disposal costs attributable to the Excess Henderson Energy and energy associated with Excess Henderson Capacity, as calculated in accordance with Section 3.4 of the Joint Facilities Agreement.

- (d) City agrees that Big Rivers, as operator, shall be allowed, but shall not be required, to operate Station Two to obtain capacity above the Total Capacity of Station Two determined in accordance with Section 3.6 of this Agreement. City further agrees that it shall not at any time be permitted to sell or commit to any person other than Big Rivers any Excess Henderson Energy without having first offered Big Rivers the opportunity to purchase such Excess Henderson Energy. Big Rivers shall have a reasonable period of time after submission of the City's scheduled energy requirements to decide whether to purchase any Excess Henderson Energy not scheduled by City. Big Rivers agrees to notify City thereafter if it does not intend to purchase such energy, and agrees to give City a response within a reasonable time so that City may take efforts to resell this power to third-parties. City agrees to compensate Big Rivers according to Big Rivers' Open Access Transmission Tariff to the extent City utilizes any transmission on Big Rivers' transmission system in marketing Excess Henderson Energy.

(d) A NEW SECTION 19.2 TO POWER SALES CONTRACT IS HEREBY CREATED AND INCLUDED AS FOLLOWS:

19.2 Big Rivers and City agree that on or before the date on which the Station Two Bonds are retired, and the remaining balance of monies contained in the Station Two Account in the Renewals and Replacements Fund in accordance with Section 1 of the Agreement dated April 8, 1980 between Big Rivers and City shall have been disbursed, the following shall occur:

- (a) Big Rivers shall establish a new Big Rivers Station Two Renewals and Replacements Fund and shall deposit immediately available funds in the amount of \$600,000. Thereafter, Big Rivers agrees that each month it shall make leveled payments into the Big Rivers Station Two Renewals and Replacements Fund, not to exceed \$50,000 each month, so as to restore a minimum balance of \$600,000. All interest on such amounts shall be repaid to Big Rivers at the end of each calendar year, and all amounts in such

fund shall be paid to Big Rivers upon termination or expiration of this Agreement. Amounts from this Fund shall be withdrawn in accordance with Section 19.2(c); and

(b) City shall establish a new Henderson Station Two Renewals and Replacements Fund and shall deposit immediately available funds in the amount of \$150,000. Thereafter, City agrees that each month it shall make levelized payments into the Henderson Station Two Renewals and Replacements Fund, not to exceed \$12,500, so as to restore a minimum balance of \$150,000. All interest on such amounts shall be repaid to Henderson at the end of each calendar year and all amounts in such fund shall be paid to City upon termination or expiration of this Agreement. Amounts from this fund shall be withdrawn in accordance with Section 19.2(c).

(c) All required expenditures for renewals and replacements shall be made from the Big Rivers Station Two Renewals and Replacements Fund and the Henderson Station Two Renewals and Replacements Fund in proportion to then effective allocation of Station Two capacity between City and Big Rivers, in accordance with Section 3 of this Agreement. No expenditures shall be made from these accounts other than for renewals and replacements that would have been permitted under the Bond Ordinance.

(d) **A NEW SECTION 19.3 TO POWER SALES CONTRACT IS HEREBY CREATED AND INCLUDED AS FOLLOWS:**

19.3 Big Rivers and City agree that on or before the date on which the Station Two Bonds are retired, and the remaining balance of monies contained in the Station Two Account in the Operation and Maintenance Fund in accordance with Section 1 of the Agreement dated April 8, 1980 between Big Rivers and City shall have been disbursed, the following shall occur:

(a) Big Rivers shall establish a new Big Rivers Station Two O&M Fund and shall deposit immediately available funds in the amount of \$400,000. Thereafter, Big Rivers agrees that each month it shall make levelized payments into the Big Rivers Station Two O&M Fund, not to exceed \$33,300 each month, so as to restore a minimum balance of \$400,000. All interest on such amounts shall be repaid to Big Rivers at the end of each calendar year, and all amounts in such fund shall be paid to Big Rivers upon termination

or expiration of this Agreement. Amounts from this Fund shall be withdrawn in accordance with Section 19.3(c); and

- (b) City shall establish a new Henderson Station Two O&M Fund and shall deposit immediately available funds in the amount of \$100,000. Thereafter, City agrees that each month it shall make levelized payments into the Henderson Station Two O&M Fund, not to exceed \$8,300, so as to restore a minimum balance of \$100,000. All interest on such amounts shall be repaid to Henderson at the end of each calendar year and all amounts in such fund shall be paid to City upon termination or expiration of this Agreement. Amounts from this fund shall be withdrawn in accordance with Section 19.3(c).
- (c) All required expenditures for operation and maintenance shall be made from the Big Rivers Station Two O&M Fund and the Henderson Station Two O&M Fund in proportion to the then effective allocation of Station Two capacity between City and Big Rivers, in accordance with Section 3 of this Agreement. No expenditures shall be made from these accounts other than for operation and maintenance expenses that would have been permitted to be paid as "Operating Expenses" under the Bond Ordinance.

JOINT FACILITIES AGREEMENT

4. The Joint Facilities Agreement, as heretofore amended by the May 1, 1993

Amendments, is further amended as follows:

SECTION 3.3 IS AMENDED TO READ AS FOLLOWS:

- 3.3 Big Rivers will allocate for the continuing joint use of the parties in the operation of their respective generating stations (Big Rivers' Green Station and City's Station Two) those Green Station FGD System Facilities described in Exhibit 1, Page 3, Part C hereto. For such use, Big Rivers shall be paid by City a prorated share of the annual carrying costs, calculated as:

Station Two net capacity
Station Two plus Green Station net capacities

Currently 312 MW
766 MW

times the then net book value of those facilities, further multiplied by a capital carrying charge rate of 11.5 percent. Big Rivers' net book value shall be determined by taking the net book value of those facilities as of December 31, 1994, i.e. \$21,675,601.32, adjusting them annually for depreciation (according to the depreciation methodology set forth in Exhibit 2), and taking into account additional costs resulting from renewals and replacements thereof. Big Rivers authorizes City to inspect Big Rivers' books to verify the original cost of these facilities, annual depreciations thereto, and the costs of any renewals and replacements thereof. All inspections by City of Big Rivers shall be at mutually agreeable times determined in advance after written request from City.

SYSTEM RESERVES AGREEMENT

5. The System Reserves Agreement of January 1, 1974 is hereby amended as follows:

SECTIONS 2.1 AND 3.1 ARE DELETED AND REPLACED BY A NEW SECTION 2.1 TO READ AS FOLLOWS:

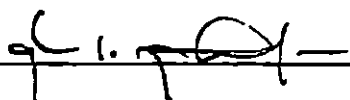
- 2.1 The City and Big Rivers covenant and agree that each will comply with any system reserve capacity requirements now required or imposed at a future date applicable to it (as such requirements may be modified from time to time and as such requirements apply to it given its respective operational characteristics) by NERC, ECAR, any successor organizations to NERC and ECAR (as applicable), any applicable regulatory or governmental agency, and any regional transmission authority, reliability council or like organization, in each case having any system reserve capacity requirements applicable to it. Absent such a requirement, neither City nor Big Rivers shall have any obligation pursuant to this Agreement to maintain system reserves. Notwithstanding the above limitations, City agrees to comply with any requirements validly imposed by any of the above entities upon Big Rivers based on Big Rivers' role as control area operator, but only if and to the extent that such requirements imposed on Big Rivers are on account of or due to the generation and/or load of the City.

6. Except as specifically modified above, the Contracts remain in full force and effect and are not altered by this Agreement.

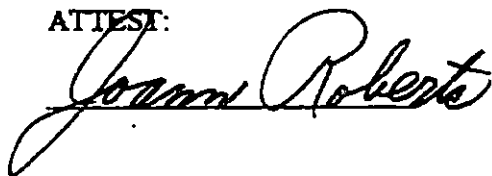
IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement in multiple counterparts as of the date first herein written.

This 15th day of July, 1998.

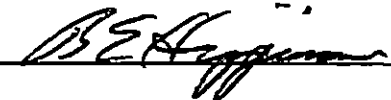
CITY OF HENDERSON, KENTUCKY

By: 

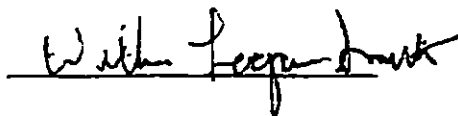
ATTEST:



CITY OF HENDERSON UTILITY COMMISSION

By: 
Chairman

ATTEST:



BIG RIVERS ELECTRIC CORPORATION

By: _____

Title: _____

[Handwritten Signature]

President and CEO

ATTEST:

[Handwritten Signature]

Exhibit 1

**BIG RIVERS - CITY OF HENDERSON
ECONOMIC DEVELOPMENT RATES**

1. Big Rivers will sell power to City of Henderson according to the following rate schedule (subject to the conditions of Section 28.2 of the Agreement) per mWh:

Year 1	\$20.00
Year 2	\$20.00
Year 3	\$20.00
Year 4 (1st six months)	\$20.00
Year 4 (following six months)	\$21.00
Year 5	\$21.00
Year 6	\$21.00
Year 7	\$21.00
Year 8 and thereafter	to be negotiated

Year 1 shall commence on the first day of the month in which the 1998 Amendments become effective, and Year 2 and following years shall each commence on the anniversary of the first day of that month.

2. The Economic Development Rates offered by Big Rivers are for power only and are exclusive of any transmission charges Big Rivers is required to pay or charge itself to deliver this power to City on Big Rivers' transmission system. Except as otherwise provided below, Big Rivers will charge the City those transmission rates that Big Rivers is required by FERC to charge itself for delivery of such power. To the extent Big Rivers, in supplying this capacity and energy uses only transmission facilities for which City has already established transmission rights, Big Rivers will not charge an additional transmission fee. In the event Big Rivers obtains Economic Development Power from systems other than that of Big Rivers, Big Rivers shall not charge City an additional charge required to wheel such power to Big Rivers' transmission system.

Exhibit 2

**JOINT FACILITIES AGREEMENT
DEPRECIATION METHODOLOGY**

For purposes of Section 3.3 of the Joint Facilities Agreement and the calculation thereunder of the annual capital carrying costs for the Green Station FGD System Facilities (the "FGD Facilities"), the following depreciation methods and accounting practices shall be used:

1. Existing FGD Facilities: The FGD Facilities, as such facilities shall exist as of the date of execution of the 1998 Amendments to Contracts among the City of Henderson, Kentucky ("City"), the City of Henderson Utility Commission ("HUC") (the City and HUC being sometimes collectively referred to herein as "Henderson") and Big Rivers Electric Corporation ("Big Rivers"), shall be depreciated on a straight-line basis over an agreed useful life of 25 years, with depreciation commencing as of June 1, 1995 and expiring May 31, 2020. The net book value of those facilities as of June 1, 1995 shall be \$21,675,601 for purposes of this Agreement. Notwithstanding the above described language, Big Rivers, City, and HUC agree that the above-described depreciation methodology and its effect upon payments due by any party shall be prospective only and shall have no effect relating to any payments made prior to the date of execution of the 1998 Amendments to Contracts.

2. Additions to the FGD Facilities. All additions, betterments, improvements and replacements to the FGD Facilities shall be capitalized in accordance with the prevailing Capitalization Guidelines approved by HUC and the operator of Big Rivers' Green generating station as of the date of such addition, betterment or improvement is placed in service. On the date hereof and until otherwise agreed, the "Capitalization Guidelines" shall be the capitalization guidelines attached hereto. Those additions, betterments, improvements or replacements which are capitalized under the Capitalization Guidelines (the "Capital Asset") shall, for purposes of the determination of the annual carrying costs of the FGD Facilities, be depreciated on a straight-line basis over the useful life of the Capital Asset (which useful life must be agreed upon by the parties prior to installation of the Capital Asset); provided that such useful life shall in no event exceed the useful life of the FGD Facilities as set forth in the most recently completed Depreciation Study for that facility or a Depreciation Study for the FGD Facilities which is commissioned by the Parties, upon the reasonable request of a Party, immediately following the installation of such addition, betterment, improvement or replacement.

3. Retirement from Service. If any Capital Asset that is a component of the FGD Facilities is disposed of, removed or otherwise retired from service as a consequence of the installation of a new Capital Asset, then, for purposes of the determination of the annual capital carrying costs of the FGD Facilities, the net book value of such retired asset, determined as of the date the new Capital Asset is placed in service, shall be subtracted from the net book value of the FGD Facilities as of such date.

Attached hereto is a depreciation schedule for illustration purposes only. The attached schedule illustrates the application of the depreciation methodology provided for herein to a hypothetical set of facts and is not intended to establish the actual depreciation schedule for the FGD Facilities, nor is it to be interpreted to establish the actual depreciation schedule for the FGD Facilities, nor is it to be interpreted to establish the annual capital carrying costs for the FGD Facilities allocable to Station Two.

**Section 2 FGD Amortization
Depreciating Value**

In-Service Date 4/1/95
Useful Life 25 Years
Original Cost \$ 21,672,001

	1995	1996	1997	1998	1999	2000	2001	2002	2003	
Beginning Balance	\$ 21,672,001	\$ 21,169,917	\$ 20,702,813	\$ 19,439,729	\$ 18,368,965	\$ 17,701,741	\$ 16,814,717	\$ 15,967,693	\$ 15,182,669	\$ 1
Depreciation	803,364	867,824	867,824	867,824	857,824	867,024	867,024	867,024	867,024	
Net Book Value	\$ 21,168,637	\$ 20,302,093	\$ 19,834,989	\$ 18,571,905	\$ 17,511,141	\$ 16,834,717	\$ 15,967,693	\$ 15,100,669	\$ 14,315,645	\$ 1
Section 2 % of Beginning Balance (12 / 1966)				\$ 7,916,405	\$ 7,567,257	\$ 7,210,500	\$ 6,856,060	\$ 6,503,812	\$ 6,150,664	\$
Rate				11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	
Reimbursement Amount				\$ 918,387	\$ 869,775	\$ 829,162	\$ 788,520	\$ 747,928	\$ 707,326	\$

Useful Life 12.52 Years
Capital Improvements \$ 5,000,000

	1995	1996	1997	1998	1999	2000	2001	2002	2003	
Beginning Balance							\$ 3,800,000	\$ 4,704,637	\$ 4,439,375	\$
Depreciation							235,363	235,363	235,363	
Net Book Value							\$ 4,704,637	\$ 4,439,375	\$ 4,203,912	\$
Section 2 % of Beginning Balance (12 / 1966)							\$ 2,036,834	\$ 1,972,542	\$ 1,828,530	\$
Rate							11.5%	11.5%	11.5%	
Reimbursement Amount							\$ 334,804	\$ 232,342	\$ 279,381	\$

Remaining Period 12.52 Years
Reimbursements (REV) \$ (1,000,000)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	
Beginning Net Book Value							\$ (2,000,000)	\$ (1,837,833)	\$ (1,705,710)	\$
Depreciation Effect							(182,143)	(182,143)	(182,143)	
Net Book Value							\$ (1,837,833)	\$ (1,739,710)	\$ (1,637,363)	\$
Section 2 % of Beginning Net Book Value (12 / 1966)							\$ (114,621)	\$ (77,817)	\$ (71,412)	\$
Rate							11.5%	11.5%	11.5%	
Reimbursement Effect							\$ (83,641)	\$ (58,897)	\$ (54,112)	\$

Total Reimbursement Amount:

\$ 918,387 \$ 869,775 \$ 829,162 \$ 729,873 \$ 681,284 \$ 633,695 \$

**Section 2 FCH Amortization
Depreciating Value**

Re-Service Rate 6.125
 Useful Life 25 Years
 Original Cost \$ 72,675,001

	2008	2009	2010	2011	2012	2013	2014	2015	2016
Beginning Balance	\$ 110,761,349	\$ 9,890,325	\$ 9,011,201	\$ 8,166,476	\$ 7,297,432	\$ 6,430,425	\$ 5,561,404	\$ 4,696,280	\$ 3,829,356
Depreciation	867,034	867,034	867,034	867,034	867,034	867,034	867,034	867,034	867,034
Net Book Value	\$ 9,838,325	\$ 9,021,501	\$ 8,144,176	\$ 7,297,432	\$ 6,430,425	\$ 5,561,404	\$ 4,696,280	\$ 3,829,356	\$ 2,962,322
Sum 2 % of Beginning Balance (312 / 766)	\$ 4,384,923	\$ 4,831,775	\$ 5,670,627	\$ 6,323,429	\$ 7,272,330	\$ 8,419,102	\$ 9,754,834	\$ 1,123,626	\$ 1,519,725
Rate	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%
Reimbursement Amount	\$ 904,266	\$ 420,726	\$ 473,549	\$ 382,430	\$ 361,095	\$ 301,236	\$ 279,791	\$ 279,802	\$ 279,529

Useful Life 19.52 Years
 Capital Improvements \$ 5,988,000

	2008	2009	2010	2011	2012	2013	2014	2015	2016
Beginning Balance	\$ 3,212,442	\$ 2,957,099	\$ 2,702,736	\$ 2,448,374	\$ 2,191,911	\$ 1,933,649	\$ 1,682,286	\$ 1,434,923	\$ 1,169,561
Depreciation	233,263	233,263	233,263	233,263	233,263	233,263	233,263	233,263	233,263
Net Book Value	\$ 2,957,099	\$ 2,721,774	\$ 2,468,474	\$ 2,191,911	\$ 1,973,649	\$ 1,680,286	\$ 1,424,923	\$ 1,169,561	\$ 914,198
Sum 2 % of Beginning Balance (312 / 766)	\$ 1,308,430	\$ 1,304,458	\$ 1,103,968	\$ 996,474	\$ 892,422	\$ 782,410	\$ 684,339	\$ 588,787	\$ 474,375
Rate	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%
Reimbursement Amount	\$ 158,674	\$ 138,613	\$ 136,531	\$ 114,500	\$ 107,629	\$ 90,667	\$ 89,533	\$ 66,744	\$ 64,783

Remaining Period 11.52 Years
 Retirements (MSP) \$ (2,000,000)

	2008	2009	2010	2011	2012	2013	2014	2015	2016
Beginning Net Book Value	\$ (1,284,983)	\$ (1,182,840)	\$ (1,080,697)	\$ (978,550)	\$ (876,404)	\$ (774,257)	\$ (672,110)	\$ (569,963)	\$ (467,816)
Depreciation Effect	(102,143)	(102,143)	(102,143)	(102,143)	(102,143)	(102,143)	(102,143)	(102,143)	(102,143)
Net Book Value	\$ (1,182,840)	\$ (1,080,697)	\$ (978,550)	\$ (876,404)	\$ (774,257)	\$ (672,110)	\$ (569,963)	\$ (467,816)	\$ (365,673)
Sum 2 % of Beginning Net Book Value (312 / 76)	\$ (523,338)	\$ (481,783)	\$ (440,178)	\$ (398,574)	\$ (356,969)	\$ (315,364)	\$ (273,759)	\$ (232,155)	\$ (190,550)
Rate	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%	11.5%
Reimbursement Effect	\$ (68,190)	\$ (55,085)	\$ (50,631)	\$ (45,836)	\$ (41,041)	\$ (36,247)	\$ (31,452)	\$ (26,657)	\$ (21,862)
Total Reimbursement Amount	\$ 594,531	\$ 544,762	\$ 493,973	\$ 431,184	\$ 403,395	\$ 355,606	\$ 315,731	\$ 260,829	\$ 211,240

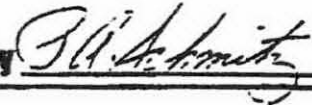
Capitalization Guidelines

The Parties hereby agree that these Capitalization Guidelines together with the attached Company Policy Number 10 of Big Rivers, Capitalization of Expenditures, dated November 30, 1993 shall constitute the "Capitalization Guidelines" identified in Exhibit 2 to the 1998 Amendments and shall serve as the Capitalization Guidelines for the purposes of Exhibit 2. These Capitalization Guidelines (including without limitation, the attached Company Policy No. 10) may not be amended, modified or supplemented following the Execution Date without the prior written consent of each of the Parties.

The Parties agree that the attached Company Policy No. 10 of Big Rivers (which is incorporated by reference herein) shall serve to amend and supplement the RUS Uniform System of Accounts Bulletin 1767B for purposes of the Accounting Practices, and for purposes of any determination of whether an expenditure shall be a Capital Asset for the purpose of Exhibit 2.

SUBJECT Capitalization of Expenditures
PAGE 1 of 2
RE-ISSUE DATE 11/30/93

Approved by



SCOPE: Determining when to capitalize an expenditure to "Electric Plant in Service" account 101.000 as opposed to expense in accordance with REA Bulletin 181-1.

POLICY: To be capitalized, an item of property must be covered by one of the following classifications:

- (A) New Retirement Unit
- (B) Retirement Unit Replacement
- (C) Retirement System Addition
- (D) Retirement System Replacement
- (E) New Minor Property Item
- (F) Minor Property Item Replacement with Betterment
- (G) Computer Software and Software Upgrades

RULES: See the corresponding lettered paragraph below for rules governing each case. Stated dollar values are after consideration of freight, sales tax, discount, etc.

(A) New Retirement Unit

1. Cost more than \$1,000 in boiler or turbogenerator plant or \$500 in other accounts, and
2. Be readily separable and separately useable, and
3. Have an expected useful life of more than one year. Valves that are requisitioned, including those inventoried, which cost more than \$1,000 and are over 2" in size and are not replacements for an existing system are to be capitalized. (System valve replacements are to be charged to maintenance.)

(B) Retirement Unit Replacement

1. Cost more than \$1,000 in boiler or turbogenerator plant or \$500 in other accounts, and
2. Be a replacement of a similar retirement unit or consist of replacing minor property items that total to more than 50% of the existing retirement unit cost. If the 50% test is met, it is assumed a new retirement unit has been created. Retire 100% of the old unit and recapitalize the salvageable portion along with the new minor property item(s). (The replacement of existing minor property items costing 50% or less of the original retirement unit is to be charged to maintenance.)

(C) Retirement System Addition

1. Be an addition to or an expansion of a system, and
2. Cost more than \$1,000 in boiler or turbogenerator plant or \$500 in other accounts, and
3. Be of permanent nature, and
4. Be an integral part of an existing system. (A system is a grouping of generic or interacting items forming a unified whole. Classification as a system is for accounting convenience and enables an efficient and methodical means to account for a grouping of items which are frequently changing as a result of additions and replacements. Classification as a system may be appropriate where specific item identity is difficult to ascertain. Financial Services will make all system determinations. When it is evident that multiple items are purchased on multiple requisitions, possibly on different dates, for the same system project, the capitalization decision shall be based on the total project cost.)

SUBJECT Capitalization of Expenditures
PAGE 2 of 2
RE-ISSUE DATE 11/30/93

Approved by *B.A. Smith*

(D) Retirement System Replacement

1. Be an integral part of an existing system, and
2. Be of permanent nature, and
3. Cost more than 50% of the existing retirement system. If the 50% test is met, it is assumed a new retirement system has been created. Retire 100% of the old system and recapitalize the salvageable portion along with the new replacement cost. (Replacement of an existing system costing 50% or less of the original system is to be charged to maintenance.)

(E) New Minor Property Item

1. Minor Property item not previously existing, and
2. Be of a permanent nature, and
3. Cost exceeds 25% of the retirement unit of which it will become a part or \$10,000, the smaller of the two. (Otherwise, the addition of minor property items is to be charged to operations.)

(F) Minor Property Item Replacement with Betterment

1. Be of a permanent nature, and
2. Result in a substantial betterment with the primary aim of making the property affected more useful, more efficient, more durable, or capable of greater capacity. Capitalize the cost in accordance with the NOTE 1, below.

(G) Computer Software and Software Upgrades

1. Capitalize any new software purchase of \$1,000 or more if used with a boiler or turbogenerator computer or \$500 or more if used for any other computer, as long as the new software has a useful life of more than one year.
2. Any software upgrade should be capitalized if the cost of the upgrade exceeds 25% of the software which it will become a part or \$10,000, the smaller of the two. The 25% must be \$1,000 or more if used with a boiler or turbogenerator computer or \$500 or more if used for any other computer. The software upgrade must have a life of more than one year.

NOTE 1:

In all cases above except (E), the amount capitalized is governed by standard accounting principles. For (E) above, the amount capitalized is equal to the difference between the cost of the new minor property item and the cost of replacement without betterment at today's prices. The remaining dollars are to be charged to maintenance.

NOTE 2:

A work order is required when constructing, fabricating, modifying, installing, or removing capital facilities or equipment. See Estimate Construction Work Order procedure number 011.210.08 for details.

REFERENCES:

Excerpts taken from REA Bulletin 181-1 (Page 101-13) and 181-2 (Page 1.)

2005 AMENDMENTS TO CONTRACTS

DATED AS OF APRIL 1, 2005

BY AND AMONG

CITY OF HENDERSON, KENTUCKY,

CITY OF HENDERSON UTILITY COMMISSION,

BIG RIVERS ELECTRIC CORPORATION,

WKE STATION TWO INC.,

AND

LG&E ENERGY MARKETING INC.

**2005 AMENDMENTS TO CONTRACTS AMONG
CITY OF HENDERSON, KENTUCKY,
CITY OF HENDERSON UTILITY COMMISSION,
BIG RIVERS ELECTRIC CORPORATION,
WKE STATION TWO INC. AND
LG&E ENERGY MARKETING INC.**

These 2005 AMENDMENTS are entered into as of April 1, 2005, (the "2005 Amendments to Contracts") by and among the City of Henderson, Kentucky, a municipal corporation and a city of the second class organized under the laws of the Commonwealth of Kentucky, of 222 First Street, Henderson Kentucky, 42420, City of Henderson Utility Commission, a public body politic and corporate, organized under Kentucky Revised Statutes, Section 96.530 and related statutes, of 100 Fifth Street, Henderson, Kentucky 42420 (said City and Commission being referred to collectively as "City"), Big Rivers Electric Corporation, a rural electric cooperative corporation organized under Chapter 279 of the Kentucky Revised Statutes, P.O. Box 24, 201 Third Street, Henderson, Kentucky 42420 ("Big Rivers"), WKE Station Two Inc., a Kentucky corporation of 145 North Main Street, Henderson, Kentucky 42420 ("WKE"), and LG&E Energy Marketing Inc., an Oklahoma corporation of 220 West Main Street, Louisville, Kentucky 40202 ("LEM") (collectively, the "Parties").

WITNESSETH

WHEREAS, (a) the City, Big Rivers, WKE (as assignee of Big Rivers) and LEM (as assignee of WKE) are parties to a Power Sales Contract, as amended (the "Power Sales Contract") (WKE and LEM being parties with joint rights, interests and obligations under the Power Sales Contract are referred to jointly herein as WKE/LEM), the City, Big Rivers and WKE (as assignee of Big Rivers) are parties to a Power Plant Construction and Operation Agreement, as amended (the "Construction and Operation Agreement") and the City, Big Rivers

and WKE (as assignee of Big Rivers) are parties to a Joint Facilities Agreement, as amended (the "Joint Facilities Agreement"), each dated as of August 1, 1970, (the "Power Sales Contract", the "Construction and Operation Agreement" and the "Joint Facilities Agreement" collectively referred to as the "Agreements"); (b) the Parties are also among the parties to the Station Two Agreement (as hereinafter defined); and (c) certain of the Parties are also parties to various other agreements relating to the City's Station Two Electric Generating Plant ("Station Two", as hereinafter defined) located at a site on the Green River in Henderson County, Kentucky;

WHEREAS, pursuant to the Station Two Agreement, Big Rivers assigned to WKE certain of its rights, title and interests under the Agreements and WKE assumed certain of the obligations of Big Rivers under the Agreements, and pursuant to an Assignment and Assumption Agreement and Bill of Sale (the "Assignment and Assumption Agreement"), dated as of July 14, 1998 (but effective upon the "Closing" on the "Effective Date", each as defined in the Station Two Agreement), WKE assigned and transferred to LEM and LEM accepted and assumed, the rights and obligations of WKE under the Power Sales Contract and certain of the rights and obligations of WKE under the Station Two Agreement;

WHEREAS, the Parties agreed that Station Two should be equipped with a selective catalytic reduction system by May, 2004 so as to comply with applicable provisions of the Federal Environmental Protection Agency's 1998 NOx SIP Call (63 Fed. Reg. 57356), which was promulgated pursuant to Section 110 of the Clean Air Act, 42 U.S.C. 7410, and implemented in Kentucky by Regulation 401 KAR 51:160 (such NOx SIP Call, as implemented in Kentucky and in effect on the date of these 2005 Amendments to Contracts, being herein referred to as the "Current NOx SIP Regulations");

WHEREAS, the City engaged the services of Burns & McDonnell Engineering Company ("Burns & McDonnell") of Kansas City, Missouri to provide consulting engineering services in connection with the selective catalytic reduction system, including assisting the City in the preparation of bidding specifications so as to facilitate the City's receipt of public bids for the design, acquisition, construction, installation, start-up and testing of the selective catalytic reduction system, and has engaged legal counsel and financial advisors to assist the City in obtaining financing for its share of the costs of design, acquisition, construction, installation, start-up and testing of such system;

WHEREAS, WKE and/or LEM intend to fund its share (determined as hereinafter provided) of the costs and expenses associated with the design, acquisition, construction, installation, start-up and testing of the selective catalytic reduction system;

WHEREAS, Burns & McDonnell determined that in order to meet the aforementioned Federal and Kentucky regulations for NOx removal at Unit 6 of the City's Station One Power Plant ("City's Station One Power Plant", as hereinafter defined) and Station Two without modifying Unit 6 of the City's Station One Power Plant and without purchasing NOx allowances or credits, the City would be required to install at Station Two a selective catalytic reduction system capable of removing 75% of the NOx emissions from the Station Two boilers;

WHEREAS, at the request of WKE and Big Rivers, the City has installed a selective catalytic reduction system at Station Two having 90% NOx removal capability (the "Station Two SCR System" as hereinafter defined), whereby WKE and Big Rivers can utilize the NOx removal capability of the Station Two SCR System in excess of that required for

compliance by Station Two and Unit 6 of the City's Station One Power Plant (subject to the limitations on the City's Station One Power Plant provided for herein) in order to meet WKE's and Big Rivers' NOx removal requirements for their other power plants, and WKE/LEM and Big Rivers are willing to pay for the incremental capital, operating and maintenance and renewal and replacement costs to be incurred so as to provide and operate and maintain the Station Two SCR System at a 90% removal efficiency rather than a 75% removal efficiency (in the case of WKE/LEM, until the expiration or termination of the Station Two Agreement), upon and subject to the terms and conditions set forth in these 2005 Amendments to Contracts and in the "Amendatory Station Two Agreement" as hereinafter defined;

WHEREAS, the Parties (other than Big Rivers), together with certain other affiliates of WKE, have entered into the Agreement for Interim Funding Station Two SCR System, dated May 7, 2002, as amended by the First Amendment to Agreement for Interim Funding Station Two SCR System dated as of April 1, 2005 (the "Interim Funding Agreement") in order to provide for the funding of SCR Capital Costs and certain operations and maintenance costs and expenses associated with the Station Two SCR System, in each case pending the completion, execution, delivery and effectiveness of these 2005 Amendments to Contracts and of the Amendatory Station Two Agreement; and

WHEREAS, the Parties hereto desire to amend the Power Sales Contract, the Construction and Operation Agreement and the Joint Facilities Agreement, as herein provided, in order to accommodate the design, acquisition, construction, installation, start-up, testing, use, operation, maintenance and funding of the Station Two SCR System, and in order to implement an equitable allocation of the Allotted Allowances in light of the parties' respective contributions toward the costs of the Station Two SCR System.

NOW, THEREFORE, in order to comply with the Current NOx SIP Regulations by providing for the funding, design, acquisition, construction, installation, operation and maintenance of the Station Two SCR System as a part of Station Two, and to provide for certain other matters related to Station Two, and in consideration of the mutual covenants herein contained, it is stipulated, covenanted and agreed by and among the Parties hereto that the Agreements shall be amended and supplemented as follows effective as and when expressly provided in Section 601 of these 2005 Amendments to Contracts (but not before).

I. CERTAIN DEFINED TERMS IN THE AGREEMENTS

Section 101 "Station Two" as defined in Section 2.2 of the Power Sales Contract and Section 2.2 of the Construction and Operation Agreement and as used in the Joint Facilities Agreement is redefined to read as follows:

"Station Two: City's 350-megawatt generating station (rated on the date of the 2005 Amendments to Contracts at 312 MW net send out capability), located at a site on the Green River in Henderson County, Kentucky, and, to the extent furnished and owned by City, all auxiliary facilities, joint use facilities and related facilities, renewals, replacements, additions, expansions and improvements thereto, including the Station Two FGD System added thereto and the Station Two SCR System, but excluding the City's Transmission and Transformation Facilities as herein defined, and excluding facilities furnished and owned by Big Rivers. The location of Station Two, including the Station Two SCR System, is

shown in Exhibit A1 to the Power Sales Contract and the Construction and Operation Agreement (as added by the 2005 Amendments to Contracts) attached hereto and reference is made to Exhibits 1 and 2 of the Cross-Grants of Rights of Access and Easements, dated July 20, 1993, by the City and Big Rivers for the location of the Station Two FGD System and the joint use and related facilities with respect to Station Two as owned by the City, and those furnished and owned by Big Rivers.

Section 102 The terms "Station Two Bonds" or "Bonds" as used in the Agreements and defined in Section 2.9 of the Power Sales Contract and Section 2.9 of the Construction and Operation Agreement are redefined to read as follows:

"Station Two Bonds" or "Bonds" shall mean bonds, if any, authorized and issued by the City subsequent to the date of the 2005 Amendments to Contracts, with the prior written approval of Big Rivers (and, during the term of the Station Two Agreement, of WKE and LEM), in order to finance any major repairs, renewals or replacements of Station Two or major additions or improvements thereto; provided, that the Station Two Bonds or Bonds shall not be deemed to include: (a) the City's Electric Light and Power Refunding Revenue Bonds, Station Two Series, Dated as of March 1, 1973 (which bonds have been paid, defeased or redeemed prior to the date hereof); or (b) any other bonds or other evidences of indebtedness issued by or for the City, or otherwise guaranteed or

secured by the City or its assets or properties, including its municipal electric system, for the purpose of financing or funding only the City's share or any portion thereof of any costs or expenses associated with the Station Two SCR System or Station Two.

Section 103 "Bond Ordinance" as defined in Section 2.8 of the Construction and Operation Agreement and Section 2.8 of the Power Sales Contract is redefined to read as follows:

"Bond Ordinance" shall mean any bond ordinance or any supplements or amendments to a bond ordinance, adopted by the City subsequent to the date of the 2005 Amendments to Contracts authorizing any Station Two Bonds, which ordinance and each such supplement and amendment shall have received the written approval of Big Rivers (and, if adopted during the term of the Station Two Agreement, WKE and LEM).

Section 104 Section 2 of the Power Sales Contract and Section 2 of the Construction and Operation Agreement are amended by adding thereto the following:

"2.12 "Actual Station Two Generation Share" shall mean, for a NOx Season (or a portion thereof), with respect to the City or Big Rivers (or WKE/LEM as assignee of Big Rivers), respectively, the net energy (MW hrs) actually generated by Station Two and taken by the City or Big Rivers (or WKE/LEM, as assignee of Big

Rivers), as the case may be, for such NOx Season (or portion thereof) divided by the Actual Net Station Two Generation for such NOx Season (or portion thereof).

2.13 "Actual Hours In NOx Season" shall mean, for a NOx Season (or a portion thereof), the product of the number of days in such NOx Season (or portion thereof) multiplied by 24.

2.14 "Actual Net Station Two Generation" shall mean, for a NOx Season (or a portion thereof), the total amount of net energy (MW hrs) actually generated by both generating units of Station Two during such NOx Season (or portion thereof).

"2.15 "Allocable SCR Costs" shall mean, (A) with respect to capacity charges for a Monthly Billing Period payable by Big Rivers (or by WKE/LEM as Big Rivers' assignee) pursuant to Section 6 of the Power Sales Contract: (i) the SCR Ammonia Costs for such Monthly Billing Period as allocated to Big Rivers (or WKE/LEM as Big Rivers' assignee) in accordance with Section 6.2 (a) of the Power Sales Contract, and (ii) the portion of the SCR Catalyst Acquisition Costs for such Monthly Billing Period as allocated to Big Rivers in accordance with Section 6.2(b) of the Power Sales Contract, or (B) with respect to the capacity charges for a Contract Year, the aggregate of the SCR Ammonia Costs for such Contract Year and the SCR Catalyst Acquisition Costs with

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respect to a Catalyst Layer acquired during such Contract Year.
Allocable SCR Costs shall not include any SCR Capital Costs.

2.16 "Allotted Allowances" shall mean, for a NOx Season, the NOx allowances and emission credits allotted to Station Two pursuant to the applicable Federal and Kentucky NOx Regulations for such NOx Season.

2.17 "Alternate Fuel" shall mean, with respect to a particular Catalyst Layer, fuel that (a) does not qualify as Base Coal, (b) is designated by a Party to be used in connection with such Catalyst Layer as provided in the contract with the vendor of such Catalyst Layer, and (c) is permitted to be used by that Party without rendering ineffective (in whole or in part) or materially adversely affecting the vendor's guarantee or warranty with respect to that Catalyst Layer set forth in such vendor contract.

2.18 "Alternate Fuel Differential Amount" shall mean, with respect to a particular Catalyst Layer, the amount of the differential with respect to the purchase price of such Catalyst Layer, as set forth in the successful bid by the vendor of such Catalyst Layer, attributable to any designation by Big Rivers (or WKE/LEM as Big Rivers' assignee) or the City of its use of Alternate Fuel with respect to such Catalyst Layer.

2.19 "Amendatory Station Two Agreement" shall mean the

Amendatory Agreement, dated as of April 1, 2005, among the City, Big Rivers, WKE, LEM, Western Kentucky Energy Corp. and WKE Corp., but only to the extent that agreement shall have become effective and enforceable in accordance with its terms.

2.20 "Average Station Two Capacity Share" shall mean, for a NOx Season, with respect to the City or Big Rivers (or WKE/LEM as assignee of Big Rivers), respectively, (i) in the event that the City's or Big Rivers' (or WKE's or LEM's, as assignee of Big Rivers), as the case may be, share of Total Capacity (determined as provided in Section 3 of the Power Sales Contract) changes during such NOx Season, the decimal share (rounded to 4 places) of Total Capacity obtained by dividing (A) the sum of (x) the product obtained by multiplying the number of MWs of the City's or Big Rivers' (or WKE's or LEM's, as assignee of Big Rivers), as the case may be, share of such Total Capacity by the number of days in the period of such NOx Season during which such share shall be in effect and (y) the product obtained by multiplying the number of MWs of the City's or Big Rivers' (or WKE's or LEM's, as assignee of Big Rivers), as the case may be, share of such Total Capacity in effect for the other period of such NOx Season by the number of days in such period, by (B) the product obtained by multiplying the number of MWs of the Total Capacity for such NOx Season by the number of days in such NOx Season; or (ii) in

the event that the City's or Big Rivers' (or WKE's or LEM's, as assignee of Big Rivers), as the case may be, share of Total Capacity (determined as provided in Section 3 of the Power Sales Contract) does not change during such NOx Season, the City's or Big Rivers' (or WKE's or LEM's, as assignee of Big Rivers), as the case may be, decimal share of such Total Capacity for such NOx Season.

2.21 "Base Coal" shall mean coal having specifications falling within the ranges set forth on Exhibit A2 attached hereto.

2.22 "Base NOx Removal" shall mean, for a NOx Season, a removal of 75% of the Station Two SCR Inlet NOx Tons during such NOx Season through the use of the Station Two SCR System.

2.23 "Big Rivers' Creditors' Subordination Agreement" shall mean the Agreement dated as of April 1, 2005, among Big Rivers and the United States of America, acting through the Administrator of the Rural Utilities Service, Ambac Assurance Corporation, the National Rural Utilities Cooperative Finance Corporation, Credit Suisse First Boston, acting by and through its New York Branch, US Bank National Association, as trustee under the Trust Indenture dated as of August 1, 2001, Ambac Credit Products, LLC, Bluegrass Leasing, Fleet Real Estate, Inc., AME Investments, LLC, CoBank, ACB, AME Asset Funding, LLC, AMBAC Credit

Products, LLC, the City of Henderson, Kentucky, the City of Henderson Utility Commission, Western Kentucky Energy Corp., WKE Station Two, Inc., LG&E Energy Marketing Inc., WKE Corp., and PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust, PBR-1 OP Statutory Trust, PBR-2 OP Statutory Trust, PBR-3 OP Statutory Trust, FBR-1 OP Statutory Trust and FBR-2 OP Statutory Trust, in each case, acting through State Street Bank and Trust Company, National Association as the same may be amended in accordance with its terms.

2.24 "Big Rivers' Easement" shall mean the Grant of Rights and of Easements, dated as of April 1, 2005, between and among Big Rivers, Western Kentucky Energy Corp. and the City as the same may be amended in accordance with its terms.

2.25 "Catalyst Failure" shall mean, with respect to a particular Catalyst Layer, the failure of such Catalyst Layer to meet the Guaranteed Life Cycle (as defined in Exhibit E to the Power Sales Contract as added by the 2005 Amendments to Contracts and attached hereto) thereof due to the use of fuel having characteristics not permitted to be used without rendering ineffective (in whole or in part) or materially adversely affecting the guarantee or warranty of the vendor of such Catalyst Layer.

2.26 "Catalyst Layer" shall mean the initial third layer of catalyst to be installed in the Station Two SCR System at a time subsequent to the effectiveness of all provisions of the 2005 Amendments to Contracts, and each replacement layer of catalyst to be installed in the Station Two SCR System.

2.27 "Catalyst Refund Payment" shall mean, with respect to a Party and a particular Catalyst Layer, the refund payment by such Party with respect to such Catalyst Layer provided for in Section IV of Exhibit E to the Power Sales Contract (as added by the 2005 Amendments to Contracts and attached hereto) and payable in accordance with Section 6.8 of the Power Sales Contract.

2.28 "City Actual Load Factor" shall mean, for a NOx Season, the net energy (in MWh) actually generated by Station Two and taken by the City for such NOx Season, divided by the product obtained by multiplying (i) the Actual Hours In NOx Season for such NOx Season by (ii) the product of the Total Capacity multiplied by the City's Average Station Two Capacity Share for such NOx Season.

2.29 "City Excess Allowances" shall mean, for any NOx Season with respect to which there shall be a City Reduction Generation Amount (it being understood that there shall be no City Excess Allowances in the event there is no City Reduction Generation Amount for the relevant NOx Season), the product obtained by

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multiplying the City Reduction Generation Amount for such NOx Season by a fraction (i) the numerator of which is the number of Station Two Allocated Allowances for such NOx Season that would have been required to comply with applicable Federal and Kentucky NOx Regulations if the Station Two Stack NOx Emissions for such NOx Season had been in an amount that would have resulted from the application of the SCR Design NOx Removal to the Station Two SCR Inlet NOx Tons for such NOx Season and (ii) the denominator of which is the net energy (MWh) actually generated by Station Two for such NOx Season.

Notwithstanding the forgoing, in the event of a complete outage of both generating units of Station Two throughout such NOx Season, the City's Excess Allowances for such NOx Season would equal the City's Average Station Two Capacity Share for such NOx Season of the lesser of (A) all Allotted Allowances for that NOx Season or (B) the number of Station Two Allocated Allowances for that NOx Season required so that 85% of the Station Two Stack NOx Emissions that would result by multiplying the Station Two Standard SCR Inlet NOx Tons by one (1) minus the SCR Design NOx Removal would comply with the applicable Federal and Kentucky NOx Regulations.

2.30 "City Reduction Generation Amount" shall mean (and shall only have relevance), for any NOx Season with respect to which

the City Actual Load Factor is less than the City Standard Load Factor for such NOx Season, an amount of Station Two generation (MW hrs) equal to (i) 85% of the maximum amount of generation (MW hrs) associated with the City's Average Station Two Capacity Share of the Total Capacity for such NOx Season multiplied by (ii) the decimal obtained by dividing the difference between the City Standard Load Factor for such NOx Season and the City Actual Load Factor for such NOx Season, by (y) the City Standard Load Factor for such NOx Season.

2.31 "City's Station One Power Plant" shall mean the City's Station One Electric Generating Plant located on a site on the Ohio River in Henderson, Kentucky, consisting of Unit 1 with a nameplate rating of 1,230 kW; Unit 2 with a nameplate rating of 1,230 kW; Unit 3 with a nameplate rating of 5,000 kW; Unit 4 with a nameplate rating of 5,000 kW; Unit 5 with a nameplate rating of 12,650 kW; and Unit 6 with a nameplate rating of 29,091 kW (and for purposes of the 2005 Amendments to Contracts, a rated net capacity (after station use) of 26 MW.

2.32 "City's Station One Rated Capacity" shall mean the rated net capacity (after station use) of Unit 6 of the City's Station One Power Plant as of the date of the 2005 Amendments to Contracts, which the Parties agree is 26MW, together with the energy associated with such rated capacity.

2.33 "City Standard Load Factor" shall mean, for any NOx Season, 85%.

2.34 "Construction and Operation Agreement" shall mean the Power Plant Construction and Operation Agreement, dated August 1, 1970, as amended, among the City, Big Rivers and WKE (as assignee of Big Rivers).

2.35 "Federal and Kentucky NOx Regulations" shall mean the Current NOx SIP Regulations, as the same may be hereafter approved, modified or supplemented by regulations or other action of the Federal Environmental Protection Agency, including, without limitation, any modification that results in a reduction or an increase in the NOx allowances or emission credits allotted to Station Two or Unit 6 of the City's Station One Power Plant, or otherwise amended, modified or supplemented, and shall include any laws, rules or regulations enacted, issued or adopted in lieu of any of the foregoing, but only to the extent they regulate or restrict NOx emissions.

2.36 "Guarantor's Consent and Acknowledgement" shall mean the Consent and Acknowledgement dated as of April 1, 2005, by LG&E Energy LLC (successor by merger with LG&E Energy Corp.), as Guarantor under the Guarantee Agreement [Station Two Obligations], dated July 15, 1998, by and among LG&E

Energy LLC., the City of Henderson and the City of Henderson Utility Commission.

2.37 "Index Rate" shall mean 5%.

2.38 "NOx Season" shall mean that period during each year that is defined as the "NOx Season" for such year under applicable Federal and Kentucky NOx Regulations and shall be deemed to include any applicable portion of a NOx Season. Reference to a NOx Season for a Contract Year shall mean the period consisting of those months of the Contract Year included within such NOx Season, and in the event that a Contract Year includes portions of two separate NOx Seasons, shall mean the periods that consist of those months of the Contract Year within each such portion of each NOx Season within such Contract Year.

2.39 "Outstanding" as used with respect to any Station Two Bonds, shall have the same meaning as set forth for such term in the Bond Ordinance authorizing such Station Two Bonds.

2.40 "Reagents" shall mean (i) the lime used in operation of the Station Two Flue Gas Desulfurization System and (ii) such other minerals, materials, supplies or substances for Station Two that the parties to the Power Sales Contract may determine to constitute a "Reagent", such determination to be evidenced by a written instrument which shall set forth the basis on which Big Rivers and

the City (or WKE/LEM as applicable) shall each supply such Reagent.

2.41 "SCR Ammonia Costs" shall mean, (A) with respect to capacity charges for a Monthly Billing Period payable by Big Rivers (or WKE/LEM as Big Rivers' assignee) pursuant to Section 6 of the Power Sales Contract, the costs of the ammonia used in the operation of the Station Two SCR System as allocated to Big Rivers (or WKE/LEM as Big Rivers' assignee) in accordance with Section 6.2(a) of the Power Sales Contract for such Monthly Billing Period (other than costs for ammonia for the initial start-up and testing of the Station Two SCR System, which are treated as SCR Capital Costs), including, without limitation, storage and handling costs allocable to such ammonia, or (B) with respect to capacity charges for a Contract Year, the aggregate of such costs of the ammonia used in the operation of the Station Two SCR System during such Contract Year.

2.42 "SCR Amortized Capital Cost per MW" shall mean, for the initial Contract Year beginning June 1, 2004 and for each of the next nineteen (19) Contract Years following such initial Contract Year, (i) an amount equal to the annual debt service that would accrue during such Contract Year with respect to a bond issue in a principal amount equal to the total amount of SCR Capital Costs (exclusive of the SCR Capital Overcontrol Amount and the amount

of \$123,584 attributable to the use of Alternate Fuel with respect to the two initial catalyst layers of the Station Two SCR System by WKE/LEM or Big Rivers) bearing interest at a rate equal to the Index Rate, payable over 20 years with level annual debt service, divided by (ii) the number of MWs of the Total Capacity of Station Two as determined for such Contract Year pursuant to Section 3.6 of the Power Sales Contract.

2.43 "SCR Capital Costs" shall mean all capitalized costs and expenses associated with the original design, acquisition, construction, installation, start-up and testing of the Station Two SCR System (exclusive of the SCR Capital Overcontrol Amount and the amount of \$123,584 attributable to the use of Alternate Fuel with respect to the two initial catalyst layers of the Station Two SCR System by WKE/LEM or Big Rivers), including applicable out-of-pocket costs of the Parties as provided in Section 4.20(e) of the Construction and Operation Agreement, and including the costs thereof payable pursuant to the Interim Funding Agreement, whether funded by the City, Big Rivers or WKE, and including the costs of the catalyst initially installed with respect to the Station Two SCR System and the ammonia supplies required for initial start-up and testing of the Station Two SCR System.

2.44 "SCR Capital Cost Share" shall mean, in the case of Big Rivers (or WKE as Big Rivers' assignee) 0.6955 and, in the case of

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the City, 0.3045.

2.45 "SCR Capital Overcontrol Amount" shall mean the difference (which the Parties agree is \$778,435), based on the public bids received by the City with respect to the SCR Contract for the design, acquisition, construction, installation, start-up and testing of the Station Two SCR System, between (i) the amount of the lowest bid acceptable to the Parties for the components of a selective catalytic reduction system of Station Two capable of removing 75% of the Station Two NO_x emissions assuming the use of Base Coal, and (ii) the amount of the bid in fact accepted by the City with the consent of the other Parties for the components of the Station Two SCR System capable of removing 90% of the Station Two NO_x emissions assuming the use of Base Coal, as such difference (that is, the \$778,435) shall be adjusted to give effect to any change orders approved by the Parties and provided to the contractor under the SCR Contract, assuming that the amount of each such change order shall be allocated to the 75% NO_x removal capability system and the Station Two SCR System, respectively, in the same proportion as (x) the amount of such bid acceptable with respect to the 75% NO_x removal system bears to (y) the amount of such bid in fact accepted with respect to the Station Two SCR System (it being agreed by the Parties that in the case of each change order such adjustment (whether an increase or

a decrease) to the "SCR Capital Overcontrol Amount" shall be equal to 2.22% of the increase or decrease in the contract price given effect by such change order).

2.46 "SCR Catalyst Acquisition Costs" shall mean, with respect to a Catalyst Layer, (A) with respect to capacity charges for any Monthly Billing Period payable by Big Rivers (or WKE/LEM as Big Rivers' assignee) pursuant to Section 6 of the Power Sales Contract, the portion of the purchase price for such Catalyst Layer, the relevant Alternate Fuel Differential Amount (if any) with respect to that Catalyst Layer, and the portion of the cost of materials and labor associated with the installation of such Catalyst Layer and the costs of removal and disposal of the catalyst layer being replaced by such Catalyst Layer (if any), provided that such removal and disposal costs shall be offset as provided in Section 6.9 of the Power Sales Contract (as added by the 2005 Amendments to Contracts) by any amount received in connection with the sale or disposal of such catalyst layer being replaced, in each case as allocated for such Monthly Billing Period to Big Rivers (or WKE/LEM as assignee of Big Rivers) pursuant to Section 6.2(b) of the Power Sales Contract, or (B) with respect to capacity charges for a Contract Year, the aggregate of the purchase price for such Catalyst Layer, any Alternate Fuel Differential Amount (regardless of the Party responsible for the

same) and the other costs of such Catalyst Layer, including the costs of removal and disposal of the catalyst layer being replaced, as incurred during such Contract Year, provided that such removal and disposal costs shall be offset as provided in Section 6.9 of the Power Sales Contract (as added by the 2005 Amendments to Contracts) by any amount received in connection with the sale or disposal of such catalyst layer being replaced. SCR Catalyst Acquisition Costs shall not include costs of operation or maintenance of an installed Catalyst Layer or, except as otherwise provided in Section IV(D) of Exhibit E to the Power Sales Contract (as added by the 2005 Amendments to Contracts and attached hereto), costs of a Catalyst Dispute Resolution Procedure (as defined in the aforesaid Exhibit E), all of which costs shall constitute costs associated with the operation and maintenance of Station Two under Section 6.3 of the Power Sales Contract. SCR Catalyst Acquisition Costs shall not include any SCR Capital Costs.

2.47 "SCR Contract" shall mean the (i) Contract SCR-01 SCR Equipment and Erection, dated as of July 9, 2002, entered into by the City with the successful bidder, as the same may be amended with the prior written consent of Big Rivers and, during the term of the Station Two Agreement, WKE, and (ii) the Contract SCR-02 Foundation, dated October 7, 2002, entered into by the City and

the successful bidder, as the same may be amended with the prior written consent of Big Rivers and, during the term of the Station Two Agreement, WKE.

2.48 "SCR Design NOx Removal" shall mean .90.

2.49 "Station One Unit 6 Allotted Allowance" shall mean, for a NOx Season, the NOx allowances and emissions credits allotted to Unit 6 of the City's Station One Power Plant pursuant to the applicable Federal and Kentucky NOx Regulations for such NOx Season.

2.50 "Station One Unit 6 Stack NOx Emissions" shall mean, for a NOx Season, the amount of NOx emissions from Unit 6 of the City's Station One Power Plant corresponding with the actual generation of energy by Unit 6 during such NOx Season (but in no event greater than the NOx emissions associated with the use and operation of Unit 6 of the City's Station One Power Plant at the City's Station One Power Plant Rated Capacity plus three (3) MWs of station use), as measured by the Station One Unit 6 Certified Continuous Emissions Monitoring System.

2.51 "Station Two Agreement" shall mean the Agreement and Amendments to Agreements, dated as of July 15, 1998, among the City, Big Rivers, WKE, LEM, Western Kentucky Energy Corp. and WKE Corp., as heretofore amended and as amended by the

Amendatory Station Two Agreement, and as may hereafter be amended in accordance with its terms,

2.52 "Station Two Allocated Allowances" shall mean, for a NOx Season, the number of Allotted Allowances required for the Station Two Stack NOx Emissions during such NOx Season to be in compliance with the applicable Federal and Kentucky NOx Regulations.

2.53 "Station Two SCR Inlet NOx Tons" shall mean, for a NOx Season, the Station Two SCR inlet NOx tons for such NOx Season as measured by the inlet NOx duct monitors or calculated by mutual agreement in the event the inlet NOx duct monitors are not monitoring or functioning properly or sufficiently to calculate to Station Two SCR Inlet NOx Tons.

2.54 "Station Two SCR System" shall mean the selective catalytic reduction system purchased by the City and constructed and installed at, and operated solely in connection with, Station Two, designed to provide at least a 90% continuous NOx removal capability during normal uses, and meeting design specifications, cost criteria and other criteria that are reasonably satisfactory to the Parties; which system shall include at the time of its initial commercial operation, among other related or supporting components and facilities, the equipment and components identified on Exhibit B to the Power Sales Contract and the Construction and Operation Agreement (as added by the 2005 Amendments to Contracts) attached hereto and made a part hereof.

2.55 "Station Two Stack NOx Emissions" shall mean, for a NOx Season, the amount of the Station Two NOx emissions as measured by the Station Two Certified Continuous Emissions Monitoring Systems pursuant to the applicable Federal and Kentucky NOx Regulations.

2.56 "Station Two Standard SCR Inlet NOx Tons" shall mean, for a NOx Season, 2,800 NOx tons.

2.57 "Total Capacity" shall mean, with respect to Station Two, the Total Capacity as defined in Section 3.6 of the Power Sales Contract.

II. CONSTRUCTION AND OPERATION AGREEMENT

Section 201 Section 3 of the Construction and Operation Agreement is amended by adding thereto the following:

"3.3 Big Rivers will transfer and convey to the City easements on land lying adjacent to the Station Two plant site in order to permit the construction, operation and maintenance thereon of certain portions of the Station Two SCR System, including the SCR reactors and the ammonia storage facility, and the auxiliary building, together with any additional rights and easements to the City required for the construction, operation, maintenance and removal of auxiliary facilities required in connection therewith and for access thereto, all in accordance with the Big Rivers'

Easement.

Section 202 Section 4 of the Construction and Operation Agreement is amended by adding thereto the following:

“4.12 The City, with the approval of Big Rivers (and WKE, as assignee of Big Rivers), awarded the SCR Contract and such other contracts with the selected contractors or vendors of the Station Two SCR System as are necessary for the design, acquisition, construction, installation, startup and testing of the Station Two SCR System, and will diligently pursue under the terms of such contracts such design, acquisition, construction, installation, startup and testing of the Station Two SCR System consistent with prudent utility practices and will perform and discharge its obligations under such contracts. Big Rivers (and WKE, as assignee of Big Rivers) and the City agree to coordinate their respective use, operation and maintenance of Station Two so as to reasonably facilitate any remaining design, acquisition, construction, installation, start-up or testing of the Station Two SCR System that may be required following the effectiveness of all provisions of the 2005 Amendments to Contracts. The City agrees to use its commercially reasonable efforts to cause its vendors and contractors to undertake such work in a manner consistent with the contracts therefor that minimizes any adverse effects on the use, operation and maintenance of Station Two. SCR Capital Costs

shall be funded by the City and WKE (and Big Rivers in the event the Station Two Agreement is terminated, subject to the limitations set forth in the Agreements), in the manner set forth in Section 4.20 of the Construction and Operation Agreement. The City shall use its commercially reasonable efforts to obtain and maintain the necessary permits and other governmental and third-party approvals for the design, acquisition, construction, installation, start-up, testing, use, operation and maintenance of the Station Two SCR System, and Big Rivers (and WKE, as assignee of Big Rivers) shall seek any such additional permits and approvals as are required of it. The Parties hereto agree that they shall use their commercially reasonable efforts to operate and maintain Station Two so as to comply with the vendor's recommendations provided in the SCR Contract as to the Station Two SCR System, or as provided in the successful bid for the design, acquisition, construction, installation, start-up and testing of the Station Two SCR System, in either case with respect to meeting its performance guarantees and warranties, except to the extent emergency conditions exist which require the operation or maintenance of Station Two in a contrary manner. WKE will obtain and maintain adequate builder's risk insurance, boiler and machinery and other insurance required to be maintained by the City under the SCR Contract, and the City, Big Rivers and WKE shall be named as

additional insureds or loss payees (as their interest may appear) as provided in the SCR Contract covering the complete construction and installation of the Station Two SCR System. Any additional cost of such insurance shall be included as part of SCR Capital Costs. The City agrees to afford Big Rivers and WKE reasonable access to all plans, specifications and contracts for and to furnish copies of any required or permitted notices to or from any contractor or vendor relating to the design, construction, acquisition, installation, start-up, testing, operation and maintenance of the Station Two SCR System. The City shall obtain the prior written approval of Big Rivers and WKE (which approval shall not be unreasonably withheld, conditioned or delayed) regarding any material changes to such plans, specifications or contracts and for the approval or acceptance by the City pursuant to such contracts of the completion or commercial operation of any material component or aspect of the Station Two SCR System, and shall generally consult with Big Rivers and WKE and allow them to reasonably participate in all meetings, inspections, tests and audits with such contractors and vendors with respect to the design, construction, acquisition, installation, start-up and testing of the Station Two SCR System. The City shall also obtain the written approval of WKE and Big Rivers (such approval not to be unreasonably withheld,

conditioned or delayed) prior to any exercise by the City of any right that it may have to terminate or suspend any contract with any such vendor or contractor relative to the Station Two SCR System or to undertake to correct or repair any defective or non-conforming work or components thereof that may have been undertaken or performed by any vendor or contractor or to complete any uncompleted work by such vendor or contractor with respect to the Station Two SCR System.

4.13 The City has employed the services of Burns & McDonnell to provide consulting services during the design, acquisition, construction, installation, start-up and testing of the Station Two SCR System. The City agrees to promptly provide to Big Rivers and WKE copies of all reports, analyses and other information that may be generated or provided by Burns & McDonnell to the City in connection with their consulting services with respect to the Station Two SCR System (including, without limitation, those generated or provided prior to the effective date of all provisions of the 2005 Amendments to Contracts) and agrees to cause such consultants to afford Big Rivers and WKE reasonable access to their relevant representatives for the purpose of obtaining follow-up or additional information regarding their services, the results thereof and the Station Two SCR System generally.

4.14. SCR Ammonia Costs and SCR Catalyst Acquisition Costs

will be recorded by Big Rivers (or WKE as assignee of Big Rivers) so as to identify those Costs on a Contract Year and a month by month basis, separate and apart from the other costs and expenses incurred in the operation and maintenance of Station Two.

4.15 The City, WKE and Big Rivers have used their respective commercially reasonable efforts, consistent with their respective obligations under the 2005 Amendments to Contracts, so that the design, acquisition, construction, installation, start-up and testing of the Station Two SCR System met the compliance dates with respect to NOx emissions required by the Federal and Kentucky NOx Regulations applicable thereto, and the reasonable costs of such actions (except as otherwise provided in Section 4.20(e) below) shall constitute SCR Capital Costs.

4.16 [Reserved]

4.17 The Parties agree that all Allotted Allowances for a NOx Season (as prorated for any applicable portion of a NOx Season) shall be allocated and applied in order of priority as follows (absent the written agreement of the City, WKE, LEM and Big Rivers to the contrary), and no Party shall be entitled to use (or claim any right to use) such Allotted Allowances in a manner contrary to such allocation and application nor shall any Party cause or instruct the Station Two Designated Representative to use

such Allotted Allowances in a manner contrary to such allocation and application:

(a) Such Allotted Allowances shall first be allocated for the benefit of the City, WKE and, following the expiration or termination of the Station Two Agreement, Big Rivers and applied to Station Two Stack NOx Emissions for such NOx Season in an amount equal to the Station Two Allocated Allowances for such NOx Season.

(b) Such Allotted Allowances shall next be allocated, but only to the extent of the amount remaining after the allocation thereof in the amounts provided pursuant to subsection (a) above, to and become the property of the City in an amount equal to the City Excess Allowances, if any, for such NOx Season. The City shall be entitled to use, apply, allocate or dispose of the City Excess Allowances allocated pursuant to this subsection (b) in any manner and for any purpose deemed appropriate by it (and permissible under applicable laws, rules and regulations), without accounting for the same to any other Party.

(c) Such Allotted Allowances shall next be allocated, but only to the extent of the amount remaining after the allocation thereof in the amounts provided pursuant to subsection (a) above and in the amounts, if any, provided pursuant to subsection (b)

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above, and applied to the Station One Unit 6 Stack NOx Emissions so that, after the application by the City to the Station One Unit 6 Stack NOx Emissions of an amount of NOx allowances or emission credits (from whatever source, but excluding Allotted Allowances other than City Excess Allowances) equal to the Station One Unit 6 Allotted Allowances for such NOx Season, the Station One Unit 6 Stack NOx Emissions for such NOx Season will be in compliance with the applicable Federal and Kentucky NOx Regulations (it being understood that for the purpose of determining the Allotted Allowances (if any) to be allocated pursuant to this subsection (c), an amount of NOx allowances and emissions credits (from whatever source, but excluding Allotted Allowances other than City Excess Allowances) equal to the Station One Unit 6 Allotted Allowances for that NOx Season shall be deemed to have been first applied to the Station One Unit 6 Stack NOx Emissions, whether or not the Station One Unit 6 Allotted Allowances or any other NOx allowances and emissions credits are in fact applied to the Station One Unit 6 Stack NOx Emissions); provided that the Allotted Allowances allocated pursuant to this subsection (c) shall not exceed 40 allowances or emissions credits (it being understood and agreed by the Parties that the portion of such 40 allowances or emissions credits not so required for the compliance of the Station One Unit 6 Stack NOx

Emissions for such NOx Season, after the application of an amount of NOx allowances or emissions credits equal to the Station One Unit 6 Allotted Allowances for such NOx Season, shall be available to WKE or Big Rivers (as applicable) pursuant to Subsection (d) below).

(d) Such Allotted Allowances shall next be allocated, but only to the extent of the amount remaining after allocation thereof in the amounts provided pursuant to subsection (a) above, and in the amounts, if any, provided pursuant to subsections (b) and (c) above, to and become property of WKE and, following the term of the Station Two Agreement (and as prorated for any applicable portion of a NOx Season), shall be allocated to and become the property of Big Rivers. WKE or Big Rivers, as applicable, shall be entitled to use, apply, allocate or dispose of such Allotted Allowances allocated as provided in this subsection (d) in any manner or for any purpose deemed appropriate by it (and permissible under applicable laws, rules or regulations), without accounting for the same to any other Party, including without limitation, using or applying the same in connection with or in support of the use or operation of any other power generation facilities that are owned or operated by WKE or Big Rivers, as applicable, except as otherwise provided in the Amendatory Station Two Agreement. The Parties acknowledge that WKE's

right to receive or utilize such Allotted Allowances for NOx Seasons (or portions thereof) following the term of the Station Two Agreement shall cease upon the expiration or termination of the Station Two Agreement, and that Big Rivers' right to receive and utilize the same shall thereafter continue throughout the term of the Construction and Operation Agreement.

(e) Exhibit C to the Construction and Operation Agreement (as added by the 2005 Amendments to Contracts) attached hereto sets forth an example of the calculations pertaining to the allocation and application of Allotted Allowances for an assumed year in accordance with subsections (a), (b), (c) and (d) above.

(f) It is understood that in the event Big Rivers (or WKE or LEM, as assignee of Big Rivers) exercises its right under Section 3.8 of the Power Sales Contract to purchase Excess Henderson Energy or energy associated with Excess Henderson Capacity during any NOx Season, Big Rivers (or WKE or LEM, as assignee of Big Rivers) shall furnish from its own sources (which may include its Allotted Allowances allocated pursuant to subsection (d) above) the emission allowances or credits required so that when applied to the Station Two Stack NOx Emissions resulting from the generation of such Excess Henderson Energy or energy associated with such Excess Henderson Capacity, such Station

Two Stack NOx Emissions comply with the applicable Federal and Kentucky NOx Regulations. It is further understood that in the event the Allotted Allowances for a NOx Season, when first allocated to the Station Two Stack NOx Emissions for such NOx Season as contemplated above, are not sufficient to cause all such Station Two Stack NOx Emissions to be in compliance with the applicable Federal and Kentucky NOx Regulations, the City and Big Rivers (or WKE/LEM, as assignee of Big Rivers) shall be responsible for furnishing, in proportion to their respective Actual Station Two Generation Shares of the Actual Station Two Generation for that NOx Season, the additional NOx emissions allowances or credits required so that their remaining Station Two Stack NOx Emissions are in compliance with applicable Federal and Kentucky NOx Regulations.

(g) Big Rivers, the City and WKE agree to cooperate with one another and to use their respective commercially reasonable efforts (in the case of WKE, during the term of the Station Two Agreement only) to effect and implement the allocations contemplated above, and to otherwise carry out the intents and purposes of this Section 4.17, including without limitation, by instructing the Station Two Designated Representative to hold, allocate and/or use all Allotted Allowances in a manner consistent with the foregoing. To the extent required under the

circumstances, a Party shall execute and deliver to the other relevant Party one or more documents of title reasonably required to reflect that Party's ownership of the relevant Allotted Allowances as contemplated above, upon the written request of that Party. To the extent the City acquires title to or control over any Allotted Allowances for a NOx Season in excess of those allocated as contemplated in subsections (a), (b) and (c) above, it shall assign and transfer (or direct the Station Two Designated Representative to assign and transfer) such title to or control over the same to WKE or, for any NOx Season (or portion thereof) following the expiration or termination of the Station Two Agreement, to Big Rivers, without any additional consideration and free and clear of all liens and encumbrances of any nature. The City shall not attempt to make any forward sale or other conveyance of any Allotted Allowances (other than any City Excess Allowances allocated to it pursuant to subsection (b) above), it being understood that all such Allotted Allowances shall be used by the City solely in connection with Station Two NOx Stack Emissions and the Station One Unit 6 Stack NOx Emissions as contemplated in (a), (b) or (c), as applicable, above or shall be allocated to WKE or Big Rivers as contemplated in subsection (d) above.

(h) The City agrees to maintain complete and accurate

records regarding the allotment under the Federal and Kentucky NOx Regulations of NOx allowances and emissions credits to the City's Station One Power Plant, the use of any Allotted Allowances for the City's Station One Power Plant as provided in subsection (c) of this Section 4.17, and the City Excess Allowances, if any, as allocated pursuant to subsection (b) of this Section 4.17. The City agrees to give WKE, Big Rivers and their respective representatives reasonable access from time to time to all such records and to furnish the following information for each NOx Season to WKE and Big Rivers, as applicable: (i) on or prior to March 1 of each year following each NOx Season, a copy of the annual report made by the City's Station One Power Plant Designated Representative to environmental regulatory authorities regarding the receipt and disposition of NOx allowances or emissions credits pertaining to Unit 6 of the City's Station One Power Plant for such prior NOx Season; and (ii) on or prior to January 31 of each year following each NOx Season, the following information: (x) the number of the NOx allowances or emissions credits allotted to Unit 6 of the City's Station One Power Plant for such NOx Season under applicable Federal and Kentucky NOx Regulations, (y) the energy (MWh) generated (including energy for station use) by Unit 6 of the City's Station One Power Plant during such NOx Season and (z) the total Station One Unit 6 Stack

NOx Emissions during such NOx Season. The City further agrees to furnish WKE and Big Rivers, as applicable, copies of any such quarterly reports required to be filed by the City's Station One Power Plant Designated Representative with environmental regulatory authorities, as well as monthly reports tracking the NOx allowance and emissions credit consumption of Unit 6 of the City's Station One Power Plant. The City also agrees to cooperate and use its best commercial efforts to provide to WKE and Big Rivers, as applicable, and the Station Two Designated Representative, as soon as practicable but in any event in a timely manner, any information set forth in the second sentence of this subsection that is required for the Station Two Designated Representative to prepare and file the annual report with environmental regulatory authorities regarding the receipt and disposition of Allotted Allowances.

(i) Big Rivers and, during the term of the Station Two Agreement, WKE agree to maintain complete and accurate records regarding Allotted Allowances and the allocation and application thereof as provided in subsections (a), (b), (c) and (d) of this Section 4.17, and agree to give the City and its respective representatives reasonable access from time to time to all such records. Big Rivers and, during the term of the Station Two Agreement, WKE further agree to direct the Station Two

Designated Representative to furnish to the City on or prior to March 1 of each year following each NOx Season a copy of the annual report made by the Station Two Designated Representative to environmental regulatory authorities regarding receipt and disposition of Allotted Allowances for such prior NOx Season. Big Rivers and, during the term of the Station Two Agreement, WKE will direct the Station Two Designated Representative to cause such report to include information that any Party may reasonably request in writing (and with reasonable advance notice) and as shall be permissible while maintaining the reports in compliance with applicable Federal and Kentucky NOx Regulations, including Allotted Allowances balances on hand at the beginning and at the end of such NOx Season and the summary of receipts and dispositions of Allotted Allowances during such NOx Season. WKE and Big Rivers, as applicable, further agree to direct the Station Two Designated Representative to furnish to each of the other Parties copies of any such quarterly reports to be filed by the Station Two Designated Representative with environmental regulatory authorities, as well as monthly reports tracking the Allotted Allowance consumption. In addition, WKE and Big Rivers, as applicable, agree to cooperate and use their respective best commercial efforts to provide to the City and the Designated Representative for City's Station One Power Plant, as

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soon as practicable but in any event in a timely manner, any information relating to Station Two operation or Allotted Allowances required for the Designated Representative for City's Station One Power Plant to prepare and file the annual report with environmental regulatory authorities regarding the receipt and disposition of NOx allowances and emissions credits with respect to City's Station One Power Plant.

(j) For purposes of any calculation of the number of Allotted Allowances allocated or applied pursuant to this Section 4.17, the number of Allotted Allowances resulting from such calculation shall be rounded, if necessary, to the nearest whole number (e.g., 33.67 being rounded up to 34 and 33.34 being rounded down to 33) with one half of an Allotted Allowance being rounded up.

4.18 The reasonable costs incurred by the Parties in connection with obtaining all governmental regulatory approvals and any creditors' consents and approvals required for the Parties' respective execution of or performance of the 2005 Amendments to Contracts, the Amendatory Station Two Agreement, the Guarantor's Consent and Acknowledgement, the Big Rivers' Creditors' Subordination Agreement and the Big Rivers' Easement shall constitute SCR Capital Costs reimbursable as provided in Section 4.20(e).

4.19 The Parties acknowledge that the City, on the one hand, and each of WKE, LEM and Big Rivers, on the other hand, have a vested interest in ensuring that the design, acquisition, construction, installation, start-up and testing of the Station Two SCR System meets certain schedules and that the Station Two SCR System performs to stated NOx removal capabilities, all as warranted or guaranteed by the relevant bidders, vendors or contractors thereof (or as otherwise contemplated in the contract(s) with such bidders, vendors or contractors), and that such Parties may be damaged by reason of a failure by the Station Two SCR System to meet those schedules or warranted or guaranteed performance capabilities. In light of those mutual interests the parties agree that:

- (1) The City shall diligently pursue (with counsel reasonably satisfactory to the Parties) and on behalf of the City, WKE, LEM and Big Rivers as their respective interests may appear, on a best commercial efforts basis, (i) any and all contractual rights and remedies that it may have against any bidder, vendor or contractor with respect to the Station Two SCR System or any component(s) thereof, or on account of any failure of or by that system to meet any of the schedules, performance specifications, criteria or

capabilities warranted or guaranteed by such bidder, vendor or contractor, or otherwise on account of any misrepresentation, breach of warranty or non-fulfillment of any covenant or agreement on the part of that bidder, vendor or contractor in any manner relating to the Station Two SCR System (including without limitation, the pursuit of specific performance and any liquidated damages or other relief available as a result of, or arising by reason of, any such failure, misrepresentation, breach or non-fulfillment), and (ii) any and all contractual rights and remedies that it may have against any provider of a surety, performance or other bond with respect to the Station Two SCR System on behalf of any such bidder, vendor or contractor;

- (2) The City shall afford WKE, LEM and Big Rivers a reasonable opportunity to participate in the City's efforts to pursue its and their respective rights and remedies as contemplated in subsection (1) above, including the right to promptly receive copies of all pleadings and correspondence with the relevant bidder, vendor or contractor, or provider of a surety, performance or other bond, to attend all hearings and settlement discussions with that bidder, vendor or

contractor (or its counsel), or provider of a surety, performance or other bond (or any counsel thereof), and to approve any settlement of the City's claims against that bidder, vendor or contractor, or provider of a surety, performance or other bond (which approval shall not be unreasonably withheld, conditioned or delayed by WKE, LEM or Big Rivers);

- (3) The reasonable costs and expenses incurred by the City, WKE, LEM and Big Rivers in connection with the foregoing efforts ("Collection Costs") shall initially be allocated between and promptly funded (or, as applicable, reimbursed) by the City and WKE (or, in the event the Station Two Agreement shall have expired or been terminated, by the City and Big Rivers) on a 50%/50% basis, with 20% of any amounts so allocated to and paid or reimbursed by WKE being promptly thereafter reimbursed by Big Rivers to WKE upon its written request. To the extent any damages are recovered from the relevant bidder, vendor, contractor or provider of a surety, performance or other bond, the amounts so recovered shall first be used to proportionately reimburse the City, WKE and Big Rivers for the portions of the Collection Costs so

funded, paid or reimbursed by them, before such amounts are allocated between or among the Parties as contemplated in paragraphs (4), (5) and (6) below;

- (4) In the case of the proceeds of liquidated damages (net of the damages used for the recovery of the Parties' Collection Costs as contemplated in paragraph (3)) payable as a result of a failure of the bidder, vendor or contractor to meet its guaranties or warranties as to NOx removal or its schedules with respect to completion or commercial operation after testing of the Station Two SCR System or a component thereof (such failure being in this paragraph (4) referred to as the "Vendor Failure"), with respect to a particular day, such proceeds, after reimbursement of the reasonable costs and expenses of the Parties incurred in connection with submitting and enforcing a claim or the recovery of damages therefor, as the same shall be reallocated as provided in subsection (3) above, shall be applied as follows:

- (i) In the case of liquidated damages payable due to a Vendor Failure consisting of a failure to meet its guaranties or warranties as to the NOx removal capability of the Station

Two SCR System or a component thereof, including a failure of the Station Two SCR System or a component thereof to meet such guaranties or warranties by a scheduled date, whether or not such Vendor Failure occurs or the liquidated damages are payable during a NOx Season, the proceeds of such liquidated damages with respect to such particular day shall be paid and allocated between the City and WKE/LEM as follows:

- (A) if the percentage of NOx removal capability of the Station Two SCR System resulting from or in light of such Vendor Failure equals or exceeds the Base NOx Removal, all such proceeds of liquidated damages with respect to such day shall be paid by the City to WKE/LEM; and
- (B) if the percentage of NOx removal capability of the Station Two SCR System resulting from or in light of such Vendor Failure is less than the Base NOx Removal, there shall be allocated to the City from such proceeds of liquidated damages an amount determined in accordance with the following formula:

$$X = .3045 \times \left[1 - \frac{Y}{Y + (NR \times Z)} \right] \times LDP$$

where:

X = amount to be allocated to the City;

NR = a fraction the numerator of which is the difference between the Base NOx Removal and the actual percentage of NOx removal capability of the Station Two SCR System (or a component thereof) resulting from such Vendor Failure and the denominator of which is the Base NOx Removal;

Y = the SCR Capital Overcontrol Amount; and

LDP = the amount of the proceeds of liquidated damages with respect to such particular day; and

Z = the final contract price for the Station Two SCR System as determined in accordance with the SCR Contract and any settlement agreements or the like that may be entered into by the City with the successful bidder (with the prior written consent of Big Rivers and, during the term of the Station Two Agreement, WKE);

and the balance of such proceeds of liquidated damages shall be paid by the City to WKE/LEM.

(ii) In the case of liquidated damages payable due to a Vendor Failure to meet a scheduled date for the tie-in of duct work to either of the Station Two generating units, whether or not such Vendor Failure shall occur or such liquidated damages shall be payable during a NOx Season, the proceeds of such liquidated damages with respect to such particular day shall be paid and allocated between the City and WKE/LEM as follows:

(A) if the City shall have available to it for such day the full amount of its share of the Total Capacity of Station Two as allocated pursuant to Section 3 of the Power Sales Contract and due to such Vendor Failure WKE/LEM shall not have available to it the full amount of its surplus capacity from Station Two as allocated pursuant to Section 3 of the Power Sales Contract, the proceeds of such liquidated damages with respect to such particular day shall be paid by the City to WKE/LEM,

(B) if the City shall not have available to it for such day the full amount of its share of the Total Capacity of

Station Two as allocated pursuant to Section 3 of the Power Sales Contract, the proceeds of such liquidated damages with respect to such particular day shall be paid to and allocated between the City and WKE/LEM, respectively, in the same proportion as (x) the amount (in MWs) of the City's full share of the Total Capacity of Station Two that is not so available to the City for such day bears to (y) the amount (in MWs) of the full surplus capacity of Station Two allocated for such day to WKE/LEM pursuant to Section 3 of the Power Sales Contract that is not so available to WKE/LEM.

- (5) In all cases, other than those in which paragraph (4) above is applicable, the proceeds of liquidated damages and of the payment of other claims or the recovery of other damages under contracts with the abovementioned bidders, vendors or contractors, or under any surety, performance or other bond, after reimbursement of the parties reasonable costs and expenses incurred in connection with submitting and enforcing claims or the recovery of damages thereon, as the same shall be reallocated as provided in paragraph (3) above, shall be paid to and allocated between the City and WKE/LEM in the same proportion as their average respective shares of the Total Capacity of Station Two as allocated pursuant to

Section 3 of the Power Sales Contract during each Contract Year from and including the Contract Year which includes the first date of the relevant failure, breach action or omission of the bidder, vendor or contractor giving rise to such recovery, through and including the Contract Year in which such recovery is made.

(6) In the event WKE, LEM or Big Rivers shall receive from the City an allocated portion of the proceeds of any claims or any liquidated or other damages as contemplated in paragraphs (4) and (5) above (net of the damages used for the recovery of the Parties' Collection Costs as contemplated in paragraph (3)), WKE and LEM, on the one hand, and Big Rivers, on the other hand, agree that all such amounts shall be allocated to them or divided between them as set forth below, except as otherwise expressly provided in this paragraph (6).

(i) All liquidated damage amounts and other damage amounts that shall be received from the City as contemplated in paragraph (5) above shall be divided such that WKE and LEM shall receive the portion thereof determined by reference to the following formula and Big Rivers shall receive the balance:

$$A = \frac{B}{23.5}$$

Where:

- A = WKE's and LEM's collective allocated portion of such damages, expressed as a percentage (which shall not be a negative percentage); and
- B = The number of years (and/or portions thereof) remaining in the full "Term" of the Station Two Agreement as of the first date of the relevant failure of the Station Two SCR System or bidder, vendor or contractor giving rise to the claims(s) or damages contemplated in paragraph (5) above.

(ii) All liquidated damage proceeds allocated and paid by the City to WKE/LEM as contemplated in subparagraph (4)(i) above by reason of a Vendor Failure of the type described in that subparagraph ("Subparagraph (4)(i) Damages") shall be remitted to and retained by WKE/LEM for their own account; provided, that WKE/LEM hereby agree to first use any such Subparagraph (4)(i) Damages for the acquisition of NOx allowances or emissions credits to the extent required for the operation of Station Two and the generation of WKE's or LEM's share of Total Capacity during the Term in the absence of a commercially-operational, conforming Station Two SCR System, before retaining such damages or using such damages for any other purpose; and provided further, that in the event, as of the expiration of the Term of the

Station Two Agreement or the early termination of the Station Two Agreement, the relevant bidder, vendor or contractor that paid such liquidated damages has not delivered and installed all components of the Station Two SCR System for which it was responsible in conformity with the guarantees, warranties or other material commitments set forth in its contract with the City, then promptly following that expiration or termination of the Station Two Agreement, WKE/LEM shall pay to Big Rivers a share of the Subparagraph (4)(i) Damages actually received by it or them (net of the amount of those damages used by WKE/LEM to acquire NOx allowances or emissions credits as contemplated above) equal to the percentage of all SCR Capital Costs for which WKE/LEM were responsible under Section 4.20 of the Construction and Operation Agreement that have been funded by Big Rivers as of the expiration or termination of the Station Two Agreement, together with interest on Big Rivers' share of those Subparagraph (4)(i) Damages from the date first received by WKE/LEM through the date paid to Big Rivers at the "Prime Rate" (as defined in the Station Two Agreement).

- (iii) All liquidated damage proceeds paid and allocated by the City to WKE/LEM as contemplated in subparagraph (4)(ii) above by reason of a Vendor Failure of the type described in that

subparagraph ("Subparagraph (4)(ii) Damages") shall be remitted to and retained by WKE/LEM for their own account; *provided, that if* the relevant Vendor Failure contemplated in subparagraph (4)(ii) and the contract between the City and the relevant bidder, vendor or contractor do not physically or contractually prevent the City (or WKE as the City's contractual operator of Station Two) from restarting and operating either Station Two generating unit in accordance with the requirements of the Station Two Contracts following the expiration of the scheduled outage during which the tie-in of duct work to the Station Two generating units was originally scheduled to be completed, and if either (A) WKE/LEM voluntarily extend that scheduled outage, or restart the Station Two generating units but thereafter voluntarily shut down either or both of those units, in either case in order to accommodate the completion of the tie-in of duct work, or (B) either or both of the Station Two generating units suffer an unscheduled or forced outage due to a mechanical or operational problem unrelated to the tie-in of duct work and such tie-in of duct work is undertaken during the period that the unscheduled or forced outage continues, then any Subparagraph (4)(ii) Damages that are allocated and paid by the City to WKE/LEM for the days (or portions

thereof) during which the scheduled outage was so voluntarily extended, for the days (or portions thereof) during which the Station Two generating units (or either of them) were so voluntarily shut down, or for the days (or portions thereof) of the unscheduled or forced outage during which the tie-in of duct work was so performed (as applicable), shall be allocated between WKE/LEM, on the one hand, and Big Rivers, on the other hand, based upon the formula set forth in subparagraph (6)(i) above, but with component "B" of that formula being the number of years (and/or portions thereof) remaining in the full Term of the Station Two Agreement as of the first date of the relevant Vendor Failure contemplated in subparagraph (4)(ii) above. Notwithstanding the foregoing provisions of this subparagraph (iii), in the event an unscheduled or forced outage as contemplated above is required to be extended beyond the period that would have been required in order to correct or repair the mechanical or operational problems initially giving rise to that outage, in order to allow the completion of tie-in of duct work undertaken during that outage and necessary for the restart of either or both of the Station Two generating units, then WKE/LEM shall be entitled to retain for their own account all Subparagraph (4)(ii) Damages paid for the days (or portions thereof) during

which that unscheduled or forced outage is extended to allow the completion of that work.

(iv) As between WKE/LEM, on the one hand, and Big Rivers, on the other hand, the Party(ies) receiving the proceeds of relevant liquidated damages or other damages from the City as contemplated in paragraph (4) or (5) above (net of the damages used for the recovery of the Parties' Collection Costs as contemplated in paragraph (3)) shall promptly thereafter pay to the other of those Parties its allocable share of those damages (if any) as contemplated in this paragraph (6) in immediately available funds. Notwithstanding anything contained in this paragraph (6) to the contrary, Big Rivers shall not be entitled to receive any portions of the proceeds of any claims or any liquidated or other damages, as contemplated in paragraph (4) or (5) above, until such time as Big Rivers shall have funded its respective share of all SCR Capital Costs as contemplated in the Amendatory Station Two Agreement. The receipt or retention by WKE/LEM of liquidated damages or other damages as contemplated in this Section 4.19 shall not preclude WKE/LEM from asserting or claiming that Big Rivers has an obligation under the Station Two Agreement to contribute its share of the costs of any other SCR Capital Costs, Station Two Improvements costs or

Henderson Incremental Environmental O&M Costs associated with, resulting from or necessitated by the relevant Vendor Failure or other failure of the Station Two SCR System or the bidder, vendor or contractor contemplated in paragraph (4) or (5) above, as applicable, nor shall Big Rivers be deemed to be released or discharged from any such obligations.

- (7) A Party's respective entitlements to portions of the proceeds of liquidated damages as contemplated above shall not be affected by any decision by such Party (or any of them) to separately acquire NOx allowances or emissions credits in order for the generation of its share of Total Capacity of Station Two (and in the case of the City, the generation of energy associated with the City's Station One Power Plant Rated Capacity) to remain compliant with the Federal and Kentucky NOx Regulations. The City agrees to hold all liquidated damages or other damages that may be recovered from a particular bidder, vendor or contractor (as contemplated in paragraph (4) or paragraph (5) above) in escrow for the benefit of the Parties until their respective shares (if any) thereof can be calculated and such amounts can be allocated and paid or distributed as contemplated in this Section 4.19.
- (8) The proceeds of any insurance maintained with respect to any damage or destruction of the Station Two SCR System or any part

thereof during the construction, start-up and testing thereof or with respect to the completion of the Station Two SCR System shall be applied by the City to the repair, reconstruction or completion thereof, as applicable.

4.20 The SCR Capital Costs have been and shall be funded in the manner provided in this Section 4.20, notwithstanding any provisions to the contrary elsewhere in the Construction and Operation Agreement or the Power Sales Contract. In addition the amount of \$123,584 shall be paid by WKE to the City with respect to WKE's proposed use of Alternate Fuel with respect to the two initial catalyst layers of the Station Two SCR System and the SCR Capital Overcontrol Amount shall be paid to the City by WKE, in each case to the extent not already funded by WKE pursuant to the Interim Funding Agreement. The City shall apply all such amounts to the payment of such costs of the Station Two SCR System.

(a) Promptly upon all provisions of the 2005 Amendments to Contracts becoming fully effective as contemplated in Section 601 below, the City agrees to establish and maintain at a bank in Henderson, Kentucky, reasonably satisfactory to the Parties, an SCR Construction Account (the "SCR Account") into which funds shall be deposited, and out of which payments shall be made, to fund the SCR Capital Costs not previously funded.

(b) The Parties agree to continue the budget for SCR Capital Costs established by the Interim Funding Agreement and to meet periodically to review

and, as needed, update such budget which shall not be amended, modified or supplemented absent the prior written consent of the City, WKE and Big Rivers, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Prior to the first day of each month, the City shall invoice WKE (or, in the event the Station Two Agreement shall have been terminated, Big Rivers) in writing for WKE's SCR Capital Cost Share of the budgeted SCR Capital Costs that are anticipated by the City, in good faith, to be expended by it during the coming month, and that have not already been funded by WKE pursuant to the Interim Funding Agreement. The City shall promptly provide WKE and Big Rivers with such information regarding those anticipated expenses as WKE (or Big Rivers) may reasonably request. Within five (5) business days after its receipt of that invoice, WKE (or, if the Station Two Agreement shall have been terminated, Big Rivers) shall deposit into the SCR Account funds in an amount equal to its SCR Capital Cost Share of the budgeted SCR Capital Costs for that coming month. Within one (1) business day following that deposit by WKE, the City shall deposit into the SCR Account the City's SCR Capital Cost Share of such budgeted SCR Capital Costs that are anticipated to be expended during that coming month. Once both of those deposits have been made (but not before), the City shall be entitled to thereafter draw upon the SCR Account to fund the budgeted expenditures of the SCR Capital Costs actually incurred by it in the applicable month (or in any subsequent month to the extent the relevant expenditures anticipated for the applicable month are deferred to a subsequent month with the written concurrence of the City and WKE (or, if the Station Two

Agreement shall have been terminated, Big Rivers)). In the event the actual expenditures of SCR Capital Costs associated with a particular aspect or component of the Station Two SCR System are less than the budgeted amounts therefor which were deposited by the City or WKE (or, if the Station Two Agreement shall have been terminated, Big Rivers), the excess amounts in the SCR Account shall be retained in the SCR Account to fund future unanticipated or unbudgeted SCR Capital Costs (with the written concurrence of the City, WKE and Big Rivers) or shall be released as contemplated in paragraph (d) below. In the event the actual obligations associated with a particular aspect or component of the Station Two SCR System require expenditures of SCR Capital Costs in excess of the budgeted amounts and available amounts which were deposited by the City and WKE (or, if the Station Two Agreement shall have been terminated, Big Rivers) in the SCR Account, the amount of the deficiency in the SCR Account shall be deposited in the SCR Account within five (5) business days by the City and WKE (or, if the Station Two Agreement shall have been terminated, Big Rivers) in accordance with their respective SCR Capital Cost Shares.

(d) The City agrees to hold and maintain all funds deposited into the SCR Account in trust for the City and WKE (and, if the Station Two Agreement shall have been terminated, Big Rivers) and agrees to use such funds solely in connection with the SCR Capital Costs as provided in this Section 4.20. If, as of the completed construction and commercial operation date of the Station Two SCR System, any amounts remain in the SCR Account which are not required to fund budgeted SCR Capital Costs that have actually accrued or that can

reasonably be expected to accrue thereafter, those remaining amounts shall promptly thereafter be released by the City from the SCR Account and returned to the City and WKE (and, if the Station Two Agreement shall have been terminated, Big Rivers) in the same proportions as those funds were deposited by those Parties into the SCR Account. In the event the Station Two Agreement shall have been terminated and the rights of WKE under the Agreements shall have been cancelled or reassigned to Big Rivers prior to a release of funds by the City from the SCR Account as contemplated in the preceding sentence, and to the extent the funds so released to Big Rivers constitute a return of funds that were deposited by WKE into the SCR Account as contemplated in paragraph (c) above, Big Rivers agrees to remit and pay to WKE such released funds within ten (10) business days following its receipt thereof without set-off, deduction or counterclaim. The covenant of Big Rivers in the preceding sentence shall survive the expiration or termination of the Station Two Agreement and/or the Construction and Operation Agreement.

(e) The Parties agree that all out-of-pocket costs and expenses that may be incurred by them or any of them (other than the costs and expenses described in Section 4.19 (3) of the Construction and Operation Agreement and other than a Party's cost to borrow or otherwise raise the funds required to be contributed by it toward SCR Capital Costs under this Agreement or under the Amendatory Station Two Agreement), whether pursuant to the 2005 Amendments to Contracts or the Interim Funding Agreement, in connection with (i) the initial design, acquisition, construction, installation, start-up and testing of the Station Two SCR System in

accordance with the 2005 Amendments to Contracts, the Interim Funding Agreement and the SCR Contract; (ii) the development, negotiation and execution of the 2005 Amendments to Contracts, the Interim Funding Agreement, the Amendatory Station Two Agreement, the SCR Contract, the Big Rivers' Easement, the Big Rivers' Creditors' Subordination Agreement and the Guarantor's Consent and Acknowledgement; or (iii) the obtaining of all governmental and third-party consents or approvals required for such agreements or instruments or for the Station Two SCR System; shall constitute SCR Capital Costs. At such time as any Party shall incur any such out-of-pocket costs or expenses (other than the deposits required to be made by WKE or the City into the SCR Account and other than the payments required to be made by the City from the SCR Account, each as contemplated in Section 4.20(c) above) and shall seek reimbursement of the same, that Party shall thereafter submit a written request for reimbursement of such costs and expenses to the City with a copy to the other Parties (or, in the case of costs and expenses incurred by the City, shall notify WKE and Big Rivers in writing of such costs and expenses and of the City's intention to charge the same to the SCR Account as SCR Capital Costs), and all such requested costs and expenses shall be deemed to be added to the approved SCR Capital Costs budget for the Station Two SCR System (to the extent they are not already included in that approved budget) without further action on the part of any Party. Thereafter, such out-of-pocket costs and expenses shall be funded by the City and WKE into the SCR Account in the same manner as other budgeted SCR Capital Costs are funded pursuant to Section 4.20(c)

above, and thereafter shall be paid by the City to the relevant Party from the SCR Account within five business days, and a portion of those out-of-pocket costs shall be paid by Big Rivers to WKE as contemplated in Section 19.4(b) of the Station Two Agreement (as added pursuant to the Amendatory Station Two Agreement). Each Party agrees to provide reasonable documentation in support of a particular cost or expense claimed as being reimbursable to it hereunder upon the request of any other Party.

(f) Upon completion of construction of the Station Two SCR System and settlement of all obligations to third parties (that is, to parties other than the City, Big Rivers, WKE, LEM or their Affiliates) relating to SCR Capital Costs or to costs funded with the SCR Capital Overcontrol Amount and the \$123,584 with respect to alternate fuel with respect to the two initial catalyst layers of the Station Two SCR System, the City shall within forty five (45) days thereafter furnish to WKE and Big Rivers a final written accounting of all items of SCR Capital Costs and all items of costs funded with the SCR Capital Overcontrol Amount and such \$123,584 with respect to alternate fuel for the Station Two SCR System. WKE and Big Rivers shall have until sixty (60) days following receipt of such accounting to question the suitability or correctness of any item thereof or to propose other costs for inclusion in that final accounting, and unless that proposed final accounting is so questioned, or other costs are so proposed within that period, the suitability and correctness of such accounting shall be conclusively presumed. In the event that WKE or Big Rivers shall question the suitability or correctness of any item or items of such accounting, or shall propose other costs

for inclusion in that accounting, the City shall review each such questioned item or items or additional costs and notify WKE and Big Rivers in writing within thirty (30) days thereafter as to whether or not it found any error(s) or omission(s) and, if any such error(s) or omission(s) were found, such notice shall also set forth any reimbursements or payments required to correct such error(s) or omission(s). If, however, after such review and notice by the City, any such questions remain unresolved or differences between the parties persist regarding the proposed final accounting, the City, WKE and Big Rivers shall endeavor, in good faith, to resolve the same for a period of at least sixty (60) days. In the absence of such consensual resolution any party shall be free to resort to the courts to resolve the dispute. Upon the suitability and correctness of such final accounting being conclusively presumed, agreed or determined, and upon the making of any such required payments and reimbursements as a final settlement of accounts, the City shall close the SCR Account and distribute to WKE and the City their respective SCR Capital Cost Shares of any remaining balance.

(g) Upon all provisions of the 2005 Amendments to Contracts becoming fully effective as contemplated in Section 601 below, the budget for SCR Capital Costs and the supplemental budget with respect to SCR Ammonia Costs, prepared and maintained as provided in the Interim Funding Agreement and approved as contemplated in Section 10 of the First Amendment to the Interim Funding Agreement shall continue as the approved budget for SCR Capital Costs and, in the case of such supplemental budget, as a supplement to the then current Annual Budget under and for the purposes of this Construction and Operation Agreement,

the other Agreements and the Station Two Agreement, and the Parties' respective rights and obligations hereunder and thereunder.

4.21. In the event that subsequent to the date of the 2005 Amendments to Contracts, Federal or Kentucky law and regulations shall require the treatment of any sulfuric acid ("SO₃") emissions generated by the Station Two SCR System, the Parties agree (or in the event the Station Two Agreement shall have expired or shall have been terminated as of that time, the City and Big Rivers agree) to negotiate in good faith the terms and conditions of an arrangement under the Construction and Operation Agreement for the sharing and payment by them of the costs relating to such treatment of the SO₃ emissions.

4.22 Big Rivers (or WKE as assignee of Big Rivers) will monitor the operating performance of the Station Two SCR System as provided in Section III of Exhibit D to the Power Sales Contract (as added by the 2005 Amendments to Contracts and attached hereto) and will perform the fuel sampling and analyses to be performed by it as provided in Section V(C) and (D) of Exhibit E to the Power Sales Contract (as added by the 2005 Amendments to Contracts and attached hereto).

Section 203 Section 9.1 of the Construction and Operation Agreement is amended to read as follows:

"9.1 In the event of the issuance of any Station Two Bonds subsequent to the date of the 2005 Amendments to Contracts with the prior written consent of Big Rivers (and, during the term of the Station Two Agreement, WKE/LEM),

the applicable Bond Ordinance may establish and provide for the funding of such funds and accounts pertaining to such Station Two Bonds or to Station Two as shall be approved in writing by Big Rivers (and during the term of the Station Two Agreement WKE/LEM).”

Section 204 Section 14.4 of the Construction and Operation Agreement is amended to read as follows:

“14.4 The Annual Budget may be amended only with the written agreement of the Parties.”

Section 205 Section 15.2 of the Construction and Operation Agreement is amended to read as follows:

“15.2 Such books, records and accounts shall be audited by an independent certified public accountant or a firm of certified public accountants of recognized standing, selected by the City. Such audit shall be completed within 120 days after the close of each Contract Year and WKE and Big Rivers shall be entitled to timely receipt of copies of the audit report of such accountant or firm of accountants and the accompanying financial statements. All such books, records and accounts shall be held and maintained by the City in confidence (and the City shall require its auditors to hold and maintain the same in confidence) for a period of five (5) years from the date of receipt, unless the same shall come into the public domain through no fault of the City or its auditors or unless disclosure thereof is required by applicable laws or regulations pertaining to the City or its auditors or any debt of the City with

respect to its municipal electric system or any Station Two Bonds or required for the exercise by the City of any of its rights or remedies under the Agreements or the Station Two Agreement.”

Section 206 Section 18.4 of the Construction and Operation Agreement is amended to read as follows:

“18.4 During the term of this Agreement all proceeds from policies of insurance maintained with respect to damage or destruction of Station Two or any component thereof and obtained pursuant to this Section shall be paid and applied by the City and Big Rivers (and during the term of the Station Two Agreement by WKE) to the cost of repair, reconstruction and replacement of such damaged or destroyed property unless otherwise agreed to by such parties; provided that if Station Two Bonds (that have been consented to as provided above) shall then be Outstanding such proceeds shall be paid and applied in accordance with the provisions of the applicable Bond Ordinance.”

Section 207 Section 28.1 of the Construction and Operation Agreement is amended to read as follows:

“28.1 In the event Station Two Bonds (that have been consented to as provided above) shall be at any time Outstanding, this Agreement shall be subject to the terms and provisions of the applicable Bond Ordinance. City and Big Rivers (and during the term of the Station Two Agreement, WKE) agree that they will not amend, modify or otherwise alter this Agreement in any manner that will conflict with the provisions of the applicable Bond

Ordinance as the same may, from time to time, exist.”

III. POWER SALES CONTRACT

Section 301 Section 3.1 of the Power Sales Contract is amended to read as follows:

“3.1 Subject to the allocation of surplus capacity to Big Rivers (or to WKE/LEM as Big Rivers’ assignee) as hereinafter provided, the Total Capacity and output of City’s Station Two shall be reserved to and available for use by the City for the purpose of supplying the needs of the City and its inhabitants for electric power and energy in excess of the capabilities, from time to time, of its Existing System. For avoidance of any doubt, the Station Two capacity and associated energy to be reserved to and available for use by the City for any Contract Year to supply the needs of the City and its inhabitants for electric power and energy shall be determined only after giving effect to the application of the then rated capacity and associated energy of the City’s Station One Power Plant (without any reduction for any off-system capacity sales therefrom) to supply such needs.

Section 301A The title of Section 6 of the Power Sales Contract is amended to read as follows:

“Section 6. PAYMENT FOR CAPACITY, FUEL, ALLOCABLE
SCR COSTS AND REAGENT REQUIREMENTS”

Section 302 Section 6.1 of the Power Sales Contract is amended to read as follows:

"6.1 Big Rivers (or during the term of the Station Two Agreement, WKE/LEM, as Big Rivers' assignee) shall pay to the City of Henderson Utility Commission capacity charges as hereinafter defined for the surplus capacity of Station Two allocated to it as provided in Section 3 of the Power Sales Contract."

Section 303 Section 6.2 of the Power Sales Contract is amended to read as follows:

"6.2 Capacity charges payable by Big Rivers (or WKE/LEM, as Big Rivers' assignee), other than Allocable SCR Costs, for any Monthly Billing Period as provided in Section 6 of the Power Sales Contract shall be in the same proportion of the Total Capacity costs (exclusive of Allocable SCR Costs) of Station Two for such Monthly Billing Period as Big Rivers' (or WKE/LEM's, as Big Rivers' assignee) allocation of surplus net send-out capacity of Station Two during such Monthly Billing Period bears to the total net send-out capacity of Station Two for such Monthly Billing Period as established pursuant to Section 3 of the Power Sales Contract. Capacity charges payable by Big Rivers (or WKE/LEM, as Big Rivers' assignee) for any Monthly Billing Period as provided in Section 6 of the Power Sales Contract consisting of Allocable SCR Costs shall be calculated as follows:

(a) The amount of SCR Ammonia Costs for such Monthly

Billing Period allocated to Big Rivers (or WKE/LEM, as Big Rivers' assignee) shall be determined in accordance with the formula and related provisions set forth in Exhibit D to the Power Sales Contract (as added by the 2005 Amendments to Contracts) attached hereto; and

(b) The amount of SCR Catalyst Acquisition Costs for such Monthly Billing Period allocated to Big Rivers (or to WKE/LEM, as Big Rivers' Assignee) shall be determined in accordance with the formula and related provisions set forth in Exhibit E to the Power Sales Contract (as added by the 2005 Amendments to Contracts) attached hereto, subject to the provisions of Sections 6.8 and 6.9 below.

Notwithstanding any other provision of the Power Sales Contract to the contrary, capacity charges payable by Big Rivers (or WKE/LEM as Big Rivers' assignee) for a Monthly Billing Period during each Contract Year commencing with the initial Contract Year beginning June 1, 2004 and ending with the expiration of the nineteenth (19th) Contract Year (i.e., a 20-year amortization) following such initial Contract Year, shall be adjusted so as to provide for each of the following:

- (i) in the event that the City's share of the Total Capacity of

Station Two as allocated pursuant to Section 3 of the Power Sales Contract for such Contract Year shall exceed its share of such Total Capacity for the Contract Year beginning June 1, 2004, a credit to Big Rivers (or WKE/LEM, as Big Rivers' assignee) in an amount equal to one-twelfth ($1/12^{\text{th}}$) (or such greater fraction as appropriate in the case of a Contract Year embracing fewer than 12 months) of the product obtained by multiplying the SCR Amortized Capital Cost per MW for such Contract Year, if any, by the number of MWs by which the City's share of the Total Capacity of Station Two for such Contract Year exceeds its share of the Total Capacity of Station Two for the Contract Year beginning June 1, 2004; and

- (ii) in the event the City's share of the Total Capacity of Station Two as allocated pursuant to Section 3 of the Power Sales Contract for such Contract Year shall be less than its share of such Total Capacity for the Contract Year beginning June 1, 2004, an additional payment by Big Rivers (or WKE/LEM, as Big Rivers' assignee) in an amount equal to one-twelfth ($1/12^{\text{th}}$) (or such greater fraction as appropriate in the case of a Contract Year embracing fewer than 12 months) of the product obtained by multiplying the SCR Amortized Capital Cost per MW for such Contract Year, if

any, by the number of MWs by which the City's share of the Total Capacity of Station Two for such Contract Year is less than its share of Total Capacity of Station Two for the Contract Year beginning June 1, 2004.

Section 304 The initial paragraph of Section 6.3 of the Power Sales Contract is amended to read as follows:

"6.3. The Total Capacity costs of Station Two for each Monthly Billing Period shall be the City's total cost resulting from the ownership, operation and maintenance of, and renewals and replacements to, Station Two, except that the cost of fuels and Reagents with respect to Station Two shall not be included as such capacity costs and such capacity costs shall not include any SCR Capital Costs or any Debt Service except Debt Service on Station Two Bonds (which as applicable have been consented to by WKE/LEM and/or Big Rivers as contemplated in the Construction and Operation Agreement, as amended by the 2005 Amendments to Contracts), if any. Such capacity costs shall include but are not limited to:

(a) In the event Station Two Bonds shall be Outstanding, Debt Service (as defined in the applicable Bond Ordinance with respect to such Station Two Bonds) for such Monthly Billing Period with respect to such Station Two Bonds.

(b) One-twelfth (1/12th) or such greater fraction as appropriate in the case of a Contract Year embracing fewer than 12 months) of all costs associated with the operation and maintenance of Station Two during such Contract Year, including, without limitation, Allocable SCR Costs and all other costs properly chargeable to FERC Accounts 408, 500, 502, 505, 506, 510, 511, 512, 513, 514 and 924, and fiscal agency costs and expenses allocable to Station Two.

(c) In the event Station Two Bonds shall be Outstanding, the amount, if any, which the City is required under the applicable Bond Ordinance with respect to such Station Two Bonds to pay during such Monthly Billing Period into (i) the Station Two Account (Station Two O. & M. Account) in the Operation and Maintenance Fund, if any, so as to restore any minimum balance required to be maintained therein, and (ii) the Station Two Account (Station Two R. & R. Account) in the Renewals and Replacements Fund, if any, so as to restore any minimum balance required to be maintained therein, but in each case only if the applicable Bond Ordinance requiring such funding amounts had been approved by Big Rivers (and, as applicable, by WKE/LEM);

(d) The amount, if any, required to be paid during such Monthly Billing Period by (i) the City and Big Rivers (or WKE/LEM, as Big Rivers' assignee) pursuant to Section 19.3(c) of the Power Sales Contract, (ii) the City and Big Rivers pursuant to Section 19.2 of the Power Sales Contract, and (iii) the City and WKE/LEM pursuant to Section 10.3(g) of the Station Two Agreement;

(e) Costs of renewals, replacements and additions (when such additions are agreed to by Big Rivers (or WKE/LEM, as Big Rivers' assignee)) which are not provided for through (i) proceeds of insurance, or (ii) funds available from proceeds of Station Two Bonds.

(f) One-twelfth (1/12) of all costs of administration and general expense for Station Two during such Contract Year, and including, but not limited to costs properly includible in FERC Accounts 920, 921, 923, 924, 925, 926, 928 and 930.

(g) Any amounts paid or payable to Big Rivers (or WKE/LEM as Big Rivers' assignee) for such Monthly Billing Period under terms of the Construction and Operation Agreement (except any delayed payment penalties as therein provided) not included in the foregoing.

(h) Any other costs associated with Station Two which are not included in paragraphs (a) through (g) hereof."

Section 305 Section 6.7 of the Power Sales Contract is amended to read as follows:

"6.7 Fuel and Reagent Requirements: Big Rivers (or WKE/LEM, as Big Rivers' assignee) and the City shall each provide, at its own cost, the full replacement of all fuels consumed from the Station Two fuel reserve for the production of electric energy used by it during each month. If at any time during the term of the Power

Sales Contract, the Station Two coal reserve shall fall below a full thirty (30) days' supply, then upon written demand by either party, both parties shall increase their respective monthly additions to the coal reserve by five per cent (5%) until the coal reserve is restored to the amount specified in such demand, not to exceed forty-five (45) days' supply for Station Two. Fuel consumption by each party will be determined on the basis of measured quantities, adjusted for heat content, and attributed to the parties on the basis of their respective uses of electric energy from Station Two during each month. Big Rivers (or WKE/LEM, as Big Rivers' assignee) and the City shall each provide, at its own cost, the full replacement of all Reagents consumed for its own use, which in the case of lime for the Station Two Flue Gas Desulfurization System shall be based on the tonnage of coal supplied by such party to produce the electric energy it takes from Station Two and the sulfur and BTU content of such coal."

Section 305A The Power Sales Contract is amended by adding a new Section 6.8 to read as follows:

"6.8 As an adjustment of payments otherwise due as provided in this Section 6 with respect to the SCR Catalyst Acquisition Costs of a Catalyst Layer, Big Rivers (or WKE/LEM, as Big Rivers' assignee) or the City, or both of such Parties, as applicable, shall make the Catalyst Refund Payment or Payments, if any, payable

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with respect to a Catalyst Failure of such Catalyst Layer
determined in accordance with the formula and related provisions
set forth in Section IV and Section V of Exhibit E hereto, and,
notwithstanding the provisions Sections 3, 6.1, 6.3 or 9.1 of the
Power Sales Contract, each such Catalyst Refund Payment shall be
due and payable within 60 days of the date of such determination
pursuant to Exhibit E hereto.”

Section 305B The Power Sales Contract is amended by adding a new
Section 6.9 to read as follows:

“6.9 The Parties agree that any proceeds received in connection
with the sale or disposal of any catalyst layer (whether or not a
“Catalyst Layer” as defined hereunder) permanently removed
from the Station Two SCR System, shall be applied solely for the
following: (i) to offset the SCR Catalyst Acquisition Costs for the
relevant new Catalyst Layer (if any) as provided in the definition
of “SCR Catalyst Acquisition Costs” (as added by the 2005
Amendments to Contracts), or (ii) if no new Catalyst Layer is then
to be installed in place of such catalyst layer sold or disposed of,
to defray the costs associated with the operation and maintenance
of Station Two.”

Section 306 Section 9.1 of the Power Sales Contract is amended to read as
follows:

"9.1. On or before the twentieth (20th) day of each calendar month during each Contract Year Big Rivers (or WKE/LEM, as Big Rivers' assignee) shall pay to the City of Henderson Utility Commission in payment for its allocated Station Two capacity during the current Monthly Billing Period all capacity charges due from Big Rivers (or WKE/LEM, as Big Rivers' assignee) for such Monthly Billing Period in accordance with Section 6 of the Power Sales Contract. Such payments shall be made on the basis of the Annual Budget in effect for the Contract Year that includes such Monthly Billing Period which, for purposes of calculating SCR Ammonia Costs and SCR Catalyst Acquisition Costs with respect to such Contract Year estimated for purposes of such Annual Budget to be allocated to Big Rivers (or WKE/LEM, as Big Rivers' assignee) for such Monthly Billing Period in accordance with Section 6.2(a) and (b) of the Power Sales Contract, shall reflect the allocation of SCR Ammonia Costs and SCR Catalyst Acquisition Costs in accordance with the applicable formulae set forth in Exhibit D and Exhibit E hereto. Payments shall be deemed complete upon the posting thereof in the regular United States mail, properly addressed and affixed with postage or upon receipt by wire transfer by a bank designated by the City for such purpose."

Section 307 Section 9.3 of the Power Sales Contract is amended to read as follows:

“9.3 Off-Setting Accounts: Big Rivers (or WKE/LEM, as Big Rivers’ assignee) shall have the right to off-set accounts payable under this Agreement by any payments due it under Section 13.6 of the Construction and Operation Agreement and thereupon shall pay to the City of Henderson Utility Commission any remaining balance of the off-set account. Off-setting of accounts shall be employed in determining any delayed payment charges as provided herein.”

Section 308 Section 9.4 of the Power Sales Contract is amended to read as follows:

“9.4 As quickly as is reasonably possible but in no event later than one hundred twenty (120) days after the end of each Contract Year Big Rivers (or WKE/LEM, as Big Rivers’ assignee) shall submit to the City a detailed statement of the actual capacity costs for all Monthly Billing Periods of such Contract Year, based on the annual audit of accounts provided for in Section 11 of the Power Sales Contract. If, on the basis of such statement, actual aggregate capacity costs for such Contract Year payable by Big Rivers (or WKE/LEM, as Big Rivers’ assignee) exceed the estimates thereof in the Annual Budget on the basis of which Big Rivers (or

WKE/LEM, as Big Rivers' assignee) has made payments, Big Rivers (or WKE/LEM, as Big Rivers' assignee) shall pay promptly to the City of Henderson Utility Commission the additional amount to which the City is entitled. If, on the basis of such statement, the actual aggregate capacity costs for such Contract Year payable by Big Rivers (or by WKE/LEM, as Big Rivers' assignee) are less than the estimates thereof in the Annual Budget on the basis of which Big Rivers (or WKE/LEM, as Big Rivers' assignee) has made payments, such excess shall be credited against Big Rivers' (or, WKE/LEM, as Big Rivers' assignee) next monthly payment or payments hereunder, or paid to Big Rivers (or to WKE/LEM, as Big Rivers' assignee) if no such payments are due from Big Rivers (or WKE/LEM, as Big Rivers' assignee)."

Section 309 Section 11.1 of the Power Sales Contract is amended to read as follows:

"11.1 There shall be an annual audit of the financial accounts of the City's Station Two by an independent certified public accountant or a firm of certified public accountants of recognized standing, selected by the City. Such audit shall be completed within 120 days after the close of each Contract Year and WKE and Big Rivers shall be entitled to receipt of copies of the annual audit report of such accountant or firm of accountants and the

accompanying financial statements within that 120-day period.

Such financial statements, accounts and reports shall be held and maintained by the City in confidence (and the City shall require its auditors to hold and maintain the same in confidence) for a period of five (5) years from the date of receipt, unless the same shall come into the public domain through no fault of the City or its auditors, or unless disclosure thereof is required by applicable laws or regulations pertaining to the City or its auditors or any debt with respect to its municipal electric system or any Station Two Bonds or required for the exercise by the City of any of its rights or remedies under the Agreements or the Station Two Agreement.”

Section 310 Section 18.1 of the Power Sales Contract is amended to read as follows:

“18.1 In the event Station Two Bonds (as applicable, that have been consented to by Big Rivers and/or WKE/LEM as contemplated in the Power Sales Contract or the Construction and Operation Agreement) shall be at any time Outstanding, this Agreement shall be subject to the terms and provisions of the applicable Bond Ordinance. City and Big Rivers (and during the term of the Station Two Agreement, WKE and LEM) agree that they will not amend, modify or otherwise alter this Agreement in any manner that will impair or adversely affect the security afforded by the provisions of this Agreement to the holders of any

such Station Two Bonds, for the payment of principal, interest and premium, if any, thereon, so long as any of such Bonds are Outstanding and unpaid, or until provision is irrevocably made for the payment thereof.”

Section 311 Section 19.1 of the Power Sales Contract is hereby deleted in its entirety.

Section 312 Section 19.2 of the Power Sales Contract is hereby renumbered as Section 19.1 and amended to read as follows, provided that this Section 19.1 shall be and remain suspended as among the parties to the extent provided in and in accordance with Section 9.4(b)(1) and Section 10.3(g) of the Station Two Agreement:

“19.1 Big Rivers and the City agree as follows:

(a) Big Rivers shall remit and pay to the City by wire transfer, within two (2) business days following its receipt of a written request therefor from the City, immediately available funds in an amount not to exceed \$1,050,000 in the aggregate (the “Maximum Funding Limit”), for use by the City to fund one or more major renewals or replacements with respect to Station Two in order to keep Station Two in good operating condition (including without limitation, any such major renewals or replacements required to correct any unusual loss or damage with respect to Station Two). The City’s use of the funds contemplated above shall be limited to those situations where a sufficient budget was not previously established in the then current Annual Budget for Station Two, but then only to the extent that the expenditure for such renewal or replacement is required on an

expedited basis and in advance of the time by which the Parties could otherwise meet to separately budget and fund the expenditure. The City's written request for funds contemplated above shall include a description of the major renewals or replacements for which the funds are requested, the reason for their expenditure, the amount of funds so requested, the City's good faith estimate of the actual cost of the relevant renewals or replacements, and the bank account of the City to which the funds are to be wire transferred (with appropriate wiring instructions).

(b) The City shall be entitled from time to time, in its discretion, to submit multiple requests for funds from Big Rivers pursuant to this Section 19.1; provided, however, that the following additional conditions or limitations shall apply to the funding obligations of Big Rivers under this Section 19.1 for all purposes:

- (i) the maximum amount of funds that Big Rivers shall be obligated to remit and pay to the City pursuant to this Section 19.1 during any consecutive twelve (12) month period (for all renewals and replacements, collectively, to be funded as contemplated in this Section 19.1) shall not exceed the Maximum Funding Limit;
- (ii) the City may not request funds hereunder in increments of less than \$10,000;
- (iii) Big Rivers shall not be required to remit or pay funds to the

City hereunder in excess of that portion of the cost of the relevant renewals or replacements corresponding with the share of the Total Capacity from Station Two then allocated for use by Big Rivers pursuant to Section 3 of the Power Sales Contract, except that, in the case of a renewal or replacement the cost of which constitutes a SCR Catalyst Acquisition Costs, the portion of such cost shall correspond with the allocation of such SCR Catalyst Acquisition Costs to Big Rivers as provided in Section 6.2 of the Power Sales Contract,

- (iv) the City shall not request funds in excess of its good faith estimate of the cost of such renewals or replacements, and hereby agrees to promptly repay to Big Rivers any amounts funded by Big Rivers in excess of the actual cost thereof plus any interest earned on such amounts, and
- (v) the City shall also contemporaneously fund, out of its own resources, that portion of the cost of such renewals or replacements corresponding with the City's share of the Total Capacity of Station Two at that time reserved for the City pursuant to Section 3 of the Power Sales Contract (or, in the case of SCR Catalyst Acquisition Costs, corresponding with the City's share of such costs as contemplated in Section 6.2 of the Power Sales Contract).

Section 313 Section 19.3 of the Power Sales Contract is hereby renumbered as Section 19.2 and amended to read as follows:

"19.2 Big Rivers and the City agree as follows:

- (a) Big Rivers shall continue the Big Rivers Station Two Operation and Maintenance Fund and shall have on deposit therein funds in the amount of \$400,000 (the "Big Rivers O&M Minimum Balance"). In the event an amount is withdrawn therefrom as hereinafter provided, Big Rivers agrees to make monthly levelized payments into the Big Rivers Station Two Operation and Maintenance Fund, so as to restore the Big Rivers O&M Minimum Balance within twelve months. All interest on such amounts shall be repaid to Big Rivers at the end of each calendar year, and all amounts in such Fund shall be paid to Big Rivers upon termination or expiration of the Power Sales Contract. Amounts from this Fund shall be withdrawn in accordance with Section 19.2(c) of this Power Sales Contract; and
- (b) The City shall continue the City Station Two Operation and Maintenance Fund and shall have on deposit therein funds in the amount of \$100,000 (the "City O&M Minimum Balance"). In the event an amount is withdrawn

therefrom as hereinafter provided, the City agrees to make monthly levelized payments into the City Station Two Operation and Maintenance Fund each month, so as to restore the City's O&M Minimum Balance within twelve months. All interest on such amounts shall be repaid to the City at the end of each calendar year, and all amounts in such Fund shall be paid to the City upon termination or expiration of the Power Sales Contract. Amounts from this Fund shall be withdrawn in accordance with Section 19.2(c) of the Power Sales Contract; and

- (c) All required expenditures for operation and maintenance not otherwise provided for, other than with respect to SCR Ammonia Costs and SCR Catalyst Acquisition Costs, shall be paid from the Big Rivers Station Two Operation and Maintenance Fund and the City Station Two Operation and Maintenance Fund, respectively, and such payments shall be made in the same ratio as the then effective allocation of Station Two capacity between Big Rivers and the City in accordance with Section 3 of the Power Sales Contract. Required expenditures for operation and maintenance constituting SCR Ammonia Costs and SCR Catalyst Acquisition Costs not otherwise

provided for shall be paid from the Big Rivers Station Two Operation and Maintenance Fund in an amount as provided in Section 6.2 of the Power Sales Contract for the allocation of SCR Ammonia Costs and SCR Catalyst Acquisition Costs to Big Rivers and the balance of such expenditures for SCR Ammonia Costs and SCR Catalyst Acquisition Costs shall be made from the City Station Two Operation and Maintenance Fund.

Big Rivers agrees that promptly following the expiration or termination of the Station Two Agreement and disbursement of amounts in the Big Rivers Station Two Operation and Maintenance Fund as provided in the Station Two Agreement, it will fund the Big Rivers Station Two Operation and Maintenance Fund to the same extent as would have initially been required of it under this Section 19.2 had such funding not been provided by WKE pursuant to Section 10.3(f) of the Station Two Agreement and Big Rivers agrees that it will comply thereafter with the provisions of this Section 19.2.”

Section 314 . . . A new Section 21.4 is added to the Power Sales Contract to read as follows:

“21.4 Since the City’s Electric Light and Power Refunding

Revenue Bonds, Station Two Series, dated as of March 1, 1973, have been paid in accordance with their terms, the two county restriction provided for in the Internal Revenue Service Letter Ruling, dated January 26, 1971, shall no longer be applicable with respect to the operation of the Henderson-Daviess System and the City Electric System referred to in Section 21.1 above (or to the capacity or energy generated by Station Two), and, accordingly, the parties to the Power Sales Contract agree that the provisions of Section 21.1, 21.2 and 21.3 of this Power Sales Contract will no longer be applicable or have any force or effect with respect to the capacity and energy generated after the date of payment of such Bonds by Station Two or the City's Station One Power Plant."

IV. BIG RIVERS ASSIGNMENT

Section 401 Section 37.1 of the Construction and Operation Agreement, Section 24.1 of the Power Sales Contract and Section 15.1 of the Joint Facilities Agreement are each amended by adding the following:

"Notwithstanding anything to the contrary contained in this Agreement or the other Agreements (as hereinafter defined) or the Station Two Agreement, in addition to the assignment of such Agreements by Big Rivers to the United States of America, Big Rivers may assign its rights and interests under the Agreements, including this Agreement, and the Station Two Agreement as security for, and may grant a security interest herein and therein

pursuant to the Mortgages (as hereinafter defined) as security for, any and all of its obligations to the other mortgagees or secured parties specifically identified in the Mortgages as being secured thereby; provided that in exercising any of its rights or remedies arising out of such assignment of rights and interests as security, no such mortgagee or secured party (other than WKE, LEM or Western Kentucky Energy Corp., or their respective successors or permitted assigns under Section 15 of the Station Two Agreement or under this Agreement or the other Agreements, in the exercise of any rights that they may have under or pursuant to any Agreement, the Station Two Agreement or any other "Operative Document" (as defined in the Station Two Agreement)), shall itself have the right to occupy, operate or maintain Station Two or exercise any other right, remedy or interest so assigned, pledged or granted as aforesaid, unless it shall meet the requirements set forth in clauses (i) to (iii), inclusive, below, as if it were a transferee or assignee as provided therein (the aforementioned limitation not to be deemed to limit any foreclosure of the mortgage liens and security interests so long as upon foreclosure the transferee or assignee of such rights and interests, whether or not including the mortgagee or secured party, shall meet the requirements set forth in clauses (i) to (iii), inclusive); and each such mortgagee or secured party may transfer or assign the rights and interest(s) so

assigned, pledged or granted as security pursuant to a sale in foreclosure of the lien of any of the Mortgages, or a sale in lieu of a foreclosure of the lien of any of the Mortgages (or the exercise of power of sale); provided that, except in the case of WKE, LEM and Western Kentucky Energy Corp., and their respective successors or permitted assigns under Section 15 of the Station Two Agreement or under this Agreement or the other Agreements, in the exercise of any rights that they may have under or pursuant to any Agreement, the Station Two Agreement or any other "Operative Document" (as defined in the Station Two Agreement),

(i) the transferee or assignee shall be an electric utility, combination electric and gas utility or an Affiliate thereof (as hereinafter defined) and shall assume all of the duties and obligations of Big Rivers under the Agreements and the Station Two Agreement, including, without limitation, all other agreements that relate to the interest being transferred or assigned,

(ii) such transferee or assignee that undertakes such duties and obligations of Big Rivers as aforesaid is authorized by all appropriate regulatory authorities and under applicable law to fulfill such duties and obligations, and (iii) such transferee or assignee is approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed, and in its consideration of such approval it is understood that the City may

take into account, among other relevant matters, the experience and reputation of such transferee or assignee in operating and maintaining coal-fired electric generating facilities similar to Station Two, the creditworthiness of such transferee or assignee and whether the business or interest of such transferee or assignee (or its Affiliate) is in conflict with the interest of the City. For purposes of this Section the following terms as used in this Section shall be defined as follows:

(1) The term "Mortgages" shall mean (i) the Restated Mortgage and Security Agreement, dated as of July 15, 1998, among Big Rivers, as mortgagor, and the United States of America acting through the Rural Utilities Service, Ambac Assurance Corporation and the National Rural Utilities Cooperative Finance Corporation (together, the "Original Mortgagees"), recorded in Mortgage Book 559, page 1, Office of the Henderson County Court Clerk, (ii) the Supplemental Mortgage and Security Agreement dated as of April 1, 2000, among the Big Rivers, as Mortgagor, and the Original Mortgagees, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust and Ambac Credit Products, LLC (together, the "Supplemental Mortgage Mortgagees"), recorded in Mortgage Book 621, page 285, Office of the Henderson County Court Clerk, (iii) the Second Restated Mortgage and Security

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Agreement among Big Rivers, as mortgagor, and the Supplemental Mortgage Mortgagees and Credit Suisse First Boston, acting by and through its New York Branch (together, the "Second Restated Mortgage Mortgagees"), recorded in Mortgage Book 647, page 125, Office of the Henderson County Court Clerk, (iv) the Third Restated Mortgage and Security Agreement, dated as of August 1, 2001, among Big Rivers, as mortgagor, and the Second Restated Mortgage Mortgagees and U.S. Bank National Association, as Trustee, recorded in Mortgage Book 679, page 1, Office of the Henderson County Court Clerk, as amended by the First Amendment to Third Restated Mortgage and Security Agreement dated as of July 15, 2003, recorded in Mortgage Book 812, page 599, Office of the Henderson County Court Clerk, (v) the Mortgage and Security Agreement (LEM Mortgage), dated as of July 15, 1998, among Big Rivers, LG&E Energy Marketing Inc., Western Kentucky Energy Corp., LG&E Station Two Inc., and WKE Corp. recorded in Mortgage Book 559, page 199, Office of the Henderson County Court Clerk, as amended by the First Amendment to Mortgage and Security Agreement (LEM Mortgage) dated as of August 22, 2002, recorded in Mortgage Book 749, page 805, Office of the Henderson County Court Clerk, (vi) the Mortgage and Security Agreement, dated as of July 15, 1998, among Big Rivers, Western Kentucky Energy Corp., LG&E

Energy Marketing Inc., WKE Station Two Inc., and WKE Corp. recorded in Mortgage Book 559, page 123, Office of the Henderson County Court Clerk, (vii) the Subordinated Mortgage and Security Agreement, dated as of April 1, 2000, among Big Rivers, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust, PBR-1 OP Statutory Trust, PBR-2 OP Statutory Trust, PBR-3 OP Statutory Trust, FBR-1 OP Statutory Trust, FBR-2 OP Statutory Trust, Ambac Credit Products, LLC, AME Investments, LLC, Cobank, ACB, Bluegrass Leasing, Fleet Real Estate, Inc., AME Asset Funding, LLC, and Ambac Assurance Corporation, recorded in Mortgage Book 621, page 328, Office of the Henderson County Court Clerk, and (viii) any instrument or instruments that replace or are substituted for any of the foregoing instruments, in the case of (i) through (viii) above, as the same may be further amended or supplemented from time to time.

(2) The term "Agreements" shall mean the Construction and Operation Agreement, the Power Sales Contract and the Joint Facilities Agreement, in each case as amended and supplemented from time to time.

(3) The term "Affiliate" of any designated entity shall mean any entity that has a relationship with the designated entity whereby either of such entities directly or indirectly controls, is

controlled by, or is under common control with the other. For this purpose, the term "control" means the power, direct or indirect, of one entity to direct or cause the direction of the management or policies of another, whether by contract, through voting securities or otherwise.

V. CONSENT AND AGREEMENT

Section 501 WKE and LEM, as assignees of certain of the rights, title and interests of Big Rivers under the Agreements and pursuant to their respective assumptions of certain of the obligations of Big Rivers under the Agreements, all pursuant to the Station Two Agreement and the Assignment and Assumption Agreement, hereby consent and agree to the amendments to the Agreements contained in the 2005 Amendments to Contracts (subject to the conditions and limitations set forth in the 2005 Amendments to Contracts), and the Parties agree that under and pursuant to the Station Two Agreement and the Assignment and Assumption Agreement, WKE and LEM shall, as such assignees, be entitled (whether or not so specified in the Agreements and the 2005 Amendments to Contracts) as aforesaid, to all the rights, title and interests of Big Rivers under the 2005 Amendments to Contracts and shall be bound (whether or not so specified in the Agreements and the 2005 Amendments to Contracts) to perform such obligations of Big Rivers under the 2005 Amendments to Contracts (other than Big Rivers' obligation pursuant to Section 201 or Section 401 thereof) that are assumed by WKE and LEM pursuant to the Station Two Agreement and the Assignment and Assumption Agreement and arise or otherwise exist during the term of the Station Two Agreement (except as otherwise provided, and subject to the limitations in the

Station Two Agreement), as well as bound by their respective obligations as Parties hereunder.

VI. REQUIRED APPROVALS; EFFECTIVE DATE; REPRESENTATIONS AND ACKNOWLEDGEMENTS; TERMINATION OF INTERIM AGREEMENTS; MISCELLANEOUS

Section 601 The Parties agree that:

(a) Each Party shall use its commercially reasonable efforts to cooperate with the other Parties to obtain at the earliest practicable time all governmental regulatory approvals and any creditors' consents and approvals required for the Parties' respective execution, delivery and performance of the 2005 Amendments to Contracts, the Amendatory Station Two Agreement, the Guarantor's Consent and Acknowledgment, the Big Rivers' Creditors' Subordination Agreement and the Big Rivers' Easement, and each Party shall otherwise use its commercially reasonable efforts to satisfy for its part the conditions of the effectiveness of all provisions of the 2005 Amendments to Contracts applicable to it or for which it is responsible as set forth in subsection (b) of this Section 601.

(b) Upon the execution and delivery of the 2005 Amendments to Contracts by the Parties this Section 601 shall become effective and, notwithstanding anything to the contrary set forth elsewhere herein, all other provisions of the 2005 Amendments to Contracts shall become effective only upon the date (based as to clauses (i), (ii) and (iii) below on certifications by the Parties as set forth in clause (iv) below) of the last of the following to occur:

(i) each Party shall have received all regulatory and other approvals, consents and authorizations required or necessary (A) for the effectiveness of all the provisions of the 2005 Amendments to Contracts with respect to all Parties thereto and the performance by the Parties of their respective duties and obligations hereunder, and for all the provisions of the 2005 Amendments to Contracts to become the legal obligation of all Parties thereto, (B) for the effectiveness of the Amendatory Station Two Agreement as to all parties thereto and the performance by all such parties of their respective duties and obligations thereunder, and for the Amendatory Station Two Agreement to become the legal and binding obligation of all parties thereto; (C) for the execution and delivery by all relevant parties of the Big Rivers' Easement and the Big Rivers' Creditors Subordination Agreement and the performance by such parties of their respective duties and obligations thereunder, and for the Big Rivers Easement and the Big Rivers Creditors' Subordination Agreement to become the legal obligation of all such parties, including in the case of subclauses (A) through (C) above, without limitation, any approvals, consents or authorizations that may be required from the Kentucky Public Service Commission, the Rural Utilities Service or any other creditor of Big Rivers that may hold one or more security interests in Big Rivers' interests in the Agreements or the

real property that is the subject of the Big Rivers' Easement;

(ii) the Amendatory Station Two Agreement, the Big Rivers Easement and the Big Rivers' Creditors' Subordination Agreement shall have been executed and delivered by the respective parties thereto and all the provisions thereof shall, either before or contemporaneous with all provisions of the 2005 Amendments to Contracts, have become effective and binding on such parties; and

(iii) LG&E Energy LLC shall have executed and delivered the Guarantor's Consent and Acknowledgement and received all regulatory and other approvals, consents and authorizations required therefor.

(iv) Each Party shall have furnished to the other Parties a written certificate to the effect that for its part each of the conditions set forth in clauses (i), (ii) and (iii) above, has been satisfied.

(v) The Parties shall have delivered each to the other, such opinions of counsel and other documentation in customary form and substance relating to the 2005 Amendments to Contracts and the other agreements referred to in this subsection (b) reasonably evidencing the due authorization, execution and delivery thereof the binding effect and enforceability thereof, the receipt of all required regulatory, creditor and other approvals thereof and

consents thereto and such other matters as reasonably requested by any Party;

(c) In the event that all the provisions of the 2005 Amendments to Contracts shall not become fully effective as to all Parties in accordance with subsection (b) of this Section 601 on or prior to April 30, 2006 (or such later date as shall be agreed to by the Parties), the 2005 Amendments to Contracts shall forthwith terminate and shall no longer have any force or effect (except for a Party's obligations for a breach or default under this Section 601 occurring prior to such termination, which obligations shall survive such termination), provided, however, if prior to April 30, 2006, the Station Two Agreement shall terminate, the 2005 Amendments to Contracts shall terminate only as to WKE and LEM and in that event this Section 601 shall continue in effect as to Big Rivers and the City;

(d) Notwithstanding anything to the contrary set forth elsewhere in the 2005 Amendments to Contracts, upon the effectiveness of all the provisions of the 2005 Amendments to Contracts as contemplated above, the 2005 Amendments to Contracts shall be deemed to have retroactive effectiveness to June 1, 2004 as among the Parties hereto.

Section 602 As of the date on which all of the provisions of the 2005 Amendments to Contracts shall be fully effective, each Party represents and warrants to each of the other Parties that:

(a) Such Party is duly organized and validly existing under applicable law and

has full power and authority to conduct its business as presently conducted, and to execute, deliver and perform the 2005 Amendments to Contracts.

(b) The execution, delivery and performance of the 2005 Amendments to Contracts have been duly authorized by all necessary action on the part of such Party and do not require approval or consent of, or notice to, any creditor or any trustee or holder of any indebtedness or other obligations of such Party or any indebtedness entitled to any security interest in any property, rights or interests of such Party, other than such approvals, consents and other action as have been duly obtained or taken.

(c) Neither the execution, delivery or performance by such Party of the 2005 Amendments to Contracts, nor the consummation by such Party of the transactions contemplated thereby, will conflict with or result in any violation of or constitute a default under any terms of any material agreement, mortgage, contract, indenture, lease or other instrument, or any applicable law, by which such Party or its properties or assets are bound.

(d) The execution, delivery or performance by such Party of any provision of the 2005 Amendments to Contracts, do not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any government authority or agency, including any judicial body, other than such consents, approvals, notices, registration or other action which have been duly obtained, given, sent or taken.

(e) These 2005 Amendments to Contracts have been duly executed and delivered by such Party and constitute the legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, except as such enforcement may be

limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity, regardless of whether enforcement is sought in a proceeding in equity or at law.

(f) There are no pending or to the actual knowledge of such Party, threatened actions or proceedings by or before any court or administrative agency that, either individually or in the aggregate, are reasonably likely materially and adversely to affect the ability of such Party to perform its obligations under these 2005 Amendments to Contracts.

Section 603 Each of the Parties acknowledges that WKE and the City have heretofore funded SCR Capital Costs and other costs of the Station Two SCR System, as well as SCR Ammonia Costs, and have otherwise performed certain obligations and undertaken certain activities with respect to the Station Two SCR System or the design, acquisition, construction, installation, start-up and testing thereof, in each case pursuant to the Interim Funding Agreement, and the Parties hereby agree that provision of such funding; the performance of such obligations and the undertaking of such activities shall be deemed to have been authorized, undertaken and accomplished consistent and in accordance with the Parties' respective obligations under the provisions of the Agreements (as amended hereby) and the Station Two Agreement. The acknowledgements and agreements of the Parties pursuant to this Section 603 shall apply with respect to all such fundings, performance and undertaking through the effective date of all provisions of the 2005 Amendments to Contracts.

Section 604 The Parties agree that upon all provisions of these 2005 Amendments to Contracts becoming fully effective as provided in Section 601, any amounts

remaining in the Interim SCR Account held by the City under the Interim Funding Agreement shall be paid into the SCR Account established under the Construction and Operation Agreement; and the Interim Funding Agreement and the Interim SCR Account shall each terminate in accordance with their respective terms. To the extent a Party has funded a share of SCR Capital Costs prior to all provisions of the 2005 Amendments to Contracts becoming fully effective that is greater than or less than the share of such costs required to be funded by that Party in accordance with the 2005 Amendments to Contracts (including without limitation, any SCR Capital Costs funded by the City, WKE or LEM pursuant to the Interim Funding Agreement), the other relevant Party or Parties agree to promptly reimburse that Party (in the case of an over funding), or that Party agrees to promptly reimburse the other relevant Party or Parties (in the case of an under funding), in each case, in an amount necessary to reflect the Parties' respective funding obligations for SCR Capital Costs under the 2005 Amendments to Contracts, without set-off, deduction or counterclaim. As used in the Interim Funding Agreement, references to the 2002 Amendments to Contracts shall mean the 2005 Amendments to Contracts. The Parties agree that notwithstanding the provisions of Section 8 of the Interim Funding Agreement to the contrary, neither Western Kentucky Energy Corp. nor WKE Corp. are required to be parties to the 2005 Amendments to Contracts as a condition to the Interim Funding Agreement becoming immediately null and void as contemplated in that Section 8.

Section 605 Except as amended by the 2005 Amendments to Contracts, each of the Agreements shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed the 2005 Amendments to Contracts in multiple counterparts as of the date first written above.

ATTEST:

Maree Collins
Acting City Clerk
(City Seal)

City of Henderson, Kentucky

By: *[Signature]*
Title: Mayor

ATTEST:

Mark S. [Signature]
Secretary

City of Henderson Utility Commission

By: *William L. Smith*
Title: Chairman

WKE Station Two, Inc.

By: *Ralph [Signature]*
Title: Vice President

LG&E Energy Marketing Inc.

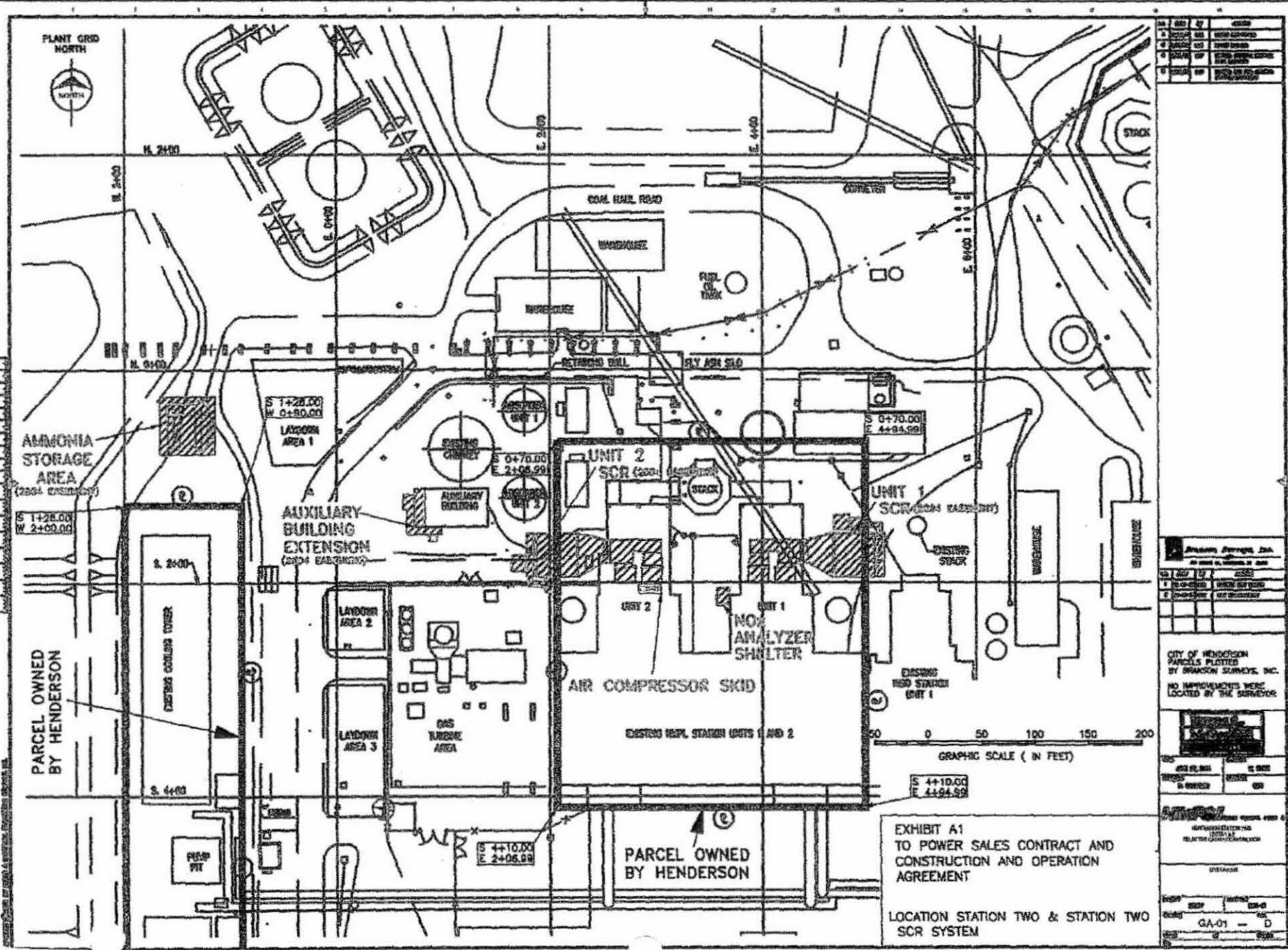
By: *[Signature]*
Title: President

Big Rivers Electric Corporation

By: *[Signature]*
Title: President

EXHIBIT A1
to the Power Sales Contract and the
Construction and Operation Agreement

LOCATION OF STATION TWO AND STATION TWO SCR SYSTEM



NO.	DATE	BY	REVISION
1	08/01/00	W.S.	ISSUE FOR PERMITS
2	08/01/00	W.S.	ISSUE FOR PERMITS
3	08/01/00	W.S.	ISSUE FOR PERMITS
4	08/01/00	W.S.	ISSUE FOR PERMITS
5	08/01/00	W.S.	ISSUE FOR PERMITS
6	08/01/00	W.S.	ISSUE FOR PERMITS

Ammonia Storage, Inc.			
NO. 1001 1001 1001			
NO.	DATE	BY	REVISION
1	08/01/00	W.S.	ISSUE FOR PERMITS
2	08/01/00	W.S.	ISSUE FOR PERMITS
3	08/01/00	W.S.	ISSUE FOR PERMITS

CITY OF HENDERSON
 PARCELS PLOTTED
 BY BRANSON SURVEYS, INC.
 NO IMPROVEMENTS WERE
 LOCATED BY THE SURVEYOR



NO.	DATE	BY	REVISION
1	08/01/00	W.S.	ISSUE FOR PERMITS
2	08/01/00	W.S.	ISSUE FOR PERMITS
3	08/01/00	W.S.	ISSUE FOR PERMITS

EXHIBIT A1
 TO POWER SALES CONTRACT AND
 CONSTRUCTION AND OPERATION
 AGREEMENT

NO.	DATE	BY	REVISION
1	08/01/00	W.S.	ISSUE FOR PERMITS
2	08/01/00	W.S.	ISSUE FOR PERMITS
3	08/01/00	W.S.	ISSUE FOR PERMITS

EXHIBIT A2
to the Power Sales Contract and the
Construction and Operation Agreement

STATION TWO SCR SYSTEM BASE COAL SPECIFICATIONS

Ultimate Analysis – Weight % as received except as noted:

	Design	Range
% Carbon	61.0	60.0 – 65.0
Hydrogen	4.2	3.5 – 5.0
% Nitrogen	1.3	1.1 – 1.5
% Chlorine	0.10	0.03 – 0.25
% Sulfur	3.6	2.5 – 4.0
% Oxygen	7.8	N/A
% Moisture	9.0	7.0 – 12.0
% Ash	13.0	5.0 – 22.0
BTU	11,200	10,800 – 12,000
SO ₂ (in lbs per mmBTU)	6.27	4.0 – 7.0

Coal Ash Analysis – Weight % as received except as noted:

	Design	Range
Silica, SiO ₂	45.6	43.1 – 51.0
Ferric Oxide, Fe ₂ O ₃	20.0	15.0 – 28.3
Alumina, Al ₂ O ₃	21.9	18.5 – 23.7
Titania, TiO ₂	1.0	0.4 – 1.93
Calcium Oxide, CaO	2.6	1.6 – 5.2
Magnesium Oxide, MgO	3.8	0.6 – 4.5
Potassium Oxide, K ₂ O	2.5	0.8 – 3.0
Sodium Oxide, Na ₂ O	0.6	0.3 – 0.9
Undetermined		remainder

Trace Elements (dry basis g/g)

	Design	Range
Arsenic, As	10	2 - 30
Vanadium, V	86	50 - 200

EXHIBIT B
to the Power Sales Contract and the
Construction and Operation Agreement

COMPONENTS OF STATION TWO SCR SYSTEM

SCR SYSTEM

The SCR system for each of the units is located between the boiler economizer outlet and the air heater inlet. The catalyst modules are located in one vertical down flow reactor for each boiler. The SCR reactors are of an outdoors design.

During periods of operation, flue gas from the boilers after the economizer sections will pass through the SCR and then through the air heaters. When the SCR is not in service, the flue gas will by-pass the SCR system. The ammonia injection system will use anhydrous ammonia from a storage facility. Two layers of catalyst will be employed initially to attain required performance. A third layer will be added, when necessary after the guarantee period, to maintain continued performance.

Ammonia System

The purpose of the ammonia injection system is to ensure that there is a correct amount of ammonia and an even distribution of NH_3/NO_x ratio at the first catalyst layer. The ammonia injection process involves moving the liquid anhydrous ammonia from the storage tanks to the vaporizer skid, where it is vaporized, and then moved to the reactor area where it is mixed with heated dilution air. The ammonia air mixture is then injected into the flue gas duct ahead of the SCR reactor through a specially designed injection grid.

SCR, Ductwork and Support System:

Pile Foundations

Grade Beams

Slabs on Grade

Equipment Pads

SCR and Ductwork Support Steel

Access Platforms and Stairs to Grade

2 SCR Reactor Vessels

SCR Inlet and Outlet Ductwork

SCR and Ductwork Insulation and Lagging

Ductwork Expansion Joints

SCR and Ductwork Access Doors

Pipe Supports

Buildings and Enclosures:

Electrical Building Extension

NOx Analyzer Shelter

2 Dilution Air Fan Skid Enclosures

Mechanical Equipment, SCR System:

4 Diverter Dampers

6 Diverter Damper Seal Air Fans

6 Damper Seal Air Fan Intake Silencers

2 Seal Air Heaters

SCR Catalyst Modules

Catalyst Handling Equipment; Carts, Air Powered Hoists, and Crane Beams

16 Sonic Air Horns

2 Air Filters

2 Air Compressors

1 Regenerative Air Dryer Skid

1 Air Receiver

6 Ash Hoppers

6 Hopper Ash Handling Valves

Mechanical Equipment, Ammonia System:

2 Ammonia Storage Tanks

2 Ammonia Leak Detection System

3 Ammonia Vaporizers

4 Dilution Air Fans

4 Dilution Air Intake Silencers

4 Dilution Air Heaters

1 Mixing Chamber

2 Air Filters

Ammonia Piping

2 Ammonia Injection Grids and Associated Nozzles, etc.

3 Ammonia Area Eye Wash Stations

Nitrogen Bottles for Purging

Electrical Equipment:

2 SCR Control Systems

2 Motor Control Centers

2 Gas Analyzers & Monitoring System

Air Preheater Refurbishment

Air Heater Baskets

4 Air Heater Rotors

Seals and Stay Plates

Multi-media Cleaning System

1 Air Heater Water Wash Skid

EXHIBIT C
to the Construction and
Operation Agreement

EXAMPLE OF CALCULATION FOR
ALLOCATION OF ALLOTTED ALLOWANCES

	A	B	C	D
1	ALLOCATION OF STATION TWO ALLOTTED ALLOWANCES *			
2	<i>DATA ENTRY (SHOWN WITH EXAMPLE VALUES)</i>			
3		"Station Two Allotted Allowances" (e.g. 750 allowances)	750	
4		"City Capacity Reservation" (e.g. 95 MWnet)	95	
5		Actual Net Station Two Generation (e.g. 890,000 MWhrs)	890,000	
6		Total Number of Hours in NOx Season (e.g. 3,672)	3,672	
7		"City Actual Load Factor" (e.g. 80%)	0.80	
8		"Station Two Stack NOx Emissions" at % Actual SCR NOx Removal (e.g. 88%)	330	
9		"Station Two SCR Inlet NOx Tons" (e.g. 2750 tons)	2,750	
10		Station Two Allocated Allowances	330	
11		SCR Design NOx Removal (Fixed at 90.0%)	0.90	
12		"Station One Unit 6 Stack NOx Emissions" (e.g. 66 tons)	66	
13		"Station One Unit 6 Allotted Allowances" (e.g. 31 allowances)	31	
14	<i>REFERENCE CALCULATIONS</i>			
15		City's "Average Station Two Capacity Share"	30.45%	C4/312
16	<i>CITY'S EXCESS ALLOWANCES (APPLIES ONLY IF CITY ACTUAL LOAD FACTOR LESS THAN 86%)</i>			
17		Actual Net Station Two Generation (e.g. 890,000 MWhrs)	890,000	=C5
18		City Reduction Generation Amount (MWhrs)	17,442	.85*(C15-312/C6)*((0.85-C7)/0.65)
19		Station Two Stack NOx Emissions applying SCR Design NOx Removal	275	C9*(1-C11)
20		Station Two Allocated Allowances if SCR Design NOx Removal Applied to Stack Emissions	275	=C19 "
21		Station Two NOx Allowances associated with City Reduction Generation Amount	5	(C20/C5)*C18
22		Calculation Value/Formula Step	5	IF(C3-C8>C21,C21,C3-C8)
23		Calculation Value/Formula Step	5	IF(C22<0.0,C22)
24		"City Excess Allowances"	5	IF(C7<0.85,C23,0)
25	<i>CALCULATION OF STATION TWO ALLOTTED ALLOWANCES ALLOCATED TO STATION ONE UNIT 6</i>			
26		Calculation Value/Formula Step	35	IF(C12-C13>0.0,C12-C13,0)
27		Calculation Value / Formula Step	35	IF(C3-C9-C24>C26,C26,C3-C9-C24)
28		Calculation Value/Formula Step	35	IF(C3-C8-C24<0.0,C27)
29		Station Two Allotted Allowances Allocated to Station One Unit 6 (not to exceed 40 or be less than 0)	35	IF(C28>40.40,C28)
30	<i>ALLOWANCES ALLOCATED TO WKE/BREC</i>			
31		Balance of Station Two Allotted Allowances to WKE/BREC less 40 Station Two Allotted Allowances potentially available for use at Station One Unit 6	375	IF(C3-C8-C24-C29-C32<0.0,C3-C8-C24-C29-C32)
32		Portion of 40 Potentially Available Station Two Allotted Allowances Not Allocated to Station One Unit 6	5	40-C29
33		Balance of Station Two Allotted Allowances to WKE/BREC	380	IF(C3-C8-C24-C29<0.0,C3-C8-C24-C29)
34	<i>SUMMARY OF ALLOWANCE DISTRIBUTION</i>			
35		"Station Two Allotted Allowances"	750	=C3
36		"Station Two Allocated Allowances" (not to exceed amount of Station Two Allotted Allowances)	330	IF(C8>C3,C3,C8)
37		"City Excess Allowances"	5	=C24
38		Station Two Allotted Allowances Allocated to Station One Unit 6 (not to exceed 40 or be less than 0)	35	=C29
39		Balance of Station Two Allotted Allowances to WKE/BREC	380	=C33
40				
41	*All values and calculations pertain to a NOx Season and reflect existing Federal and Kentucky NOx Regulations under which one allowance equals one ton of NOx			
42	**Line C20 must be reflected as a number carried to at least ten decimal places			
43				

SCR AMMONIA COST SHARE

I. DEFINITIONS

In addition to the terms used in this Exhibit that are defined in Section 2 of the Power Sales Contract, capitalized terms used in this Exhibit shall have the meanings set forth in Section VI of this Exhibit.

II. SCR AMMONIA COST ALLOCATION FORMULA

The SCR Ammonia Costs allocated to Big Rivers (or WKE/LEM, as Big Rivers' assignee) pursuant to Section 6.2(a) of the Power Sales Contract for a particular Monthly Billing Period shall be determined, subject to adjustment as provided in Sections IV and V of this Exhibit, as follows:

$$AC = \left[C \times \frac{G}{TG} \right] \times MB$$

Where:

AC = The amount of SCR Ammonia Costs allocated to Big Rivers (or WKE/LEM, as Big Rivers' assignee) for such Monthly Billing Period

C = The total amount of SCR Ammonia Costs for the Contract Year that includes such Monthly Billing Period.

G = The Actual Station Two Generation Share of Big Rivers (or

WKE/LEM, as Big Rivers' assignee) for the NOx Season or portions of the NOx Seasons within the Contract Year that includes such Monthly Billing Period

TG = The Actual Net Station Two Generation for the NOx Season or portions of the NOx Seasons within the Contract Year that includes such Monthly Billing Period

MB = 1/12, or in the case where the Contract Year that includes such Monthly Billing Period embraces fewer than 12 months, a greater fraction the numerator of which is 1 and the denominator of which is the number of months in such Contract Year.

III. MONITORING OPERATING PERFORMANCE

Monitoring of the operating performance of the Station Two SCR System by Big Rivers (or WKE as Big Rivers' assignee) under the Construction and Operation Agreement, shall include the following:

- (A) Boiler Efficiency
- (B) Performance under vendor warranties:
 - (i) Operation of NOx duct inlet and outlet monitors
 - (ii) Actual NOx removal
 - (iii) Actual ammonia consumption and ammonia slip
- (C) NOx burner performance
- (D) Unit turndown

IV. Two Year Revisit of SCR Ammonia Cost Allocation Formula

Within 60 days following the end of the 2005 NOx Season (September 30, 2005), the Parties shall revisit the SCR Ammonia Cost Allocation Formula for the purpose of determining whether there is to be an adjustment of the SCR Ammonia Cost Allocation Formula as follows:

(A) Selection of an SCR Ammonia Consultant (that may be an affiliate of a Party) by agreement of all the Parties to advise and assist the Parties in making such determination.

(B) Review of data derived from the monitoring of operating performance under Section III of this Exhibit.

(C) Consideration of whether a Correction Factor is needed to adjust the SCR Ammonia Cost Allocation Formula in light of the operating performance data.

(D) Determination by agreement of all the Parties of whether (and the extent to which) (i) the SCR Ammonia Cost Allocation Formula shall be adjusted by a Correction Factor approved by all the Parties; or (ii) the SCR Ammonia Cost Allocation Formula shall continue without adjustment.

(E) If the Parties are not able to agree as set forth in (D) above within 60 days following the end of the 2005 NOx Season, then at the request of any Party made within ten days thereafter, there shall be an Ammonia Dispute Resolution Procedure to commence 20 days after the date of such request for the purpose of determining whether or not the SCR Ammonia Cost Allocation Formula shall be adjusted, and if so, a determination as to the Correction Factor for the adjustment. The Parties shall be bound by the determinations made pursuant to the Ammonia Dispute Resolution Procedure.

(F) If a Correction Factor shall be determined pursuant to (D) or (E) above, this

Exhibit shall be revised to reflect the adjustment of the Ammonia Cost Allocation Formula by such Correction Factor.

(G) The costs of the Ammonia Dispute Resolution Procedure shall be treated as capacity costs of Station Two and constitute general and administrative expenses thereof under Section 6.3 of the Power Sales Contract.

V. **Other Adjustments of SCR Ammonia Cost Allocation Formula**

Based on a review by the Parties of the data developed from the monitoring of operating performance pursuant to Section III of this Exhibit, the SCR Ammonia Cost Allocation Formula may be adjusted at any time by a Correction Factor approved by all the Parties, and this Exhibit shall be revised to reflect the adjustment of the SCR Ammonia Cost Allocation Formula by such Correction Factor.

VI. **Certain Definitions**

Certain terms used in this Exhibit are defined as follows:

“Ammonia Dispute Resolution Procedure” shall mean, with respect to a determination pursuant to this Exhibit as to whether or not the SCR Ammonia Allocation formula shall be adjusted by a Correction Factor, the following procedures and actions:

(i) The appointment of members of a committee (the “Dispute Resolution Committee”) consisting of three SCR Consultants. One SCR Consultant shall be appointed by Big Rivers (or WKE/LEM, as Big Rivers’ assignee) and one appointed by the City, and each of such SCR Consultants may be affiliated with the Party that appointed it. Each such Party shall notify the other as to the identity of its appointee within 15 days of the commencement of the Ammonia Dispute Resolution Procedure. The third SCR Consultant shall be appointed by the

two SCR Consultants appointed by the Parties as above provided, which appointment shall be made within 30 days from the commencement of the Ammonia Dispute Resolution Procedure. The third SCR Consultant shall not be affiliated with any Party and shall be the Chair of the Dispute Resolution Committee:

(ii) The Dispute Resolution Committee shall be furnished by Big Rivers (or WKE as Big Rivers' assignee) with the monitoring data obtained pursuant to Section III of this Exhibit and upon request of any member, the Dispute Resolution Committee shall be furnished by a Party with other available information in that Party's possession or control relating to this Exhibit or the Station Two SCR System.

(iii) Both Big Rivers (or WKE/LEM, as Big Rivers' assignee) and the City shall furnish to the Dispute Resolution Committee statements as to their respective positions with respect to the determination in dispute, together with such other information that such Party deems relevant. Each such Party may be assisted by an advisor and by counsel of its choice, each of which shall be at the expense of that Party.

(iv) The Dispute Resolution Committee shall establish by majority vote of its members such procedures for its deliberations as it deems appropriate.

(v) The determination by the Dispute Resolution Committee as to whether the SCR Ammonia Cost Allocation Formula should be adjusted by a Correction Factor and, if so, the determination of such Correction Factor shall be made by a majority vote of its members.

(vi) The Dispute Resolution Committee shall issue a written decision as to its determinations stating the reasons upon which such determinations are based. The determinations by the Dispute Resolution Committee shall be made within 60 days of the

commencement of the Ammonia Dispute Resolution Procedure (or by such later date as the Parties shall approve). Such determination by the Dispute Resolution Committee shall be conclusive for the purposes of the Power Sales Contract and shall be final and binding on the Parties.

“Correction Factor” shall mean the correction factor considered and, as applicable, determined pursuant to Section IV or Section V of this Exhibit which shall constitute an adjustment of the SCR Ammonia Cost Allocation Formula.

“SCR Consultant” shall mean the engineering or consulting firm having a favorable reputation for knowledge and experience with respect to the operation and performance of selective catalytic reduction systems installed in coal-fired electric power plants.

SCR CATALYST AND COST SHARE
AND
CATALYST REFUND PAYMENT

I. Definitions

In addition to the terms used in this Exhibit that are defined in Section 2 of the Power Sales Contract, capitalized terms used in this Exhibit shall have the meanings set forth in Section VI of this Exhibit.

II. SCR Catalyst Cost Allocation Formula

The SCR Catalyst Acquisition Costs with respect to a Catalyst Layer allocated to Big Rivers (or WKE/LEM, as Big Rivers' assignee) pursuant to Section 6.2(b) of the Power Sales Contract for a particular Monthly Billing Period shall be calculated in accordance with the following formula:

$$X = \frac{[(CC - AF) \times CSI] + BAF}{MB}$$

Where:

X = The amount of the SCR Catalyst Acquisition Costs with respect to such Catalyst Layer allocated to Big Rivers (or WKE/LEM, as Big Rivers' assignee) for such Monthly Billing Period

CC = The amount of the SCR Catalyst Acquisition Costs with respect to such Catalyst Layer for the Contract Year that includes such Monthly Billing

..
..
..
Period

AF = The amount of any Alternate Fuel Differential Amount with respect to such Catalyst Layer as set forth in the successful bid by the vendor of such Catalyst Layer based on the designation of Alternate Fuel by either or both Parties with respect to such Catalyst Layer

MB = 12, or in the case where the Contract Year that includes such Monthly Billing Period embraces fewer than 12 months, the number of months in such Contract Year

CS = The share (expressed as a decimal) of the Total Capacity (determined as provided in Section 3 of the Power Sales Contract) of Big Rivers (or WKE/LEM, as Big Rivers' assignee) for the Contract Year that includes such Monthly Billing Period

BAF = The amount of the Alternate Fuel Differential Amount, if any, attributable to the designation by Big Rivers, (or WKE/LEM, as Big Rivers' assignee) of its use of Alternate Fuel with respect to such Catalyst Layer

III. Certain Requirements for Vendor's Bid

The bid terms for the purchase by a vendor of a Catalyst Layer shall require, among others, that:

(A) The vendor's bid with respect to the Catalyst Layer shall set forth (i) the purchase price with respect to such Catalyst Layer as designed for Base Coal;

(B) If either Big Rivers (or WKE/LEM, as Big Rivers' assignee) or the City shall designate its use of Alternate Fuel with respect to such Catalyst Layer, the vendor's bid with

respect to such Catalyst Layer shall set forth in addition to the amount of the purchase price of the Catalyst Layer as if designed for Base Coal, any adjustment in the amount of the purchase price attributable to such designation of the use of Alternate Fuel .

IV. Catalyst Failure and Catalyst Refund Payment

The amount of SCR Catalyst Acquisition Costs allocated pursuant to the SCR Catalyst Cost Allocation Formula set forth in Section II of this Exhibit or paid by the City shall be adjusted by a Catalyst Refund Payment in the event of a Catalyst Failure as follows:

(A) In the event of a Catalyst Failure, the Party (either Big Rivers (or WKE/LEM, as Big Rivers' assignee) or the City, as the case may be) whose fuel is responsible for the Catalyst Failure shall make a Catalyst Refund Payment to the other Party as an adjustment of the payments by the Parties of their respective amounts of SCR Catalyst Acquisition Costs, or in the case where both Big Rivers' (or WKE/LEM's, as Big Rivers' assignee) and the City's fuel characteristics are responsible for the Catalyst Failure, such Parties shall pay, each to the other, a Catalyst Refund Payment in proportion to the relative responsibility of its fuel for the Catalyst Failure.

(B) Unless determined by agreement of all the Parties, the determination of whether a Catalyst Failure shall have occurred and, if so, the characteristics of a Party's fuel responsible therefor, or, if both Parties' fuel shall be responsible, the percentage with respect to the proportionate responsibility of each Party therefor as contemplated in (A) above, shall be made within 90 days following the occurrence of such Catalyst Failure (or by such later date as approved by all the Parties) by a Catalyst Analysis Organization (which may be an affiliate of a Party) acceptable to all the Parties based upon the data obtained through the fuel sampling and analysis methodology provided for in Section V of this Exhibit.

(C) In the event the Parties are not able to reach a determination as to a Catalyst Failure and its cause by mutual acquiescence and are not able to select a Catalyst Analysis Organization mutually acceptable to all the Parties within 20 days of the occurrence of the Catalyst Failure, at the request of any Party made within 10 days thereafter, there shall be a Catalyst Dispute Resolution Procedure which shall commence within 15 days of the date of such request for the purpose of selecting a Catalyst Analysis Organization to make the determination as to the Catalyst Failure, its cause and the fuel characteristic responsible, as set forth in (B) above.

(D) The cost of the Catalyst Analysis Organization, together with costs of any attendant Catalyst Dispute Resolution Procedure, shall constitute capacity costs of Station Two and operation and maintenance costs thereof under Section 6.3 of the Power Sales Contract, provided that, in the case where the determination by the Catalyst Analysis Organization of a Catalyst Failure with respect to a Catalyst Layer results in a Catalyst Refund Payment, such costs shall be included in the SCR Catalyst Acquisition Costs for such Catalyst Layer for the purposes of the calculation of the amount of any Catalyst Refund Payment pursuant to (F) below.

(E) In the event of a Catalyst Failure where neither the Parties nor any Catalyst Analysis Organization shall be able to determine the responsibility for the Catalyst Failure based on the respective fuel characteristics of the Parties' fuel, no Catalyst Refund Payment shall be payable by any Party.

(F) The amount of a Catalyst Refund Payment with respect to a Catalyst Layer to be made by a Party (either Big Rivers (or WKE/LEM, as Big Rivers' assignee) or the City) whose fuel shall be responsible for the Catalyst Failure, or made by each of such Parties in the case where the fuel of both such Parties shall be responsible for the Catalyst Failure, based on a

determination made pursuant to (B) above or (C) above, shall be calculated with respect to a Party in accordance with the following formula:

$$Z = \frac{(AC - AF) \times (GL - AL) \times PS \times CS}{GL}$$

Where:

- Z = The amount of the Catalyst Refund Payment to be made by such Party
- AC = The SCR Catalyst Acquisition Costs with respect to such Catalyst Layer
- AF = The Alternate Fuel Differential Amount, if any, with respect to such Catalyst Layer
- GL = The Guaranteed Life Cycle with respect to such Catalyst Layer
- AL = The total number of hours of the actual operating life of such Catalyst Layer
- CS = The share (expressed as a decimal) of the Total Capacity (determined as provided in Section 3 of the Power Sales Contract) of such Party for the Contract Year for which the SCR Catalyst Acquisition Costs with respect to such Catalyst Layer was payable pursuant to Section 6 of the Power Sales Contract
- PS = If the characteristics of both Parties' fuel shall be responsible for the Catalyst Failure, the percentage (expressed as a decimal) of the proportionate

responsibility of such Party's fuel therefor as determined pursuant to (B) or (C) above or, if only such Party's fuel is responsible, PS shall equal 1

V. **Fuel sampling and Analysis Methodology**

Fuel sampling and analysis methodology shall be conducted for each NO_x Season for purposes of making determinations as to any Catalyst Failure as set forth in Section IV of this Exhibit and to identify and evaluate any issues as to the warranties under the catalyst vendor's contract with respect to each Catalyst Layer as follows:

(A) Big Rivers (or WKE/LEM, as Big Rivers' assignee) shall perform monthly composite sampling to obtain ultimate, trace element and mineral ash analyses of the as-received fuel purchased by it from the fuel supplier, which sampling shall be performed at its own cost.

(B) The City shall perform monthly composite sampling to obtain ultimate, trace element and mineral ash analyses of the as-received fuel purchased by it from the fuel supplier which sampling shall be performed at its own cost.

(C) Big Rivers (or WKE as Big Rivers' assignee) will perform daily into weekly composite ultimate and trace element analyses of as-fired fuel under the Construction and Operation Agreement, and the costs thereof shall be treated as capacity costs of Station Two and constitute operation and maintenance costs thereof under Section 6.3 of the Power Sales Contract.

(D) Big Rivers (or WKE as Big Rivers' assignee) will perform monthly composite sampling and obtain mineral ash analysis of fly ash samples under the Construction and Operation Agreement, and the cost thereof shall be treated as capacity costs of Station Two and

constitute operation and maintenance costs thereof under Section 6.3 of the Power Sales Contract.

VI. Certain Definitions:

“Catalyst Analysis Organization” shall mean a laboratory or engineering firm having a favorable reputation for skill and experience with respect to conducting tests, analyses and studies in connection with the use of catalyst in the operation of selective catalytic reduction systems installed in coal fired electric power plants.

“Catalyst Dispute Resolution Procedure” shall mean, with respect to determinations pursuant to Section IV(C) of this Exhibit as to a Catalyst Failure, its cause and the fuel characteristics responsible therefor, the following procedures and actions:

(i) The appointment of members of a committee (the “Selection Committee”) consisting of three SCR Consultants. One SCR Consultant shall be appointed by Big Rivers (or WKE/LEM, as Big Rivers’ assignee) and one appointed by the City, and each of such SCR Consultants may be affiliated with the Party that appointed it. Each such Party shall notify the other as to the identity of its appointee within 15 days of the commencement of the Catalyst Dispute Resolution Procedure. The third SCR Consultant shall be appointed by the two SCR Consultants appointed by the Parties as above provided, which appointment shall be made within 30 days from the commencement of the Catalyst Dispute Resolution Procedure. The third SCR Consultant shall not be affiliated with any Party and shall be the Chair of the Selection Committee.

(ii) The Selection Committee shall by a majority vote of its members select an independent Catalyst Analysis Organization which shall not be affiliated with any of the Parties

that will accept the assignment to make the determinations for which the Catalyst Dispute Resolution Procedure was required by Section IV (C) of this Exhibit.

(iii) Such Catalyst Analysis Organization shall be furnished by Big Rivers (or WKE as Big Rivers' assignee) with the fuel sampling and analyses methodology data obtained pursuant to Section V of this Exhibit and upon its request shall be furnished by a Party with other available information in the possession or control of that Party relating to this Exhibit or the Station Two SCR System.

(iv) Big Rivers (or WKE/LEM, as Big Rivers' assignee) and the City may each furnish to the Catalyst Analysis Organization any statements as to their respective positions with respect to the determination in dispute, together with such other information that such Party deems relevant. Each such Party may be assisted by an advisor and by counsel of its choice, each of which shall be at the expense of that Party.

(v) The determination shall be made by the Catalyst Analysis Organization as to whether a Catalyst Failure occurred and, if so, its cause and the fuel characteristics of the Party responsible therefor, or, in the case where the fuel of both such Parties shall be responsible, the percentage of the proportionate responsibility of the fuel of each such Party (or, if the Catalyst Analysis Organization is not able to determine such proportionate responsibility, it shall state that it is unable to do so).

(vi) The Catalyst Analysis Organization shall issue a written decision as to its determinations (or inability to make the same) stating the basis therefor. Such decision by the

Catalyst Analysis Organization shall be made within 60 days of the commencement of the Catalyst Dispute Resolution Procedure or by such later date as the Parties shall approve. Such decision by the Catalyst Analysis Organization shall be conclusive for the purposes of the Power Sales Contract and shall be final and binding on the Parties.

“Guaranteed Life Cycle” shall mean, with respect to a particular Catalyst Layer, the number of hours of operation of such Catalyst Layer consistent with its design capability guaranteed or warranted by the vendor of such Catalyst Layer based on compliance with the operation and maintenance procedures and fuel specifications provided in the contract with such vendor.

“SCR Consultant” shall mean, with respect to a particular Catalyst Layer, an engineering or consulting firm having a favorable reputation for skill and experience in connection with the operation of selective catalytic reduction systems installed in coal fired electric power plants.



American Arbitration Association
Dispute Resolution Services Worldwide

John Bishop, Vice President
bishopj@adr.org

May 31, 2012

Southeast Case Management Center
2200 Century Parkway, Suite 300, Atlanta, GA 30345
telephone: 404-325-0101 facsimile: 877-395-1388
internet: <http://www.adr.org/>

VIA ELECTRONIC MAIL:

C. S. Greene, Esq.
Bryan Cave, LLP
1201 West Peachtree Street NW
Suite 14
Atlanta, GA 30309-3488

Jason Renzelmann
Frost Brown Todd LLC
400 West Market Street
32nd Floor
Louisville, KY 40202-3363

Theresa A. Canaday, Esq.
Frost Brown Todd, LLC
400 West Market Street
32nd Floor
Louisville, KY 40202-3363

K. G. Haynes, Esq.
Wyatt Tarrant & Combs, LLP
500 W. Jefferson Street, Suite 2800
Louisville, KY 40202-2898

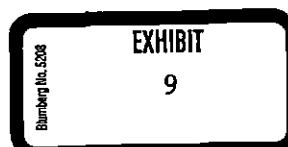
Virginia H. Snell
Wyatt, Tarrant & Combs, LLP
PNC Plaza, Suite 2800
500 West Jefferson Street
Louisville, KY 40202-2898

Re: 52 198 00173 10
Big Rivers Electric Corporation
vs
City of Henderson, Kentucky
and City of Henderson Utility Commission
dba Henderson Municipal Power and Light (HMPL)

Dear Parties:

By direction of the Arbitrators we herewith transmit to you the duly executed Final Award and Concurrence in Award in the above matter. Original copies will follow via U.S. mail. This serves as a reminder that there is to be no direct communication with the Arbitrators. All communication shall be directed to the Association.

At this time we have verified with the arbitrators that they have submitted all requests for compensation and expenses in this matter. Accordingly, we have conducted a final reconciliation of the finances and are providing each party with a Financial History and Compensation Summary. If a party had any unused



compensation deposits, we have issued a refund check that should arrive in the mail shortly. If a party has an outstanding balance, that party will continue to receive cyclical invoices until the balance is paid.

Note that the financial reconciliation reflects costs as they were incurred during the course of the proceeding. Any apportionment of these costs by the arbitrator, pursuant to the Rules, will be addressed in the award and will be stated as one party's obligation to reimburse the other party for costs incurred. Any outstanding balances the parties may have with the AAA for the costs incurred during the arbitration proceedings remain due and payable to the AAA even after the final award is issued, and regardless of the arbitrator's apportionment of these costs between the parties in the award.

Please note that the physical case file will be destroyed fifteen (15) months after the date of this letter. In the normal course of our administration, the AAA may maintain certain documents in our electronic records system. Such electronic records are not routinely destroyed and do not constitute a complete case file.

We appreciate your selection of the AAA as your alternative dispute resolution provider in this matter. As always, please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Paris Earp

Paris N. Earp
Manager of ADR Services
800 388 6312
EarpP@adr.org

Encl.

cc: W.J. Michael Cody, Esq.
T. Maxfield Bahner, Esq.
Richard L. Pemberton, Esq.

AMERICAN ARBITRATION ASSOCIATION

In the matter of the arbitration between:

Re: 52 198 00173 10

Big Rivers Electric Corporation (Claimant)

vs

City of Henderson, Kentucky

and City of Henderson Utility Commission

dba Henderson Municipal Power and Light (HMPL) (Respondents)

AWARD

We, The Undersigned Arbitrators, having been designated in accordance with the arbitration agreement entered into between the parties and having been duly sworn and having heard the proofs and allegations of the Parties, do hereby FIND and AWARD as follows:

Complainant, Big Rivers Electric Corporation, filed this arbitration for a declaration of rights under a certain Power Sales Contract between City of Henderson, Kentucky and Big River's Rural Electric Co-Operative Corporation, dated August 1, 1970, and later amendments to that agreement.

The demand for arbitration filed February 23, 2010 requested declaratory judgment regarding contract provisions and non-monetary declaratory relief with potential injunctive relief. Big River's demand concerned the amendments to the Power Sales Contract dated July 15, 1998, specifically new Section 3.8. Its demand at paragraph 24 recited:

"There is an actual controversy among Big River's and Henderson/HMPL regarding whether (a) Henderson/HMPL can sell Excess Henderson Energy directly to a third-party without first offering the energy to Big River's and (b) Henderson/HMPL is entitled to offer the Excess Henderson Energy to Big River's at a price higher than the explicit

contractual price of \$1.50MWh plus certain variable production costs. Respondents agree that the arbitration concerns the interpretation of Section 3.8 of the power sales contract. Respondents claim that Big River's interpretation of the agreement as amended is unreasonable and would be illegal."

In January, 2011, each party filed a position statement. Thereafter, the parties engaged in various discovery.

The panel held evidentiary hearings in Louisville, Kentucky, November 5-13, 2011. The hearing was kept open for the parties to submit post-hearing briefs and present oral argument. Final arguments occurred in Louisville on March 14, 2012, followed by questions by the panel to counsel for the parties.

In the July, 1998 amendments to the 1970 Power Sales Contract, new Section 3.8 deals with energy from capacity at Station Two not utilized by the City, including capacity in excess of the City's reserved capacity. Subsection (a) provides that Big Rivers has the discretion to take and utilize all of the energy which is not scheduled or taken by City in accordance with Section 3.8(c). Subsection (b) provides that if Station Two is operated to generate power in excess of its total capacity, Big Rivers will take and utilize all of that energy unless the parties otherwise agree as provided in Section 3.8(c). Subsection (c) provides that Big Rivers must each month notify City of the amount of Excess Henderson Energy and energy associated with Excess Henderson Capacity which Big Rivers was taking during the prior month and pay for it at a rate equal to \$1.50 per mWh plus the costs of production. Subsection (d) provides:

- Big Rivers may operate Station Two to obtain capacity above the Total Capacity of Station Two.
- City agrees that it will not be permitted to sell or commit to any person other than Big Rivers any Excess Henderson Energy without first offering Big Rivers the opportunity to purchase that energy.

- After submission of the City's scheduled energy requirements Big Rivers then has a reasonable time to decide whether or not to purchase the Excess Henderson Energy not scheduled by the City.
- If it does not intend to purchase such energy Big Rivers agrees to notify City within a reasonable time so that City can make efforts to resell that power to third parties.
- City also agrees to pay Big Rivers according to its open access transmission tariff to the extent any transmission on Big Rivers transmission system is used in marketing Excess Henderson Energy.

Complainant and Respondent say that the language of Section 3.8 is not ambiguous. Yet each reach diametrically opposite conclusions about what Subsection (d) means.

Subsection (d) is not clear about the price at which Big Rivers will purchase any Excess Henderson Energy offered to it by City. Big Rivers insists that the price provided in Subsection (c) applies to Subsection (d). Henderson disagrees. The plain language of Subsection (d) does not resolve the disagreement between the parties. The drafters could have made clear the definition of price Big Rivers was to pay Henderson for this energy, but did not. Thus, the panel concludes that Subsection (d) is ambiguous because the price Big Rivers is to pay City for the energy is not clear and the words of Section 3.8 can bear differing interpretations.

The panel concludes that under Section 3.8(d) the City shall schedule and take from Station Two such energy as it, in good faith, determines is needed to serve its native load. When City does not require all of the capacity it in good faith reserved to serve its native load, the excess energy shall be considered to belong to City which it may offer to third parties subject to Big Rivers first right to purchase such energy. The price at which the energy will be offered to Big Rivers shall be the price at which City has a firm offer from a third party. Big Rivers shall then notify City within a reasonable time if

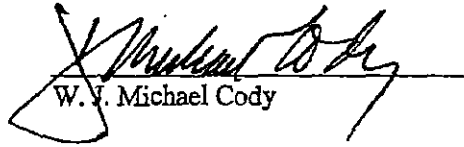
it does not intend to purchase such energy so that City can sell that power to third parties. Each party shall bear its pro rata share of the fixed and variable costs. Big Rivers shall continue to have the first right to take the energy generated by Station Two in excess of the City's reserved capacity as provided by Section 3.8(a)(b) and (c). As to Excess Henderson Energy within Henderson's reserved capacity which Henderson does not need to serve its native load which Big Rivers declines to purchase, after being notified by Henderson that the energy is available and the price at which Henderson has a bonafide offer, Henderson may sell to the third party from which it has the bonafide offer.

The panel does not find that the contracts entered into between Big Rivers and Henderson, as amended, are illegal.

The administrative fees and expenses of the American Arbitration Association totaling \$4,600.00 shall be borne equally by the parties and the fees and expenses of the Arbitrators totaling \$293,576.85 shall be borne equally by the parties. Therefore City of Henderson, Kentucky and City of Henderson Utility Commission dba Henderson Municipal Power and Light shall reimburse Big Rivers Electric Corporation the sum of \$2,300.04 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Big Rivers Corporation.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

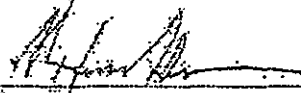
This Award may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.


W. J. Michael Cody

T. Maxfield Bahner

Dated: May 30, 2012

W. I. Michael Cody



T. Maxfield Bahnet

Dated: May 30, 2012

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between:

Case No. 52 198 00173 10

BIG RIVERS ELECTRIC CORPORATION,

Claimant,

vs.

CITY OF HENDERSON, KENTUCKY and
CITY OF HENDERSON UTILITY COMMISSION D/B/A
HENDERSON MUNICIPAL POWER AND LIGHT,

Respondents.

CONCURRENCE IN AWARD

I concur in the result reached by my colleague arbitrators, Bahner and Cody. But, I believe more needs to be said. I strongly believe that the 40 year history presented by the evidentiary record shows multiple words and deeds of the parties which are both inconsistent with one another and result in ambiguity and need for arbitral construction, including, without limitation, the ambiguity focused upon by my colleague arbitrators by the silence of paragraph 3.8(d) to support Big Rivers' claim of right to take Station II generation thereunder at only \$1.50 per Mw/hr plus variable costs. My colleague arbitrators feel compelled to observe the language of that paragraph in issuing their award. I believe that language does not recognize the realities of central marketing of electric energy which exists today and therefore presents an award which is unworkable in practice.


Both parties have established of record that they are members of MISO (Midwest Independent Transmission System Operator, Inc.). As such they offer to MISO the energy that is generated by Station II. MISO has a load to satisfy, as do the parties, and MISO's load includes the loads of both parties. The parties chose not to present the panel with the processes of the centralized MISO market. Thus, my colleague arbitrators are left with the language of paragraph 3.8(d) which they iterate in the award to require that Henderson obtain a "price at which City has a firm offer from a third party", notify Big Rivers of that price and that "Big Rivers shall then notify City within a reasonable time if it does not intend to purchase such energy so that City can sell to third parties."

I believe it to be common knowledge from everyday experience which a jury is entitled to apply to the evidence presented to it and which arbitrators can apply in their award as well, that the MISO market changes in intervals of a few minutes and does not allow for the leisurely process my colleagues order.

I would order that the energy generated by Station II be offered to MISO at the price per megawatt hour that will allow recovery of fixed plus variable costs of generation plus whatever additional dollars per mw/hr the market will bear, so that MISO will take rather than reject the

offered energy. Then the parties will receive the highest price MISO pays for any part of the collective offering needed to fill its load, however much more than the parties' offering price that may be. The parties can take back the energy needed to fill their respective loads at the same price they received for their offerings and the excess megawatt hours of their offering over their take back has already been sold in the MISO market at the collective price. Hopefully, with the low cost of Station II's generation (which the panel has been repeatedly advised of on the hearing record) there will be a significant profit to share on what energy went to the third party market rather than was taken back by the parties. That profit can be calculated retrospectively and divided according to the parties' respective entitlements pursuant to this award.

I also observe that the panel has been presented with 40 years of history in the form of more than 2,000 pages of hearing testimony and argument plus more than 200 exhibits, but for the limited purpose of providing, by the award, guidance to the parties for the future, and not with any request or ability to otherwise address the many happenings of the past.



Richard L. Pemberton, Chair

Dated: May 30, 2012

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

**APPLICATION OF BIG RIVERS ELECTRIC
CORPORATION FOR DECLARATORY ORDER**

)
) **Case No.**
) **2016-_____**

DIRECT TESTIMONY

OF

**ROBERT W. BERRY
PRESIDENT AND CHIEF EXECUTIVE OFFICER**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

FILED: July 29, 2016

**DIRECT TESTIMONY
OF
ROBERT W. BERRY**

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4
**DIRECT TESTIMONY
OF
ROBERT W. BERRY**

5 **I. INTRODUCTION**

6
7 **Q. Please state your name, business address, and position.**

8 A. My name is Robert W. Berry. I am employed by Big Rivers Electric Corporation (“Big
9 Rivers”), 201 Third Street, Henderson, Kentucky 42420 as its President and Chief
10 Executive Officer. I have held this position since July 1, 2014. Previously, I was Big
11 Rivers’ Chief Operating Officer beginning February 2013. Before that, I served as Big
12 Rivers’ Vice President of Production from the closing of the transaction that unwound
13 Big Rivers’ 1998 lease with E.ON U.S., LLC and its affiliates (the “Unwind
14 Transaction”), described in Case No. 2007-00455. Before the closing of the Unwind
15 Transaction, I was employed by Western Kentucky Energy Corporation (“WKE”) for 11
16 years beginning as a Maintenance Manager in 1998. I held the position of Plant Manager
17 at the Coleman Generating Station from 2000 until 2003, at which time I became the
18 Plant Manager of the Sebree Generating Station. Altogether, I have over 35 years of
19 experience in this system, having worked for both Big Rivers and WKE since 1981.

20 **Q. Have you previously testified before the Kentucky Public Service Commission
21 (“Commission”)?**

22 A. Yes. I testified most recently on behalf of Big Rivers in two cases seeking approval of
23 contracts relating to the two smelters owned by subsidiaries of Century Aluminum
24 Company, Case Nos. 2013-00221 and 2013-00413; in its last two general rate cases, Case

1 Nos. 2012-000535 and 2013-00199; and in its 2012 Environmental Compliance Plan
2 case, Case No. 2012-00063.
3

4 **II. PURPOSE OF TESTIMONY**
5

6 **Q. What is the purpose of your testimony?**

7 A. The purpose of my testimony is to provide a summary of a contractual dispute between
8 Big Rivers and the City of Henderson, Kentucky and City of Henderson Utility
9 Commission (collectively, "Henderson") and to support Big Rivers' request for the relief
10 sought in the application ("Application") in this proceeding.
11

12 **III. BIG RIVERS' DISPUTE WITH HENDERSON**
13

14 **Q. Provide a brief overview of Big Rivers' contractual relationship with Henderson.**

15 A. As noted in the Application filed with this testimony, Henderson owns two coal-fired
16 electric generating units near Sebree, Kentucky known as "Station Two," which have a
17 Total Capacity¹ of 312 MW. Big Rivers operates and maintains the Station Two units
18 under a series of contracts that were originally executed on August 1, 1970 (the "Station
19 Two Contracts"), and which have since been amended on several occasions. The
20 relevant Station Two Contracts and amendments are attached to Big Rivers' Application
21 as Exhibits 1-8.
22

¹ The "Total Capacity" of Station Two is defined in Section 3.6 of the Power Sales Contract (Exhibit 1 to this Application) as the average of the total continuous net send-out capability of all generating units in Station Two.

1 **Q. Have any disputes arisen between Big Rivers and Henderson with respect to the**
2 **Station Two Contracts?**

3 A. Unfortunately, a number of disputes have arisen between Big Rivers and Henderson with
4 respect to the Station Two Contracts. While Big Rivers continues to try to resolve most
5 of these issues with Henderson, the parties have reached an impasse on one issue that
6 requires the Commission's intervention. That issue relates to which party is responsible
7 for the variable production costs of "Excess Henderson Energy" that Big Rivers declines
8 to take and utilize. The variable production costs of Excess Henderson Energy include
9 fuel, all reagents, and sludge disposal costs ("Variable Costs").

10 One of the Station Two Contracts is the Power Sales Contract (Exhibit 1), which
11 defines each party's rights and obligations with respect to the capacity and energy from
12 Station Two and determines how much each party pays for its respective share of the
13 generation output of Station Two. Section 6.7 of the Power Sales Contract provides that
14 each party, at its own cost, must provide the full replacement of all fuels and reagents
15 consumed for that party's use of electric energy from Station Two. Section 3.8(c) of the
16 Power Sales Contract provides that Big Rivers is responsible for the costs of fuel, reagent
17 and sludge disposal for Excess Henderson Energy that it takes, but this provision does not
18 require Big Rivers to pay these Variable Costs for Excess Henderson Energy that Big
19 Rivers does not take.

20 **Q. Please explain what Excess Henderson Energy is.**

21 A. Under Section 3.3 of the Power Sales Contract, each year Henderson elects a portion of
22 the Station Two capacity to be reserved for serving the needs of the City and its
23 inhabitants (the "Reserved Capacity") by way of a rolling five-year reservation

1 methodology. Henderson then allots the balance of the capacity of Station Two to Big
2 Rivers, and Big Rivers is then entitled to, and is obligated to take and pay for, the allotted
3 Station Two capacity. For the 2016 contract year, Station Two's Total Capacity is 312
4 MW. Of that amount, Henderson's Reserved Capacity is 115 MW, resulting in Big
5 Rivers' allotted capacity being 197 MW.

6 In a given hour, Henderson may take less energy than is actually attributable to its
7 Reserved Capacity and available to Henderson. This remaining energy associated with
8 Henderson's Reserved Capacity that is not taken by Henderson for purposes of supplying
9 the needs of the City of Henderson and its inhabitants is "Excess Henderson Energy."

10 **Q. What is the dispute over Excess Henderson Energy?**

11 A. Each party pays a share of the fixed costs of Station Two in proportion to the party's
12 respective capacity reservation. Each party is separately responsible for the Variable
13 Costs associated with the energy each of them takes. The dispute over Excess Henderson
14 Energy concerns whether Big Rivers is responsible for Variable Costs for Henderson's
15 Excess Henderson Energy that Big Rivers does not take and utilize. Big Rivers notified
16 Henderson by letter dated May 25, 2016 (Application Exhibit 11, page 1), that although
17 Big Rivers had previously elected to take Excess Henderson Energy when it was
18 uneconomic to do so, on and after June 1, 2016, Big Rivers may not exercise its
19 discretion to take Excess Henderson Energy, particularly at times when the cost to Big
20 Rivers of the energy makes that energy economically uncompetitive in the wholesale
21 power market. Big Rivers also advised Henderson that if Big Rivers did not take Excess
22 Henderson Energy, Big Rivers would also not be responsible for the Variable Costs
23 associated with the production of that energy. Henderson objected to that change in

1 practice, but has refused to meet with Big Rivers to explain and discuss the substance of
2 its objection.

3 The concept of Excess Henderson Energy first came into existence with the
4 adoption of the 1998 amendments to the Station Two Contracts, when Section 3.8 was
5 added to the Power Sales Contract. Before 1998, the Station Two Contracts did not
6 address the issue of Excess Henderson Energy, but Big Rivers would pay the variable
7 production costs of any energy taken and used by Big Rivers. The 1998 amendments
8 were approved by the Commission in Case No. 1998-00267, and are attached as Exhibit 7
9 to the Application filed with this testimony. Section 3.8(a) provides:

10 In the event that at any time and from time to time [the City of Henderson]
11 does not take the full amount of energy associated with its reserved
12 capacity from Station Two (determined in accordance with this
13 Agreement), Big Rivers may, at its discretion, take and utilize all such
14 energy (or any portion thereof designated by Big Rivers) not scheduled or
15 taken by City (the "Excess Henderson Energy"), in accordance with
16 Section 3.8(c).
17

18 Section 3.8(c) provides:

19 Following the end of each calendar month, Big Rivers shall notify City of
20 the amount of Excess Henderson Energy and energy associated with
21 Excess Henderson Capacity, if any, taken by Big Rivers during the
22 previous month, and Big Rivers shall pay City prior to the 25th day of the
23 then current month for the amount of Excess Henderson Energy and
24 energy associated with the Excess Henderson Capacity so taken by it at a
25 rate equal to \$1.50 per mWh. In addition, Big Rivers shall provide, at its
26 own cost, the full replacement of all fuels and reagents consumed from the
27 Station Two fuel and reagent reserves for the production of the Excess
28 Henderson Energy and energy associated with the Excess Henderson
29 Capacity so taken by it. Further, Big Rivers shall pay the portion of sludge
30 disposal costs attributable to the Excess Henderson Energy and energy
31 associated with Excess Henderson Capacity, as calculated in accordance
32 with Section 3.4 of the Joint Facilities Agreement.
33

34 My understanding of these sections is that the 1998 amendments gave Big Rivers the
35 option, but not the obligation, to take and utilize all or any portion of the Excess

1 Henderson Energy that Big Rivers, *at its discretion*, chooses to take. It is my
2 understanding that Section 3.8(c) requires Big Rivers to provide, at its own cost, the full
3 replacement of all fuels and reagents consumed from the Station Two fuel and reagent
4 reserves for, and to pay the sludge disposal costs attributable to, any Excess Henderson
5 Energy taken by Big Rivers. It is also my understanding that the Station Two Contracts
6 do not require Big Rivers to replace the fuel and reagents or pay the sludge disposal costs
7 for Excess Henderson Energy that Big Rivers does not take. Nevertheless, Henderson,
8 for reasons it has not disclosed, disagrees with Big Rivers' interpretation of the Power
9 Sales Contract, as amended, and objects to Big Rivers' proposed change of practice
10 regarding Excess Henderson Energy. Henderson claims the change of practice breaches
11 the Station Two Contracts. After Henderson denied Big Rivers' request to meet with
12 Henderson to provide us the bases for Henderson's objections and to have a substantive
13 discussion of the issue, Big Rivers was left with no choice but to seek the Commission's
14 assistance in resolving this dispute.

15 Big Rivers and Henderson previously had a dispute over the entitlement of the
16 parties to Excess Henderson Energy under the Power Sales Contract that culminated in
17 Big Rivers initiating an arbitration proceeding in 2009 (the "Arbitration")² to resolve the
18 dispute. The arbitration panel concluded that when Henderson does not require all of the
19 capacity that it in good faith reserves to serve its native load, "the excess energy shall be
20 considered to belong to [Henderson]."³ A copy of the award of the arbitration panel is
21 attached to the Application as Exhibit 9. The arbitration award also provides that

² *Big Rivers Electric Corporation vs. City of Henderson, Kentucky and City of Henderson Utility Commission dba Henderson Municipal Power and Light*, American Arbitration Association Case No. 52 198 00173 10

³ *Id.*, May 31, 2012 award, p. 3.

1 Henderson has the ability to sell Excess Henderson Energy into the market when it has a
2 firm, bona fide third party offer, subject to Big Rivers' right of first refusal to purchase
3 that energy on the same terms as the offer, and with Henderson being responsible for the
4 Variable Costs for any Excess Henderson Energy it sells. The practical result of the
5 arbitration award is that Henderson can sell and profit from Excess Henderson Energy
6 when the cost to produce that energy is below market price. But when the cost to
7 produce Excess Henderson Energy is above market price, Henderson will not want to sell
8 it, and apparently also wants to avoid responsibility for the Variable Costs of producing
9 that energy. Based on the arbitration award, I understand the Station Two Contracts to
10 permit Henderson to benefit from selling its Excess Henderson Energy, subject to Big
11 Rivers' rights to meet any offer as stated above, when the price it receives is above the
12 Variable Costs of production. Likewise, Henderson is required to bear the burden of the
13 unavoidable Variable Costs of its Excess Henderson Energy when the Variable Costs of
14 production are greater than the market price and that energy is still produced from Station
15 Two but not taken by Big Rivers.

16 **Q. Why is this unwanted Excess Henderson Energy only now becoming an issue?**

17 A. Big Rivers has historically exercised its rights under Section 3.8(a) of the Power Sales
18 Contract prior to June 1, 2016, by purchasing Excess Henderson Energy. Big Rivers did
19 not want to create additional issues with Henderson while the arbitration was pending,
20 and so Big Rivers purchased Excess Henderson Energy even in hours when the cost to
21 Big Rivers of the Excess Henderson Energy exceeded the prevailing market price for
22 energy, resulting in Big Rivers assuming responsibility for the Excess Henderson Energy

1 at a financial loss to itself and its members. In addition, until recently, the Excess
2 Henderson Energy was at most times economically competitive in the wholesale market.

3 While Big Rivers has historically taken and paid for Excess Henderson Energy
4 each month, there is nothing in Section 3.8(a) that imposes upon Big Rivers any
5 obligation to take and pay for all of this energy. To the contrary, Section 3.8 provides
6 that Big Rivers may, *at its discretion*, take all or any portion of such energy.

7 However, with the recent competition from natural gas generating units and other
8 market forces, there has been a significant increase in the number of hours in which
9 Station Two is not competitive in the wholesale market, and the energy produced from
10 Station Two is not economically competitive. Energy can at most times be purchased on
11 the wholesale market for less than the Variable Costs associated with generating energy
12 at Station Two.

13 **Q. Can Big Rivers reduce the amount of energy generated at Station Two so that**
14 **Station Two only generates enough energy for Henderson's Capacity Reservation,**
15 **and Big Rivers can then obtain its energy needs for less on the wholesale market?**

16 A. No, Big Rivers cannot do this. First, Henderson's requirement that the units be in
17 continuous operation prevents Big Rivers from idling one or both of the two units of
18 Station Two. Station Two has a Selective Catalytic Reduction ("SCR") system to reduce
19 NOx emissions as required by applicable Clean Air Act regulations⁴ that also affects
20 operations. The Station Two units must maintain a minimum operating temperature for
21 safe and continuous operation of the SCR system. Thus, the SCR system requires the
22 units to generate a minimum amount of energy, 115 MW for Unit 1 and 120 MW for Unit

⁴ See 2005 Amendments to the Station Two Contracts attached to the application as Exhibit 8.

1 2, a total of 235 MW. Since Henderson's Reservation Capacity is 115 MW, even if
2 Henderson uses its full Reservation Capacity of 115 MW each hour, 120 MW remain,
3 and Big Rivers must pay the Variable Costs of the energy that is part of its allocation
4 even though it could obtain that energy on the wholesale market for a lower cost.

5 **Q. If Henderson does not take the energy, and Big Rivers does not take the energy,**
6 **what happens to the unwanted Excess Henderson Energy?**

7 A. The Station Two units are a part of Big Rivers' balancing area, which is
8 connected to and a part of the Midcontinent Independent System Operator, Inc. ("MISO")
9 system. Both Station Two units are registered MISO generating assets. Accordingly,
10 both units are offered into the MISO market each day in accordance with MISO tariffs
11 and operating procedures. Because of the contractual restrictions imposed by Henderson,
12 the energy from Station Two is offered into the MISO market as must run units based on
13 Big Rivers' dispatch curve for the units. This means that the units will run at least at
14 their minimum load levels (H1 – 115 MW and H2 – 120 MW) regardless of market
15 prices. The MISO day-ahead market clears each day based on the market demand and
16 offers from the generators. Part of this generation, whether economic or not, will be
17 offset by the energy needs of the City of Henderson. The remainder, whether it is Excess
18 Henderson Energy or part of Big Rivers' allotment, is sold into MISO. Big Rivers serves
19 as the Market Participant for Station Two, and thus receives the associated MISO
20 revenues. Up until the recent change in practice, Big Rivers paid the Variable Costs of
21 this energy and retained the associated MISO revenues. Now that Big Rivers is
22 exercising its discretion to purchase and pay Variable Costs of Excess Henderson Energy
23 only when it is profitable, it is no longer retaining the MISO revenues associated with

1 Excess Henderson Energy that it does not purchase, but is passing those revenues through
2 to Henderson.

3 **Q. If Station Two energy is not economically competitive, why are the parties not**
4 **purchasing power from other sources?**

5 A. Over the past several years, Big Rivers has had numerous discussions with Henderson
6 about this issue, and Big Rivers has recommended various alternatives to Henderson to
7 modify the operations of Station Two to make Station Two more competitive and lower
8 the cost of serving the load of Henderson. These recommendations include idling one of
9 the two units at Station Two until it becomes economically competitive to resume
10 generation of both units on a full time basis.

11 However, Henderson rejected all of Big Rivers' recommendations and has
12 required Big Rivers to operate both units of Station Two on a continuous basis.
13 Henderson relies upon Section 13.2 of the Construction and Operation Agreement,
14 attached to the Application as Exhibit 2, which provides that Big Rivers operates Station
15 Two "[s]ubject to [Henderson]'s ownership, management and control," and that "Big
16 Rivers will provide as an independent contractor, all operating personnel, materials,
17 supplies and technical services required for the continuous operation of City's Station
18 Two" Thus, Henderson requires Big Rivers to operate Station Two and take and
19 pay for energy from Station Two.

20 **Q. How did Big Rivers inform Henderson of this decision to curtail its purchases of**
21 **Excess Henderson Energy, and what was Henderson's response?**

1 A. Earlier this year, in a letter dated May 25, 2016,⁵ I informed Gary Quick, General
2 Manager of Henderson Municipal Power & Light, that because the Excess Henderson
3 Energy being produced often was not economically competitive, effective June 1, 2016,
4 Big Rivers may from time to time not take all of the Excess Henderson Energy.

5 Mr. Quick wrote a response to me on May 31, 2016, stating that he disagreed with
6 the statement of facts in my letter and my interpretation of the Power Sales Contract. Mr.
7 Quick also stated that Henderson did not consent to Big Rivers' proposed change in
8 practice, which suggests that he believes Henderson's consent is required for Big Rivers
9 to decline to take Excess Henderson Energy. Mr. Quick also claimed Big Rivers' actions
10 would breach the Station Two Contracts, but he provided no explanation for what facts I
11 misstated or how I misinterpreted the Power Sales Contract.

12 Because Mr. Quick provided no explanation for his position, I wrote him a letter
13 on June 3, 2016, which, among other things, asked him to explain his disagreement with
14 my statement of the facts and interpretation of the Station Two Contracts, and to meet
15 with me to discuss the issue. Mr. Quick responded by letter dated June 17, 2016,
16 claiming that his May 31, 2016 letter was clear, that he had nothing to add, and that he
17 saw no reason to have the meeting I suggested. Mr. Quick encouraged me to consult with
18 Big Rivers' attorneys. Given Henderson's clear objection to Big Rivers' proposal to no
19 longer take all Excess Henderson Energy, its claim that doing so was a breach of the
20 Station Two Contracts, and its refusal to discuss our apparent differences, Big Rivers had
21 no choice but to seek this relief from the Commission.

22 **Q. What has occurred since June 1, 2016?**

⁵ The correspondence discussed in this answer is attached to the Application as Exhibit 11.

1 A. Beginning June 1, 2016, Big Rivers has not taken all of the Excess Henderson Energy. In
2 its billing to Henderson since June 1, Big Rivers accounts for the Excess Henderson
3 Energy it does not take but that is still being produced by attributing the Variable Costs
4 and the MISO revenues for the untaken energy to Henderson and looking to Henderson to
5 replace the fuel and reagents for the untaken energy. Pursuant to the Station Two
6 Contracts, Henderson and Big Rivers each purchase their own coal and reagents for
7 Station Two, and Big Rivers allocates the fuel and reagents used to produce Henderson's
8 energy, including the Excess Henderson Energy not taken by Big Rivers, to Henderson's
9 coal and reagent. Because Henderson does not agree with how Big Rivers has allocated
10 the fuel burn and use of reagent, and Henderson has not been replacing the fuel and
11 reagent attributable to the Excess Henderson Energy not taken by Big Rivers, Henderson
12 will soon run out of fuel and reagent for production of its energy from Station Two.

13 **Q. What is the financial implication for Big Rivers of having to be responsible**
14 **for the Variable Costs for production of Henderson's uneconomic and unwanted**
15 **Excess Henderson Energy?**

16 A. To provide an idea of the financial impact of denying Big Rivers' requested relief, we
17 have calculated the net impact to Big Rivers of the Excess Henderson Energy it has taken
18 and purchased from January 1, 2016, through May 31, 2016--a period during which the
19 Variable Costs to Big Rivers of that energy almost always exceeded the MISO market
20 prices. This is energy Big Rivers would not have taken under its practice implemented
21 on and after June 1, 2016. The net impact was determined by subtracting the MISO
22 revenues Big Rivers received for that energy from the Variable Costs Big Rivers paid for
23 that energy. As you can see from Exhibit RWB_1, attached to this testimony, Big Rivers

1 experienced an \$ [REDACTED] loss from January 1, 2016, through May 31, 2016, associated
2 with taking and paying the Variable Cost of the Excess Henderson Energy.

3 **Q. Will Big Rivers continue to experience losses of this magnitude going forward if the**
4 **Commission fails to grant the relief sought?**

5 A. If the Commission determines that Big Rivers must bear the Variable Costs of
6 unprofitable and unwanted EHE belonging to Henderson, the losses going forward will
7 be even greater. Exhibit RWB_1 was prepared using the calculation of Excess
8 Henderson Energy that I understand has been used by the parties since approximately
9 1998. Beginning June 1, 2016, Big Rivers began calculating Excess Henderson Energy
10 using the simplified method we understand Henderson wants to use as it begins selling
11 Excess Henderson Energy into the market, and which Big Rivers has included in its
12 proposed protocol to be followed by Big Rivers and Henderson in connection with that
13 activity. The simplified method of determining Excess Henderson Energy is to subtract
14 Henderson's megawatt hour load in each hour from the amount of energy associated with
15 Henderson's Reserved Capacity. If that method is applied hypothetically to the five
16 months shown in Exhibit RWB_1, the loss to Big Rivers during that period would have
17 been \$ [REDACTED], a calculation shown on Exhibit RWB_2, also attached to my testimony.

18
19 **IV. RELIEF REQUESTED**

20
21 **Q. What is Big Rivers asking the Commission to do?**

22 A. Big Rivers is asking the Commission to enter an order finding that Big Rivers, consistent
23 with its rights under the Power Sales Contract, is not responsible for the Variable Costs of

1 any of Henderson's Excess Henderson Energy that Big Rivers declines to take, and that
2 Henderson is responsible for those Variable Costs. The responsibility for these costs has
3 a direct impact on the overall amount Big Rivers pays for the energy it receives from
4 Station Two under the Power Sales Contract approved by the Commission. It is my
5 understanding that under Kentucky law the Station Two Contracts are subject to the
6 jurisdiction and supervision of the Commission, which gives the Commission the
7 authority to grant the relief Big Rivers seeks.

8 The arbitration award determined that all Excess Henderson Energy belongs to
9 Henderson. Because Section 3.8 of the Power Sales Contract does not require Big Rivers
10 to take all of the Excess Henderson Energy, any Excess Henderson Energy that Big
11 Rivers declines to take still belongs to Henderson. Section 3.8 only requires Big Rivers
12 to pay the Variable Costs of Excess Henderson Energy that Big Rivers takes. Therefore,
13 my understanding of Section 3.8 is that Henderson is responsible for Variable Costs of
14 Excess Henderson Energy not taken by Big Rivers. Although the Power Sales Contract
15 requires Henderson to be responsible for the Variable Costs of its energy, Henderson
16 claims Big Rivers is misinterpreting the Power Sales Contract and its change in handling
17 Excess Henderson Energy breaches the Station Two Contracts. Therefore, Big Rivers
18 requests that the Commission exercise its authority as requested.

19 **Q. Please explain the alternative relief Big Rivers requested in its Application.**

20 A. It is my understanding that if the Commission were to find that Big Rivers is not
21 excluded from responsibility for the Variable Costs of all Excess Henderson Energy not
22 taken and utilized by Big Rivers, then it could alternately enter an order to effectively
23 change the rate for electricity purchased by the parties under the Power Sales Contract by

1 finding that the Station Two Contracts are not fair, just and reasonable, and exercise its
2 authority to order that Big Rivers is not responsible under the Station Two Contracts for
3 the Variable Costs of any Excess Henderson Energy not taken and utilized by Big Rivers.
4 So Big Rivers makes that request, in the alternative.

5 It is not fair, just, and reasonable to require Big Rivers to have the overall cost of
6 power it receives under the Power Sales Contract increased by the Variable Costs of
7 production of Excess Henderson Energy that belongs to Henderson, Big Rivers does not
8 want, Big Rivers cannot avoid generating because of Henderson's operating parameters,
9 and costs more to produce than it is worth in the wholesale market. Henderson has the
10 right to take the Excess Henderson Energy when it can be sold for a price higher than the
11 Variable Cost to produce it, subject to Big Rivers' rights to meet any offer as stated
12 above. Big Rivers already has the obligation to take and pay for the energy associated
13 with its share of the Station Two capacity, even when that energy is uneconomic. It
14 would not be fair, just, and reasonable to also make Big Rivers take and pay for
15 uneconomic energy associated with Henderson's share of Station Two capacity. As such,
16 if the Commission believes that the Power Sales Contract requires Big Rivers to be
17 responsible for the Variable Costs of uneconomic Excess Henderson Energy, the
18 Commission should change the contract to make the provisions regarding responsibility
19 for the Variable Costs of Excess Henderson Energy fair, just, and reasonable by granting
20 the alternative relief sought by Big Rivers.

21 **Q. Does this conclude your testimony?**

22 **A. Yes.**

23

1 Verification

2 I, Robert W. Berry, President and CEO of Big Rivers Electric Corporation, hereby state
3 and affirm that the foregoing testimony and attached exhibits were prepared by me or under my
4 supervision, and all statements contained therein are true and correct to the best of my
5 knowledge and belief, on this the 28th day of July, 2016.

6  _____

7 Robert W. Berry

8
9 COMMONWEALTH OF KENTUCKY)

10 COUNTY OF HENDERSON)

11 The foregoing verification statement was SUBSCRIBED AND SWORN to before me by
12 Robert W. Berry, President and CEO of Big Rivers Electric Corporation, on this the 28th day of
13 July, 2016.

14  _____

15 Notary Public, State at Large Kentucky

16 My commission expires 1-12-17

17 Notary ID: 479863

Big Rivers Corporation
 Excess Henderson Energy "EHE" Calculation P&L Comparison
 YTD May 2016

Line

No. EHE Calculation:

	Jan-16	Feb-16	Mar-16	Apr-16	May-16	YTD 2016	
1							
2	EHE MWhrs Sold to BREC	11,121	842	905	2,447	32,111	47,426
3							
4	DA/RT NET Revenue - EHE	\$ 243,726	\$ 19,634	\$ 19,978	\$ 57,348	\$ 703,632	\$ 1,044,318
5	Fee Paid to HMPL	\$ (16,682)	\$ (1,263)	\$ (1,358)	\$ (3,671)	\$ (48,167)	\$ (71,139)
6	Avg Variable Cost - EHE	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
7	Net Gain/(Loss) to BREC	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Economical EHE Only:

	Jan-16	Feb-16	Mar-16	Apr-16	May-16	YTD 2016	
8							
9	EHE MWhrs Sold to BREC	18	-	-	27	-	45
10							
11	DA/RT NET Revenue - EHE	\$ 678	\$ -	\$ -	\$ 992	\$ -	\$ 1,669
12	Fee Paid to HMPL	\$ (27)	\$ -	\$ -	\$ (41)	\$ -	\$ (68)
13	Avg Variable Cost - EHE	\$ [REDACTED]	\$ -	\$ -	\$ [REDACTED]	\$ -	\$ [REDACTED]
14	Net Gain/(Loss) to BREC	\$ [REDACTED]	\$ -	\$ -	\$ [REDACTED]	\$ -	\$ [REDACTED]
15							
16							% of EHE mWhrs "In" the \$: 0.1%

Exhibit RWB_1

Big Rivers Corporation
 Excess Henderson Energy "EHE" Calculation P&L Comparison
 YTD 2016

Line

No. EHE Calculation (Reservation - Load):

	Jan-16	Feb-16	Mar-16	Apr-16	May-16	YTD 2016	
1							
2	EHE MWhrs Sold to BREC	31,133	32,224	36,993	36,252	32,111	168,713
3							
4	DA/RT NET Revenue - EHE	\$ 709,204	\$ 689,162	\$ 744,448	\$ 843,033	\$ 703,632	\$ 3,689,479
5	Fee Paid to HMPL	\$ (46,700)	\$ (48,336)	\$ (55,490)	\$ (54,378)	\$ (48,167)	\$ (253,070)
6	Avg Variable Cost - EHE	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
7	Net Gain/(Loss) to BREC	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Economical EHE Only (Reservation - Load):

	Jan-16	Feb-16	Mar-16	Apr-16	May-16	YTD 2016	
8							
9	EHE MWhrs Sold to BREC	135	201	-	217	-	553
10							
11	DA/RT NET Revenue - EHE	\$ 5,454	\$ 7,920	\$ -	\$ 7,838	\$ -	\$ 21,211
12	Fee Paid to HMPL	\$ (203)	\$ (302)	\$ -	\$ (326)	\$ -	\$ (830)
13	Avg Variable Cost - EHE	\$ [REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]	\$ -	\$ [REDACTED]
14	Net Gain/(Loss) to BREC	\$ [REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]	\$ -	\$ [REDACTED]
15							
16							% of EHE mWhrs "In" the \$: 0.3%

Exhibit RWB_2



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

May 25, 2016

Mr. Gary Quick
 Henderson Municipal Power & Light
 P.O. Box 8
 Henderson, KY 42419

Re: Power Sales Contract between the City of Henderson, Kentucky and Big Rivers Rural Electric Co-Operative Corporation dated August 1, 1970, as amended – Section 3.8

Dear Gary:

As you are aware, Big Rivers Electric Corporation (hereinafter "Big Rivers") has for some time now been in discussions with the City of Henderson, Kentucky (hereinafter "City") regarding the ongoing costs associated with generating power from Station Two. On multiple occasions over the last year, Big Rivers has advised the City that power often can be purchased on the wholesale market for less than the variable costs associated with producing power at Station Two. Because the power generated from Station Two during these time periods is not economically competitive, Big Rivers has recommended various alternatives to the City regarding modifications that should be made to the ongoing operations of Station Two to help maintain the economic competitiveness of the power being produced from Station Two and lower the costs of serving the load of both Big Rivers and the City. In particular, Big Rivers recommended to the City that at least one of the Station Two units be idled until such time as it becomes economically competitive to resume generation of electricity from both units on a full-time basis. Up to this point, however, the City has not been interested in this approach, or any other approach recommended by Big Rivers to address the economic competitiveness of these units. Rather, the City has insisted that both Station Two units be operated on a must run basis despite the fact that they are frequently not producing economically competitive electricity. As such, during these times, Big Rivers has been forced to address the reliability issues associated with the generation of power from Station Two when it is not needed to serve either party's existing load by selling the Excess Henderson Energy into the market at a loss.

As a general matter, Big Rivers has historically exercised its rights under Section 3.8(a) of the Power Sales Contract between the City and Big Rivers dated August 1, 1970, as amended (hereinafter "Contract") by purchasing energy associated with the City's reserved capacity from Station Two that has not been scheduled or taken by the City (such energy being referred to hereinafter as "Excess Henderson Energy"). In addition, Big Rivers has compensated the City in accordance with the terms of Section 3.8(c) of the Contract when it has exercised this right to purchase and utilize the Excess Henderson Energy, including providing, at its own cost, the full replacement of all fuels and reagents consumed from Station Two fuel and reagent reserves for the production of the Excess Henderson Energy and paying the portion of the sludge disposal costs attributable to the Excess Henderson Energy (hereinafter collectively referred to as

EXHIBIT
 11

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Mr. Gary Quick
May 25, 2016.
Page Two

"Variable Costs"). Given changes in the marketplace, particularly the low price of natural gas, there have been an increasing number of hours when Big Rivers has purchased Excess Henderson Energy even when the Variable Costs of producing it have exceeded the prevailing market price for energy, resulting in Big Rivers assuming responsibility for the Excess Henderson Energy at a financial loss to itself.

While it has historically been Big Rivers' practice to take and utilize the Excess Henderson Energy each month, thereby allowing the City to avoid the Variable Costs noted above, and Big Rivers has compensated the City accordingly, there is nothing in Section 3.8(a) that imposes upon Big Rivers any obligation to take and pay for the Excess Henderson Energy and associated Variable Costs. To the contrary, Section 3.8(a) provides that in the event that the City does not take the full amount of energy associated with its reserved capacity from Station Two, Big Rivers may, at its discretion, take and utilize all such energy (or any portion thereof designated by Big Rivers) not scheduled or taken by the City. The purpose of this letter is to provide you with notice that beginning no later than June 1, 2016, from time to time Big Rivers may not take and utilize the Excess Henderson Energy generated from Station Two as it has voluntarily done in the past, especially in light of the fact that the Excess Henderson Energy being produced is often not economically competitive. Please understand that this does not mean that Big Rivers will never exercise its rights under Section 3.8(a) to take and utilize all, or a portion of, such energy not scheduled or taken by the City as permitted under the Contract. Indeed, at times, Big Rivers fully intends to take and utilize the Excess Henderson Energy. But, in the spirit of cooperation and in consideration of the longstanding relationship of the parties, Big Rivers deems it advisable to provide you with advance notice of its change in practice concerning the Excess Henderson Energy described above. Hopefully, this notice will allow the City to plan accordingly for this change as it deems necessary or advisable.

Going forward, Big Rivers will continue to provide the City with notice at the end of each calendar month of the amount of Excess Henderson Energy, if any, taken by Big Rivers during the previous month as set forth in Section 3.8(c) of the Contract. In addition, Big Rivers will continue to pay the City for such Excess Henderson Energy, and will continue to be responsible for the associated Variable Costs, in the manner set forth in the Contract for that portion of the Excess Henderson Energy, if any, taken by Big Rivers during the previous month. In the event that there is Excess Henderson Energy generated that Big Rivers has not taken pursuant to Section 3.8(a), the City will remain responsible for the Variable Costs attributable to the Excess Henderson Energy in accordance with the terms of the various agreements between the parties. Additionally, the City will no longer receive the \$1.50 per MWh for that portion of the Excess Henderson Energy not taken by Big Rivers during the previous calendar month.

As you know from my letter dated March 28, 2016, Big Rivers and the City are continuing to make progress toward reaching a mutually acceptable agreement whereby The Energy Authority (hereinafter "TEA") will act as a Market Participant on behalf of the City related to Excess Henderson Energy. To date, however, the City has not responded to that letter. Therefore, until such time as Big Rivers and the City are able to reach an agreement on the manner in which TEA will assist the City with the sale of the Excess Henderson

Mr. Gary Quick

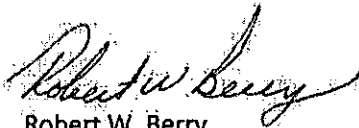
May 25, 2016

Page Three

Energy into the market, Big Rivers will continue to assist the City in delivery of the Excess Henderson Energy which is generated yet not taken by Big Rivers and will allocate to the City the revenues, if any, from the Excess Henderson Energy not taken by Big Rivers less any associated costs of delivery incurred by Big Rivers.

In the event this letter generates any questions or warrants further discussion, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in cursive script that reads "Robert W. Berry".

Robert W. Berry

President and CEO

Big Rivers Electric Corporation

HMP&L

HENDERSON MUNICIPAL POWER & LIGHT



May 31, 2016

Mr. Bob Berry
Big Rivers Electric Corporation
PO Box 24
Henderson, KY 42419-0024

Re: Power Sales Contract between the City of Henderson, Kentucky and Big Rivers Rural Electric Co-Operative Corporation dated August 1, 1970, as amended – Section 3.8

Dear Bob:

I am writing in response to your letter dated May 25, 2016. Henderson disagrees with your account of the facts and your interpretation of the Power Sales Contract as amended, and Henderson does not consent to any of the changes of practice outlined in your letter. If Big Rivers implements these changes of practice it will be in further breach of the contracts between Henderson and Big Rivers; therefore, Henderson reserves all of its rights to enforce the Station Two Contracts and recover any resulting damages.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Quick".

Gary Quick
General Manager
Henderson Municipal Power & Light



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

June 3, 2016

Mr. Gary Quick
Henderson Municipal Power and Light
P. O. Box 8
Henderson, KY 42419

Dear Gary:

I have your response of May 31, 2016, to my letter to you of May 25, 2016. If I correctly understand your response, you disagree generally with everything in my letter, but provide no specifics about why you believe I am wrong on any individual point. You also said nothing directly about my statement that we had received no response to my letter dated March 28, 2016, to you and TEA. Do you plan to respond to that letter?

I certainly intend to state facts correctly, and do not understand how the Station Two Contracts can be interpreted differently. You must be seeing something in the Station Two Contracts that I do not. We need to meet immediately so you can help me understand your reasoning and why you believe Big Rivers should be required to purchase excess energy owned by HMP&L when Big Rivers does not want it. Please give me some dates in the next two weeks when we can meet, wherever you want, to talk about these issues. In the meantime, Big Rivers intends to proceed as outlined in my May 25 letter.

Sincerely yours,

A handwritten signature in cursive script that reads "Robert W. Berry".

Robert W. Berry
President and CEO
Big Rivers Electric Corporation

HMP&L

HENDERSON MUNICIPAL POWER & LIGHT

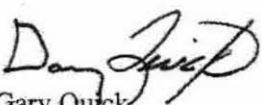
June 17, 2016

Mr. Bob Berry
Big Rivers Electric Corporation
PO Box 24
Henderson, KY 42419-0024

Dear Bob:

I am writing in response to your letter of June 3, 2016. My letter dated May 31 was clear, and I have nothing to add except to say that in your June 3 letter you once again misstate the facts. Consequently, I do not believe that there is any need for us to meet to discuss Henderson's and Big Rivers' respective positions. We would encourage you to consult with your attorneys.

Sincerely,


Gary Quick
General Manager
Henderson Municipal Power & Light