



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

Tyson Kamuf  
Attorney  
tkamuf@smsmlaw.com

October 7, 2016

Skill. Integrity. Efficiency.

VIA FEDERAL EXPRESS

Dr. Talina R. Mathews  
Executive Director  
Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

RECEIVED

OCT 10 2016

PUBLIC SERVICE  
COMMISSION

Re: *In the Matter of: Application of Big Rivers  
Electric Corporation for a Declaratory Order*  
Case No. 2016-00278

Dear Dr. Mathews:

Enclosed for filing on behalf of Big Rivers Electric Corporation ("Big Rivers") are an original and ten copies of (i) Big Rivers' responses to the Public Service Commission Staff's Second Request for Information; (ii) Big Rivers' responses to the Second Request for Information from the City of Henderson, Kentucky, and Henderson Utility Commission d/b/a Henderson Municipal Power & Light; (iii) a list of definitions for defined terms contained in Big Rivers' responses to the information request; and (iv) a petition for confidential treatment. I certify that on this date, a copy of this letter and a copy of all the enclosures were served on all persons listed on the attached service list by first class mail. Please feel free to contact me if you have any questions.

Sincerely,

Tyson Kamuf  
Counsel for Big Rivers Electric Corporation

TAK/abg

Enclosures

cc: Service List

Service List  
Case No. 2016-00278

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

John N. Hughes  
124 West Todd Street  
Frankfort, Kentucky 40601

H. Randall Redding  
King, Deep, Branaman  
127 North Main Street  
Post Office Box 43  
Henderson, Kentucky 42419

Sharon W. Farmer  
King, Deep, Branaman  
127 North Main Street  
Post Office Box 43  
Henderson, Kentucky 42419

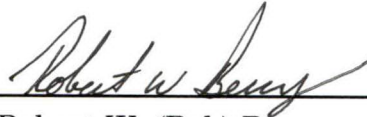
Big Rivers Electric Corporation  
201 Third Street  
Post Office Box 24  
Henderson, Kentucky 42420

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**VERIFICATION**

I, Robert W. (Bob) Berry, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Robert W. (Bob) Berry

COMMONWEALTH OF KENTUCKY )  
COUNTY OF HENDERSON )

SUBSCRIBED AND SWORN TO before me by Robert W. (Bob) Berry on this  
the 6<sup>th</sup> day of October, 2016.



Notary Public, Kentucky State at Large

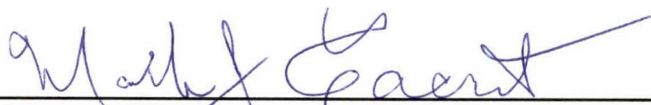
My Commission Expires 1-12-17

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**VERIFICATION**

I, Mark J. Eacret, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

  
\_\_\_\_\_  
Mark J. Eacret

COMMONWEALTH OF KENTUCKY )  
COUNTY OF HENDERSON )

SUBSCRIBED AND SWORN TO before me by Mark J. Eacret on this the 6<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
Notary Public, Kentucky State at Large  
My Commission Expires 1-12-17

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**VERIFICATION**

I, Michael T. (Mike) Pullen, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



\_\_\_\_\_  
Michael T. (Mike) Pullen

COMMONWEALTH OF KENTUCKY )  
COUNTY OF HENDERSON )

SUBSCRIBED AND SWORN TO before me by Michael T. (Mike) Pullen on this the 6<sup>th</sup> day of October, 2016.



\_\_\_\_\_  
Notary Public, Kentucky State at Large

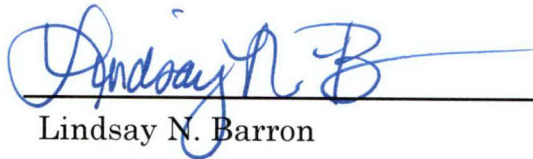
My Commission Expires 1-12-17

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**VERIFICATION**

I, Lindsay N. Barron, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

  
\_\_\_\_\_  
Lindsay N. Barron

COMMONWEALTH OF KENTUCKY )  
COUNTY OF HENDERSON )

6th SUBSCRIBED AND SWORN TO before me by Lindsay N. Barron on this the  
day of October, 2016.

  
\_\_\_\_\_  
Notary Public, Kentucky State at Large  
My Commission Expires 7-12-17

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**VERIFICATION**

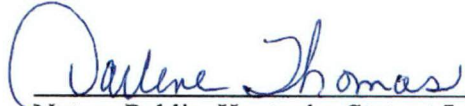
I, Michael W. (Mike) Chambliss, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Michael W. (Mike) Chambliss

COMMONWEALTH OF KENTUCKY    )  
COUNTY OF DAVIESS            )

SUBSCRIBED AND SWORN TO before me by Michael W. (Mike) Chambliss on this the 7<sup>th</sup> day of October, 2016.



Notary Public, Kentucky State at Large  
My Commission Expires: 10/26/19  
Notary ID No.: 543584

**ORIGINAL**



Your Touchstone Energy® Cooperative 

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**In the Matter of:**

**APPLICATION OF  
BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER** )  
)  
)

**Case No.  
2016-00278**

**Responses to Commission Staff's  
Second Request for Information  
dated  
September 26, 2016**

**FILED: October 10, 2016**

**ORIGINAL**



## DEFINITIONS

- A. "Arbitration Award" means the award issued in AAA Arbitration Case No. 52 198 00173 10, which is attached to the Application as Exhibit 9.
- B. "Big Rivers" shall mean the applicant Big Rivers Electric Corporation and any agents, representatives, employees, officers, directors, accountants, independent contractors or attorneys of Big Rivers answering these discovery requests.
- C. The term "Capacity" means the maximum amount of instantaneous energy output that a power generating facility can produce, regardless of whether or not the facility is producing energy at that level, and is usually measured in megawatts (MW).
- D. "Commission" means the Kentucky Public Service Commission.
- E. "Energy" means the amount of electricity produced or consumed over time and is usually measured in megawatt-hours (MWh).
- F. "Excess Henderson Energy" means Energy associated with the Capacity that is the positive difference between Henderson's Annual Reservation and Henderson's load in any hour to serve its Native Load.
- G. "Henderson" shall mean intervenors City of Henderson, Kentucky and City of Henderson Utility Commission, d/b/a Henderson Municipal Power & Light and any agents, representatives, employees, officers, directors, accountants, independent contractors or attorneys of Henderson.
- H. "Henderson's Annual Reservation" means the portion of the Capacity of Station Two reserved by Henderson for any contract year in accordance with Section 3.3 of the Power Sales Contract.

I. "Henderson's Native Load" means the Capacity and Energy required in any hour to supply the needs of Henderson and its inhabitants for electric power and energy.

J. "MISO" means the Midcontinent Independent System Operator, Inc., including any agents, representatives, employees, officers, directors, accountants, independent contractors or attorneys of MISO.

K. "Power Plant Construction and Operation Agreement" means the Power Plant Construction and Operation Agreement Between City of Henderson, Kentucky and Big Rivers Rural Electrical Co-Operative Corporation entered into on August 1, 1970, and all subsequent amendments thereto and as interpreted by the Arbitration Award, as defined herein. The Power Plant Construction and Operation Agreement is one of the Station Two Contracts, as defined herein.

L. "Power Sales Contract" means the Power Sales Contract Between City of Henderson, Kentucky and Big Rivers Rural Electrical Co-Operative Corporation entered into on August 1, 1970, and all subsequent amendments thereto and as interpreted by the Arbitration Award, as defined herein. The Power Sales Contract is one of the Station Two Contracts.

M. "Station Two Contracts" means the series of agreements between Big Rivers and Henderson creating the arrangement by which Big Rivers operates and maintains Henderson's Station Two generating station, and purchases certain output from Station Two.

N. "TEA" means The Energy Authority, including any agents, representatives, employees, officers, directors, accountants, independent contractors or attorneys of TEA.

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to Commission Staff's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 1)** *Refer to Big Rivers' response to Commission Staff's Initial Request for*  
2 *Information ("Staff's First Request"), Item 6. Provide a copy of the bill issued by Big Rivers*  
3 *to Henderson for the month of May 2016.*

4  
5 **Response)** Please see the confidential attachment to this response. In accordance with  
6 terms of the Station Two contracts and past historical practice, each month, Big Rivers  
7 calculates the MWhs of Excess Henderson Energy taken by Big Rivers, submits to Henderson  
8 for its review, and prepares the invoice from Henderson to Big Rivers for the sale of the Excess  
9 Henderson Energy to Big Rivers. The attached May 2016 Excess Henderson Energy invoice  
10 reflects the Excess Henderson Energy during May 2016 that was taken by Big Rivers. The  
11 Excess Henderson Energy invoices for June 2016 and July 2016, which were provided in Big  
12 Rivers' response to Item 6(a) of the Commission Staff's First Request for Information, reflect  
13 the Excess Henderson Energy that was taken by Big Rivers and the MISO revenue associated  
14 with the Excess Henderson Energy that was not taken by Big Rivers and remained  
15 Henderson's energy. The attachments to the June 2016 and July 2016 invoices detail the  
16 Station Two hourly transaction activity within MISO and show the MWhs of Excess  
17 Henderson Energy taken by Big Rivers and Henderson.

18

19 **Witness)** Lindsay N. Barron

In the Matter of:

APPLICATION OF  
BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER

)  
)  
)

Case No.  
2016-00278

## **CONFIDENTIAL RESPONSE**

to

Item 1 of Commission Staff's  
Second Request for Information  
dated September 26, 2016

FILED: October 10, 2016

INFORMATION SUBMITTED UNDER  
PETITION FOR CONFIDENTIAL TREATMENT

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to Commission Staff's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 2) Refer to Big Rivers' response to the City of Henderson, Kentucky, and**  
2 **Henderson Utility Commission, d/b/a Henderson Municipal Power and Light's First Request**  
3 **for Information ("Henderson's First Request"), Item 1, page 2 of 2. The last sentence of the**  
4 **response states, "Thus, if Big Rivers is required to take the uneconomic Excess Henderson**  
5 **Energy, its FAC charges to its members will generally be greater than they would have been**  
6 **had Big Rivers been able to exercise its contractual right not to take such energy."**

7 **a. State whether this response means that, in instances when Big Rivers does not take**  
8 **the uneconomic Excess Henderson Energy, it would operate one of its own units at a**  
9 **cheaper cost.**

10 **b. When Big Rivers takes the uneconomic Excess Henderson Energy and such power is**  
11 **in excess of Big Rivers' load requirements, state whether Big Rivers is able to reduce**  
12 **generation at one or more of its units, or is it only after the fact that Big Rivers is**  
13 **made aware of the amount of Excess Henderson Energy that is uneconomic.**

14 **c. State whether there are times when the Excess Henderson Energy does not clear in**  
15 **the Midcontinent Independent System Operator, Inc. ("MISO") market.**

16

17

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to Commission Staff's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Response)**

2 a. No. Big Rivers sells all of its generation into MISO and purchases all of its load from  
3 MISO. Thus, Big Rivers' decision whether to operate its own units is unrelated to  
4 whether Big Rivers is taking uneconomic Excess Henderson Energy, and the  
5 commitment and dispatch of Big Rivers' own units will depend upon their cost, their  
6 operating characteristics, and market prices, rather than on Big Rivers' load  
7 requirements.

8 b. The commitment and dispatch of Big Rivers units will depend upon their cost, their  
9 operating characteristics, and market prices, not whether Big Rivers is taking  
10 uneconomic Excess Henderson Energy or Big Rivers' load requirements. Big Rivers  
11 does not know with certainty what the day-ahead price for energy is in the MISO  
12 market until the market clears.

13 c. Big Rivers assumes for purposes of its response that "clear the market" means that the  
14 Excess Henderson Energy is produced at a cost less than or equal to the MISO LMP at  
15 Station Two. Based upon that assumption, yes, there are times when Excess Henderson  
16 Energy is produced at a cost greater than the MISO LMP at Station Two.

17 Please note that Big Rivers pays Henderson a premium over the variable costs  
18 for any Excess Henderson Energy that Big Rivers takes. That premium will either be  
19 the amount by which the consideration contained in a firm, bona fide third party offer

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to Commission Staff's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1           obtained by Henderson exceeds variable production costs, or \$1.50/MWh. For Excess  
2           Henderson Energy to be economic for Big Rivers to take, the MISO market price at  
3           which Big Rivers can sell the energy must exceed the variable cost of the energy plus  
4           the premium it pays Henderson.

5

6   **Witness)**     Mark J. Eacret

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to Commission Staff's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 3)** *Refer to Big Rivers' response to Henderson's First Request, Item 13, page 2 of*  
2 *2, the last sentence. Provide the journal entries made by Big Rivers related to the variable*  
3 *production costs of Excess Henderson Energy for the months of May 2016, June 2016, and*  
4 *July 2016.*

5  
6 **Response)** Please see attached copies of journal entries J012 and J013, which account for  
7 and assign the variable production costs of Station Two to the party to which these costs belong  
8 consistent with the terms of the Station Two contracts, for the months of May 2016, June 2016,  
9 and July 2016. Please note Big Rivers records total costs for operating Station Two and allocates  
10 these costs between Big Rivers and Henderson. These journal entries do not allocate the costs  
11 of operating Station Two to Excess Henderson Energy only. Variable costs associated with fuel,  
12 lime and start-up fuel are not recorded in the Station Two set of accounting books maintained by  
13 Big Rivers since Big Rivers and Henderson purchase these items independently. Therefore,  
14 variable costs of fuel, lime and start-up fuel oil are not reflected in the attached journal entries.

15  
16 **Witness)** Lindsay N. Barron



**Big Rivers Electric Corporation**  
**Case No. 2016-00278**  
**May 2016 Journal Entry**

**Balance Type** Actual  
**Database** USHRSDRDB001  
**Data Access Set** HMP&L  
**Chart Of Accounts** Accounting Flexi

**Ledger** \* List - Text HMP&L  
**Category** \* List - Text Adjustment  
**Source** \* List - Text Spreadsheet  
**Currency** \* List - Text USD  
**Accounting Date** \* List - Date 5/31/2016  
**Batch Name** Text J012-0940-0516

Upl	Cor	Respr	Account	Expen	Locati	Future	Future	Debit	Credit	Line Description	Messages
* List - Text								* Number	* Number	Text	
<input type="radio"/>	20	0940	50210000	0677	0000	000000	000000			FGD - BREC-OPS	☺
<input type="radio"/>	20	0940	50210000	0677	0000	000000	000000			FGD - HMP&L-OPS	☺
<input type="radio"/>	20	0940	23250300	0699	1551	000000	000000			A/P-BREC	☺
<input type="radio"/>	20	0940	23250400	0699	1551	000000	000000			A/P-HMPL	☺
<input type="radio"/>	20	0940	14350100	0699	1551	000000	000000			Set P&L to Zero Net Income	☺
<input type="radio"/>	20	0940	14350100	0699	1552	000000	000000			Set P&L to Zero Net Income	☺
<input type="radio"/>	20	0940	44701000	0699	1551	000000	000000			Set P&L to Zero Net Income	☺
<input type="radio"/>	20	0940	44701000	0699	1552	000000	000000			Set P&L to Zero Net Income	☺
<b>Totals:</b>											

Purpose: To record the monthly SII FGD costs and allocate these expenses between BREC and HMPL.

Prepared & Posted by: \_\_\_\_\_

**Big Rivers Electric Corporation**  
**Case No. 2016-00278**  
**May 2016 Journal Entry**

**Balance Type** Actual  
**Database** USHRSRDB001  
**Data Access Set** HMP&L  
**Chart Of Accounts** Accounting Flexi

**Ledger** \* List - Text HMP&L  
**Category** \* List - Text Adjustment  
**Source** \* List - Text Spreadsheet  
**Currency** \* List - Text USD  
**Accounting Date** \* List - Date 5/31/2016  
**Batch Name** Text J013-0940-0516

Upl	Cor	Respr	Account	Expen	Locati	Future	Future	Debit	Credit	Line Description	Messages
* List - Text								* Number	* Number	Text	
20	0940	14350100	0699	1551	000000	000000				Set P&L to Zero Net Income	☺
20	0940	14350100	0699	1552	000000	000000				Set P&L to Zero Net Income	☺
20	0940	44701000	0699	1551	000000	000000				Set P&L to Zero Net Income	☺
20	0940	44701000	0699	1552	000000	000000				Set P&L to Zero Net Income	☺
20	0940	23250300	0699	1551	000000	000000				SII O&M/G&A Allocation from BREC - BR	☺
20	0940	23250400	0699	1552	000000	000000				SII O&M/G&A Allocation from BREC - HMPL	☺
20	0940	50130000	0301	1510	000000	000000				SII O&M/G&A Allocation from BREC	☺
20	0940	50130000	0301	1510	000000	000000				SII O&M/G&A Allocation from BREC	☺
20	0940	50135000	0301	1510	000000	000000				SII O&M/G&A Allocation from BREC	☺
20	0940	50135000	0301	1510	000000	000000				SII O&M/G&A Allocation from BREC	☺
20	0940	50230000	0433	1510	000000	000000				SII O&M/G&A Allocation from BREC	☺
20	0940	50230000	0433	1510	000000	000000				SII O&M/G&A Allocation from BREC	☺
20	0940	50630000	0443	1510	000000	000000				SII O&M/G&A Allocation from BREC	☺
20	0940	50630000	0443	1510	000000	000000				SII O&M/G&A Allocation from BREC	☺
0											

Purpose: To record BREC's monthly SII G&A and O&M expenses (from BREC Mass Allocations) and allocate these expenses between BREC and HMPL based on their respective SII MW splits for the current FY.

Prepared & Posted by: \_\_\_\_\_

**Case No. 2016-00278**

**Attachment for Response to PSC 2-3**

**Witness: Lindsay N. Barron**

**Page 2 of 6**

**Big Rivers Electric Corporation  
Case No. 2016-00278  
June 2016 Journal Entry**

**Balance Type** Actual  
**Database** USHRSDRDB001  
**Data Access Set** HMP&L  
**Chart Of Accounts** Accounting Flexi

**Ledger** \* List - Text HMP&L  
**Category** \* List - Text Adjustment  
**Source** \* List - Text Spreadsheet  
**Currency** \* List - Text USD  
**Accounting Date** \* List - Date 6/30/2016  
**Batch Name** Text J012-0940-0616

Upl	Cor Resp	Account	Expen	Locati	Future	Future	Debit	Credit	Line Description	Messages
* List - Text							* Number	* Number	Text	
<input type="radio"/>	20	0940	50210000	0677	0000	000000	000000		FGD - BREC-OPS	☺
<input type="radio"/>	20	0940	50210000	0677	0000	000000	000000		FGD - HMP&L-OPS	☺
<input type="radio"/>	20	0940	23250300	0699	1551	000000	000000		A/P-BREC	☺
<input type="radio"/>	20	0940	23250400	0699	1551	000000	000000		A/P-HMPL	☺
<input type="radio"/>	20	0940	14350100	0699	1551	000000	000000		Set P&L to Zero Net Income	☺
<input type="radio"/>	20	0940	14350100	0699	1552	000000	000000		Set P&L to Zero Net Income	☺
<input type="radio"/>	20	0940	44701000	0699	1551	000000	000000		Set P&L to Zero Net Income	☺
<input type="radio"/>	20	0940	44701000	0699	1552	000000	000000		Set P&L to Zero Net Income	☺
<b>Totals:</b>										

Purpose: To record the monthly SII FGD costs and allocate these expenses between BREC and HMPL.

Prepared & Posted by: \_\_\_\_\_

**Big Rivers Electric Corporation**  
**Case No. 2016-00278**  
**June 2016 Journal Entry**

**Balance Type** Actual  
**Database** USHRBRDB001  
**Data Access Set** HMP&L  
**Chart Of Accounts** Accounting Flexi

**Ledger** \* List - Text HMP&L  
**Category** \* List - Text Adjustment  
**Source** \* List - Text Spreadsheet  
**Currency** \* List - Text USD  
**Accounting Date** \* List - Date 6/30/2016  
**Batch Name** Text J013-0940-0616

Upl	Cor	Resp	Account	Expen	Locati	Future	Future	Debit	Credit	Line Description	Messages
								* Number	* Number	Text	
	20	0940	14350100	0699	1551	000000	000000			Set P&L to Zero Net Income	☺
	20	0940	14350100	0699	1552	000000	000000			Set P&L to Zero Net Income	☺
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	20	0940	44701000	0699	1552	000000	000000			Set P&L to Zero Net Income	☺
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	20	0940	23250400	0699	1552	000000	000000			SII O&M/G&A Allocation from BREC - HMPL	☺
	20	0940	50130000	0301	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50130000	0301	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50230000	0433	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50230000	0433	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50630000	0443	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50630000	0443	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺

Purpose: To record BREC's monthly SII G&A and O&M expenses (from BREC Mass Allocations) and allocate these expenses between BREC and HMPL based on their respective SII MW splits for the current FY.

Prepared & Posted by: \_\_\_\_\_

**Big Rivers Electric Corporation  
Case No. 2016-00278  
July 2016 Journal Entry**

**Balance Type** Actual  
**Database** USHRSDRDB001  
**Data Access Set** HMP&L  
**Chart Of Accounts** Accounting Flexi

**Ledger** \* List - Text HMP&L  
**Category** \* List - Text Adjustment  
**Source** \* List - Text Spreadsheet  
**Currency** \* List - Text USD  
**Accounting Date** \* List - Date 7/31/2016  
**Batch Name** Text J012-0940-0716

Upl	Cor Resp	Account	Expen	Locati	Future	Future	Debit	Credit	Line Description	Messages
* List - Text							* Number	* Number	Text	
<input type="radio"/>	20	0940	50210000	0677	0000	000000	000000		FGD - BREC-OPS	☺
<input type="radio"/>	20	0940	50210000	0677	0000	000000	000000		FGD - HMP&L-OPS	☺
<input type="radio"/>	20	0940	23250300	0699	1551	000000	000000		A/P-BREC	☺
<input type="radio"/>	20	0940	23250400	0699	1551	000000	000000		A/P-HMPL	☺
<input type="radio"/>		20	0940	14350100	0699	1551	000000	000000	Set P&L to Zero Net Income	☺
<input type="radio"/>		20	0940	14350100	0699	1552	000000	000000	Set P&L to Zero Net Income	☺
<input type="radio"/>		20	0940	44701000	0699	1551	000000	000000	Set P&L to Zero Net Income	☺
<input type="radio"/>		20	0940	44701000	0699	1552	000000	000000	Set P&L to Zero Net Income	☺
<b>Totals:</b>										

Purpose: To record the monthly SII FGD costs and allocate these expenses between BREC and HMPL.

Prepared & Posted by: \_\_\_\_\_

# Big Rivers Electric Corporation

## Case No. 2016-00278

### July 2016 Journal Entry

**Balance Type** Actual  
**Database** USHRSDRDB001  
**Data Access Set** HMP&L  
**Chart Of Accounts** Accounting Flex

**Ledger** \* List - Text HMP&L  
**Category** \* List - Text Adjustment  
**Source** \* List - Text Spreadsheet  
**Currency** \* List - Text USD  
**Accounting Date** \* List - Date 7/31/2016  
**Batch Name** Text J013-0940-0716

Upl	Cor	Resp	Account	Expen	Locati	Future	Future	Debit	Credit	Line Description	Messages
* List - Text								* Number	* Number	Text	
	20	0940	14350100	0699	1551	000000	000000			Set P&L to Zero Net Income	☺
	20	0940	14350100	0699	1552	000000	000000			Set P&L to Zero Net Income	☺
	20	0940	44701000	0699	1551	000000	000000			Set P&L to Zero Net Income	☺
	20	0940	44701000	0699	1552	000000	000000			Set P&L to Zero Net Income	☺
	20	0940	23250300	0699	1551	000000	000000			SII O&M/G&A Allocation from BREC - BR	☺
	20	0940	23250400	0699	1552	000000	000000			SII O&M/G&A Allocation from BREC - HMPL	☺
0											
	20	0940	50130000	0301	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50130000	0301	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50230000	0433	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50230000	0433	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50230000	0442	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50230000	0442	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50630000	0443	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
	20	0940	50630000	0443	1510	000000	000000			SII O&M/G&A Allocation from BREC	☺
0											
										0.00	

Purpose: To record BREC's monthly SII G&A and O&M expenses (from BREC Mass Allocations) and allocate these expenses between BREC and HMPL based on their respective SII MW splits for the current FY.

Prepared & Posted by:

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to Commission Staff's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 4)** *Refer to Big Rivers' response to Henderson's First Request, Item 14. Explain*  
2 *the consequences of depletion of either of Henderson's coal or lime reagent inventories.*

3

4 **Response)** In the event there is a depletion of Henderson's coal or lime reagent inventories,  
5 and Big Rivers keeps the Station Two units in operation, Big Rivers will have additional cash  
6 expenditures associated with procuring fuel and reagent required to make up for the fuel and  
7 reagent shortage caused by the City's failure to provide these inventories as required by the  
8 Station Two contracts. Ultimately, this will negatively impact Big Rivers' cash flow until it is  
9 reimbursed by the City for these expenditures. Section 6.7 of the Power Sales Contract, as  
10 amended, provides that each party, at its own cost, must provide the full replacement of all  
11 fuels and reagents consumed for that party's electric energy produced from Station Two.  
12 Additionally, Section 13.8(c) of the Power Plant Construction and Operation Agreement also  
13 requires each party to provide its own fuels for the operation of Station Two. Once the City's  
14 coal or lime reagent inventories are depleted, the City will be in default under the Power Plant  
15 Construction and Operation Agreement and the Power Sales Contract. In the event that the  
16 default is not cured in accordance with the terms of those agreements, Big Rivers will have the  
17 right to pursue any remedies available to it under the Agreements or by operation of  
18 law/equity.

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to Commission Staff's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1           As of September 30, 2016, the City's coal and lime reagent inventories were depleted,  
2 so Big Rivers gave notice to the City on October 7, 2016, that it was in default under the Power  
3 Sales Contract and the Power Plant Construction and Operation Agreement. Big Rivers  
4 demanded that the City immediately restore its fuel and reagent stocks at Station Two, and  
5 advised the City that in addition to any other remedies available to it under the Agreement or in  
6 law/equity, it would seek recovery from the City of any damages it sustained as a result of the  
7 City's default. A copy of this letter is attached to this response.

8

9 **Witness)**       Michael T. Pullen





201 Third Street  
P.O. Box 24  
Henderson, KY 42419-0024  
270-827-2561  
www.bigrivers.com

October 7, 2016

Mr. Gary Quick  
General Manager  
Henderson Municipal Power & Light  
P.O. Box 8  
Henderson, KY 42419

Mayor  
City of Henderson  
222 First Street  
Henderson, KY 42420

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

Gentlemen:

By letter dated May 25, 2016 letter, I notified Henderson Municipal Power and Light (“City”) that effective June 1, 2016, Big Rivers Electric Corporation (hereinafter “Big Rivers”), from time to time, may not take and utilize the full amount of Excess Henderson Energy<sup>1</sup> generated from Station Two as Big Rivers had voluntarily done in the past. That letter also stated that Big Rivers would 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 Power Sales Contract. In addition, Big Rivers would continue to pay the City for such Excess Henderson Energy taken by Big Rivers, and would continue to be responsible for the associated Variable Costs, in the manner set forth in the Power Sales 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 would remain responsible for the Variable Costs attributable to the Excess Henderson Energy in accordance with the terms of the various agreements between the parties.

The Variable Costs of Excess Henderson Energy include fuel and reagents. 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 electric energy produced from Station Two. Section 13.8(c) of the Power Plant Construction and Operation Agreement also requires each party to provide its own

<sup>1</sup> All capitalized terms in this letter have the same meaning as contained in my May 25, 2016 letter to Gary Quick.

Mr. Gary Quick  
Mayor, City of Henderson  
October 7, 2016  
Page Two

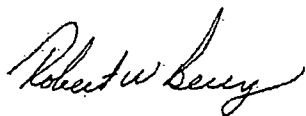
fuels for the operation of Station Two. Section 3.8(c) of the Power Sales Contract provides that Big Rivers is responsible for the costs of fuel, reagent and sludge disposal for Excess Henderson Energy that it takes, but this provision does not require Big Rivers to pay these Variable Costs for the City's Excess Henderson Energy that Big Rivers does not take. Therefore, the City is responsible for providing the full replacement of all fuels and reagents consumed for the City's Excess Henderson Energy not taken and used by Big Rivers.

Since June 1, 2016, the City has failed to comply with its requirements under the Power Sales Contract and the Power Plant Construction and Operation Agreement to provide the full replacement of all fuels and reagents consumed for the Excess Henderson Energy not taken and used by Big Rivers. As of September 30, 2016, the City has exhausted its coal supply by 7,430 tons and its lime supply by 1,894 tons.

Accordingly, Big Rivers gives notice that the City's failure to fulfill its obligations under Section 6.7 of the Power Sales Contract and Section 13.8(c) of the Power Plant Construction and Operation Agreement to replace fuel and reagents consumed for the production of Excess Henderson Energy that was not taken by Big Rivers is an event of default under the Power Plant Construction and Operation Agreement and the Power Sales Contract. Without waiving or limiting any rights and remedies that it may have as a result of the City's default, Big Rivers demands that the City immediately restore its fuel and reagent stocks at Station Two, and states that it will seek recovery from the City of any damages it sustains as a result of the City's default, including but not limited to the costs associated with procuring any fuel and reagent required to make up for the fuel and reagent City has failed to provide in accordance with its contractual obligations.

If you wish to meet to discuss this matter, I am willing to do so.

Respectfully,



Robert Berry  
President and CEO  
Big Rivers Electric Corporation

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to Commission Staff's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 5)** *Confirm that Big Rivers remits revenue to Henderson for Henderson's share*  
2 *of Station Two when capacity from Station Two is sold into the MISO capacity market.*

3  
4 **Response)** What Big Rivers receives for Station Two's capability in MISO are Zonal  
5 Resource Credits ("ZRC"). One ZRC equals one megawatt ("MW") of Unforced Capacity,  
6 which is defined by MISO as the amount of Capacity in MW assigned to a Planning Resource  
7 after accounting for its forced outage rate or historic availability. To date, all ZRCs associated  
8 with Henderson's share of Station Two have been used to satisfy Henderson's MISO resource  
9 adequacy requirements. Prior to 2013, Big Rivers made no capacity sales into the MISO  
10 capacity market. Since 2013, as detailed in Attachment 2, pages 3 and 4, of Big Rivers'  
11 response to Item 12 of Henderson's First Request for Information ("HMPL 1-12"), Big Rivers  
12 has incurred losses totaling approximately \$200,000 in MISO's Planning Resource Auction  
13 associated with the shortfall of ZRCs from Henderson's reserved share when compared to its  
14 resource adequacy requirements. As previously stated in Big Rivers' response to HMPL 1-12,  
15 Station Two's capacity within Henderson's Annual Reservation has never been utilized by Big  
16 Rivers for its own benefit or use.

17  
18 **Witness)** Mark J. Eacret

**ORIGINAL**



Your Touchstone Energy® Cooperative 

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**In the Matter of:**

**APPLICATION OF )  
BIG RIVERS ELECTRIC CORPORATION ) Case No.  
FOR A DECLARATORY ORDER ) 2016-00278**

**Response to City of Henderson, Kentucky and Henderson Utility  
Commission, d/b/a Henderson Municipal Power & Light's  
Supplemental Request for Information  
dated  
September 26, 2016**

**FILED: October 10, 2016**

**ORIGINAL**

## DEFINITIONS

- A. "Arbitration Award" means the award issued in AAA Arbitration Case No. 52 198 00173 10, which is attached to the Application as Exhibit 9.
- B. "Big Rivers" shall mean the applicant Big Rivers Electric Corporation and any agents, representatives, employees, officers, directors, accountants, independent contractors or attorneys of Big Rivers answering these discovery requests.
- C. The term "Capacity" means the maximum amount of instantaneous energy output that a power generating facility can produce, regardless of whether or not the facility is producing energy at that level, and is usually measured in megawatts (MW).
- D. "Commission" means the Kentucky Public Service Commission.
- E. "Energy" means the amount of electricity produced or consumed over time and is usually measured in megawatt-hours (MWh).
- F. "Excess Henderson Energy" means Energy associated with the Capacity that is the positive difference between Henderson's Annual Reservation and Henderson's load in any hour to serve its Native Load.
- G. "Henderson" shall mean intervenors City of Henderson, Kentucky and City of Henderson Utility Commission, d/b/a Henderson Municipal Power & Light and any agents, representatives, employees, officers, directors, accountants, independent contractors or attorneys of Henderson.
- H. "Henderson's Annual Reservation" means the portion of the Capacity of Station Two reserved by Henderson for any contract year in accordance with Section 3.3 of the Power Sales Contract.

I. "Henderson's Native Load" means the Capacity and Energy required in any hour to supply the needs of Henderson and its inhabitants for electric power and energy.

J. "MISO" means the Midcontinent Independent System Operator, Inc., including any agents, representatives, employees, officers, directors, accountants, independent contractors or attorneys of MISO.

K. "Power Plant Construction and Operation Agreement" means the Power Plant Construction and Operation Agreement Between City of Henderson, Kentucky and Big Rivers Rural Electrical Co-Operative Corporation entered into on August 1, 1970, and all subsequent amendments thereto and as interpreted by the Arbitration Award, as defined herein. The Power Plant Construction and Operation Agreement is one of the Station Two Contracts, as defined herein.

L. "Power Sales Contract" means the Power Sales Contract Between City of Henderson, Kentucky and Big Rivers Rural Electrical Co-Operative Corporation entered into on August 1, 1970, and all subsequent amendments thereto and as interpreted by the Arbitration Award, as defined herein. The Power Sales Contract is one of the Station Two Contracts.

M. "Station Two Contracts" means the series of agreements between Big Rivers and Henderson creating the arrangement by which Big Rivers operates and maintains Henderson's Station Two generating station, and purchases certain output from Station Two.

N. "TEA" means The Energy Authority, including any agents, representatives, employees, officers, directors, accountants, independent contractors or attorneys of TEA.

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to City of Henderson, Kentucky and Henderson Utility Commission, d/b/a  
Henderson Municipal Power & Light's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 1)** *Please identify the source or authority from which Big Rivers derives its*  
2 *definition of "Excess Henderson Energy," as set forth in the "Definitions" section of its*  
3 *responses to the Commission Staff's First Request for Information.*

4  
5 **Response)** Big Rivers objects to this information request to the extent that it seeks  
6 information protected by the attorney-client and/or work product privileges. Subject to and  
7 without waiving that objection, Big Rivers states that the definition of Excess Henderson Energy  
8 in the Definitions applicable to Big Rivers' responses to the First Requests for Information in  
9 this matter is based upon the Power Sales Contract and the arbitration award, and is consistent  
10 with Big Rivers' understanding of Henderson's definition of Excess Henderson Energy. By way  
11 of example, Big Rivers refers to the two letters from Henderson to Big Rivers that are attached  
12 to Big Rivers' response to this Request for Information, and the first bullet on the first page of  
13 each letter. While the language in the two letters varies slightly, Mr. Gary Quick, writing for  
14 Henderson, states in the letter to Mr. Bob Berry dated October 27, 2015: "The amount of  
15 HMPL's available hourly Excess Energy will be an amount up to its Annual Reserved Capacity  
16 minus its hourly native forecasted loads."

17

18 **Witness)** Robert W. Berry

July 13, 2012

Mr. Mark Bailey  
President  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42420

Dear Mark:

In response to Scott Greene's letter dated June 28, 2012, Henderson ("HMPL") offers the following process to begin scheduling our Excess Energy from our Henderson Station Two Facility (CP node BREC.HMP2). Initially, HMPL will pursue day-ahead sales of its Excess Energy using MISO Financial Schedules ("FinSched"). Over time HMPL may change its process for selling its Excess Energy, but currently HMPL will use the process described herein. To achieve this, HMPL proposes the attached MISO Contract defining terms with which Henderson and Big Rivers Electric Corporation (BREC) could use to create MISO FinScheds for energy. Our expectation is that this process would begin on or shortly after July 23, 2012, and could be a daily exercise, performed on business days before the next day, weekend, and NERC holiday schedules ("Day-ahead Schedules"). In order to begin this MISO FinSched process, the first step would be for BREC, as Market Participant for Henderson Station Two, to approve the attached underlying MISO Contract. The proposed MISO Contract for FinScheds would not change BREC's current scheduling process for Henderson's native load and resources under the carve out status. The FinSched would involve the scheduling of Excess Energy between Henderson's native load and its Annual Reserved Capacity.

HMPL proposes that the following processes be executed by our respective scheduling agents.

- The amount of HMPL's available hourly Excess Energy will be based on its Annual Reserved Capacity minus its hourly forecasted loads. From the resulting amount of energy, HMPL will develop an hourly schedule of Excess Energy that it desires to offer for third party sales.
- Firm third party bids to purchase HMPL's desired sale schedule, with pricing, will be provided to BREC no later than 8:00 a.m. EPT on the business day before the transaction.
- BREC will provide HMPL notice of its intent to accept or reject the purchase no later than 10:30 a.m. EPT on the business day before the transaction. BREC's failure to respond by 10:30 a.m. EPT will be an assumed rejection of the purchase. An accepted transaction by BREC must match the firm third party purchaser's hourly megawatt hours scheduled and prices.





As opportunities for physical bilateral transactions occur, HMPL's scheduling agent will manage the acquisition of the necessary transmission services, tagging, and will be responsible for managing real-time changes. Please let me know who we should contact at Big Rivers to begin the process of scheduling our Excess Energy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary Quick', written over a horizontal line.

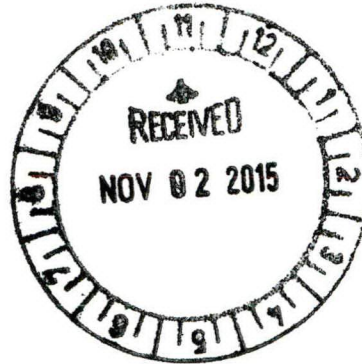
Gary Quick

Enclosure

Financial Contract	
Submit	Cancel
Contract Name	<u>BRPS-HMPL DA @ BREC.HMP2</u>
Buyer Name	<u>HMPL</u>
Seller Name	<u>BRPS</u>
Effective Start (EST)	<u>07/01/2012</u>
Effective End (EST)	<u>1/1/2013</u>
Source Location	<u>BREC.HMP2</u>
Sink Location	<u>BREC.HMP2</u>
Delivery Point	<u>BREC.HMP2</u>
Contract Type	PureFinancial
Schedule Approval	<u>CounterpartyApproval</u>
Settlement Market	<u>DayAhead</u>
Congestion Losses	BuyerPays ▾
Buyer Comments	<u>(null)</u>
Seller Comments	<u>(null)</u>
Contract Approval (EST)	Not Approved
RSG Deviation Contract	<u>false</u>

October 27, 2015

Mr. Bob Berry  
President  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42420



Dear Bob:

Henderson ("HMPL") is proposing the following process to begin scheduling our Excess Energy from our Henderson Station Two Facility (CP node BRECHMP2). Initially, HMPL will pursue day-ahead sales of its Excess Energy using MISO Financial Schedules ("FinSched"). Over a period of time HMPL may change its process for selling its Excess Energy, but currently HMPL will use the process described herein. To achieve this, HMPL proposes the attached MISO Contract defining terms with which Henderson and Big Rivers Electric Corporation (BREC) could use to create MISO FinScheds for energy. Our expectation is that this process would begin shortly after October 27, 2015, and could be a daily exercise, performed on business days before the next day, weekend, and NERC holiday schedules ("Day-ahead Schedules"). In order to begin this MISO FinSched process, the first step would be for BREC, as Market Participant for Henderson Station Two, to approve the attached underlying MISO Contract. The proposed MISO Contract for FinScheds would not change BREC's current scheduling process for Henderson's native load and resources under the carve out status. The FinSched would involve the scheduling of Excess Energy between Henderson's native load and its Annual Reserved Capacity.

HMPL proposes that the following processes be executed by our respective scheduling agents.

- The amount of HMPL's available hourly Excess Energy will be an amount up to its Annual Reserved Capacity minus its hourly native forecasted loads. From the resulting amount of energy, HMPL will develop an hourly schedule of Excess Energy that it desires to offer for third party sales.
- Firm third party bids to purchase HMPL's desired sale schedule, with pricing, will be provided to BREC no later than 8:00 a.m. EPT on the business day before the transaction.
- BREC will provide HMPL notice of its intent to accept or reject the purchase no later than 10:30 a.m. EPT on the business day before the transaction. BREC's failure to respond by 10:30 a.m. EPT will be an assumed rejection of the purchase. An accepted transaction by BREC must match the firm third party purchaser's hourly megawatt hours scheduled and prices.
- Please note that all times may be subject to change pending FERC approval of MISO's response to FERC Order No. 809.



As opportunities for physical bilateral transactions occur, HMPL's scheduling agent will manage the acquisition of the necessary transmission services, tagging, and will be responsible for managing real-time changes. Please let me know who we should contact at Big Rivers to begin the process of scheduling Henderson's Excess Energy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary Quick'. The signature is stylized with a large initial 'G' and a horizontal line extending to the right.

Gary Quick

Enclosure

## Financial Contract

Contract Name	<u>BRPS-HMPL DA @ BREC.HMP2</u>
Buyer Name	<u>HMPL</u>
Seller Name	<u>BRPS</u>
Effective Start (EST)	<u>7/1/2012</u>
Effective End (EST)	<u>1/1/2016</u>
Source Location	<u>BREC.HMP2</u>
Sink Location	<u>BREC.HMP2</u>
Delivery Point	<u>BREC.HMP2</u>
Contract Type	PureFinancial
Schedule Approval	<u>CounterpartyApproval</u>
Settlement Market	<u>DayAhead</u>
Congestion Losses	BuyerPays ▼
Buyer Comments	<u>(null)</u>
Seller Comments	<u>(null)</u>
Contract Approval (EST)	Not Approved
RSG Deviation Contract	<u>false</u>

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to City of Henderson, Kentucky and Henderson Utility Commission, d/b/a  
Henderson Municipal Power & Light's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 2)** *Will Big Rivers acknowledge that, pursuant to Section 3.8(a) of the Power*  
2 *Sales Contract, as amended, energy associated with Henderson's reserved capacity is not*  
3 *"Excess Henderson Energy" until and unless Henderson elects to not schedule or take said*  
4 *energy?*

5  
6 **Response)** Big Rivers objects to this information request to the extent that it seeks  
7 information protected by the attorney-client and/or work product privileges, or calls for a legal  
8 conclusion. Subject to and without waiving that objection, Big Rivers states that it does not  
9 acknowledge that the statement in this request for information is accurate. The terms of the  
10 Power Sales Contract speak for themselves. Please also refer to Big Rivers' response to  
11 Henderson's Supplemental Request for Information, Item 1.

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

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
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**October 10, 2016**

1 **Item 3)** *Will Big Rivers acknowledge that the arbitration award issued pursuant to the*  
2 *Henderson Circuit Court's reference of the parties' contractual dispute to arbitration in*  
3 *Civil Action No. 09-CI-00693 did not change the terms of the Power Sales Contract, as*  
4 *amended, or redefine the rights of the parties? If the response is in the affirmative [sic],*  
5 *please explain specifically and in detail the way in which you contend the arbitration award*  
6 *changed the terms of the Power Sales Contract, as amended, and/or redefined the rights of*  
7 *the parties.*

8  
9 **Response)** No. As it relates to this proceeding, please see Big Rivers' response to Item  
10 1(b) of the Commission Staff's First Request for Information.

11  
12 **Witness)** Robert W. Berry

**BIG RIVERS ELECTRIC CORPORATION**

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Henderson Municipal Power & Light's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 4)** *Refer to your response to Request No. 1 of Henderson's First Request for*  
2 *Information. Please define the term "uneconomic Excess Henderson Energy."*

3

4 **Response)** If the total cost to Big Rivers of purchasing and generating Excess Henderson  
5 Energy makes that energy economically uncompetitive in the wholesale power market, then it  
6 is uneconomic Excess Henderson Energy. Energy is uneconomic to Big Rivers if the wholesale  
7 market price of energy is not greater than the variable cost of generation plus \$1.50 per  
8 megawatt hour.

9

10 **Witness)** Robert W. Berry



**BIG RIVERS ELECTRIC CORPORATION**

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Henderson Municipal Power & Light's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 5)** *Refer to your response to Request No. 1 of Henderson's First Request for*  
2 *Information. Please explain with specificity and in detail the basis for your claim that*  
3 *Henderson is forcing or has forced Big Rivers to take "uneconomic Excess Henderson*  
4 *Energy."*

5  
6 **Response)** Big Rivers objects to this request on the grounds that it misstates or  
7 mischaracterizes Big Rivers' response to Item 1 of Henderson's First Request for Information  
8 ("HMPL 1-1"). Subject to and without waiving this objection, Big Rivers states that in its  
9 response to HMPL 1-1, Big Rivers referred to a premise that Henderson is making an effort to  
10 force Big Rivers to take uneconomic Excess Henderson Energy. As a result of Henderson's  
11 mandate that Station Two remain in continuous operation, it is not possible to avoid the  
12 production of Excess Henderson Energy, regardless of whether it is uneconomic to do so. This  
13 fact, coupled with the fact that Henderson is refusing to pay the variable costs associated with  
14 the Excess Henderson Energy Big Rivers does not take, despite being notified of Big Rivers'  
15 intention not to take the uneconomic Excess Henderson Energy, support Big Rivers' assertion  
16 that Henderson is attempting to force Big Rivers to take the uneconomic Excess Henderson  
17 Energy, despite Big Rivers rights under Section 3.8 of the Power Sales Contract to not take that  
18 power.

**BIG RIVERS ELECTRIC CORPORATION**

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**October 10, 2016**

1           Additionally, Henderson has refused to discuss an economic commitment strategy  
2 designed to eliminate the production of uneconomic energy from Station Two and has insisted  
3 that both Station Two units remain in continuous operation, regardless of whether the units are  
4 generating economically competitive energy, as described in detail by Mr. Pullen in Big  
5 Rivers' responses to Henderson's First Request for Information, Items 7 and 8. Additionally,  
6 on September 8, 2016, Mike Pullen, Big River's Vice President of Production, sent Ken  
7 Brooks, Henderson's Interim Power Production Director, a letter requesting that Henderson  
8 and Big Rivers' work together to minimize the economic losses of Station Two generation by  
9 implementing an economic commitment strategy for the Station Two units. A copy of that  
10 letter is attached. As of the date of this response, Henderson has not responded to that letter  
11 nor indicated any interest in allowing or agreeing to any economic commitment strategy for the  
12 Station Two units.

13           The following also support Big Rivers' assertion:

14           1) Henderson's repeated challenges to Big Rivers' calculations of Excess  
15           Henderson Energy using the methodology set forth in the Power Sales Contract,  
16           and the Arbitration Award, as described by Mr. Berry in his testimony on page  
17           15, lines 9-18,

**BIG RIVERS ELECTRIC CORPORATION**

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Henderson Municipal Power & Light's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

- 1           2) Henderson's refusal to replenish the coal and reagent inventories associated  
2           with the Excess Henderson Energy not taken by Big Rivers as required by the  
3           Power Sales Contract and the Power Plant Construction and Operation  
4           Agreement, as described in detail by Mr. Pullen in Big Rivers' response to the  
5           Commission Staff's Supplemental Request for Information, Item 4, and  
6           3) Henderson's refusal to meet with Big Rivers to discuss any of these issues and  
7           whether any common ground exists to resolve these issues as described in Mr.  
8           Berry's testimony, page 7, and as evidenced by Exhibit 11, page 6 of Big  
9           River's Application.

10  
11  
12

**Witness)**     Robert W. Berry

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

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dated September 26, 2016**

**October 10, 2016**

1 **Item 6)** *Does Big Rivers contend that Henderson is forcing or has forced Big Rivers*  
2 *to generate that energy which is associated with Henderson's reserved Station Two capacity,*  
3 *but which Henderson does not schedule or take? If the response is in the affirmative, please*  
4 *state specifically and in detail the basis for this contention.*

5  
6 **Response)** Big Rivers contends that as a result of the operating characteristics of the  
7 Station Two units (which are discussed in Big Rivers' responses to Items 7 and 9 of  
8 Henderson's First Request for Information) and Henderson's position that Big Rivers does not  
9 have the contractual right to idle the units for economic reasons (which is discussed in Big  
10 Rivers' response to Item 8 of Henderson's First Request for Information and Items 5, 9 and 10  
11 of Henderson's Supplemental Request for Information), Excess Henderson Energy is generated  
12 even in hours when it is uneconomic to do so. Since June 1, 2016, Big Rivers has been  
13 exercising its contractual right not to take Excess Henderson Energy by not taking Excess  
14 Henderson Energy that is uneconomic energy. In the hours Excess Henderson Energy is  
15 generated but not taken by Big Rivers, that energy is generated in accordance with operating  
16 parameters required by Henderson, belongs to Henderson, must go somewhere, and Henderson  
17 is responsible for the variable production costs of that energy.

18

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1 **Witness)** Robert W. Berry

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1 **Item 7)** *Refer to Big Rivers' response to Request No. 1 of the Commission Staff's First*  
2 *Request for Information. Please define the term "Henderson's MISO capacity requirement."*

3

4 **Response)** Section 3 of the MISO Resource Adequacy Business Practice Manual BPM-011-  
5 r16, entitled "Establishing Planning Reserve Margin Requirement", defines the capacity  
6 requirement for Henderson load to include the coincident peak demand forecast, plus the  
7 transmission loss percentage, plus the Planning Reserve Margin percentage. The pertinent part  
8 of this manual is shown on the next page; it is otherwise available on the internet at:  
9 <https://www.misoenergy.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManu>  
10 [als.aspx](#).

11

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1



**Resource Adequacy Business Practice Manual**

**BPM-011-r16**

**Effective Date: JUL-15-2016**

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**3. Establishing Planning Reserve Margin Requirement**

**3.1. Overview**

The Planning Reserve Margin Requirement (PRMR) is the number of ZRCs required to meet an LSE's Resource Adequacy Requirements (RAR). The RAR is established to ensure that LSEs have enough Planning Resources to reliably serve load.

The PRMR is expressed in the following equation per Asset Owner per Local Resource Zone (LRZ):

$$PRMR_{LRZ} = \sum_{LBA} [(CPDf - FRP + FRS) \times (1 + TL\%) \times (1 + PRM_{RTO})]$$

Where:

PRMR<sub>LRZ</sub> = Planning Reserve Margin Requirement per LRZ

CPDf = Coincident Peak Demand forecast per LBA

FRP = Full Responsibility Purchase per LBA

FRS = Full Responsibility Sale per LBA

TL% = Transmission Loss Percentage of LBA

PRM<sub>RTO</sub> = Planning Reserve Margin in Unforced Capacity set by LOLE Studies

2

3 **Witness)** Mark J. Eacret

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1 **Item 8)** *Will Big Rivers acknowledge that there exists no contractual provision*  
2 *requiring Big Rivers to generate "Excess Henderson Energy" as defined in Section 3.8(a) of*  
3 *the Power Sales Contract, as amended?*

4  
5 **Response)** Big Rivers objects to this request on the grounds that it seeks a legal conclusion.  
6 Notwithstanding this objection, and without waiving it, Big Rivers states as follows: As  
7 explained in Big Rivers' response to Item 8 of Henderson's First Request for Information,  
8 Henderson has taken the position that Big Rivers does not have the contractual right to idle the  
9 Station Two units for economic reasons. As a result of Henderson's position and the minimum  
10 operating levels of the units described in Big Rivers' responses to Items 7 and 9 of  
11 Henderson's First Request for Information, Excess Henderson Energy is generated even in  
12 hours when it is uneconomic to do so. Please see also Big Rivers' responses to Items 5, 6, 9  
13 and 10 of Henderson's Supplemental Request for Information.

14  
15 **Witness)** Robert W. Berry



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1 **Item 9)** *Will Big Rivers acknowledge that Big Rivers is not contractually required to*  
2 *generate that energy which exceeds Henderson's native load in a given hour, but which*  
3 *Henderson neither schedules nor takes? If the response is in the negative, please state the*  
4 *basis for your claim that Big Rivers is required to generate that energy which exceeds*  
5 *Henderson's native load in a given hour, but is less than or equal to its reservation for that*  
6 *hour, and which Henderson neither schedules nor takes.*

7

8 **Response)** Big Rivers objects to this request on the grounds that it seeks a legal conclusion.  
9 Notwithstanding this objection, and without waiving it, Big Rivers states as follows: Please see  
10 Big Rivers' response to Henderson's First Request for Information, Items 7 and 8. In addition,  
11 on September 8, 2016 Mike Pullen, Big River's Vice President of Production, sent Ken  
12 Brooks, Henderson' Interim Power Production Director, a letter requesting that Henderson and  
13 Big Rivers' work together to minimize the economic losses of Station Two generation by  
14 implementing an economic commitment strategy for the Station Two units. A copy of that  
15 letter is attached. As of this date, Henderson has not responded to the letter nor indicated any  
16 interest in allowing or agreeing to any economic commitment strategy for the Station Two  
17 units.

18

**BIG RIVERS ELECTRIC CORPORATION**

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1 **Witness)** Robert W. Berry



201 Third Street  
P.O. Box 24  
Henderson, KY 42419-0024  
270-827-2561  
www.bigrivers.com

September 8, 2016

Mr. Ken Brooks  
Interim Power Production Director  
Henderson Municipal Power & Light  
100 Fifth Street  
P.O. Box 8  
Henderson, KY 42419

[kbrooks@hmpl.net](mailto:kbrooks@hmpl.net)

**via Electronic Communication**

RE: Economic dispatch of the Station Two units

Dear Ken:

As we have previously discussed with you and others at HMPL on several occasions, there are many hours during which the Station Two units are uneconomical to operate. This is because energy may be purchased from the Midcontinent Independent System Operator energy market (MISO) at a price which is less than the variable costs associated with the production of energy by the Station Two units. For example, this past Labor Day weekend, energy could have been purchased from MISO to serve both Big Rivers' and HMPL's native load for approximately \$200,000 less than the variable cost incurred to operate the Station Two units as shown on Attachment 1 "Estimate of Cost to Run HMPL 1 and HMPL 2 Over the Labor Day Weekend." Over time, these types of avoidable losses represent a substantial cost to the HMPL ratepayers as well as to Big Rivers' members.

Going forward, there continues to be an opportunity for Big Rivers and HMPL to work together to minimize these types of losses by implementing an economic commitment strategy for the Station Two units. For example, during hours when it is foreseeable that it may be uneconomical to generate energy from Station Two because the Station Two units are not expected to clear the MISO market (i.e. variable costs to produce energy exceed the cost to purchase energy from MISO), the units could be offered into MISO in economic commit status such that they would only run if MISO dispatches the units if the cost of energy in the MISO market place exceeds a certain price. If the units are not dispatched by MISO, they could then be placed in reserve standby until such time as the market pricing recovers. This mode of economic dispatch is expected to avoid the more expensive variable cost associated with operating the units when energy may be purchased for a lower price in the marketplace. In addition, it has the potential to reduce ongoing maintenance expense because the Units would be operating less frequently.

Case No. 2016-00278  
Attachment for HMPL 2-9  
Witness: Robert W. Berry  
Page 1 of 4

Based on the current expected market prices for the fall of 2016, Big Rivers estimates that HMPL could realize a savings for the remainder of 2016 in excess of \$900,000. There is also the potential for an additional savings in excess of \$1,000,000 associated with the Excess Henderson Energy that may be uneconomical during this time period. Please refer to Attachment 2 "Estimate of Savings to HMPL from Market Purchases versus Station Two Generation" for a more detailed explanation of how these numbers were derived. Please note that the potential savings quoted above are rough estimates based on Big Rivers' understanding of HMPL's expected load and its understanding of HMPL's variable costs. HMPL should verify this data and perform its own calculations to confirm accuracy and make its own determination as to any potential savings to HMPL.

In order to implement this strategy, Big Rivers proposes that each party, on a weekly basis, review the expected market prices for the upcoming week for the Station Two units. Based on each party's review of those prices, a joint decision would be made as to whether to operate the Station Two units as they have been operated in the past or to place them into economic commit status so that they will be dispatched economically by MISO. In the event the decision is made to offer them into MISO in an economic commit status, and the units are subsequently not dispatched by MISO, Big Rivers would purchase energy from MISO to serve HMPL's native load, and HMPL would in turn reimburse Big Rivers its actual, out-of-pocket purchase costs, plus an adjustment for losses incurred over Big Rivers' electric system. This is currently the price HMPL pays for energy under the existing agreements when Station Two is unavailable and the energy is not available on Big Rivers' system to serve HMPL's native load.

If we want to realize the full potential of this opportunity, it is necessary for HMPL to review this information promptly as time is critical to realize these potential savings based on information that is currently available. After you have completed your review, please contact me so that we can set up a time to meet to work through the logistics of implementation and discuss any open issues that may exist that may impede HMPL's agreement to this strategy.

Respectfully,



Michael T. Pullen  
Vice President Production  
Big Rivers Electric Corporation

cc: Mark Eacret – VP Energy Services, Big Rivers



**Big Rivers Energy Corp  
 Estimate of Savings to HMPL from Market Purchases versus Station Two Generation  
 September 2, 2016**

		Sep	Oct	Nov	Dec	Total	2017
IndyHub _1/	On-Peak	[REDACTED]					[REDACTED]
	Off-Peak	[REDACTED]					[REDACTED]
HMPL _2/	On-Peak	[REDACTED]					[REDACTED]
	Off-Peak	[REDACTED]					[REDACTED]
HMPL Load (MWh)	60% On-Peak	[REDACTED]					[REDACTED]
	40% Off-Peak	[REDACTED]					[REDACTED]
Market Cost		[REDACTED]					[REDACTED]
Station Two VOM		[REDACTED]					[REDACTED]
Savings on HMPL Load		[REDACTED]					[REDACTED]
Excess Energy	On-Peak	[REDACTED]					[REDACTED]
	Off-Peak	[REDACTED]					[REDACTED]
Market Value		[REDACTED]					[REDACTED]
Station Two VOM		[REDACTED]					[REDACTED]
Avoided Loss on Excess Energy		[REDACTED]					[REDACTED]

\_1/ IndyHub prices as of 9/2/2016

\_2/ ACES estimate of IndyHub to HMPL basis

Estimate for 2017 assumes market purchases for the entire year. Figure would be increased if Station Two were run during periods when gross margins would be realized.

September 8, 2016

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1 **Item 10)** *Will Big Rivers acknowledge that Big Rivers possesses physical control over*  
2 *the Station Two generating facilities such that Big Rivers controls whether energy is*  
3 *generated or not generated by either or both of the Station Two Units?*

4  
5 **Response)** Big Rivers objects to this request on the grounds that it seeks information which  
6 is neither relevant nor calculated to lead to the discovery of admissible evidence.  
7 Notwithstanding this objection, and without waiving it, Big Rivers states as follows: Big  
8 Rivers operates Station Two in accordance with the terms of the Station Two Contracts.  
9 Henderson frequently asserts that Big Rivers exercises its rights and obligations under the  
10 Station Two Contracts subject to Henderson's ownership, management and control. Please see  
11 Big Rivers' response to Item 8 of Henderson's First Request for Information for examples of  
12 constraints Henderson has imposed on Big Rivers' operation of Station Two.

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

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1 **Item 11)** *Will Big Rivers acknowledge that, since June 1, 2016, Big Rivers in any given*  
2 *hour has generated energy associated with Henderson's reserved Station Two capacity, but*  
3 *which was not scheduled or taken by Henderson, prior to generating any energy from*  
4 *Station Two capacity allocated to Big Rivers?*

5

6 **Response)** Big Rivers acknowledges that, since June 1, 2016, it has allocated energy  
7 generated by the Station Two units to Henderson's reserved capacity prior to allocating any  
8 energy generated by the Station Two units to Big Rivers' capacity allocation.

9

10 **Witness)** Robert W. Berry



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1 **Item 12)** *Refer to the Direct Testimony of Robert W. Berry, submitted as Exhibit 10 with*  
2 *Big Rivers' Application for a Declaratory Order, pages 13-14. Please confirm that, over*  
3 *Henderson's formal written objection of May 31, 2016, Big Rivers has taken and continues to*  
4 *take without authorization Henderson's coal and lime inventory, while billing Henderson for*  
5 *other variable costs associated with the production of Station Two energy not scheduled or*  
6 *taken by Henderson, but generated, taken, and sold by Big Rivers.*

7

8 **Response)** Big Rivers denies this assertion. Energy associated with Henderson' reserved  
9 Station Two capacity in excess of Henderson's native load requirements in a given hour is Excess  
10 Henderson Energy. Pursuant to the Arbitration Award, Henderson has the first right to sell  
11 Excess Henderson Energy in response to a firm bona fide third party offer, subject to Big Rivers'  
12 right of first refusal. In the event Henderson fails to present a firm bona fide third party offer for  
13 such energy, Big Rivers may, at its discretion, take that energy, and if Big Rivers takes that  
14 energy, it has the obligation to pay Henderson \$1.50/MWh for, and to be responsible for the  
15 variable production costs of, any energy so taken by Big Rivers.

16 Henderson is responsible for any Excess Henderson Energy not sold by Henderson  
17 pursuant to a firm bona fide third party offer or taken by Big Rivers. If Big Rivers exercises its  
18 discretion and elects not to purchase Excess Henderson Energy, there is no basis in the Station

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1 Two Contracts for holding Big Rivers responsible for the variable production costs of that  
2 energy. Big Rivers' allocation to Henderson of the variable production costs for the Excess  
3 Henderson Energy taken by Henderson is consistent with the terms of the Station Two Contracts.

4

5 **Witness)** Robert W. Berry

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1 **Item 13)** *Will Big Rivers acknowledge that, since on or about June 1, 2016, Big Rivers*  
2 *has maintained records of coal, lime, and other Station Two expenses associated both with the*  
3 *actual number of megawatt hours taken by Henderson, and with the number of megawatt*  
4 *hours Big Rivers claims to have generated at Henderson's direction, and sold on Henderson's*  
5 *behalf?*

6

7 **Response)** Big Rivers objects to this request on the grounds that it misstates or  
8 mischaracterizes Big Rivers' process. Subject to and without waiving this objection, Big Rivers  
9 states that Big Rivers is recording expenses on its books using the Henderson megawatt hours  
10 reported on the monthly bills to Henderson, which includes Henderson's native load and the  
11 Excess Henderson Energy belonging to and allocated to Henderson.

12

13 **Witness)** Robert W. Berry

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1 **Item 14)** *Please explain in detail why Big Rivers is generating that energy which is*  
2 *associated with Henderson's reserved Station Two capacity, but which is not scheduled or*  
3 *taken by Henderson, prior to generating energy from that Station Two capacity allocated to*  
4 *Big Rivers.*

5  
6 **Response)** Energy associated with Henderson's capacity reservation that is in excess of  
7 Henderson's native load in a given hour is Excess Henderson Energy. For why Big Rivers,  
8 since June 1, 2016, has allocated energy generated by the Station Two units to Excess  
9 Henderson Energy prior to allocating energy generated by the Station Two units to Big Rivers'  
10 capacity allocation, please see Big Rivers' response to Item 7 of the Commission Staff's First  
11 Request for Information. For why Station Two generates Excess Henderson Energy during  
12 each hour while it remains in continuous operation as required by Henderson, please see Big  
13 Rivers' response to Item 9 of Henderson's First Request for Information, and Mr. Berry's  
14 testimony on pages 10 and 11. Please see also Big Rivers' responses to Henderson's  
15 Supplemental Request for Information, Items 5, 6, 8, 9 and 10.

16

17 **Witness)** Robert W. Berry

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1 **Item 15)** *Please describe the manner in which Big Rivers currently disposes of energy*  
2 *generated from that Station Two capacity allocated to Big Rivers, including an explanation*  
3 *of whether that energy is sold into the MISO market, to Big Rivers' member cooperatives, to*  
4 *other third parties, or some combination of all three. Please provide documentation*  
5 *indicating what portion of that energy associated with Big Rivers' allocated capacity is sold*  
6 *to which buyer, and the amount of revenue Big Rivers received from each buyer between*  
7 *12:01 a.m. on July 17, 2009, and the date of the answering of these requests.*

8  
9 **Response)** Big Rivers objects to this request on the grounds that it is overly broad, unduly  
10 burdensome, and seeks information which is neither relevant nor calculated to lead to the  
11 discovery of admissible evidence. The request is not related to the energy at issue in this  
12 proceeding, and only encompasses energy associated with Big Rivers' allocated capacity and  
13 energy Big Rivers is contractually entitled to purchase. Subject to and without waiving these  
14 objections, Big Rivers states that energy associated with all Station Two capacity allocated to  
15 Big Rivers is currently sold into the MISO Market and has been for all dates following Big  
16 Rivers' full integration into MISO on December 1, 2010. The revenue associated with these  
17 sales is presented in the confidential attachment to this response. Prior to Big Rivers' full  
18 integration into MISO on December 1, 2010, Big Rivers did not have a mechanism in place to

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1 specifically track the destination of the megawatt hours from Station Two that may have been  
2 sold to contractual or other customers, and as such, this information is not reasonably available  
3 to Big Rivers.

4

5 **Witness)** Mark J. Eacret

**Big Rivers Electric Corporation**  
**Case No. 2016-00278**  
**Big Rivers Share of Station Two**

	A	B	C	D	E	F	G	H	I	J	K
	Station Two Total Generation	Revenues - Costs ((D+I)-(E+F+J)) for Total Station Two Generation	Station Two HMPL Reservation mWhrs	Total Net \$ Received From MISO for Station Two Generation	Total HMPL Load MISO Costs <sup>4</sup>	Total Station Two Variable Cost Paid by BREC for Henderson Excess Energy mWhrs (Resv - Load)	Revenues - Costs ((D+H)- (E+I)) for Station Two HMPL Reservation <sup>3</sup>	Station Two BREC Share mWhrs	Total \$ Received from MISO for BREC Share of Station Two Generation	Total Station Two Variable Cost - BREC Share of Station Two Generation	Revenues - Cost (I-J) for BREC Share of Station Two Generation
<b>2009</b>	<b>1,110,553</b>	<b>\$0</b>	<b>403,300</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>707,253</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
July	97,262	\$0	36,000	\$0	\$0	\$0	\$0	61,262	\$0	\$0	\$0
August	187,813	\$0	74,400	\$0	\$0	\$0	\$0	113,413	\$0	\$0	\$0
September	196,515	\$0	72,000	\$0	\$0	\$0	\$0	124,515	\$0	\$0	\$0
October	201,182	\$0	74,400	\$0	\$0	\$0	\$0	126,782	\$0	\$0	\$0
November	212,222	\$0	72,100	\$0	\$0	\$0	\$0	140,122	\$0	\$0	\$0
December	215,559	\$0	74,400	\$0	\$0	\$0	\$0	141,159	\$0	\$0	\$0
<b>2010</b>	<b>2,255,085</b>	<b>\$1,280,097</b>	<b>896,579</b>	<b>\$2,827,233</b>	<b>\$1,908,745</b>	<b>\$756,013</b>	<b>\$162,474</b>	<b>1,358,506</b>	<b>\$4,603,966</b>	<b>\$3,486,343</b>	<b>\$1,117,623</b>
January	197,203	\$0	74,400	\$0	\$0	\$0	\$0	122,803	\$0	\$0	\$0
February	186,214	\$0	67,200	\$0	\$0	\$0	\$0	119,014	\$0	\$0	\$0
March	177,957	\$0	73,940	\$0	\$0	\$0	\$0	104,017	\$0	\$0	\$0
April	133,311	\$0	72,000	\$0	\$0	\$0	\$0	61,311	\$0	\$0	\$0
May	177,845	\$0	74,400	\$0	\$0	\$0	\$0	103,445	\$0	\$0	\$0
June	203,046	\$0	75,600	\$0	\$0	\$0	\$0	127,446	\$0	\$0	\$0
July	189,411	\$0	73,374	\$0	\$0	\$0	\$0	116,037	\$0	\$0	\$0
August	211,822	\$0	78,120	\$0	\$0	\$0	\$0	133,702	\$0	\$0	\$0
September	192,765	\$0	75,600	\$0	\$0	\$0	\$0	117,165	\$0	\$0	\$0
October	194,871	\$0	78,120	\$0	\$0	\$0	\$0	116,751	\$0	\$0	\$0
November	187,664	\$0	75,705	\$0	\$0	\$0	\$0	111,959	\$0	\$0	\$0
December	202,976	\$1,280,097	78,120	\$2,827,233	\$1,908,745	\$756,013	\$162,474	124,856	\$4,603,966	\$3,486,343	\$1,117,623

**Big Rivers Electric Corporation**  
**Case No. 2016-00278**  
**Big Rivers Share of Station Two**

	A	B	C	D	E	F	G	H	I	J	K
	Station Two Total Generation	Revenues - Costs ((D+I)-(E+F+J)) for Total Station Two Generation	Station Two HMPL Reservation mWhrs	Total Net \$ Received From MISO for Station Two Generation	Total HMPL Load MISO Costs <sup>4</sup>	Total Station Two Variable Cost Paid by BREC for Henderson Excess Energy mWhrs (Resv - Load)	Revenues - Costs ((D+H)- (E+I)) for Station Two HMPL Reservation <sup>3</sup>	Station Two BREC Share mWhrs	Total \$ Received from MISO for BREC Share of Station Two Generation	Total Station Two Variable Cost - BREC Share of Station Two Generation	Revenues - Cost (I-J) for BREC Share of Station Two Generation
<b>2011</b>	<b>2,190,664</b>	<b>\$8,849,971</b>	<b>939,934</b>	<b>\$32,274,933</b>	<b>\$21,485,672</b>	<b>\$10,108,108</b>	<b>\$681,153</b>	<b>1,250,730</b>	<b>\$44,425,452</b>	<b>\$36,256,634</b>	<b>\$8,168,818</b>
January	193,000	\$1,081,577	78,120	\$2,891,012	\$2,080,334	\$687,825	\$122,853	114,880	\$4,259,227	\$3,300,502	\$958,724
February	142,632	\$614,036	66,228	\$2,288,307	\$1,527,320	\$647,843	\$113,143	76,404	\$2,747,935	\$2,247,042	\$500,893
March	193,760	\$779,309	77,740	\$2,597,179	\$1,514,426	\$947,728	\$135,025	116,020	\$3,955,494	\$3,311,211	\$644,283
April	143,721	\$518,692	74,818	\$2,525,813	\$1,457,831	\$959,863	\$108,119	68,903	\$2,417,717	\$2,007,144	\$410,573
May	185,469	\$1,004,024	78,120	\$2,825,498	\$1,660,654	\$1,011,260	\$153,583	107,349	\$4,017,236	\$3,166,796	\$850,441
June	189,225	\$1,131,465	79,038	\$2,987,165	\$2,202,670	\$758,540	\$25,955	110,187	\$4,385,777	\$3,280,267	\$1,105,510
July	201,830	\$1,962,201	81,840	\$3,602,467	\$3,056,002	\$558,326	(\$11,862)	119,990	\$5,526,967	\$3,552,904	\$1,974,063
August	201,757	\$877,842	81,840	\$2,938,346	\$2,345,431	\$609,032	(\$16,118)	119,917	\$4,397,935	\$3,503,975	\$893,960
September	174,584	\$41,758	79,200	\$2,354,873	\$1,507,878	\$905,291	(\$58,296)	95,384	\$2,947,266	\$2,847,212	\$100,054
October	177,482	\$322,342	81,840	\$2,470,126	\$1,454,932	\$976,264	\$38,929	95,642	\$2,952,781	\$2,669,368	\$283,412
November	194,310	\$440,711	79,310	\$2,407,091	\$1,358,214	\$982,333	\$66,544	115,000	\$3,550,466	\$3,176,300	\$374,166
December	192,894	\$76,015	81,840	\$2,387,058	\$1,319,978	\$1,063,804	\$3,277	111,054	\$3,266,651	\$3,193,913	\$72,738
<b>2012</b>	<b>2,034,966</b>	<b>(\$1,745,658)</b>	<b>965,583</b>	<b>\$27,164,493</b>	<b>\$17,280,559</b>	<b>\$11,245,360</b>	<b>(\$1,361,425)</b>	<b>1,069,383</b>	<b>\$31,067,629</b>	<b>\$31,451,862</b>	<b>(\$384,233)</b>
January	183,808	(\$245,549)	81,840	\$2,254,804	\$1,372,948	\$977,903	(\$96,046)	101,968	\$2,832,042	\$2,981,544	(\$149,503)
February	140,557	(\$276,260)	76,560	\$2,050,078	\$1,243,937	\$917,520	(\$111,379)	63,997	\$1,710,871	\$1,875,752	(\$164,881)
March	181,091	(\$222,552)	81,730	\$2,207,839	\$1,234,358	\$1,047,046	(\$73,565)	99,361	\$2,707,641	\$2,856,629	(\$148,988)
April	80,085	(\$216,951)	66,868	\$1,657,013	\$948,972	\$870,456	(\$162,415)	13,217	\$335,100	\$389,637	(\$54,537)
May	145,844	(\$447,251)	68,098	\$1,885,287	\$1,311,222	\$743,303	(\$169,239)	77,746	\$2,174,097	\$2,452,109	(\$278,012)
June	186,801	(\$155,762)	82,800	\$2,255,423	\$1,643,720	\$791,201	(\$179,498)	104,001	\$2,937,844	\$2,914,108	\$23,736
July	200,753	\$1,233,886	85,560	\$3,227,070	\$2,578,370	\$653,363	(\$4,663)	115,193	\$4,538,829	\$3,300,279	\$1,238,549
August	176,000	(\$373,154)	85,544	\$2,323,734	\$1,681,680	\$823,684	(\$181,631)	90,456	\$2,523,062	\$2,714,585	(\$191,523)
September	180,946	(\$450,884)	82,800	\$2,143,744	\$1,285,997	\$1,001,938	(\$144,191)	98,146	\$2,588,615	\$2,895,307	(\$306,692)
October	178,340	(\$91,146)	85,308	\$2,500,116	\$1,375,985	\$1,172,993	(\$48,862)	93,032	\$2,797,983	\$2,840,267	(\$42,284)
November	198,838	(\$115,273)	82,915	\$2,351,324	\$1,346,981	\$1,068,991	(\$64,648)	115,923	\$3,315,779	\$3,366,404	(\$50,625)
December	181,903	(\$384,762)	85,560	\$2,308,061	\$1,256,389	\$1,176,961	(\$125,288)	96,343	\$2,605,767	\$2,865,241	(\$259,473)



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**Case No. 2016-00278**  
**Big Rivers Share of Station Two**

	A	B	C	D	E	F	G	H	I	J	K
	Station Two Total Generation	Revenues - Costs ((D+I)-(E+F+J)) for Total Station Two Generation	Station Two HMPL Reservation mWhrs	Total Net \$ Received From MISO for Station Two Generation	Total HMPL Load MISO Costs <sup>4</sup>	Total Station Two Variable Cost Paid by BREC for Henderson Excess Energy mWhrs (Resv - Load)	Revenues - Costs ((D+H)- (E+I)) for Station Two HMPL Reservation <sup>3</sup>	Station Two BREC Share mWhrs	Total \$ Received from MISO for BREC Share of Station Two Generation	Total Station Two Variable Cost - BREC Share of Station Two Generation	Revenues - Cost (I-J) for BREC Share of Station Two Generation
<b>2013</b>	<b>2,088,301</b>	<b>\$785,497</b>	<b>1,001,966</b>	<b>\$31,225,210</b>	<b>\$18,713,057</b>	<b>\$12,667,882</b>	<b>(\$155,729)</b>	<b>1,086,335</b>	<b>\$34,077,694</b>	<b>\$33,136,468</b>	<b>\$941,226</b>
January	192,184	(\$315,325)	85,560	\$2,361,695	\$1,390,298	\$1,064,407	(\$93,010)	106,624	\$2,980,670	\$3,202,985	(\$222,315)
February	172,027	(\$280,375)	77,280	\$2,141,225	\$1,249,390	\$985,637	(\$93,803)	94,747	\$2,661,523	\$2,848,095	(\$186,572)
March	187,598	\$203,389	85,248	\$2,686,245	\$1,555,343	\$1,116,881	\$14,022	102,350	\$3,269,079	\$3,079,712	\$189,368
April	102,965	\$435,714	82,800	\$2,949,904	\$1,518,269	\$1,161,291	\$270,343	20,165	\$749,551	\$584,180	\$165,371
May	117,067	\$240,031	85,069	\$2,861,901	\$1,606,516	\$1,182,775	\$72,610	31,998	\$1,138,240	\$970,819	\$167,420
June	173,963	\$200,370	82,800	\$2,636,416	\$1,767,023	\$921,407	(\$52,013)	91,163	\$2,975,880	\$2,723,496	\$252,383
July	189,836	\$55,365	84,734	\$2,558,550	\$1,646,511	\$996,436	(\$84,397)	105,102	\$3,300,389	\$3,160,627	\$139,762
August	173,431	\$27,199	81,644	\$2,445,005	\$1,679,586	\$793,706	(\$28,287)	91,787	\$2,783,304	\$2,727,818	\$55,486
September	175,432	(\$194,735)	82,796	\$2,343,314	\$1,523,757	\$940,359	(\$120,801)	92,636	\$2,714,780	\$2,788,714	(\$73,934)
October	200,324	(\$202,616)	85,560	\$2,602,879	\$1,509,909	\$1,177,455	(\$84,486)	114,764	\$3,564,876	\$3,683,006	(\$118,130)
November	197,234	\$303,200	82,915	\$2,731,416	\$1,571,185	\$1,130,103	\$30,128	114,319	\$3,799,929	\$3,526,856	\$273,072
December	206,240	\$313,279	85,560	\$2,906,659	\$1,695,269	\$1,197,425	\$13,965	120,680	\$4,139,473	\$3,840,159	\$299,314
<b>2014</b>	<b>2,331,463</b>	<b>\$13,977,942</b>	<b>1,006,237</b>	<b>\$38,173,858</b>	<b>\$24,473,998</b>	<b>\$11,606,127</b>	<b>\$2,093,733</b>	<b>1,325,226</b>	<b>\$51,287,435</b>	<b>\$39,403,226</b>	<b>\$11,884,209</b>
January	208,908	\$3,867,634	85,560	\$4,891,980	\$3,424,315	\$939,398	\$528,268	123,348	\$7,229,147	\$3,889,781	\$3,339,366
February	184,401	\$3,196,290	77,280	\$4,132,680	\$2,773,678	\$849,218	\$509,783	107,121	\$5,966,444	\$3,279,938	\$2,686,507
March	213,614	\$2,345,863	85,445	\$3,757,908	\$2,284,311	\$1,055,725	\$417,872	128,169	\$5,697,313	\$3,769,322	\$1,927,991
April	180,082	\$763,063	82,502	\$2,960,460	\$1,652,636	\$1,125,832	\$181,992	97,580	\$3,513,840	\$2,932,769	\$581,072
May	132,739	\$424,101	85,560	\$3,223,900	\$2,021,400	\$1,093,077	\$109,423	47,179	\$1,788,787	\$1,474,110	\$314,678
June	181,230	\$718,792	82,759	\$3,046,885	\$2,119,801	\$838,903	\$88,181	98,471	\$3,602,961	\$2,972,349	\$630,612
July	202,980	\$124,244	85,560	\$2,688,090	\$1,842,887	\$909,598	(\$64,395)	117,420	\$3,758,207	\$3,569,568	\$188,639
August	203,232	\$118,261	85,560	\$2,668,999	\$1,866,072	\$846,079	(\$43,153)	117,672	\$3,763,824	\$3,602,410	\$161,414
September	191,840	\$425,397	82,800	\$2,658,107	\$1,664,137	\$935,117	\$58,852	109,040	\$3,580,171	\$3,213,627	\$366,544
October	207,933	\$492,589	84,851	\$2,652,310	\$1,525,376	\$1,057,309	\$69,626	123,082	\$3,908,768	\$3,485,806	\$422,963
November	213,903	\$1,224,440	82,800	\$2,934,522	\$1,757,163	\$953,825	\$223,534	131,103	\$4,688,047	\$3,687,141	\$1,000,906
December	210,601	\$277,267	85,560	\$2,558,016	\$1,542,221	\$1,002,045	\$13,750	125,041	\$3,789,923	\$3,526,406	\$263,517

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	Station Two Total Generation	Revenues - Costs ((D+I)-(E+F+J)) for Total Station Two Generation	Station Two HMPL Reservation mWhrs	Total Net \$ Received From MISO for Station Two Generation	Total HMPL Load MISO Costs <sup>4</sup>	Total Station Two Variable Cost Paid by BREC for Henderson Excess Energy mWhrs (Resv - Load)	Revenues - Costs ((D+H)- (E+I)) for Station Two HMPL Reservation <sup>3</sup>	Station Two BREC Share mWhrs	Total \$ Received from MISO for BREC Share of Station Two Generation	Total Station Two Variable Cost - BREC Share of Station Two Generation	Revenues - Cost (I-J) for BREC Share of Station Two Generation
<b>2015</b>											
January											
February											
March											
April											
May											
June											
July											
August											
September											
October											
November											
December											
<b>2016</b>											
January											
February											
March											
April											
May											
June											
July											
August											
<b>Grand Total</b>											

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A	B	C	D	E	F	G	H	I	J	K
Station Two Total Generation	Revenues - Costs ((D+I)-(E+F+J)) for Total Station Two Generation	Station Two HMPL Reservation mWhrs	Total Net \$ Received From MISO for Station Two Generation	Total HMPL Load MISO Costs <sup>4</sup>	Total Station Two Variable Cost Paid by BREC for Henderson Excess Energy mWhrs (Resv - Load)	Revenues - Costs ((D+H)- (E+I)) for Station Two HMPL Reservation <sup>3</sup>	Station Two BREC Share mWhrs	Total \$ Received from MISO for BREC Share of Station Two Generation	Total Station Two Variable Cost - BREC Share of Station Two Generation	Revenues - Cost (I-J) for BREC Share of Station Two Generation

**Please Note:**

<sup>1</sup>Big Rivers entered into MISO as a Market Participant beginning December 1, 2010; prior to that Big Rivers did not delineate between generating units its sales of energy into the MISO Market

<sup>2</sup>HMPL Reservation includes HMPL Load net of SEPA and Henderson Excess Energy

<sup>3</sup>The net \$ received does not include the \$1.50/mWh paid to HMPL for Henderson Excess Energy pursuant to the Power Sales Contract

<sup>4</sup>MISO Cost for HMPL Load include - Day-Ahead or Real-Time LMP, Congestion/Loss GFA Rebates, RT Regulation Cost Distribution, RT Spinning Reserve Cost Distribution, RT Supplemental Reserves Cost Distribution

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Henderson Municipal Power & Light's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 16)** *Will Big Rivers acknowledge that there exists no provision in the Power Sales*  
2 *Contract, as amended to permit the idling of one or both Station Two Units solely for economic*  
3 *and/or profitability reasons?*

4  
5 **Response)** Big Rivers objects to this request on the grounds that it seeks a legal conclusion  
6 and is vague. The request does not specify what is meant by "permit" and whether the use of  
7 the term "permit" references Henderson, Big Rivers, or both. Notwithstanding these objections,  
8 and without waiving them, Big Rivers states as follows:

9 No. The Station Two Contracts, including the Power Sales Contract, speak for  
10 themselves and are the best evidence of their contents. Section 13 of the Power Plant  
11 Construction and Operation Agreement, as amended, requires Henderson and Big Rivers to carry  
12 out their respective obligations associated with managing and operating Station Two in a way  
13 that will result in the production of economical and reliable electricity for customers. While Big  
14 Rivers believes that idling one or both Station Two units to meet this obligation would be a  
15 prudent utility practice, Henderson insists otherwise. Furthermore, as discussed in Big Rivers'  
16 response to Request No. 10 of the Commission Staff's First Request for Information, in the event  
17 the parties are unable to meet these obligations, and Station Two is no longer capable of being  
18 operated in a manner that results in the production of economically competitive electricity, the

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1 Power Sales Contract provides by its terms that it will terminate. Specifically, Section 1 of the  
2 1998 Amendments only extended the Power Sales Contract for the operating life of Station Two  
3 which is limited to the period of time when "...Unit One and Unit Two, or either of them,  
4 (emphasis added) is operated, or is capable of normal, continuous, reliable operation for the  
5 economically competitive production of electricity, temporary outages excepted."

6 Finally, nothing in the Station Two Contracts prevents the parties from agreeing to idle  
7 the units for economic reasons.

8

9 **Witnesses)** Robert W. Berry and Counsel

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1 **Item 17)** *Will Big Rivers acknowledge that, in the event the energy associated with*  
2 *Henderson's reserved capacity is unavailable from Station Two then, under the terms of the*  
3 *existing 1974 System Reserve Agreement, Big Rivers could fulfill its contractual obligation*  
4 *to Henderson by making the amount of energy associated with Henderson's reserved*  
5 *capacity available from another source?*

6

7 **Response)** Big Rivers objects to this request on the grounds that it seeks a legal conclusion.  
8 The request is also unclear what is meant by "contractual obligations" since no specific  
9 contractual provisions are cited by Henderson in its request. Notwithstanding these objections,  
10 and without waiving them, Big Rivers states as follows:

11 The Station Two Contracts, including the 1974 System Reserve Agreement, as  
12 amended, speak for themselves and are the best evidence of their contents. Big Rivers  
13 acknowledges that in the event the energy associated with Henderson's reserved capacity is  
14 unavailable from Station Two, Big Rivers will follow any applicable provisions of the Station  
15 Two Contracts, including the 1974 System Reserve Agreement, in determining the manner in  
16 which energy associated with Henderson's reserved capacity will be replaced and the terms  
17 applicable to that transaction.

18

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1 **Witnesses)** Mike W. Chambliss and Counsel

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1 **Item 18)** *Please describe in detail the process whereby Big Rivers distinguishes between*  
2 *that Excess Henderson Energy, which is sold into the MISO market, and the energy*  
3 *associated with Big Rivers' allocated Station Two capacity, which is sold to Big Rivers'*  
4 *member cooperatives or other third parties, or some combination of the two.*

5

6 **Response)** Big Rivers objects to this request on the grounds that it is overly broad and  
7 seeks information which is neither relevant nor likely to lead to the discovery of admissible  
8 evidence. The request is not limited to the energy that is at issue in this proceeding, and seeks  
9 information encompassing the energy associated with Big Rivers' allocated capacity and  
10 energy Big Rivers is contractually entitled to purchase. Big Rivers further objects to this  
11 request on the grounds that is unclear what is meant by the phrase "Excess Henderson Energy"  
12 and "other third parties." Subject to and without waiving these objections, Big Rivers will  
13 assume that Excess Henderson Energy is defined as set forth in Big Rivers' response to the  
14 Commission Staff's First Request for Information and that "other third parties" excludes the  
15 MISO market, and responds as follows.

16 Excess Henderson Energy is calculated by determining the positive difference between  
17 Henderson's Annual Reservation and Henderson's Native Load in any hour. Energy generated  
18 by Station Two above Henderson's Annual Reservation in any hour is energy associated with



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1 Big Rivers' capacity allocation. All Station Two energy is sold into the MISO market, so there  
2 is no difference between Excess Henderson Energy sold into the MISO market and the energy  
3 associated with Big Rivers' capacity allocation from that perspective.

4

5 **Witness)** Mark J. Eacret

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1 **Item 19)** *If you contend that all Excess Henderson Energy sold by Big Rivers between*  
2 *12:01 a.m. on July 17, 2009, and the date of the answering of these requests, has been sold*  
3 *into the MISO market rather than to Big Rivers' member cooperatives, to other third parties,*  
4 *or some combination of both, please identify the person responsible for that decision, and*  
5 *explain the rationale underlying that decision.*

6

7 **Response:** Big Rivers objects to this request to the extent that it seeks information protected  
8 by the attorney-client and/or work product privileges. Subject to and without waiving this  
9 objection, Big Rivers states that prior to Big Rivers' full integration into MISO on December  
10 1, 2010, Big Rivers did not have a mechanism in place to specifically track the destination of  
11 the megawatt hours from Station Two, and as such, this information is not reasonably available  
12 to Big Rivers. Therefore, Big Rivers does not contend that all Excess Henderson Energy sold  
13 by Big Rivers between 12:01 a.m. on July 17, 2009, and the date of answering of these  
14 requests, has been sold into the MISO market.

15 Since December 1, 2010, all Excess Henderson Energy has been sold into MISO. In  
16 Big Rivers' response to Item 12 of Henderson's First Request for Information, Mr. Berry and  
17 Mr. Eacret describe in detail the reasons why it was necessary for Big Rivers to join MISO,

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1 and as noted on page 2, lines 2-6, of that response, the Commission concurred with that  
2 decision. No single officer, employee, or agent of Big Rivers made these decisions.

3

4 **Witness)** Robert W. Berry

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1 **Item 20)** *Please state the price MISO paid to Big Rivers for each megawatt hour of*  
2 *Excess Henderson Energy sold into the MISO market between 12:01 a.m. on July 17, 2009,*  
3 *and the date of the answering of these requests. Please include the price paid for Excess*  
4 *Henderson Energy sold into the MISO market prior to the date on which Big Rivers joined*  
5 *MISO in December 2010.*

6

7 **Response)** Prior to Big Rivers' full integration into MISO on December 1, 2010, Big Rivers  
8 did not have a mechanism in place to specifically track the destination of the megawatt hours  
9 from Station Two, and as such, this information is not reasonably available to Big Rivers.  
10 With respect to the Excess Henderson Energy sold into MISO following Big Rivers' full  
11 integration into MISO, the requested data through June of 2016 was provided in response to  
12 Item 12 of Henderson's First Request for Information. Big Rivers is supplementing that data  
13 with the data from July and August of 2016 in the confidential attachment to this response.  
14 September information is not yet available.

15

16 **Witness)** Mark J. Eacret

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Henderson Share of Station Two**

	A	B	C	D	E	F	G	H	I	J
	Station Two HMPL Reservation mWhrs	Revenues - Costs ((D+H)-(E+I)) for Station Two HMPL Reservation <sup>3</sup>	Total HMPL Load mWhrs net of SEPA	Total Net \$ Received From MISO for Station Two Generation for HMPL Load net of SEPA	Total HMPL Load MISO Costs <sup>4</sup>	Revenues - Costs (D-E) for HMPL Load net of SEPA	Station Two Excess Henderson Energy mWhrs (Resv - Load)	Total \$ Received from MISO for Henderson Excess Energy (Resv - Load)	Total Station Two Variable Cost Paid by BREC for Henderson Excess Energy mWhrs (Resv - Load)	Revenues - Cost (H-I) for Henderson Excess Energy (Resv - Load)
<b>2016</b>										
January										
February										
March										
April										
May										
June										
July										
August										
<b>Grand Total</b>										

**Please Note:**

<sup>1</sup>Big Rivers entered into MISO as a Market Participant beginning December 1, 2010; prior to that Big Rivers did not delineate between generating units its sales of energy into the MISO Market

<sup>2</sup>HMPL Reservation includes HMPL Load net of SEPA and Henderson Excess Energy

<sup>3</sup>The net \$ received does not include the \$1.50/mWh paid to HMPL for Henderson Excess Energy pursuant to the Power Sales Contract

<sup>4</sup>MISO Cost for HMPL Load include - Day-Ahead or Real-Time LMP, Congestion/Loss GFA Rebates, RT Regulation Cost Distribution, RT Spinning Reserve Cost Distribution, RT Supplemental Reserves Cost Distribution

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to City of Henderson, Kentucky and Henderson Utility Commission, d/b/a  
Henderson Municipal Power & Light's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 21)** *Please state the price paid to Big Rivers for each megawatt hour of Excess*  
2 *Henderson Energy sold to Big Rivers' member cooperatives, other third parties, or some*  
3 *combination of both, between 12:01 a.m. on July 17, 2009, and the date of the answering of*  
4 *these requests.*

5

6 **Response)** Big Rivers objects to this information request on the grounds that it is vague. It  
7 is unclear what Henderson means when it refers to "other third parties." Without waiving this  
8 objection, Big Rivers states that it sells the entire output of the Henderson units to MISO. Please  
9 see the confidential attachment to Item 20 of Henderson's Second Request for Information.

10

11 **Witness)** Mark J. Eacret

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to City of Henderson, Kentucky and Henderson Utility Commission, d/b/a  
Henderson Municipal Power & Light's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 22)** *Please confirm that Big Rivers' audited and publicly disclosed Annual*  
2 *Reports set forth the annual operating revenue for all annual sales of energy and capacity,*  
3 *including energy produced and capacity available at Henderson's Station Two, and that the*  
4 *data in the Annual Reports can be used to calculate Big Rivers' average annual revenue on*  
5 *a megawatt hour basis for each year beginning at 12:01 a.m. on July 17, 2009, and*  
6 *continuing through the date of the answering of these requests.*

7

8 **Response)** Big Rivers objects to this request on the basis that it is vague. It is unclear  
9 whether reference to "Big Rivers' average annual revenue" is limited to revenue associated  
10 with megawatt hours generated by Station Two or encompasses all of the Big Rivers units.  
11 Notwithstanding this objection, and without waiving it, Big Rivers states as follows:

12 Big Rivers sells all the output of each of its units to MISO. Big Rivers then purchases  
13 all load needed to serve its native load from MISO. The average annual revenue on a  
14 megawatt hour basis for the Henderson Station Two units cannot be extrapolated from the  
15 annual report information. Please see Big Rivers' response to Item 20 of Henderson's  
16 Supplemental Request for Information for the MISO sales price associated with Station Two  
17 energy.

18

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to City of Henderson, Kentucky and Henderson Utility Commission, d/b/a  
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**October 10, 2016**

1 **Witness)** Lindsay N. Barron



**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
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**October 10, 2016**

1 **Item 23)** *If the response to Request No. 20 [sic] is a denial, and Big Rivers asserts that*  
2 *its average annual revenue, on a megawatt hour basis, is calculated based upon anything*  
3 *other than the data in the Annual Reports, then please identify and provide copies of the*  
4 *data forming the basis of Big Rivers' assertion and calculation.*

5

6 **Response)** Big Rivers notes that Henderson has corrected this request for information to  
7 refer to Item 22. Please see Big Rivers' response to Item 22 of Henderson's Supplemental  
8 Request for Information.

9

10 **Witness)** Lindsay N. Barron

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
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**Response to City of Henderson, Kentucky and Henderson Utility Commission, d/b/a  
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**October 10, 2016**

1 **Item 24)** *Please provide an itemized list of monthly expenses which constitute the*  
2 *individual variable costs Big Rivers paid per megawatt hour of Excess Henderson Energy as*  
3 *documented in Big Rivers' attachment (identified as RWB\_1) to its response to Request No. 4*  
4 *of the Commission Staff's Request for Information.*

5  
6 **Response)** The list of monthly expenses which constitute the individual variable costs<sup>1</sup> Big  
7 Rivers paid per megawatt hour of Excess Henderson Energy as documented in Big Rivers'  
8 attachment (identified as RWB\_1) to its response to Request No. 4 of the Commission Staff's  
9 Initial Request for Information includes the cost of coal and oil used for generation as well as  
10 reagent costs for pollution control, such as anhydrous ammonia, emulsified Sulphur for NOx, fly  
11 and bottom ash disposal costs, fixation lime, lime, emulsified Sulphur for SO2, and sodium  
12 bisulfite.

13  
14 **Witnesses)** Mark J. Eacret and Lindsay N. Barron

---

<sup>1</sup> In addition to the variable costs, Big Rivers allocates certain fixed costs related to the Joint Facilities Agreement as prescribed in Exhibit 6 of the Application. The allocation of these fixed costs between Big Rivers and Henderson is also impacted by Excess Henderson Energy. Big Rivers does not reflect these fixed costs in its analysis identified as RWB\_1.

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
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**Response to City of Henderson, Kentucky and Henderson Utility Commission, d/b/a  
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dated September 26, 2016**

**October 10, 2016**

1 **Item 25)** *Refer to Big Rivers' response to Request No. 4(a)(1) of the Commission Staff's*  
2 *First Request for Information. Please produce an unredacted copy of the "Indemnification*  
3 *Agreement," as executed, and an unredacted copy of the "Exhibit A" referenced as an*  
4 *attachment to the "Indemnification Agreement."*

5  
6 **Response)** Please see the attached Indemnification Agreement, including all attachments,  
7 which is being filed pursuant to a Petition for Confidential Treatment. Big Rivers declines to  
8 provide a public, unredacted copy of the Indemnification Agreement. The Commission has  
9 already determined that a portion of the Indemnification Agreement is entitled to confidential  
10 treatment under 807 KAR 5:001 Section 13 pursuant to the standards of the Kentucky Open  
11 Records Act, specifically KRS 61.878. An unsigned version of the Indemnification Agreement  
12 was filed with the Commission on May 19, 2009, in P.S.C. Case No. 2007-00455<sup>1</sup> pursuant to  
13 a petition for confidential treatment under the Commission's regulations. The Commission  
14 granted confidential treatment to the confidential information in the Indemnification  
15 Agreement by letter dated August 31, 2009. This prior grant of confidential treatment is also

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<sup>1</sup> *In the Matter of: The Applications of Big Rivers Electric Corporation for: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (2) Approval of Transactions, (3) Approval to Issue Evidences of Indebtedness, and (4) Approval of Amendments to Contracts, and of E.ON U.S., LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc. for Approval of Transactions, P.S.C. Case No. 2007-00455.*

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
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**October 10, 2016**

1 recited in the Petition for Confidential Treatment filed with Big Rivers' responses to these  
2 requests for information.

3 Because the Henderson parties have signed a protective agreement in this case, a  
4 confidential copy of the Indemnification Agreement with the portions previously granted  
5 confidential treatment highlighted in yellow ink is being served with Big Rivers' responses to  
6 Henderson's Supplemental Requests for Information.

7

8 **Witness)** Robert W. Berry

**INDEMNIFICATION AGREEMENT**

**THIS INDEMNIFICATION AGREEMENT (“*Indemnification Agreement*”), dated as of July 16, 2009 (the “*Effective Date*”), between BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric generation and transmission cooperative (“*Big Rivers*”), and WESTERN KENTUCKY ENERGY CORP., a Kentucky corporation (“*WKEC*”) (collectively, the “*Parties*”).**

**RECITALS:**

**A.** Reference is made to that certain Transaction Termination Agreement dated as of March 26, 2007, as amended, by and among Big Rivers, WKEC and LG&E Energy Marketing Inc. (“*LEM*”) (the “*Termination Agreement*”), pursuant to which, among other transactions, those parties agreed to terminate certain property interests and contractual relationships between or among them at the Closing, upon the terms and subject to the conditions set forth therein.

**B.** The Parties desire that the Closing occur on the date hereof. However, Big Rivers has conditioned its willingness to consummate the transactions contemplated in the Termination Agreement at the Closing on the execution and delivery of this Indemnification Agreement by WKEC, and on the execution and delivery by E.ON U.S. LLC (“*E.ON*”) of E.ON’s Guarantee of even date herewith, guarantying the debts, obligations and liabilities (if any) of WKEC under or pursuant to this Indemnification Agreement in accordance with its terms (the “*Guarantee*”).

**C.** WKEC is willing to execute and deliver this Indemnification Agreement, and E.ON is willing to execute and deliver the Guarantee, in each case in consideration of, and as an inducement for, Big Rivers’ agreement to consummate the Closing on the Effective Date and to perform Big Rivers’ covenants and agreements set forth in this Indemnification Agreement in accordance with their respective terms.

**D.** The Parties agree that the definition of Excess Henderson Energy set forth in Section 1 below is how they each interpret the definition of “Excess Henderson Energy” as used in the 1970 Power Sales Contract, and they will not take a contrary position in any action, suit or proceeding of the types contemplated in this Indemnification Agreement.

**AGREEMENT:**

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants and agreements set forth herein, WKEC and Big Rivers each agree as follows, effective as of the Closing (but not before):

set forth in the Termination Agreement. The following capitalized terms, as and where used in this Indemnification Agreement, shall have the meanings set forth below:

**"1970 Power Sales Contract"** shall mean only the Power Sales Contract dated August 1, 1970, among Big Rivers, the City and the City Utility Commission, as the same has been amended and is in force and effect immediately following the expiration or termination (on the Unwind Closing Date) of the Agreement and Amendments to Agreement dated as of July 15, 1998, as amended, among Big Rivers, WKEC (for itself and as successor to WKE Station Two Inc. and WKE Corp.), LEM, the City and the City Utility Commission (but shall not include any amendments to or other modifications of such Power Sales Contract which may be entered into from and after the Closing).

**"Allowance Cost Factor"**



**"Annual NOx Allowances(s)"** means NOx Allowances collectively which are authorized by the EPA or by Kentucky to allow the holder to emit nitrogen oxide (NOx) during a control period (Jan through December) in the then current year.

**"Associated Variable Costs"** shall have the meaning set forth in Subsection 2.1(b).

**"Big Rivers"** shall have the meaning set forth in the Preamble of this Indemnification Agreement.

**"Big Rivers Defense Costs"** shall have the meaning set forth in Subsection 3.2(b).

**"Big Rivers Funding Requirement"** shall have the meaning set forth in Subsection 2.2(d).

**"Big Rivers Participation Costs"** shall have the meaning set forth in Subsection 3.2(a).

**"Cap Amount"** shall have the meaning set forth in Section 4.3.

**"City"** shall mean the City of Henderson, Kentucky.

**"City Utility Commission"** shall mean the City of Henderson Utility Commission, doing business as Henderson Municipal Power & Light, or any successor thereof.

**"Decision"** shall have the meaning set forth in Subsection 2.1(b).

**"Defense"** shall have the meaning set forth in Section 3.2.

**"Defense Expense Cap"** shall have the meaning set forth in Subsection 3.2(b).

**"Delivery Demand"** shall have the meaning set forth in Subsection 2.2(a).

**"Delivery Demand Notice"** shall have the meaning set forth in Subsection 2.2(a).

**"Effective Date"** shall have the meaning set forth in the Preamble of this Indemnification Agreement.

**"Emission Allowances"** means Annual NOx Allowance(s), Seasonal NOx Allowance(s), Sulfur Dioxide Allowance(s) and any other subsequent program(s) under the Clean Air Act, or any successor and/or additional statutes administered by the Federal, State and/or Local Governments. For sake of clarity, such additional emission control programs may include, but are not limited to Carbon Dioxide (CO2) and Mercury (HG).

**"E.ON"** shall have the meaning set forth in Recital B.

**"EPA"** means the United States Environmental Protection Agency or any successor agency with similar jurisdiction.

**"Excess Henderson Energy"** shall for purposes of this Indemnification Agreement mean the difference in an hour (measured in MWh) between (a) the amount of energy associated with the City's or City Utility Commission's reserved capacity share of Station Two and (b) the amount of energy actually used by the City or City Utility Commission from Station Two to serve its retail electricity customers and (if not included as part of such retail load) to serve the electric consuming facilities owned or operated by or for the City or the City Utility Commission.

**"Excessive Offer"** shall have the meaning set forth in Subsection 2.2(a).

***“Excessive Offer Notice”*** shall have the meaning set forth in Subsection 2.2(a).

***“Excessive Offer Price”*** shall have the meaning set forth in Subsection 2.2(c).

***“Guarantee”*** shall have the meaning set forth in Recital B.

***“Indemnifiable Claim”*** shall have the meaning set forth in Section 3.1.

***“Index Losses”*** shall mean.

[REDACTED]

***“Index Payment”*** shall mean the sum for all hours in a particular month in which Index Volumes occur of *the product of* (a) the Index Losses *and* (b) the Index Volumes.

***“Index Price”*** shall mean

[REDACTED]

***“Index Volumes”*** shall mean

[REDACTED]



[REDACTED]

**"Key Big Rivers Commitments"** shall mean the covenants and agreements of Big Rivers set forth in the following provisions of this Indemnification Agreement: Subsections 2.2(a)(i) and 2.2(a)(ii), Subsection 2.2(e), the first sentence of Subsection 2.2(f), Subsection 2.3(c), Section 2.4, Section 3.2, the second sentence of Section 3.4, Section 4.6, Sections 5.2 through 5.11 inclusive (other than Sections 5.5 and 5.9), and Section 6.15.

**"KPSC"** shall mean the Kentucky Public Service Commission.

**"LEM"** shall have the meaning set forth in Recital A.

**"Losses"** shall mean any and all Pre-Decision Losses and Post-Decision Losses, collectively.

**"MW"** shall mean megawatt.

**"MWh"** shall mean megawatt hour.

**"Offer Deadline"** shall have the meaning set forth in Section 2.2(a).

**"Participation Expense Cap"** shall have the meaning set forth in Subsection 3.2(a).

**"Parties"** shall have the meaning set forth in the Preamble of this Indemnification Agreement.

**"Person"** shall mean any individual, corporation, partnership, joint venture, limited liability company or any other legal form of organization (including without limitation, any governmental or regulatory agency or body).

**"Post-Decision Excessive Offer"** shall have the meaning set forth in Subsection 2.3(c).

**"Post-Decision Excessive Offer Price"** shall have the meaning set forth in Subsection 2.3(e).

**"Post-Decision Losses"** shall have the meaning set forth in Subsection 2.3(h).

**"Pre-Decision Losses"** shall have the meaning set forth in Subsection 2.2(h).

**"Proceeding"** shall have the meaning set forth in Subsection 2.1(b).

**"Purchase Losses"** shall mean [REDACTED]

**"Purchase Payment"** shall mean [REDACTED]

**"Purchase Volume"** shall mean [REDACTED]

**"Relevant Period"** shall have the meaning set forth in Section 2.1.

**"Remaining Index Losses"** shall have the meaning set forth in Subsection 2.2(b).

**"Remaining Purchase Losses"** shall have the meaning set forth in Subsection 2.2(c).

**"Seasonal NOx Allowance(s)"** means NOx Allowances collectively which are authorized by the EPA or by Kentucky to allow the holder to emit nitrogen oxide (NOx) during a control period (May through September) in the then-current year.

**"Section (c) Offer Deadline"** shall have the meaning set forth in Subsection 2.3(c).

**"Section (e) Offer Deadline"** shall have the meaning set forth in Subsection 2.2(e).

**"Subsection 2.3(g) Losses"** shall have the meaning set forth in Subsection 2.3(g).

**"Station Two Costs"** shall mean [REDACTED]

**"Sulfur Dioxide Allowance(s)"** means Sulfur Dioxide Allowances collectively which are authorized by the EPA or by Kentucky to allow the holder to emit Sulfur Dioxide (SO<sub>2</sub>) during a control period (Jan through December) in the then-current year.

**"Termination Agreement"** shall have the meaning set forth in Recital A.

**"WKEC"** shall have the meaning set forth in the Preamble of this Indemnification Agreement.

2. INDEMNIFICATION COVENANTS.

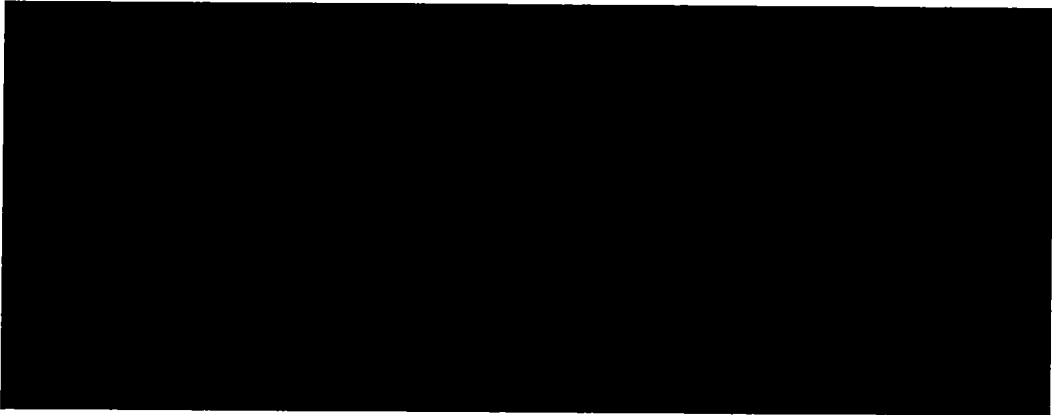
2.1 *Indemnity.* Subject to the limitations and exclusions provided for below in this Section 2 or elsewhere in this Indemnification Agreement, from and after the Closing WKEC shall indemnify and hold harmless Big Rivers from and against:

(a) Pre-Decision Losses [REDACTED]

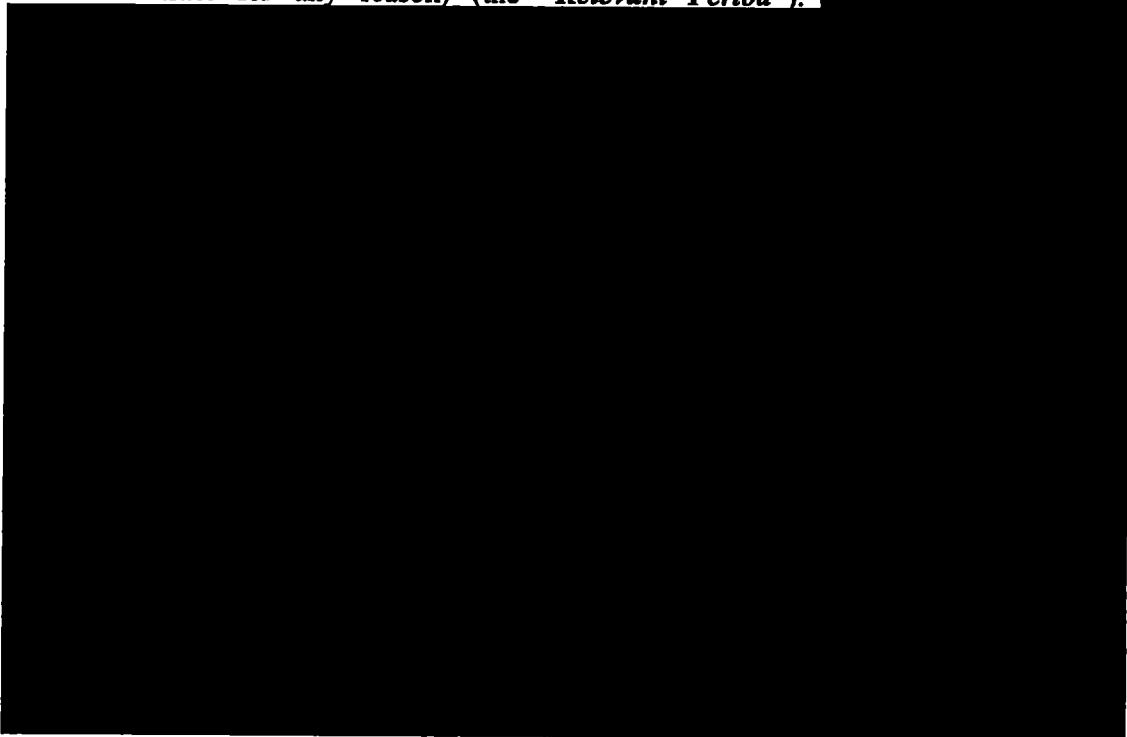
[REDACTED] and

(b) Post-Decision Losses [REDACTED]

suffered or incurred by Big Rivers as a result of (but only as a result of) (i) a court or arbitration suit or proceeding initiated by the City and/or the City Utility Commission, or (ii) an action in court for declaratory judgment or other relief initiated by Big Rivers solely at the direction of or with the prior written consent of WKEC as contemplated in Subsection 2.2(f) or Section 5.3 below, or (iii) a proceeding before the KPSC initiated by any Person (other than Big Rivers, its member distribution cooperatives (or any of them) or any of Big Rivers' Affiliates, directors, officers, employees, agents or representatives) (a suit, proceeding or action of the type contemplated in (i), (ii) or (iii) above being referred to in this Indemnification Agreement as a "*Proceeding*"), but in each case only to the extent that Proceeding is first initiated following the Unwind Closing Date and prior to December 31, 2023, and then only to the extent that Proceeding results in a final, non-appealable judgment by a court of competent jurisdiction, or a final, non-appealable arbitration decision, or a final, non-appealable order of the KPSC, in each case that is binding and enforceable against Big Rivers and the City and/or the City Utility Commission (as applicable), with respect to or based upon an interpretation of the rights to Excess Henderson Energy set forth in the 1970 Power Sales Contract that results in an actual economic loss to Big Rivers [REDACTED]

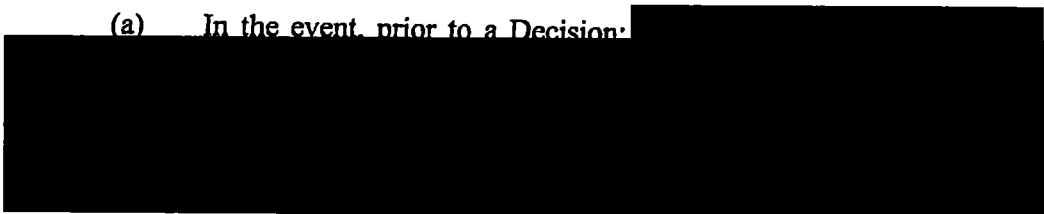


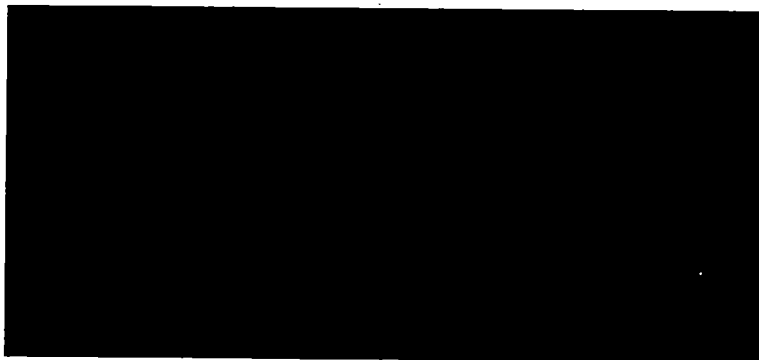
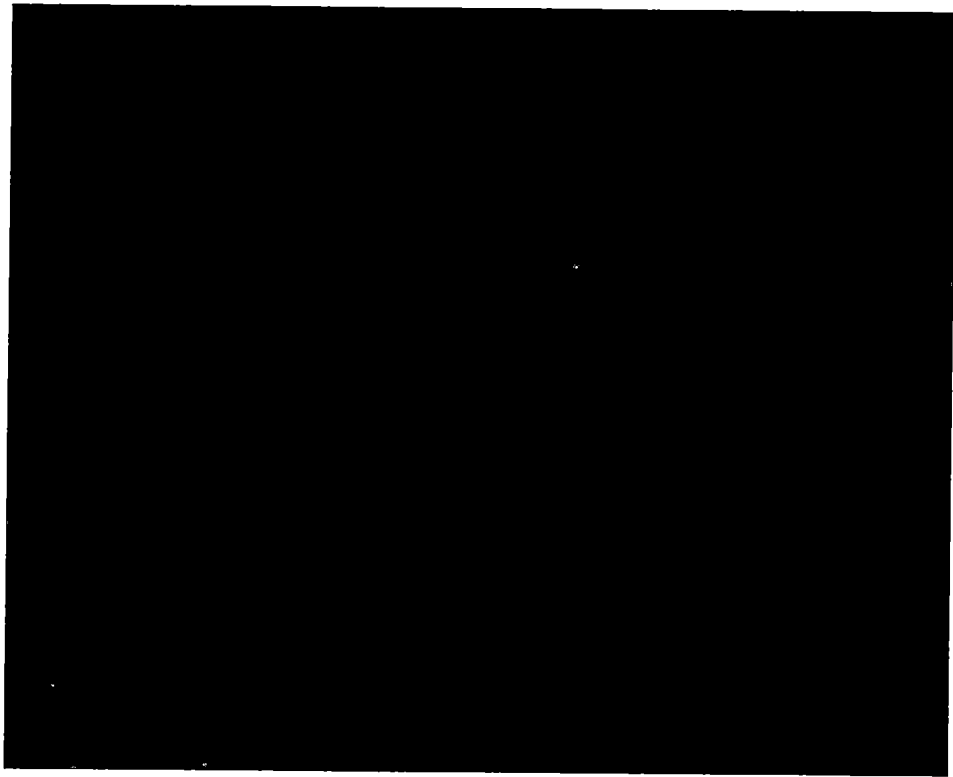
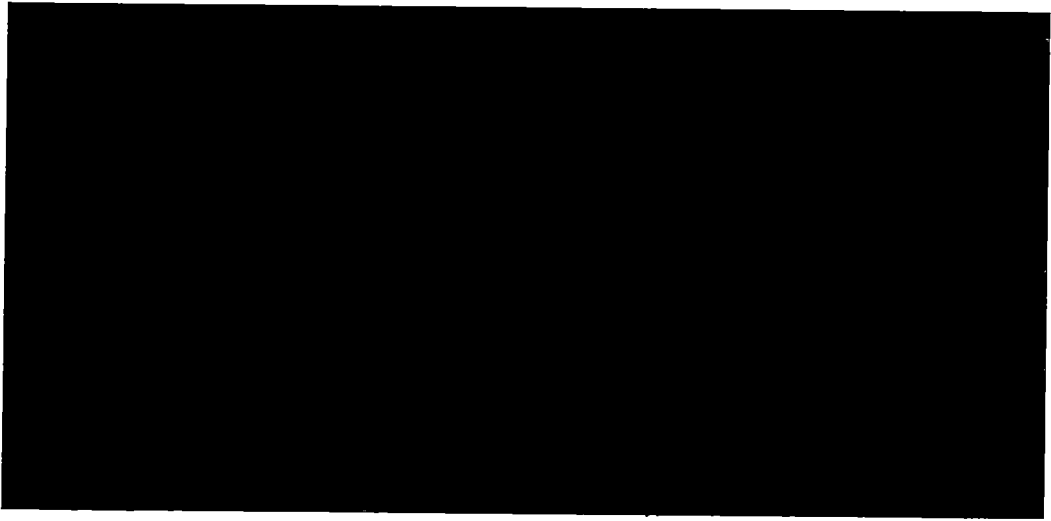
Notwithstanding the foregoing, the provisions of this Section 2 shall only apply to and cover Pre-Decision Losses or Post-Decision Losses associated with Excess Henderson Energy that is generated by the existing Unit 1 or Unit 2 of Station Two (that is, units having a combined total capacity not to exceed 312 megawatts for purposes of this Indemnification Agreement) during the period following the Unwind Closing Date through December 31, 2023 (or any earlier expiration or termination of the 1970 Power Sales Contract for any reason) (the "*Relevant Period*").

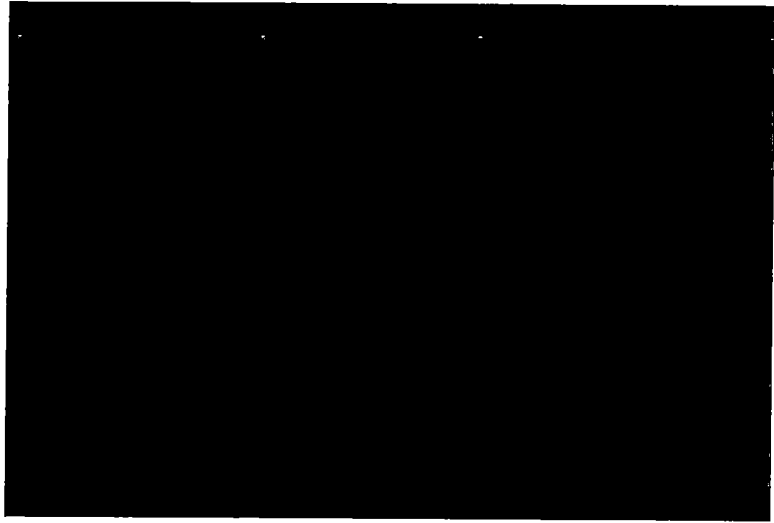


**2.2 Pre-Decision Losses.**

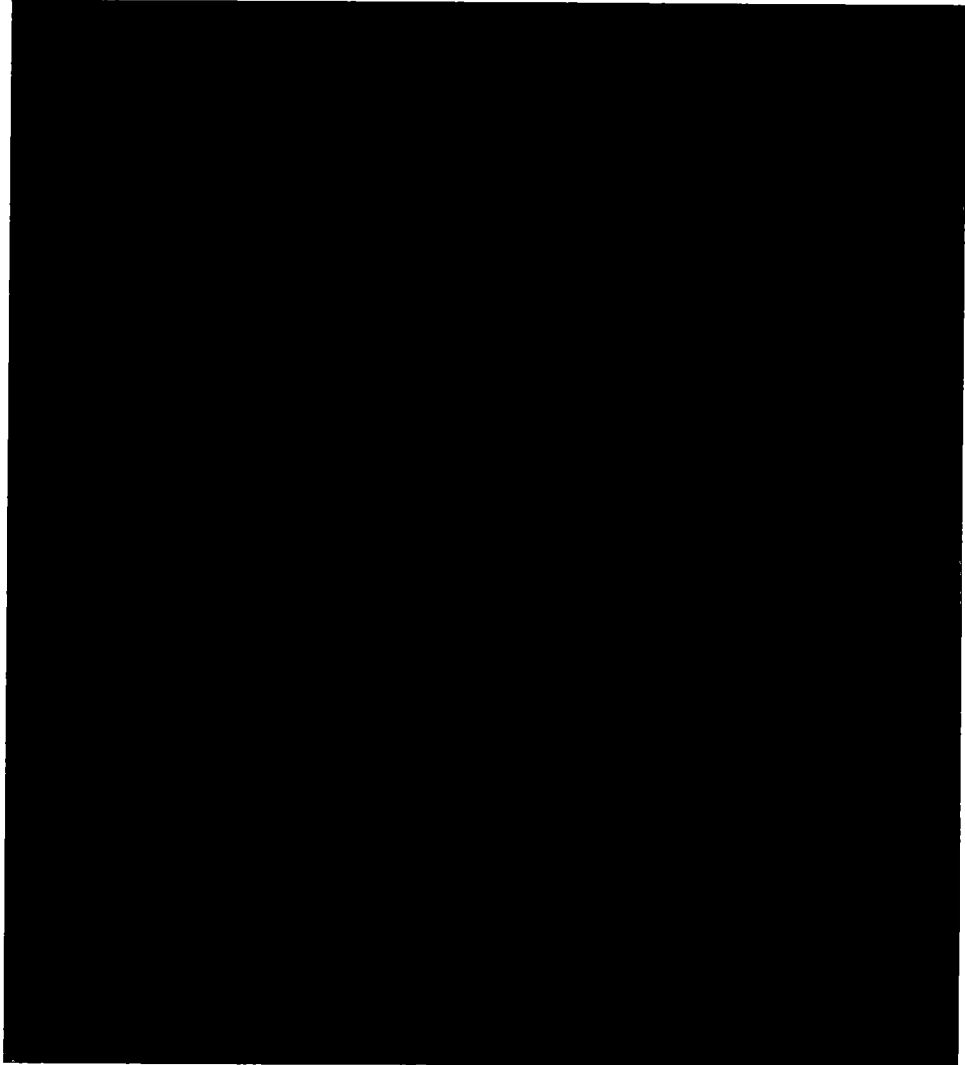
(a) In the event, prior to a Decision:

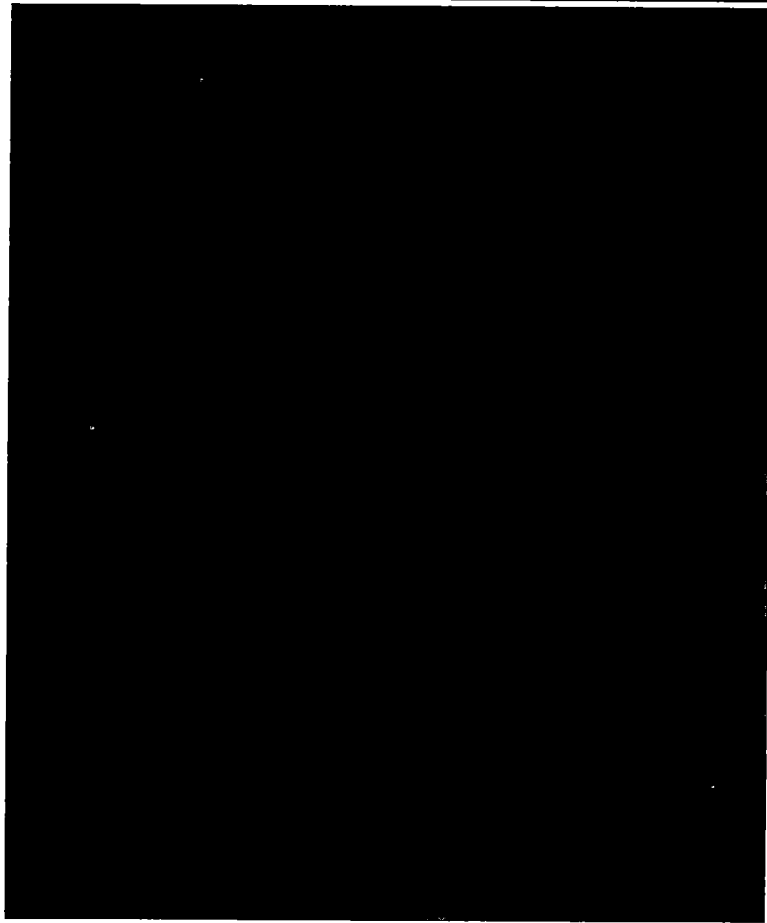
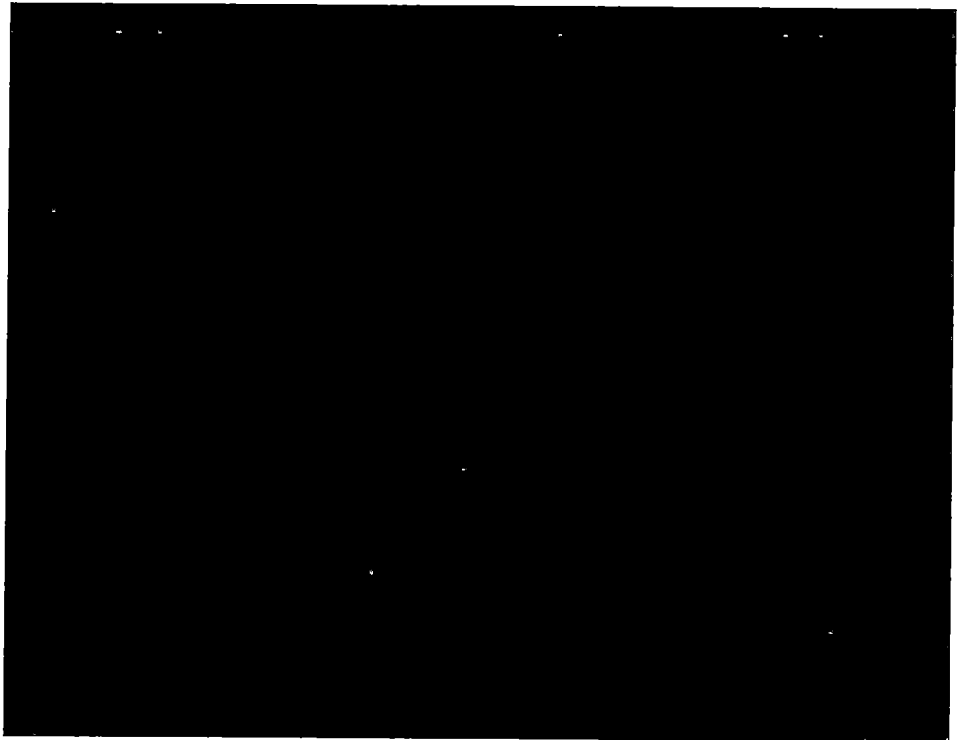






*; and*





[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

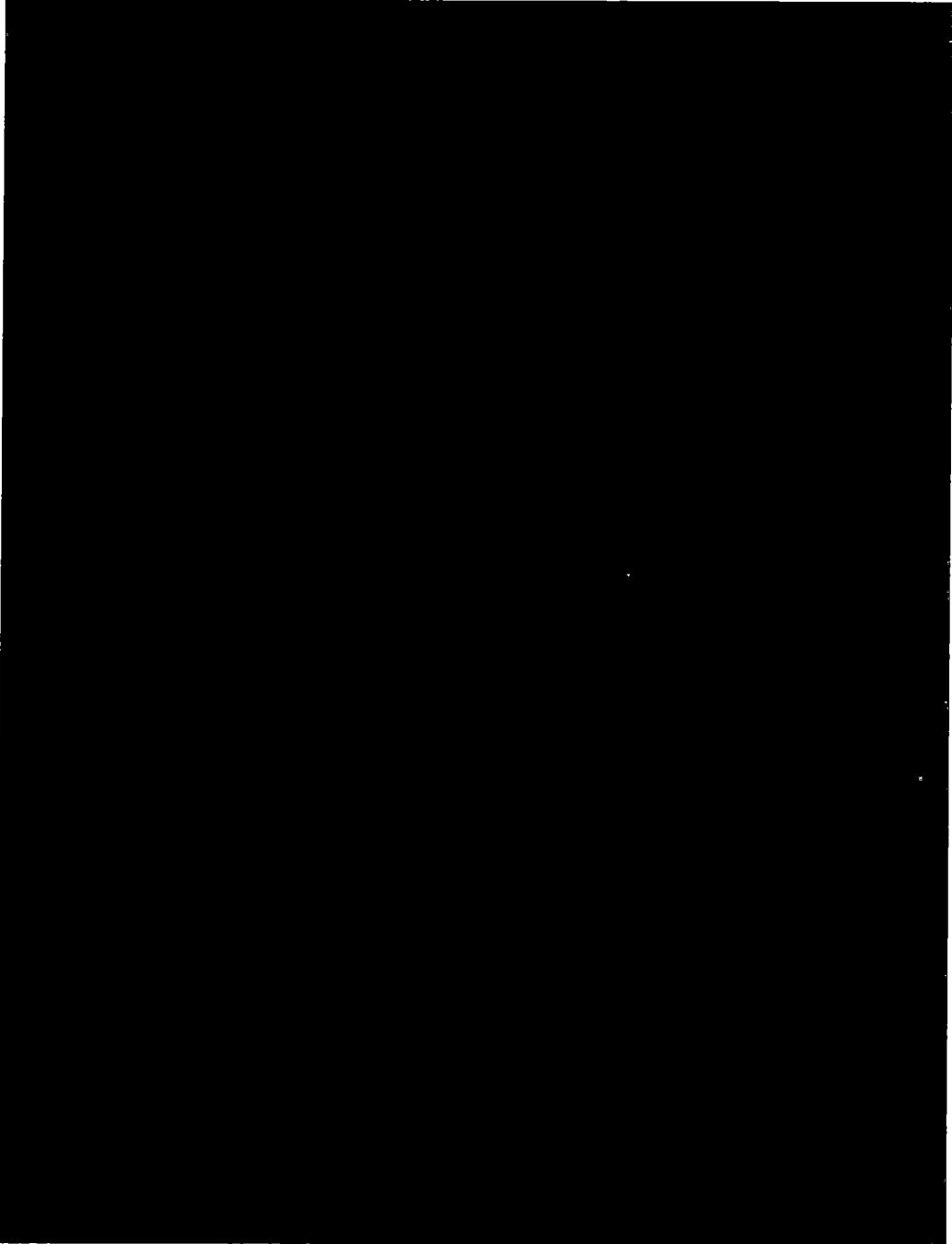
(d)

[REDACTED]

(e)

[REDACTED]



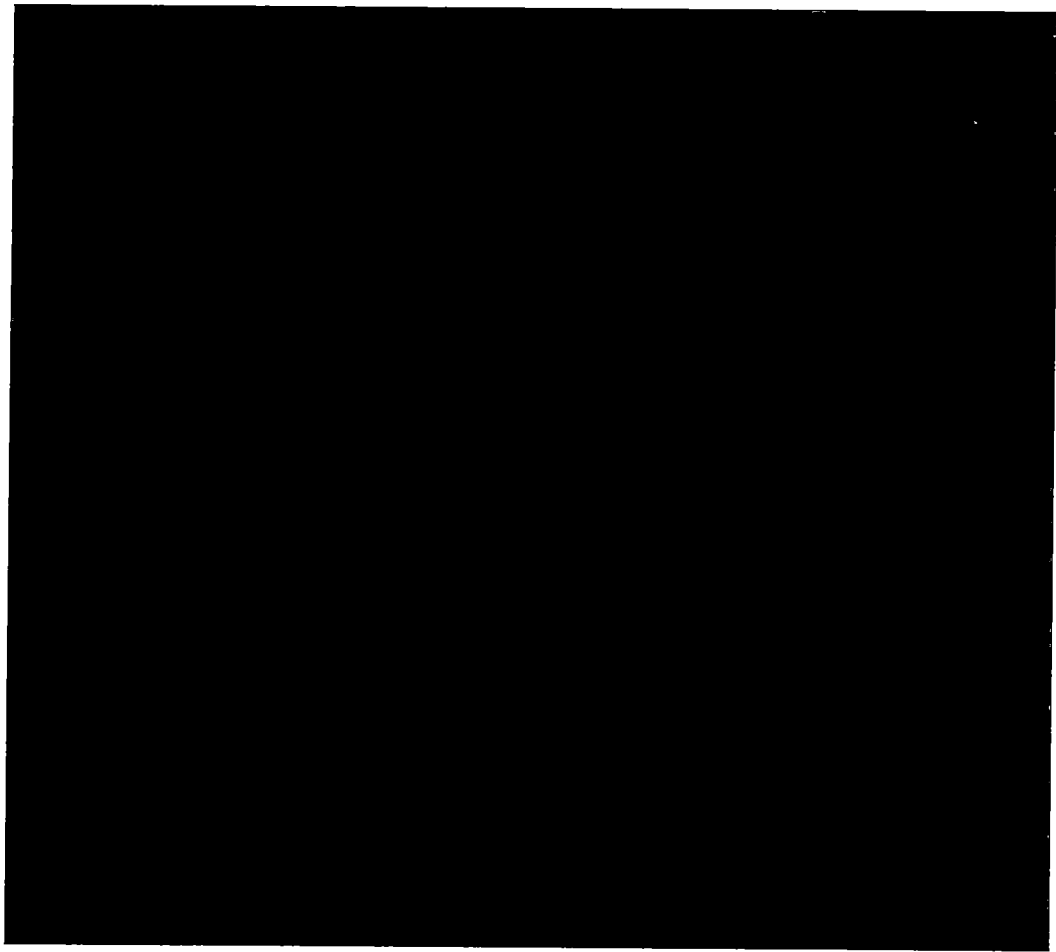


(f) Big Rivers shall fully cooperate with WKEC at its request in any actions, suits or proceedings (including Big Rivers' initiation of such actions, suits or proceedings if requested by WKEC) to pursue any rights or remedies against the City and/or the City Utility Commission in the event WKEC has made any payments to Big Rivers hereunder (or E.ON has made payments to Big Rivers under the Guarantee), or in the event WKEC believes in good faith that it may have an indemnity or payment obligation under this Indemnification Agreement (or that E.ON may have such an obligation under the Guarantee) or that the City and/or the City Utility Commission have breached the 1970 Power Sales Contract

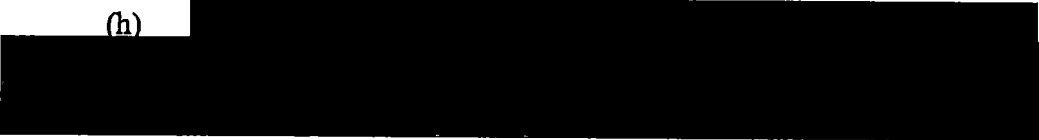
with respect to any of the Excess Henderson Energy contemplated in this Section 2.2 or in Section 2.3 below (which actions, suits or proceedings would be controlled by WKEC the same as for the declaratory judgment action or action, suit or proceeding for other relief contemplated in Section 5.3 below). Any amounts recovered from the City or the City Utility Commission pursuant to such actions, suits or proceedings (together with any interest from the City or the City Utility Commission thereon that may be awarded by the relevant tribunal) would first be allocated to the reimbursement of Big Rivers for its litigation costs incurred in the action, suit or proceeding (to the extent not already recovered from WKEC or E.ON pursuant to this Indemnification Agreement or the Guarantee), and then allocated to the reimbursement of Big Rivers for its litigation costs incurred in connection with any Defense(s) contemplated in Section 3.2 or any declaratory judgment action(s) contemplated in Section 5.3, and then allocated to Big Rivers in repayment of the cumulative total of all Remaining Index Losses and all Remaining Purchase Losses (up to a maximum of the Big Rivers Funding Requirement), together with interest thereon as contemplated in Subsection 2.2(g) below, not previously recovered from WKEC or E.ON, and then allocated to any interest that may be awarded to Big Rivers in that action, suit or proceeding on the Remaining Index Losses and/or the Remaining Purchase Losses (after deducting the amount of interest thereon contemplated in Subsection 2.2(g) to be recovered pursuant to the preceding clause), with any remaining balances then being allocated to WKEC until such time as WKEC has recovered (i) all amounts paid by it or by E.ON to Big Rivers pursuant to this Indemnification Agreement or the Guarantee (including without limitation, all Losses, Big Rivers Participation Costs and Big Rivers Defense Costs), and (ii) all of WKEC's and E.ON's litigation costs incurred in the action, suit or proceeding or incurred in connection with any Defense(s) contemplated in Section 3.2 or any declaratory judgment action(s) contemplated in Section 5.3. WKEC agrees that any amounts allocated to and recovered by WKEC pursuant to the preceding sentence for the recovery of Losses shall replenish the Cap Amount, and any amounts allocated to and recovered by WKEC pursuant to the preceding sentence for the recovery of Big Rivers Participation Costs or Big Rivers Defense Costs shall replenish the Participation Expense Cap or the Defense Expense Cap, respectively.

(g)





(h)

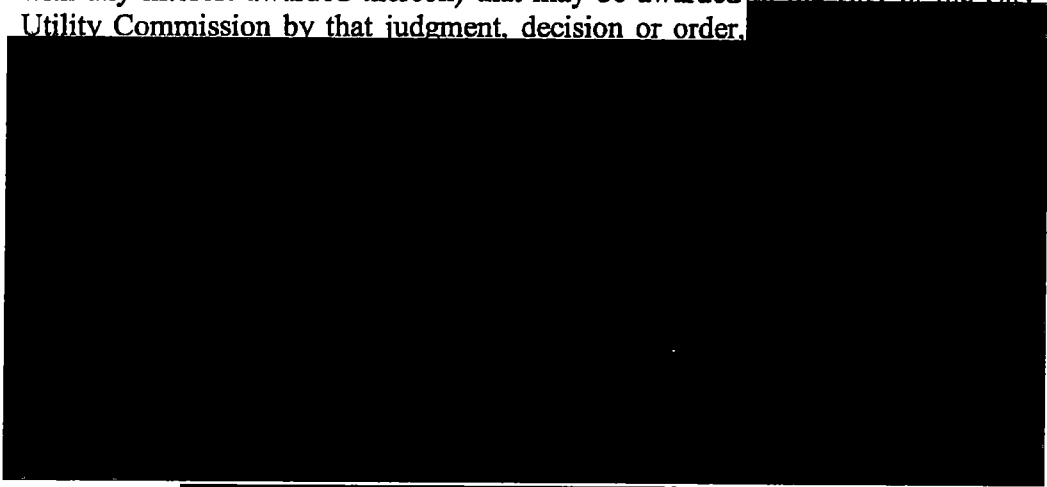


**2.3 *Post-Decision Losses.***

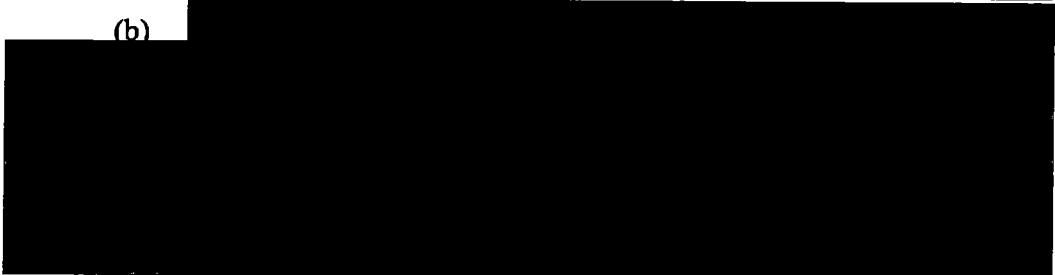


(a) Solely with respect to Excess Henderson Energy generated during the Relevant Period and prior to a Decision, if and to the extent, as a result of a Decision, any court of competent jurisdiction, any arbitrator or the KPSC, in that or a subsequent final, non-appealable judgment, decision or order, determines that Big Rivers breached the 1970 Power Sales Contract by denying that Excess Henderson Energy from the City or the City Utility Commission, or by failing to pay the City or the City Utility Commission amounts owing for that energy, and in the event, in the case of such Excess Henderson Energy that was the subject of any Delivery Demand made prior to that Decision, Big Rivers performed and complied with its covenants set forth in Section 2.2 with respect to that Delivery Demand and associated Excess Henderson Energy, then the damages or economic

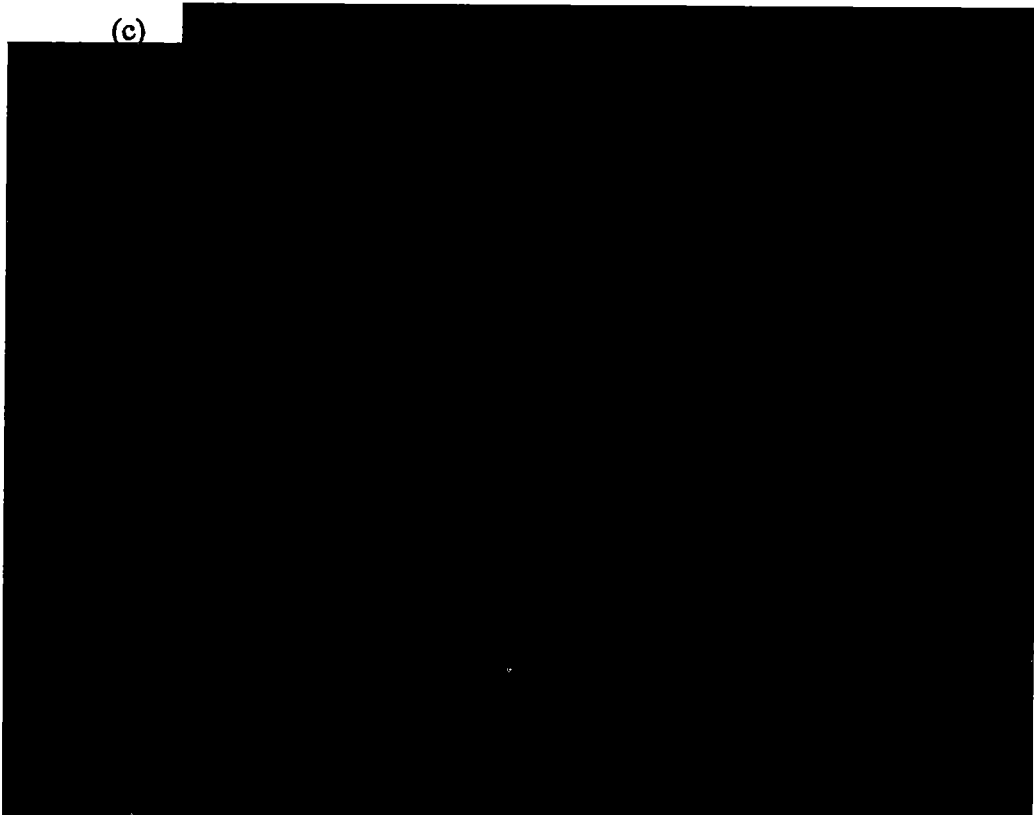
losses for which Big Rivers may seek indemnification from WKEC pursuant to Subsection 2.1(b) shall include (but shall only include) those damages (together with any interest awarded thereon) that may be awarded to the City or the City Utility Commission by that judgment, decision or order.



(b)



(c)



[Redacted]

(d)

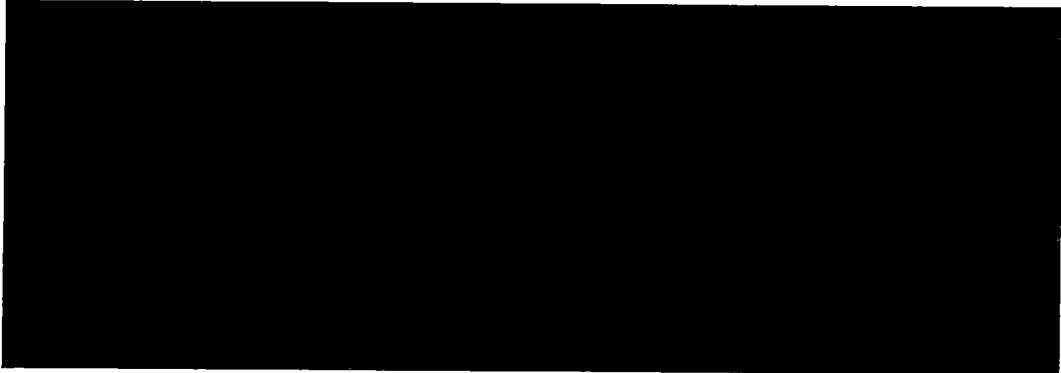
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(e)

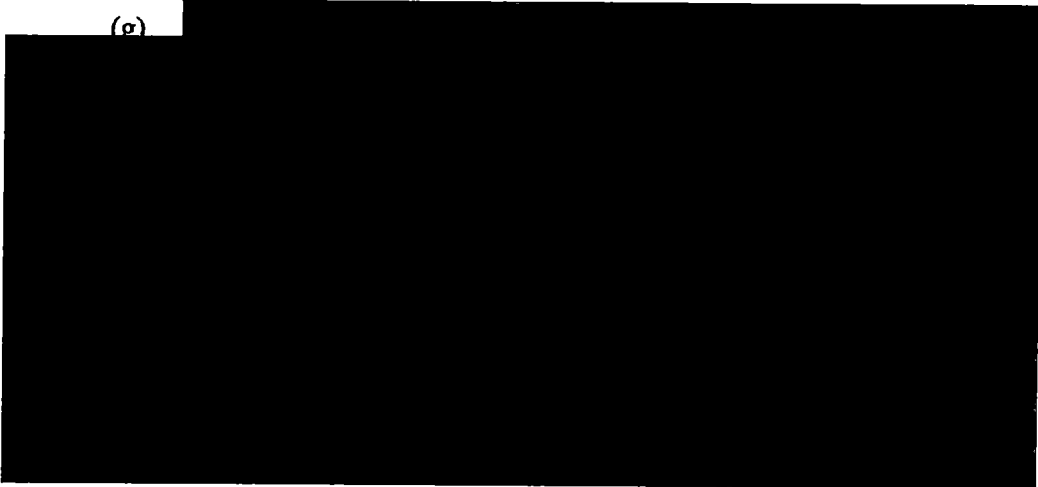
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(f)

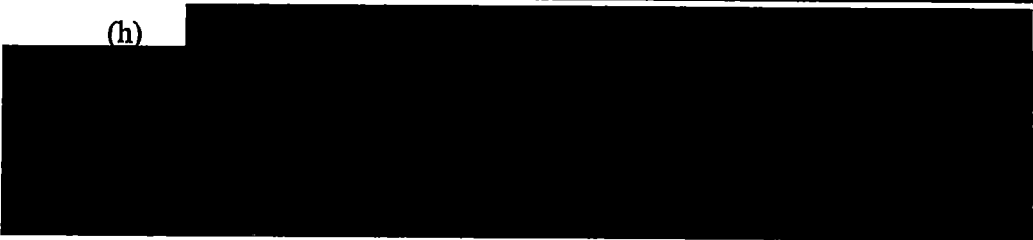
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(g)



(h)



**2.4 Payment Terms; Inspection Rights.** Any monthly Index Payment or monthly Purchase Payment contemplated in this Section 2 shall become due and payable by WKEC to Big Rivers net 30 days after Big Rivers' written invoice for such payments relating to the relevant Purchase Volumes and Index Volumes, accompanied by a written report from Big Rivers containing all information reasonably necessary to calculate the relevant Purchase Volumes, Index Volumes and Station Two Costs. Big Rivers agrees to maintain all records and files that are generated by or for Big Rivers in the ordinary course of business and that relate to Excess Henderson Energy generation, scheduling, pricing, purchases, deliveries and/or rejections (including without limitation, all of the information described in the preceding sentence), throughout the Relevant Period and thereafter for a period of not less than three (3) years following the expiration of the Relevant Period; provided, that in the event, as of the end of that 3-year period, any Proceeding (or any other action, suit or proceeding for which Big Rivers has or may seek indemnification from WKEC under this Indemnification Agreement (or from E.ON under the Guarantee)) is then pending, then Big Rivers shall continue to maintain those records

and files thereafter until the third (3<sup>rd</sup>) anniversary of (a) the rendering of a final, non-appealable judgment, decision or order in that Proceeding (or other action, suit or proceeding), (b) a settlement of that Proceeding (or other action, suit or proceeding) with the requisite consents or approvals contemplated elsewhere in this Indemnification Agreement, or (c) a dismissal of that Proceeding (or other action, suit or proceeding) with prejudice. Throughout that same period, Big Rivers agrees to provide WKEC, E.ON and their respective advisors with reasonable access to all such records and files during normal business hours, for the purposes of verifying any payments accruing under this Indemnification Agreement and/or verifying Big Rivers' compliance with the provisions of this Indemnification Agreement.

### 3. PROCEDURE FOR INDEMNIFICATION CLAIMS.

**3.1 Notice of Claims.** Promptly after the receipt by Big Rivers of notice of the commencement or assertion of any claim, action, suit or proceeding (including without limitation, a Proceeding) by the City, the City Utility Commission or any other Person relating in any manner to any rights or obligations of the City, the City Utility Commission or Big Rivers to or in respect of any Excess Henderson Energy (each, an "**Indemnifiable Claim**"), whether commenced or asserted against Big Rivers, the City or the City Utility Commission, Big Rivers shall give written notice to WKEC of the commencement, assertion or receipt of that Indemnifiable Claim (together with a copy of all relevant pleadings). Notwithstanding the foregoing, the failure to so notify WKEC of the commencement, assertion or receipt of an Indemnifiable Claim will not relieve WKEC of any liability that it may have under this Indemnification Agreement with respect to that Indemnifiable Claim, except to the extent that WKEC demonstrates that the Defense of or concerning that Indemnifiable Claim was materially prejudiced by BREC's failure to give such notice; provided that, as a condition to seeking and/or retaining indemnification, payment or other relief for such Indemnifiable Claim from WKEC pursuant to this Indemnification Agreement, Big Rivers shall not settle or compromise any Indemnifiable Claim, admit to responsibility or liability for any Indemnifiable Claim, attempt to contest, defend or litigate any Indemnifiable Claim (other than denying any allegations in a formal answer or response to a complaint or cause of action containing such allegations), or consent to judgment, confess judgment or permit a default judgment with respect to any Indemnifiable Claim, without first *either* (i) giving WKEC notice of that Indemnifiable Claim as contemplated herein and the opportunity to participate in and, in the discretion of WKEC, to assume the entire Defense of or concerning that Indemnifiable Claim as contemplated in, and subject to the conditions of, Section 3.2 below, *or* (ii) fully and irrevocably releasing and discharging in writing any and all obligations, responsibilities and liabilities (if any) of WKEC to Big Rivers under or pursuant to this Indemnification Agreement. The notice contemplated herein from Big Rivers shall describe the Indemnifiable Claim and the specific facts and circumstances in reasonable detail, shall include a copy of any related notices or written claims regarding that Indemnifiable Claim from third-parties, and shall indicate the amount, if known, or an estimate, if possible, of the Losses that have been or may be suffered or incurred as a result of that Indemnifiable Claim.

### 3.2 Assumption of Defense.

(a) With respect to any Indemnifiable Claim, WKEC will be entitled, at its sole expense (including for all court costs and other expense of litigation), to participate in the contest, defense, settlement, settlement negotiations and litigation (collectively, the "*Defense*") of or concerning such Indemnifiable Claim and, to the extent that it wishes, so long as WKEC acknowledges (in writing) that it will have an obligation to indemnify Big Rivers for such Indemnifiable Claim under this Indemnification Agreement to the extent that Indemnifiable Claim results in a Decision, to assume the entire Defense of or concerning such Indemnifiable Claim with counsel reasonably satisfactory to Big Rivers. After notice from WKEC to Big Rivers of its election to assume the Defense of or concerning such Indemnifiable Claim, WKEC shall reimburse Big Rivers for seventy-five percent (75%) of Big Rivers' reasonable out of pocket costs and expenses incurred in connection with its participation in or assistance with that Defense (but solely as it may relate to Excess Henderson Energy, and excluding any settlement amounts and awards or judgments made in the action, suit or proceeding) ("*Big Rivers Participation Costs*"), not to exceed \$ [REDACTED] in the aggregate for all such Defenses and Big Rivers Participation Costs collectively (the "*Participation Expense Cap*") (subject to adjustment in the remaining, unused balance of the Participation Expense Cap as of January 1 of each year (commencing with January 1, 2010), based on changes in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics from time-to-time (with a base index value being equal to the value of that index for the month in which the Effective Date occurs)), but WKEC will not, as long as it diligently conducts such Defense, be liable to Big Rivers under this Indemnification Agreement for any other costs or expenses of conducting the Defense of or concerning such Indemnifiable Claim, in either case incurred by Big Rivers in connection with the Defense of or concerning that Indemnifiable Claim. If WKEC assumes the Defense of or concerning an Indemnifiable Claim (i) neither Big Rivers nor WKEC shall thereafter attempt to engage in any settlement discussions or negotiations with any other party to that action, suit or proceeding without the prior written consent and direction of the other Party, and (ii) no compromise or settlement of that Indemnifiable Claim may be effected by WKEC or Big Rivers without the other Party's prior written consent. Big Rivers shall be entitled to participate in the Defense of or concerning any Indemnifiable Claim assumed by WKEC as contemplated herein. WKEC hereby agrees to (i) vigorously perform such Defense and (ii) assert in any such Defense positions Big Rivers reasonably requests be asserted.

(b) If notice is given to WKEC of any Indemnifiable Claim and WKEC does not, within fifteen (15) days after receipt of Big Rivers' notice, give notice to Big Rivers of its election to assume the Defense of or concerning such Indemnifiable Claim, WKEC will no longer have the right to assume that Defense. In the event Big Rivers thereafter assumes that Defense: (i) Big Rivers agrees to vigorously perform such Defense and to assert in any such Defense positions WKEC reasonably requests be asserted; and (ii) WKEC agrees to reimburse Big Rivers for Big Rivers' reasonable out of pocket legal and legal related costs and expenses incurred in the Defense (but solely as it may relate to



Excess Henderson Energy) ("*Big Rivers Defense Costs*"), but not to exceed [REDACTED] in the aggregate for all such costs and expenses for all such Defenses that may be so assumed by Big Rivers, collectively (the "*Defense Expense Cap*") (subject to adjustment in the remaining, unused balance of the Defense Expense Cap as of January 1 of each year (commencing with January 1, 2010), based on changes in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics from time-to-time (with a base index value being equal to the value of that index for the month in which the Effective Date occurs)). The Parties agree that the Defense Expense Cap and the Participation Expense Cap are independent of one another, and any reduction in the Defense Expense Cap shall not correspondingly reduce the Participation Expense Cap, or vice versa.

(c) Regardless of whether WKEC exercises its right hereunder to assume or participate in the Defense of or concerning any Indemnifiable Claim, Big Rivers and WKEC shall reasonably cooperate in good faith in opposing and defending against any such claim.

**3.3 Other Claims.** A claim by Big Rivers for indemnification, payment or other relief under Section 2 for any matter not involving a third-party Indemnifiable Claim against Big Rivers may be asserted only by a written notice delivered to WKEC (and within the relevant time period or period(s) contemplated elsewhere in this Indemnification Agreement, as applicable), setting forth in reasonable detail the facts and circumstances pertaining to that claim.

**3.4 Cooperation of Parties.** WKEC, if it shall assume the Defense of or concerning an Indemnifiable Claim as contemplated above, shall keep Big Rivers reasonably informed of the progress and development of WKEC's Defense of or concerning, and compromise efforts with respect to, such Indemnifiable Claim, and shall furnish Big Rivers with copies of all relevant pleadings, correspondence and other papers. In addition, the Parties shall cooperate with each other, and make available to each other and their representatives all available relevant records or other materials required by them for their use in defending, compromising or contesting any Indemnifiable Claim.

#### **4. LIMITATIONS AND EXCLUSIONS.**

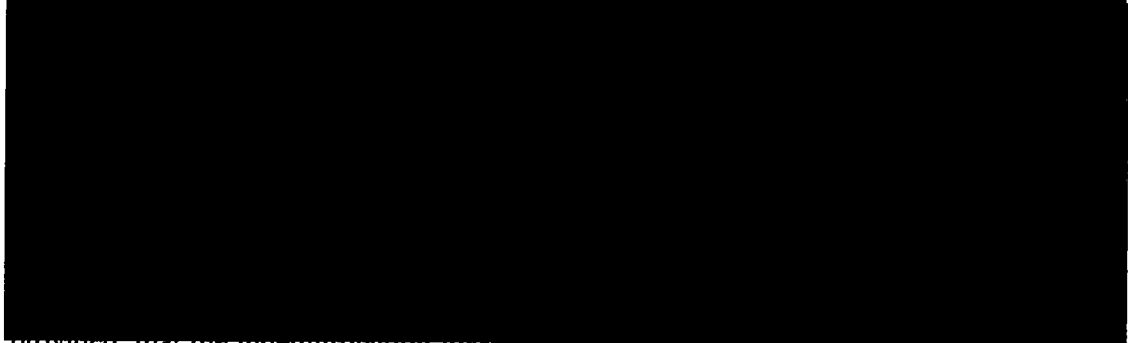
**4.1 Disclaimer of Incidental and Consequential Damages, Etc.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS INDEMNIFICATION AGREEMENT TO THE CONTRARY, BIG RIVERS SHALL NOT BE ENTITLED TO RECOVER ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES OR OTHER SIMILAR RELIEF (INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOST BUSINESS OPPORTUNITY) UNDER OR PURSUANT TO THIS INDEMNIFICATION AGREEMENT (OR UNDER OR PURSUANT TO THE GUARANTEE BY VIRTUE OF THIS INDEMNIFICATION AGREEMENT OR ANY OF THE COVENANTS OR AGREEMENTS SET FORTH HEREIN), OTHER THAN PRE-DECISION LOSSES AND POST-DECISION LOSSES WHICH THEMSELVES CONSTITUTE INCIDENTAL OR CONSEQUENTIAL DAMAGES AND FOR WHICH BIG RIVERS IS ENTITLED TO

INDEMNIFICATION OR PAYMENT AS CONTEMPLATED ELSEWHERE IN THIS INDEMNIFICATION AGREEMENT.

**4.2 Sole and Exclusive Remedies.** WITHOUT LIMITING THE GENERALITY OF ANY OTHER LIMITATIONS CONTEMPLATED ELSEWHERE IN THIS INDEMNIFICATION AGREEMENT, BIG RIVERS, FOR ITSELF AND ITS SUCCESSORS AND PERMITTED ASSIGNS, HEREBY AGREES THAT THE INDEMNIFICATIONS AND OTHER RIGHTS AND/OR RELIEF PROVIDED FOR OR CONTEMPLATED IN, OR UNDER OR PURSUANT TO, THIS INDEMNIFICATION AGREEMENT (AS THE SAME MAY BE LIMITED BY ANY OTHER PROVISION(S) OF THIS INDEMNIFICATION AGREEMENT) SHALL BE WKEC'S (AND E.ON'S PURSUANT TO THE GUARANTEE) SOLE LIABILITY, AND BIG RIVERS' SOLE AND EXCLUSIVE RIGHTS AND REMEDIES AS AGAINST WKEC, BY REASON OF, RESULTING FROM OR ARISING OUT OF ANY OF THE FACTS, CIRCUMSTANCES, STATE OF FACTS, CLAIMS, LOSSES, PROCEEDINGS, EVENTS, CONDITIONS, FAILURES, VIOLATIONS, DAMAGES, LIABILITIES, ACTIONS, OMISSIONS, OPERATIONS, COSTS, EXPENSES, OBLIGATIONS OR OTHER MATTERS REFERRED TO OR IDENTIFIED IN THIS INDEMNIFICATION AGREEMENT. BIG RIVERS HEREBY KNOWINGLY, IRREVOCABLY AND ABSOLUTELY DISCLAIMS AND DISAVOWS ANY AND ALL OTHER RIGHTS OR REMEDIES THAT IT MAY HAVE AGAINST WKEC OR E.ON BY REASON OF, RESULTING FROM OR ARISING OUT OF SUCH FACTS, CIRCUMSTANCES, STATE OF FACTS, CLAIMS, LOSSES, PROCEEDINGS, EVENTS, CONDITIONS, FAILURES, VIOLATIONS, DAMAGES, LIABILITIES, ACTIONS, OMISSIONS, OPERATIONS, COSTS, EXPENSES, OBLIGATIONS OR OTHER MATTERS. Big Rivers acknowledges and agrees that it shall not at any time be entitled to recover any of the Losses contemplated in this Indemnification Agreement from WKEC, LEM or E.ON under or pursuant to the Termination Agreement or any other Definitive Documents.

**4.3 Maximum Liability.** Notwithstanding any provision set forth in this Indemnification Agreement to the contrary (it being understood and agreed that this Section 4.3 shall take precedence over every other provision in this Indemnification Agreement, whether in the event of a conflict or otherwise), the maximum aggregate amount of all Losses, and the maximum aggregate value of any other payments, damages or other relief that may be awarded in lieu of or in addition to Losses, collectively, that may at any time be sought or recovered by Big Rivers from WKEC under or pursuant to any and all provisions of this Indemnification Agreement, collectively, shall not exceed [REDACTED] (the "**Cap Amount**"); provided, however, that the Cap Amount will be reduced as of the fiscal year end, following a Decision, at which any new Station Two capacity share designation by the City or the City Utility Commission becomes effective in accordance with the 1970 Power Sales Contract, and on each anniversary thereafter, by the aggregate amount of the "total capacity costs" (as used and defined in Section 6.3 of the 1970 Power Sales Contract, but excluding all costs for fuel, reagent, Emission Allowances, carbon taxes and sludge disposal) associated with Station Two for the year then ended (pro-rated for any partial year following the Decision) and attributable to the portion of the City's or the City

Utility Commission's reserved capacity from Station Two that exceeds 95 MW. The Cap Amount shall not apply to any Big Rivers Participation Costs or Big Rivers Defense Costs that may become payable by WKEC to Big Rivers pursuant to Section 3.2, it being understood and agreed that those costs shall be limited solely by the Participation Expense Cap and the Defense Expense Cap, respectively. To the extent, by reason of a non-appealable judgment by a court or decision in arbitration (subject to Section 5.7 below) or order of the KPSC, the City or City Utility Commission shall be entitled to collect damages or other amounts of the type described in Section 2.3(a) for any Excess Henderson Energy generated following the Effective Date but prior to the Decision, then the Cap Amount will also be reduced for those prior years in the same manner and on the same basis as described in the preceding sentence for the City's or the City Utility Commission's reserved capacity in excess of 95 MW. In the event a Decision made or rendered as contemplated above contains an interpretation of the 1970 Power Sales Contract that will result in one or more of the circumstances described in Subclause (1), (2) or (3) of Section 2.1(b), but that judgment, decision or order does not expressly award damages or economic losses or the right to Excess Henderson Energy to the City or the City Utility Commission, and if



provided, that the indemnification for such damages or economic losses would not be the subject of the Cap Amount, and any amounts paid by WKEC for such damages or economic losses would not serve to reduce the Cap Amount. Big Rivers, for itself and its successors and assigns, hereby fully and forever waives and releases the recovery from WKEC of any Losses, damages or other relief in excess of the Cap Amount, except as otherwise expressly provided above.

**4.4 No Amendments.** This Indemnification Agreement applies to and has effect only with respect to: (a) the 1970 Power Sales Contract, and no amendments to that contract following the Effective Date shall be binding on WKEC or shall expand, modify or otherwise affect any of WKEC's debts, obligations or liabilities (if any) under this Indemnification Agreement, in either case unless WKEC has agreed in writing to such amendments in a settlement agreement reached with the City and the City Utility Commission or unless such amendments are mandated by the Decision; (b) Excess Henderson Energy generated by the existing two units of Station Two; and (c) increases in Excess Henderson Energy associated with increases following the Effective Date in the City's or the City Utility Commission's capacity share, but only to the extent those increases in the City's or the City Utility Commission's capacity share are made in accordance with the existing five-year projection methodology set forth in the 1970 Power Sales Contract or are associated with Station Two Economic Development Power as contemplated in Section 28.1 of that contract.

**4.5 Capacity Costs, Etc.** Notwithstanding anything contained in this Indemnification Agreement to the contrary, Big Rivers shall not at any time be entitled to recover from WKEC under or pursuant to this Indemnification Agreement (or from E.ON under or pursuant to the Guarantee) any "SCR Capital Costs," any "Debt Service" (each as defined in the Station Two Operating Agreement or the 1970 Power Sales Contract, as applicable), or any "capacity costs" as contemplated in Section 6.3 of the 1970 Power Sales Contract.

**4.6 Insurance.** In addition to the limitations set forth elsewhere in this Indemnification Agreement, and notwithstanding any provision to the contrary set forth elsewhere in this Indemnification Agreement, WKEC shall not have any obligation to indemnify, hold harmless or pay (or provide other relief to) Big Rivers pursuant to this Indemnification Agreement to the extent of any insurance proceeds (after the cost of recovery) that are actually recovered by Big Rivers with respect to the Losses giving rise to such claim for indemnification, payment or other relief, it being understood and agreed that Big Rivers shall use its commercially reasonable efforts to seek full recovery under all insurance policies of which it is aware covering any such Losses, and shall promptly notify WKEC and E.ON of any such recovery and repay to WKEC (or, as applicable, to E.ON) any Losses funded by WKEC (or E.ON) to the extent Big Rivers shall have recovered insurance proceeds therefor (after the cost of recovery).

**4.7 Other Losses of Excess Henderson Energy.** WKEC shall have no obligation or liability to Big Rivers whatsoever under this Indemnification Agreement for or with respect to any failure by Big Rivers to receive any Excess Henderson Energy (or any benefits associated therewith) for any reason other than as expressly specified in this Indemnification Agreement.


**4.8 Rate Disallowances.** WKEC shall have no obligation or liability to Big Rivers whatsoever under this Indemnification Agreement for or with respect to the consequences of any rate disallowance or rate disallowances ordered by the KPSC for costs associated with the 1970 Power Sales Contract or any other Station Two Contract, including without limitation, in connection with fuel adjustment clause reviews or base rate cases.

## **5. ADDITIONAL COVENANTS.**

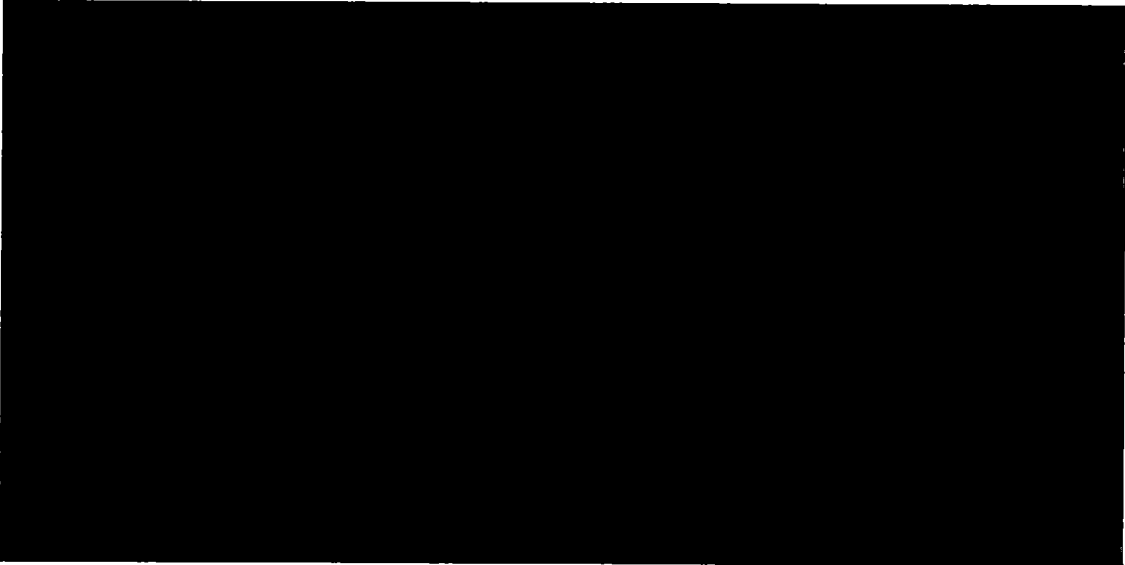
**5.1 No Effect on Insurance.** The provisions of this Indemnification Agreement shall not be construed to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible casualty and liability insurance maintained in respect of any risks.

**5.2 Enforcement, Etc.** Big Rivers agrees to





**5.3 Declaratory Judgment Actions.** Upon the written directive of WKEC, Big Rivers agrees to initiate and prosecute in Big Rivers' name any declaratory judgment action or action, suit or proceeding for other relief desired to be initiated by WKEC in order to resolve the interpretation of, or to establish, the City's, the City of Henderson's and/or Big Rivers' respective rights and obligations with respect to, Excess Henderson Energy, or their respective rights to be paid for the same, including before a court, arbitrator or the KPSC. Notwithstanding anything contained elsewhere in this Indemnification Agreement to the contrary, Big Rivers shall not at any time be permitted to, nor shall it permit any of its members, Affiliates, directors, officers, employees, successors or assigns to on Big Rivers' behalf, at any time during the Relevant Period initiate, institute or prosecute (whether in Big Rivers' name or otherwise, and whether or not against the City or the City Utility Commission) any declaratory judgment action or action, suit or proceeding for other relief (including without limitation, any Proceeding) in order to resolve the interpretation of, or to establish, the City's, the City of Henderson's and/or Big Rivers' respective rights and obligations with respect to Excess Henderson Energy, or their respective rights to be paid for the same, including before a court, arbitrator or the KPSC, in each case unless directed to do so as contemplated above or absent the prior written consent or directive of WKEC. WKEC shall also have the right to control the prosecution of any declaratory judgment action or action or proceeding for other relief described above in this Indemnification Agreement, with Big Rivers being entitled to participate in that defense or prosecution, but not having the right to confess judgment or admit liability in the proceeding or to settle with the City or City Utility Commission without WKEC's consent. WKEC hereby agrees (i) to vigorously defend or prosecute any such action, suit or proceeding and (ii) to assert in any such action, suit or proceeding positions that Big Rivers reasonably requests be asserted.



**5.4 Covenant to Defend.** Each Party agrees to use its best efforts to defend an action, suit or proceeding initiated by the City, City Utility Commission, or any other Person (or to prosecute a declaratory judgment action or action, suit or proceeding for other relief desired by WKEC), and to cooperate with one another in that action, suit or proceeding, including granting the other Party access to witnesses and information within their organizations.

**5.5 Representation.** Big Rivers hereby represents and warrants to WKEC that, to the actual knowledge, without independent investigation, of Mark Bailey, David Spainhoward, Mike Core, Mike Thompson, Mark Hite, Bill Blackburn, Travis Housley, and Jim Miller as of the Closing, Big Rivers has disclosed to WKEC (and, as applicable, provided WKEC copies of) prior to the Closing any correspondence or other documents (including amendments to agreements with the City or City Utility Commission, but excluding (i) any correspondence (including by email) originating from any employee, officer, agent or contractor of E.ON or any of its Affiliates or (ii) any agreements or documents to which E.ON or any of its Affiliates is a signatory) or other evidence in Big Rivers' possession that could reasonably have been expected to support the City's or City Utility Commission's position with respect to the interpretation of the City's or City Utility Commission's rights with respect to Excess Henderson Energy under the 1970 Power Sales Contract. The foregoing representation and warranty shall survive the Effective Date, the execution and delivery of this Indemnification Agreement.

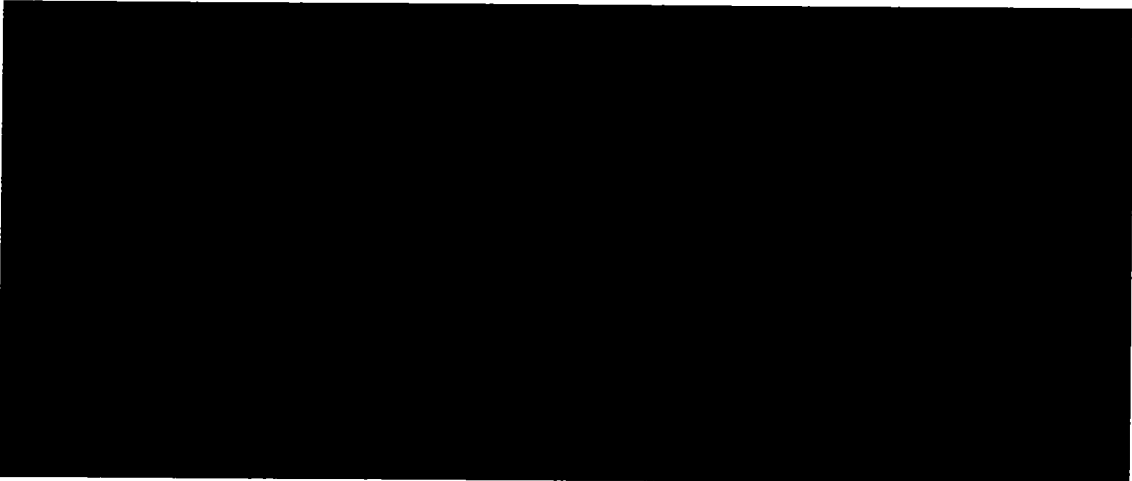
**5.6 Defenses.** Big Rivers agrees to assert any defenses that it may have with respect to any Indemnifiable Claims that WKEC believes in good faith are meritorious.

**5.7 Arbitration.** Big Rivers agrees not to consent to any binding arbitration proceeding between Big Rivers, on the one hand, and the City or the City Utility Commission, on the other hand, with respect to any claim, dispute, disagreement or alleged default which would or could reasonably be expected to give rise to an Indemnifiable Claim, without the prior written consent of WKEC.

**5.8 Appeals.** In the event WKEC requests the filing of any appeal or petition for rehearing of any court judgment, arbitration decision or KPSC order and if that appeal or petition is permissible, Big Rivers shall timely file that appeal or petition, but WKEC shall be responsible for the cost of any related appeal bond, and Big Rivers agrees not to initiate such an appeal or petition without the prior written consent of WKEC (or a complete termination of and release of WKEC from any further debts, obligations and liabilities under this Indemnification Agreement).

**5.9**






**5.10 Compliance.** Big Rivers shall at all times comply in all material respects with, and shall enforce against the City and the City Utility Commission, all provisions of the 1970 Power Sales Contract, of any applicable tariff, of any Applicable Laws of the Commonwealth of Kentucky, and of the Federal Power Act (and the rules, regulations and orders promulgated or issued pursuant thereto), in each case to the extent the same may relate to Excess Henderson Energy or to the respective rights and obligations of Big Rivers, the City and/or the City Utility Commission with respect to Excess Henderson Energy that could result in an indemnification or payment obligation on the part of WKEC under this Indemnification Agreement.

**5.11 No Tolling.** Big Rivers shall not at any time agree with the City, the City Utility Commission or any other Person to "toll" or suspend any statute of limitations or other similar statute relating to or, upon its expiration, barring any right of the City or the City Utility Commission to assert any claim or initiate any proceeding alleging, or to establish, any breach or default by Big Rivers under the 1970 Power Sales Contract.

**5.12 No Admission as Evidence.** Each Party agrees that it will not admit or seek to admit, and will not cause or permit its Affiliates to admit or seek to admit, the Indemnification Agreement (or any portions thereof) as evidence in any action, suit or proceeding before any court, arbitrator, arbitration panel, the KPSC or any other governmental authority or regulatory body, in any case for the purpose of proving any matter asserted therein, other than for purposes of (a) establishing the existence of the Indemnification Agreement, (b) seeking the approval of the Indemnification Agreement by the KPSC (if required for its validity, effectiveness or enforceability), or (c) enforcing a Party's rights, remedies and/or obligations under the Indemnification Agreement in accordance with its terms.

**5.13 Termination Right.** Notwithstanding anything contained in this Indemnification Agreement to the contrary, at such time as the total amount of all Pre-Decision Losses and Post-Decision Losses, collectively, that have been paid by WKEC (or by E.ON) to Big Rivers pursuant to this Indemnification Agreement (or pursuant to the Guarantee) equal  then at the sole

option of WKEC exercisable by written notice delivered to Big Rivers at any time thereafter, WKEC may unilaterally terminate this Indemnification Agreement and the Guarantee, rendering this Indemnification Agreement and the Guarantee immediately null, void and of no further force or effect whatsoever (subject to the following sentence); provided, that by exercising that right and option WKEC shall be deemed to have waived and relinquished any rights that it may have to recover the Pre-Decision Losses and Post-Decision Losses from any Person. Notwithstanding the preceding sentence, the obligation of WKEC to reimburse Big Rivers Participation Costs and Big Rivers Defense Costs pursuant to Section 3.2 of this Indemnification Agreement shall survive the termination of this Indemnification Agreement pursuant to that preceding sentence but shall at all times remain subject to the Participation Expense Cap and the Defense Expense Cap, respectively.

**6. MISCELLANEOUS.**

**6.1 Further Assurances.** Each Party shall, at all times and from time-to-time, upon the reasonable request of the other Party, do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, documents, instruments and assurances as may be required to give full force and effect to the provisions of this Indemnification Agreement or to give to that other Party the full benefit of all the provisions of this Indemnification Agreement.

**6.2 No Third Party Beneficiaries.** This Indemnification Agreement is entered into for the sole benefit of the Parties hereto, and shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

**6.3 Entire Agreement.** This Indemnification Agreement (together with all Exhibits hereto) constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

**6.4 Successors and Assigns.** This Indemnification Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.

**6.5 Notices.** All notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed duly given if (and then two Business Days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to WKEC:

Western Kentucky Energy Corp.  
c/o E.ON U.S. LLC  
220 West Main Street  
Louisville, KY 40202



Facsimile: 502-627-2995  
Telephone: 502-627-3861  
Attn: President

LG&E Energy Marketing Dispatch  
220 West Main Street  
Louisville, Kentucky 40202  
Facsimile: 502-627-4177  
Telephone: 502-627-4275

Copy to:

John R. McCall  
Executive Vice President & General Counsel  
E.ON U.S. LLC  
220 West Main Street  
Louisville, Kentucky 40202  
Facsimile: 502-627-4622  
Telephone: 502-627-3665

If to Big Rivers:

Big Rivers Electric Corporation  
201 Third Street  
P.O. Box 24  
Henderson Kentucky 42419  
Attention: CEO and President  
Facsimile: 270-827-2558  
Telephone: 270-827-2561

Copy to:

Big Rivers Electric Corporation  
201 Third Street  
P.O. Box 24  
Henderson Kentucky 42419  
Attention: Senior Vice President of External Relations  
Facsimile: 270-827-2101  
Telephone: 270-827-2561

Big Rivers Electric Corporation  
201 Third Street  
P.O. Box 24  
Henderson Kentucky 42419  
Attention: Senior Vice President for Energy Services  
Facsimile: 270-827-2101  
Telephone: 270-827-2561

James M. Miller, Esq.  
Sullivan, Mountjoy, Stainback & Miller, P.S.C.  
100 St. Ann Building  
Post Office Box 727

Owensboro, Kentucky 42302-0727  
Facsimile: 270-683-6694  
Telephone: 270-926-4000

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

**6.6 Governing Law.** This Indemnification Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules or principles.

**6.7 Amendments and Waivers.** This Indemnification Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of WKEC and Big Rivers. No waiver of any of the provisions of this Indemnification Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar). No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

**6.8 Severability.** Any term or provision of this Indemnification Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Indemnification Agreement or affecting the validity or enforceability of any of the terms or provisions of this Indemnification Agreement in any other jurisdiction.

**6.9 Construction.** The Parties have participated jointly in the negotiation and drafting of this Indemnification Agreement. In the event an ambiguity or question of intent or interpretation arises, this Indemnification Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Indemnification Agreement.

**6.10 Incorporation.** The Exhibits identified in this Indemnification Agreement are incorporated herein by reference and made a part hereof.

**6.11 Waiver of Jury Trial.** EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THEM ARISING OUT OF OR RELATED TO THIS INDEMNIFICATION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**6.12 Headings.** The article and section headings contained in this Indemnification Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Indemnification Agreement.

**6.13 Counterparts.** This Indemnification Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

**6.14 Venue.** Any legal action or proceeding by any Party hereto against the other Party arising out of this Agreement may be brought in or removed to the state or federal courts of the Commonwealth of Kentucky.

**6.15 Assignments.** Big Rivers shall not assign, transfer or delegate this Indemnification Agreement or any of Big Rivers rights or obligations hereunder to any other Person without the prior written consent of WKEC and E.ON, except that such consent shall not be required with respect to (a) any merger or consolidation of Big Rivers into or with another Person following the Effective Date, (b) any assignment or this Indemnification Agreement resulting from a transfer of voting control of the Big Rivers membership interests following the Effective Date, (c) any sale of substantially all of the assets of Big Rivers following the effective Date where the assignee assumes Big Rivers' rights and obligations under this Indemnification Agreement and succeeds to all of Big Rivers' rights and obligations under the Station Two Contracts, and (d) any assignment of this Indemnification Agreement as collateral security for indebtedness of Big Rivers.

**6.16 Specific Performance.** In the event of any failure on the part of any Party to perform or comply with any of its covenants or agreements set forth in this Indemnification Agreement, the Parties agree that the non-breaching Party shall have, in addition to all other rights or remedies that may be available at law, in equity, under contract or otherwise, the right to specific performance and injunctive relief with respect to that failure, and the breaching Party waives any right that it may have to claim or argue that the non-breaching Party has an adequate remedy at law.

**IN WITNESS WHEREOF,** the Parties hereto have caused this Indemnification

Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

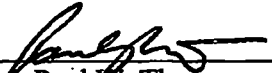
**[Signatures Appear on the Following Pages]**

BIG RIVERS ELECTRIC CORPORATION

By: Mark T Bailey  
Name: Mark Bailey  
Title: President

[Indemnification Agreement]

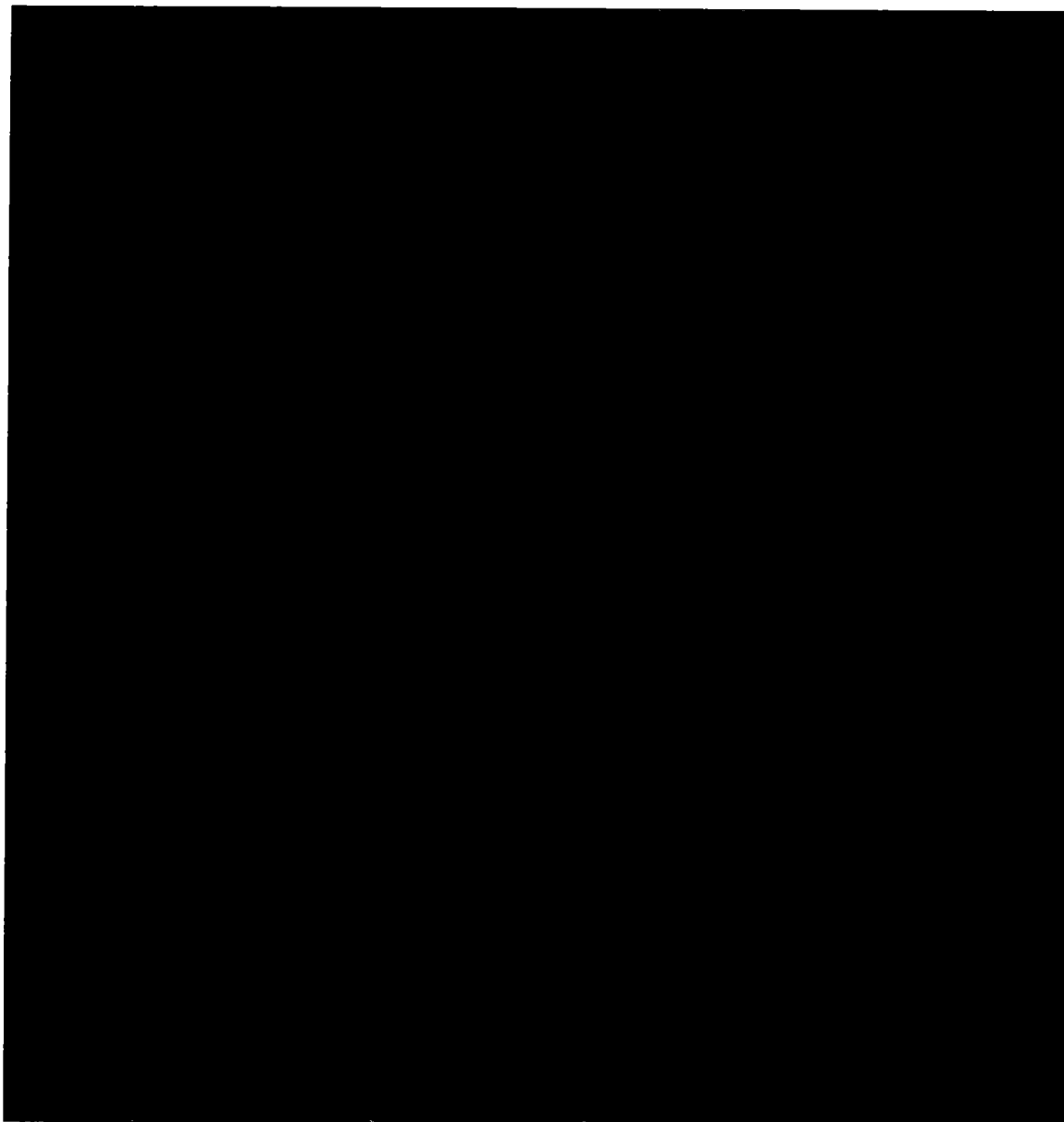
WESTERN KENTUCKY ENERGY CORP.

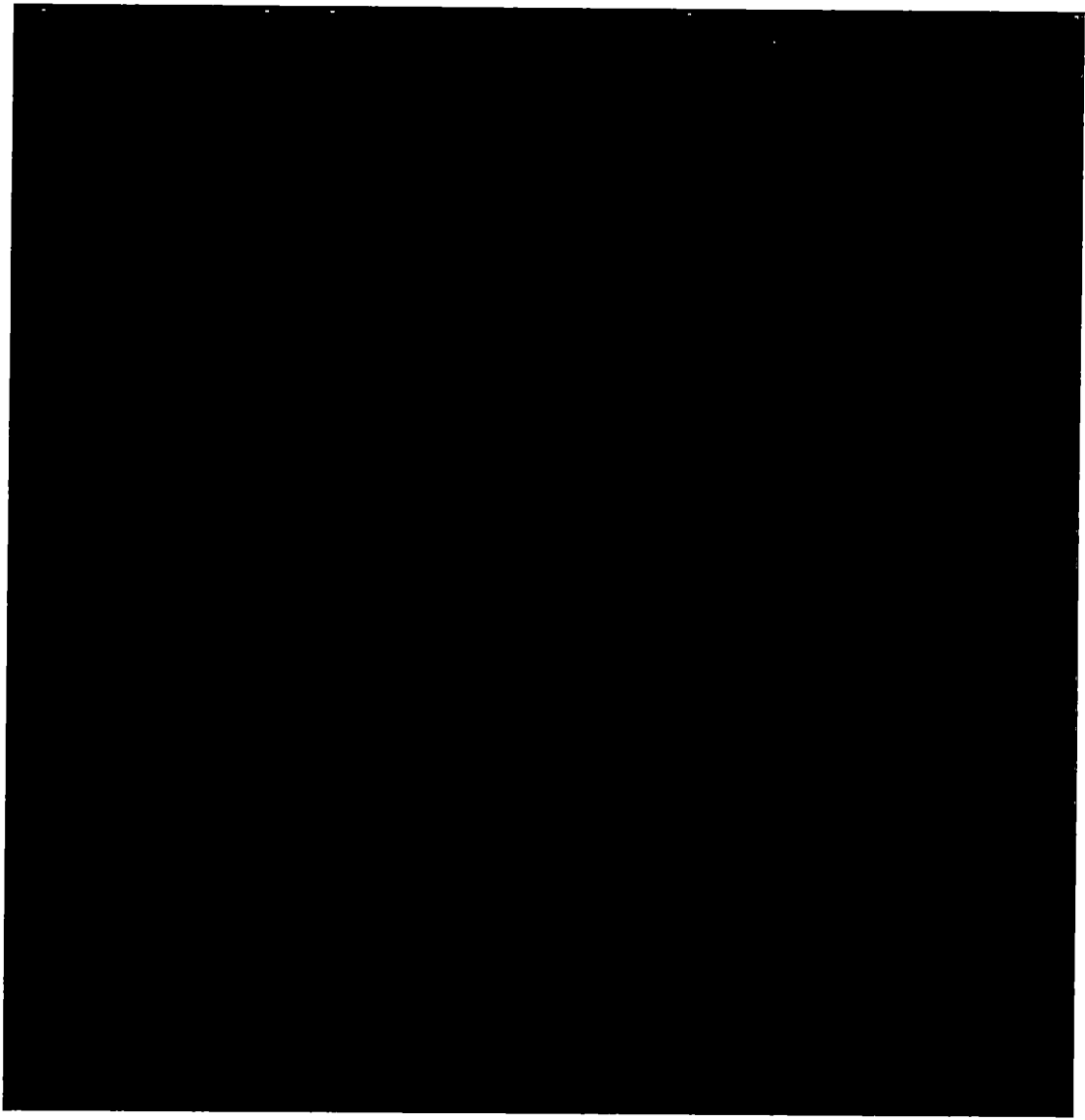
By:   
Name: Paul W. Thompson  
Title: President

[Indemnification Agreement]

**EXHIBIT A**

**PROTOCOLS, PRACTICES AND METHODOLOGIES**





LOU: 3473030-1



**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
CASE NO. 2016-00278**

**Response to City of Henderson, Kentucky and Henderson Utility Commission, d/b/a  
Henderson Municipal Power & Light's Supplemental Request for Information  
dated September 26, 2016**

**October 10, 2016**

1 **Item 26)** *Refer to Big Rivers' response to Request No. 4(a)(1) of the Commission Staff's*  
2 *First Request for Information. Please produce unredacted copies of any and all current*  
3 *and/or past attachments to the "Indemnification Agreement," including any and all*  
4 *amendments, corrections, and/or revisions made subsequent to the original execution of said*  
5 *Agreement, attachments, amendments, corrections, and/or revisions.*

6

7 **Response)** Please see Big Rivers' response to Henderson's Supplemental Requests for  
8 Information, Item 25.

9

10 **Witness)** Robert W. Berry

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A DECLARATORY ORDER  
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**October 10, 2016**

1 **Item 27)** *Refer to Big Rivers' response to Request No. 8 of the Commission Staff's*  
2 *First Request for Information. Please cite the contractual provision or other authority upon*  
3 *which Big Rivers relied for authorization to change, revise, or deviate from the method for*  
4 *calculating Excess Henderson Energy set forth in the "Indemnification Agreement" and/or*  
5 *its attachments, specifically the aforementioned "Exhibit A."*

6

7 **Response)** Please see Big Rivers' responses to Items 7 and 8 of the Commission Staff's  
8 First Request for Information.

9

10 **Witness)** Robert W. Berry

**BIG RIVERS ELECTRIC CORPORATION**

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**October 10, 2016**

1 **Item 28)** *Refer to Big Rivers' response to Request No. 9 of the Commission Staff's First*  
2 *Request for Information. Please state the basis for your statement that Big Rivers "does not*  
3 *know how much energy Henderson is going to use in any given hour or how much Excess*  
4 *Henderson Energy will exist in any given hour until after the energy is produced and*  
5 *consumed."*

6  
7 **Response)** The quantity of Excess Henderson Energy that exists in any given hour depends  
8 on two real-time quantities that are only known *after* any given hour. These quantities are  
9 Henderson's actual native load and Station Two's actual generation output. Neither of these  
10 factors are known until *after* any given hour. The actual native load, which represents the  
11 energy consumed by Henderson's inhabitants, is measured at the end of each hour. Likewise,  
12 the Station Two's actual generation output is measured at the end of each hour. This Station  
13 Two generation output can range from its rated output of 312 MW to zero MW based on the  
14 hourly capability of the Station Two generating units. If the Station Two generation output is  
15 less than the native load (if neither Station Two unit were operating, for example), then no  
16 Excess Henderson Energy would be available.

17  
18 **Witness)** Robert W. Berry

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**October 10, 2016**

1 **Item 29)** *Please explain with specificity and in detail why Big Rivers in 2009 sought*  
2 *interpretation of the Power Sales Contract, as amended, by petitioning the Henderson*  
3 *Circuit Court to refer the dispute to arbitration, rather than bringing the matter before the*  
4 *Commission.*

5  
6 **Response)** Big Rivers objects to this request for information on the grounds that it seeks  
7 information protected by the attorney-client and/or work product privileges.

8  
9 **Witness)** Robert W. Berry

**BIG RIVERS ELECTRIC CORPORATION**

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**October 10, 2016**

1 **Item 30)** *Will Big Rivers acknowledge that the allocation of Station Two costs between*  
2 *the parties to the Power Sales Contract, as amended, and Big Rivers' payment of \$1.50 per*  
3 *megawatt hour to Henderson for Excess Henderson Energy not scheduled or taken by*  
4 *Henderson, do not constitute rates for usual service rendered to the public generally?*

5  
6 **Response)** Big Rivers objects to the ambiguity associated with the phrase "rates for usual  
7 service rendered to the public generally," which Henderson does not define. Big Rivers further  
8 objects to this information request on the grounds that it calls for a legal conclusion. Big  
9 Rivers further objects to this information to the extent that it seeks information protected by the  
10 attorney-client and/or work product privileges.

11 Subject to and without waiving its objections, Big Rivers states, as it did in its response  
12 to Item 1 of Henderson's First Request for Information, that "[t]he provisions of the Power  
13 Sales Contract, as amended, relating to the allocation of costs of, and the payment of  
14 \$1.50/MWh for, any Excess Henderson Energy sold to Big Rivers are rates under the  
15 Commission's jurisdiction pursuant to KRS 278.200."

16

17 **Witnesses)** Robert W. Berry and Counsel

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
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1 **Item 31)** *Will Big Rivers acknowledge that both of the Henderson Station Two Units are*  
2 *considered to be based-load [sic] generation units, and were not designed nor intended to be*  
3 *operated as peaking units or cycled for economic-commitment dispatch? If the response is in*  
4 *the negative, please state specifically and in detail the basis for your response.*

5

6 **Response)** There is no reference in the Station Two contracts describing the Station Two  
7 Units as base-load generation units or requiring them to be operated in that matter.

8 Furthermore, the Station Two units are no different than other coal-fired units owned and  
9 operated by Big Rivers and other utilities that are cycled or temporarily idled in accordance with  
10 prudent utility practice based upon system and market economics.

11

12 **Witness)** Robert W. Berry

**BIG RIVERS ELECTRIC CORPORATION**

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1 **Item 32)** *Will Big Rivers acknowledge that both of the Henderson Station Two Units*  
2 *were placed into service in the early 1970s, and that Big Rivers' proposed cycling for*  
3 *economic-commitment dispatch would increase the probability of a catastrophic failure of*  
4 *both Units? If the response is in the negative, please state specifically and in detail the basis*  
5 *for your response.*

6

7 **Response)** Big Rivers acknowledges that Station Two Unit 1 went into commercial operation  
8 in 1973 and Unit 2 went into commercial operation in 1974. However, Big Rivers will not  
9 acknowledge that temporary idling of these units increases the probability of catastrophic failure.  
10 In fact, the opposite occurs because the probability of catastrophic failure decreases due to the  
11 units not operating when they are temporarily idled for economic purposes in accordance with  
12 prudent utility practices. There are more than 150 coal fired units with a capacity greater than  
13 100 MW in MISO, most if not all operate economically similar to how we are proposing to  
14 operate the HMPL units. Roughly a third of those units were placed into service prior to 1970.

15

16 **Witness)** Robert W. Berry

**BIG RIVERS ELECTRIC CORPORATION**

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**October 10, 2016**

1 **Item 33)** *Has Big Rivers commissioned or otherwise obtained any engineering studies,*  
2 *or otherwise empirical data supporting its responses?*

3

4 **Response)** Big Rivers objects to this request as being vague in that it does not specify to  
5 which responses this request applies. Subject to and without waiving this objection, Big Rivers  
6 assumes for the purpose of responding to this request that this question is referring to request 32  
7 and responds as follows:

8 In support of its responses, Big Rivers relies on its own experience operating its other  
9 units - Green 1, Green 2, Wilson, Coleman 1, Coleman 2 and Coleman 3 in an economic manner.  
10 These units are periodically removed from service and temporarily idled when system and  
11 market economics are unfavorable. Big Rivers has operated these units in this manner  
12 throughout 2015 and 2016 with no catastrophic failure or damage to them. Big Rivers notes that  
13 Coleman 3, which is almost identical to Station Two Units 1 and 2, is currently idled.

14 While Big Rivers has not conducted an exhaustive search of all generating units in the  
15 MISO region, Big Rivers is providing as part of this response an example of other coal-fired  
16 units of the same vintage or even older than the Station Two units in the MISO region that are  
17 being operated in a similar economic manner during this time period. Attached to this response  
18 is an excerpt from Dynegy's Second Quarter 2016 Earnings Presentation. According to this



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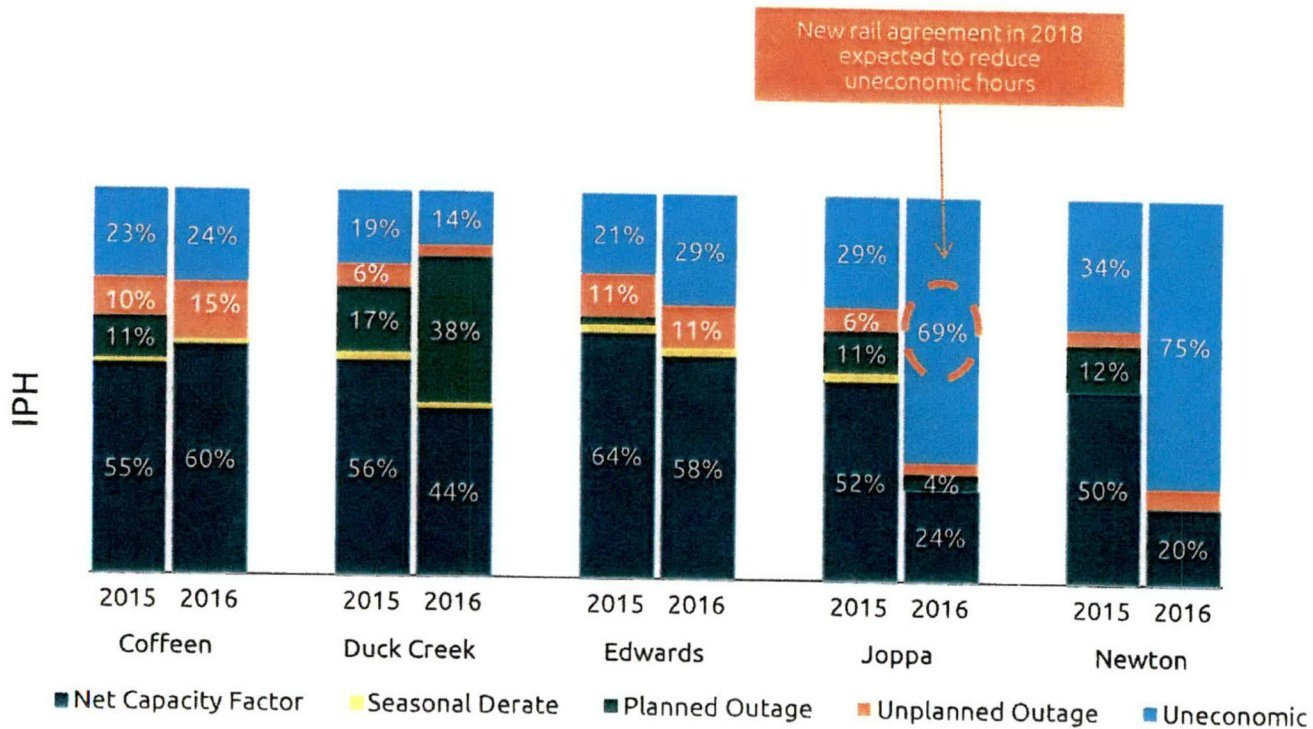
1 excerpt, the net capacity factor of their Joppa and Newton units dropped to 24% and 20%,  
2 respectively, in 2016. This drop in net capacity factor is due to the units being uneconomic and  
3 not operating 69% and 75% of the time, respectively. Joppa's commercial operation date was  
4 in the 1950s and Newton's commercial operation date was in 1977.

5

6 **Witness)** Robert W. Berry

# SECOND QUARTER FLEET PERFORMANCE - IPH SEGMENT

## NET CAPACITY FACTORS<sup>(1)</sup>



<sup>(1)</sup> Net Capacity Factor is based on the NERC method of calculation, which uses a maximum capacity rating

Low prices in MISO continue to negatively impact capacity factors

