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

**IN THE MATTER OF:**

<b>APPLICATION OF BIG RIVERS</b>	)	
<b>ELECTRIC CORPORATION FOR</b>	)	<b>CASE NO. 2016-00278</b>
<b>A DECLARATORY ORDER</b>	)	

**CITY OF HENDERSON, KENTUCKY, AND HENDERSON UTILITY COMMISSION  
d/b/a HENDERSON MUNICIPAL POWER & LIGHT'S RESPONSES TO  
COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION**

**BIG RIVERS ELECTRIC CORPORATION**

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

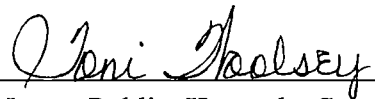
**VERIFICATION**

I, Gary Quick, General Manager of Henderson Municipal Power & Light, 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.

  
\_\_\_\_\_  
Gary Quick

COMMONWEALTH OF KENTUCKY  
COUNTY OF HENDERSON

SUBSCRIBED AND SWORN TO before me by Gary Quick on this the 17<sup>th</sup> day of November, 2016.

  
\_\_\_\_\_  
Notary Public, Kentucky State at Large #559438  
My Commission Expires: July 18, 2020

1 **REQUEST NO. 1:** Refer to the Direct Testimony of Gary Quick (“Quick Testimony”),  
2 page 4, lines 23-25, which state that “[e]ach party is responsible for its proportionate share  
3 of the annual net rated generating capacity expense associated with Station Two.” Confirm  
4 that this statement indicates that Henderson acknowledges it is responsible for the expenses  
5 associated with the energy produced by its reserved capacity of Station Two. If this cannot  
6 be confirmed, explain.

7 **RESPONSE:** An appropriate response to this request requires an explanation of the  
8 distinction between expenses associated with reserved capacity, and expenses associated with the  
9 actual generation of energy. Expenses associated with reserved capacity are those expenses  
10 which are incurred whether or not capacity is used to generate energy. As explained in my  
11 testimony, Henderson acknowledges that each party is responsible for its proportionate share of  
12 these “capacity” expenses. The net rated generating capacity of Station Two is 312 MW. Under  
13 the current capacity split, Henderson is therefore responsible for capacity expenses associated  
14 with its current annual reserved capacity of 115 MW (36.86 percent of total net rated generating  
15 capacity), while Big Rivers is responsible for capacity expenses associated with the 197 MW of  
16 capacity (63.14 percent of total net rated generating capacity) currently allocated to Big Rivers.  
17 The actual use of capacity to generate energy results in additional “variable” expenses, i.e. the  
18 cost of coal and lime used in the generation process, which are the responsibility of the party that  
19 either takes the energy for its own use, or schedules the energy for sale to third parties.  
20 Henderson thus is responsible for capacity expenses associated with its reserved capacity, but is  
21 not responsible for variable expenses associated with the generation of energy from its reserved  
22 capacity, unless Henderson elects to take or schedule the energy.

23 **WITNESS: Gary Quick**

1 **REQUEST NO. 2:** Refer to the Quick Testimony, page 5, lines 14-18.

2 a. Provide details of each instance in which “Big Rivers refused to allow  
3 Henderson to schedule or take its energy for sale to third parties.”

4 b. Explain in detail how Big Rivers “continues to deprive Henderson of energy  
5 associated with its reserved capacity. . . .”

6 c. Explain in detail how Henderson notifies Big Rivers of its intention to “take  
7 its energy for sale to third parties,” and when that notice is provided.

8 **RESPONSE:**

9 a. As evidenced by the correspondence attached hereto as **Exhibit 1**, Henderson has  
10 notified Big Rivers on multiple occasions that it wished to schedule its excess energy for sale to  
11 third parties, and has submitted on more than one occasion a proposed protocol for doing so. Big  
12 Rivers has repeatedly rejected Henderson’s requests. Big Rivers’ refusal to approve a scheduling  
13 protocol effectively has prevented Henderson from scheduling its energy for sale to third parties  
14 in every hour of every day since July 16, 2009, the date of the Unwind Transaction in which Big  
15 Rivers regained functional control of its electrical system from Western Kentucky Energy Corp.,  
16 a subsidiary of E.On LLC.

17 b. Big Rivers to date continues to refuse to approve a scheduling protocol that would  
18 allow Henderson to offer its excess energy associated with its reserved capacity for sale to third  
19 parties. Rather, Big Rivers takes and sells this energy for its own benefit when it is profitable to  
20 do so, or, under its new practice effective June 1, 2016, purports to sell the energy into the  
21 currently unprofitable MISO market on Henderson’s behalf, and attempts to pass the resulting  
22 losses along to Henderson. Under either scenario, Henderson is prevented from deciding whether

1 energy associated with its reserved capacity will be generated, and, if so, how to dispose of that  
2 energy.

3 c. Big Rivers has refused, and continues to refuse, to accept Henderson's scheduling  
4 proposal setting forth notice requirements and other procedures for the sale of Henderson's  
5 excess energy to third parties. Because no procedures are in place that would allow Henderson to  
6 solicit firm or bona fide third-party offers for its excess energy, or to notify Big Rivers that it had  
7 received such an offer, Henderson is effectively precluded from providing such notice to Big  
8 Rivers.

9 **WITNESS: Gary Quick**

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1 **REQUEST NO. 3:** Refer to the Quick Testimony, page 6, lines 22-23, through page 7,  
2 lines 1-3, which state as follows: “In the event that Henderson’s reserved capacity is used to  
3 generate energy above Henderson’s native load, the energy above native load does not  
4 become ‘Excess Henderson Energy’ until and unless Henderson elects to either not  
5 schedule or not take the energy for its own use, or offer the energy for sale to third  
6 parties.”

7 a. Provide a detailed explanation regarding the process by which Henderson  
8 elects to either not schedule or not take for Henderson’s own use, the Station Two energy  
9 that is generated above Henderson’s native load. Include in this explanation in both words  
10 and numbers the distinction between Excess Henderson Energy, as that term is defined in  
11 the Power Sales Contract, as compared to “mere ‘excess’ or ‘surplus’ energy, which is that  
12 energy which exceeds the amount Henderson needs to serve its native load in a given period  
13 of time, but is equal to or less than the amount of energy associated with Henderson’s  
14 capacity reservation for that given period of time.”

15 b. Explain why any energy is generated above Henderson’s native load if  
16 Henderson elects to either not schedule or not take the Station Two energy above  
17 Henderson’s native load.

18 **RESPONSE:**

19 a. Section 3.8 of the Power Sales Contract defines “Excess Henderson Energy” as  
20 energy within Henderson’s reserved capacity that is “not scheduled or taken by City  
21 [Henderson].” Accordingly, energy which Henderson either takes for its own use, or schedules  
22 for sale to third parties, does not meet the contractual definition of “Excess Henderson Energy.”  
23 This energy is merely that energy which exceeds Henderson’s native load in a given time period,

1 but is within Henderson's reserved capacity for that time period, and is therefore available for  
2 Henderson to either schedule or take.

3           The amount of energy Henderson takes in a given time period is an amount equal  
4 to its native load, i.e. the amount of energy required to serve the electrical needs of the city and  
5 its inhabitants for that time period, plus any other energy within its reserved capacity that  
6 Henderson may take or schedule for sale to third parties. For example, Henderson currently  
7 reserves 115 megawatts of Station Two capacity, with the remaining 197 megawatts allocated to  
8 Big Rivers. If Henderson's native load in a given time period is 70 megawatt hours, then  
9 Henderson takes 70 megawatt hours of energy during that time period. If the remaining 45  
10 megawatt hours of energy that are within Henderson's reserved capacity are generated, then  
11 Henderson has the option of taking or scheduling that energy for sale to third parties, subject  
12 only to Big Rivers' first right to match a firm or bona fide third-party offer. As stated previously,  
13 Henderson has submitted a proposed protocol for scheduling such third-party sales, and Big  
14 Rivers has repeatedly rejected the proposal. There currently exists no process whereby  
15 Henderson decides whether to schedule or not schedule its energy which exceeds its native load,  
16 but is within its reserved capacity. This is because, under the existing scenario, there is no  
17 decision to make; Henderson has been denied the opportunity to exercise its option to schedule  
18 or take its energy for sale to third parties. Such energy thus is not being scheduled by default.

19           b.       Big Rivers is the party who has physical control of the Station Two generation  
20 facilities, and, as such, is ultimately the party in control of what energy is and is not generated.  
21 Henderson is unable to provide an explanation for Big Rivers' decision to generate and take  
22 "Excess Henderson Energy," i.e. energy which is above Henderson's native load and within  
23 Henderson's reserved capacity, but which Henderson does not schedule and does not take.

1 WITNESS: Gary Quick

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1 **REQUEST NO. 4:** Refer to the Quick Testimony, page 7, lines 22-24. Explain whether  
2 Henderson agrees with Big Rivers' position that Station Two Units 1 and 2 must run at a  
3 minimum of 115 MW and 120 MW, respectively, in order to maintain safe and reliable  
4 operation.

5 **RESPONSE:** Henderson has not been provided, nor is it aware of the existence of, any  
6 empirical data that would support Big Rivers' position concerning the minimum generation  
7 levels necessary for the Station Two Units to remain in safe and reliable operation. Therefore,  
8 Henderson is unable to state whether it agrees or disagrees with Big Rivers' assertion.

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10 **WITNESS: Gary Quick**  
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1 **REQUEST NO. 5:** Refer to the Quick Testimony, page 9, lines 1-9. Provide an update of  
2 the meeting that was to take place on October 26, 2016.

3 **RESPONSE:** Representatives of both parties met as scheduled on October 26, 2016, for  
4 the purpose of exploring potential options that would allow Big Rivers to idle one or both of the  
5 Station Two Units. The parties were unable to reach an agreement.

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7 **WITNESS:** Gary Quick  
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1 **REQUEST NO. 6:** Refer to the Quick Testimony, page 10, lines 1-3. Provide a detailed  
2 explanation for Henderson's assertion that an issue exists as to whether Big Rivers has  
3 raised an issue that falls within the Commission's jurisdiction over rates and service.

4 **RESPONSE:** Although Big Rivers has characterized its application as a request for  
5 enforcement of a contract, the request is better characterized as a request for the Commission to  
6 improperly engage in contractual interpretation, and alter the rights and responsibilities of the  
7 parties under a privately negotiated contract. Neither KRS 278.200 nor KRS 278.030, the statutes  
8 Big Rivers cites in its request for relief, provide the Commission with authority to grant the  
9 request.

10 The question Big Rivers presents in no way involves the regulation of utility rates or  
11 service within the meaning of KRS Chapter 278, and thus is insufficient to invoke exclusive  
12 Commission jurisdiction, or to trigger the inevitable and otherwise impermissible infringement  
13 of Henderson's contract rights. Henderson is not a "utility" as defined in KRS 278.010(3)(a), and  
14 thus is generally exempt from Commission regulation.

15 Big Rivers and Henderson are parties to a contract governing the operation of the Station  
16 Two facility for the production of power. The Power Sales Contract, as amended, sets forth the  
17 process for reserving and allocating capacity and the related energy to each party, and establishes  
18 the procedure to be followed by each party in taking its respective share of capacity and energy  
19 either for the provision of utility service to its own customers, or to offer for sale to third parties.  
20 Nothing in the Power Sales Contract establishes rates for utility service, or parameters for the  
21 delivery of such service. Nothing in the Contract calls for either party to furnish utility service to  
22 the other, or to pay or collect a rate in compensation for such service. The Contract embodies the  
23 unique relationship between the parties and the peculiar rights and obligations arising from it.

1 The Contract bears no relation to rates or service at all, much less usual service to the public  
2 generally. Even were Big Rivers to argue that an interpretation of certain contractual provisions  
3 in Henderson's favor would potentially impact the rates and/or quantity or quality of utility  
4 service to its customers, such an argument would be premature, and the impact would be no  
5 more than speculative. A request to interpret a contract for fear of uncertain collateral effects is  
6 still a request for contractual interpretation, and, absent involvement of rates or service, exceeds  
7 the scope of the Commission's jurisdiction.

8 The jurisdiction of the Commission is strictly limited by statute to the regulation of rates  
9 and service, and was not intended to usurp functions properly left to the courts, or to impede the  
10 contract rights of municipalities where rates or service are not impacted.

11 For all of these reasons, there exist significant issues related to the Commission's  
12 jurisdiction over this dispute, and counsel should be afforded an opportunity to address those  
13 issues.

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15 **WITNESS: Gary Quick**

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1 **REQUEST NO. 7:** Will Henderson allow Big Rivers to idle or place in standby service  
2 one or both units of Station Two when it is uneconomical to operate the units? If not,  
3 explain why not.

4 **RESPONSE:** Henderson has advised Big Rivers that Henderson is unaware of any  
5 contractual provision that would permit Big Rivers to idle one or both of the Station Two Units  
6 for economic or market reasons. Henderson has not advised Big Rivers that there exist no set of  
7 circumstances under which Henderson would agree for one or both units to be idled or placed  
8 into standby service. However, Henderson is unable to entertain Big Rivers' proposal in its  
9 current form, as the proposal provides no assurance to Henderson that energy associated with its  
10 reserved capacity would continue to be available at no increased cost to Henderson. Furthermore,  
11 Henderson remains concerned that a plan to cycle the Station Two Units on and off in  
12 accordance with market conditions would ultimately have a catastrophic impact on the aged  
13 units. Henderson would support the hiring, at Big Rivers' expense, of a qualified, independent,  
14 third party to conduct an engineering study for the purpose of addressing this concern.

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16 **WITNESS: Gary Quick**

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COPY

Law Offices of  
KING, DEEP AND BRANAMAN

Harry L. Mathison, Jr.  
W. Mitchell Deep, Jr.  
H. Randall Redding\*  
Leslie M. Newman  
Eric A. Shappell  
Jennifer P. Andrews  
Sharon W. Farmer  
Tara L. Hunter

127 North Main Street - P.O. Box 43  
Henderson, Kentucky 42419-0043  
Telephone (270) 827-1852  
FAX (270) 826-7729  
E-MAIL [rredding@kdblaw.com](mailto:rredding@kdblaw.com)

Leo King (1893-1982)  
William M. Deep (1920-1990)  
William M. Branaman (1925-1996)

\*Licensed to practice in Indiana

August 8, 2016

Jim Miller  
Sullivan, Mountjoy, Stainback & Miller, P.S.C.  
100 St. Ann Street  
P. O. Box 727  
Owensboro, Kentucky 42302-0727

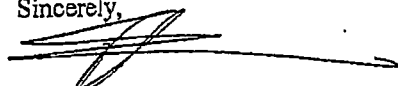
Dear Jim:

My client is in receipt of the July 8, 2016, correspondence and attachment referenced in your email of July 12, 2016, and is compelled to point out that Big Rivers is simply incorrect when it asserts that Henderson has been unwilling to extend a proposal for scheduling sales of its energy. To the contrary, Henderson has provided detailed proposals both during and after the arbitration proceeding and the subsequent legal challenges to the Arbitration Award. Furthermore, Henderson paid the expense to bring representatives of The Energy Authority (TEA) from Jacksonville, Florida, to Henderson for a meeting with Big Rivers. The TEA representatives explained in detail how Henderson would schedule its energy. Subsequent to the meeting, TEA responded to additional questions Big Rivers presented. Unfortunately, after all of the expense and time Henderson put forward, Big Rivers merely rejected the proposal out of hand. Big Rivers' most recent rejection is consistent with its prior rejections of Henderson's proposals. Big Rivers has in fact been on notice since before the closing of the 2009 Unwind Transaction that Henderson wished to establish a procedure for scheduling its energy.

On July 13, 2012, Henderson submitted to Big Rivers a proposal detailing the process whereby Henderson would schedule its energy for sale to third parties. Big Rivers rejected the proposal, arguing in part that the proposal was based upon a flawed Arbitration Award that Big Rivers was seeking to vacate. On October 27, 2015, Henderson resubmitted the proposal. Big Rivers again rejected Henderson's proposal, this time raising numerous logistical and operational objections. Henderson pointed out that Big Rivers' position had been rejected by the courts, and that the objections it continued to raise are addressed in the parties' contracts, and in MISO procedural rules.

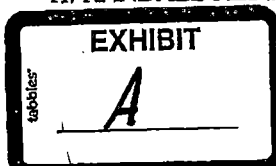
Henderson stands by the specific scheduling proposal it has now advanced on two separate occasions: in July 2012, shortly after the arbitration panel issued its award, and in October 2015, roughly two months after the Kentucky Supreme Court put to rest any further legal contest as to the validity of the Arbitration Award. Please respond at your earliest convenience with either an acceptance or a rejection of that proposal.

Sincerely,



H. RANDALL REDDING

CC: Hon. Dawn S. Kelsey  
Mr. Gary Quick





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

July 8, 2016

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

RE: Scheduling of Excess Henderson Energy

Dear Gary:

I wrote you and The Energy Authority ("TEA") on March 28, 2016, suggesting that the best path to establishing an agreed protocol by which HMP&L may schedule, take and market Excess Henderson Energy through TEA would be for HMP&L or TEA to draft a proposed procedure that the parties could follow through each step of the process. TEA had provided details about the principal scheduling steps it anticipates, and we did not believe the remaining commercial and contractual requirements for such a transaction would be difficult to resolve. We renewed this request in my letters to you of May 25, 2016, and June 3, 2016. We never received a draft procedure in response.

We do not know why HMP&L has been unwilling to provide Big Rivers with a proposed comprehensive protocol, but we remain very interested in putting a procedure in place. Big Rivers understands and accepts that HMP&L has the right to propose a firm and bona fide offer for Excess Henderson Energy, and when HMP&L eventually does so Big Rivers wants to have the commercial arrangements in place so the transaction can proceed smoothly.

As you know, Big Rivers has ongoing concerns regarding whether the scheduling process previously offered by TEA or any use of the financial scheduling process meets the requirements of the arbitration award. But despite these reservations, and without waiving them, Big Rivers attaches to this letter for HMP&L's consideration a draft, comprehensive protocol for handling of Excess Henderson Energy transactions based upon the TEA proposal. This is proposed in an effort to resolve the commercial issues surrounding future Excess Henderson Energy transactions, and is not an admission of any kind by Big Rivers.



Mr. Gary Quick  
July 8, 2016  
Page 2

We look forward to hearing from you about the attached protocol. When agreement to a protocol is reached, we would anticipate attaching it to a simple letter agreement signed by both parties that would promptly be submitted by Big Rivers for any approvals that may be necessary.

Respectfully,



Robert W Berry  
President and CEO  
Big Rivers Electric Corporation

## Procedure for Administering Excess Henderson Energy

July 8, 2016

### Preliminary

1. Henderson Municipal Power and Light ("HMPL") will be registered as a MISO Asset Owner ("AO") under The Energy Authority ("TEA") as a market participant.
2. TEA will post Contracts 1 and 2 as described below in the MISO Portal with HMPL as the Buyer and BREC as the Seller. One contract will specify Unit 1 as the source and the other will specify Unit 2 as the source.
3. TEA will post Contracts 3 and 4 as described below in the MISO Portal with TEA as the Buyer and HMPL as the Seller. One contract will specify Unit 1 as the source and the other will specify Unit 2 as the source.
4. The term "Excess Energy" used in this procedure has the meaning given to "excess energy" and "Excess Henderson Energy" in the May 30, 2012 award in the arbitration between BREC and the City of Henderson and HMPL.

	Contract 1	Contract 2	Contract 3	Contract 4
Contract Name	BRPS-HMPL DA @ BREC.HMP1	BRPS-HMPL DA @ BREC.HMP2	HMPL-TEA DA @ BREC.HMP1	HMPL-TEA DA @ BREC.HMP2
Buyer Name	HMPL	HMPL	TEA	TEA
Seller Name	BRPS	BRPS	HMPL	HMPL
Effective Start (EST)	6/1/2016	6/1/2016	6/1/2016	6/1/2016
Effective End (EST)	6/1/2018	6/1/2018	6/1/2018	6/1/2018
Source Location	BREC.HMP1	BREC.HMP2	BREC.HMP1	BREC.HMP2
Sink Location	BREC.HMP1	BREC.HMP2	BREC.HMP1	BREC.HMP2
Delivery Point	BREC.HMP1	BREC.HMP2	BREC.HMP1	BREC.HMP2
Contract Type	Pure Financial	Pure Financial	Pure Financial	Pure Financial
Schedule Approval	CounterpartyApproval	CounterpartyApproval	CounterpartyApproval	CounterpartyApproval
Settlement Market	DayAhead	DayAhead	DayAhead	DayAhead
Congestion Losses	Null	Null	Null	Null
Buyer Comments	Null	Null	Null	Null
Seller Comments	Null	Null	Null	Null
Contract Approval (EST)	Not Approved	Not Approved	Not Approved	Not Approved
RSG Deviation Contract	False	False	False	False

**Gary Quick**

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**From:** Gary Quick  
**Sent:** Monday, July 18, 2016 3:44 PM  
**To:** 'Patrick McGarry'  
**Cc:** 'Daina [REDACTED]'; Tammy [REDACTED]; Barbara [REDACTED]; [REDACTED]  
**Subject:** TEA Risk Advisor Services Agreement for June

Hi Pat:

I don't know how this ended up being sent to the City of Henderson, but obviously that should not have been done. I don't have the Services Agreement in front of me, perhaps someone misread the language. You should not send any billing or include any reference on your billing to the City of Henderson. Perhaps the confusion is the "City of Henderson Utility Commission" is HMP&L. We are indeed a separate entity from the City. Send all TEA billings to:

Henderson Municipal Power & Light  
100 Fifth Street  
PO Box 8  
Henderson, Kentucky 42419-0008

I'm just not sure how you ended up sending a bill to the City. We (HMP&L) have always received your prior billings and paid them. Someone must have changed something in your accounting department. Again, just send the bill to us and let me know if you find out what has taken place. We will pay the billing statements as soon as we receive them.

Thanks, Gary

---

**From:** Patrick McGarry [<mailto:pmcgarry@teainc.org>]  
**Sent:** Monday, July 18, 2016 3:15 PM  
**To:** Gary Quick  
**Subject:** Fwd: TEA Risk Advisor Services Agreement for June

Gary

Good afternoon.

Has there been a change in billing policy at HMPL?

Thanks

Pat

Begin forwarded message:

**From:** Daina [REDACTED] <[REDACTED]>  
**Date:** July 18, 2016 at 3:52:53 PM EDT  
**To:** Patrick McGarry <[pmcgarry@teainc.org](mailto:pmcgarry@teainc.org)>  
**Subject:** FW: TEA Risk Advisor Services Agreement for June

Hi Pat,

Can you help clarify this discrepancy with me? I have been sending the invoices to the same address since January and they are being paid. Should they have been going to a different contact? If so, please let me know who to direct this invoice to and invoices going forward. The Risk Advisor Agreement is with the City of Henderson, but the contact information references HMPL.

I apologize for any confusion.

Thank you for our help,  
Daina

Daina [REDACTED] | Senior Accountant

p: [REDACTED] f: 904.665.0242 | e: d[REDACTED]

[REDACTED]  
Jacksonville, FL - Portland, OR - Seattle, WA | [REDACTED]

---

**From:** Paul Titzer [mailto:paul[REDACTED]@cityofhendersonky.org]

**Sent:** July 18, 2016 10:30 AM

**To:** Daina [REDACTED]

**Subject:** FW: TEA Risk Advisor Services Agreement for June

I am returning this invoice since it is not for the City of Henderson. It is for Henderson Municipal Power and Light which separate from the City. Their phone number is [REDACTED]

Paul [REDACTED]  
[REDACTED]

City of Henderson  
PO Box 716  
Henderson, Ky 42419

[REDACTED]  
[paul.titzer@cityofhendersonky.org](mailto:paul.titzer@cityofhendersonky.org)

---

**From:** Cindy [REDACTED]

**Sent:** Monday, July 18, 2016 8:49 AM

**To:** Robert J. [REDACTED]; Paul [REDACTED]

**Subject:** FW: TEA Risk Advisor Services Agreement for June

---

**From:** Daina [REDACTED] [mailto:[REDACTED]@teainc.org]

**Sent:** Friday, July 15, 2016 12:23 PM

**To:** [REDACTED] [mailto:[REDACTED]@cityofhendersonky.org]

**Subject:** TEA Risk Advisor Services Agreement for June

Good afternoon,

Please find attached the invoice for the TEA Risk Advisor Services Agreement for June.

Feel free to contact me with any questions.

Thank you,  
Daina

**Daina [REDACTED] Senior Accountant**  
[REDACTED]

[REDACTED]  
Jacksonville, FL - Portland, OR - Seattle, WA | [REDACTED]

**Gary Quick**

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**From:** Gary Quick  
**Sent:** Monday, July 11, 2016 11:37 AM  
**To:** Matthew A. [REDACTED]  
**Subject:** RE: HPL Teleconference to Discuss BREC Letter

It does show that.....I simply missed it.....sorry.

---

**From:** Matthew A. [REDACTED] [mailto:m[REDACTED]@teainc.org]  
**Sent:** Monday, July 11, 2016 11:33 AM  
**To:** Gary Quick  
**Subject:** RE: HPL Teleconference to Discuss BREC Letter

Gary,

It should have come through in your time zone as 1pm, CPT. I apologize if it did not.

Thanks,

Matthew [REDACTED] | Director, RTO Trading  
[REDACTED]

[REDACTED]  
Jacksonville, FL - Portland, OR - Seattle, WA [REDACTED]

---

**From:** Gary Quick [mailto:gquick@hmpl.net]  
**Sent:** Monday, July 11, 2016 12:31 PM  
**To:** Matthew [REDACTED]  
**Subject:** RE: HPL Teleconference to Discuss BREC Letter

Hi Matt:

Will this be 1:00 Central Time or Eastern Time??

Gary

---

**From:** Matthew A. [REDACTED]  
**Sent:** Monday, July 11, 2016 11:29 AM  
**To:** Gary Quick  
**Subject:** RE: HPL Teleconference to Discuss BREC Letter

Gary,

Please forward the meeting invite as you prefer to Interested HPL staff.

Thanks,

Matthew [REDACTED] | Director, RTO Trading  
[REDACTED]

β  
[REDACTED]  
—Original Appointment—

**From:** Gary Quick [mailto:gquick@hmpl.net]

**Sent:** Monday, July 11, 2016 12:27 PM

**To:** Matthew [REDACTED]

**Subject:** Accepted: HPL Teleconference to Discuss BREC Letter

**When:** Thursday, July 14, 2016 1:00 PM-2:00 PM (UTC-06:00) Central Time (US & Canada).

**Where:** Resource-Conf-1 [REDACTED]

Linda Clary

---

**From:** Gary Quick <gquick@hmpl.net>  
**Sent:** Friday, July 08, 2016 8:46 AM  
**To:** Patrick McGarry; Matthew [REDACTED] David  
**Cc:** Wayne [REDACTED] Barbara [REDACTED] Brad [REDACTED] Randall Redding  
**Subject:** Big Rivers Letter  
**Attachments:** doc01680620160708083216.pdf

Good Morning:

The attached letter was hand delivered to me a few minutes ago. I wanted you to have a copy and perhaps we can schedule a conference call sometime next week. Please read the letter and attachments carefully. This may be in response to MISO contacting Big Rivers about the 2010 Station Two registration process.

Thanks and have a good weekend. Gary





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

July 8, 2016

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

RE: Scheduling of Excess Henderson Energy

Dear Gary:

I wrote you and The Energy Authority ("TEA") on March 28, 2016, suggesting that the best path to establishing an agreed protocol by which HMP&L may schedule, take and market Excess Henderson Energy through TEA would be for HMP&L or TEA to draft a proposed procedure that the parties could follow through each step of the process. TEA had provided details about the principal scheduling steps it anticipates, and we did not believe the remaining commercial and contractual requirements for such a transaction would be difficult to resolve. We renewed this request in my letters to you of May 25, 2016, and June 3, 2016. We never received a draft procedure in response.

We do not know why HMP&L has been unwilling to provide Big Rivers with a proposed comprehensive protocol, but we remain very interested in putting a procedure in place. Big Rivers understands and accepts that HMP&L has the right to propose a firm and bona fide offer for Excess Henderson Energy, and when HMP&L eventually does so Big Rivers wants to have the commercial arrangements in place so the transaction can proceed smoothly.

As you know, Big Rivers has ongoing concerns regarding whether the scheduling process previously offered by TEA or any use of the financial scheduling process meets the requirements of the arbitration award. But despite these reservations, and without waiving them, Big Rivers attaches to this letter for HMP&L's consideration a draft, comprehensive protocol for handling of Excess Henderson Energy transactions based upon the TEA proposal. This is proposed in an effort to resolve the commercial issues surrounding future Excess Henderson Energy transactions, and is not an admission of any kind by Big Rivers.

Mr. Gary Quick  
July 8, 2016  
Page 2

We look forward to hearing from you about the attached protocol. When agreement to a protocol is reached, we would anticipate attaching it to a simple letter agreement signed by both parties that would promptly be submitted by Big Rivers for any approvals that may be necessary.

Respectfully,



Robert W Berry  
President and CEO  
Big Rivers Electric Corporation

## Procedure for Administering Excess Henderson Energy

July 8, 2016

### Preliminary

1. Henderson Municipal Power and Light ("HMPL") will be registered as a MISO Asset Owner ("AO") under The Energy Authority ("TEA") as a market participant.
2. TEA will post Contracts 1 and 2 as described below in the MISO Portal with HMPL as the Buyer and BREC as the Seller. One contract will specify Unit 1 as the source and the other will specify Unit 2 as the source.
3. TEA will post Contracts 3 and 4 as described below in the MISO Portal with TEA as the Buyer and HMPL as the Seller. One contract will specify Unit 1 as the source and the other will specify Unit 2 as the source.
4. The term "Excess Energy" used in this procedure has the meaning given to "excess energy" and "Excess Henderson Energy" in the May 30, 2012 award in the arbitration between BREC and the City of Henderson and HMPL.

	Contract 1	Contract 2	Contract 3	Contract 4
Contract Name	BRPS-HMPL DA @ BREC.HMP1	BRPS-HMPL DA @ BREC.HMP2	HMPL-TEA DA @ BREC.HMP1	HMPL-TEA DA @ BREC.HMP2
Buyer Name	HMPL	HMPL	TEA	TEA
Seller Name	BRPS	BRPS	HMPL	HMPL
Effective Start (EST)	6/1/2016	6/1/2016	6/1/2016	6/1/2016
Effective End (EST)	6/1/2018	6/1/2018	6/1/2018	6/1/2018
Source Location	BREC.HMP1	BREC.HMP2	BREC.HMP1	BREC.HMP2
Sink Location	BREC.HMP1	BREC.HMP2	BREC.HMP1	BREC.HMP2
Delivery Point	BREC.HMP1	BREC.HMP2	BREC.HMP1	BREC.HMP2
Contract Type	Pure Financial	Pure Financial	Pure Financial	Pure Financial
Schedule Approval	CounterpartyApproval	CounterpartyApproval	CounterpartyApproval	CounterpartyApproval
Settlement Market	DayAhead	DayAhead	DayAhead	DayAhead
Congestion Losses	Null	Null	Null	Null
Buyer Comments	Null	Null	Null	Null
Seller Comments	Null	Null	Null	Null
Contract Approval (EST)	Not Approved	Not Approved	Not Approved	Not Approved
RSG Deviation Contract	False	False	False	False

#### Operating Day Minus One (OD-1) Option 1

1. When authorized by HMPL, TEA will communicate a bid ("firm bona fide offer") to BREC in writing by 0800 EST MISO Market Time or in any event no later than three hours before the MISO Day-Ahead Market Submittal Deadline for the next day or days.
  - a. The quantity of the firm bona fide offer would be calculated by TEA using a TEA hourly forecast of HMPL load and the HMPL Station 2 Reservation Quantity.
  - b. It is not required that the firm bona fide offer be for all hours for which Excess Energy is expected.
  - c. A firm bona fide offer for any hour would include a fixed quantity and fixed price.
  - d. If no firm bona fide offer is received by 0800 EST or in any event no later than three hours before the MISO Day-Ahead Market Submittal Deadline, it will be assumed that there is no such offer.
2. BREC would notify TEA by 1000 EST MISO Market Time or in any event no later than one hour before the MISO Day-Ahead Market Submittal Deadline as to whether it was exercising Option 1, the right to purchase the Excess Energy at the same terms as indicated in the firm bona fide offer. HMPL would be responsible for the fixed and variable costs of generating the energy in accordance with existing contractual obligations.
  - a. If BREC does not respond by 1000 EST or in any event no later than one hour before the MISO Day-Ahead Market Submittal Deadline, it would be assumed that BREC was declining to exercise its Option 1.
  - b. BREC Option 1 would require acceptance of all terms of the firm bona fide offer, that is, BREC could not select some hours and not others.
  - c. If BREC does not exercise its Option 1, HMPL will accept the firm bona fide offer.

#### Operating Day Minus One Option 2

1. If no firm bona fide offer were submitted to BREC for consideration, BREC may exercise its right to purchase Excess Energy by paying \$1.50/MWh and its existing contractual obligation for the variable cost of generating the Excess Energy taken by BREC. In the event BREC exercises this right, it will provide HMPL with notice at the end of each calendar month of the amount of Excess Energy, if any, purchased by it during the previous month.
2. HMPL will retain the Excess Energy and remain responsible for the fixed and variable costs attributable to generating the Excess Energy except as otherwise expressly provided in this procedure.

#### Operating Day (OD)

1. TEA will submit a series of FinScheds by 1200 MISO Market Time on the OD, with the Source, Sink, and Delivery Point designated as BREC.HMP1 or BREC.HMP2 (whichever is appropriate)
  - a. FinSched 1 under Contract 1 or 2 will be for all Excess Energy in each hour, with HMPL as the Buyer and BREC as the Seller.
    - i. If BREC exercises its Option 1, the FinSched 1 quantity for any hour for which BREC was exercising its Option 1 would be reduced by the Excess Energy quantity.
    - ii. If BREC exercises its Option 2, the FinSched 1 quantity for any hour for which BREC was exercising its Option 2 would be reduced by the Excess Energy quantity.

- b. FinSched 2 under Contract 3 or 4 will be for all Excess Energy sold through the firm bona fide offer, with TEA as the Buyer and HMPL as the Seller
- 2. BREC will confirm FinSched 1 before the MISO FinSched Deadline for the appropriate Operating Day.
- 3. TEA will confirm FinSched 2 before the MISO FinSched Deadline for the appropriate Operating Day.

#### Monthly MISO Settlements

- 1. Monthly MISO settlements would include the following
  - a. HMPL would receive all of the MISO Day-Ahead (DA) Energy revenues associated with the Excess Energy for those hours for which there was no firm bona fide offer, BREC did not exercise its Option 1, and BREC did not exercise its Option 2. These revenues would appear in the TEA settlement statements under the HMPL asset owner.
  - b. TEA would receive the MISO DA Energy revenues associated with the hours and quantities in the bona fide offer for which BREC did not exercise its Option 1.
  - c. BREC would receive the MISO DA Energy revenue associated with the hours and quantities of its exercise of Option 1 or its exercise of Option 2.
  - d. MISO Administrative Charges applicable to the FinScheds would flow to the Buyers and Sellers designated in the FinScheds.

#### Monthly Invoicing

- 1. HMPL will invoice TEA under the terms of any firm bona fide offer for which BREC did not exercise its Option 1 based upon the quantities and prices for each hour.
- 2. HMPL will invoice BREC under the terms of any firm bona fide offer for which BREC did exercise its Option 1, based upon the quantities and prices for each hour.
- 3. If BREC exercises its Option 2, BREC will be responsible to HMPL in accordance with its existing contractual obligations for \$1.50/MWh times the number of MWh purchased under Option 2 and the associated variable costs of generating that energy.
- 4. HMPL will be obligated to BREC for Station 2 variable costs as follows:
  - a. For any hour in which actual Station 2 net generation is greater than the HMPL Station 2 Reservation Quantity, HMPL will be responsible in accordance with its existing contractual arrangements for the variable costs of the amount of energy associated with the HMPL Station 2 Reservation Quantity, reduced by any MWhs sold to BREC under Option 2.
    - i. Additionally, if the sum of HMPL actual load and Excess Energy sold under a firm bona fide offer or BREC Option 1 is greater than the amount of energy associated with the HMPL Station 2 Reservation Quantity, BREC will charge and invoice HMPL at the Station 2 MISO Real-Time Locational Marginal Price for the amount of that energy that exceeds the amount of energy associated with the HMPL Station 2 Reservation Quantity.
  - b. For any hour in which actual Station 2 net generation is less than the HMPL Station Two Reservation Quantity, HMPL will pay variable costs based upon actual Station 2 generation, reduced by any MWhs sold to BREC under Option 2.
    - i. Additionally, if the sum of HMPL actual Load and Excess Energy sold under a firm bona fide offer or BREC Option 1 is greater than Station 2 net generation, BREC will charge and invoice HMPL at the Station 2 MISO Real-Time Locational Marginal Price for the amount of that energy that exceeds the actual Station 2 net generation.

It was great meeting you and Bob. This email is a follow up to our January 27 meeting and is subject to the same agreed terms and conditions set out in the January 15, 2016, Letter Agreement signed by Gary Quick and Robert Berry. We're glad you asked for clarification because neither of the "Approaches" outlined in your January 28 email accurately reflects the process that Matt and I described during our January 27 Meeting. Here is a summary of our proposed process including additional scheduling details for your consideration. As stated, we will do our best to accommodate any timeline changes to meet BREC's scheduling needs. In addition, it probably goes without saying, but please note that although TEA's name is used throughout the below, our relationship with Henderson is strictly contractual, and subject to change without any adverse impact to the below. Please let us know if you have any questions.

- TEA would register HPL an Asset Owner with MISO under the TEA Market Participant
- When authorized by HPL, TEA would communicate a bona fide firm offer to BREC via email by 0800 EST/EDT for the next day, weekends, and/or holidays
- The firm offer would be predicated on hourly volumes within HPL's Annual Reserved Capacity
- The firm offer may not be explicit to every hour (i.e. Bid may only be for hours ending 5 through hours ending 23 EST/EDT)
- BREC will assess the offer with ACES and notify TEA by 0900 EST/EDT via recorded phone call as to whether or not it intends to exercise its first right of refusal and TEA will confirm the phone call
- If BREC has not notified TEA of a decision concerning the exercise of its first right of refusal by 0900 EST/EDT then TEA and Henderson will proceed as if BREC had affirmatively declined to exercise its first right of refusal
- BREC's decision to exercise or to not exercise its first right of refusal will be for the entire schedule (i.e. No "cherry picking" hours)
- If BREC chooses to exercise its first right of refusal, the existing billing process with HPL will be maintained and BREC will pay the offer price
- If BREC decides not to exercise its first right of refusal, (or if it fails to exercise the right before 0900 EST/EDT) TEA will populate a Day Ahead (DA) MISO Finsched in the MISO portal with the schedule volumes by 1200 EST/EDT of transaction date
- The MISO Finsched will be predicated on a long-term MISO Finsched Contract with the defined "Source", "Sink", & "Delivery Point" designated as the resource bus
- BREC would agree to confirm the Finsched volumes by 1600 EST/EDT on the transaction date
- Both parties agree that all times will be flexible to accommodate all parties and potential FERC 809 implications



COPY

June 17, 2016

Mr. Bob Berry  
Big Rivers Electric Corporation  
PO Box 24  
Henderson, KY 42419-0024

Dear Bob:

I am writing in response to your letter of June 3, 2016. My letter dated May 31 was clear, and I have nothing to add except to say that in your June 3 letter you once again misstate the facts. Consequently, I do not believe that there is any need for us to meet to discuss Henderson's and Big Rivers' respective positions. We would encourage you to consult with your attorneys.

Sincerely,

  
Gary Quirk  
General Manager  
Henderson Municipal Power & Light



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

June 3, 2016

Mr. Gary Quick  
Henderson Municipal Power and Light  
P. O. Box 8  
Henderson, KY 42419

Dear Gary:

I have your response of May 31, 2016, to my letter to you of May 25, 2016. If I correctly understand your response, you disagree generally with everything in my letter, but provide no specifics about why you believe I am wrong on any individual point. You also said nothing directly about my statement that we had received no response to my letter dated March 28, 2016, to you and TEA. Do you plan to respond to that letter?

I certainly intend to state facts correctly, and do not understand how the Station Two Contracts can be interpreted differently. You must be seeing something in the Station Two Contracts that I do not. We need to meet immediately so you can help me understand your reasoning and why you believe Big Rivers should be required to purchase excess energy owned by HMP&L when Big Rivers does not want it. Please give me some dates in the next two weeks when we can meet, wherever you want, to talk about these issues. In the meantime, Big Rivers intends to proceed as outlined in my May 25 letter.

Sincerely yours,

A handwritten signature in cursive script that reads "Robert W. Berry".

Robert W. Berry  
President and CEO  
Big Rivers Electric Corporation





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

May 25, 2016

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

Re: Power Sales Contract between the City of Henderson, Kentucky and Big Rivers Rural Electric Co-Operative Corporation dated August 1, 1970, as amended – Section 3.8

Dear Gary:

As you are aware, Big Rivers Electric Corporation (hereinafter "Big Rivers") has for some time now been in discussions with the City of Henderson, Kentucky (hereinafter "City") regarding the ongoing costs associated with generating power from Station Two. On multiple occasions over the last year, Big Rivers has advised the City that power often can be purchased on the wholesale market for less than the variable costs associated with producing power at Station Two. Because the power generated from Station Two during these time periods is not economically competitive, Big Rivers has recommended various alternatives to the City regarding modifications that should be made to the ongoing operations of Station Two to help maintain the economic competitiveness of the power being produced from Station Two and lower the costs of serving the load of both Big Rivers and the City. In particular, Big Rivers recommended to the City that at least one of the Station Two units be idled until such time as it becomes economically competitive to resume generation of electricity from both units on a full time basis. Up to this point, however, the City has not been interested in this approach, or any other approach recommended by Big Rivers to address the economic competitiveness of these units. Rather, the City has insisted that both Station Two units be operated on a must run basis despite the fact that they are frequently not producing economically competitive electricity. As such, during these times, Big Rivers has been forced to address the reliability issues associated with the generation of power from Station Two when it is not needed to serve either party's existing load by selling the Excess Henderson Energy into the market at a loss.

As a general matter, Big Rivers has historically exercised its rights under Section 3.8(a) of the Power Sales Contract between the City and Big Rivers dated August 1, 1970, as amended (hereinafter "Contract") by purchasing energy associated with the City's reserved capacity from Station Two that has not been scheduled or taken by the City (such energy being referred to hereinafter as "Excess Henderson Energy"). In addition, Big Rivers has compensated the City in accordance with the terms of Section 3.8(c) of the Contract when it has exercised this right to purchase and utilize the Excess Henderson Energy, including providing, at its own cost, the full replacement of all fuels and reagents consumed from Station Two fuel and reagent reserves for the production of the Excess Henderson Energy and paying the portion of the sludge disposal costs attributable to the Excess Henderson Energy (hereinafter collectively referred to as

Mr. Gary Quick  
May 25, 2016  
Page Two

"Variable Costs"). Given changes in the marketplace, particularly the low price of natural gas, there have been an increasing number of hours when Big Rivers has purchased Excess Henderson Energy even when the Variable Costs of producing it have exceeded the prevailing market price for energy, resulting in Big Rivers assuming responsibility for the Excess Henderson Energy at a financial loss to itself.

While it has historically been Big Rivers' practice to take and utilize the Excess Henderson Energy each month, thereby allowing the City to avoid the Variable Costs noted above, and Big Rivers has compensated the City accordingly, there is nothing in Section 3.8(a) that imposes upon Big Rivers any obligation to take and pay for the Excess Henderson Energy and associated Variable Costs. To the contrary, Section 3.8(a) provides that in the event that the City does not take the full amount of energy associated with its reserved capacity from Station Two, Big Rivers may, at its discretion, take and utilize all such energy (or any portion thereof designated by Big Rivers) not scheduled or taken by the City. The purpose of this letter is to provide you with notice that beginning no later than June 1, 2016, from time to time Big Rivers may not take and utilize the Excess Henderson Energy generated from Station Two as it has voluntarily done in the past, especially in light of the fact that the Excess Henderson Energy being produced is often not economically competitive. Please understand that this does not mean that Big Rivers will never exercise its rights under Section 3.8(a) to take and utilize all, or a portion of, such energy not scheduled or taken by the City as permitted under the Contract. Indeed, at times, Big Rivers fully intends to take and utilize the Excess Henderson Energy. But, in the spirit of cooperation and in consideration of the longstanding relationship of the parties, Big Rivers deems it advisable to provide you with advance notice of its change in practice concerning the Excess Henderson Energy described above. Hopefully, this notice will allow the City to plan accordingly for this change as it deems necessary or advisable.

Going forward, Big Rivers will continue to provide the City with notice at the end of each calendar month of the amount of Excess Henderson Energy, if any, taken by Big Rivers during the previous month as set forth in Section 3.8(c) of the Contract. In addition, Big Rivers will continue to pay the City for such Excess Henderson Energy, and will continue to be responsible for the associated Variable Costs, in the manner set forth in the Contract for that portion of the Excess Henderson Energy, if any, taken by Big Rivers during the previous month. In the event that there is Excess Henderson Energy generated that Big Rivers has not taken pursuant to Section 3.8(a), the City will remain responsible for the Variable Costs attributable to the Excess Henderson Energy in accordance with the terms of the various agreements between the parties. Additionally, the City will no longer receive the \$1.50 per MWh for that portion of the Excess Henderson Energy not taken by Big Rivers during the previous calendar month.

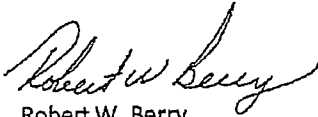
As you know from my letter dated March 28, 2016, Big Rivers and the City are continuing to make progress toward reaching a mutually acceptable agreement whereby The Energy Authority (hereinafter "TEA") will act as a Market Participant on behalf of the City related to Excess Henderson Energy. To date, however, the City has not responded to that letter. Therefore, until such time as Big Rivers and the City are able to reach an agreement on the manner in which TEA will assist the City with the sale of the Excess Henderson

Mr. Gary Quick  
May 25, 2016  
Page Three

Energy into the market, Big Rivers will continue to assist the City in delivery of the Excess Henderson Energy which is generated yet not taken by Big Rivers and will allocate to the City the revenues, if any, from the Excess Henderson Energy not taken by Big Rivers less any associated costs of delivery incurred by Big Rivers.

In the event this letter generates any questions or warrants further discussion, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in cursive script that reads "Robert W. Berry".

Robert W. Berry  
President and CEO  
Big Rivers Electric Corporation

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Thursday, March 31, 2016 4:55 PM  
**To:** 'Patrick McGary'  
**Subject:** TEA Authorization  
**Attachments:** TEA AUTHORIZATION.pdf

Hi Pat:

Here you go; the authorization was dated in October 2010. Please note that I apparently sent copies of the email authorization to BREC and MISO. Let me know if you need any additional information. If you need a recent approval, just drop me a note and I will respond.

Thanks, Gary

Henderson Municipal Power & Light  
100 Fifth Street  
Henderson, KY 42420

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**Wayne Thompson**

---

**From:** Gary Quick  
**Sent:** Friday, October 22, 2010 4:19 PM  
**To:** William T. [REDACTED], Sam H. [REDACTED]  
**Cc:** Mark Bailey; [REDACTED] Wayne [REDACTED]  
**Subject:** Henderson Municipal Power & Light - Station Two Generation Facilities

Good Afternoon:

Thank you for taking the time to visit with us. Please accept this email as formal authorization for The Energy Authority to represent Henderson Municipal Power & Light in discussions with the Midwest ISO and the Big Rivers Electric Corporation regarding MISO membership, market participation, and registration of the Henderson Station Two Generation Facilities.

Please note that I have sent copies of this authorization to representatives of the Midwest ISO and the Big Rivers Electric Corporation.

Thank you, Gary

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Wednesday, March 30, 2016 11:21 AM  
**To:** 'Patrick McGarry'  
**Subject:** RE: Question

Yes.....Gary

---

**From:** Patrick McGarry [<mailto:pmcgarry@teainc.org>]  
**Sent:** Wednesday, March 30, 2016 9:40 AM  
**To:** Gary Quick  
**Subject:** Question

Gary,

Was BREC the BA for HMPL prior to MISO?

*Pat*

Patrick McGarry|Managing Director, Midwest

p: [REDACTED]

Th [REDACTED]  
Jacksonville, FL - Portland, OR - Seattle, WA | [REDACTED]







1. HMPL would bear the variable expenses/costs for EHE that is sold to TEA or Big Rivers at the offer price from a third party.

2. HMPL would bear the risk of any change in the volume of EHE due to load forecast error or variance in Station Two generation.

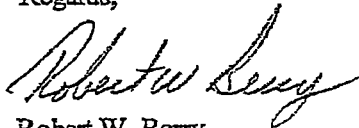
3. As to any EHE not purchased by TEA pursuant to a bona fide, firm offer, or by Big Rivers by matching that offer, Big Rivers will have the right but not the obligation to purchase that EHE pursuant to Section 3.8(c) of the Power Sales Contract, i.e., \$1.50 per MWh plus variable costs associated with this energy.

4. Relatedly, if TEA does not submit a bid for EHE, Big Rivers does not exercise its right to purchase EHE at \$1.50/MWh, and Station Two cannot be backed down low enough to eliminate EHE, HMPL would bear the financial responsibility for EHE.

We remain hopeful the parties can productively discuss the Proposed TEA Scheduling. Nonetheless, in sending this letter Big Rivers does not concede that the Proposed TEA Scheduling is consistent with the arbitration award and reserves its rights on the issue.

We look forward to your response.

Regards,

A handwritten signature in cursive script that reads "Robert W. Berry".

Robert W. Berry



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

March 17, 2011

Mr. Gary Quick  
General Manager  
Henderson Municipal Power & Light  
P. O. Box 8  
Henderson, KY 42420


Dear Gary:

I am writing in regard to your letter of February 10, 2011 and March 9, 2011 follow-up telephone conference among representatives of Big Rivers Electric Corporation ("Big Rivers"), Henderson Municipal Power & Light ("HMPL"), and The Energy Authority ("TEA"). As I understand it, the purpose of the February 10 letter and March 19 teleconference was to inform Big Rivers of HMPL's desire for TEA to assist HMPL in selling the energy output associated with HMPL's capacity reservation from Station II into the Midwest ISO market, and to request Big Rivers' consent and cooperation in facilitating those efforts. Your February 10 letter asks that Big Rivers "let [you] know [its] reaction to using the proposed Finsched process."

Big Rivers cannot consent or otherwise agree to the arrangement you have proposed. As you are well aware, Big Rivers and HMPL are currently in arbitration before a AAA panel concerning this very issue — i.e., whether HMPL has the right under the Power Sales Contract, as amended, to market and sell energy associated with its capacity reservation that is in excess of the hour-to-hour needs of the City of Henderson and its inhabitants, without first giving Big Rivers the opportunity to purchase such energy at the contractually-specified price of \$1.50/MWh (with Big Rivers providing fuel and other variable costs). Big Rivers has consistently and vigorously denied that HMPL possesses any such right under the terms of the Power Sales Contract. The primary relief sought by Big Rivers in the pending arbitration is an award declaring that HMPL has no right to sell energy associated with its capacity reservation to third parties without first making that energy available to Big Rivers at \$1.50/MWh, as expressly provided in Section 3.8 of the parties' Power Sales Contract. For Big Rivers to agree to the process you now propose would be tantamount to surrendering the very issue we are currently litigating. Big Rivers cannot agree to that.

Big Rivers has reviewed the Power Sales Contract, and is aware of no provision in that agreement (or any other agreement between Big Rivers and HMPL) that would obligate Big Rivers to assist or consent to the type of arrangement you have proposed. Indeed, any such arrangement would be in direct contravention of the express terms of the Power Sales Contract. If you disagree, I would ask that you please identify, in writing, the contractual provisions that you contend impose such an obligation on Big Rivers.

Sincerely yours,

  
C. William Blackburn  
Senior Vice President  
Financial & Energy Services & CFO  
Big Rivers Electric Corporation

cc Mr. Mark Bailey

BRYAN [REDACTED]

BRYAN C [REDACTED]

March 1, 2016 [REDACTED]

VIA E-MAIL AND US MAIL

K. Gregory [REDACTED]

Fl. Randall Redding  
King, Deep and Branaman  
127 North Main Street  
Post Office Box 43  
Henderson, KY 42419-0043

Re: Communications between TEA and Big Rivers

Gentlemen:

In January of this year, at the insistence of Henderson, Big Rivers and Henderson executed an agreement designating the meeting(s) between TEA and Big Rivers confidential and not to be used in litigation.

On February 12, 2015, Henderson filed a "Petition for an Award of Damages" in Henderson Circuit Court. In its petition, Henderson accuses Big Rivers of "the wrongful seizure and utilization of Henderson's Excess Energy and generating capacity" and that this "continue(s) to cause Henderson to suffer monetary loss." Such an allegation is belied by the ongoing discussions between TEA and Big Rivers, where the parties are endeavoring to develop a mutually-acceptable resolution that would enable Henderson to sell the Excess Energy to third parties.

Big Rivers remains committed to arriving at an acceptable protocol for the sale of Excess Energy with TEA. Nonetheless, in light of the ongoing litigation brought by Henderson and the contentions made by Henderson, it would be unnecessarily confusing and misleading to continue communications between TEA and Big Rivers in secret. Accordingly, Big Rivers places Henderson on notice pursuant to this letter that Big Rivers does not intend for any future communications between any party on the subject of the sale of Excess Energy to be confidential.

Bryan [REDACTED]

K. Gregory [REDACTED]  
H. Randall Redding  
March 1, 2016  
Page 2

Very truly yours,

 [REDACTED]  
C. Scott [REDACTED]

CSG:lac

Cc: Theresa [REDACTED]



January 15, 2016

Robert W. Berry  
President and CEO  
Big Rivers Electric Corporation  
P.O. Box 24  
Henderson, KY 42419-0024

RE: Excess Henderson Energy

Dear Bob:

This is to memorialize the terms and conditions upon which HMP&L will agree to a meeting proposed in your letter to me of December 11, 2015. If BREC still wants to have a meeting please and return a copy of this letter to me.

HMP&L expressly denies that the questions posed in your November 5, 2015, letter involve any genuine obstacles to HMP&L's sales of Excess Henderson Energy. The purpose of this meeting, an effort, on HMP&L's part, to resolve and compromise a disputed claim. It is agreed, therefore, that the occurrence of the meeting, all discussions that take place during the course of the meeting, any follow up conferences, and any minutes or other records prepared in connection with the meeting shall be kept strictly confidential, and shall not be offered as evidence, or admitted in evidence, in any judicial or arbitral forum at any time. BREC and HMP&L further agree that there will be no tape or other voice recording of the meeting's discussions.

The meeting will take place at HMP&L's office on January 22, 2016, at 9:30 a.m. local time. BREC and HMP&L will each send no more than two representatives to the meeting. These representatives will be either members of BREC's and HMP&L's respective operational staffs, or employees of ACES or TEA who participate as subject matter consultants to BREC or HMP&L, respectively. No attorneys will attend or participate in the meeting.

Sincerely yours,

  
Gary Quick

On behalf of Big Rivers Electric Corporation, the above terms and conditions are accepted:

---

By: Robert W. Berry  
Its: President and CEO

61447676.1

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Wednesday, January 13, 2016 10:46 AM  
**To:** Patrick McGary  
**Subject:** General Information

Hi Pat:

I wanted you to see the email below.

Gary

---

**From:** [REDACTED] Greg [mailto:g[REDACTED]]  
**Sent:** Wednesday, January 13, 2016 10:22 AM  
**To:** [REDACTED] Scott  
**Cc:** [REDACTED] Theresa ([REDACTED])  
**Subject:** RE: Meeting

Dear Scott,

We want the meeting to remain limited to two representatives from BREC and two from HMP&L. We also do not want to modify the confidentiality agreement as you suggest. We should be able to confirm the January 22 date for the meeting by tomorrow or, at the latest, by Friday.

Greg

K. Gregory [REDACTED]

[REDACTED]

---

**From:** [REDACTED] Scott [mailto:Scott.[REDACTED]]  
**Sent:** Tuesday, January 12, 2016 4:21 PM  
**To:** [REDACTED] Greg  
**Cc:** [REDACTED] Theresa ([REDACTED])  
**Subject:** Meeting

Greg,

Bob Berry and Mark Eacret at BREC do not understand why Gary wishes to limit attendance to two representatives total from among Big Rivers, [REDACTED]. For the meeting to have the best chance of success, there should be at least one operational representative from each of

those organizations. Otherwise, since they all need to be consulted, the danger of missing key input at the meeting – along with the danger of miscommunication after the meeting – is high and would needlessly delay progress. Big Rivers would welcome others from Gary's organization to attend, but we request that there not be an artificial limitation to the number of attendees. Nonetheless, if Gary refuses to permit more than two representatives from our side, Bob and Mark will participate. They have a strong preference for January 22.

We also request one slight change to the confidentiality agreement. In the interest of all parties, if the meeting is unsuccessful and litigation cannot be avoided, the parties should be able to inform the court that in response to the exchange of letters late last year a meeting did in fact occur, but did not result in a resolution of the dispute. That would place those (admissible) letters in their proper context. Of course, we fully agree that nothing from the meeting can be disclosed to others, whether or not in a litigation context. Please let us know if you agree with this change.

I look forward to hearing back from you as soon as possible.

Scott

**BRYAN**

C. Scott

Partner

scott.g

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bcllp2016

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**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Tuesday, January 12, 2016 8:22 PM  
**To:** pmcgarry@teainc.org  
**Subject:** Fwd: Meeting

Hi Pat:

Let me know your reaction to the email.

Call whenever you have time.

Thank you, Gary

Sent from my iPhone

Begin forwarded message:

**From:** [REDACTED] Greg" [REDACTED]  
**Date:** January 12, 2016 at 5:10:25 PM CST  
**To:** Gary Quick <[gquick@himpl.net](mailto:gquick@himpl.net)>  
**Subject:** FW: Meeting

Gary, let's talk tomorrow.

Greg

---

**From:** [REDACTED] Scott  
**Sent:** Tuesday, January 12, 2016 4:20:34 PM  
**To:** [REDACTED] Greg  
**Cc:** [REDACTED] Theresa [REDACTED]  
**Subject:** Meeting

Greg,

Bob Berry and Mark Eacret at BREC do not understand why Gary wishes to limit attendance to two representatives total from among Big Rivers, [REDACTED]. For the meeting to have the best chance of success, there should be at least one operational representative from each of those organizations. Otherwise, since they all need to be consulted, the danger of missing key input at the meeting – along with the danger of miscommunication after the meeting – is high and would needlessly delay progress. Big Rivers would welcome others from Gary's organization to attend, but we request that there not be an artificial limitation to the number of attendees. Nonetheless, if Gary refuses to permit more than two representatives from our side, Bob and Mark will participate. They have a strong preference for January 22.



We also request one slight change to the confidentiality agreement. In the interest of all parties, if the meeting is unsuccessful and litigation cannot be avoided, the parties should be able to inform the court that in response to the exchange of letters late last year a meeting did in fact occur, but did not result in a resolution of the dispute. That would place those (admissible) letters in their proper context. Of course, we fully agree that nothing from the meeting can be disclosed to others, whether or not in a litigation context. Please let us know if you agree with this change.

I look forward to hearing back from you as soon as possible.

Scott

**BRYAN**



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bc1p2016

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## Gary Quick

---

**From:** Gary Quick  
**Sent:** Thursday, January 07, 2016 4:11 PM  
**To:** 'Patrick McGarry'  
**Cc:** Wayne [REDACTED]  
**Subject:** RE: Trip to Kentucky

Hi Pat:

We would select Thursday morning January 14 at 9:30 central time (10:30 eastern) for the start of the call. We will stay on the call for whatever time you and Matt need. Wayne [REDACTED] our Power Production Director, will join me on the call. Let me know what phone number you want me to call for you.

Thanks, Gary

---

**From:** Patrick McGarry [<mailto:pmcgarry@teainc.org>]  
**Sent:** Thursday, January 07, 2016 3:10 PM  
**To:** Gary Quick  
**Subject:** RE: Trip to Kentucky

Meeting Times(EST) to Discuss History & Negotiation Parameters

Thursday, 1/14/16 Between 10:30-1:00 & From 2:30-4:00  
Friday, 1/15/16 Between 12:00-2:00  
Monday, 1/18/16 Between 10:30-1:30  
Tuesday, 1/19/16 Between 10:30-12:00

---

**From:** Gary Quick [<mailto:gquick@hmp1.net>]  
**Sent:** Thursday, January 07, 2016 3:42 PM  
**To:** Patrick McGarry  
**Subject:** RE: Trip to Kentucky

Hi Pat:

I will run the dates by Big Rivers and get back to you. I thought you would need a travel day coming in to Henderson, a day for the meeting (even if the meeting only takes a couple of hours), and a travel day going back to Jacksonville. Anyway, we can talk about this. Also, we can schedule a one hour call anything that works for you and Matt prior to the meeting.

I can call you now, but let me know if you want me to call your cell phone or office number.

Gary

---

**From:** Patrick McGarry [<mailto:pmcgarry@teainc.org>]  
**Sent:** Thursday, January 07, 2016 2:14 PM  
**To:** Gary Quick

**Cc:** Haynes, Greg  
**Subject:** RE: Trip to Kentucky

Gary,

Happy New Year!

Would either of the following dates work?

- 1/21-1/22
- 1/25-1/26

Also- Matt and I would like to schedule a one hour conference call with you prior to our trip so I can get Matt up to speed on the history of the Big Rivers/ Henderson dispute as well as the current state of the plant from an operational perspective.

Would you have five minutes to speak today?

Thanks

Pat

---

**From:** Gary Quick [mailto:gquick@hmpl.net]  
**Sent:** Thursday, January 07, 2016 2:33 PM  
**To:** Patrick McGarry  
**Cc:** [REDACTED] Greg  
**Subject:** Trip to Kentucky

Hi Pat:

Would you check with Matt Johnson and let me know when you and Matt could come to Henderson for a meeting with Big Rivers concerning the scheduling of Excess Henderson Energy?? It would help if you could give me a couple of schedule options.

After you respond, I will visit with Big Rivers and get back to you. I hope we can find a time and date that works for everyone; in advance, thanks for helping us.

Gary

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Thursday, January 07, 2016 3:00 PM  
**To:** 'Eacret, Mark J'  
**Subject:** RE: Excess Energy Meeting

Hi Mark:

The TEA representative sent me a note a few minutes ago and said that they could be available for a meeting on Thursday, January 21 or Friday, January 22. The other option is Monday January 25 or Tuesday January 26.

Let me know your reaction. Thanks, Gary

---


**From:** Eacret, Mark J [<mailto:Mark.Eacret@bigrivers.com>]  
**Sent:** Thursday, January 07, 2016 12:49 PM  
**To:** Gary Quick  
**Subject:** Excess Energy Meeting

Gary,

I hope that your new year is off to a good start.

We spoke in mid-December about scheduling a meeting with TEA on Excess Energy. Have you been able to identify any dates that work for them yet? I can be available just about any time over the next few weeks except for 1/12 and 1/14 and, if necessary, I could move some things around and 1/12 would be possible.

Regards,

Mark Eacret  
VP Energy Services  
Big Rivers Electric Corp  


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**Gary Quick**

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**From:** Patrick McGarry [pmcgarry@teainc.org]  
**Sent:** Thursday, January 07, 2016 2:44 PM  
**To:** Gary Quick  
**Subject:** RE: Trip to Kentucky

Now would be great

**From:** Gary Quick [mailto:gquick@hmpl.net]  
**Sent:** Thursday, January 07, 2016 3:42 PM  
**To:** Patrick McGarry  
**Subject:** RE: Trip to Kentucky

Hi Pat:

I will run the dates by Big Rivers and get back to you. I thought you would need a travel day coming in to Henderson, a day for the meeting (even if the meeting only takes a couple of hours), and a travel day going back to Jacksonville. Anyway, we can talk about this. Also, we can schedule a one hour call anything that works for you and Matt prior to the meeting.

I can call you now, but let me know if you want me to call your cell phone or office number.

ary

---

**From:** Patrick McGarry [mailto:pmcgarry@teainc.org]  
**Sent:** Thursday, January 07, 2016 2:14 PM  
**To:** Gary Quick  
**Cc:** Haynes, Greg  
**Subject:** RE: Trip to Kentucky

Gary,

Happy New Year!

Would either of the following dates work?

- 1/21-1/22
- 1/25-1/26

Also- Matt and I would like to schedule a one hour conference call with you prior to our trip so I can get Matt up to speed on the history of the Big Rivers/ Henderson dispute as well as the current stae of the plant from an operational perspective.

ould you have five minutes to speak today?

Thanks

Pat

---

**From:** Gary Quick [mailto:gquick@hmpl.net]  
**Sent:** Thursday, January 07, 2016 2:33 PM  
**To:** Patrick McGarry  
**Cc:** Haynes, Greg  
**Subject:** Trip to Kentucky

Hi Pat:

Would you check with Matt [REDACTED] and let me know when you and Matt could come to Henderson for a meeting with Big Rivers concerning the scheduling of Excess Henderson Energy?? It would help if you could give me a couple of schedule options.

After you respond, I will visit with Big Rivers and get back to you. I hope we can find a time and date that works for everyone; in advance, thanks for helping us.

Gary

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Thursday, January 07, 2016 2:04 PM  
**To:** 'Mark.Eacret@bigrivers.com'  
**Subject:** Meeting  
**Attachments:** BIG RIVERS MEETING.pdf

Hi Mark

I am checking with our representative at TEA to see when he could make the trip to Henderson. Our representative is Patrick McGarry and he would bring Mr. Matt J [REDACTED] (also with TEA) with him to attend the meeting. I will contact you as soon as I hear back from Mr. McGarry.

As I discussed with you during our previous phone call, Henderson will have only two representatives attending the meeting. Attached is a proposed draft of a Letter of Understanding for the meeting; it is addressed to Bob Berry since he is the individual who signed the December 11 letter. Please share the draft letter with Bob and see if it is acceptable.

Please don't hesitate to call if you have questions. Thank you, Gary

Henderson Municipal Power & Light  
100 Fifth Street  
Henderson, KY 42420  
270.826.2726

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January \_\_, 2016

Robert W. Berry  
President and CEO  
Big Rivers Electric Corporation  
P.O. Box 24  
Henderson, KY 42419-0024

RE: Excess Henderson Energy

Dear Bob:

This is to memorialize the terms and conditions upon which HMP&L will agree to a meeting as proposed in your letter to me of December 11, 2015. If BREC still wants to have a meeting please sign and return a copy of this letter to me.

HMP&L expressly denies that the questions posed in your November 5, 2015, letter involve any genuine obstacles to HMP&L's sales of Excess Henderson Energy. The purpose of this meeting is an effort, on HMP&L's part, to resolve and compromise a disputed claim. It is agreed, therefore, that the occurrence of the meeting, all discussions that take place during the course of the meeting, any follow up conferences, and any minutes or other records prepared in connection with the meeting shall be kept strictly confidential, shall be disclosed only to legal counsel for BREC and HMP&L, and shall not be offered as evidence, or admitted in evidence, in any judicial or arbitral forum at any time. BREC and HMP&L further agree that there will be no tape or other voice recording of the meeting's discussions.

The meeting will take place at \_\_\_\_\_ on January \_\_, 2016, at \_\_\_\_\_ a.m./p.m. BREC and HMP&L will each send no more than two representatives to the meeting. These representatives will be either members of BREC's and HMP&L's respective operational staffs, or employees of ACES or TEA who participate as subject matter consultants to BREC or HMP&L, respectively. No attorneys will attend or participate in the meeting.

Sincerely yours,

Gary Quick

On behalf of Big Rivers Electric Corporation, the above terms and conditions are accepted:

\_\_\_\_\_  
By: Robert W. Berry  
Its: President and CEO



**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Thursday, January 07, 2016 1:33 PM  
**To:** 'Patrick McGary'  
**Cc:** 'Haynes, Greg'  
**Subject:** Trip to Kentucky

Hi Pat:

Would you check with Matt Johnson and let me know when you and Matt could come to Henderson for a meeting with Big Rivers concerning the scheduling of Excess Henderson Energy?? It would help if you could give me a couple of schedule options.

After you respond, I will visit with Big Rivers and get back to you. I hope we can find a time and date that works for everyone; in advance, thanks for helping us.

Gary

**Gary Quick**

---

**From:** Eacret, Mark J [Mark.Eacret@bigrivers.com]  
**Sent:** Thursday, January 07, 2016 12:49 PM  
**To:** Gary Quick  
**Subject:** Excess Energy Meeting

Gary,

I hope that your new year is off to a good start.

We spoke in mid-December about scheduling a meeting with TEA on Excess Energy. Have you been able to identify any dates that work for them yet? I can be available just about any time over the next few weeks except for 1/12 and 1/14 and, if necessary, I could move some things around and 1/12 would be possible.

Regards,

Mark Eacret  
VP Energy Services  
Big Rivers Electric Corp  
[REDACTED]

---

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**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Tuesday, December 15, 2015 11:26 AM  
**To:** 'Patrick McGarry'  
**Subject:** RE: Big Rivers

10/4 will do

---

**From:** Patrick McGarry [<mailto:pmcgarry@teainc.org>]  
**Sent:** Tuesday, December 15, 2015 10:05 AM  
**To:** Gary Quick  
**Subject:** Re: Big Rivers

Yes

Please call me at [REDACTED]

Sent from my iPhone

On Dec 15, 2015, at 11:03 AM, Gary Quick <[gquick@hmpl.net](mailto:gquick@hmpl.net)> wrote:

Hi Pat:

Could you take my call at 2:00PM CT (3:00PM Jacksonville Time) this afternoon?? If so, is the correct number [REDACTED]

If this does not work for you just select a time tomorrow and I will call you.

Thank you, Gary

---

**From:** Patrick McGarry [<mailto:pmcgarry@teainc.org>]  
**Sent:** Tuesday, December 15, 2015 9:29 AM  
**To:** Gary Quick  
**Subject:** RE: Big Rivers

Gary

I am available at your leisure.

Pat

---

**From:** Gary Quick [<mailto:gquick@hmpl.net>]  
**Sent:** Monday, December 14, 2015 2:34 PM  
**To:** Patrick McGarry  
**Subject:** Big Rivers

Hi Pat:

Do you have some time available to take a call from me this week?? I will be the only one the call for Henderson and the call should only take a few minutes. I want to respond to Big Rivers, but I think it would be wise for me to visit with you before I contact them. If this week is bad for you, perhaps you will have some time available next week.

Thanks, Gary

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Monday, December 14, 2015 7:55 AM  
**To:** Patrick McGary  
**Cc:** [REDACTED] Greg; Wayne [REDACTED] Tammy [REDACTED]  
**Subject:** Big Rivers Letter  
**Attachments:** doc01079620151211162812.pdf

Good Morning Pat:

Attached is the response letter I received from Big Rivers. Don't hesitate to share it with your TEA Team and I will contact you after I visit with Greg Haynes. Hope you had a good weekend.

Thank you, Gary

-----Original Message-----

**From:** Gary Quick  
**Sent:** Friday, December 11, 2015 4:40 PM  
**To:** [REDACTED], Greg  
**Subject:** Big Rivers Letter

Hi Greg:

I just received the attached letter from Big Rivers. Take a look at it and we will discuss next week. I hope you have a good weekend.

Thanks, Gary



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

December 11, 2015

Mr. Gary Quick  
Henderson Municipal Power & Light  
100 Fifth Street  
P.O. Box 8  
Henderson, Kentucky 42419-0008

Re: Excess Henderson Energy – Request for Meeting

Dear Gary:

I am in receipt of your November 13, 2015 letter, which I received via mail on November 18, 2015.

You asked me to identify the point of contact at Big Rivers for scheduling power. That person is Mark Eacret, Vice President of Energy Services at Big Rivers. His direct dial number is [REDACTED] [REDACTED] if HMP&L has a firm, bonafide third party offer to present to Big Rivers, we encourage you to provide the required notice to Mr. Eacret. He will be prepared to take your call.

In response to your October 27 letter we went to the MISO portal where you said a MISO contract was awaiting our approval, and were unable to find any such contract. In addition, the MISO FinSched mechanism is complicated, it operates under multiple constructs, and certain constructs may not necessarily comply with the arbitration award. It is very important that Big Rivers understand the details of your plans in advance, and identify and resolve in advance any issues with those plans. The questions posed in my November 5, 2015, letter are important, real questions, which are not answered by the Power Sales Contract, as amended (the "Contract"), the arbitration award or the related judicial opinions. As you know, the Contract and 1998 Amendments were executed before the centralized MISO energy market was even created. Indeed, Chairman Pemberton's separate concurring opinion specifically stated that the arbitration award does not take into account the operation of the MISO market.

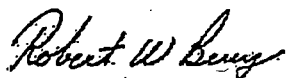
I am concerned you read my November 5 request for a meeting as mere posturing. It was not. Big Rivers and HMP&L are by necessity parties to a long-term relationship due to the Contract. The only way our relationship can function well is if the parties are able to have periodic discussions. Big Rivers genuinely desires to work with HMP&L on this issue. We acknowledge that the arbitration award provides for HMP&L's ownership rights with regard to Excess Henderson Energy, subject to Big Rivers' right of first refusal. It is simply our view that it is imperative for the parties to meet to discuss in good faith the operational details governing how any third party

Mr. Gary Quick  
December 11, 2015  
Page Two

sales of Excess Henderson Energy are to be handled. It is our sincere hope that through these discussions the parties could resolve any open questions and avoid further costly litigation.

We continue to reserve our rights on this dispute, but we are earnest about wanting a meeting and hope you will reconsider. If you are willing to sit down with us, please provide us dates that may work for you.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Berry".

Robert W. Berry  
President and CEO  
Big Rivers Electric Corporation



November 13, 2015

Robert W. Berry  
President and CEO  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42420

Re: Excess Henderson Energy

Dear Bob:

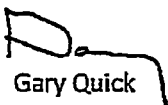
This responds to your letter dated November 5, 2015.

My letter to you of October 27, 2015, sets out in detail HMPL's plan to market Excess Henderson Energy in accordance with the terms of the Power Sales Contract as amended, and requests that you identify the point of contact at BREC with whom HMPL may work to schedule its energy. Your November 5 response does nothing more than raise the same obstacles that were rejected by the Arbitration Panel and three levels of Kentucky trial and appellate courts. I disagree that we need to negotiate further protocols or agreements. That is the same argument rejected by the Panel and the Courts. BREC is thoroughly familiar with the terms of the Power Sales Contract and the now final judgment interpreting it. Moreover BREC is a MISO Market Participant and well aware that the questions posed in your letter are all answered by the terms of the Power Sales Contract and by the manner in which energy sales are conducted through MISO, including long term capacity sales to entities outside the MISO footprint.

Please let me know by December 14, 2015, if BREC is going to comply with its contractual obligations and cooperate with implementation of HMPL's plan as set out in my October 27 letter, and designate the point of contact at BREC with whom HMPL may work to schedule its energy. If you will not provide this confirmation and information by that date then we will initiate legal action to enforce Henderson's rights as defined by the Arbitration and Court decisions.

I look forward to hearing from you.

Sincerely,

  
Gary Quick

61423362.1





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

November 5, 2015

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

Re: Scheduling of Excess Henderson Energy

Dear Gary:

This will acknowledge receipt of your letter dated October 27, 2015, which I received on November 2.

The proposal you outlined in your October 27, 2015 letter is identical to the proposal you made in July 2012. Big Rivers' response to that proposal in July 2012 – in addition to questioning whether the type of purely financial transactions embodied in MISO FinScheds are compatible with the Power Sales Contract, as interpreted in the Arbitration Award – identified a number of logistical and operational details that your proposal failed to address, and which would need to be resolved before it could be put into practice. As HMPL never provided a response to our inquiries, the issues raised in that response remain unanswered.

We continue to have questions about whether the proposed FinSched process is compatible with the Power Sales Contract, as amended, and the Arbitration Award. Nonetheless, we want to be responsive to your proposal for scheduling Excess Henderson Energy with the hope that, through open discussion among us, the parties could potentially move toward an agreed-upon approach to Excess Henderson Energy which complies fully with the Arbitration Award.

In order to do that, however, a number of issues must be discussed and addressed, as indicated in Big Rivers' July 2012 letter. For example (and this list is by no means exhaustive) agreement would need to be reached about the following:

1. What priority would be given to HMPL's sales of Excess Henderson Energy, particularly in relationship to Big Rivers' rights to receive energy from the Station II capacity that it has paid for?
2. What are the characteristics of a "firm" and "bonafide" offer under the award that Big Rivers would be obligated to match if it desires to purchase the Excess Henderson Energy? How can Big Rivers verify the terms of any third party offer?
3. Which party is responsible for providing HMPL's day-ahead load forecast each day used to determine the amount of Excess Henderson Energy to be offered to third parties, and who bears the risk of errors in the forecast?

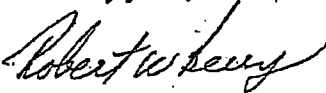
Mr. Gary Quick  
November 5, 2015  
Page Two

4. What happens if the Excess Henderson Energy committed to third parties becomes unavailable in real time due to outage, derate, HMPL's underestimation of its native load needs, or MISO's decision not to dispatch the units at sufficient levels to cover a third party sale?
5. What are Big Rivers' remedies if it agrees to purchase the Excess Energy and that energy is not available?
6. What is Big Rivers' backup obligation for any proposed third-party transactions?
7. How would settlement be handled between Big Rivers and HMPL for third party sales?
8. How are MISO administrative and other expenses to be handled? What about transmission and congestion-related charges?

To move us closer to a possible resolution, we suggest representatives from HMPL and Big Rivers find a convenient day and time to meet to discuss your proposal and, if possible, memorialize in writing any consensus we may reach on how those issues are to be handled. It is our hope that this meeting will permit the parties to execute an agreed-upon protocol. Given [REDACTED] interest in this matter, I have advised them of your proposal and [REDACTED] representatives would like to join our discussions. Could you please provide some dates that would work for this meeting.

I look forward to hearing from you soon.

Sincerely yours,



Robert W. Berry  
President and CEO  
Big Rivers Electric Corporation

# HMPL

HENDERSON MUNICIPAL POWER & LIGHT

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 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 approval of MISO's response to Order No. 809.

# HMPL

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,

  
Gary Quick

Enclosure

# HMP&L

## 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>

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Sunday, October 25, 2015 9:26 AM  
**To:** pmcgarry@teainc.org  
**Cc:** Wayne [REDACTED] Tammy [REDACTED]  
**Subject:** Fwd: Yesterday  
**Attachments:** TEA LETTER\_V3\_1-\_23\_2015\_PJM.docx; ATT00001.htm

Hi Pat:

I have a question concerning the MISO Contract document that will be attached to the letter we are sending to BREC.

The document shows "Effective Start (Est) 7/1/2012" and "Effective End (Est) 1/1/2016." I'm merely wondering if the two dates are correct. I'm not saying the dates are wrong; I just want to make sure the dates are correct before we send the letter.

Again, we appreciate all of the help you have provided to Henderson.

Thanks, Gary

Sent from my iPhone

Begin forwarded message:

**From:** Patrick McGarry <pmcgarry@teainc.org>  
**Date:** October 23, 2015 at 1:19:18 PM CDT  
**To:** Gary Quick <gquick@hmpl.net>  
**Cc:** Wayne [REDACTED] Tammy [REDACTED]  
**Subject:** RE: Yesterday

Gary,

As per your request, we have reviewed the letter and made the edits that we discussed.

Please feel free to ask if you have any questions. Have a great weekend.

Pat

---

**From:** Gary Quick [mailto:gquick@hmpl.net]  
**Sent:** Thursday, October 22, 2015 10:49 AM  
**To:** Patrick McGarry  
**Cc:** Wayne [REDACTED] Tammy [REDACTED]  
**Subject:** Re: Yesterday

Hi Pat:

No problem and no big deal. We sincerely appreciate your help and we're glad you are feeling better.

Let us know if you need something.

Thanks, Gary

Sent from my iPhone

On Oct 22, 2015, at 8:49 AM, Patrick McGarry <[pmcgarry@teainc.org](mailto:pmcgarry@teainc.org)> wrote:

Gary,

I am sorry that I couldn't make the call yesterday. The day started with a small toothache in the morning and ended with root canal surgery in the afternoon that couldn't wait any longer. I am feeling better and we will finish up the touches on the letter today.

Let's Go Mets!!!

*Pat*

Patrick McGarry | Managing Director, Midwest  
p: 904-360-1389 | f: 904-665-0387 | m: 904-993-9511 | e: [pmcgarry@teainc.org](mailto:pmcgarry@teainc.org)

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Jacksonville, FL - Portland, OR - Seattle, WA | [www.teainc.org](http://www.teainc.org)

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Tuesday, October 20, 2015 5:12 PM  
**To:** Patrick McGarry  
**Cc:** Wayne [REDACTED] Tammy [REDACTED]  
**Subject:** Re: Tea Documentation

Yes

Gary

Sent from my iPhone

On Oct 20, 2015, at 4:19 PM, Patrick McGarry <[pmcgarry@teainc.org](mailto:pmcgarry@teainc.org)> wrote:

3PM my time. 2 PM your time.

Make sense?

Sent from my iPhone

On Oct 20, 2015, at 4:19 PM, Gary Quick <[gquick@hmpl.net](mailto:gquick@hmpl.net)> wrote:

Hi Pat:

Please confirm the "central time" you are planning to call us tomorrow.  
We are not sure if it will be 2 or 3 PM our time.

Sent from my iPhone

Begin forwarded message:

**From:** Tammy [REDACTED] >  
**Date:** October 20, 2015 at 1:02:52 PM CDT  
**To:** Gary Quick <[gquick@hmpl.net](mailto:gquick@hmpl.net)>  
**Subject:** RE: Tea Documentation

Mr. Quick,

FYI Pat has the time as 3 PM Eastern time, not our time.

Tammy [REDACTED]  
Henderson Municipal Power & Light  
100 Fifth Street  
Henderson, KY 42420  
[REDACTED]



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**From:** Gary Quick  
**Sent:** Tuesday, October 20, 2015 12:55 PM  
**To:** Patrick McGarry  
**Cc:** Wayne [REDACTED]; Tammy [REDACTED]; Matthew A. [REDACTED]  
**Subject:** Re: Tea Documentation

Hi Pat:

Yes, we plan to take your call tomorrow.

Gary

Sent from my iPhone

On Oct 20, 2015, at 12:28 PM, Patrick McGarry <[pmcgarry@teainc.org](mailto:pmcgarry@teainc.org)> wrote:

Gary

Just confirming that we will call you tomorrow 3PM EPT.

Thanks

Pat

---

**From:** Patrick McGarry  
**Sent:** Wednesday, October 14, 2015 9:30 AM  
**To:** Gary Quick  
**Cc:** Wayne [REDACTED]; Tammy [REDACTED]; Matthew A. [REDACTED]  
**Subject:** Re: Tea Documentation

Gary

We will call you on the number that you provided below.

Looking forward towards our conversation.

Pat

Sent from my iPhone

On Oct 14, 2015, at 8:19 AM, Gary Quick <[gquick@hmpl.net](mailto:gquick@hmpl.net)> wrote:

Hi Pat:

That time will work for us. Do you want us to call you or will you call us?? If you want us to call just send me the number.

Thanks, Gary

Sent from my iPhone

On Oct 14, 2015, at 6:24 AM, Patrick McGarry <[pmcgarry@teainc.org](mailto:pmcgarry@teainc.org)> wrote:

Gary

Would 3PM EST next Wednesday afternoon work for you guys?

Thanks

Pat

---

**From:** Gary Quick  
[mailto:[gquick@hmpl.net](mailto:gquick@hmpl.net)]  
**Sent:** Tuesday, October 13, 2015 5:24 PM  
**To:** Patrick McGarry  
**Cc:** Wayne [REDACTED]  
Tammy [REDACTED]  
Matthew [REDACTED]  
**Subject:** RE: Tea Documentation

Hi Pat:

We can take a call on October 21. Just let us know the time that works for you; Henderson is on central time. Also, let me know if you plan to call us [REDACTED] or you want us to call you.

Wayne [REDACTED] and I will be on the call for Henderson.

Thanks, Gary

October 14, 2015

VIA EMAIL AND FIRST CLASS MAIL

Mr. H. Randall Redding  
Law Offices of King, Deep and Branaman  
127 North Main Street  
Henderson, KY 42419

Re: Big Rivers Electric Corp v. City of Henderson, Kentucky, et al

Dear Mr. Redding:

Thank you for your letter of September 14, 2015, and your follow up letter of September 28, 2015. We have discussed these with Big Rivers. As an initial matter, please be assured that Big Rivers fully intends to comply with the terms of the Power Sales Contract as clarified by the May 31, 2012 arbitration award.

Big Rivers does not agree that the award entitles Henderson in any way to the damages sought in your demand. Your September 14 letter states – and your September 28 letter confirms – that the damages represent HMPL's "total fixed expenses" allegedly associated with Excess Henderson Energy. While there appear to be numerous problems with your calculations, the most fundamental is that award recognizes no right by Henderson to recover any fixed costs allegedly associated with Excess Henderson Energy. Furthermore, the award recognized no entitlement to any past damages, regardless of how they might be calculated.

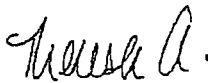
The award clarified the process whereby HMPL may seek more than the price set forth in Section 3.8(c) of the Power Sales Contract for Excess Henderson Energy. Specifically, HMPL may, if it chooses, obtain a firm and bona fide offer from a third party to purchase some quantity of Excess Henderson Energy. If it does so, then Henderson must present that offer to Big Rivers. Big Rivers may then match the offer or allow HMPL to sell the Excess Henderson Energy to the third party according to the terms of the original offer. To date, HMPL has never presented Big Rivers with a firm and bona fide third-party offer to purchase any Excess Henderson Energy, so any such energy was available to be purchased by Big Rivers at the price set forth in Section 3.8(c). Nothing in the Power Sales Contract, as interpreted by the award, provides any basis for HMPL to recover fixed costs associated with Excess Henderson Energy which is taken under the contract by Big Rivers at the default contractual price.

Mr. H. Randall Redding  
October 14, 2015  
Page 2

With regard to the Excess Henderson Energy going forward, you also urge Big Rivers to "cease any ongoing sales" of such energy. However, you offer no legal basis for your demand. As noted above, Big Rivers has the absolute right to take such energy, at the price set forth in Section 3.8(c), unless HMPL presents a firm and bona fide offer from a third party to purchase such energy at a higher price. The logistics associated with this is something that HMPL and Big Rivers would need to resolve. We recall Gary Quick making a comment to that effect following the issuance of the arbitration award. We also understand from your recent conversation with Jim Miller that we should be expecting a letter from Greg Haynes addressing those logistical issues. Please advise if HMPL is willing to meet and present a proposal for those logistics.

Respecting your demand for historical damages, however, Big Rivers does not believe there is any legal basis for the demands made in your September 14, 2015 letter. We invite you to set forth the alleged authority undergirding these claims in greater detail if you believe this analysis is mistaken or has overlooked anything in the Power Sales Contract or the arbitration award.


Sincerely,



Theresa A. [redacted]

[redacted]  
cc: C. Scott [redacted]

0000HCLJ.0574368 4817-5071-2873v1

**Gary Quick**

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**From:** Gary Quick  
**Sent:** Thursday, August 20, 2015 8:59 AM  
**To:** 'Patrick McGarry'  
**Subject:** RE: Phone Call

Hi Pat:

You may call our main office number [REDACTED] and ask for me. I don't have any concerns if you want other TEA staff members to participate in the call.

I look forward to our visit.

Thank you, Gary

---

**From:** Patrick McGarry [mailto:pmcgarry@teainc.org]  
**Sent:** Thursday, August 20, 2015 8:54 AM  
**To:** Gary Quick  
**Subject:** RE: Phone Call

Gary

If its ok, I would like to call you. What number would be best?

Also, I would like to invite Jamie [REDACTED] (VP Client Services) and Matt [REDACTED] (Director-RTO Trading) to our discussion. Back in 2012 & 2013, Matt assisted Sam and I on the research and he will be a good asset if we have any "deep detail" questions.

Looking forward to speaking to you again. I spoke to Sam last night and he said to say hello!

Thanks

Pat

---

**From:** Gary Quick [mailto:gquick@hmpl.net]  
**Sent:** Thursday, August 20, 2015 9:40 AM  
**To:** Patrick McGarry  
**Subject:** RE: Phone Call

Hi Pat:

That time works for me. Do you want me to call you or are you planning to call me??

hanks, Gary

---

**From:** Patrick McGarry [<mailto:pmcgarry@teainc.org>]  
**Sent:** Thursday, August 20, 2015 8:22 AM  
**To:** Gary Quick  
**Subject:** RE: Phone Call

Gary

Would 1230 EST(1130 CST) work for you?

Thanks

Pat

---

**From:** Gary Quick [<mailto:gquick@hmpl.net>]  
**Sent:** Wednesday, August 19, 2015 4:53 PM  
**To:** Patrick McGarry  
**Subject:** RE: Phone Call

Hi Pat:

Anytime tomorrow will work for me. We are on central time so just let me know a time that works for you and I will be here.

Thanks for getting back to me so quickly.

Gary

---

**From:** Patrick McGarry [<mailto:pmcgarry@teainc.org>]  
**Sent:** Wednesday, August 19, 2015 3:29 PM  
**To:** Gary Quick  
**Subject:** Re: Phone Call

Gary

Do you have a specific time tomorrow that will work for you to speak?

Thanks

Pat

Sent from my iPhone

On Aug 19, 2015, at 3:14 PM, Gary Quick <[gquick@hmpl.net](mailto:gquick@hmpl.net)> wrote:

Hi Pat:

I received your phone message; thanks for returning my call. I understand that you may be on the road; however, when you return to your office and have a few minutes, would you please give me a call?? My number is [REDACTED]

I am interested in visiting with you about the Excess Henderson Energy issue. The Kentucky Supreme Court issued an Order last week in favor of Henderson and I would like to visit with you about the process of scheduling energy and how the MISO market works. We may want to (or need to) enter another formal agreement with TEA.

Anyway, when you have some time, please call. Thank you and if you see Sam tell him we said hello.

Gary



August 20, 2015

Pat:

Thanks for taking the time to visit with us this morning.

Attached is a copy of the July 13, 2012, letter we discussed.  
Let us know if you need anything.

Thank you.

  
Gary

100 FIFTH STREET PO BOX 8  
HENDERSON, KENTUCKY 42419-0008  
(270)826-2726 FAX (270) 826-9650





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 BRECHMP2). 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.

**HMPL**

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,



Gary Quick

Enclosure

<input type="button" value="Submit"/> <input type="button" value="Cancel"/>	
Contract Name BRPS-HMPL DA @ BREC.HMP2	
Buyer Name	HMPL
Seller Name	BRPS
Effective Start (EST)	07/01/2012
Effective End (EST)	1/1/2013
Source Location	BREC.HMP2
Sink Location	BREC.HMP2
Delivery Point	BREC.HMP2
Contract Type	Pure-Financial
Schedule Approval	CounterpartVApproval
Settlement Market	DayAhead
Congestion Losses	BuyerPays ▼
Buyer Comments	(null)
Seller Comments	(null)
Contract Approval (EST)	Not Approved
RSG Deviation Contract	false

**HMPL**



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

June 7, 2013

Mr. Gary Quick  
General Manager  
Henderson Municipal Power & Light  
P.O. Box 8  
Henderson, KY 42419-0008

Dear Gary:

In accordance with Section 14.1 of the Power Plant Construction and Operation Agreement between the City of Henderson Kentucky (the City) and Big Rivers Electric Corporation (Big Rivers), dated as of August 1, 1970, as amended by the Amendments to Contracts dated May 1, 1993, Amendments to Contracts dated July 15, 1998, and 2005 Amendments to Contracts dated April 1, 2005 (the Operating Agreement), Big Rivers submitted the proposed operating budget for Station Two for the fiscal year beginning June 1, 2013, and ending May 31, 2014, to the City on March 1, 2013. Having now incorporated appropriate revisions resulting from review with HMP&L Station Two management, Big Rivers hereby submits this annual operating budget. Following the adoption by the City of the June 1, 2013, through May 31, 2014, Station Two operating budget, it will become the basis for monthly payments made by the City to Big Rivers for the City's Station Two cost-share during such year, payable on or before the 20<sup>th</sup> of each month. Please note the attached letter dated June 7, 2013, from Bob Berry, Chief Operating Officer, to Wayne Thompson, regarding Big Rivers exception related to MISO administration fees.

Please direct any questions you may have regarding any element of this proposed budget to me at [REDACTED]

Sincerely,

A handwritten signature in cursive script that reads "Billie J. Richert".

Billie J. Richert, CPA, CITP  
Vice President Accounting, Rates, and CFO  
Big Rivers Electric Corporation

Enclosure

c: Mark Bailey  
Bob Berry

[REDACTED]



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

June 7, 2013

Wayne [REDACTED]  
Henderson Municipal Power & Light  
100 5<sup>th</sup> Street  
Henderson, KY 42420

Dear Wayne:

Thank you for taking the time to meet with Big Rivers on May 17, 2013, to attempt to resolve the issues regarding the 2013 – 2014 Station II fiscal budget. As you know, HMP&L has requested Big Rivers to defer certain maintenance projects at Station II based on its disagreement of certain items that were submitted by Big Rivers in the 2013 – 2014 fiscal budget. HMP&L has also denied the approval of the 2013 – 2014 fiscal budget due to the MISO administration fees included in the budget.

Subsequent to the May 17, 2013, meeting, Big Rivers conceded or provided the requested information to resolve all of the budget items with the exception of the MISO administration fees. In the spirit of cooperation, please find attached the revised HMP&L Station II budget which reflects all of your requested changes including the removal of the MISO administration fees.

Although Big Rivers has agreed to remove from the proposed Annual Budget the MISO cost incurred by Big Rivers in connection with its operation and maintenance of Station Two in compliance with applicable regulatory and legal standards, Big Rivers reserves and does not waive its right to demand recovery of the City's share of those cost from HMP&L and the City. We are hopeful this will resolve the issues with the Annual Budget and HMP&L will approve the revised 2013 – 2014 fiscal budget. Please contact me if you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Berry".

Robert W. Berry  
Chief Operating Officer  
Big Rivers Electric Corporation

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Thursday, January 03, 2013 10:59 AM  
**To:** Sam H. [REDACTED]  
**Cc:** [REDACTED] Greg; [REDACTED] Virginia; [REDACTED] David; Wayne [REDACTED]  
**Subject:** Henderson Litigation

Good Morning Sam:

I wanted to let you know that yesterday Big Rivers filed a motion to appeal the Circuit Court's decision and the Arbitrator's final award in the Excess Henderson Energy dispute. I will contact you in the near future.

Thanks, Gary

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Friday, July 20, 2012 1:42 PM  
**To:** Sam H. [REDACTED]  
**Cc:** Wayne [REDACTED], Greg [REDACTED], Virginia [REDACTED]  
**Subject:** Letter to HMP&L  
**Attachments:** Letter to HMP&L 7-20-120001.pdf

Hi Sam:

I wanted you and the staff at TEA to see the letter from Big Rivers concerning the Henderson Energy. I will be in contact with you and I will keep you informed.

Gary

---

**From:** Mark Bailey [mailto:Mark.Bailey@bigrivers.com]  
**Sent:** Friday, July 20, 2012 12:58 PM  
**To:** Gary Quick  
**Cc:** [REDACTED], Theresa [REDACTED], Scott [REDACTED], jmillier@smsmlaw.com  
**Subject:** FW: Letter to HMP&L

Good Afternoon Gary,

I hope this message finds you well. Please find attached my response to your letter to me dated July 13, 2012.

Regards,  
Mark

---

**From:** Paula [REDACTED]  
**Sent:** Friday, July 20, 2012 12:54 PM  
**To:** Mark Bailey  
**Subject:** Letter to HMP&L

Attached is the letter to Gary Quick.

[REDACTED]  
Big Rivers Electric Corporation  
P. O. Box 24  
Henderson, KY 42419-0024  
[REDACTED]



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

July 20, 2012

VIA E-MAIL AND FIRST CLASS MAIL

Mr. Gary Quick  
Henderson Municipal Power & Light  
100 Fifth Street  
P.O. Box 8  
Henderson, Kentucky 42419-0008

RE: Scheduling of Excess Henderson Energy

Dear Gary:

This responds to your letter of July 13, 2012, in which you propose a process for scheduling "Excess Energy" from Station II utilizing – at least initially – MISO Financial Schedules. While Big Rivers appreciates your providing a written response to Mr. Greene's June 28, 2012, letter, Big Rivers cannot and does not agree with your scheduling proposal.

As you now know, Big Rivers has initiated vacatur proceedings with the Henderson Circuit Court, seeking an order vacating the award upon which HMPL purports to be relying in making its July 13 proposal. It is Big Rivers' position that the arbitration award is defective on a number of levels, and we think it unwise to use it as a basis for developing a scheduling approach that contradicts the terms of the Power Sales Agreement.

Even without the Motion to Vacate, Big Rivers disagrees with the process you have proposed. Your proposal is inconsistent with the Panel's award on numerous levels. For example, you have proposed use of a MISO process, even though Mr. Pemberton's concurrence expressly questioned the applicability of MISO in the award. Similarly, you have proposed a purely financial process, but we believe the award contemplates only physical bilateral transactions. We also do not believe that the FinSched process you propose meets the "firm" and "bona fide" offer requirements of the award, and have concluded that it would require contract amendments or a new contract between the parties, which are not required by the Power Sales Agreement or the arbitration award. Additionally, you have defined Excess Energy as the difference between HMPL's annual capacity reservation and hourly forecasted load, but both the Contract and the award define Excess Energy as the difference between HMPL's capacity reservation and actual load.

Moreover, while you have offered some detail with your proposal, it still fails to address a host of important questions that must be resolved before any scheduling could be put into practice. The issues that remain open include, but are not limited to: (1) the characteristics of a "firm" and

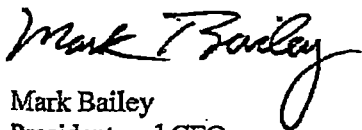


Mr. Gary Quick  
July 20, 2012  
Page Two

"bonafide" third-party offer that Henderson believes Big Rivers would be obligated to match under the Award; (2) Big Rivers' backup obligations for the proposed transactions; (3) how settlement will be handled between Big Rivers and Henderson for third-party sales, and how settlement will be affected in the event Excess Energy is unavailable from Station II to cover a sale, either due to an outage or derate of Station II or Henderson's under-estimation of its native load needs in a given hour; (4) Big Rivers' remedies in the event Big Rivers agrees to purchase the Excess Energy and that Excess Energy is not available from Station II; (5) the form of confirmation or verification Henderson would provide Big Rivers so it can verify the terms of third party offer; (6) how transmission and congestion-related charges will be handled; and (7) how MISO administrative and other expenses will be handled. Each would need to be fully considered and addressed.

Your letter referenced an intention to begin the proposed MISO financial transactions as early as July 23, 2012. For the reasons articulated, we believe such transactions would be entirely inappropriate at this time.

Sincerely,



Mark Bailey  
President and CEO  
Big Rivers Electric Corporation

c: Scott [REDACTED]  
Jim Miller  
Theresa [REDACTED]

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Friday, July 13, 2012 10:18 AM  
**To:** 'Mark Bailey'  
**Cc:** [REDACTED], Greg'; [REDACTED] 'Randall Redding'  
**Subject:** Scheduling Henderson's Energy  
**Attachments:** BREC LETTER 7-13-12.pdf

Good Morning Mark:

Attached is a letter that Scott [REDACTED] requested from Henderson. We will also send you the original letter by US Mail and it should go out later today.

I hope everything is going well for you.

Gary

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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.

# **HMPL**

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,



Gary Quick

Enclosure

# HMP&L

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	<u>BuyerPays</u>
Buyer Comments	<u>(null)</u>
Seller Comments	<u>(null)</u>
Contract Approval (EST)	Not Approved
RSG Deviation Contract	<u>false</u>



C. Scott  
Direct  
scott.g

June 28, 2012

VIA ELECTRONIC AND U.S. MAIL

K. Gregory  
[Redacted]

Re: *Big Rivers Electric Corporation v. City of Henderson, Kentucky and City of Henderson Utility Commission dba Henderson Municipal Power and Light*  
Case No. 52-198-000173-10


Dear Greg:

This will acknowledge receipt of your letter dated June 26, 2012. Pursuant to your request, we will respond to that letter on or before July 13, 2012.

In the meantime, on behalf of Big Rivers, I ask that your client provide us with your proposed plan to implement the arbitration decision. Kendal Bryan testified that his interpretation of Section 3.8(d), which the Panel seemingly adopted, would necessitate another agreement between the parties to set out the specific terms, conditions, rights and responsibilities of the parties. Please provide us with Henderson's proposal on these matters, including, among other things, the method for determining available Excess Henderson Energy to offer to third parties, Henderson's definition of a "firm" or "bonafide" offer as used by the Panel, the time frame for communicating a firm/bonafide offer to Big Rivers, the time Big Rivers shall have to accept or reject the offer, the arrangements for transmission and NERC tagging, responsibilities of each party in case of changes in the quantity of Excess Henderson Energy after a sale has been made and any other agreement detail Henderson believes to be appropriate.

We look forward to receipt of Henderson's proposal and ask that you provide it by July 13, 2012.

Very truly yours,

  
C. Scott  
[Redacted]



# HMP&L

HENDERSON MUNICIPAL POWER & LIGHT


April 6, 2011

Mr. Bill Blackburn  
Senior Vice President Financial & Energy Services & CFO  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42419-0024

Dear Bill:

We received your April 5 letter concerning your interpretation of Henderson's contractual rights to schedule and take its Station Two reserved capacity and energy. Big Rivers is well aware of Henderson's position. As clearly noted in my March 18 letter to you, Henderson will hold Big Rivers financially liable for the illegal taking of Henderson's property by its refusal to allow Henderson to schedule and take its Station Two resources.

Sincerely,

  
Gary Quick  
General Manager

cc: Wayne [REDACTED]



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

April 5, 2011

Mr. Gary Quick  
General Manager  
Henderson Municipal Power & Light  
P.O. Box 8  
Henderson, KY 42419-0008

Dear Gary:

In response to your letter dated March 18, 2011, we absolutely disagree with your statement that Big Rivers is refusing to allow the City of Henderson (the "City") to schedule its Station Two resources. We do not believe that the 1970 Power Sales Contract between Big Rivers and the City, as amended, allows the City to schedule "Excess Henderson Energy" (as that term is defined in the Power Sales Contract).

As you know, Big Rivers and the City are engaged in an arbitration proceeding to resolve the City's claim that the Power Sales Contract permits the City to sell Excess Henderson Energy to third parties without providing Big Rivers with a right of first refusal to purchase that energy at \$ [REDACTED] per MWh. It is Big Rivers' position that any such sale to a third party would be wrongful and constitute a breach of the Power Sales Contract. Big Rivers has an unqualified first right, pursuant to the Power Sales Contract, to purchase Excess Henderson Energy from the City or the City Utility Commission for \$ [REDACTED] per MWh (with Big Rivers responsible for other costs as contemplated in the Power Sales Contract), and Big Rivers desires to exercise that right and purchase that energy.

Please note that your letter dated February 10, 2011 did not schedule any energy. Instead, that letter asked Big Rivers to assist the City and The Energy Authority with the creation of financial schedules ("Finscheds") for the Midwest ISO Market Portal. The letter specifically states that the City wants to "begin [a] MISO Finsched process" and asks Big Rivers to "please inform your staff or scheduling agent and let us know their reaction to using the proposed MISO Finsched process." We are not aware of any provision in the Power Sales Contract, or any other contract between Big Rivers and the City, that obligates Big Rivers to advise about or participate in a MISO Finsched process with the City and The Energy Authority. In our letter dated March 17, 2011, we requested that you identify in writing the specific contractual provision(s) that you believe create such an obligation. Your reply letter of March 18, 2011 ignored that request. We ask again that you cite us to the portions of the contract that you believe obligate Big Rivers to participate with the City in its proposed MISO Finsched process.



Mr. Gary Quick  
April 5, 2011  
Page Two

Finally, I am the person at Big Rivers whom you should contact about any scheduling matters.

Sincerely yours,



C. William Blackburn  
Senior Vice President  
Financial & Energy Services & CFO  
Big Rivers Electric Corporation

c: Mr. Mark Bailey

---



March 18, 2011

Mr. Bill Blackburn  
Senior Vice President Financial & Energy Services & CFO  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42419-0024

Dear Bill:

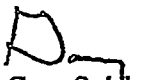
Thank you for your March 17 letter concerning the scheduling of Henderson's Station Two reserved capacity and energy. We were surprised and disappointed to learn that Big Rivers is refusing to allow the City to schedule its Station Two resources.

Big Rivers' position is contrary to the language and Henderson's rights set forth in the Station Two Contracts. Henderson has the contractual right to schedule and take its reserved capacity and energy and Big Rivers has a contractual duty under the existing provisions of the contracts to comply with the schedules Henderson provides to Big Rivers.

As stated in your letter, Big Rivers has elected to litigate the dispute concerning Excess Henderson Energy not scheduled or taken by City. Clearly, Henderson's February 10 letter and the subsequent telephone conference on March 9 were not about Henderson's energy not scheduled or taken by City.

As the owner of Station Two, Henderson is hereby formally instructing Big Rivers to immediately identify an individual or organization Henderson should contact to begin scheduling Henderson's Station Two resources. Big Rivers' refusal to allow Henderson to schedule its reserved capacity and energy is a veiled illegal taking of Henderson's property and, therefore, Henderson is financially damaged and the damages will be ongoing in the future. Please accept this letter as formal notice to Big Rivers of Henderson's intent to fully recover all of its damages from the date of this notice related to your refusal to allow Henderson to schedule its reserved Station Two resources.

Sincerely,

  
Gary Quick  
General Manager

cc: Wayne Thompson



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

March 17, 2011

Mr. Gary Quick  
General Manager  
Henderson Municipal Power & Light  
P. O. Box 8  
Henderson, KY 42420


Dear Gary:

I am writing in regard to your letter of February 10, 2011 and March 9, 2011 follow-up telephone conference among representatives of Big Rivers Electric Corporation ("Big Rivers"), Henderson Municipal Power & Light ("HMPL"), and The Energy Authority ("TEA"). As I understand it, the purpose of the February 10 letter and March 19 teleconference was to inform Big Rivers of HMPL's desire for TEA to assist HMPL in selling the energy output associated with HMPL's capacity reservation from Station II into the Midwest ISO market, and to request Big Rivers' consent and cooperation in facilitating those efforts. Your February 10 letter asks that Big Rivers "let [you] know [its] reaction to using the proposed Finsched process."

Big Rivers cannot consent or otherwise agree to the arrangement you have proposed. As you are well aware, Big Rivers and HMPL are currently in arbitration before a AAA panel concerning this very issue – i.e., whether HMPL has the right under the Power Sales Contract, as amended, to market and sell energy associated with its capacity reservation that is in excess of the hour-to-hour needs of the City of Henderson and its inhabitants, without first giving Big Rivers the opportunity to purchase such energy at the contractually-specified price of \$[REDACTED]/MWh (with Big Rivers providing fuel and other variable costs). Big Rivers has consistently and vigorously denied that HMPL possesses any such right under the terms of the Power Sales Contract. The primary relief sought by Big Rivers in the pending arbitration is an award declaring that HMPL has no right to sell energy associated with its capacity reservation to third parties without first making that energy available to Big Rivers at \$[REDACTED]/MWh, as expressly provided in Section 3.8 of the parties' Power Sales Contract. For Big Rivers to agree to the process you now propose would be tantamount to surrendering the very issue we are currently litigating. Big Rivers cannot agree to that.

Big Rivers has reviewed the Power Sales Contract, and is aware of no provision in that agreement (or any other agreement between Big Rivers and HMPL) that would obligate Big Rivers to assist or consent to the type of arrangement you have proposed. Indeed, any such arrangement would be in direct contravention of the express terms of the Power Sales Contract. If you disagree, I would ask that you please identify, in writing, the contractual provisions that you contend impose such an obligation on Big Rivers.

Sincerely yours,

  
C. William Blackburn  
Senior Vice President  
Financial & Energy Services & CFO  
Big Rivers Electric Corporation

cc Mr. Mark Bailey

G Q Cook



February 10, 2011

Mr. Mark Bailey  
President & CEO  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42419-0024

Dear Mark:

I'm sure you recall our prior discussions concerning Henderson's reservation of capacity and energy at Station Two and Henderson's interest in retaining the services of The Energy Authority. We have concluded our preliminary discussions with The Energy Authority and both parties are now ready to move forward.


In an effort to begin the process of The Energy Authority scheduling Henderson's energy from Station Two [CP node BREC.HMP2], we are proposing to use the attached MISO Financial Contract form which was copied from the MISO website Market Portal. We believe the attached form provides the information and terms Big Rivers and Henderson will need in order to create the MISO Financial Schedules [Finscheds] for Henderson.

Based upon our past discussions with The Energy Authority and MISO, we anticipate the communications between Big Rivers, Henderson, The Energy Authority, and Big Rivers' scheduling agent will be conducted by 08:00 EST each day.

To begin the MISO Finsched process, we are requesting that you please inform your staff or scheduling agent and let us know their reaction to using the proposed MISO Finsched process. Also, we need to know the name of the person at Big Rivers or perhaps a representative of your scheduling agent who The Energy Authority will need to contact in order to begin the Finsched process. We understand the MISO Finscheds will not change the current process of Big Rivers reporting to MISO under the carve out status for Henderson.

Please let us know how you want to move forward and in advance, thank you.

Sincerely,

  
Gary Quick  
General Manager

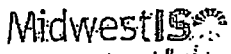
cc: Wayne [REDACTED]  
The Energy Authority

MISG Portal Window

https://markets.midwestiso.org/MI201

File Edit View Favorites Tools Help

MISG Portal



### Market Portal

Account Services Settlements **API** Schedule Approval

Financial Contract	
Submit	Cancel
Contract Name	BRPS-HMPL DA @ BREC.HMP2
Buyer Name	HMPL
Seller Name	BRPS
Effective Start (EST)	1/1/2011
Effective End (EST)	1/31/2011
Source Location	BREC.HMP2
Sink Location	BREC.HMP2
Delivery Point	BREC.HMP2
Contract Type	PureFinancial
Schedule Approval	Counterparty Approval
Settlement Market	DayAhead
Congestion Losses	BuyerPays
Buyer Comments	(null)
Seller Comments	(null)
Contract Approval (EST)	Not Approved

**Wayne Thompson**

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**From:** Gary Quick  
**Sent:** Friday, October 22, 2010 4:19 PM  
**To:** William T. [REDACTED]; Sam H. [REDACTED]  
**Cc:** "Mark Bailey"; [REDACTED]; Cheryl A. [REDACTED]; [REDACTED]@midwestiso.org; Wayne [REDACTED]  
**Subject:** Henderson Municipal Power & Light - Station Two Generation Facilities

Good Afternoon:

Thank you for taking the time to visit with us. Please accept this email as formal authorization for The Energy Authority to represent Henderson Municipal Power & Light in discussions with the Midwest ISO and the Big Rivers Electric Corporation regarding MISO membership, market participation, and registration of the Henderson Station Two Generation Facilities.

Please note that I have sent copies of this authorization to representatives of the Midwest ISO and the Big Rivers Electric Corporation.

Thank you, Gary



September 30, 2010

Mr. Mark Bailey  
Big Rivers Electric Corporation  
PO Box 24  
Henderson, KY 42419-0024

REF: MISO Registration – Big Rivers  
PSC Case No. 2010-00043

Dear Mark:

Thank you for your September 27 email (copy attached) concerning the pending MISO registration for Big Rivers. Since receiving your September 22 letter (copy attached) concerning the MISO registration a couple of events have taken place. Henderson has held discussions with The Energy Authority (TEA) which is located in Jacksonville, Florida, and this past Monday, Henderson and TEA participated in a conference call with representatives of MISO.

Based upon the statements made by MISO representatives during the conference call, it is Henderson's understanding that an officer of Big Rivers has certified to MISO that Big Rivers has the authority or right to register all of the capacity and related energy of Henderson Station Two under Big Rivers' name. Big Rivers has apparently also certified that it has the authority or right to act as the MISO Market Participant for Henderson's annual reserved capacity and related energy. As the asset owner, Henderson is not aware of any existing verbal or written authorizations that allow Big Rivers to register Henderson Station Two, which apparently included Henderson's annual reserved capacity and related energy, with MISO. Also, Henderson has not authorized Big Rivers to act as a MISO Market Participant for Henderson. Henderson is not aware of any existing documents between Henderson and Big Rivers that grant Big Rivers the authority to register Station Two with MISO without the written consent from Henderson. As we explained to Big Rivers and MISO, since our first meeting with you on April 12 concerning the possibility of Big Rivers joining MISO, Henderson has considered becoming a Market Participant or retaining a third party to act as our Market Participant. Henderson has also indicated an interest in registering Station Two with MISO since that was one of the options MISO presented to Henderson.

# HMP&L

As the owner of Station Two, Henderson does not agree with or approve the Big Rivers proposed MISO registration filing for Station Two and we do not agree with Big Rivers' proposal to act as Market Participant for Henderson's reserved capacity and related energy. We suggest that Big Rivers and MISO correct the proposed Big Rivers' pending registration filing concerning Henderson's Station Two and Big Rivers' proposed market participation to represent Henderson.

Sincerely,



Gary Quick  
General Manager

cc: Mr. Ray [REDACTED] MISO  
Ms. Cheryl [REDACTED] MISO  
Mr. Kevin [REDACTED] MISO  
Mr. Sam [REDACTED] TEA  
Mr. Bill [REDACTED] TEA  
Mr. Jeff R. [REDACTED] PSC  
Mr. Wayne [REDACTED] HMP&L

Attachments:

- 1) May 27, 2010 email to Cheryl A. [REDACTED]
- 2) September 22, 2010 Mark Bailey Letter
- 3) September 23, 2010 email to Cheryl A. [REDACTED]
- 4) September 24, 2010 & September 27, 2010 emails G. Quick and M. Bailey



**Gary Quick**

---

**From:** Mark Bailey [Mark.Bailey@bigrivers.com]  
**Sent:** Monday, September 27, 2010 3:14 PM  
**To:** Gary Quick  
**Cc:** ct [REDACTED]@midwestiso.org  
**Subject:** RE: BREC Letter

Hello Gary:

You asked in the following e-mail message of September 24, 2010, how Big Rivers submitted the registration request for the Station Two capacity and related energy. Big Rivers, as Market Participant, has submitted to Midwest ISO registration forms for Station Two Unit 1 (153 MW) and Unit 2 (159 MW). The HMP&L load is registered as a part of Big Rivers' load. This was accomplished on or about September 15, 2010, as required by Midwest ISO to assure integration of Big Rivers into Midwest ISO by December 1, 2010, prior to expiration on December 31, 2010, of Midwest ISO Attachment RR Contingency Reserve service to Big Rivers for all generators operated by it. As I noted in my letter of September 22, 2010, this registration will have no negative impact on Big Rivers' performance of its contractual obligations under its agreements with the City of Henderson regarding Station Two. Please let me know if we may provide you further information.

Mark

---

**From:** Gary Quick [mailto:gquick@hmpl.net]  
**Sent:** Friday, September 24, 2010 11:46 AM  
**To:** Mark Bailey  
**Cc:** Cheryl A. B [REDACTED]; Wayne [REDACTED]  
**Subject:** FW: BREC Letter

Good Morning Mark:

I plan to respond to your September 22 letter concerning MISO, but after I received your letter I had several questions for MISO. Below is an email from Cheryl and she responded to some of my questions. However, please note her comment below concerning my questions about the registration of Station Two capacity and related energy. Cheryl suggested that I contact you; can you let me know how Big Rivers submitted the registration request for the Station Two capacity and related energy? As we discussed with you and your staff, if HMP&L participates in MISO we will register our annual reserved capacity and related energy. We assume Big Rivers has registered its annual allocated capacity and related energy. We have a meeting today with TEA and I'm sure they will need to have this information as they go forward as HMP&L's Market Participant.

In advance, thanks for your help. Gary

---

**From:** Cheryl A. Bredenbeck [mailto:cbredenbeck@midwestiso.org]  
**Sent:** Friday, September 24, 2010 10:22 AM  
**To:** Gary Quick  
**Cc:** Wayne [REDACTED]; Sam H. [REDACTED]; Randall Redding; [REDACTED] Greg; [REDACTED] Virginia; Mark Bailey  
**Subject:** RE: BREC Letter

Hi Gary,

I do have a copy of your referenced May 27th e-mail. As you recall at the time of those April to May discussions, Big Rivers was preparing for a September 1 integration (that was later postponed) and the timeline for Market Participants to register assets located in the Balancing Authority was June 15th, two and one-half months before the initial planned Big Rivers integration. The postponed integration date is now December 1 with the corresponding deadline for Market Participants (new and existing) to register assets falling the same two and one-half months before, or September 15. If you look at the materials Midwest ISO provided and reviewed in our visit to your offices back on April 27<sup>th</sup>, Slide 27 of those materials contains the registration process and due dates for Market Participant registration materials to be submitted.

In order for a Big Rivers Balancing Authority to join the Midwest ISO market all generation and load must be registered by Market Participants. Each Market Participant submits asset registration forms and becomes financially responsible for the assets it registers. As you recognize in your message below, under the Midwest ISO process the only way assets can be registered is by a Market Participant. On September 15 Midwest ISO only received the registration from an existing Market Participant – namely Big Rivers. Your May 27<sup>th</sup> e-mail confirmed that you were agreeable to Big Rivers registering the City's assets. Therefore, we have processed the Big Rivers September 15<sup>th</sup> Registration accordingly.

As we discussed back in April, the City of Henderson, as an asset owner, can certainly register once you've met the requirements of a Market Participant or elect to have a different Market Participant register these assets on your behalf in a future modeling cycle. The timing of the registration needs to be compliant with the attached Midwest ISO model deadlines presentation. These deadlines are also posted on our website. We would be happy to assist you in better understanding that Market Participant and asset registration process if you would like.

With regard to specific questions as to how the capacity and energy was registered you would need to contact Mr. Bailey at Big Rivers.

Sincerely,

Cheryl

---

**From:** Gary Quick [mailto:gquick@hmpl.net]  
**Sent:** Thursday, September 23, 2010 12:54 PM  
**To:** Cheryl A. [REDACTED]  
**Cc:** Wayne [REDACTED]; Sam H. [REDACTED]; Randall Redding; [REDACTED], Greg; [REDACTED] Virginia; Mark Bailey  
**Subject:** BREC Letter

Good Morning Cheryl:

On May 27 of this year I sent you an email at 5:10pm concerning Henderson Municipal Power and Light's intentions in the event Big Rivers Electric Cooperation became a member of MISO. Henderson has also held several meetings with you, MISO staff, and Big Rivers concerning the various options available to Henderson related to how Henderson could participate in MISO. Our position concerning participation in MISO has not changed since our last communication.

Attached is a letter I received this morning from Mr. Bailey at Big Rivers concerning the Henderson Station Two generation units. Henderson needs to know how MISO is planning to register the Henderson units. As stated in the attached letter, Big Rivers informed us this morning that it will act as the Market Participant on behalf of the

City of Henderson, which is not consistent with our position and what we have clearly stated to MISO and Big Rivers.

Before we respond to Big Rivers, we need to know what MISO and Big Rivers have done, if anything, regarding the Henderson Station Two capacity, energy, and Market Participation. As we explained to MISO and Big Rivers, Henderson has always intended to register its annual reserved capacity and the related energy. Furthermore, we also informed MISO and Big Rivers that Henderson was considering two options regarding future Market Participation; first, Henderson would request MISO's approval to become a Market Participant or second, Henderson would retain an existing external Market Participant to represent Henderson.

Please let me know the details of how Big Rivers is requesting to join MISO regarding the registration of Henderson's Station Two units and the Market Participant responsibilities.

In advance, thank you. Gary

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**Gary Quick**

**From:** Gary Quick  
**Sent:** Thursday, September 23, 2010 12:54 PM  
**To:** 'Cheryl A. [REDACTED]'  
**Cc:** Wayne [REDACTED]; 'Sam H. [REDACTED]'; Randall Redding; [REDACTED] Greg; [REDACTED] Virginia; 'Mark Bailey'  
**Subject:** BREC Letter  
**Attachments:** BREC LTR 9-22.pdf

Good Morning Cheryl:

On May 27 of this year I sent you an email at 5:10pm concerning Henderson Municipal Power and Light's intentions in the event Big Rivers Electric Cooperation became a member of MISO. Henderson has also held several meetings with you, MISO staff, and Big Rivers concerning the various options available to Henderson related to how Henderson could participate in MISO. Our position concerning participation in MISO has not changed since our last communication.

Attached is a letter I received this morning from Mr. Bailey at Big Rivers concerning the Henderson Station Two generation units. Henderson needs to know how MISO is planning to register the Henderson units. As stated in the attached letter, Big Rivers informed us this morning that it will act as the Market Participant on behalf of the City of Henderson, which is not consistent with our position and what we have clearly stated to MISO and Big Rivers.

Before we respond to Big Rivers, we need to know what MISO and Big Rivers have done, if anything, regarding the Henderson Station Two capacity, energy, and Market Participation. As we explained to MISO and Big Rivers, Henderson has always intended to register its annual reserved capacity and the related energy. Furthermore, we also informed MISO and Big Rivers that Henderson was considering two options regarding future Market Participation; first, Henderson would request MISO's approval to become a Market Participant or second, Henderson would retain an existing external Market Participant to represent Henderson.

Please let me know the details of how Big Rivers is requesting to join MISO regarding the registration of Henderson's Station Two units and the Market Participant responsibilities.

In advance, thank you. Gary



BREC LTR 9-22.pdf  
(400 KB)

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

September 22, 2010

Mr. Gary Quick  
General Manager  
Henderson Municipal Power & Light  
P. O. Box 8  
Henderson, KY 42419-0008

Dear Gary:

As you may know, Big Rivers' hearing before the Public Service Commission in its case seeking authority to transfer functional control of its transmission system to Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") concluded September 15, 2010. In order to implement Big Rivers' scheduled December 1, 2010, integration into the Midwest ISO, Big Rivers submitted Commercial Model data to the Midwest ISO on September 15, 2010, and on September 22, 2010, submitted two required certifications regarding the registration of the Station Two generation asset and the City of Henderson load. Pursuant to those submissions, Big Rivers will act as the Market Participant on behalf of the City of Henderson load and Station Two. This designation will have no impact on Big Rivers' performance of its contractual obligations under its agreements with the City of Henderson regarding Station Two. Please let me know if you have any questions, or if we can provide you further information.

Sincerely yours,

A handwritten signature in cursive script that reads "Mark A. Bailey".

Mark A. Bailey  
President and CEO  
Big Rivers Electric Corporation

**Gary Quick**

---

**From:** Gary Quick  
**Sent:** Thursday, May 27, 2010 5:10 PM  
**To:** Cheryl A. [REDACTED]  
**Cc:** Wayne [REDACTED]  
**Subject:** RE: Big Rivers to register Henderson Question

Hi Cheryl:

Yes, we talked with Mark Bailey yesterday morning at 8:00 am at the Big Rivers Office Building. We informed Mark and his staff that Henderson was agreeable to Big Rivers registering Henderson's 105 MW (as of June 1) and Big Rivers 207 MW separately rather than merely registering the 312 MW. You will need to visit with Mark, but I did not get the impression the separate registration was a problem for Big Rivers. We also informed Mark and his staff that Henderson was visiting with TEA to represent Henderson in the near future. Does this provide you with the information you need??

Thanks, Gary

---

**From:** Cheryl A. [REDACTED] [mailto:[REDACTED]@midwestiso.org]  
**Sent:** Thursday, May 27, 2010 4:31 PM  
**To:** Gary Quick  
**Cc:** Wayne [REDACTED]  
**Subject:** Big Rivers to register Henderson Question

Gary,

Thank you for meeting us again last week. I am writing to ask if you had a chance to leave a message for Mark Bailey of Big Rivers informing them that you are fine with Big Rivers registering Henderson assets for this first modeling registration cycle?

Have a great memorial weekend!

Regards,

Cheryl

Cheryl [REDACTED]  
Director, Transmission Services  
Midwest ISO

# HMP&L

HENDERSON MUNICIPAL POWER & LIGHT

May 25, 2010

Via Regular Mail

Mr. Sam H. [REDACTED]  
The Energy Authority  
301 West Bay Street, Suite 2600  
Jacksonville, FL 32202

Re: TEA Risk Advisor Risk Management Services Agreement  
Amendment #1

Dear Mr. [REDACTED]

Enclosed, per your request, are two signed originals of the TEA Risk Advisor Risk Management Services Agreement Amendment #1 for execution. Please return one fully executed original for our records.

Sincerely,

  
Gary Quick  
General Manager

cc: Wayne [REDACTED]

Enclosure