

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RIVERSIDE GENERATING COMPANY, L.L.C.)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2017-00472
)	
KENTUCKY POWER COMPANY)	
)	
DEFENDANTS)	

NOTICE OF FILING

Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the evidentiary hearing conducted on September 18, 2018 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- All exhibits introduced at the evidentiary hearing conducted on September 18, 2018 in this proceeding;
- A written log listing, *inter alia*, the date and time of where each witness' testimony begins and ends on the digital video recording of the evidentiary hearing conducted on September 18, 2018.

A copy of this Notice, the certification of the digital video record, hearing log, and exhibits have been electronically served upon all persons listed at the end of this Notice.

Parties desiring to view the digital video recording of the hearing may do so at http://psc.ky.gov/av_broadcast/2017-00472/2017-00472_18Sep18_Inter.asx.

Parties wishing an annotated digital video recording may submit a written request by electronic mail to pscfilings@ky.gov. A minimal fee will be assessed for a copy of this recording.

Done at Frankfort, Kentucky, this 5th day of October 2018.



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Executive Director
Public Service Commission of Kentucky

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CERTIFICATION

I, Angela Fields, hereby certify that:

1. The attached DVD contains a digital recording of the Hearing conducted in the above-styled proceeding on September 18, 2018. Hearing Log, Exhibit List and Witness List are included with the recording on September 18, 2018.
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Hearing of September 18, 2018.
4. The Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Hearing of September 18, 2018 and the time at which each occurred.

Signed this 4 day of October 2018.


Angela Fields, Paralegal Consultant


Stephanie Schweighardt, Notary Public
State at Large
Commission Expires: January 14, 2019
ID#: 525987



Date:	Type:	Location:	Department:
9/18/2018	Other	Hearing Room 1	Hearing Room 1 (HR 1)

Judge: Talina Mathews; Michael Schmitt
 Defendant: Kentucky Power Company
 Witness: Anthony Hammond; Ranie Wohnhas
 Clerk: Angela Fields

Event Time	Log Event
8:32:08 AM	Session Started
8:32:11 AM	Session Paused
9:01:12 AM	Session Resumed
9:01:33 AM	Review of 9/18/2018 9:01:12 AM
9:01:50 AM	Chairman Schmitt
	Note: Fields, Angela Preliminary Comments
9:02:17 AM	Atty Goss
	Note: Fields, Angela Introduction of counsel and preliminary comments re: witness
9:02:45 AM	Atty Overstreet
	Note: Fields, Angela Introduction of Counsel for KY Power and preliminary comments re: witnesses
9:03:23 AM	Chairman Schmitt
	Note: Fields, Angela Outstanding Motions?
9:03:59 AM	Chairman
	Note: Fields, Angela Motion sustained
9:04:12 AM	Atty Goss
	Note: Fields, Angela Exhibits that are already contained in the record with exception to a few.
9:05:00 AM	Chairman
	Note: Fields, Angela Did you provided your exhibits to PSC staff?
9:05:24 AM	Atty Goss- direct Hammond
	Note: Fields, Angela Sworn in witness.
9:05:46 AM	Atty Goss direct Hammond
	Note: Fields, Angela State name and employment
9:06:14 AM	Atty Goss direct Hammond
	Note: Fields, Angela Revisions or changes to testimony?
9:06:33 AM	Atty Overstreet cross Hammond
	Note: Fields, Angela Pg 3 of rebuttal testimony.
9:07:08 AM	Atty Overstreet cross Hammond
	Note: Fields, Angela Does Foothills LLC still exist?
9:08:55 AM	Atty Overstreet cross Hammond
	Note: Fields, Angela Does the entity still exist?
9:09:53 AM	Atty Overstreet cross Hammond
	Note: Fields, Angela Pg 5 of 35 AH-3 to rebuttal testimony. Exhibit to the rebuttal testimony.
9:10:40 AM	Atty Overstreet cross Hammond
	Note: Fields, Angela 4th Whereas clause. Do you know whether that sublease took place?
9:11:58 AM	Atty Overstreet cross Hammond
	Note: Fields, Angela Describe for Commission the equipent and machinery on the Zelda site?

9:12:46 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Are those assests recorded on the book of Foothills Generating LLC?
9:13:17 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Your testimony that the assests are recorded on Riverside books?
9:13:37 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Pg 6 of initial testimony.
9:14:26 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Line 9 and 10. What is the identity of the other facility that is not located on the Zelda site?
9:14:57 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Does Riverside have any plans to use other assets?
9:15:36 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Pg 4 of direct testimony, Line 6.
9:16:23 AM	Atty Overstreet cross Hammond Note: Fields, Angela	PJM's OATT - Agree that if KY Power retail power rates were significantly less than the price at which Riverside sells energy to PJM than it would be looking to purchase power from KY Power at retail?
9:17:26 AM	Atty Overstreet cross Hammond Note: Fields, Angela	You want to sell supply because it is in your economic interest?
9:18:23 AM	Atty Overstreet cross Hammond Note: Fields, Angela	PJM open access rule require you to self supply?
9:18:44 AM	Atty Overstreet cross Hammond Note: Fields, Angela	True that the net effect to self supply is that Riverside is paying wholesale rates for power used at Zelda and Foothill sites?
9:19:30 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Tarriff. Special terms and conditions that talk about remote self supply. When was that tariff first filed with the PSC?
9:20:06 AM	Atty Overstreet cross Hammond Note: Fields, Angela	The tariff was filed in Sept. 2001 in KY Power Response to 1-5?
9:20:46 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Iterations. Provision dealing with remote self supply is in every approved version. Do you agree with that?
9:21:08 AM	Atty Overstreet cross Hammond Note: Fields, Angela	When did the three Zelda units start operating?
9:21:26 AM	Atty Overstreet cross Hammond Note: Fields, Angela	When did the Foothill units start?
9:21:45 AM	Atty Overstreet cross Hammond Note: Fields, Angela	When did Riverside first approach KY Power?
9:22:06 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Fair to say that course of dealing between KY Power and Riverside in the intervening 14 years, was that Riverside would take power from KY power and pay retail rates?
9:22:48 AM	Atty Overstreet cross Hammond Note: Fields, Angela	New Event Riverside Response to Staff - subpart B.
9:24:41 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Does that response means that if the generation by any or all of the 5 units in a single calendar month exceded the amount of power consumed by Riverside that Riverside would not pay KY Power for retail service?
9:25:46 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Output is to be netted against consumption over the same calendar month?
9:26:18 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Billing increments under that tariff are what time?

9:26:36 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Response to staff 1-3.
9:28:09 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Tables. Zelda and Foothills. First row is energy usage. Amount of energy that Zelda consumes. Is that correct?
9:28:49 AM	Atty Overstreet cross Hammond Note: Fields, Angela	In January, it was 537,144 kWh hrs? Below it you show production by the three Zelda units. Correct?
9:29:13 AM	Atty Overstreet cross Hammond Note: Fields, Angela	January 2017, Zelda 1 produced 5,823 mwh?
9:29:49 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Convert usage to MW hours in Jan. Zelda's usage was 537 MW?
9:30:34 AM	Atty Overstreet cross Hammond Note: Fields, Angela	What is the factor in January for Foothills?
9:31:41 AM	Atty Overstreet cross Hammond Note: Fields, Angela	There was not a need for the 5 units to generate, there was a need for the five units to consume the power?
9:32:15 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Who supplies the power to the site?
9:32:35 AM	Atty Overstreet cross Hammond Note: Fields, Angela	The entity you rely of for the power?
9:32:59 AM	Atty Overstreet cross Hammond Note: Fields, Angela	If Riverside had the ability to remote self supply beginning the calendar 2017 throughout 2017, For Zelda and Foothills, what months would there have not been a net zero settlement?
9:34:21 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Feb. 2017 numbers, Zelda and Foothills consumed power even when they were not generating?
9:35:20 AM	Atty Overstreet cross Hammond Note: Fields, Angela	There was energy consumption during the same month. Is it fair to assume Zelda and Foothills consume energy even when the five units are not generating?
9:36:45 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Does that give rise to the 561 mwh in feb. 2017 when they were not generating?
9:39:21 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Ky Power has the obligation to have the contracts in place to provide reasonable service to Riverside?
9:40:01 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Because you are utilizing the same equipment you are saying you are buying it from the wholesale market?
9:40:26 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Your position it is appropriate under ky law for entity to bypass the retail utility and purchase power from the wholesale market?
9:40:56 AM	Atty Goss Note: Fields, Angela	Object to question.
9:41:10 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Accurate that the Zelda site is consuming electricity 24/hrs a day, 7 days a week?
9:41:42 AM	Atty Overstreet cross Hammond Note: Fields, Angela	What percentage of the hours per month does the Zelda site not generate?
9:43:03 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Refer to RKW exhibit 1.

9:43:50 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Filed your rebuttal after Mr. Wohnhas filed his?
9:44:12 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Capacity factors are not too far apart?
9:45:07 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Refer to Pg 4 of your rebuttal testimony.
9:45:24 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Line14. One factor you indicate is Zelda and Foothills are separate and unique.
9:46:25 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Are you aware that Marathon refinery has multiple meters?
9:47:27 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Riverside receives a single bill from KY Power.
9:47:59 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Refer to Pg 6 of your direct testimony.
9:48:40 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Are you familiar with the KY Power's Mitchell generating station?
9:49:04 AM	Atty Overstreet cross Hammond Note: Fields, Angela	The generation ties from Zelda and Foothills to Bakersfield?
9:49:25 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Big sandy 1 and 2 each had independent ties to Bakersfield?
9:51:05 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Power is flowing to Riverside, you are utilizing KY Power's assests?
9:51:55 AM	Atty Overstreet cross Hammond Note: Fields, Angela	True a singe administrative building serves Zelda and Foothills?
9:52:26 AM	Atty Overstreet cross Hammond Note: Fields, Angela	That building is located on Zelda site?
9:53:22 AM	Atty Overstreet cross Hammond Note: Fields, Angela	The 9 mile lateral enters where?
9:53:47 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Who owns the 9 mile lateral?
9:54:19 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Refer to response 1-1-g. Singe warehouse located on zelda site?
9:55:39 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Riverside response 1-1 on pg 1 of 9 subpart g.
9:57:00 AM	Atty Overstreet cross Hammond Note: Fields, Angela	The warehouse. Is it is a common facility?
9:57:39 AM	Atty Overstreet cross Hammond Note: Fields, Angela	It performes warehousing functions for Foothills?
9:58:06 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Who is your water supplier?
9:58:23 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Where does the six inch water line enter the facility?
9:58:44 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Refer to your response to 1-1-k. Foothills and Zelda receive sewer service from one line?
9:59:24 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Septic system located on Zelda?
9:59:44 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Refer to Pg 13 of Wohnhas testimony.
10:01:23 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Zelda and Foothills have a single KY pollution discharge elimination permit?

10:02:06 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Handing out exhibit. KY Power Exhibit 2. Refer to pg. 6.
10:04:23 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Exh. 2 Pg 6, 1.4. Pollution elimination discharge system permit is?
10:05:03 AM	Atty Overstreet cross Hammond Note: Fields, Angela	This is regulated by Ky Dept of for Environmental Protection?
10:05:19 AM	Atty Overstreet cross Hammond Note: Fields, Angela	How many outfalls does the Zelda site have?
10:06:23 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Pg 13 of Wohnhas testimony. Ky Division of Air Quailty issued one permit to Zelda and Foothills. Do you dispute?
10:06:53 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Refer to 1-1-A. Zelda control room.
10:07:14 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Common entrance to Zelda and Foothill from highway 23?
10:08:05 AM	Atty Overstreet cross Hammond Note: Fields, Angela	The first 30 feet of entrance belongs to the Zelda site?
10:09:57 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Is there a second gate into foothills?
10:10:21 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Foothills and Zelda share common street address?
10:10:50 AM	Atty Overstreet cross Hammond Note: Fields, Angela	The mail goes to same address for both sites?
10:11:38 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Refer to your direct testimony on pg. 4, lines 6-10. Ability to self supply.
10:12:45 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Self supply will always be less expensive then buying from KY Power. Riverside did not approach KY Power until 2017. Why wait the 14-15 years to discuss the self supply option?
10:16:08 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Riverside owns other stations that self supply. How many other stations do that?
10:16:39 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	How many of the 16 are self supplying?
10:17:01 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	11 of the 12 self supply. Riverside is the only non-self supplying facility?
10:17:56 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	IL , PN and NJ is the only ones?
10:18:16 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Virgina, who is the retail self supplier for that station?
10:19:18 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Dawswell limited partnership. Self supply?
10:19:58 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Rappahanic (?) Distribution company. Tariff on file that provides for the ability for Dawswell to self supply.
10:20:46 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	PHDR - provide the Dawswell tariff?
10:21:23 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Ellis power own any generation facilities outside of PJM?
10:21:48 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	How many units are in that plant?

10:22:36 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Is self supply an option for a power station that is within the MISO footprint similar to a power plant within the PJM footprint?
10:23:14 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Other tariff provisions that are similar what is allowed in the PJM re: self supply?
10:24:10 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	If Zelda and Foothills sites are eligible under tariff PJM for self supply. Does that mean that for those months that those 2 sites generate more power than they consume there will be zero retail costs associated with the usage provided by KY Power?
10:25:36 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Did you research into the reasons why self supply was provided?
10:26:53 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Overlap between PJM as a wholesale market provider and the consumption of energy at the retail level. Do you perceive a conflict there?
10:27:32 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Agree that PJM is a wholesale market?
10:30:43 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	recognition by riverside of retail impact ...
10:32:24 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	LS power aquired Riverside around 2010. When Zelda and Foothills were developed?
10:33:28 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Have any knowledge if the sites were singe or multiple projects?
10:35:36 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Refer to rebuttal testimony at bottom of pg 1. KY Power's position to maintain a lucrative status quo?
10:36:40 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Not suggesting that KY Power's rates are excessive or unreasonable?
10:37:21 AM	PSC Atty Nguyen cross Hammond Note: Fields, Angela	Is Dynogy still in existance?
10:38:34 AM	Atty Goss redirect Hammond Note: Fields, Angela	KY Power still has a retail tariff that allows Riverside to self supply.
10:39:20 AM	Atty Goss redirect Hammond Note: Fields, Angela	Explain the difference in self supply and remote self supply.
10:40:58 AM	Chairman Note: Fields, Angela	What does remote mean?
10:41:26 AM	Atty Goss redirect Hammond Note: Fields, Angela	Does KY Power's special terms and conditions provide any guidance on what remote means?
10:41:59 AM	Atty Goss redirect Hammond Note: Fields, Angela	Any other customer besides Riverside takes service from KY Power under service tariff NUG?
10:42:31 AM	Atty Goss redirect Hammond Note: Fields, Angela	Refer to KY Power Exh. 2.
10:43:00 AM	Atty Goss redirect Hammond Note: Fields, Angela	Are there water discharge permits typically part of the 10,000 MW assets you manage for the company?
10:43:28 AM	Atty Goss redirect Hammond Note: Fields, Angela	Who's name isthe permit in?
10:43:48 AM	Atty Goss redirect Hammond Note: Fields, Angela	Riverside is the owner of Zelda and Foothills site? Does it suprise you that this permit is a single permit?

10:44:20 AM	Atty Goss redirect Hammond Note: Fields, Angela	What is an outfall?
10:45:09 AM	Atty Goss redirect Hammond Note: Fields, Angela	There should not be a concern about pollution in the water?
10:46:14 AM	Session Paused	
11:10:48 AM	Session Resumed	
11:10:56 AM	Atty Goss redirect Hammond Note: Fields, Angela	Site map put on the wall. Riverside Exhibit 1.
11:11:09 AM	Laptops Activated	
11:12:31 AM	Laptops Deactivated	
11:12:35 AM	New Event	
11:12:55 AM	Laptops Activated	
11:13:20 AM	Atty Goss redirect Hammond Note: Fields, Angela	Laptop view of google earth view. Riverside Exhibit 1
11:14:19 AM	Atty Goss redirect Hammond Note: Fields, Angela	Describe what we are seeing, and point out the attributes of what we are seeing.
11:16:21 AM	Atty Goss redirect Hammond Note: Fields, Angela	Tell the commission what we are looking at on the wall.
11:16:46 AM	Camera Lock PTZ Activated	
11:17:48 AM	Atty Goss redirect Hammond Note: Fields, Angela	What are the water tanks for?
11:18:33 AM	Atty Goss redirect Hammond Note: Fields, Angela	What is in the administration building?
11:19:01 AM	Atty Goss redirect Hammond Note: Fields, Angela	What is the building between the gas yard and the administration building?
11:19:39 AM	Atty Goss redirect Hammond Note: Fields, Angela	How many people work at this address?
11:21:02 AM	Atty Goss redirect Hammond Note: Fields, Angela	If heading north on us 23 and head into the driveway, how would one get to one site or the other?
11:21:56 AM	Atty Goss redirect Hammond Note: Fields, Angela	Is there gate security?
11:22:18 AM	Atty Goss redirect Hammond Note: Fields, Angela	Gate that leads to Foothills is more on the Zelda property; is there any significance to that fence?
11:23:07 AM	Atty Goss redirect Hammond Note: Fields, Angela	There is a fence that separates the adjacent sites?
11:23:55 AM	Atty Goss redirect Hammond Note: Fields, Angela	Foothills. Describe that site.
11:25:14 AM	Atty Goss redirect Hammond Note: Fields, Angela	Gas supply to the properties. Describe the lateral that comes from the TN line. Where does it come in?
11:26:03 AM	Chairmain Schmitt Note: Fields, Angela	Where is the location of that line where it splits off?
11:26:40 AM	Atty Goss redirect Hammond Note: Fields, Angela	Water line from the big sandy water district. Where is that line?
11:27:26 AM	Atty Goss redirect Hammond Note: Fields, Angela	Path that goes in different directions. What are those? Outfalls?
11:28:46 AM	Atty Goss redirect Hammond Note: Fields, Angela	Where is the control room for the Foothill site. Describe the control rooms for both sites.

11:30:18 AM	Atty Goss redirect Hammond Note: Fields, Angela	Are these two site electricly isolated?
11:31:09 AM	Atty Goss redirect Hammond Note: Fields, Angela	Switch yards. How are the electrons produced there makes it to the Bakersfield substation.
11:32:51 AM	Atty Goss redirect Hammond Note: Fields, Angela	Who owns the poles and wires to the bakersfield substation?
11:33:16 AM	Atty Goss redirect Hammond Note: Fields, Angela	Backfeed. Is there a capability for the electrons to run in both directions in these plants?
11:33:55 AM	Atty Goss redirect Hammond Note: Fields, Angela	Step up and step down transformers?
11:34:32 AM	Atty Goss redirect Hammond Note: Fields, Angela	Parking lot in the middle of the photo?
11:35:10 AM	Atty Goss redirect Hammond Note: Fields, Angela	What do you mean that the sites can be sold separately. Explain that.
11:36:12 AM	Atty Goss redirect Hammond Note: Fields, Angela	Common water line and gas line. Is that a problem that is easily solveable if sold separatly.
11:37:30 AM	Atty Goss redirect Hammond Note: Fields, Angela	Describe the concept of remote self supply as Riverside views it.
11:38:55 AM	Chairman Schmitt - Hammond Note: Fields, Angela	If you kept Foothills and sold Zelda, would you have a lot of problems to operate Foothills regarding lines?
11:40:37 AM	Chairman Schmitt - Hammond Note: Fields, Angela	Property subject to a use by owner on the adjoining tract.
11:42:05 AM	Chairman Schmitt - Hammond Note: Fields, Angela	Question about remote supply.
11:44:51 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Where is the fence between the two properties?
11:45:13 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Water meter is single and located where? Pg 8. of your response.
11:45:56 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Water Meter is located on Zelda or Foothills property?
11:46:07 AM	Camera Lock Deactivated	
11:46:17 AM	Camera Lock PTZ Activated	
11:46:39 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Where are the water tanks on the foothill property?
11:47:32 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Road to the big sandy river. No gate to that?
11:48:34 AM	Atty Overstreet cross Hammond Note: Fields, Angela	Need for easements. Does an easement of record exist for the road from the zelda site to the foothills site.
11:50:02 AM	Atty Goss redirect Hammond Note: Fields, Angela	One common owner for each of these sites. No need to have an easement because the road is owned by the same entity.
11:50:59 AM	Atty Goss redirect Hammond Note: Fields, Angela	Summarize the interplay between the KY Power tariff NUG and the PJM open access tariff.
11:52:34 AM	Atty Goss redirect Hammond Note: Fields, Angela	Reference to the applicable open access tariff. Is that the tariff you are talking about?

11:53:17 AM	Atty Goss redirect Hammond Note: Fields, Angela	Do you know if these sites were not adjacent, would you think there position would be different?
11:55:35 AM	Camera Lock Deactivated	
11:55:45 AM	Laptops Deactivated	
11:56:39 AM	Atty Goss redirect Hammond Note: Fields, Angela	Wohnhas testimony at pg. 13.
11:57:06 AM	Atty Goss redirect Hammond Note: Fields, Angela	Title Five Air Permit.
11:57:42 AM	Atty Goss redirect Hammond Note: Fields, Angela	You deal with title 5 pretty often?
11:58:21 AM	Atty Goss redirect Hammond Note: Fields, Angela	Federal government tell the states...
11:58:30 AM	Atty Goss redirect Hammond Note: Fields, Angela	What types of industry and source are subject to Title V?
11:59:30 AM	Atty Goss redirect Hammond Note: Fields, Angela	What is the criteria that have multiple sites in close proximity?
12:00:51 PM	Atty Goss redirect Hammond Note: Fields, Angela	Handing out exhibits. Riverside Exhibit 2.
12:02:27 PM	Atty Goss redirect Hammond Note: Fields, Angela	This reg appears to say that Kentucky is obligated under title V to regulate and issue permits to sources.
12:02:49 PM	Atty Goss redirect Hammond Note: Fields, Angela	Handing out Exhibit 3.
12:03:42 PM	Atty Goss redirect Hammond Note: Fields, Angela	Pg 3 of exh. 3. 5th paragraph down.
12:05:27 PM	Atty Goss redirect Hammond Note: Fields, Angela	What is that paragraph telling you.
12:05:47 PM	Atty Goss redirect Hammond Note: Fields, Angela	What is your experience as VP as to the issuance of title V permits?
12:06:35 PM	Atty Goss redirect Hammond Note: Fields, Angela	Could zelda and foothills site got separate permits if they wanted to?
12:07:09 PM	Atty Overstreet cross Hammond Note: Fields, Angela	In response to question about the lapse of time before riverside began exploring...
12:08:06 PM	Atty Overstreet cross Hammond Note: Fields, Angela	Under the tariff the language concerning the applicable... existed at that time?
12:09:34 PM	Atty Overstreet cross Hammond Note: Fields, Angela	Handing out exhibits. Ky Power Exhibit 3
12:11:54 PM	Atty Overstreet cross Hammond Note: Fields, Angela	Unlike KY where LS power owns plant, VA is regulated. But there is choice in VA?
12:12:37 PM	Atty Overstreet cross Hammond Note: Fields, Angela	Energy being generated at Zelda and flowing up to Bakersfield and back.
12:13:52 PM	Atty Overstreet cross Hammond Note: Fields, Angela	They travel out over the KY Power transmission?
12:14:53 PM	Atty Overstreet cross Hammond Note: Fields, Angela	On average, that none of the five units are operating about 90% of the time
12:15:31 PM	Atty Overstreet cross Hammond Note: Fields, Angela	Staffing. Riverside response to KY Power 1-6 and 1-7

12:16:54 PM	Atty Overstreet cross Hammond Note: Fields, Angela	There are no Riverside employee providing service on these sites.
12:17:55 PM	Atty Overstreet cross Hammond Note: Fields, Angela	By Riverside you mean Foothills?
12:18:12 PM	Atty Overstreet cross Hammond Note: Fields, Angela	IHI Power Services?
12:18:31 PM	Atty Overstreet cross Hammond Note: Fields, Angela	A group of employees described as non-Riverside employees. Contractors hired?
12:19:40 PM	Chairman Schmitt Note: Fields, Angela	Two tracts were both, for tax purposes, were considered separate? Still the case?
12:20:23 PM	Atty Overstreet cross Hammond Note: Fields, Angela	Pilot payment for Foothills is assigned to Riverside?
12:21:21 PM	New Event Note: Fields, Angela	All exhibits entered into the record.
12:21:45 PM	Session Paused	
1:29:20 PM	Session Resumed	
1:29:29 PM	Atty Overstreet direct Wohnhas Note: Fields, Angela	Name and employment?
1:30:36 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Single issue of whether Zelda and Foothills is one or two sites?
1:31:33 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Ky Power has not abandoned its common ownership objection?
1:32:24 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Introduction of documents in the record. Discussion about documents between Chairman and Counsel.
1:35:06 PM	Discussion between Counsel Note: Fields, Angela	KY power does not dispute common ownership.
1:35:55 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Handed out Riverside Exhibit 4.
1:37:30 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Two sites are electrically isolated? Dispute?
1:38:00 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Separately metered? What is happening in this situation?
1:38:51 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Presumes electrical isolation, the separate meters?
1:39:19 PM	Atty Goss cross Wohnhas Note: Fields, Angela	What do you mean by separately served?
1:40:43 PM	Atty Goss cross Wohnhas Note: Fields, Angela	How many generators under ISG
1:41:00 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Has KY Power had another generation besides Riverside that has taken service under tariff NUG?
1:41:20 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Pg 3 under special terms and conditions. Read all three sentences.
1:42:24 PM	Atty Goss cross Wohnhas Note: Fields, Angela	KY Power's position?
1:43:28 PM	Atty Goss cross Wohnhas Note: Fields, Angela	This tariff allows for remote self supply but not for self supply?
1:45:15 PM	Atty Goss cross Wohnhas Note: Fields, Angela	How many time has tariff NUG been amended?
1:45:41 PM	Atty Goss cross Wohnhas Note: Fields, Angela	What were the changes and why were they changed?

1:46:13 PM	Atty Goss cross Wohnhas Note: Fields, Angela	When the tariff was amended last year, what part of the amendment dealt with the issue in this case?
1:46:53 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Direct testimony on pg 3. Tariff revision. Read at line 6
1:47:58 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Isn't that inconsistant to what you just said. Please explain that.
1:49:24 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Handing out Riverside Exhibit 5.
1:50:03 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Explain how the addition of the term "other" in the tariff in last year's rate case emphasized the requirement of separate and distinct facilities?
1:51:07 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Phrase removed was commonly owned and replaced by "other".
1:52:18 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Look at Riverside #5 on pg 1 second sentence.
1:53:22 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Those are not consistant statements?
1:54:21 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Top of Pg 3 of same document.
1:55:08 PM	Atty Goss cross Wohnhas Note: Fields, Angela	The term "other" was intended to address that very issue?
1:55:54 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Tariff amendent in last year's rate case, KY power believed tariff was vague and needed clarification.
1:57:06 PM	Atty Goss cross Wohnhas Note: Fields, Angela	KY power response to riverside request #16.
1:57:52 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Question 16-b. KY power's response was see info publicly available on PSC website?
1:59:50 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Handing out two exhibits. Riverside Exhibits 6 & 7.
2:01:11 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Who are Alex Vaughn and Steven Sharp?
2:01:41 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Mr. Vaughn's testimony. Pg 25 line 11-19
2:03:14 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Phrase at end of line 15, is incorrect?
2:03:36 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Line 18, made clarifying edits?
2:04:12 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Mr. Sharp's testimony, pg 28 line 14-2
2:05:10 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Ky Power told the PSC that there was not tariff changes. Clear that there was tariff changes.
2:05:48 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Riverside moves to admit Exhibits 4,5,6 & 7.
2:07:02 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Ky power response to riverside request #3, Item 3 attachment 1, pg 61.
2:08:09 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Handing out Riverside exhibit 8.

2:08:50 PM	Atty Goss cross Wohnhas Note: Fields, Angela	What is it?
2:09:15 PM	Atty Goss cross Wohnhas Note: Fields, Angela	You are the witness responsible for providing this document in the data request?
2:09:46 PM	Atty Goss cross Wohnhas Note: Fields, Angela	It appears to be a schematic of KY Power kV switch
2:10:10 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Separate designations for riverside and ...
2:10:55 PM	Atty Goss cross Wohnhas Note: Fields, Angela	This is KY Power's document, correct?
2:11:40 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Appear to be separate connections?
2:12:19 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Summarize KY Power's position, the facilities are on one side
2:13:42 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Who is EJ Clayton?
2:15:26 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Email from Clayton to Rothomeyer?
2:15:46 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Read the 2nd paragraph to email.
2:17:09 PM	Atty Goss cross Wohnhas Note: Fields, Angela	2006, Mr. Clayton on three occasions in one email referred to the facilities as separate sites.
2:18:31 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Hard to believe Mr. Clayton was unaware of the use of those statements?
2:19:00 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Greater weight should be given as to how parties regarded the two sights in the beginning than after the conflict arose?
2:20:14 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Mr. Clayton was under your supervision in 2006 when email was written?
2:20:53 PM	Atty Goss cross Wohnhas Note: Fields, Angela	The fact that KY Power does not believe these are separate sites is because they are adjacent to each other?
2:23:56 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Not what the special term in the Tariff NUG says.
2:24:43 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Is the problem the fact that Zelda and Foothills are beside each other. Is this one side or two?
2:25:52 PM	Atty Goss cross Wohnhas Note: Fields, Angela	What if they were 10 feet apart?
2:26:25 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Remote and self supply is a term of art? Special meaning in the utility business?
2:27:15 PM	Atty Goss cross Wohnhas Note: Fields, Angela	What if they were 50 feet apart?
2:27:39 PM	Atty Goss cross Wohnhas Note: Fields, Angela	What would it take to satisfy KY Power
2:29:08 PM	Atty Goss cross Wohnhas Note: Fields, Angela	What would constitute two sites?
2:29:49 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Any situation accept a remote self supply

2:30:29 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Pg 18 of testimony, line 3.
2:32:55 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Eliminate tariff all together if you do not see that it is one site
2:33:41 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Is KY Power asking to eliminatate tariff NUG?
2:34:14 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Is that becuae KY Power view Riverside as a competitor?
2:35:49 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Last rate case, KY Power referred to Riverside as a competitor?
2:37:15 PM	Chairman Schmitt Note: Fields, Angela	Could riverside qualify for remote? billed at a lesser rate...
2:39:51 PM	Chairman Schmitt Note: Fields, Angela	If Foothills was in Pikeville, the cost to KY Power would be the same as it is now with the two units side by side?
2:42:45 PM	Atty Goss cross Wohnhas Note: Fields, Angela	From your perspective, the million dollars you saved will be spread among the ratepayers?
2:43:15 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Clarity on the Zelda and Foothills site. If they were clearly separate and significantly apart then KY Power would have not issue with the remote self supply issue?
2:44:36 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Terms of the Tariff. Reason for drafting tariff NUG?
2:46:09 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Was there a FERC requirement?
2:46:42 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Implemented by AIP system as a whole?
2:47:05 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	PHDR - any other KY affiliates with similar NUG tariff?
2:47:39 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Any other AEP affiliates?
2:48:57 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	When did you start with Ky Power?
2:49:58 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Any discussion regarding tariff NUG?
2:51:13 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Initial implementation of NUG. AEP wanted to further that effort?
2:53:14 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Self supply aspect. Erosion of sales?
2:54:05 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Any concerns with respect to that part?
2:54:34 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	KY Power's intial position with respect to the Riverside sites met the requirements for self supply?
2:56:17 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	When riverside first approached KY Power, was the only concern was if they met requirements or not?
2:58:14 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	The term remote self supply was a term of art in the industry?
2:58:51 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Your definition of remote to you means a distance away?

2:59:45 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Your definition of remote is the same as your definition of what remote self supply means?
3:00:15 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Direct testimony pg 9, line 17-19.
3:01:23 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Riverside to the Commission item 5, refer to the attachment to that response.
3:01:57 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Attachments pg 3 & 4.
3:03:24 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Distinction between transmission provider and market saler?
3:04:23 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	Transmission provider. Subpart 2-I.
3:05:49 PM	Atty Nguyen cross Wohnhas Note: Fields, Angela	The definition according to PJM of remote self supply?
3:06:31 PM	Commissioner Mathews Note: Fields, Angela	Is Riverside a market seller in PJM or an industrial customer of KY Power?
3:06:56 PM	Commissioner Mathews Note: Fields, Angela	Governed by PJM OAT and be allowed to self supply under provision i, ii, or iii?
3:07:53 PM	Commissioner Mathews Note: Fields, Angela	If we believed the systems were separate and remote self supplies that is what you would tell us to do is throw away NUG. Where would that leave Riverside?
3:09:27 PM	Commissioner Mathews Note: Fields, Angela	Relationship between NUG and PJM OATT and look at self supply, remote self supply, self supply outside of the PJM region. Tell me how that does not govern this relationship.
3:11:59 PM	Commissioner Mathews Note: Fields, Angela	Only pulling implicable OATT provision being subsection 2.
3:14:35 PM	Commissioner Mathews Note: Fields, Angela	What about OATT provision 1 that talks about a netting?
3:17:12 PM	Commissioner Mathews Note: Fields, Angela	If they did that they are no longer included in the FRR calculations. They then are a transmission customer.
3:19:02 PM	Commissioner Mathews Note: Fields, Angela	Concerned about the Commission today. Trying to understand your prospective.
3:20:36 PM	Commissioner Mathews Note: Fields, Angela	PHDR - court cases you are referring to?
3:21:04 PM	Atty Goss Note: Fields, Angela	I would like to see the cases too if these cases are being relied on.
3:22:02 PM	Chairman Schmitt Note: Fields, Angela	Court cases that challenge the FERC. Proper interpretation of the NUG.
3:23:24 PM	Commissioner Mathews Note: Fields, Angela	Under NUG, they can self supply under the OATT. You are only accepting one of the three criteria under OATT.
3:24:33 PM	Session Paused	
3:41:00 PM	Session Resumed	
3:42:19 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Competitors in the wholesale market?

3:42:46 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Proposal to eliminate the terms and conditions allowing remote self supply, was because they are competitors.
3:43:39 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Be your anticipation that a unit located in Boyd or Pike Co. would share the same characteristics you discussed at length?
3:44:36 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Tariff NUG appear in Exhibit 9 email?
3:45:32 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	At the time, 2006, who was in charge of regulatory at KY Power?
3:45:53 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Goss said more weight given to communciations at the beginning of controversy. Remember that?
3:46:47 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Response Riverside, 1-10
3:48:44 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Refer to special terms and conditions provision of tariff NUG.
3:50:13 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Refer to pg 5 of Hammond direct testimony. First Q&A.
3:51:42 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Was 2014 or 2015 that Big Sandy retired?
3:52:11 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Two units and Big Sandy?
3:52:38 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Separate generation ties to Big Sandy switch yard?
3:53:29 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	50% undivided in the Mitchell generating system?
3:53:46 PM	Atty Overstreet redirect Wohnhas Note: Fields, Angela	Does each of Mitchell 1 and 2 have a unique PJM number?
3:54:11 PM	Atty Goss cross Wohnhas Note: Fields, Angela	PHDR - Big Sandy 1 & 2 electrically isolated from one another?
3:55:20 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Handing out documents. Riverside exhibit 10
3:56:28 PM	Atty Goss cross Wohnhas Note: Fields, Angela	1.7.10 d (1,2&3) Set of questions. Under Ky Power's belief that the only way that riverside can only self supply under d-2 to that provision.
3:58:52 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Look at D-1 read first couple of sentences.
3:59:35 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Isn't #2 the definition of self supply?
4:00:35 PM	Atty Goss cross Wohnhas Note: Fields, Angela	D-2 read into record.
4:01:26 PM	Atty Goss cross Wohnhas Note: Fields, Angela	D-i-2 is not self supply?
4:02:13 PM	Atty Goss cross Wohnhas Note: Fields, Angela	Believer Riverside could only remote self supply under D-ii and not D-i or D-iii?
4:02:57 PM	Atty Goss cross Wohnhas Note: Fields, Angela	No definition of remote self supply. D-ii-2 provides a definition?
4:04:21 PM	Chairman Schmitt Note: Fields, Angela	Data requests, end of day Friday 21st. Responses due with 10 business days (Oct. 5). Briefs: 30/15
4:08:40 PM	Session Paused	



Name:	Description:
Kentucky Power Exhibit 01	Commission's Staff First Request for Information, Item 3
Kentucky Power Exhibit 02	July 29, 2016 Letter to Steven Holbrook from Peter Goodmann
Kentucky Power Exhibit 03	Article titled Dynegy to sell power plants to LS Power for \$1.025 billion
Riverside Exhibit 01	Google Earth picture of Zelda and Foothill site
Riverside Exhibit 02	401 KAR 52:020 Title V Permits
Riverside Exhibit 03	40 C.F.R 70.2 Definitions
Riverside Exhibit 04	Tariff N.U.G.
Riverside Exhibit 05	Kentucky Power Company's Response in Opposition to Riverside Gnerating Company, L.L.C.'s Motion for Intervention (PSC 2017-00179)
Riverside Exhibit 06	Direct Testimony of Alex E. Vaughan on behalf of Kentucky Power Company (PSC 2017-00179)
Riverside Exhibit 07	Direct Testimony of Stephen L. Sharp Jr. on behalf of Kentucky Power Company (PSC 2017-00179)
Riverside Exhibit 08	Baker 345kV Station
Riverside Exhibit 09	Riverside's First Set of Data Requests Item 3, Attachment 1, Page 88 of 89
Riverside Exhibit 10	OATT Attachment K, Appendix 1.7 General



Item 3
Page 1 of 2
Witness: Anthony Hammond

Riverside Generating Company, L.L.C.
Case No. 2017-00472
Commission Staff's First Request for Information

3. Refer to the Hammond Testimony, page 4, lines 3-4. For each month of calendar year 2017, provide the amount of energy produced and the amount of energy consumed by the Zelda and Foothill generating stations.

Response:

Please see Page 2 of this Response.

KENTUCKY POWER
EXHIBIT 1

Witness: Anthony Hammond

Zelda (035)	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	YTD 2017
Energy Usage (kWh) Monthly	537,144	561,052	512,720	494,060	489,040	475,112	470,404	466,628	479,440	438,412	501,622	440,808	5,866,442
Zelda 1 MWh	5,823	0	15,214	2,082	6,321	3,841	8,380	5,141	16,454	9,365	6,345	18,705	97,671
Zelda 2 MWh	5,227	0	12,669	717	1,304	3,096	8,006	5,471	14,339	7,342	5,168	15,407	78,746
Zelda 3 MWh	3,901	0	11,773	0	5,052	2,897	7,531	5,939	13,977	9,206	5,077	17,787	83,140

Foothills (004)	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	YTD 2017
Energy Usage (kWh) Monthly	259,984	301,088	338,080	344,000	307,164	322,732	323,076	323,244	343,208	316,272	340,346	383,196	3,902,390
Foothills 1 MWh	5,162	0	11,546	2,550	6,027	3,990	9,715	3,279	15,205	9,880	6,937	18,314	92,605
Foothills 2 MWh	1,245	0	6,374	1,942	4,643	3,594	9,739	5,836	14,814	8,996	7,245	18,416	82,844



MATTHEW G. BEVIN
GOVERNOR

CHARLES G. SNAVELY
SECRETARY

**ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

AARON B. KEATLEY
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

July 29, 2016

Mr. Steve Holbrook
25038 U.S. 23
Catlettsburg, KY 41129

Re: KPDES Final Permit Issuance
KPDES No.: KY0103918
Riverside Generating Co LLC
AI ID: 4392
Boyd County, Kentucky

Dear Mr. Holbrook:

Enclosed is the Kentucky Pollutant Discharge Elimination System (KPDES) permit for the above-referenced facility. This action constitutes a final permit issuance under 401 KAR 5:075, pursuant to KRS 224.16-050.

This permit will become effective on the date indicated in the attached permit provided that no request for adjudication is granted. All provisions of the permit will be effective and enforceable in accordance with 401 KAR 5:075, unless stayed by the Hearing Officer under Sections 11 and 13.

Any demand for a hearing on the permit shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470 and any regulations promulgated thereto. Any person aggrieved by the issuance of a permit final decision may demand a hearing, pursuant to KRS 224.10-420(2), within thirty (30) days from the date of the issuance of this letter. Two (2) copies of request for hearing should be submitted in writing to the Energy and Environment Cabinet, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601 and the Commonwealth of Kentucky, Energy and Environment Cabinet, Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

If you have any questions regarding the KPDES decision, please contact the Operational Permits Section, Surface Water Permits Branch by phone at (502) 564-3410 or via email at SWPBSupport@ky.gov.

Further information on procedures and legal matters pertaining to the hearing request may be obtained by contacting the Office of Administrative Hearings at (502) 564-7312.

Sincerely,

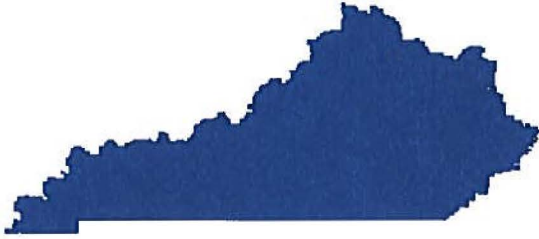
Peter T. Goodman, Director
Division of Water

PTG: SJB: asw
Enclosure

C: TEMPO

**KENTUCKY POWER
EXHIBIT 2**

KPDES



**KENTUCKY POLLUTANT
DISCHARGE ELIMINATION
SYSTEM**

PERMIT

PERMIT NO.: KY0103918
AI NO.: 4392

**AUTHORIZATION TO DISCHARGE UNDER THE
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM (KPDES)**

Pursuant to Authority in KRS 224,

Riverside Generating Company, LLC
25038 U.S. Highway 23
Catlettsburg, Kentucky 41129

is authorized to discharge from a facility located at

Riverside Generating Company, LLC
25038 U.S. Highway 23
Catlettsburg, Lawrence County, Kentucky

to receiving waters named

Big Sandy River (38°11'34" N, Longitude 82°36'08" W)

in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.

This permit shall become effective on September 1, 2016.

This permit and the authorization to discharge shall expire at midnight, August 31, 2021.

July 28, 2016

Date Signed

A handwritten signature in black ink, appearing to read "Peter T. Goodmann".

**Peter T. Goodmann, Director
Division of Water**

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601**

THIS KPDES PERMIT CONSISTS OF THE FOLLOWING SECTIONS.

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SECTION 1
EFFLUENT LIMITATIONS AND MONITORING
REQUIREMENTS

1. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1.1. Compliance Monitoring Locations (Outfalls)

The following table lists the outfalls authorized by this permit, the latitude and longitude of each and the DOW assigned KPDES outfall number:

TABLE 1.						
No.	Type	Treatment Provided	Latitude (N)	Longitude (W)	Receiving Waters	Description of Outfall
001	Direct	Oil/Water Separator Discharge to Surface Water	38°11'31"	82°36'16"	Big Sandy River	Stormwater and Non-process Water
002	Direct	Oil/Water Separator Discharge to Surface Water	38°11'25"	82°36'18"	Big Sandy River	Stormwater and Non-process Water
003	Direct	Oil/Water Separator Discharge to Surface Water	38°11'25"	82°36'17"	Big Sandy River	Stormwater and Non-process Water
004	Direct	Oil/Water Separator Discharge to Surface Water	38°11'35"	82°36'11"	Big Sandy River	Stormwater and Non-process Water

1.2. Effluent Limitations and Monitoring Requirements

1.2.1. Outfalls 001, Outfall 002, and Outfall 003

Beginning on the effective date and lasting through the term of this permit discharges from Outfalls 001, 002, 003 shall comply with the effluent limitations:

TABLE 2.										
EFFLUENT LIMITATIONS									MONITORING REQUIREMENTS	
Effluent Characteristic	STORET Code	Units	Loadings (lbs/day)		Concentrations				Frequency	Sample Type
			Monthly Average	Daily Maximum	Minimum	Monthly Average	Daily Maximum	Maximum		
Effluent Flow	50050	MGD	Report	Report	N/A	N/A	N/A	N/A	1/Quarter	Instantaneous
pH	00400	SU	N/A	N/A	6.0	N/A	N/A	9.0	1/Quarter	Grab
Total Suspended Solids	00530	mg/l	N/A	N/A	N/A	30	60	N/A	1/Quarter	Grab
Oil & Grease	00556	mg/l	N/A	N/A	N/A	10	15	N/A	1/Quarter	Grab
Hardness (as mg/l CaCO ₃)	00900	mg/l	N/A	N/A	N/A	N/A	Report	N/A	1/Quarter	Grab
Total Recoverable Zinc	01094	mg/l	N/A	N/A	N/A	N/A	0.120	N/A	1/Quarter	Grab

1.2.2. Outfall 004

Beginning on the effective date and lasting through the term of this permit discharges from Outfall 004 shall comply with the effluent limitations

TABLE 3.

EFFLUENT LIMITATIONS									MONITORING REQUIREMENTS	
Effluent Characteristic	STORET Code	Units	Loadings (lbs/day)		Concentrations				Frequency	Sample Type
			Monthly Average	Daily Maximum	Minimum	Monthly Average	Daily Maximum	Maximum		
Effluent Flow	50050	MGD	Report	Report	N/A	N/A	N/A	N/A	1/Quarter	Instantaneous
pH	00400	SU	N/A	N/A	6.0	N/A	N/A	9.0	1/Quarter	Grab
Total Suspended Solids	00530	mg/l	N/A	N/A	N/A	30	60	N/A	1/Quarter	Grab
Oil & Grease	00556	mg/l	N/A	N/A	N/A	10	15	N/A	1/Quarter	Grab
Hardness (as mg/l CaCO ₃)	00900	mg/l	N/A	N/A	N/A	N/A	Report	N/A	1/Quarter	Grab
Total Recoverable Zinc	01094	mg/l	N/A	N/A	N/A	N/A	0.120	N/A	1/Quarter	Grab

1.3. Standard Effluent Requirements

The discharges to waters of the Commonwealth shall not produce floating solids, visible foam or a visible sheen on the surface of the receiving waters.

1.4. DMR Monitoring Requirements

Until Outfall 004 is constructed, NODI Code N (Not Constructed) shall be used on the DMR for Outfall 004. Once Outfall 004 is constructed and receiving the flows from Outfalls 001, 002, and 003, a no discharge certification form (found on the Division of Water's website) shall be submitted to remove Outfalls 001, 002, and 003. By doing so, permit compliance will be relocated to Outfall 004.

SECTION 2
STANDARD CONDITIONS

2. STANDARD CONDITIONS

2.1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, modification, or denial of a permit renewal application. Any person who violates applicable statutes, who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99.010.

2.2. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit.

2.3. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action, that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2.4. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

2.5. Proper Operation and Maintenance

The permittee shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2.6. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, notification of planned changes or anticipated noncompliance does not stay any permit condition.

2.7. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

2.8. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

2.9. Inspection and Entry

The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by KRS 224, any substances or parameters at any location.

2.10. Monitoring and Records

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities which shall be retained for a period of at least five (5) years (or longer as required by 401 KAR 5:065, Section 2(10)), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

- (i) The date, exact place, and time of sampling or measurements;
- (ii) The individual(s) who performed the sampling or measurements;
- (iii) The date(s) analyses were performed;
- (iv) The individual(s) who performed the analyses;
- (v) The analytical techniques or methods used; and
- (vi) The results of such analyses.

(4) Monitoring must be conducted according to test procedures approved under 401 KAR 5:065, Section 2(8) unless another method is required under 401 KAR 5:065, Section 2(9) or (10).

(5) KRS 224.99-010 provides that any person who knowingly violates KRS 224.70-110 or other enumerated statutes, or who knowingly renders inaccurate any monitoring device or method required to be maintained under this permit, shall be guilty of a Class D felony and, upon conviction, shall be punished by a fine of not more than \$25,000, or by imprisonment for not more than one (1) year, or both. Each day upon which a violation occurs shall constitute a separate violation.

2.11. Signatory Requirement

(1) All applications, reports, or information submitted to the Director shall be signed and certified pursuant to 401 KAR 5:060, Section 4.

(2) KRS 224.99-010 provides that any person who knowingly provides false information in any document filed or required to be maintained under KRS Chapter 224 shall be guilty of a Class D felony and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars (\$25,000), or by imprisonment, or by fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

2.12. Reporting Requirements

2.12.1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (i) The alteration or addition to a permitted facility, may meet one of the criteria for determining whether a facility is a new source in KRS 224.16-050; or
- (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under KRS 224.16-050; or
- (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2.12.2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

2.12.3. Transfers

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS 224; see 401 KAR 5:070, Section 5; in some cases, modification or revocation and reissuance is mandatory.

2.12.4. Monitoring Reports

Monitoring results shall be reported at the intervals specified elsewhere in this permit.

- (i) Monitoring results must be reported on a DMR or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
- (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 401 KAR 5:065, Section 2(8), or another method required for an industry-specific waste stream under 401 KAR 5:065, Section 2(9) or (10), the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
- (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

2.12.5. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit, shall be submitted no later than fourteen (14) days following each schedule date.

2.12.6. Twenty-four Hour Reporting

- (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- (ii) The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph:
 - (A) Any unanticipated bypass which exceeds any effluent limitation in the permit.
 - (B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph ii of this section if the oral report has been received within twenty-four (24) hours.

2.12.7. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Sections 2.12.1, 2.12.4, 2.12.5 and 2.12.6, at the time monitoring reports are submitted. The reports shall contain the information listed in Section 2.12.6.

2.12.8. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, or in any report to the Director, it shall promptly submit such facts or information.

2.13. Bypass

2.13.1. Definitions

- (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

2.13.2. Bypass Not Exceeding Limitations

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section 2.13.1.

2.13.3. Notice

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, and if possible at least ten days before the date of the bypass.
- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section 2.12.6.

2.13.4. Prohibition of Bypass

- (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The permittee submitted notices as required under Section 2.13.3.
- (ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the conditions listed above in Section 2.13.3.

2.14. Upset**2.14.1. Definition**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2.14.2. Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations, if the requirements of Section 2.14.3 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2.14.3. Conditions Necessary for a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (ii) The permitted facility was at the time being properly operated;
- (iii) The permittee submitted notice of the upset as required in Section 2.12.6; and
- (iv) The permittee complied with any remedial measures required under Section 2.4.

2.14.4. Burden of Proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset, has the burden of proof.

SECTION 3
BEST MANAGEMENT PRACTICES (BMP) PLAN
REQUIREMENTS

3. BEST MANAGEMENT PRACTICES (BMP) PLAN REQUIREMENTS

The permittee shall develop and implement a Best Management Practices Plan (BMPP) consistent with 401 KAR 5:065, Section 2(4).

3.1. Applicability

These conditions apply to all permittees who use, manufacture, store, handle, or discharge any pollutant listed as: (1) toxic under Section 307(a)(1) of the Clean Water Act; (2) oil, as defined in Section 311(a)(1) of the Act; (3) any pollutant listed as hazardous under Section 311 of the Act; or (4) is defined as a pollutant pursuant to KRS 224.1-010(35) and who have operations which could result in (1) the release of a hazardous substance, pollutant, or contaminant, or (2) an environmental emergency, as defined in KRS 224.1-400, as amended, or any regulation promulgated pursuant thereto (hereinafter, the "BMP pollutants"). These operations include material storage areas; plant site runoff; in-plant transfer, process and material handling areas; loading and unloading operations, and sludge and waste disposal areas.

3.2. Plan

The permittee shall develop and implement a BMPP consistent with 401 KAR 5:065, Section 2(4) pursuant to KRS 224.70-110, which prevents or minimizes the potential for the release of "BMP pollutants" from ancillary activities through site runoff; spillage or leaks, sludge or waste disposal; or drainage from raw material storage.

3.3. Implementation

The permittee shall implement the BMPP upon of the commencement of regulated activity. Modifications to the plan as a result of ineffectiveness or plan changes to the facility shall be implemented as soon as possible.

3.4. General Requirements

The BMPP shall:

- 1) Be documented in narrative form, and shall include any necessary plot plans, drawings, or maps.
- 2) Establish specific objectives for the control of toxic and hazardous pollutants.
 - a. Each facility component or system shall be examined for its potential for causing a release of "BMP pollutants" due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.
 - b. Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances which could result in a release of "BMP pollutants", the plan should include a prediction of the direction, rate of flow, and total quantity of the pollutants which could be released from the facility as result of each condition or circumstance.
- 3) Establish specific BMPs to meet the objectives identified under paragraph b of this section, addressing each component or system capable of causing a release of "BMP pollutants".
- 4) Include any special conditions established in part b of this section.
- 5) Be reviewed by engineering staff and the site manager.

3.5. Specific Requirements

The plan shall be consistent with the general guidance contained in the publication entitled "NPDES Best Management Practices Guidance Document", and shall include the following baseline BMPs as a minimum:

- (1) BMP Committee
- (2) Reporting of BMP Incidents
- (3) Risk Identification and Assessment
- (4) Employee Training
- (5) Inspections and Records
- (6) Preventive Maintenance
- (7) Good Housekeeping
- (8) Materials Compatibility
- (9) Security
- (10) Materials Inventory

3.6. SPCC Plans

The BMP plan may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under Section 311 of the Act and 40 CFR Part 151, and may incorporate any part of such plans into the BMP plan by reference.

3.7. Hazardous Waste Management

The permittee shall assure the proper management of solids and hazardous waste in accordance with the regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1978 (RCRA) (40 U.S.C. 6901 et seq.) Management practices required under RCRA regulations shall be referenced in the BMP plan.

3.8. Documentation

The permittee shall maintain a copy of the BMPP at the facility and shall make the plan available upon request to EEC personnel.

3.9. BMP Plan Modification

The permittee shall modify the BMPP whenever there is a change in the facility or change in the operation of the facility that materially increases the potential for the release of "BMP pollutants".

3.10. Modification for Ineffectiveness

The BMPs and the BMPP shall be reviewed and appropriate modifications implemented to utilize other practicable measures if any of the following events occur:

- 1) As a result of either a fixed or episodic event-driven evaluation, the permittee determines the selected BMPs are not achieving the established performance benchmarks;
- 2) As a result of an evaluation or inspection by Cabinet personnel; or
- 3) A release of any petroleum-based product, toxic or hazardous substance.

SECTION 4
OTHER CONDITIONS

4. OTHER CONDITIONS

4.1. Schedule of Compliance

The permittee shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated below:

4.2. Other Permits

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

4.3. Continuation of Expiring Permit

This permit shall be continued in effect and enforceable after the expiration date of the permit provided the permittee submits a timely and complete application in accordance with 401 KAR 5:060, Section 2(4).

4.4. Antidegradation

For those discharges subject to the provisions of 401 KAR 10:030 Section 1(3)(b)5, the permittee shall install, operate, and maintain wastewater treatment facilities consistent with those identified in the SDAA submitted with the KPDES permit application.

4.5. Reopener Clause

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved in accordance with 401 KAR 5:050 through 5:080, if the effluent standard or limitation so issued or approved:

- 1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
- 2) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224 when applicable.

4.6. Outfall Signage

The KPDES permit establishes monitoring points, effluent limitations, and other conditions to address discharges from the permitted facility. In an effort to better document and clarify these locations the permittee should place and maintain a permanent marker at each of the monitoring locations.

SECTION 5
MONITORING AND REPORTING REQUIREMENTS

5. MONITORING AND REPORTING REQUIREMENTS

5.1. KPDES Outfalls

Discharge samples and measurements shall be collected at the compliance point for each KPDES Outfall identified in this permit. Each sample shall be representative of the volume and nature of the monitored discharge.

5.2. Sufficiently Sensitive Analytical Methods

Analytical methods utilized to demonstrate compliance with the effluent limitations established in this permit shall be sufficiently sensitive to detect pollutant levels at or below the required effluent limit. It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.

5.3. Certified Laboratory Requirements

All laboratory analyses and tests required to demonstrate compliance with the conditions of this permit shall be performed by EEC certified general wastewater laboratories.

5.4. Submission of DMRs

Monitoring results obtained during each monitoring period must be reported. The completed DMR for each monitoring period must be submitted no later than the 28th day of the month following the monitoring period for which monitoring results were obtained.

The completed DMR for each monitoring period must be entered into the DOW approved electronic system no later than midnight on the 28th day of the month following the monitoring period for which monitoring results were obtained.

For more information regarding electronic submittal of DMRs, please visit the Division's website at: <http://water.ky.gov/permitting/Pages/netDMRInformation.aspx> or contact the DMR Coordinator at (502) 564-3410.

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Dynergy to sell power plants to LS Power for \$1.025 billion

08/10/2009

10 August 2009 -- Dynergy Inc. agreed to sell nine power generating assets to LS Power for \$1.025 billion. The plants are in Kentucky, Illinois, Michigan, Connecticut, Arizona and Texas.

Dynergy also said it planned to cut capital expenditures, with a targeted range of \$25 million to \$30 million in savings per year; reduce operational expenditures, with a targeted range of \$30 million to \$40 million in savings per year; and reduce general and administrative expenditures, with a targeted range of \$40 million to \$45 million in savings per year.

Under terms of the agreement with LS Power, Dynergy will receive \$1.025 billion in cash and 245 million of its Class B shares. In exchange, Dynergy will sell five peaking and three combined-cycle generation assets, as well as Dynergy's remaining interest in a project under construction in Texas. LS Power will also receive \$235 million principal amount of 7.5 percent senior unsecured notes due 2015. The transaction is expected to close later this year.

The generation assets include five peaking facilities (Riverside and Bluegrass in Kentucky, Rocky Road and Tilton in Illinois and Renaissance in Michigan) as well as

**KENTUCKY POWER
EXHIBIT 3**

three combined-cycle facilities (Arlington Valley and Griffith in Arizona and Bridgeport

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RIVERSIDE
EXHIBIT 1



401 KAR 52:020. Title V permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 70, 42 U.S.C. 7661-7661(f)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 70, 42 U.S.C. 7661-7661(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for air contaminant sources located in Kentucky that are required to obtain a Title V permit.

Section 1. Applicability. This administrative regulation shall apply to sources required to obtain a Title V permit, including:

- (1) Major sources;
- (2) Affected sources subject to the Acid Rain Program;
- (3) Sources subject to new source review under 401 KAR 51:017 or 401 KAR 51:052; and
- (4) Sources that are:
 - (a) Subject to a federal standard promulgated under 42 U.S.C. 7411 (NSPS) or 42 U.S.C. 7412 (NESHAP); and
 - (b) Not exempted or deferred from Title V permitting by the U.S. EPA.

Section 2. Exemptions. The following sources shall be exempt from this administrative regulation, except that an exempted source may voluntarily apply for a Title V permit:

- (1) Sources required to obtain a permit solely because they are subject to 40 C.F.R. 60.530 to 60.539b, Standards of Performance for New Residential Wood Heaters; and
- (2) Sources required to obtain a permit solely because they are subject to the requirements contained in 401 KAR 58:025, Asbestos standards.

Section 3. General Provisions. (1) Sources subject to this administrative regulation shall:

- (a) Not construct, reconstruct, or modify without a permit or permit revision issued under this administrative regulation, except as provided in Sections 13, 14, 15, 17, and 18 of this administrative regulation;
 - (b) Operate in compliance with a permit issued under this administrative regulation;
 - (c) Demonstrate compliance with applicable requirements if requested by the cabinet;
 - (d) Comply with 401 KAR 50:038, Emission fees;
 - (e) Submit an annual compliance certification pursuant to Section 21 of this administrative regulation;
 - (f) Submit an annual emission certification pursuant to Section 22;
 - (g) Apply for a permit renewal pursuant to Section 12 of this administrative regulation; and
 - (h)1. Allow authorized representatives of the cabinet to enter upon the premises where a source is located or emissions-related activity is conducted, or records are kept, at reasonable times:
 - a. To access and copy any records required by the permit;
 - b. To inspect any facility, equipment (including air pollution control equipment), practice, or operation; and
 - c. To sample or monitor substances or parameters to determine compliance with the permit and all applicable requirements.
2. Reasonable times shall be:
- a. During all hours of operation;



- b. During normal office hours; or
- c. During an emergency.

(2) For permits issued to construct, reconstruct, or modify:

(a) The permit shall become invalid if the permitted action:

- 1. Is not commenced within eighteen (18) months after the permit is issued;
- 2. Begins but is discontinued for a period of eighteen (18) months or more; or
- 3. Is not completed within eighteen (18) months of the scheduled completion date;

(b) For phased construction projects:

- 1. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement dates;
- 2. The time period between construction of approved phases shall not count in determining that construction has been discontinued for eighteen (18) months or longer; and
- 3. The cabinet may extend the time periods in this paragraph if the source shows good cause.

(3) Sources that construct, reconstruct, or modify shall demonstrate compliance pursuant to 401 KAR 50:055 as follows:

(a) Constructing or reconstructing sources shall demonstrate compliance with all applicable requirements;

(b) Modifying sources shall demonstrate compliance with all applicable requirements that:

- 1. Become applicable following the modification; or
- 2. May be affected as a result of the modification; and

(c) Sources that have not demonstrated compliance during the prescribed timeframe given in 401 KAR 50:055 shall operate only for purposes of demonstrating compliance unless otherwise authorized by an approved compliance plan or an order of the cabinet.

Section 4. Applying for a Permit, Permit Revision, or Permit Renewal. (1) Complete applications shall be submitted using Forms DEP7007AI to DD, which is incorporated by reference in 401 KAR 52:050, for the following permit actions:

(a) Initial permits for sources commencing construction;

(b) The first Title V permit for sources that commence construction prior to the effective date of this administrative regulation;

(c) Renewal permits; and

(d) Permit revisions, including administrative permit amendments, minor permit revisions, and significant permit revisions.

(2) A complete application shall contain the information specified in Section 5 of this administrative regulation, except that:

(a) Forms DEP7007AA, BB, and CC shall not be required for the application of a source commencing construction unless a compliance plan is required under Section 3(3)(c) of this administrative regulation;

(b) Applications for permit revisions shall provide only the information related to the change and a certification by a responsible official pursuant to Section 23 of this administrative regulation; and

(c) Applications for permit renewals shall provide only the information that is new or different from the most recent source-wide permit application and certification by a responsible official pursuant to Section 23 of this administrative regulation.

(3) Sources subject to Section 1(4) of this administrative regulation shall submit a complete application within one (1) year after the U.S. EPA publishes a final rule requiring the source to obtain a Title V permit.

(4) Sources that submit an application with a claim of confidential information shall:

- (a) Authorize the cabinet to submit the information to the U.S. EPA; or
- (b) Submit the information to the cabinet and directly to the U.S. EPA.
- (5) Completed application forms shall be submitted to Kentucky Division for Air Quality, Attn: Permit Support Section, 300 Sower Boulevard, Frankfort Kentucky 40601:
 - (a) For initial permits, minor permit revisions, significant permit revisions, and permit renewals, the original plus two (2) copies; and
 - (b) For administrative permit amendments, the original only.
- (6) The cabinet may request up to seven (7) additional copies of the completed application form if needed for public review.
- (7) Forms DEP7007AI to DD may be obtained:
 - (a) By contacting the Kentucky Division for Air Quality, Permit Support Section, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3999, or fax (502) 564-4666; or
 - (b) On the Internet at: <http://air.ky.gov>.

Section 5. Information Required on Application. Applications shall contain:

- (1) All the information needed to determine the applicable requirements and emission fees;
- (2) The following administrative information:
 - (a) Company name and address and, if different, plant name and address;
 - (b) Owner's and agent's names and addresses;
 - (c) Name, address, and phone number of the plant site manager or contact;
 - (d) Description of the source's processes and products; and
 - (e) Appropriate SIC Code;
- (3) The following emissions-related information:
 - (a) All emissions for which the source is major and all emissions of regulated air pollutants;
 - (b) All fugitive emissions, listed in the same manner as stack emissions;
 - (c) Additional information if needed to verify which requirements are applicable;
 - (d) Identification of the applicable requirements for each emissions unit;
 - (e) Identification and description of all emission units and emission points in sufficient detail to establish the basis for applicable requirements and emission fees;
 - (f) Identification and description of air pollution control equipment and compliance monitoring devices or activities;
 - (g) Emission rates in tons per year and in terms necessary to establish compliance consistent with the applicable standard reference test method;
 - (h) Fuels, fuel use, raw materials, production rates, and operating schedules to the extent needed to determine or limit emissions;
 - (i) Other information required by an applicable requirement, including stack height limitations developed pursuant to 401 KAR 50:042; and
 - (j) Calculations on which the information in this paragraph is based;
- (4) Citation and description of all applicable requirements, and the applicable test method for determining compliance with each;
- (5) An explanation of proposed exemptions to otherwise applicable requirements;
- (6) Other information if needed to implement and enforce other applicable requirements or to determine their applicability;
- (7) If applicable, information needed to determine the applicable requirements and emission fees, and to define the permit terms and conditions for:
 - (a) Each alternate operating scenario; and
 - (b) Emissions trading under federally-enforceable emissions caps containing proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable;

- (8) A compliance plan containing:
 - (a) The compliance status for all applicable requirements, including:
 - 1. For requirements with which the source is in compliance, a statement that the source will continue to comply; and
 - 2. For requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance;
 - (b) A compliance schedule that:
 - 1. Resembles or is at least as stringent as that contained in an order of the cabinet;
 - 2. Is supplemental to, and does not condone noncompliance with, the applicable requirements upon which it is based;
 - 3. Includes, for applicable requirements that will become effective during the permit term, a statement that the source will comply on a timely basis, unless a more detailed schedule is called for in the applicable requirement; and
 - 4. Includes, for requirements with which the source is not in compliance, remedial measures leading to compliance, including checkpoints and scheduled completion dates;
- (c) For sources required to have a schedule of compliance to remedy a violation or non-compliance, a schedule for submission of certified progress reports no less frequent than every six (6) months;
- (9) A certification of compliance with all applicable requirements by a responsible official pursuant to Section 23 of this administrative regulation;
- (10) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting requirements, and test methods;
- (11) A schedule for submission of compliance certifications during the permit term, to be submitted annually or more frequently if specified by the cabinet or in an applicable requirement;
- (12) A statement describing the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements; and
- (13) Insignificant activities as specified in Section 6(1) of this administrative regulation.

Section 6. Insignificant and Trivial Activities. (1) Activities that meet the following conditions shall be classified as insignificant activities:

- (a) The PTE from each activity shall not exceed:
 - 1. One-half (1/2) tpy of combined HAPs; or
 - 2. Five (5) tpy of a nonhazardous regulated air pollutant;
 - (b) The activity shall not involve the incineration of medical waste; and
 - (c) The activity shall not be subject to a federally-enforceable requirement, other than generally applicable requirements.
- (2) In applications for permits, permit revisions, and permit renewals, sources shall:
- (a) Include descriptions for all insignificant activities;
 - (b) Include all applicable requirements for each insignificant activity; and
 - (c) Not be required to provide detailed estimates for insignificant activities.
- (3) A list of insignificant activities and generally applicable requirements approved by the cabinet shall be maintained and made available on request by contacting the Division for Air Quality, Permit Support Section, phone (502) 564-3999, or fax (502) 564-4666.
- (4) The cabinet shall maintain a list of approved trivial activities, which shall not be required to be included in permit applications. The list shall be made available:
- (a) On request by contacting the Division for Air Quality, Permit Support Section, phone (502) 564-3999, or fax (502) 564-4666; or
 - (b) On the Internet at: <http://air.ky.gov>.

Section 7. Duty to Supplement or Correct Application. (1) An applicant who fails to submit relevant facts or who has submitted incorrect information in an application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information.

(2) If new requirements become applicable to a source after the application is submitted, but before a draft permit is issued, the applicant shall promptly provide the supplemental information to the cabinet.

(3) Failure to supplement or correct an application shall be a violation of this administrative regulation and may result in:

- (a) Termination of a permit;
- (b) Revocation and reissuance of a permit;
- (c) Revision of a permit; or
- (d) Denial of a permit.

Section 8. Application Shield. (1) If a source submits a timely and complete application for a source-wide permit or permit renewal, the source's failure to have a permit shall not be a violation of this administrative regulation unless the cabinet makes a final determination to deny the permit or permit renewal.

(2) A source's authority to operate shall cease to apply if the source fails to submit additional information requested by the cabinet, by the deadline set by the cabinet, after the completeness determination has been made.

Section 9. Completeness Review and Determination. Applications shall be reviewed by the cabinet for completeness pursuant to Section 2-1 of "Cabinet Provisions and Procedures for Issuing Title V Permits", which is incorporated by reference in Section 26 of this administrative regulation, for:

- (1) Initial permits for sources commencing construction;
- (2) The first Title V permit for sources that commenced construction prior to the effective date of this administrative regulation;
- (3) Significant permit revisions; and
- (4) Permit renewals.

Section 10. Permit Content. Permits shall contain terms and conditions as provided in Sections 1a to 1c of "Cabinet Provisions and Procedures for Issuing Title V Permits."

Section 11. Permit Shield. (1) Compliance with the conditions of a permit shall be considered in compliance with all applicable requirements as of the date of permit issuance if:

- (a) The applicable requirements are included and specifically identified in the permit; or
- (b) The cabinet, in acting on the permit application or revision, determines in writing that other specifically identified requirements are not applicable to the source, and this determination is stated in the permit.

(2) A permit shall not have a permit shield unless the permit expressly states that a shield exists.

(3) Nothing in the permit or permit shield shall alter or affect:

- 1. Emergency orders issued under 42 U.S.C. 7603, including the authority of the U.S. EPA under that section;
- 2. The liability of the owner or operator for violation of an applicable requirement prior to or at the time of permit issuance;
- 3. The applicable requirements of the Acid Rain Program; or

4. The ability of the U.S. EPA to obtain information from the source pursuant to 42 U.S.C. 7414.

Section 12. Permit Duration and Renewal. (1) Title V permits issued pursuant to this administrative regulation shall remain in effect for a fixed term of five (5) years, except that permits for solid waste incineration units combusting municipal waste shall remain in effect for twelve (12) years and shall be reviewed by the cabinet every five (5) years.

(2) Permits issued under the procedures of Section 2-III of "Cabinet Provisions and Procedures for Issuing Title V Permits" shall remain in effect until a Title V permit is issued to the source.

(3) A source that is subject to an existing permit, authorization to operate, or order of the cabinet, shall operate in compliance with the existing terms and conditions until a final Title V permit is issued.

(4) An application for a permit renewal shall be submitted at least six (6) months prior to expiration of the current permit.

(5) Expiration of a permit shall terminate the source's authority to operate unless the source has submitted a timely and complete renewal application.

(6) All terms and conditions of the previous permit, including the permit shield, shall remain in effect until the renewal permit has been issued or denied, if:

(a) The cabinet fails to issue or deny the renewal permit before the expiration of the previous permit; and

(b) The source has submitted a timely and complete renewal application.

(7) If the cabinet fails to act promptly on a permit renewal, the U.S. EPA may terminate or revoke and reissue the permit pursuant to 42 U.S.C. 7661d(e).

Section 13. Administrative Permit Amendments. (1) The following permit revisions may be processed as administrative permit amendments:

(a) Correct typographical errors;

(b) Change the name, address, or phone number of a person identified in the permit, or make similar minor administrative changes;

(c) Change in ownership or operational control if the cabinet determines that no other changes in the permit are necessary;

(d) Require more frequent monitoring or reporting; and

(e) Incorporate into a Title V permit the requirements from preconstruction review permits that:

1. Were processed using procedures equivalent to those in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision; and

2. Contained compliance requirements equivalent to those in this administrative regulation.

(2) Sources requesting an administrative permit amendment shall submit the appropriate Forms DEP7007AI to DD reflecting the desired change and may implement the change immediately upon submittal.

(3) For administrative permit amendments in which only the owner or person to whom a permit is issued changes, the following information shall be submitted to the cabinet within ten (10) days following the change:

(a) Administrative Information Form DEP7007AI showing the names and other information that has changed; and

(b) If ownership has changed, a signed written agreement specifying the date of transfer of permit responsibility, coverage, and liability.

(4) The cabinet may allow coverage under the permit shield for a preconstruction review permit incorporated as an administrative permit amendment, if:

(a) The preconstruction review permit meets the relevant requirements for a significant permit revision under this administrative regulation; and

(b) The cabinet notifies the U.S. EPA of the proposed action as provided in Section 2-IV.5 of "Cabinet Provisions and Procedures for Issuing Title V Permits".

(5) Administrative permit amendments for the acid rain portion of a permit shall be governed by regulations promulgated pursuant to 42 U.S.C. 7651 to 7651o.

Section 14. Minor Permit Revisions. (1) Except as provided in the Acid Rain Program the procedures in this section shall be used for permit revisions that:

(a) Do not violate an applicable requirement;

(b) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(c) Do not require or change a case-by-case determination of:

1. An emission limitation or other standard;

2. A source-specific determination for temporary sources of ambient impacts; or

3. A visibility or increment analysis;

(d) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and which the source has assumed to avoid an otherwise applicable requirement, including:

1. A federally enforceable emissions cap assumed to avoid classification as a modification under Title I of the Act; and

2. An alternative emissions limit approved pursuant to 42 U.S.C. 7412(i)(5);

(e) Is not a modification under Title I of the Act; and

(f) Is not required to be processed as a significant permit revision.

(2) The procedures in this section may be used for changes involving the use of economic incentives, marketable permits, emissions trading, or similar programs in:

(a) The state implementation plan (SIP); or

(b) A federal requirement.

(3) Sources requesting a minor permit revision shall submit the appropriate Forms DEP7007AI to DD, including:

(a) A description of the change, and the resulting change in emissions;

(b) New applicable requirements that will apply after the change;

(c) Certification by a responsible official pursuant to Section 23 of this administrative regulation that the change meets the criteria for use of minor permit revision procedures, and a request for their use;

(d) A suggested draft permit showing only the information that is new or different than the existing permit; and

(e) Completed forms for the cabinet to notify the U.S. EPA and affected states.

(4) The source may implement the change immediately upon filing a complete application.

(a) After the source makes the change, and until the cabinet takes any of the actions specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits", the source shall comply with:

1. The applicable requirements governing the change; and

2. The proposed permit terms and conditions.

(b) Until the cabinet takes an action specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits":

1. The source shall not be required to comply with the existing permit terms and conditions it seeks to modify, unless the source fails to comply with its proposed permit terms and conditions; and

2. If the source fails to comply with its proposed permit terms and conditions, the existing permit terms and conditions it seeks to modify may be enforced against it.

(c) If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

(5) The permit shield shall not extend to minor permit revisions.

Section 15. Group Processing of Minor Permit Revisions. (1) Group processing shall be used only for permit revisions that:

(a) Meet the criteria for minor permit revisions; and

(b) Are collectively below the following thresholds:

1. Ten (10) percent of the emissions allowed in the permit for the emission unit or units affected by the change; and

2. The lesser of twenty (20) percent of the applicable major source threshold or five (5) tpy.

(2) A source with two (2) or more pending minor permit revisions may apply for group processing by submitting:

(a) A written request to use group processing;

(b) A list of pending permit revision applications awaiting group processing, and a determination of whether the sum of all the revisions will equal or exceed a threshold in this section;

(c) Certification by a responsible official pursuant to Section 23 of this administrative regulation that all the pending revisions meet the criteria for use of group processing procedures;

(d) A list of new requirements that will apply after each revision is made;

(e) A suggested draft permit showing only the information that is new or different than the existing permit;

(f) Certification that the source has notified the U.S. EPA of the proposed permit revision and included a brief description of the change; and

(g) Completed forms for the cabinet to notify the U.S. EPA and affected states.

(3) The source may implement the changes immediately upon filing a complete application.

(a) After the source makes the change, and until the cabinet takes any of the actions specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits", the source shall comply with:

1. The applicable requirements governing the change; and

2. The proposed permit terms and conditions.

(b) Until the cabinet takes an action specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits":

1. The source shall not be required to comply with the existing permit terms and conditions it seeks to modify, unless the source fails to comply with its proposed permit terms and conditions; and

2. If the source fails to comply with its proposed permit terms and conditions, the existing permit terms and conditions it seeks to modify may be enforced against it.

(c) If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

(4) The permit shield shall not extend to permit revisions eligible for group processing.

Section 16. Significant Permit Revisions. (1) Except as provided in the Acid Rain Program, significant permit revision procedures shall be used for revisions that:

- (a) Involve significant changes in the monitoring requirements or a relaxation in the reporting or recordkeeping requirements contained in the permit; or
 - (b) Do not qualify as administrative permit amendments or minor permit revisions.
- (2) Significant permit revisions shall follow the same procedures that are required for initial permits and permit renewals.
- (3) The permit shield shall extend to significant permit revisions.

Section 17. Off-Permit Changes. (1) A permit revision shall not be required for changes that:

- (a) Are not modifications under Title I of the Act;
- (b) Are not subject to the Acid Rain Program;
- (c) Do not violate any existing terms or conditions of the permit; and
- (d) Meet all applicable requirements.

(2) Except for changes that qualify as insignificant activities under Section 6 of this administrative regulation, sources shall notify the cabinet and the U.S. EPA in writing at least seven (7) workdays prior to making each change. The notification shall include:

- (a) A brief description of the change;
- (b) The date on which the change will occur;
- (c) Any change in emissions or pollutants that result from the change; and
- (d) Any new applicable requirements that will apply after the change.

(3) Sources shall keep records describing:

(a) Off-permit changes that resulted in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit; and

- (b) The emissions that resulted from those changes.
- (4) Sources shall keep a copy of each change notice on file with the permit.
- (5) The permit shield shall not extend to changes made under this section.

(6) Changes made under this section shall be incorporated into the permit upon renewal.

Section 18. Section 502(b)(10) Changes. (1) A permit revision shall not be required for changes that:

- (a) Are not modifications under Title I of the Act;
- (b) Are not subject to the Acid Rain Program; and
- (c) Do not exceed the emissions allowed under the permit.

(2) Sources shall notify the cabinet and the U.S. EPA, in writing at least seven (7) workdays prior to making each change. The notification shall include:

- (a) A brief description of each change;
- (b) The date on which the change will occur;
- (c) Any change in emissions that will result; and
- (d) Any permit term or condition that will no longer be applicable after the change.

(3) Sources shall keep a copy of each change notice on file with the permit.

(4) The permit shield shall not extend to changes made under this section.

(5) Changes made under this section shall be incorporated into the permit upon renewal.

Section 19. Reopening for Cause. (1) A permit shall be reopened prior to expiration, if:

(a) An affected source or a source with a remaining permit term of three (3) or more years becomes subject to a new applicable requirement. A reopening:

1. Shall be completed not later than eighteen (18) months after promulgation of the new applicable requirement; and

2. Shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms

and conditions has been extended pursuant to Section 12(6) of this administrative regulation; or

(b) New requirements become applicable to an affected source subject to the Acid Rain Program; or

(c) The cabinet or the U.S. EPA determines that:

1. The permit contains a material mistake or an inaccurate statement was made when establishing the standards, terms or conditions of the permit; or

2. It is necessary to revise or revoke the permit to assure compliance with applicable requirements.

(2) Reopening a permit:

(a) Shall follow the same procedures as initial permits; and

(b) Shall affect only those parts of the permit for which cause to reopen exists.

(3) Permit reopenings shall be made as expeditiously as practicable.

(4) The permit and all its terms and conditions, including any permit shield that has been issued pursuant to Section 11 of this administrative regulation, shall remain in effect until the revised permit has been issued or denied.

Section 20. General Permits. The cabinet may, after notice and opportunity for public participation provided in 401 KAR 52:100, issue a general permit covering similar sources in the same source category.

(1) A general permit shall require compliance with all requirements applicable to other permits and shall identify criteria by which sources may qualify for coverage.

(2) Sources that qualify for a general permit may:

(a) Apply to the cabinet for coverage under the terms of the general permit; or

(b) Apply for an individual permit under this administrative regulation.

(3) An application for a general permit shall meet the requirements of this administrative regulation and shall include information necessary to determine qualification for, and to assure compliance with, the general permit.

(4) If the cabinet determines that a source does not meet the criteria for a general permit, the application shall be processed as a single-source permit pursuant to this administrative regulation.

(5) The permit shield shall apply to general permits.

(6) If a source applies for and receives a general permit and is later determined not to qualify for the permit's terms and conditions:

(a) The source shall be subject to enforcement action for operating without a permit; and

(b) The permit shield shall not be a defense to this violation.

(7) General permits shall not be authorized for affected sources except as provided in the Acid Rain Program.

(8) Coverage granted under a general permit shall not be a final permit action for purposes of judicial review unless the public review procedures in 401 KAR 52:100 are met.

Section 21. Compliance Certifications. (1) Sources shall certify compliance with all applicable requirements annually using Form DEP7007CC:

(a) Sources with Title V permits issued prior to December 31, 2000 shall submit their certification in 2001 on the permit anniversary, unless otherwise instructed by the local regional office.

(b) All sources, including those that have not received a Title V permit, shall submit their certification in 2002 and each year thereafter on or before January 30, except that sources who

submitted a certification after September 30, 2001, shall not be required to submit their next certification until January 30, 2003.

(2) The compliance certification shall contain the following information for each term or condition of the permit that is the basis for the certification:

(a) Identification of the term or condition;

(b) Compliance status;

(c) The method used for determining compliance over the reporting period, and whether the method provided continuous or intermittent data; and

(d) The method currently used for determining compliance.

(3) Compliance certifications shall be mailed to the Division for Air Quality, Central Files, 300 Sower Boulevard, Frankfort, Kentucky 40601, and a copy sent to the U.S. EPA and to the appropriate Regional Office listed in Section 26 of this administrative regulation.

Section 22. Annual Emissions Certification. An annual emission certification shall be submitted to the cabinet by sources subject to this administrative regulation.

(1) During the first quarter of each calendar year, the cabinet shall survey each source to determine its actual emissions during the preceding calendar year, and the source shall provide and certify the information requested and return the updated survey to the cabinet within thirty (30) days from the date that the survey is mailed to the source.

(2) Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation.

(3) If no response is received from a source, the cabinet may estimate its actual emissions based on prior history and other relevant information that is available.

(4) Failure by the cabinet to notify a source shall not relieve the source of its obligation to submit an annual emissions statement.

Section 23. Certification by Responsible Official. A responsible official shall certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the following documents are true, accurate, and complete:

(1) Applications for initial permits, permit revisions, and permit renewals;

(2) Reports;

(3) Compliance certifications; and

(4) Emissions certifications.

Section 24. Emergency Provision. (1) An emergency shall be an affirmative defense to enforcement actions brought for noncompliance with a technology-based emission standard if the source demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and the permittee can identify the cause of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) The source took all reasonable steps to minimize excess emissions during the emergency; and

(d) The source notified the cabinet as quickly as possible and followed-up, as soon as practicable but not later than ten (10) workdays after the emergency occurred, with a written report that contains:

1. A description of the emergency;

2. Any steps taken to mitigate emissions; and

3. The corrective actions taken.

(2) In an enforcement proceeding seeking to establish that an emergency occurred, the burden of proof shall rest with the source.

(3) This provision shall be in addition to any emergency or upset provision contained in an applicable requirement.

Section 25. Public, Affected State, and U.S. EPA Review. All permits, permit renewals, and permit revisions issued under this administrative regulation, other than administrative permit amendments, shall be offered for review by the public, affected states, and the U.S. EPA pursuant to 401 KAR 52:100.

Section 26. Incorporation by Reference. (1) "Cabinet Provisions and Procedures for Issuing Title V Permits", June 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;

(c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;

(e) Frankfort Regional Office, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; or

(3) This material is also available on the Internet at: <http://air.ky.gov>. (27 Ky.R. 617; Am. 1281; 1779; eff. 1-15-2001; TAm eff. 8-9-2007; TAm eff. 5-20-2010; TAm eff. 4-2-2014; TAm eff. 7-8-2016.)

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 70. State Operating Permit Programs (Refs & Annos)

40 C.F.R. § 70.2

§ 70.2 Definitions.

Effective: August 2, 2016

Currentness

The following definitions apply to part 70. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

Affected source shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Affected States are all States:

- (1) Whose air quality may be affected and that are contiguous to the State in which a part 70 permit, permit modification or permit renewal is being proposed; or
- (2) That are within 50 miles of the permitted source.

Affected unit shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Alternative operating scenario (AOS) means a scenario authorized in a part 70 permit that involves a change at the part 70 source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

Applicable requirement means all of the following as they apply to emissions units in a part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

- (1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;
- (2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;
- (3) Any standard or other requirement under section 111 of the Act, including section 111(d);

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- (4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;
- (5) Any standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder;
- (6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;
- (7) Any standard or other requirement under section 126(a)(1) and (c) of the Act;
- (8) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
- (9) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;
- (10) Any standard or other requirement for tank vessels under section 183(f) of the Act;
- (11) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;
- (12) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; and
- (13) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Approved replicable methodology (ARM) means part 70 permit terms that:

- (1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this part, such that the protocol is based on sound scientific and/or mathematical principles and provides reproducible results using the same inputs; and
- (2) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the ARM, or requirement of this part, including where an ARM is used for determining applicability of a specific requirement to a particular change.

Designated representative shall have the meaning given to it in section 402(26) of the Act and the regulations promulgated thereunder.

Draft permit means the version of a permit for which the permitting authority offers public participation under § 70.7(h) or affected State review under § 70.8 of this part.

Emissions allowable under the permit means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of title IV of the Act.

The EPA or the Administrator means the Administrator of the EPA or his designee.

Final permit means the version of a part 70 permit issued by the permitting authority that has completed all review procedures required by §§ 70.7 and 70.8 of this part.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part 70 permit that meets the requirements of § 70.6(d).

Major source means any stationary source (or any group of stationary sources that are located on one or more continuous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. State programs may adopt the following provision: For onshore activities belonging to Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within ¼ mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in the introductory text of this definition, has the same meaning as in 40 CFR 63.761.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified or treated as classified as “Marginal” or “Moderate,” 50 tpy or more in areas classified or treated as classified as “Serious,” 25 tpy or more in areas classified or treated as classified as “Severe,” and 10 tpy or more in areas classified or treated as classified as “Extreme”; except that the references in this paragraph to 100, 50, 25 and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) That are classified or treated as classified as “Serious,” and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified or treated as classified as “Serious,” sources with the potential to emit 70 tpy or more of PM-10.

Part 70 permit or permit (unless the context suggests otherwise) means any permit or group of permits covering a part 70 source that is issued, renewed, amended, or revised pursuant to this part.

Part 70 program or State program means a program approved by the Administrator under this part.

Part 70 source means any source subject to the permitting requirements of this part, as provided in §§ 70.3(a) and 70.3(b) of this part.

Permit modification means a revision to a part 70 permit that meets the requirements of § 70.7(e) of this part.

Permit program costs means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in § 70.9(b) of this part (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

Permit revision means any permit modification or administrative permit amendment.

Permitting authority means either of the following:

(1) The Administrator, in the case of EPA-implemented programs; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this part.

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV of the Act or the regulations promulgated thereunder.

Proposed permit means the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8.

Regulated air pollutant means the following:

- (1) Nitrogen oxides or any volatile organic compounds;
- (2) Any pollutant for which a national ambient air quality standard has been promulgated;
- (3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
- (4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or
- (5) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r) of the Act, including the following:
 - (i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and
 - (ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement.

Regulated pollutant (for presumptive fee calculation), which is used only for purposes of § 70.9(b)(2), means any regulated air pollutant except the following:

- (1) Carbon monoxide;
- (2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance to a standard promulgated under or established by title VI of the Act;
- (3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act; or
- (4) Greenhouse gases.

Renewal means the process by which a permit is reissued at the end of its term.

Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under part 70.

Section 502(b)(10) changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where such meaning is clear from the context, "State" shall have its conventional meaning. For purposes of the acid rain program, the term "State" shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

Subject to regulation means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) Greenhouse gases (GHGs), the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.

(2) The term tpy CO₂ equivalent emissions (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of part 98 of this chapter—Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e. For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

Whole program means a part 70 permit program, or any combination of partial programs, that meet all the requirements of these regulations and cover all the part 70 sources in the entire State. For the purposes of this definition, the term “State” does not include local permitting authorities, but refers only to the entire State, Commonwealth, or Territory.

Credits

[66 FR 59166, Nov. 27, 2001; 69 FR 31505, June 3, 2004; 72 FR 24078, May 1, 2007; 74 FR 51438, Oct. 6, 2009; 75 FR 31607, June 3, 2010; 76 FR 43507, July 20, 2011; 80 FR 12318, March 6, 2015; 80 FR 64659, Oct. 23, 2015; 81 FR 35633, June 3, 2016]

AUTHORITY: 42 U.S.C. 7401, et seq.

Notes of Decisions (17)

Current through September 13, 2018; 83 FR 46423.

**TARIFF N.U.G.
(Non-Utility Generator)**

AVAILABILITY OF SERVICE.

This tariff is applicable to customers with generation facilities which have a total design capacity of over 1,000 kW that intends to schedule, deliver and sell the net electric output of the facility at wholesale, and who require Commissioning Power, Startup Power and/or Station Power service from the Company.

Service to any load that is electrically isolated from the Customer's generator shall be separately metered and provided in accordance with the generally available demand-metered tariff appropriate for such service to the Customer.

This tariff is not available for standby, backup, maintenance, or supplemental service for wholesale or retail loads served by customer's generator.

DEFINITIONS.

1. **Commissioning Power** - The electrical energy and capacity supplied to the customer prior to the commercial operation of the customer's generator, including initial construction and testing phases.
2. **Station Power** - The electrical energy and capacity supplied to the customer to serve the auxiliary loads at the customer's generation facilities, usually when the customer's generator is not operating. Station Power does not include Startup Power.
3. **Startup Power** - The electrical energy and capacity supplied to the customer following a planned or forced outage of the customer's generator for the purpose of returning the customer's generator to synchronous operation.

COMMISSIONING POWER SERVICE.

Customers requiring Commissioning Power shall take service under Tariff T.S. or by special agreement with the Company.

The Customer shall coordinate its construction and testing with the Company to ensure that the customer's operations do not cause any undue interference with the Company's obligations to provide service to its other customers or impose a burden on the Company's system or any system interconnected with the Company.

STATION POWER SERVICE.

Customers requiring Station Power shall take service under the generally available demand-metered tariff appropriate for the customer's Station Power requirements.

Station Contract Capacity – The Customer shall contract for a definite amount of electrical capacity in kW sufficient to meet the maximum Station Power requirements that the Company is expected to supply under the generally available demand-metered tariff appropriate for the customer.

STARTUP POWER SERVICE.

Customers requiring Startup Power have the option of contracting for such service under the terms of this tariff or under the generally available demand-metered tariff appropriate for the customer's Startup Power requirements.

Startup Contract Capacity – The Customer shall contract for a definite amount of electrical capacity in kW sufficient to meet the maximum Startup Power requirements that the Company is expected to supply.

Startup Duration – The Customer shall contract for a definite number of hours sufficient to meet the maximum period of time for which the Company is expected to supply Startup Power.

(Cont'd on Sheet No. 26-2)

DATE OF ISSUE: February 7, 2018

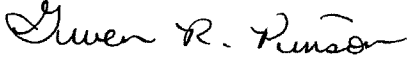
DATE EFFECTIVE: Service Rendered On And After January 19, 2018

ISSUED BY: /s/ Ranie K. Wohnhas

TITLE: Managing Director, Regulatory & Finance

By Authority Of an Order of the Public Service Commission

In Case No. 2017-00179 Dated January 18, 2018

KENTUCKY PUBLIC SERVICE COMMISSION
Gwen R. Pinson Executive Director 
EFFECTIVE 1/19/2018 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)



**TARIFF N.U.G. (Cont'd)
(Non-Utility Generator)**

STARTUP POWER SERVICE. (cont'd)

Startup Duration – The Customer shall contract for a definite number of hours sufficient to meet the maximum period of time for which the Company is expected to supply Startup Power.

Startup Frequency – The Customer shall contract for a definite number of startup events sufficient to meet the maximum number of times per year that the Company is expected to supply Startup Power.

Other Startup Characteristics – The customer shall provide to the Company other information regarding the customer's Startup Power requirements, including, but not limited to, anticipated time-of-use and seasonal characteristics.

Notification Requirement - Whenever Startup Power is needed, the Customer shall provide advance notice to the Company.

Upon receipt of a request from the Customer for Startup Power Service under the terms of this tariff, the Company will provide the Customer a written offer containing the Notification Requirement, generation, transmission and distribution rates (including demand and energy charges) and related terms and conditions of service under which service will be provided by the Company. Such offer shall be based upon the Startup Contract Capacity, Startup Duration, Startup Frequency, and Other Startup Characteristics as specified by the customer. In no event shall the rates be less than the sum of the Tariff I.G.S. Energy Charge, the Fuel Adjustment Clause, the System Sales Clause, the Demand-Side Management Adjustment Clause, Decommissioning Rider, Purchase Power Adjustment, KY Economic Development Surcharge, Environmental Surcharge, and the Capacity Charge.

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If the parties reach an agreement based upon the offer provided to the customer by the Company, a contract shall be executed that provides full disclosure of all rates, terms and conditions of service under this tariff, and any and all agreements related thereto.

DELAYED PAYMENT CHARGE.

This tariff is due and payable in full on or before the due date stated on the bill. On all accounts not so paid, an additional charge of 5% of the unpaid balance will be made.

(Cont'd on Sheet No. 26-3)

DATE OF ISSUE: February 7, 2018

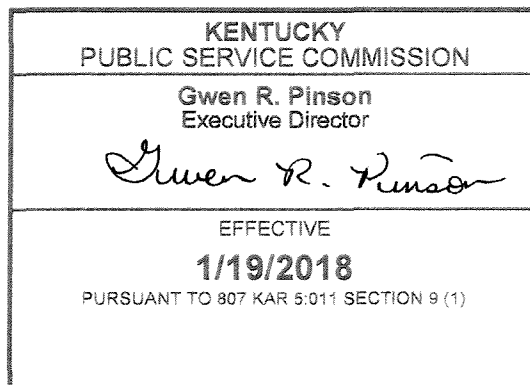
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TARIFF N.U.G. (Cont'd)
(Non-Utility Generator)

MONTHLY BILLING DEMAND.

The monthly billing demand in kW shall be taken each month as the highest single 15-minute integrated peak in kW as registered by a demand meter or indicator, less the Station Contract Capacity. The monthly billing demand so established shall in no event be less than the greater of (a) the Startup Contract Capacity or b) the customer's highest previously established monthly billing demand during the past 11 months.

MONTHLY BILLING ENERGY.

Interval billing energy shall be measured each 15-minute interval of the month as the total KWH registered by an energy meter or meters less the quotient of the Station Contract Capacity and four (4). In no event shall the interval billing energy be less than zero (0). Monthly billing energy shall be the sum of the interval billing energy for all intervals of the billing month.

TRANSMISSION SERVICE.

Transmission Provider – The entity providing transmission service to customers in the Company's service territory. Such entity may be the Company or a regional transmission entity.

Prior to taking service under this tariff, the Customer must have a fully executed Interconnection and Operation Agreement with the Company and/or the Transmission Provider or an unexecuted agreement filed with the Federal Energy Regulatory Commission under applicable procedures.

Should the customer's use of Startup Power result in any charges for Transmission Congestion from the Transmission Provider, such charges, including any applicable taxes or assessments, shall be paid by or passed through to the customer without markup. Transmission Congestion is the condition that exists when market participants seek to dispatch in a pattern that would result in power flows that cannot be physically accommodated by the system.

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TERM OF CONTRACT.

Contracts under this tariff will be made for an initial period of not less than one year and shall remain in effect thereafter until either party shall give at least 6 months' written notice to the other of the intention to terminate the contract. The Company reserves the right to require initial contracts for periods greater than one year.

A new initial contract period will not be required for existing customers who change their contract requirements after the original initial period unless new or additional facilities are required.

The Company may not be required to supply capacity in excess of that contracted for except by mutual agreement. Contracts will be made in multiples of 100 kW.

SPECIAL TERMS AND CONDITIONS.

This tariff is subject to the Company's Terms and Conditions of Service.

This tariff shall not obligate the Company to purchase or pay for any capacity or energy produced by the Customer's generator.

Customers desiring to provide Startup and Station Power from other generation facilities, owned by the same individual business entity that are not located on the site of the customer's generator (remote self-supply), shall take service under the terms and conditions contained within the applicable Open Access Transmission Tariff as filed with and accepted by the Federal Energy Regulatory Commission.

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DATE OF ISSUE: February 7, 2018

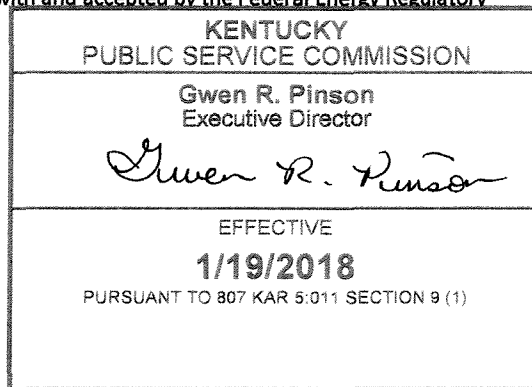
DATE EFFECTIVE: Service Rendered On And After January 19, 2018

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TITLE: Managing Director, Regulatory & Finance

By Authority Of an Order of the Public Service Commission

In Case No. 2017-00179 Dated January 18, 2018



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

In the Matter of:

Electronic Application Of Kentucky Power)	
Company For (1) A General Adjustment Of Its)	
Rates For Electric Service; (2) An Order)	
Approving Its 2017 Environmental Compliance)	
Plan; (3) An Order Approving Its Tariffs And)	
Riders; (4) An Order Approving Accounting)	Case No. 2017-00179
Practices To Establish A Regulatory Asset Or)	
Liability Related To The Big Sandy 1 Operation)	
Rider; And (5) An Order Granting All Other)	
Required Approvals And Relief)	

**KENTUCKY POWER COMPANY’S RESPONSE IN OPPOSITION TO
RIVERSIDE GENERATING COMPANY, L.L.C.’S MOTION FOR INTERVENTION**

Kentucky Power Company (“Kentucky Power” or the “Company”) opposes Riverside Generating Company, L.L.C.’s (“Riverside”) Motion for Leave to Intervene (“Motion”) filed on July 14, 2017. Intervention is appropriate only when the party seeking intervention has an interest in the rates or services of a utility and (1) has a special interest in the proceeding not otherwise represented by other parties to the case or (2) is likely to present issues or develop facts that will assist the Commission in fully evaluating the matter without unduly complicating or disrupting the proceedings.¹

Riverside does not have a special interest in this case and its participation would unduly complicate and disrupt the proceedings. None of the changes proposed to the Company’s Non-Utility Generator Tariff (“Tariff N.U.G.”) affect the on-going discussions between the Company and Riverside with regard to the applicability of the remote self-supply provision of Tariff

¹ Order, *In the Matter of: Application of Kentucky Power Company for Approval of Its 2011 Environmental Compliance Plan, for Approval of Its Amended Cost Recovery Surcharge Tariff, and for the Grant of a Certificate of Public Convenience and Necessity for the Construction and Acquisition of Related Facilities*, Case No. 2011-00401, at 2, (Ky. P.S.C, January 26, 2012).



N.U.G. to Riverside's facility. Additionally, Riverside's role as a direct competitor of Kentucky Power in the PJM wholesale market would impact the ability of the Company to provide confidential information in response to data requests, even under the protections afforded by 807 KAR 5:001, Section 13. Riverside's Motion must be denied.

A. **Riverside's On-Going Discussions with Kentucky Power Are Unrelated to the Changes Proposed by the Company in this Proceeding.**

Kentucky Power proposes limited changes to Tariff N.U.G. in this case. The first, as Riverside accurately points out, relates to removing antiquated language relating to potential future transmission charges.² The second, which appears to form the basis for Riverside's alleged special interest in this case, relates to the requirements a non-utility generator must meet to qualify for remote self-supply and, therefore, take service under the PJM Open Access Transmission Tariff ("PJM OATT"). A non-utility generator can qualify for remote self-supply and take service under the PJM OATT instead of the Company's applicable retail service tariff if it provides start up and station power for one of its generation facilities from another generation facility that is (1) commonly owned and (2) not located on the same site.

In this case, the Company is proposing to clarify what it meant by "common ownership" as follows:

SPECIAL TERMS AND CONDITIONS.

...

Customers desiring to provide Startup and Station Power from ~~commonly owned~~ *other* generation facilities, *owned by the same individual business entity* that are not located on the site of the customer's generator (remote self-supply), shall take service under the terms and conditions contained within the applicable Open Access Transmission Tariff as filed with and accepted by the Federal Energy Regulatory Commission.³

² Motion at 4.

³ Application, Section II, Exhibit E, at 150.

The Company is proposing no other changes to the requirements for remote self-supply, including, most importantly for Riverside's motion, what constitutes being "located on the site of the customer's generator (remote self-supply)".

Beginning in the spring of 2017, Riverside and Kentucky Power have been in discussions regarding the eligibility of the Riverside facility for remote self-supply. These discussions have focused on whether Riverside's facility in Lawrence County is one facility or two adjacent facilities. There is no dispute among Kentucky Power and Riverside regarding the common ownership of the two adjacent portions of the Riverside facility. Because the Company is not proposing to change any of the language relating to the "located on the same site" eligibility requirement in this case, the dispute between Kentucky Power and Riverside over the interpretation of that requirement does not give rise to a special interest in this case. The dispute is simply a dispute over the interpretation of existing tariff language for which no change is proposed. This dispute is unrelated to the issues presented in the Company's rate case and, accordingly, Riverside does not have a special interest in this case unrepresented by another party. Moreover, adding this unrelated issue is likely to unduly complicate and disrupt the rate case proceeding.

To the extent Riverside argues it has a special interest in this case because it takes service under Tariff I.G.S., its interest is adequately represented by an existing party to this proceeding, Kentucky Industrial Utility Customers, Inc. ("KIUC"). KIUC regularly intervenes in Commission proceedings and has a demonstrated ability to represent the interest of Tariff I.G.S. customers.

B. Riverside's Role as a Competitor Would Unnecessarily Complicate Handling of Confidential Information in this Case.

As a merchant generator participating in the PJM wholesale market, Riverside is a direct competitor of Kentucky Power. As participants in the PJM market, both Kentucky Power and Riverside bid their generating assets into the day-ahead energy and ancillary services market. These bids are based on the operating costs and characteristics of the generation assets. Information about the operating costs and characteristics of a competitor's generating assets would allow a market participant to alter its bidding strategy to undercut the bid of the competitor.

During the course of this case, it is likely that Kentucky Power will be required to provide highly confidential information regarding the operating costs and characteristics of its generating assets in response to data requests. The Kentucky Open Records Act excludes from public disclosure

records confidentially disclosed to an agency or required to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.⁴

Accordingly, Kentucky Power will seek confidential treatment under 807 KAR 5:001, Section 13 of information relating to operating costs and characteristics on the basis that the disclosure of this information would give its competitors an unfair advantage in the PJM market to the detriment of the Company and its customers. Kentucky Power will provide this highly confidential information under seal, and it will only be available to parties in the case who sign non-disclosure agreements to protect against disclosure of the highly confidential information to the Company's competitors. Riverside is one of these competitors.

⁴ KRS 61.878(1)(c)(1).

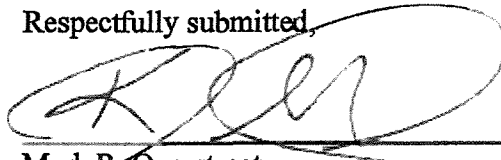
Kentucky Power cannot provide this sort of confidential information to Riverside under any circumstances without suffering the exact competitive harm that KRS 61.878(1)(c)(1) seeks to prevent. Even if Riverside had a special interest in this proceeding, which it does not, granting intervention would unnecessarily complicate and disrupt the proceeding due to the nature of the confidential information that is likely to become a part of the record. Riverside's Motion should be denied.

C. Conclusion.

Riverside has not satisfied the standards for intervention. Riverside's dispute with Kentucky Power regarding the "located on the same site" requirement for remote self-supply eligibility is simply a dispute over the application of tariff language for which no change is proposed. Kentucky Power is willing to work with Riverside to resolve this dispute, but this rate case proceeding is not the proper forum. Riverside does not have a special interest in this proceeding that is not otherwise adequately represented. Moreover, even if Riverside did have a special interest in this proceeding, its role as a direct competitor of Kentucky Power would unduly complicate and disrupt the handling of confidential information in the case.

Riverside's Motion should be denied.

Respectfully submitted,



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COUNSEL FOR KENTUCKY POWER
COMPANY

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Application Of Kentucky Power)
Company For (1) A General Adjustment Of Its)
Rates For Electric Service; (2) An Order)
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Practices To Establish Regulatory Assets And)
Liabilities; And (5) An Order Granting All Other)
Required Approvals And Relief)

Case No. 2017-00179

DIRECT TESTIMONY OF
ALEX E. VAUGHAN
ON BEHALF OF KENTUCKY POWER COMPANY

EXHIBIT

RIVERSIDE
EXHIBIT 6

1 customers, the Company is ensuring that RECs are removed from circulation and cannot
2 be bought or sold again in the REC markets. All of the costs associated with service
3 under the Renewable Power Option Rider are borne solely by the customers who select to
4 receive service under the rider. Because this is an optional service, there is no cost of
5 service impact on customers who do not participate in the Renewable Power Option
6 Rider.

7 Also included in proposed tariff RPO is an option for larger customers to contract
8 with the Company bilaterally to directly purchase the electrical output and all associated
9 environmental attributes from a specific renewable energy project. The proposed
10 Renewable Power Option Rider is attached to my testimony as Exhibit AEV 5.

11 **iii. Non Utility Generator Tariff Changes**

12 **Q. PLEASE DESCRIBE THE PROPOSED CHANGES TO THE NON UTILITY
13 GENERATOR (“NUG”)TARIFF.**

14 A. The NUG tariff has been updated to remove an antiquated clause regarding potential
15 future transmission congestion charges. The tariff contemplated how existing customers
16 would be notified if a regional transmission organization created such charges. Since
17 there are no customers currently on the NUG tariff, and PJM has already created
18 transmission congestion charges, the notice language relating to the creation of these
19 charges is no longer necessary. The Company also made clarifying edits regarding the
provision of station power to the special terms and conditions section.

20 **iv. Proposed Changes to the Purchase Power Adjustment Rider**

21 **Q. WHAT COST OF SERVICE ITEMS ARE CURRENTLY APPROVED FOR
INCLUSION IN THE PURCHASE POWER ADJUSTMENT RIDER?**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Application Of Kentucky Power)
Company For (1) A General Adjustment Of Its)
Rates For Electric Service; (2) An Order)
Approving Its 2017 Environmental Compliance)
Plan; (3) An Order Approving Its Tariffs And)
Riders; (4) An Order Approving Accounting)
Practices To Establish Regulatory Assets And)
Liabilities; And (5) An Order Granting All Other)
Required Approvals And Relief)

Case No. 2017-00179

DIRECT TESTIMONY OF
STEPHEN L. SHARP JR.
ON BEHALF OF KENTUCKY POWER COMPANY

EXHIBIT

RIVERSIDE
EXHIBIT 7

1 A. Temporary service may be extended in 90-day increments upon Kentucky Power's
2 determination of a need for the extension.

3 **Q. WHY HAS THE COMPANY ADDED LANGUAGE REGARDING THE**
4 **MINIMUM TEMPORARY SERVICE CHARGE TO TARIFF T.S.?**

5 A. The modification clarifies that customers seeking temporary service will be required to
6 pay a charge, in advance, that compensates the Company for the actual costs associated
7 with the temporary installation.

System Sales Clause (Tariff S.S.C.) (Sheet 19-1 through Sheet 19-2)

8 **Q. IS THE COMPANY PROPOSING TO MODIFY ITS SYSTEM SALES CLAUSE**
9 **TARIFF?**

10 A. Yes. The Company is proposing to modify Tariff S.S.C to switch from a monthly
11 system sales adjustment factor to an annual factor and to update the annual base system
12 sales margin amount. Details regarding the proposed changes to Tariff S.S.C are
13 included in the testimony of Company Witness Vaughan.

Non-Utility Generator (Tariff N.U.G.) (Sheet 26-1 through 26-3)

14 **Q. PLEASE DESCRIBE THE CHANGES THE COMPANY IS PROPOSING TO**
15 **THE COMPANY'S NON-UTILITY GENERATOR TARIFF.**

16 A. The Company is proposing to eliminate outdated language in its tariff that states a 30-
17 day written notice is provided to customers taking service under this tariff should a
18 Transmission Provider implement charges for transmission congestion. In addition, the
19 Company is proposing language under the tariffs special terms and conditions to clarify
20 the requirement to take service for remote self-supply. Additional information

1 regarding the need for these changes is included in the testimony of Company Witness
2 Vaughan.

Environmental Surcharge (Tariff E.S.) (Sheet 29-1 through Sheet 29-7)

3 **Q. IS THE COMPANY PROPOSING TO MODIFY ITS ENVIRONMENTAL**
4 **SURCHARGE TARIFF?**

5 A. Yes. The Company is proposing to modify Tariff E.S. to incorporate revisions to its
6 environmental compliance plan and to update its monthly base environmental costs.
7 Additional information regarding the proposed changes to Tariff E.S. are included in
8 the testimony of Company Witness Elliott.

Green Pricing Option Rider (Rider G.P.O.) (Sheet 31-1 through Sheet 31-2)

9 **Q. IS KENTUCKY POWER PROPOSING TO CHANGE ITS GREEN PRICING**
10 **OPTION RIDER?**

11 A. Yes. The Company is proposing to amend its Green Pricing Option Rider to expand
12 the categories of renewable energy credits available and to allow participating
13 customers to purchase their full requirements from renewable energy generators. In
14 addition, the Company is proposing to change the name of the Green Pricing Option
15 Rider to the Renewable Power Option Rider (R.P.O.). Additional information
16 regarding the nature of and need for the revisions are included in testimonies of
17 Company Witnesses Hall and Vaughan.

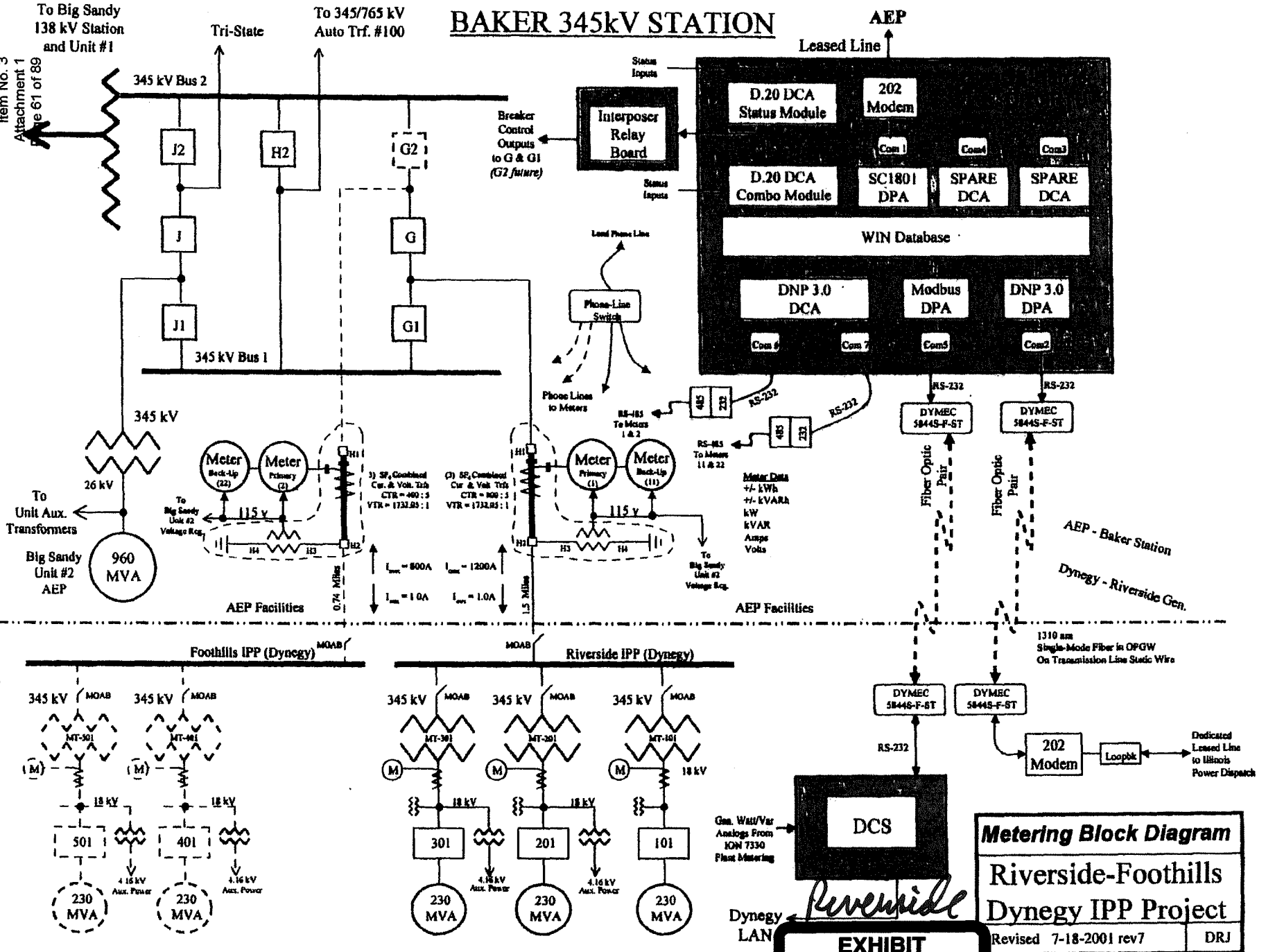
Purchase Power Adjustment (Tariff P.P.A.) (Sheet 35-1 through Sheet 35-3)

18 **Q. PLEASE DESCRIBE THE COMPANY'S PROPOSED CHANGES TO TARIFF**
19 **P.P.A.**

20 A. The Company is proposing the following with regards to Tariff P.P.A.:

KPSC Case No. 2017-00472
 Riverside's First Set of Data Requests
 Dated May 18, 2018
 Item No. 3
 Attachment 1
 Page 61 of 89

BAKER 345kV STATION



RIVERSIDE EXHIBIT 8

Riverside
 EXHIBIT 8

dan_roethemeyer@dynegy.com



dan_roethemeyer@dynegy.com
om
03/22/2006 12:29 PM

To ejclayton@aep.com
cc

Subject Re: Billing/Metering Data, Electric Account 034-873-686-1

E.J.,

Thanks for the explanation. I agree with it and don't have a problem with it.

On another semi-related item, did you happen to look into whether the plant may qualify (or whether it even makes sense) for the Non-Utility Generator tariff?

Thanks!!

ejclayton@aep.com

To:

dan_roethemeyer@dynegy.com

03/15/2006 03:27
PM

cc:

Subject: Billing/Metering

Data, Electric Account 034-873-686-1

Dan,

Per your recent inquiry I wanted to provide the following information in addition to our recent conversation regarding processing the metering data for the auxiliary power requirements at your Riverside and Foothills KY plants.

You questioned why there are repetitive energy readings for various billing months on this electric account. As I stated in our discussion, the bill constant for both plants (Riverside and Foothills) is very large. One plant location has a billing constant of 277,128. This constant is derived as the product of the voltage and current instrument transformer ratio. As an example, for one plant, the delivery voltage is 345 kV with a VT ratio of 1732.05 and a CT ratio of 160. The product of these two numbers equates to a 277,128 bill constant used to determine the energy consumption for one plant. The other plant service also includes a large billing constant of 138,564 calculated similarly to the above example. Energy consumption for both sites (Riverside and Foothills) are combined each month to determine the total energy usage in kWh.

Normally energy consumption is several meter register units for both plant sites. As example, your most recent bill with meter readings recorded

RIVERSIDE
EXHIBIT 9



through February 28th, the meter for one plant site registered 2 units and the other plant site registered 3 units. Using the bill constants identified above for these two meter locations, results in the total energy consumption for the account.

Example - Bill issued March 2, 2006

2 X 277,128 = 554,256 kWh

3 X 138,564 = 415,692 kWh

Total Energy Consumed = 969,948 kWh (554,256 + 415,692)

If you should have remaining questions or comments regarding your Companies electric account, please don't hesitate to contact me.

Sincerely,
E. J. Clayton
Engineer - Customer Services
(606) 929-1453
(606) 929-1510 fax

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and are hereby notified that any disclosure, copying, or distribution of this message, or the taking of any action based on it, is strictly prohibited.

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this Schedule. PJMSettlement shall not be a contracting party with respect to such self-scheduled or self-supplied transactions.

1.7.9 Delivery to an External Market Buyer.

A purchase of Spot Market Energy by an External Market Buyer shall be delivered to a bus or buses at the electrical boundaries of the PJM Region specified by the Office of the Interconnection, or to load in such area that is not served by Network Transmission Service, using Point-to-Point Transmission Service paid for by the External Market Buyer. Further delivery of such energy shall be the responsibility of the External Market Buyer.

1.7.10 Other Transactions.

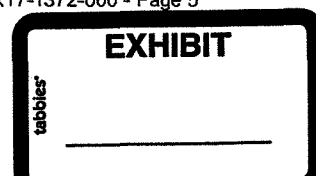
(a) Bilateral Transactions.

(i) In addition to transactions in the PJM Interchange Energy Market, Market Participants may enter into bilateral contracts for the purchase or sale of electric energy to or from each other or any other entity, subject to the obligations of Market Participants to make Generation Capacity Resources available for dispatch by the Office of the Interconnection. Such bilateral contracts shall be for the physical transfer of energy to or from a Market Participant and shall be reported to and coordinated with the Office of the Interconnection in accordance with this Schedule and pursuant to the LLC's rules relating to its InSchedule and ExSchedule tools.

(ii) For purposes of clarity, with respect to all bilateral contracts for the physical transfer of energy to a Market Participant inside the PJM Region, title to the energy that is the subject of the bilateral contract shall pass to the buyer at the source specified for the bilateral contract, and the further transmission of the energy or further sale of the energy into the PJM Interchange Energy Market shall be transacted by the buyer under the bilateral contract. With respect to all bilateral contracts for the physical transfer of energy to an entity outside the PJM Region, title to the energy shall pass to the buyer at the border of the PJM Region and shall be delivered to the border using transmission service. In no event shall the purchase and sale of energy between Market Participants under a bilateral contract constitute a transaction in the PJM Interchange Energy Market or be construed to define PJMSettlement as a contracting party to any bilateral transactions between Market Participants.

(iii) Market Participants that are parties to bilateral contracts for the purchase and sale and physical transfer of energy reported to and coordinated with the Office of the Interconnection under this Schedule shall use all reasonable efforts, consistent with Good Utility Practice, to limit the megawatt hours of such reported transactions to amounts reflecting the expected load and other physical delivery obligations of the buyer under the bilateral contract.

(iv) All payments and related charges for the energy associated with a bilateral contract shall be arranged between the parties to the bilateral contract and shall not be



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billed or settled by the Office of the Interconnection or PJMSettlement. The LLC, PJMSettlement, and the Members will not assume financial responsibility for the failure of a party to perform obligations owed to the other party under a bilateral contract reported and coordinated with the Office of the Interconnection under this Schedule.

(v) A buyer under a bilateral contract shall guarantee and indemnify the LLC, PJMSettlement, and the Members for the costs of any Spot Market Backup used to meet the bilateral contract seller's obligation to deliver energy under the bilateral contract and for which payment is not made to PJMSettlement by the seller under the bilateral contract, as determined by the Office of the Interconnection. Upon any default in obligations to the LLC or PJMSettlement by a Market Participant, the Office of the Interconnection shall (i) not accept any new InSchedule or ExSchedule reporting by the Market Participant and (ii) terminate all of the Market Participant's InSchedules and ExSchedules associated with its bilateral contracts previously reported to the Office of the Interconnection for all days where delivery has not yet occurred. All claims regarding a buyer's default to a seller under a bilateral contract shall be resolved solely between the buyer and the seller. In such circumstances, the seller may instruct the Office of the Interconnection to terminate all of the InSchedules and ExSchedules associated with bilateral contracts between buyer and seller previously reported to the Office of the Interconnection. PJMSettlement shall assign its claims against a seller with respect to a seller's nonpayment for Spot Market Backup to a buyer to the extent that the buyer has made an indemnification payment to PJMSettlement with respect to the seller's nonpayment.

(vi) Bilateral contracts that do not contemplate the physical transfer of energy to or from a Market Participant are not subject to this Schedule, shall not be reported to and coordinated with the Office of the Interconnection, and shall not in any way constitute a transaction in the PJM Interchange Energy Market.

(b) Market Participants shall have Spot Market Backup with respect to all bilateral transactions that contemplate the physical transfer of energy to or from a Market Participant, that are not Dynamic Transfers pursuant to Section 1.12 and that are curtailed or interrupted for any reason (except for curtailments or interruptions through Load Management for load located within the PJM Region).

(c) To the extent the Office of the Interconnection dispatches a Generating Market Buyer's generation resources, such Generating Market Buyer may elect to net the output of such resources against its hourly Equivalent Load. Such a Generating Market Buyer shall be deemed a buyer from the PJM Interchange Energy Market to the extent of its PJM Interchange Imports, and shall be deemed a seller to the PJM Interchange Energy Market to the extent of its PJM Interchange Exports.

(d) A Market Seller may self-supply Station Power for its generation facility in accordance with the following provisions:

Intra-PJM Tariffs → OPEN ACCESS TRANSMISSION TARIFF → OATT VI. ADMINISTRATION AND STUDY OF NEW SERVICE REQUESTS; R → OATT ATTACHMENT K – APPENDIX → OATT ATTACHMENT K APPENDIX SECTION 1 - MARKET OPERATIONS → OATT Attachment K Appendix Sec 1.7 General

(i) A Market Seller may self-supply Station Power for its generation facility during any month (1) when the net output of such facility is positive, or (2) when the net output of such facility is negative and the Market Seller during the same month has available at other of its generation facilities positive net output in an amount at least sufficient to offset fully such negative net output. For purposes of this subsection (d), “net output” of a generation facility during any month means the facility’s gross energy output, less the Station Power requirements of such facility, during that month. The determination of a generation facility’s or a Market Seller’s monthly net output under this subsection (d) will apply only to determine whether the Market Seller self-supplied Station Power during the month and will not affect the price of energy sold or consumed by the Market Seller at any bus during any hour during the month. For each hour when a Market Seller has positive net output and delivers energy into the Transmission System, it will be paid the LMP at its bus for that hour for all of the energy delivered. Conversely, for each hour when a Market Seller has negative net output and has received Station Power from the Transmission System, it will pay the LMP at its bus for that hour for all of the energy consumed.

(ii) Transmission Provider will determine the extent to which each affected Market Seller during the month self-supplied its Station Power requirements or obtained Station Power from third-party providers (including affiliates) and will incorporate that determination in its accounting and billing for the month. In the event that a Market Seller self-supplies Station Power during any month in the manner described in subsection (1) of subsection (d)(i) above, Market Seller will not use, and will not incur any charges for, transmission service. In the event, and to the extent, that a Market Seller self-supplies Station Power during any month in the manner described in subsection (2) of subsection (d)(i) above (hereafter referred to as “remote self-supply of Station Power”), Market Seller shall use and pay for transmission service for the transmission of energy in an amount equal to the facility’s negative net output from Market Seller’s generation facility(ies) having positive net output. Unless the Market Seller makes other arrangements with Transmission Provider in advance, such transmission service shall be provided under Part II of the PJM Tariff and shall be charged the hourly rate under Schedule 8 of the PJM Tariff for Non-Firm Point-to-Point Transmission Service with an election to pay congestion charges, provided, however, that no reservation shall be necessary for such transmission service and the terms and charges under Schedules 1, 1A, 2 through 6, 9 and 10 of the PJM Tariff shall not apply to such service. The amount of energy that a Market Seller transmits in conjunction with remote self-supply of Station Power will not be affected by any other sales, purchases, or transmission of capacity or energy by or for such Market Seller under any other provisions of the PJM Tariff.

(iii) A Market Seller may self-supply Station Power from its generation facilities located outside of the PJM Region during any month only if such generation facilities in fact run during such month and Market Seller separately has reserved transmission service and scheduled delivery of the energy from such resource in advance into the PJM Region.

1.7.11 Emergencies.

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