

ORIGINAL



Your Touchstone Energy® Cooperative 

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

In the Matter of:

ELECTRONIC APPLICATION OF)	
BIG RIVERS ELECTRIC CORPORATION)	Case No.
FOR ENFORCEMENT OF)	2019-00269
RATE AND SERVICE STANDARDS)	

**Responses to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

Part 1 of 2

Responses to Item 1 through Item 40

FILED: June 8, 2020

ORIGINAL

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

VERIFICATION

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



Robert W. ("Bob") Berry

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Robert W. ("Bob") Berry on this
the 8th day of June, 2020.



Notary Public, Kentucky State at Large

My Commission Expires _____

Notary Public, Kentucky State-At-Large
My Commission Expires: July 10, 2022
ID: 604480

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

VERIFICATION

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

Michael W. Chambliss

Michael W. ("Mike") Chambliss

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Michael W. ("Mike") Chambliss on this the 8th day of June, 2020.

Joy P. Parsley

Notary Public, Kentucky State at Large

My Commission Expires _____

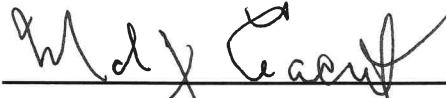
Notary Public, Kentucky State-At-Large
My Commission Expires: July 10, 2022
ID: 604480

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269**

VERIFICATION

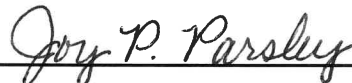
I, Mark J. Eacret, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Mark J. Eacret

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

8th SUBSCRIBED AND SWORN TO before me by Mark J. Eacret on this the
_____ day of June, 2020.



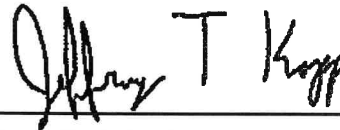
Notary Public, Kentucky State at Large
My Commission Expires _____

Notary Public, Kentucky State-At-Large
My Commission Expires: July 10, 2022
ID: 604480

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

VERIFICATION

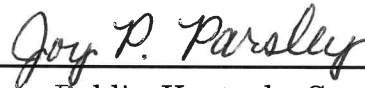
I, Jeffrey T. ("Jeff") Kopp, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Jeffrey T. ("Jeff") Kopp

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Jeffrey T. ("Jeff") Kopp on this
the 8th day of June, 2020.



Notary Public, Kentucky State at Large

My Commission Expires _____

Notary Public, Kentucky State-At-Large
My Commission Expires: July 10, 2022
ID: 604480

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

VERIFICATION

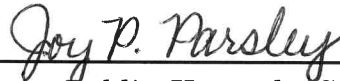
I, Michael T. ("Mike") Pullen, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Michael T. ("Mike") Pullen

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Michael T. ("Mike") Pullen on this the 8th day of June, 2020.



Notary Public, Kentucky State at Large

My Commission Expires _____

Notary Public, Kentucky State-At-Large
My Commission Expires: July 10, 2022
ID: 604480

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269**

VERIFICATION

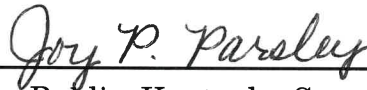
I, Paul G. Smith, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry,



Paul G. Smith

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

8th SUBSCRIBED AND SWORN TO before me by Paul G. Smith on this the
_____ day of June, 2020.



Notary Public, Kentucky State at Large

My Commission Expires _____

Notary Public, Kentucky State-At-Large
My Commission Expires: July 10, 2022
ID: 604480

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 1)** *Is it Big Rivers' contention that either the approval or denial of*
2 *its application will result in a rate increase or rate decrease, or otherwise*
3 *impact the rates Big Rivers charges its customers for electrical services? If*
4 *so, please provide all documentation, calculations, reconciliations, and*
5 *related work papers that support this contention.*

6

7 **Response)** Yes. Big Rivers is a Member-owned, not-for-profit cooperative. It has
8 no shareholders that can absorb the costs Henderson is obligated to pay under the
9 Station Two Contracts when Henderson does not pay those costs. In fact, if the
10 Commission approves Big Rivers' application in Case No. 2020-00064,¹ for so long as
11 Big Rivers' TIER remains above a 1.30, any costs that are shifted from Henderson to
12 Big Rivers would result in an effective and immediate increase in the effective rates
13 paid by Big Rivers' Members and their retail member-customers.

14

¹ See: *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRSM Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief – Case No. 2020-00064.*

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 In addition, even if the application in Case No. 2020-00064 is not approved,
2 requiring Big Rivers' members to subsidize the ratepayers of the City will reduce the
3 margins of Big Rivers and therefore reduce member equity. Member equity can be
4 used to reduce rates in a number of ways. First, by resulting in a stronger credit
5 rating and lower borrowing costs. Second, by using excess member equity to reduce
6 regulatory assets. Finally, by patronage capital credits back to the members.

7

8

9 **Witness)** Robert W. Berry

10

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 2)** *Is it Big Rivers' contention that either the approval or denial of*
2 *its Application for will have an impact on the quantity and/or quality of*
3 *service to Big Rivers' customers? If so, please provide an explanation of the*
4 *effect on the quantity of service available to Big Rivers' tariffed customers,*
5 *and the effect on the quality of service available to tariffed customers,*
6 *including all documentation, calculations, reconciliations, and related*
7 *work papers that support these contentions.*

8

9 **Response)** No.

10

11

12 **Witness)** Robert W. Berry

13

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 3)** *With respect to Henderson Circuit Court, Civil Action No. 19-CI-*
2 *504 and Webster Circuit Court, Civil Action No. 18-CI-200, please cite to the*
3 *portion of the court record in each case where Big Rivers challenged the*
4 *jurisdiction of the Henderson Circuit Court and/or the Webster Circuit Court*
5 *over the matters pending in those action.*

6

7 **Response)** Big Rivers does not claim the Webster Circuit Court lacks jurisdiction
8 over the deed issue in Civil Action No. 18-CI-200. In Civil Action No. 19-CI-504, Big
9 Rivers has argued that the Henderson Circuit Court lacks jurisdiction in every, or
10 nearly every, pleading it has filed in that case, including:

- 11 1. Big Rivers' Answer;
- 12 2. Big Rivers' Memorandum in Support of Motion to Hold in Abeyance; and
- 13 3. Big Rivers' Reply Memorandum in Support of Motion to Hold in Abeyance.

14 These pleadings are attached hereto.

15

16 **Witness)** Robert W. Berry

COMMONWEALTH OF KENTUCKY
HENDERSON CIRCUIT COURT
CIVIL ACTION NO. 19-CI-00504
Electronically Filed

CITY OF HENDERSON, KENTUCKY, AND
CITY OF HENDERSON UTILITY COMMISSION,
d/b/a HENDERSON MUNICIPAL POWER & LIGHT

PLAINTIFFS

V.

BIG RIVERS ELECTRIC CORPORATION

DEFENDANT

ANSWER OF DEFENDANT BIG RIVERS ELECTRIC CORPORATION

Defendant, Big Rivers Electric Corporation (“Big Rivers”), states as follows for its Answer to the Complaint of Plaintiffs, City of Henderson, Kentucky (“City”), and City of Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (“HMP&L”) (jointly referenced hereinafter as “Henderson”).

FIRST DEFENSE

The Complaint fails to state a claim against Big Rivers upon which relief may be granted.

SECOND DEFENSE

This Court lacks subject matter jurisdiction over the Complaint because the Kentucky Public Service Commission (the “Commission”) has exclusive jurisdiction of the dispute between the parties pursuant to KRS 278.200, and there is case pending before the Commission involving this dispute styled *Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards*, Case No. 2019-00269. Because this action was pending before the Commission when Henderson filed the instant case, Big Rivers is not required to assert as compulsory counterclaims herein the claims that it has asserted in the action pending before the

Commission. Also, for these same reasons, this action should be stayed and held in abeyance pending finality of Case No. 2019-00269.

THIRD DEFENSE

Big Rivers affirmatively pleads improper venue, laches, payment, waiver, estoppel, release and accord and satisfaction as defenses to the Complaint.

FOURTH DEFENSE

Big Rivers has a right at common law and under the relevant contracts between the parties to offset against any sums that Big Rivers owes Henderson, sums that Henderson owes Big Rivers, and Big Rivers affirmatively pleads these rights of offset as a partial or total bar to Henderson's claims.

FIFTH DEFENSE

1. Big Rivers admits the allegations contained in paragraph 1 of the Complaint.
2. Big Rivers admits the allegations in paragraph 2 of the Complaint, except that it denies that Henderson has absolute control of the City's municipally owned electric system.
3. Big Rivers admits the allegations contained in paragraph 3 of the Complaint.
4. Big Rivers denies the allegations contained in paragraph 4 of the Complaint.
5. Big Rivers admits the allegations contained in paragraph 5 of the Complaint, except that Big Rivers states the parties have not terminated the Joint Facilities Agreement. Big Rivers denies the allegation that the "parties ultimately agreed to cease operating Station Two effective February 1, 2019," but admits that the parties agreed to retire Station Two effective February 1, 2019.
6. Big Rivers admits the allegations contained in the first sentence of paragraph 6 of the Complaint. Regarding the second sentence of paragraph 6 of the Complaint, Big Rivers

states that Henderson made some payments due to Big Rivers under the Power Plant Construction & Operation Agreement, as amended, on the basis of the annual budget in effect at the time the payments fell due; but the Power Plant Construction & Operation Agreement, as amended, also required Henderson to make other payments to Big Rivers that Henderson has not made.

7. Big Rivers admits the allegations in paragraph 7 of the Complaint, but adds that paragraph 9.3 of the Power Sales Contract, as amended, and Kentucky common law, provide Big Rivers with the right to offset against any sum owed by Big Rivers to Henderson any sum owed by Henderson to Big Rivers under the Power Sales Contract or Power Plant Construction & Operation Agreement, as amended; and Henderson owes Big Rivers sums against which Big Rivers can offset sums that it owes Henderson.

8. Big Rivers admits the allegations contained in the first and second sentences of paragraph 8 of the Complaint, and Big Rivers denies the allegations in the final sentence of paragraph 8.

9. Big Rivers admits the allegations in paragraph 9 of the Complaint.

10. Big Rivers denies the allegations in first sentence of paragraph 10 of the Complaint. In response to the second sentence of paragraph 10 of the Complaint, Big Rivers admits that it has not paid the November 29, 2018 invoice, and Big Rivers denies that it is indebted to Henderson for that sum.

11. In response to the allegations in paragraph 11 of the Complaint, Big Rivers admits that settlement negotiations collapsed, but denies that Henderson “withdrew its offer to pay the disputed MISO charges” because Henderson has represented to Big Rivers that those MISO

charges are valid expenses owed by Henderson. Big Rivers denies the allegations in the final sentence of paragraph 11.

12. Big Rivers denies the allegations in paragraph 12 of the Complaint and any allegation not specifically admitted herein.

WHEREFORE, Big Rivers having answered requests that the Complaint be dismissed, with prejudice, that Henderson take nothing thereby, that Big Rivers recover its reasonable attorney fees and costs herein expended, have trial by jury on all issues so triable, and have all other relief to which it is entitled.

SULLIVAN MOUNTJOY, PSC

/s/ R. Michael Sullivan

James M. Miller

R. Michael Sullivan

100 St. Ann Street, P.O. Box 727

Owensboro, KY 42302-0727

(270) 926-4000 - telephone

jmiller@smlegal.com

msullivan@smlegal.com

Attorneys for Defendant, Big Rivers
Electric Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2019, a copy of the foregoing was served upon the Plaintiffs by mailing same, postage prepaid, to their attorneys:

H. Randall Redding, Esq.
Sharon W. Farmer, Esq.
King, Deep & Branaman
127 North Main Street
P.O. Box 43
Henderson, Kentucky 42419-0043

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

/s/ R. Michael Sullivan
R. Michael Sullivan

COMMONWEALTH OF KENTUCKY
HENDERSON CIRCUIT COURT
CIVIL ACTION NO. 19-CI-00504

Electronically Filed

CITY OF HENDERSON, KENTUCKY, AND
CITY OF HENDERSON UTILITY COMMISSION,
d/b/a HENDERSON MUNICIPAL POWER & LIGHT

PLAINTIFFS

vs.

BIG RIVERS ELECTRIC CORPORATION

DEFENDANT

**DEFENDANT’S MEMORANDUM IN SUPPORT OF MOTION TO
HOLD IN ABEYANCE**

The Defendant, Big Rivers Electric Corporation (“Big Rivers”), by counsel, for its Memorandum in Support of Motion to Hold in Abeyance, states as follows:

I. INTRODUCTION

The Plaintiffs, City of Henderson, Kentucky, and City of Henderson Utility Commission (collectively “Henderson”), filed this action seeking to recover from Big Rivers for sums related to operation and maintenance of two coal-fired generating units owned by Henderson known as “Station Two.” There are two pre-existing, pending proceedings between Big Rivers and Henderson that also concern the responsibilities of the parties for costs associated with operation and maintenance of Station Two, i.e., (1) *Application of Big Rivers Electric Corporation for a Declaratory Order*, Kentucky Public Service Commission (“PSC”) Case No. 2016-278, which is pending on appeal before the Franklin County Circuit Court in Civil Action No. 18-CI-00078, and (2) *Application for Enforcement of Rate and Services Standards*, PSC Case No. 2019-269 (collectively referred to as the “Related Proceedings” herein). These other proceedings ultimately will resolve the issues presented in Henderson’s Complaint in this case, including

which forum has jurisdiction to hear these issues. Therefore, the Court should order that this case be held in abeyance until resolution of the matters pending in these other forums.

II. BACKGROUND AND RELATED PROCEEDINGS

This case arises from a series of contracts between the parties that are the subject of the Related Proceedings before the PSC and the Franklin Circuit Court. The contracts at issue in these proceedings include a Power Plant Construction and Operation Agreement (Exhibit A to the Complaint in this action), a Power Sales Contract, and a Joint Facilities Agreement (collectively the “Station Two Contracts”). The Related Proceedings are summarized in the following paragraphs.

1. PSC, Case No. 2016-278.

On July 29, 2016, Big Rivers filed an Application with the PSC requesting that the PSC find that rate and service standards under the Power Sales Contract with Henderson require Henderson to pay the variable production costs of “Excess Henderson Energy”¹ generated by Station Two that Big Rivers elected not to take. Application, attached without exhibits as Exhibit A, page 1. By Order entered January 5, 2018, the PSC determined it had jurisdiction to interpret the Power Sales Contract and decide the issues presented. It further determined that under the Power Sales Contract, “Big Rivers is not required to pay for any variable production costs associated with Excess Henderson Energy that Big Rivers elects not to take.” Order, attached as Exhibit B, page 13.

On January 29, 2018, Henderson filed a complaint in Franklin Circuit Court, Division II, Case No. 18-CI-00078, appealing from this order of the PSC. Complaint, attached as Exhibit C.

¹ The PSC found that “Excess Henderson Energy” is the difference between Henderson’s reserved capacity under the Power Sales Contract, or 115 MW as of 2016, and the amount of capacity needed by Henderson to serve its native load and for sale by Henderson to third parties. January 5, 2018 Order, attached as Exhibit B, p. 13. Big Rivers refers the Court to this Order for a more detailed discussion of this Excess Henderson Energy issue.

Henderson's sole ground for appeal was that the PSC lacks jurisdiction over the matter. Id., page 5.

Big Rivers filed a counterclaim against Henderson in the Franklin Circuit Court case to recover a money judgment for the variable production costs of this Excess Henderson Energy based on the PSC's ruling that Big Rivers was not responsible for these costs. Henderson filed a counterclaim seeking to offset against those costs certain revenues received by Big Rivers from the sale of this Excess Henderson Energy. By order entered September 5, 2019, the Franklin Circuit Court stayed proceedings on these counterclaims and Henderson's challenge to PSC jurisdiction of that case. Order, attached as Exhibit D. The stay is in effect pending the resolution of a separate PSC case (No. 2019-269), discussed below.

2. PSC Case No. 2019-269.

On July 31, 2019, before Henderson filed this case, Big Rivers filed an Application with the PSC in Case No. 2019-269, asking the PSC to enforce rate and service standards contained in the Station Two Contracts. In that case, Big Rivers asks the PSC to find that: "1) Henderson must comply with its contractual obligations to pay its share of costs under the Contracts as set forth in the Interim Accounting Summary attached to the Application and Big Rivers correctly determined each party's ownership of the coal and lime reagent remaining at Station Two; 2) Henderson has a current and ongoing contractual obligation to share in the costs of decommissioning Station Two; 3) Henderson has a current and ongoing contractual obligation to share in the costs of maintaining Station Two waste in Big Rivers' Green Station landfill; and 4) Henderson is contractually obligated to allow Big Rivers to continue utilizing city-owned joint use facilities." Application, attached as Exhibit E (without exhibits except Exhibit 1), page 8.

Big Rivers' request that the PSC confirm the Interim Accounting Summary puts squarely before the PSC the issue raised in Henderson's Complaint in this case. The Interim Accounting Summary, attached hereto as the last two pages of Exhibit E, includes all of the expenses in dispute between the parties related to operation of Station Two, some of which are owed by Big Rivers to Henderson and some of which are owed by Henderson to Big Rivers. The Interim Accounting Summary reflects that once all offsets are taken into account, "Henderson owes Big Rivers \$718,942 as of June 30, 2019[.]" Application, attached as Exhibit E, page 11.

On September 5, 2019 in the 2019 PSC proceeding, Henderson filed a Motion to Dismiss or Alternatively to Hold in Abeyance, which asks the PSC to dismiss the case based on lack of jurisdiction or to hold the case in abeyance while the Franklin Circuit Court rules on the issue of the PSC's jurisdiction. Big Rivers filed a response to the motion, and the matter is under submission to the PSC.

III. ARGUMENT

Big Rivers has filed its Answer in this case, which includes the defense that this Court lacks jurisdiction because the dispute comes within the exclusive jurisdiction of the PSC pursuant to KRS 278.200. Indeed, the PSC has repeatedly for many years exercised jurisdiction over the Station Two Contracts.² Big Rivers also asserts the affirmative defense of setoff because of the various sums Henderson owes Big Rivers, which are the subject matter of the 2019 PSC case. These issues of PSC jurisdiction and the claims between the parties related to Station Two costs are pending in the Related Matters.

² Order dated October 22, 1970, in Case No. 5406 (approving the Station Two Contracts); Case No. 94-032, Order (March 31, 1995) (approving 1993 Amendments); Case No. 1998-00267, Order (July 14, 1998) (approving 1998 Amendments); Case No. 2005-00532, Order (February 24, 2006) (approving 2005 Amendments); Case No. 2016-00278, Order (January 5, 2018) (granting Big Rivers' request for Declaratory Order); Case No. 2018-00146, Order (August 29, 2018) (finding that the Station Two units were no longer economically viable).

In general, a second action based on the same cause asserted in a previously filed action shall be abated if the action involves the same parties and substantially the same subject matter. Brooks Erection Co. v. William R. Montgomery & Assoc., Inc., 576 S.W.2d 273, 275 (Ky.App. 1979); see also Annie Gardner Foundation v. Gardner, 375 S.W.2d 705, 706 (Ky. 1963) (the rule of abatement is that a second action based on the same cause will generally be abated where there is a prior action pending between the same parties involving substantially the same subject matter and in which prior action the right of the parties may be adjudged). This case should be stayed pending disposition of the first-filed case involving the same subject matter pending before the PSC.

This Court should hold this matter in abeyance pending the outcome of the Related Proceedings because there is an issue of PSC jurisdiction to be resolved, and because the claim asserted by Henderson in this action is already the subject of the 2019 PSC case. If, based on the rulings in the Related Proceedings, this Court has jurisdiction over Henderson's claim, then this matter may proceed without prejudice to Henderson or Big Rivers. However, if it is determined in the Related Proceedings that this Court does not have jurisdiction, then this case should be dismissed. Therefore, the Court should not expend, and potentially waste, its time and resources and those of the parties until these issues are resolved in the Related Proceedings.

In this action, Henderson takes a single issue out of a universe of interconnected issues that are addressed in the Related Proceedings. The sole claim asserted by Henderson in this case concerns the amount that Henderson allegedly overpaid to Big Rivers for maintenance and operation costs at Station Two during Fiscal Years 2018 and 2019. Complaint, ¶¶11-12. This is one of several issues identified by Big Rivers in its Application filed in PSC Case No. 2019-269. The amount set forth in paragraph 8 of the Complaint related to Fiscal Year 2018, \$1,649,922.53,

is the exact amount included in the Big Rivers Interim Accounting Summary on the line “FY 17/18 Annual Settlement True-Up,” which Big Rivers has asked the PSC to confirm as accurate in Case No. 2019-269. However, Henderson now claims in paragraph 11 of its Complaint that it is actually owed \$1,925,116.02. Thus, the dispute presented in this case by Henderson is already pending before the PSC.

As previously noted, Big Rivers is permitted to offset amounts it owes to Henderson with amounts owed to it by Henderson. Section 9.3 of the Power Sales Contract contains this right of offset:

Big Rivers . . . shall have the right to off-set accounts payable under this Agreement by any payments due it under Section 13.6 of the Construction and Operation Agreement and thereupon shall pay to the City of Henderson Utility Commission any remaining balance of the off-set account. Off-setting of accounts shall be employed in determining any delayed payment charges as provided herein.

Kentucky common law also provides Big Rivers with a right of offset. See McFall v. Burley Tobacco Growers’ Co-Op Ass’n, 54 S.W.2d 922 (Ky. 1932). In order for this Court to determine if Big Rivers owes Henderson any amount, this Court will also have to determine Big Rivers’ entitlement to any offset. Both issues are already before the PSC in Case No. 2019-269.

The Franklin Circuit Court has already issued a stay similar to that requested by Big Rivers in this case. After Henderson appealed the 2016 PSC case to the Franklin Circuit Court, Henderson raised additional issues relating to the responsibility for, and computation of, variable production costs of Excess Henderson Energy generated by Station Two. Because these additional issues were under the PSC’s jurisdiction, Big Rivers’ 2019 PSC Application includes a request that the PSC confirm the appropriate amount owed by Henderson for these variable production costs, as well as any offsets to which Henderson may be entitled. After Big Rivers filed the 2019 PSC case, Henderson filed its counterclaim in the Franklin Circuit Court, and Big

Rivers asked the Franklin Circuit Court to stay action on the counterclaims asserted by Big Rivers and Henderson related to the variable costs of Excess Henderson Energy until the PSC resolved these issues. By order entered September 5, 2019 (Exhibit D hereto), the Franklin Circuit Court stayed the entire case, so that all matters, including the issue of the PSC's jurisdiction, could be resolved at one time in the same forum. That is the same request Big Rivers is making in the instant motion.

Because the Franklin Circuit Court entered an order holding the entire case in abeyance until the PSC ruled on the matters before it in the 2019 case, the issue of jurisdiction will be adjudicated by the PSC, then likely on appeal by the Franklin Circuit Court, and then by the Court of Appeals, and possibly the Kentucky Supreme Court, in subsequent appeals. This Court and the parties should await the outcome of those rulings before engaging in duplicative litigation, and potentially inconsistent or unauthorized results, in this matter. See Wagner v. Peoples Bldg. & Loan Ass'n, 167 S.W.2d 825, 826 (Ky. 1943) (citing "universal" rule that a judgment is void when court has no subject matter jurisdiction).

The Related Proceedings will also address the substantive issues raised by Henderson's Complaint in this action. Thus, the amount owed by the parties under the Station Two Contracts will also be determined by the PSC and possibly by appellate courts in the Related Matters. This Court should not take action before the issues raised in the PSC cases have reached finality. Hardin v. Jefferson Co. Board of Education, 558 S.W.3d 1, 10 (Ky. 2018) (circuit court erred when it did not grant a stay of the action to allow an administrative process to reach finality); see also Berg v. Cincinnati N. & C. R. Co., 56 F.Supp. 842, 847-848 (E.D.Ky. 1944) (court should stay matter pending resolution of identical issues pending before administrative agency).

IV. CONCLUSION

The PSC, Franklin Circuit Court, and possibly Kentucky's appellate courts, will address the same issues raised in this action. Those cases will also resolve the issue of the jurisdiction of the PSC to address these issues. In order to allow the PSC to decide issues within its exclusive jurisdiction, in the interest of judicial economy, and in order to avoid a duplication of effort and expenses of the parties, this Court should stay all action in this case pending resolution of the issues presented in the Related Proceedings described above.

SULLIVAN MOUNTJOY, PSC

/s/ R. Michael Sullivan

James M. Miller

R. Michael Sullivan

100 St. Ann Street, P.O. Box 727

Owensboro, KY 42302-0727

(270) 926-4000 - telephone

jmiller@smlegal.com

msullivan@smlegal.com

Attorneys for Defendant, Big Rivers
Electric Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2019, a copy of the foregoing was served upon the Plaintiffs by mailing same, postage prepaid, to their attorneys:

H. Randall Redding, Esq.
Sharon W. Farmer, Esq.
King, Deep & Branaman
127 North Main Street
P.O. Box 43
Henderson, Kentucky 42419-0043

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

/s/ R. Michael Sullivan

R. Michael Sullivan

RECEIVED

JUL 29 2016

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

APPLICATION OF BIG RIVERS ELECTRIC
CORPORATION FOR A DECLARATORY
ORDER

) Case No.
) 2016- 00278
)

APPLICATION

1. Big Rivers Electric Corporation ("Big Rivers") files this application

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

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

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

Introduction

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

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

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

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

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

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

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

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

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

3 **Dispute over Excess Henderson Energy**

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

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

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

⁵ *Id.*, May 31, 2012 award, p. 3.

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

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

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

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

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

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

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

3 **Jurisdiction**

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

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

18 **Request for Relief**

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

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

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

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

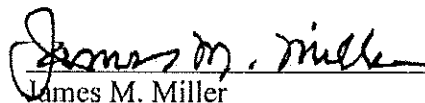
3 18. If, however, the Commission were to interpret the Power Sales Contract to find
4 that Big Rivers is not excluded from responsibility for the Variable Costs of all of Henderson's
5 Excess Henderson Energy not taken and utilized by Big Rivers, then Big Rivers alternatively
6 requests that the Commission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

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

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

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

15 Respectfully submitted,

16
17
18 

19 James M. Miller

20 R. Michael Sullivan

21 Tyson Kamuf

22 SULLIVAN, MOUNTJOY, STAINBACK
23 & MILLER, P.S.C.

24 100 St. Ann Street

25 P. O. Box 727

26 Owensboro, Kentucky 42302-0727

27 Phone: (270) 926-4000

28 Facsimile: (270) 683-6694

29 jmillersmsmlaw.com

30 tkamuf@smsmlaw.com

31
32 *Counsel for Big Rivers Electric Corporation*

Verification

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

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

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

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

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

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On July 29, 2016, Big Rivers Electric Corporation (“Big Rivers”) filed an application seeking an order declaring that the rate and service standards under Big Rivers’ existing Power Sales Contract with the City of Henderson, Kentucky, and City of Henderson Utility Commission (jointly “Henderson”), as amended, require Henderson to be responsible for the variable production costs of any Excess Henderson Energy generated by Henderson’s Station Two Generating Station (“Station Two”), as that term is defined in the Power Sales Contract, that Big Rivers declines to take and utilize.¹ In the alternative, Big Rivers requests an order pursuant to KRS 278.030 and KRS 278.200 finding that the Power Sales Contract is unfair, unjust, and unreasonable unless Henderson is deemed to be responsible for the variable costs of Excess Henderson Energy that Big Rivers declines to take and utilize, and declaring that Henderson is responsible for such variable costs.²

¹ Big Rivers Application at 1.

² *Id.*

On August 5, 2016, the Commission issued an Order, pursuant to 807 KAR 5:001, Section 19(8), establishing a procedural schedule in this matter. The procedural schedule provided for a deadline to request intervention, two rounds of discovery upon Big Rivers, an opportunity for any intervenor to file testimony, discovery upon intervenor testimony, and an opportunity for Big Rivers to file rebuttal testimony. Pursuant to an Order issued on August 24, 2016, Henderson was granted intervention in this matter. An evidentiary hearing was held on February 7, 2017. Big Rivers filed responses to post-hearing data requests on February 16, 2017. Big Rivers filed its post-hearing brief on February 28, 2017. Henderson filed its post-hearing response brief on March 14, 2017. Big Rivers filed a post-hearing reply brief on March 21, 2017. At the parties' requests, the matter was held in abeyance so that the parties could engage in settlement discussions to resolve the issues involved herein. While the parties were able to reach an informal settlement, they were unable to produce a document formalizing their agreement. The matter now stands submitted to the Commission for a decision.

BACKGROUND

Big Rivers is a member-owned rural electric generation and transmission cooperative organized pursuant to KRS Chapter 279. As a rural electric cooperative, Big Rivers "shall be subject to all the provisions of KRS 278.010 to KRS 278.450 inclusive, and KRS 278.990."³ Big Rivers owns and operates generating assets, and purchases, transmits, and sells electricity at wholesale. Its three distribution cooperative member-owners, Jackson Purchase Energy Corporation, Kenergy Corp., and Meade County

³ KRS 279.210(1).

Rural Electric Cooperative Corporation, sell electricity to approximately 114,000 retail customers in 22 western Kentucky counties.

Henderson owns Station Two, which is a two-unit coal-fired electric generating station with a total capacity of 312 megawatts (“MW”).⁴ Big Rivers operates and maintains Station Two under a series of contracts that originally were executed on August 1, 1970, and that have since been amended.⁵ One of those contracts is the Power Sales Contract, which sets forth the methodology for allocating the Station Two capacity between Henderson and Big Rivers. Specifically, under the Power Sales Contract, Henderson each year elects a portion of Station Two’s 312 MW to be reserved to it for serving the City of Henderson and its inhabitants by way of a rolling five-year reservation methodology.⁶ After electing its reserved capacity, Henderson then allots the balance of the capacity of Station Two to Big Rivers.⁷ Big Rivers is then entitled to, and obligated to pay the capacity charges for, the allotted Station Two capacity.⁸

Henderson’s reserved capacity for the 2016–2017 contract year is 115 MW and Big Rivers’ allotted capacity share is 197 MW.⁹ Big Rivers and Henderson are separately responsible for the variable costs associated with the energy each of them uses in a given hour, including the obligation that each party must replace at its cost all

⁴ Application at 5.

⁵ *Id.*

⁶ *Id.* at 7.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

fuels, reagents, and sludge disposal consumed in producing the energy used by that party.¹⁰

Under the 1998 amendments to the Power Sales Contract, a provision was added to address the situation in which Henderson takes less energy than is actually available to Henderson under its reserved capacity in any given hour. The term Excess Henderson Energy is defined in Section 3.8(a) of the 1998 amendments and provides, in full, as follows:

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

(a) In the event that at any time and from time to time City does not take the full amount of energy associated with its reserved capacity from Station Two (determined in accordance with this Agreement), Big Rivers may, at its discretion, take and utilize all such energy (or any portion thereof designated by Big Rivers) not scheduled or taken by City (the "Excess Henderson Energy"), in accordance with Section 3.8(c).

Big Rivers asserts that the central issue in the dispute over the Excess Henderson Energy is whether Big Rivers is responsible for the variable costs associated with Henderson's Excess Henderson Energy that Big Rivers does not take and utilize.¹¹ From July 15, 1998, the effective date of the 1998 amendments to the Power Sales Contract, until June 1, 2016, Big Rivers elected to take the Excess Henderson Energy even when it was uneconomic to do so.¹² However, by letter dated May 25, 2016, Big

¹⁰ *Id.*

¹¹ Direct Testimony of Robert W. Berry ("Berry Testimony") at 6.

¹² *Id.*

Rivers notified Henderson that after June 1, 2016, Big Rivers may, at its discretion, decline to take Excess Henderson Energy, particularly during those times when the cost to generate the energy is higher than the cost of energy in the Midcontinent Independent System Operator (“MISO”) wholesale power market.¹³ The Big Rivers’ letter also notified Henderson that if Big Rivers did not take any Excess Henderson Energy, Big Rivers also would not be responsible for the variable costs associated with the production of that energy.¹⁴ Big Rivers notes that there has been a significant increase in the number of hours in which Station Two is not competitive in the MISO energy market, due to recent competition from natural gas generating units and other market forces.¹⁵ For the period from June 1, 2016, through October, 31, 2016, Big Rivers states that the variable production costs associated with the unwanted Excess Henderson Energy total \$3,888,843, compared to revenues produced by such energy of only \$2,818,628.¹⁶ Big Rivers contends that Section 3.8 of the 1998 amendments gives Big Rivers the option, but not the obligation, to take and utilize all or any portion of the Excess Henderson Energy that Henderson chooses not to take.¹⁷ Big Rivers further contends that, under the 1998 amendments, it is not required to replace the fuel and reagents or pay the sludge disposal costs for the Excess Henderson Energy that Big Rivers does not take.¹⁸

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Berry Testimony at 10.

¹⁶ Rebuttal Testimony of Robert W. Berry (“Berry Rebuttal”) at 5–6.

¹⁷ Berry Testimony at 8–9.

¹⁸ *Id.*

Henderson interprets Excess Henderson Energy, as provided in Section 3.8 of the 1998 amendments, as energy which is within Henderson's reserved capacity and which is not scheduled or taken by Henderson.¹⁹ Thus, it is Henderson's contention that Excess Henderson Energy is that energy which Henderson, for whatever reason, has neither scheduled or taken for the use of the City of Henderson and its inhabitants, nor scheduled or taken by Henderson for sale to third parties.²⁰ Henderson contends that Excess Henderson Energy is a defined contractual term and should not be confused with mere "excess" or "surplus" energy, which is that energy which exceeds the amount Henderson needs to serve its native load in a given period of time, but is equal to or less than the amount of energy associated with Henderson's reserved capacity for that given time period.²¹ According to Henderson, in the event that Henderson's reserved capacity is used to generate energy above Henderson's native load, the energy above native load does not become Excess Henderson Energy until and unless Henderson elects to either not schedule or not take the energy for its own use, or offer the energy for sale to third parties.²²

Henderson asserts that Big Rivers is required to generate only that energy which Henderson schedules or takes, up to Henderson's reserved capacity.²³ Henderson points out that Big Rivers has operated Station Two in the past to generate only the minimum amount of capacity, i.e., 115 MW for Unit 1 and 120 MW for Unit 2, required to

¹⁹ Direct Testimony of Gary Quick ("Quick Testimony") at 6.

²⁰ *Id.*

²¹ *Id.*

²² Quick Testimony at 6–7.

²³ Quick Testimony at 7.

maintain safe and reliable operation.²⁴ In the event Big Rivers elects to operate Station Two at minimum operating levels that require the generation of energy which exceeds Henderson's native load, plus energy scheduled or taken by Henderson, Henderson contends that such energy should be considered attributable to the capacity that is allocated to Big Rivers.

Henderson argues that Big Rivers' position is contrary to the arbitration award issued in May 31, 2012 ("2012 Arbitration") involving a dispute between parties concerning whether Henderson had a contractual right to sell Excess Henderson Energy directly to a third party without first offering the energy to Big Rivers at a certain price.²⁵ Henderson also argues that Big Rivers' interpretation of Excess Henderson Energy represents a unilateral change in practice by Big Rivers regarding the generation of Station Two energy and the assignment of responsibility for variable production costs, and is inconsistent with Exhibit A of the Indemnification Agreement that Big Rivers and Western Kentucky Energy Corp. ("WKE") executed in 2009 with respect to the operation of Station Two.²⁶

Lastly, Henderson contends that the Commission does not have jurisdiction to resolve any issues related to the Power Sales Contract because that contract does not implicate Big Rivers' rates or service and because the only issue presented in Big Rivers' application relates to an interpretation of a contract, an issue that lies solely within the jurisdiction of a court and not within that of the Commission.²⁷

²⁴ *Id.*

²⁵ Quick Testimony at 5.

²⁶ *Id.* at 5–6.

²⁷ Henderson Post-Hearing Brief at 4–6.

On rebuttal, Big Rivers argues that its interpretation of Excess Henderson Energy is supported by the Power Sales Contract and consistent with the 2012 Arbitration decision.²⁸ Big Rivers notes that the 2012 Arbitration decision, on page 4, refers to Excess Henderson Energy as energy that is within Henderson's reserved capacity but is not needed to serve its native load, and which Henderson may sell to a third party.²⁹ Big Rivers contends that the phrase "not scheduled or taken by the City" as provided in Section 3.8(c) is taken out of context by Henderson.³⁰ Big Rivers asserts that this phrase applies to energy that Henderson uses to meet its native load.³¹ Big Rivers maintains that this phrase, contrary to Henderson's interpretation, does not apply to energy that Henderson may want to sell to a third party.³² Big Rivers also references a March 14, 2008 letter from Henderson to WKE in which Henderson admits that Excess Henderson Energy includes energy within Henderson's reserved capacity that Henderson may sell to a third party. Big Rivers asserts that this admission is contrary to Henderson's position in the instant proceeding.³³

Big Rivers contends that Henderson's reliance on the Indemnification Agreement is misplaced because Henderson was not a party to that agreement and because none of the Station Two contracts, including the Power Sales Contract, require Big Rivers to

²⁸ Berry Rebuttal at 5.

²⁹ Berry Rebuttal at 7.

³⁰ Berry Rebuttal at 7–8.

³¹ Berry Rebuttal at 8.

³² *Id.*

³³ Berry Rebuttal at 8–9.

utilize the calculation methodology set forth in the Indemnification Agreement.³⁴ Big Rivers points out that, in Henderson's response to Big Rivers' discovery request, Henderson agrees that the amount of Excess Henderson Energy should not be calculated in accordance with the Indemnification Agreement.³⁵ Big Rivers notes, however, that even if the calculation of Excess Henderson Energy were done pursuant to the Indemnification Agreement, there would continue to be Excess Henderson Energy that Big Rivers would not want to generate or that Henderson would insist that Big Rivers must generate and pay the variable costs of producing.³⁶

Big Rivers avers that its calculation of the Excess Henderson Energy is reasonable and appropriate under the Purchase Sales Contract.³⁷ Big Rivers explains that, under the Power Sales Contract, Henderson requires that its reserved capacity and the associated energy be available continuously for the needs of itself, its inhabitants, and its third-party sales.³⁸ Based upon Henderson's response to Big Rivers' discovery request, Big Rivers states that this capacity and energy is the first to come from the Station Two generation.³⁹ Using this as the starting point, Big Rivers

³⁴ Berry Rebuttal at 12–13. Under the Indemnification Agreement, Excess Henderson Energy came after both Henderson's native load and Big Rivers' capacity allocation when both units were operating. When only one unit was operating, Excess Henderson Energy came before any energy associated with Big Rivers' capacity allocation. See Big Rivers response to Commission Staff's First Request for Information, Item 8.

³⁵ Berry Rebuttal at 13.

³⁶ *Id.*

³⁷ Berry Rebuttal at 9.

³⁸ Berry Rebuttal at 11.

³⁹ *Id.*

asserts that first 115 MW in an hour from Station Two belongs to Henderson.⁴⁰ According to Big Rivers, the difference between the 115 MW and the actual requirements of Henderson and its inhabitants in any given hour is Excess Henderson Energy, as defined by the Section 3.8 of the Power Sales Contract and the 2012 Arbitration decision.⁴¹ Big Rivers further contends that Henderson's calculation of the amount of Excess Henderson Energy is unreasonable because it is inconsistent with the Power Sales Contract, past practices, and the 2012 Arbitration decision.⁴²

Henderson states that Excess Henderson Energy should be calculated according to the following stacking methodology: 1) generated energy within Henderson's reserved capacity for Henderson's native load; 2) generated energy within Henderson's reserved capacity scheduled or taken by Henderson; 3) energy associated with Station Two capacity allocated to Big Rivers; and 4) energy generated and taken by Big Rivers from Henderson's reserved capacity.⁴³ Big Rivers contends that Henderson's stacking methodology, which also seeks to divide Excess Henderson Energy into two parts – the part used for third-party sales and the part not used for third-party sales, is not contemplated under the Power Sales Contract.⁴⁴ Big Rivers asserts that Henderson's methodology would ensure that the Excess Henderson Energy it wants always will be available for Henderson, and that when the cost of producing energy from Station Two is less than the market price of energy, Henderson will get its full 115 MW allocation,

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Berry Rebuttal at 9.

⁴³ Henderson response to Big Rivers First Request for Information, Item 4.

⁴⁴ Berry Rebuttal at 10.

including Excess Henderson Energy that Henderson sells to third parties, before Big Rivers gets any energy from Station Two.⁴⁵ Big Rivers further asserts that, under Henderson's methodology, when the energy is uneconomic, Henderson avoids the variable costs associated with generating that energy and imposes that obligation upon Big Rivers.⁴⁶

Lastly, Big Rivers contends that the Power Sales Contract falls under the exclusive jurisdiction of the Commission pursuant to KRS 278.200, which governs the rate and service terms of a contract between a jurisdictional utility and a city.

DISCUSSION

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that it has jurisdiction over this matter pursuant to KRS 278.200. That statute provides, in full, as follows:

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter.

The issues in this matter involve a Power Sales Contract, as amended, entered into between Big Rivers, a utility within the Commission's regulatory jurisdiction, and the City of Henderson. The inherent nature of the Power Sales Contract necessarily involves

⁴⁵ Big Rivers Post-Hearing Brief at 16.

⁴⁶ *Id.*

rates and service in that the contract sets forth terms relating to Big Rivers's obligations to purchase Station Two capacity and energy from Henderson and Henderson's obligations to provide that capacity and energy to Big Rivers. Likewise, the specific issue that is raised in Big Rivers' application pertains to the quantity and costs of Excess Henderson Energy that is not elected to be taken by Big Rivers. This issue implicates the service and rates under the Power Sales Contract, and such issue is clearly within the ambit of the Commission's jurisdiction under KRS 278.200. We note that under KRS 278.030(1), Big Rivers' rates must be fair, just and reasonable. Consequently, the costs associated with Excess Henderson Energy purchased by Big Rivers would be passed on to Big Rivers' three distribution cooperative owner-members and those costs would ultimately be recovered through the rates charged to the retail consumers of those distribution cooperatives.

Despite their attempts to do so, the parties have been unable to reach an agreement on the issue of whether the Power Sales Contract requires Big Rivers to pay the variable costs of Excess Henderson Energy that is not taken by Big Rivers. Given the parties' inability to settle their differences, the Commission must now address Big Rivers' application for a declaratory order. It is well settled law that in the absence of ambiguity, the terms of a contract should be interpreted by assigning language its ordinary meaning and without resort to extrinsic evidence.⁴⁷ Having reviewed the record and, in particular, the 1998 amendments to the Power Sales Contract, the Commission finds that the clear and unambiguous terms as set forth in Section 3.8 of the 1998 amendments allow Big Rivers the option, at its discretion, to either take or decline to

⁴⁷ *Board of Trustees of Kentucky School Boards Insurance Trust v. Pope*, 528 S.W.3d 901, 906 (Ky. 2017).

take any Excess Henderson Energy. Section 3.8(a) of the 1998 amendments provides that “[i]n the event that...[Henderson] does not take the full amount of energy associated with its reserved capacity from Station Two . . . Big Rivers may, at its discretion, take and utilize all such energy...not scheduled or taken by [Henderson] (the “Excess Henderson Energy”)” A plain reading of this section reveals that Excess Henderson Energy constitutes energy that is not taken or scheduled by Henderson within its reserved capacity. In other words, Excess Henderson Energy is the difference between Henderson’s reserved capacity under the Power Sales Contract, or 115 MW as of 2016, and the amount of capacity needed by Henderson to serve its native load and for sale by Henderson to third-parties.

The Commission further finds that Big Rivers is not required to pay for any variable costs associated with Excess Henderson Energy that Big Rivers elects not to take. Section 3.8(d) of the 1998 amendments provides, in relevant part, as follows:

[Henderson] further agrees that it shall not at any time be permitted to sell or commit to any person other than Big Rivers any Excess Henderson Energy without having first offered Big Rivers the opportunity to purchase such Excess Henderson Energy. Big Rivers shall have a reasonable period of time after submission of the City’s scheduled energy requirements to decide whether to purchase any Excess Henderson Energy not scheduled by [Henderson]. Big Rivers agrees to notify [Henderson] thereafter if it does not intend to purchase such energy, and agrees to give [Henderson] a response within a reasonable time so that [Henderson] may take efforts to resell this power to third-parties.

This section clearly and unambiguously provides Big Rivers the discretion to purchase or not to purchase any Excess Henderson Energy. Because the Power Sales Contract requires each party to pay for the variable costs associated with the power

taken or used by that party during any month, the Commission finds that Big Rivers is not obligated, under the express terms of the Power Sales Contract, as amended, to pay for any Excess Henderson Energy that is declined to be taken by Big Rivers at its discretion.

IT IS THEREFORE ORDERED that:

1. Big Rivers request for a declaration that, under the terms of the Power Sales Contract, as amended, it is not required to pay for any variable costs associated with Excess Henderson Energy that it declines to take is granted.

2. Big Rivers alternative request that, in the event that the Commission finds that Big Rivers is required to pay for the variable costs associated with Excess Henderson Energy, the Commission declare the provision not fair, just, and reasonable, is denied as moot.

By the Commission

ENTERED
JAN 05 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Filed
*Dawn Kelsey
City Attorney
City of Henderson
222 First Street
Henderson, KENTUCKY 42420

19-CI-00504 10/15/2019

Herbert McKee, Jr. Henderson Circuit Clerk
NOT ORIGINAL DOCUMENT
05/22/2020 06:09:22 PM
tkamuf

*Honorable James M Miller
Attorney at Law
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KENTUCKY 42302-0727

*Honorable John N Hughes
Attorney at Law
124 West Todd Street
Frankfort, KENTUCKY 40601

*Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

*H. Randall Redding
King, Deep & Branaman
127 North Main Street
P.O. Box 43
Henderson, KENTUCKY 42419

*Sharon W Farmer
King, Deep & Branaman
127 North Main Street
P.O. Box 43
Henderson, KENTUCKY 42419

Filed

19-CI-00504 10/15/2019

Herbert McKee, Jr. Henderson Circuit Clerk

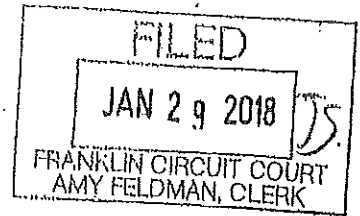
*Denotes Served by Email

Service List for Case 2016-00278

001344

EXH : 000015 of 000015

tkamuf



COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION A
CIVIL ACTION NO. 18-CI- TV 78

CITY OF HENDERSON, KENTUCKY, AND
HENDERSON UTILITY COMMISSION, d/b/a
HENDERSON MUNICIPAL POWER & LIGHT

PLAINTIFF

v.

KENTUCKY PUBLIC SERVICE COMMISSION

DEFENDANTS

Serve: Michael J. Schmitt
Chairman
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

Serve: Gwen R. Pinson
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

and

BIG RIVERS ELECTRIC CORPORATION

Serve: Paula L. Mitchell
Registered Agent
Big Rivers Electric Corp.
201 Third Street
Henderson, Kentucky 42420

Serve: Robert W. Berry
President & CEO
Big Rivers Electric Corp.
201 Third Street
Henderson, Kentucky 42420

and

EXHIBIT C

KENTUCKY ATTORNEY GENERAL

Serve: Andy Beshear
Kentucky Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3449

COMPLAINT

The City of Henderson, Kentucky ("City), and the Henderson Utility Commission, d/b/a Henderson Municipal Power & Light ("HMPL"), jointly referenced hereinafter as "Henderson," for their Complaint against the Kentucky Public Service Commission states and alleges:

PARTIES

1. The City is and at all times relevant hereto was a Kentucky city of the home-rule class, with authority and powers as specified and enumerated by the Constitution of the Commonwealth of Kentucky, and by state statutes enacted by the Kentucky General Assembly, and is a public body politic and corporate, with perpetual succession, which body may contract and be contracted with, sue and be sued, in and by its corporate name. The City is headquartered at 222 First Street, Henderson, Kentucky, 42420.

2. HMPL is and at all times relevant hereto was a utility commission established by ordinance of the City of Henderson, Kentucky, pursuant to KRS 96.530 et. seq., and is a public body politic and corporate, with perpetual succession, which has absolute control of the municipal electric system of the City of Henderson, Kentucky, including the operation and fiscal management of its generation, transmission, and distribution facilities, for the purpose of providing power to its customers residing inside and outside the city limits, which body may contract and be contracted with, sue and be sued, in and by its corporate name, HMPL is located at 100 Fifth Street, Henderson, Kentucky, 42420.

3. Defendant Kentucky Public Service Commission ("Commission") is and at all times relevant hereto was an agency of the Kentucky Energy & Environment Cabinet, and is a statutorily created administrative agency operating under the provisions of KRS Chapter 278. Its address is 211 Sower Boulevard, Frankfort, Kentucky, 40601.

4. Defendant Big Rivers Electric Corporation ("Big Rivers") is and at all times relevant hereto was an electric generation and transmission cooperative corporation headquartered at 201 Third Street, Henderson, Kentucky 42419-0024, organized pursuant to KRS Chapter 279, and having the capacity to contract, to sue, and to be sued in its own name. Big Rivers is regulated by and subject to the statutory authority of the PSC, as prescribed in KRS Chapter 278, and Title 807 of the Kentucky Administrative Regulations.

5. Henderson was an intervening party in Big Rivers' Application for a Declaratory Order before the Commission (Case No. 2016-278), which issued the Order giving rise to this action.

6. The Attorney General is served pursuant to Ky. R. Civ. P. 4.04(6).

JURISDICTION & VENUE

7. This action is filed pursuant to KRS 278.410.

8. Venue is proper in the Franklin Circuit Court pursuant to KRS 278.410.

CAUSE OF ACTION

9. Henderson and Big Rivers are parties to a series of contracts, which were originally executed on August 1, 1970, and which have been amended a number of times since that date. One such contract is the Power Sales Contract, as amended, which governs the rights and obligations of the parties with respect to energy and generating capacity associated with two jointly operated coal-fired power plants known collectively as Station Two.

10. On July 29, 2016, Big Rivers filed an Application for a Declaratory Order with the Commission pursuant to 807 KAR 5:001(19). The Commission opened a proceeding under Case No. 2016-278, "Application of Big Rivers Electric Corporation for a Declaratory Order."

11. Big Rivers' application sought an order declaring first that the Commission had jurisdiction to interpret certain provisions of the Power Sales Contract, as amended, so as to grant the relief Big Rivers requested. The application next sought an order declaring that, under the terms of the Power Sales Contract, Big Rivers was not responsible for the variable production costs of energy that Henderson declined to take or schedule for sale to a third party ("Excess Henderson Energy"), and that Big Rivers also declined to take and utilize. In the alternative, Big Rivers sought an order declaring that any contractual provision requiring Big Rivers to be responsible for the variable production costs associated with such energy was not fair, just, and reasonable, and assigning those costs to Henderson.

12. Subsequent to the filing of the application, the Commission established a procedural schedule, and all parties engaged in extensive discovery. An evidentiary hearing was held on February 7, 2017. The final order which gives rise to this action was issued on January 5, 2018.

13. The Commission determined that it possessed jurisdiction to interpret the Power Sales Contract, as amended, pursuant to KRS 278.200, and held it had the authority to grant the requested relief that Big Rivers was not responsible for the variable production costs of Excess Henderson Energy that Big Rivers declined to take. The Commission dismissed as moot Big Rivers' alternative request that any contractual provision holding it responsible for such costs was not fair, just, and reasonable, and that any such costs be assigned to Henderson.

14. In exercising jurisdiction over Big Rivers' application, and granting relief to Big Rivers, the Commission exceeded the authority granted under KRS 278.200 as interpreted by the Kentucky Supreme Court, mischaracterized the nature of the parties' contractual relationship, and misconstrued the dispute as one that implicates the rates and service standards necessary to invoke Commission jurisdiction. The Commission's exercise of jurisdiction was unlawful and unreasonable under KRS 278.410.

15. The Commission's order further fails to state specific findings of fact to support its conclusions that Big Rivers is required under the terms of the Power Sales Contract, as amended, to purchase capacity and/or energy from Henderson, or that an obligation to pay the variable production costs of energy that Big Rivers elects not to take ultimately would translate into increased rates for Big Rivers' retail customers. The Commission's decision to engage in contractual interpretation in the absence of an issue implicating rates and/or service standards was unlawful and unreasonable, and is inconsistent with prior orders limiting its jurisdiction. The Commission's determination that a speculative impact on rates and/or service standards is sufficient to invoke jurisdiction is unsupported by substantial evidence, and is unlawful and unreasonable.

16. The order of January 5, 2018, invades the province of the Courts, impermissibly infringes upon the contract rights of a municipality where neither rates nor services are implicated, and exceeds the scope of authority the legislature granted to the Commission, which is arbitrary in violation of Section 2 of the Kentucky Constitution.

WHEREFORE, Henderson respectfully requests:

1. That the order of January 5, 2018, be set aside and vacated on the grounds that the order is unlawful, unreasonable, and arbitrary.

2. Any and all other proper relief to which Henderson may appear entitled, including reasonable attorney fees and costs.

Respectfully submitted,

John N. Hughes (w/permission)
JOHN N. HUGHES

ATTORNEY AT LAW
Professional Service Corporation
124 West Todd Street
Frankfort, Kentucky 40601
Telephone: (502) 227-7270
jnhughes@johnnhughespsco.com

and

H. Randall Redding (w/permission)
H. RANDALL REDDING

SHARON W. FARMER
KING, DEEP & BRANAMAN
127 North Main Street
P.O. Box 43
Henderson, Kentucky 42419-0043
Telephone: (270) 827-1852
rredding@kdblawn.com
sfarmer@kdblawn.com

*Attorneys for Henderson Utility Commission, d/b/a
Henderson Municipal Power & Light*

Dawn Kelsey (w/permission)
DAWN KELSEY

CITY ATTORNEY
CITY OF HENDERSON
222 First Street
Henderson, Kentucky 42420
Attorney for City of Henderson

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 18-CI-78

ENTERED
SEP 05 2019
FRANKLIN CIRCUIT COURT
AMY FELDMAN, CLERK

CITY OF HENDERSON, KENTUCKY,
and HENDERSON UTILITY COMMISSION
d/b/a HENDERSON MUNICIPAL
POWER & LIGHT

PLAINTIFFS

vs.

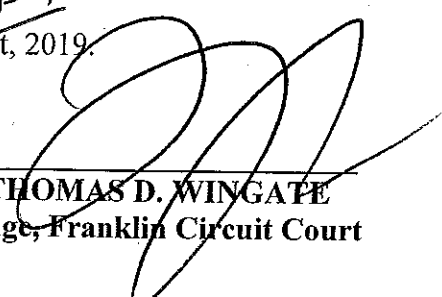
KENTUCKY PUBLIC SERVICE
COMMISSION, et al.

DEFENDANTS

ORDER

This matter is before the Court upon Defendant Big Rivers Electric Corporation's *Motion to Stay Proceedings on Counterclaims*. The case was called before the Court during a motion hour on Wednesday, August 28, 2019. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby **GRANTS** Defendant's *Motion*. The Court hereby **STAYS** all matters related to Defendant's Counterclaim as well as any issues relating to the PSC's jurisdiction in this case pending the resolution of action filed on July 31, 2019 at the PSC.

SO ORDERED, this 3 day of August, 2019.

Sgt


THOMAS D. WINGATE
Judge, Franklin Circuit Court

EXHIBIT D

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this 5 day of ~~August~~ ^{September}, 2019, to the following:

Hon. John N. Hughes
Professional Service Corporation
124 West Todd Street
Frankfort, Kentucky 40601

Hon. H. Randall Redding
Hon. Sharon W. Farmer
King, Deep & Branaman
127 North Main Street
P.O. Box 43
Henderson, Kentucky 42419

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

Hon. R. Michael Sullivan
Hon. James M. Miller
Sullivan Mountjoy, PSC
100 St. Ann Street
Owensboro, Kentucky 42302

Hon. John E.B. Pinney
Hon. Quang D. Nguyen
Hon. Kyle M. Melloan
Hon. Benjamin A. Bellamy
Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602

Hon. Jack B. Bates
Bates and Skidmore
415 West Main Street, Suite 3
Frankfort, Kentucky 40601

Amy Feldman by JS

Amy Feldman, Franklin County Circuit Court Clerk

1
2
3
4
5

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

IN THE MATTER OF:

**APPLICATION OF)
BIG RIVERS ELECTRIC CORPORATION) Case No.
FOR ENFORCEMENT OF) 2019-00 269
RATE AND SERVICE STANDARDS)**

6
7
8
9

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR
ENFORCEMENT OF RATE AND SERVICE STANDARDS**

10

INTRODUCTION

11 1. Big Rivers Electric Corporation ("Big Rivers") files this Application
12 ("Application") pursuant to KRS 278.200, 278.030, and 278.040, seeking an order
13 from the Kentucky Public Service Commission ("Commission") enforcing the rates
14 and service standards contained in the series of contracts that the City of Henderson,
15 Kentucky and City of Henderson Utility Commission (collectively, "Henderson")
16 entered into with Big Rivers related to the Station Two generating units (the "Station
17 Two Contracts" or "Contracts").¹ Specifically, Big Rivers asks that the Commission
18 find that: 1) Big Rivers correctly performed the calculations contained in the Interim
19 Accounting Summary (Exhibit Smith-1), Henderson is contractually obligated to pay
20 its share of costs as reflected therein, and Big Rivers correctly determined each
21 party's ownership of the coal and lime reagent remaining at Station Two; 2)

¹ The Station Two Contracts include the Power Sales Contract, the Power Plant Construction and Operation Agreement, the Joint Facilities Agreement, the System Reserves Agreement, and amendments to the Station Two Contracts that were made in years 1993, 1998, and 2005. *Please see Exhibits 8-14 attached hereto and Big Rivers' Application & Exhibits 1-8 in Case No. 2016-00278.*

1 Henderson has both a current and an ongoing contractual obligation to share in the
2 costs of decommissioning Station Two; 3) Henderson has current and ongoing
3 contractual obligations to share in the costs of maintaining Station Two waste in Big
4 Rivers' Green Station landfill; and 4) Henderson is contractually obligated to allow
5 Big Rivers to continue utilizing city-owned joint use facilities.

6 BACKGROUND

7 2. The Applicant, Big Rivers, is a rural electric cooperative corporation
8 organized pursuant to KRS Chapter 279. Its full name is Big Rivers Electric
9 Corporation. Big Rivers' mailing address is P.O. Box 24, Henderson, Kentucky
10 42419-0024, and its street address is 201 Third Street, Henderson, Kentucky 42420.
11 Big Rivers' address for electronic mail service is regulatory@bigrivers.com.²

12 3. Big Rivers owns generating assets and purchases, transmits and sells
13 electricity at wholesale. Its principal purpose is to provide the wholesale electricity
14 requirements of its three distribution cooperative members: Jackson Purchase
15 Energy Corporation, Kenergy Corp., and Meade County Rural Electric Cooperative
16 Corporation (collectively, the "Members"). The Members in turn provide retail
17 electric service to approximately 117,000 consumers/retail members located in 22
18 western Kentucky counties: Ballard, Breckenridge, Caldwell, Carlisle, Crittenden,
19 Daviess, Graves, Grayson, Hancock, Hardin, Henderson, Hopkins, Livingston, Lyon,
20 Marshall, McCracken, McLean, Meade, Muhlenberg, Ohio, Union, and Webster.

² 807 KAR 5:001 Section 14(1).

1 4. Big Rivers was incorporated in the Commonwealth of Kentucky on June
2 14, 1961, and hereby attests that it is currently in good standing in Kentucky.³

3 5. The City of Henderson is a municipality in Western Kentucky with a
4 street address of 222 First Street, Henderson, Kentucky 42420, and a mailing address
5 of P.O. Box 716, Henderson, Kentucky 42419-0716. The City of Henderson Utility
6 Commission, d/b/a Henderson Municipal Power and Light, is a municipal utility
7 organized under the law of Kentucky with an address of 100 Fifth Street, Henderson,
8 Kentucky 42420.

9 6. Henderson owns two coal-fired electric generating units near Sebree,
10 Kentucky, known as "Station Two," which have a Total Capacity of 312 MW. Big
11 Rivers has operated and maintained the Station Two units pursuant to the Contracts.

12 7. The Contracts were originally executed on August 1, 1970 and
13 subsequently approved by the Commission on October 22, 1970 in Case No. 5406.
14 The initial Contracts were amended on several occasions and the amendments were
15 approved by the Commission.⁴ The relevant Contracts and amendments are attached
16 as exhibits hereto.

17 8. Under Section 1.1 of the 1993 Amendments to the Station Two
18 Contracts, Big Rivers had the option to extend the term of the Contracts "for so long
19 as [either of the Station Two units] is operated, or is capable of normal, continuous,
20 reliable operation for the economically competitive production of electricity,

³ 807 KAR 5:001 Section 14(2).

⁴ See e.g. Case No. 94-032, Order (March 31, 1995) (approving 1993 Amendments); Case No. 1998-00267, Order (July 14, 1998) (approving 1998 Amendments); Case No. 2005-00532, Order (February 24, 2006) (approving 2005 Amendments).

1 temporary outages excepted.” Big Rivers elected to exercise that option, and the
2 extension of the term is reflected in the 1998 Amendments to the Contracts.

3 9. However, as time progressed and the electric market changed, the
4 Station Two units became uneconomic. And on August 29, 2018, at Big Rivers’
5 request, the Commission issued an Order finding that, pursuant to Section 1 of the
6 1998 Amendments to the Station Two Contracts, the term of each of the Contracts,
7 except for the Joint Facilities Agreement, expired when the Station Two units were
8 no longer economically viable.⁵ In that Order, the Commission also granted Big
9 Rivers authority to continue to operate Station Two under the terms of the Station
10 Two Contracts for a period up to May 31, 2019, in order to afford Henderson an
11 opportunity to find alternate arrangements for its power supply needs.⁶

12 10. Henderson and Big Rivers agreed to expedite the closure of Station Two
13 and cease generating electricity by February 1, 2019 in order to prevent additional
14 economic losses. Further, because Station Two was uneconomic, ceasing operations
15 at Station Two prior to May 31, 2019 saved Big Rivers additional money, which
16 allowed Big Rivers to increase the Station Two Depreciation Credit established in
17 Case No. 2018-00146 to its Members by approximately \$1.1 million (from about \$5.4
18 million to \$6.5 million).

⁵ *In the Matter of: Application of Big Rivers Electric Corporation for Termination of Contracts and a Declaratory Order and for Authority to Establish a Regulatory Asset*, Case No. 2018-00146.

⁶ *Id.*, Order (August 29, 2018).

1 11. Big Rivers and Henderson began the process of decommissioning by
2 starting to transition the plant into a “safe, dark, and dry” status to prepare the plant
3 to undergo full decommissioning in the near future.

4 12. Henderson retained an alternate power supplier to begin serving its
5 native load through the MISO⁷ market beginning February 1, 2019.

6 13. Station Two retired on February 1, 2019.

7 14. While Big Rivers and Henderson were able to reach an agreement on
8 the retirement date of Station Two, multiple disputes have arisen between Big Rivers
9 and Henderson regarding the parties’ respective rights and obligations under the
10 Station Two Contracts. These disputes, which are still unresolved, include
11 Henderson’s refusal: 1) to pay certain amounts owed to Big Rivers under the
12 Contracts; 2) to pay its share of decommissioning costs as required under Section 8 of
13 the 1993 Amendments;⁸ 3) to pay its share of the costs of maintaining Station Two
14 waste in Big Rivers’ Green Station landfill under Sections 4.1 and 6.1 of the Joint
15 Facilities Agreement; and 4) to allow Big Rivers to continue to utilize city-owned joint
16 use facilities as required by Section 1.5 of the Joint Facilities Agreement, which is
17 necessary in order to continue operation of Big Rivers’ Green generating units.

18 15. Additionally, Henderson has initiated two pending actions in Kentucky
19 Circuit Courts: 1) an action in the Franklin Circuit Court to review the Commission’s

⁷ “MISO” is the Midcontinent Independent System Operator, Inc.

⁸ That Section amended the Contracts to provide that “[i]f Big Rivers exercises its option under Section 1.1... to extend the life of the Contracts for the operating life of Station Two... **the parties shall bear decommissioning costs of Station Two in the proportions in which they shared capacity costs during the life of Station Two**” (emphasis added).

1 January 5, 2018, Order in Case No. 2016-00278, to which Big Rivers has filed a
2 counterclaim to protect its rights and to enforce the Commission's January 5, 2018
3 Order; and 2) an action in the Webster Circuit Court in which Henderson is seeking
4 a determination that Big Rivers now owns the real estate on which portions of Station
5 Two were constructed.⁹

6 16. The Franklin Circuit Court proceeding is the natural predecessor to this
7 case. In Case No. 2016-00278, the Commission case on appeal, Big Rivers filed a
8 request for a Declaratory Order finding that under the Station Two Contracts, Big
9 Rivers was not required to pay for any variable costs associated with Excess
10 Henderson Energy generated by Station Two that Big Rivers did not elect to take.
11 Invoking its jurisdiction under KRS 278.200 and 278.030, the Commission granted
12 Big River's request.¹⁰ Henderson appealed the Commission's Order on jurisdictional
13 grounds. And because Henderson continued to refuse to reimburse Big Rivers for the
14 variable costs of Excess Henderson Energy that Big Rivers elected not to take, Big
15 Rivers filed a counterclaim in that action seeking to recover damages associated with
16 those costs.

17 17. In the Webster Circuit Court proceeding, Henderson seeks a declaration
18 that Big Rivers now owns the real property on which portions of Station Two are
19 located, citing a provision of the 1971 Station Two Deed that states in part that, "upon
20 discontinuance by [Henderson] of the... operation and/or maintenance [of Station

⁹ This lawsuit is described in more detail in the Direct Testimony of Robert W. Berry. It is in the discovery stage.

¹⁰ Case No. 2016-00278, Order (January 5, 2018).

1 Two]...and the retirement of all outstanding [Station Two Bonds issued by
2 Henderson]...title...shall revert to Big Rivers.”¹¹ Henderson’s position in that case is
3 that the real property automatically reverted to Big Rivers on February 1, 2019.
4 However, Henderson’s position is contrary to both the law and the facts. KRS 381.218
5 abolished automatic reversions such as the one claimed by Henderson, and even were
6 that not the case, the conditions precedent for the reversion have not occurred
7 (maintenance continues on Station Two and Big Rivers understands that there are
8 still Station Two Bonds outstanding). Additionally, Big Rivers asserts, *inter alia*,
9 that it cannot acquire a generating facility like Station Two in the absence of a
10 Certificate of Public Convenience and Necessity (“CPCN”) from this Commission. As
11 the Commission recently explained, “To obtain a CPCN, the utility must demonstrate
12 a need for such facilities and an absence of wasteful duplication.”¹² Hence, the
13 property transfer that Henderson seeks would likely require a CPCN, which Big
14 Rivers does not intend to seek since Big Rivers does not believe that the property
15 satisfies the legal standard for a CPCN.

16 18. Consequently, in order to resolve the outstanding issues within the
17 Commission’s jurisdiction, Big Rivers respectfully requests that the Commission
18 exercise its enforcement authority over the rates and service standards set forth in
19 the Contracts pursuant to KRS 278.200 by finding that: 1) Henderson must comply
20 with its contractual obligations to pay its share of costs under the Contracts as set

¹¹ See Henderson Complaint for Declaratory Relief (Exhibit 17 hereto) at 3.

¹² *In the Matter of the Application of East Kentucky Power Cooperative, Inc...*, Case No. 2017-00376, Order (May 18, 2018) at 30 (emphasis added); *In the Matter of the Application of East Kentucky Power Cooperative, Inc....*, Case No. 2015-00267, Order (Dec. 1, 2015) at 39.

1 forth in the Interim Accounting Summary and Big Rivers correctly determined each
2 party's ownership of the coal and lime reagent remaining at Station Two ; 2)
3 Henderson has a current and ongoing contractual obligation to share in the costs of
4 decommissioning Station Two; 3) Henderson has a current and ongoing contractual
5 obligation to share in the costs of maintaining Station Two waste in Big Rivers' Green
6 Station landfill; and 4) Henderson is contractually obligated to allow Big Rivers to
7 continue utilizing city-owned joint use facilities. Each of these requests are discussed
8 in more detail below and in the accompanying testimony.

9 19. In the event that the Commission grants Big Rivers' requested relief,
10 but Henderson refuses to comply with the Commission's rate order, then Big Rivers
11 respectfully requests that the Commission exercise its enforcement authority
12 pursuant to KRS 278.390 and KRS 278.990 and also require Henderson to pay
13 interest at a rate determined by the Commission.

14 20. Big Rivers is serving a copy of this Application on the Mayor of the City
15 of Henderson, the City of Henderson Utility Commission, and the city attorney for
16 the City of Henderson, by hand delivery on July 31, 2019. Big Rivers is also serving
17 a copy of this Application on the Attorney General by overnight delivery.

18 COMMISSION JURISDICTION

19 21. The Commission has jurisdiction over the Station Two Contracts
20 pursuant to KRS 278.200, which gives the Commission the power to enforce any rate
21 or service standard of any utility that has been or may be fixed by any contract or
22 agreement between a utility and a city. That Section also states that all obligations

1 arising out of any such contract are subject to the jurisdiction of this Commission.

2 KRS 278.200 states:

3 **Power to regulate rates and service standards fixed by agreement**
4 **with city.**

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

15 22. Because enforcing Big Rivers' existing contract rights would not "limit
16 or restrict" the contract rights of Henderson, the Commission's exercise of authority
17 in this case would be consistent with KRS 278.040, and in furtherance of its mandates
18 to maintain just and reasonable rates under KRS 278.030.

19 23. While Henderson is not a "utility" as defined under KRS 278.010(3), the
20 Kentucky Supreme Court has held that "[t]he statutory definition of utility is not to
21 serve as an impenetrable shield to afford the City immunity."¹³ The Court has
22 explained that when addressing contracts between a city and a utility, "[j]urisdiction
23 to regulate...rates and service has been exclusively vested in the PSC."¹⁴ The Court
24 of Appeals of Kentucky has held similarly, finding that "...the PSC does not have
25 jurisdiction over utility services furnished by a municipality except to the extent that

¹³ *Simpson County Water Dist. v. City of Franklin*, 872 S.W.2d 460, 464 (Ky. 1994).

¹⁴ *Id.* See also *Simpson* at 465 ("The rates and service exception effectively insures, throughout the Commonwealth, that any water district consumer/customer that has contracted and become dependent for its supply of water from a city utility is not subject to either excessive rates or inadequate service").

1 those services are rendered pursuant to a contract with a utility which is regulated
2 by the PSC. In such cases the municipality, in the matters covered under the
3 contract, is subject to the jurisdiction of the PSC.”¹⁵ Because Big Rivers’ request
4 directly relates to the rates and service standards set forth in the Contracts, the
5 Commission has the exclusive jurisdiction over these matters.

6 24. Indeed, the Commission has previously exercised jurisdiction over the
7 Station Two Contracts by approving the Contracts and the amendments thereto, and
8 by resolving other issues that have arisen between the parties arising out of the
9 Contracts.¹⁶

10 **REQUEST FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS**
11 **WITH RESPECT TO OUTSTANDING FINANCIAL DISPUTES**

12 25. As described more fully in the Direct Testimony of Mr. Robert W. Berry,
13 for over a year, Big Rivers and Henderson have engaged in extensive negotiations in
14 order to resolve various outstanding issues related to how certain costs and revenues
15 should be allocated between the parties, including the costs of decommissioning
16 Station Two. In fact, each party has issued checks to the other party representing
17 various amounts that each believed were sufficient to settle the outstanding financial
18 disputes between them. But neither party cashed the checks because each continued
19 to dispute the other’s calculations. As such, the financial obligations of each party

¹⁵ *City of Greenup v. PSC*, 182 S.W.3d 535, 538 (Ky. App. 2005).

¹⁶ See, e.g., Case No. 5406, Order (Oct. 22, 1970) (approving the Contracts); Case No. 1998-00267; Order (March 31, 1995) (approving 1993 Amendments); Order (July 14, 1998) (approving 1998 Amendments) Case No. 94-032; Case No. 2016-00278, Order (Jan. 5, 2018).

1 still remain unresolved. It is now clear that the involvement of the Commission is
2 necessary and in the public interest to bring closure to these matters.

3 26. Accordingly, commensurate with the filing of this Application, Big
4 Rivers is delivering the Interim Accounting Summary and an invoice to Henderson
5 (attached hereto as Exhibit 1), informing Henderson of its calculation of the final
6 amounts due and owing by the parties to each other under the Station Two Contracts
7 and the amount still owed to Big Rivers by Henderson as of June 30, 2019. Big Rivers'
8 calculations, associated methodology, and contractual support for each calculation
9 are detailed in the Direct Testimony of Mr. Paul G. Smith.

10 27. Additionally, Mr. Berry and Mr. Smith discuss in their testimonies that
11 under the Contracts, each party was required to supply the fuel and reagent
12 associated with the generation of the energy that party took from Station Two.
13 Because Henderson refuses to accept that any Excess Henderson Energy that Big
14 Rivers did not take belonged to Henderson, Henderson also disagrees with Big Rivers'
15 calculations as to the ownership of the coal and lime reagent remaining at Station
16 Two.

17 28. Big Rivers requests that the Commission exercise its enforcement
18 authority over rates and service standards set forth in the Station Two Contracts
19 pursuant to 278.200 by entering an order finding that the calculations and
20 methodology associated with each calculation comprising the Interim Accounting
21 Summary is the correct application of the terms of the Contracts, that Henderson
22 owes Big Rivers \$718,942 as of June 30, 2019, and must immediately pay Big Rivers

1 that amount, that 481 tons of lime reagent remaining at Station Two belongs to
2 Henderson as of February 1, 2019, and that all of the coal and the rest of the lime
3 reagent remaining at Station Two belong to Big Rivers.

4 **REQUEST FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS**
5 **WITH RESPECT TO STATION TWO DECOMMISSIONING COST SHARING**

6 29. The Station Two Contracts are clear that the parties remain obligated
7 to share in the decommissioning costs associated with Station Two. Section 8 of the
8 1993 Amendments provides that “the parties shall bear decommissioning costs of
9 Station Two in the proportions in which they shared capacity costs during the life of
10 Station Two.”

11 30. The Direct Testimony of Mr. Jeffrey T. Kopp describes the tasks that
12 comprise decommissioning, and the Direct Testimony of Mr. Smith explains how
13 decommissioning costs are allocated between the parties under the Contracts. Mr.
14 Berry and Mr. Kopp also detail in their testimonies how the parties’ obligations under
15 the Station Two Contracts to share in decommissioning costs include not only the
16 costs to dismantle the Station Two units, but also: (i) the costs to decommission any
17 joint use facilities once Big Rivers ceases to utilize them, which includes the Station
18 Two ash pond and the Station Two dredgings in Big Rivers’ Green Station landfill;
19 and (ii) all ongoing legally mandated environmental monitoring, remediation and
20 permitting costs relating to Station Two, including the joint use facilities.

21 31. Henderson has indicated that it will no longer share in the
22 decommissioning costs, except perhaps relating to the closure of the Station Two ash
23 pond. Additionally, Henderson has refused to accept any further financial

1 responsibility for costs associated with making Station Two "safe, dark and dry," and
2 has not been amenable to retaining an engineering firm to develop a formal
3 decommissioning plan for the Station Two units and auxiliary facilities that are no
4 longer needed by either party. Instead, Henderson has taken the position that it is
5 no longer obligated for any of the ongoing costs associated with Station Two under
6 the Station Two Contracts.

7 32. Big Rivers requests an Order from the Commission holding that
8 pursuant to Section 8 of the 1993 Amendments, Henderson is responsible for its share
9 of the current and ongoing costs of decommissioning Station Two, net of its salvage
10 value, that decommissioning consists of the activities described by witness Mr. Kopp,
11 including all ongoing environmental monitoring and any future environmental
12 remediation that may be required; and that Henderson's share of the
13 decommissioning costs is 22.76%.

14 33. Big Rivers has an alternative request for relief regarding
15 decommissioning. Mr. Kopp explains in his testimony that decommissioning requires
16 the facility to be dismantled and made suitable for future industrial use, and that
17 because the costs to maintain a generating facility in a retired-in-place state will
18 typically exceed the costs to fully decommission the facility in approximately 5 to 7
19 years, absent a valid reason for delay, it is prudent to proceed with fully
20 decommissioning the facility as soon as practical. Because Station Two is owned by
21 the City, Big Rivers must follow municipal bidding and contracting requirements
22 prior to contracting work on Station Two, and the City must approve any such

1 contracts. Since Big Rivers is prepared to begin the full decommissioning process for
2 Station Two, except the joint use facilities it continues to have the right to utilize
3 under the Joint Facilities Agreement, Big Rivers requests that the Commission find
4 that in the event Henderson elects not to cooperate in fully decommissioning any
5 portion of Station Two or not to city-bid and award contracts necessary for the
6 completion of full decommissioning of Station Two, any ongoing maintenance costs or
7 other costs or liabilities that may result from those decisions are solely the
8 responsibility of Henderson, and Big Rivers shall have no obligation to share in those
9 costs or associated liability.

10 **REQUEST FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS**
11 **WITH RESPECT TO COSTS OF MAINTAINING STATION TWO WASTE IN**
12 **GREEN STATION LANDFILL**

13 34. Certain waste from Station Two was deposited in the landfill at Big
14 Rivers' Green Station. Exhibit 1 of the Joint Facilities Agreement, as amended, lists
15 that waste (Station Two ash pond dredgings in the Big Rivers Green Station sludge
16 disposal landfill) as a city-owned joint use facility on Big Rivers' property. Section
17 4.1 of the Joint Facilities Agreement, as amended, provides that title to such joint use
18 facilities remains with Henderson. As such, Henderson's portion of Station Two
19 waste residing in the Green Station landfill still belongs to Henderson but resides on
20 Big Rivers' property.

21 35. As discussed above, once Big Rivers no longer needs a joint use facility
22 for the continued operation of its Green Station, that joint use facility should be
23 decommissioned, with the parties splitting the decommissioning costs. Big Rivers
24 has no use for the Station Two waste in the landfill; however, Big Rivers continues to

1 use the landfill itself. And so long as Big Rivers continues to need the landfill for its
2 Green Station, the landfill cannot be closed and the Station Two waste in the landfill
3 cannot be decommissioned.

4 36. Section 6.1 of the Joint Facilities Agreement provides that Henderson is
5 "severally and jointly responsible for the continued operation, maintenance, repair,
6 renewal and replacements of such joint use facilities so as to assure the continuous
7 operation of the parties' respective generating station or stations served thereby."
8 The city-owned Station Two waste in the landfill must be maintained so that it is
9 contained as required by environmental laws and regulations and to assure the
10 continuous operation of Big Rivers' Green Station.

11 37. Therefore, Big Rivers requests an Order from the Commission enforcing
12 the rates and service standards set forth in the Joint Facilities Agreement by finding
13 that, until such time as the Station Two ash pond ~~dredgings~~ can be fully
14 decommissioned, Henderson is contractually obligated to share in the costs to
15 maintain them in proportion to Henderson's share of the waste deposited into the
16 landfill.

17 **REQUEST FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS**
18 **WITH RESPECT TO USE OF JOINT FACILITIES**

19 38. Section 1.5 of the Joint Facilities Agreement allows Big Rivers to
20 continue to utilize city-owned joint use facilities for so long as Big Rivers operates a
21 generating facility in connection therewith. That section provides:

22 It is the intention of the parties, by this Agreement, each to devote to the joint
23 use of both parties, as long as they or either of them, or their respective
24 successors or assigns, shall continue to operate a generating station or stations
25 in connection therewith, those joint use facilities to be provided by each, and

1 to provide for the continuous operation and maintenance thereof for the
2 parties' joint and separate benefits.

3 39. Section 1.5 was inserted into the Joint Facilities Agreement as a
4 protection for both Henderson and Big Rivers as it allowed each party use of the
5 auxiliary generating facilities of the other even in the event that the generating
6 station owned by one of the parties ceased to operate.

7 40. Although the Joint Facilities Agreement is still in effect, as recognized
8 by the Commission in its August 29, 2018 Order in Case No. 2018-00146, Henderson
9 has objected to Big Rivers continuing to utilize the joint use facilities in connection
10 with Big Rivers' Green generating station without purchasing those joint facilities
11 from Henderson or otherwise compensating Henderson for their use.

12 41. Section 4.1 of the Joint Facilities Agreement provides that title to the
13 city-owned joint use facilities remains with Henderson and that the allocation for the
14 joint use of those facilities by the City is irrevocable and continues for so long as Big
15 Rivers operates and/or maintains a generating station in connection therewith.

16 42. Therefore, Big Rivers requests an Order from the Commission enforcing
17 the rate and service standards set forth in the Joint Facilities Agreement by finding
18 that: (i) Big Rivers is entitled to continue utilizing any city-owned joint use facilities
19 for so long as Big Rivers operates and/or maintains a generating station in connection
20 therewith; and (ii) if Big Rivers no longer has the need to utilize any city-owned joint
21 use facility, then Big Rivers must notify Henderson, at which time the parties shall
22 share in any decommissioning costs related to that facility incurred by either party
23 in the same proportion as for the other Station Two facilities.

ONGOING ENFORCEMENT

1
2 43. After the payment of all past due amounts, Big Rivers believes that on
3 an ongoing basis the outcome of this case should result in an efficient ratemaking
4 process that is fair, just and reasonable to both Big Rivers and Henderson. That
5 ongoing process should be a process under which 1) Big Rivers files monthly with the
6 Commission (similar to the monthly filings Big Rivers makes with respect to its fuel
7 adjustment clause, environmental surcharge, member rate stability mechanism, and
8 non-FAC Purchased Power Adjustment) a charge representing Henderson's share
9 (based on the percentages described herein and in the accompanying testimony) all
10 Station Two Contract costs incurred by Big Rivers; 2) after filing with the
11 Commission, the monthly charge would be submitted to Henderson for payment
12 within thirty days; and 3) the charges would be subject to comprehensive Commission
13 review, audit, true-up and refund under whatever schedule the Commission deems
14 appropriate. If Henderson fails to timely pay the monthly charge, then the
15 Commission should seek enforcement of its rate order at the Franklin Circuit Court
16 pursuant to KRS 278.390.

SUMMARY OF TESTIMONY

17
18 44. Robert W. Berry, President and Chief Executive Officer for Big Rivers,
19 summarizes the disputes between Big Rivers and the City of Henderson, and supports
20 Big Rivers' request for the relief sought in this Application.

21 45. Paul G. Smith, Chief Financial Officer for Big Rivers, supports the
22 Interim Accounting Summary of amounts owed between Big Rivers and Henderson
23 as of June 30, 2019, the methodology that was used to arrive at the calculations set

1 forth in the summary, and each party's share of the coal and lime inventories
2 remaining at Station Two.

3 46. Michael T. Pullen, Vice President of Production for Big Rivers, discusses
4 Big Rivers' current and ongoing Station Two decommissioning obligations and
5 reports on the status of the joint use facilities.

6 47. Mark J. Eacret, Vice President of Energy Services for Big Rivers,
7 describes the MISO fees incurred by Big Rivers that Henderson owes Big Rivers and
8 explains the methodology used to calculate those fees.

9 48. Michael W. Chambliss, Vice President of System Operations for Big
10 Rivers, supports Big Rivers' request for a finding related to Henderson's obligation to
11 pay its share of MISO fees incurred by Big Rivers on account of Henderson's load.

12 49. Jeffrey T. Kopp, Manager of the Utility Consulting Department of the
13 Business & Technology Solutions Division for Burns & McDonnell Engineering
14 Company, Inc., outlines prudent decommissioning activities and describes the
15 decommissioning process as it relates to decommissioning obligations associated with
16 Henderson Station Two.

17 CONCLUSION

18 WHEREFORE, Big Rivers respectfully requests that the Commission enter an
19 Order finding the following, and providing for all other just and proper relief to which
20 Big Rivers is entitled:

21 1. The calculations set forth in the Interim Accounting Summary are
22 consistent with the terms of the Station Two Contracts and Henderson must

1 immediately pay its share of the costs set forth therein to Big Rivers, 481 tons of lime
2 remaining at Station Two belong to Henderson as of February 1, 2019, and all coal
3 and all other lime remaining at Station Two belong to Big Rivers.

4 2. Pursuant to Section 8 of the 1993 Amendments, Henderson is
5 contractually obligated to pay its share of current and future Station Two
6 decommissioning costs. Decommissioning consists of the activities described by Mr.
7 Kopp to demolish the Station Two facilities and to make the Station Two site suitable
8 for future industrial use. The decommissioning costs that the parties are obligated
9 to share also include any ongoing environmental monitoring, remediation and
10 permitting costs relating to Station Two, including the joint use facilities, which
11 includes but is not limited to the Station Two ash pond and the ash pond dredgings
12 in the Big Rivers Green Station landfill. Big Rivers' share of decommissioning costs
13 is 77.24%, and Henderson's share of decommissioning costs is 22.76%. Additionally,
14 the ongoing obligation to share in decommissioning costs applies to both parties,
15 regardless of who incurs the cost or owns the real property upon which the asset is
16 located.

17 3. In the event Henderson elects not to cooperate in fully decommissioning
18 any portion of Station Two or not to city bid and award contracts necessary for the
19 completion of full decommissioning of Station Two, any ongoing maintenance costs or
20 other costs or liabilities that may result from those decisions are solely the
21 responsibility of Henderson, and Big Rivers shall have no obligation to share in those
22 costs or associated liability.

1 4. Until such time as the Station Two ash pond dredgings can be fully
2 decommissioned, Henderson is contractually obligated to share in the costs to
3 maintain them in the Green Station landfill so as to contain them in accordance with
4 applicable laws and regulations, in proportion to Henderson's share of waste
5 deposited into the landfill. As of December 31, 2018, Henderson owned 12% percent
6 of the waste in the landfill.

7 5. Pursuant to the Joint Facilities Agreement, Big Rivers is entitled to
8 continue utilizing any city-owned joint use facilities for so long as Big Rivers operates
9 and/or maintains generating stations in connection therewith. At such time as Big
10 Rivers no longer has the need to utilize any city-owned joint use facility, Big Rivers
11 shall notify Henderson, at which time the parties shall share in any decommissioning
12 costs related to that facility incurred by either party in the same proportion as for the
13 other Station Two facilities.

14 6. Big Rivers shall file monthly a charge representing Henderson's share
15 of all Station Two Contract costs incurred by Big Rivers. Big Rivers shall submit the
16 monthly charge to Henderson for payment within thirty days. The monthly charge
17 is subject to comprehensive Commission review, audit, true-up and refund under
18 whatever schedule the Commission deems appropriate. If Henderson fails to timely
19 pay the monthly charge, then the Commission will seek enforcement of its rate order
20 at the Franklin Circuit Court pursuant to KRS 278.390.

21 7. In the event that the Commission grants any or all of Big Rivers'
22 requested relief yet Henderson refuses to comply with the Commission's Order, then

1 the Commission will exercise its enforcement authority pursuant to KRS 278.390 and
2 KRS 278.990 and will also require Henderson to pay interest at a rate determined by
3 the Commission.

4

5

1 On this the 30th day of July, 2019.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,



Tyson Kamuf, Esq.
Laura Chambliss, Esq.
Big Rivers Electric Corporation
201 Third Street, P.O. Box 727
Henderson, Kentucky 42419-0024
Phone: (270) 827-2561
Facsimile: (270) 844-6417
tyson.kamuf@bigrivers.com
laura.chambliss@bigrivers.com

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513)421-2764
E-Mail: mkurtz@BKLLawfirm.com
kboehm@BKLLawfirm.com
jkylercohn@BKLLawfirm.com

*Counsel for Big Rivers Electric
Corporation*

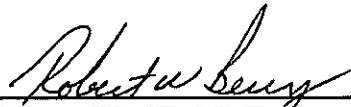
BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR
ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00_____**

VERIFICATION

1
2
3
4
5
6
7
8

I, Robert W. ("Bob") Berry, President and Chief Executive Officer for Big Rivers Electric Corporation, hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 30th day of July, 2019.



Robert W. ("Bob") Berry
President and Chief Executive Officer
Big Rivers electric Corporation


9

10 COMMONWEALTH OF KENTUCKY)
11 COUNTY OF HENDERSON)

12
13

SUBSCRIBED AND SWORN TO before me by Robert W. ("Bob") Berry, as President and Chief Executive Officer for Big Rivers Electric Corporation, on this the 30th day of July, 2019.

14
15
16
17
18



Notary Public, Kentucky State at Large
My Commission Expires 2/22/22
ID: 594036

19
20



Big Rivers Electric Corporation
P.O. Box 24
201 Third Street
Henderson, KY 42419-0024
Ph (270) 827-2561 Fax (270) 827-2558

Invoice No. BR2019

Henderson Municipal Power & Light P.O. Box 8 Henderson, KY 42419-0008	Date July 31, 2019
---	--------------------

Description		Amount
Excess Henderson Energy - MISO Revenue less Coal & Lime Shortfall	01/05/18 - 05/31/19	(\$3,310,482.54)
HMP&L Native Load Coal & Lime Shortfall	01/05/18 - 05/31/19	\$4,693,587.29
MISO Fees	12/01/10 - 05/31/16	\$1,422,761.54
FY 17/18 Annual Settlement True-Up	06/01/17 - 05/31/18	(\$1,649,922.53)
FY 18/19 Annual Settlement True-Up	06/01/18 - 05/31/19	(\$649,850.80)
Auxiliary Power	10/01/18 - 01/31/19	\$78,750.98
Decommissioning Costs	01/01/19 - 06/30/19	\$134,098.00
Payment due immediately upon receipt	TOTAL	\$718,941.94

Case No. 2019-00 _____
Application Exhibit 1
Page 1 of 2

**Big Rivers Electric Corporation
Amounts Due (To) / From Henderson
Excess Henderson Energy
June 30, 2019**

<u>Description</u>	<u>Reference</u>	<u>Amount (\$) Due (To)/From</u>
Excess Henderson Energy	Exhibit Smith-2	(3,310,482)
Henderson Native Load	Exhibit Smith-3	4,693,587
Other Operating Costs	Exhibit Smith-4	(798,261)
Decommissioning Costs	Exhibit Smith-5	134,098
Total Due (To) / From Henderson		<u>718,942</u>

COMMONWEALTH OF KENTUCKY
HENDERSON CIRCUIT COURT
CIVIL ACTION NO. 19-CI-00504

Electronically Filed

CITY OF HENDERSON, KENTUCKY, AND
CITY OF HENDERSON UTILITY COMMISSION,
d/b/a HENDERSON MUNICIPAL POWER & LIGHT

PLAINTIFFS

vs.

BIG RIVERS ELECTRIC CORPORATION

DEFENDANT

**DEFENDANT’S REPLY MEMORANDUM IN SUPPORT OF MOTION TO
HOLD IN ABEYANCE**

The Defendant, Big Rivers Electric Corporation (“Big Rivers”), by counsel, for its Reply Memorandum in Support of Motion to Hold in Abeyance (“Reply”), states as follows:

I. ARGUMENT

Henderson’s¹ arguments in opposition to holding this matter in abeyance assume the outcome of jurisdictional issue to be addressed in the Related Proceedings. Rather than make that assumption and risk inconsistent rulings, this Court should await the final adjudication of the jurisdiction issue before proceeding in this matter.

A. Jurisdiction is a Principal Issue in This Case and the Related Proceedings.

Contrary to Henderson’s assertion, the Franklin Circuit Court case and this case are related because they both involve matters under the exclusive jurisdiction of the Public Service Commission (“PSC”), and this jurisdiction issue is a principal issue in both cases. Both cases involve a determination of the cost that Big Rivers pays Henderson for power under the Station

¹ Capitalized terms have the meaning assigned to them in Big Rivers’ Memorandum, e.g., “Henderson” refers to Plaintiffs, City of Henderson, Kentucky (“City”) and City of Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (“HUC”).

Two Contracts, and that is a matter within the PSC's exclusive jurisdiction pursuant to KRS 278.200, which provides:

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter. (emphasis added).

The Station Two Contracts are like a tariff because they determine the rates that Big Rivers must pay Henderson for power, including the amounts at issue in this case and the Related Proceedings. The amount that Big Rivers should pay is a rate issue within the exclusive jurisdiction of the PSC. Henderson Circuit Court should do the same thing that the Franklin Circuit Court did—stay the matter until the PSC rules on the issues before it.

In its Response Memorandum, Henderson repeatedly argues that the PSC lacks jurisdiction. These arguments assume the answer that Big Rivers asks this Court to await—whether the PSC has jurisdiction. That issue will be determined in the Related Proceedings and appeals thereof.

B. The PSC Will Determine the Relative Liabilities of the Parties Under the Station Two Contracts and Enforce Rates.

The PSC can decide the liabilities of Big Rivers and Henderson under the Station Two Contracts, including how much Big Rivers should pay or receive under the Station Two Contracts. If the PSC determines that it cannot enforce its award, or a party does not voluntarily comply, either party, or the PSC, can file an action in state court to obtain a judgment enforcing a monetary award. It would be premature for the Henderson Circuit Court to allow the parties to move forward before the PSC determines the relative liabilities of the parties.

While the PSC cannot award damages for some matters,² it can enforce rates and order utilities to make payments consistent with its determinations related to rates. For example, in *Center Services, Inc. v. Hima-Sibert Water District*, P.S.C. Case No. 1998-172, 2000 WL 35951264 (Order, May 1, 2000) (copy attached as Exhibit A), the PSC ordered a water district to refund overcharges to its customer. This is exactly what Big Rivers has requested in the Related Proceedings, i.e., that the PSC determine the rates under the Station Two Contracts by confirming the relative liabilities of the parties under those contracts.

The issues raised in the Complaint in this case will be determined in the Related Proceedings. Indeed, since the Station Two Contracts allows for the netting of all expenses and revenues, the only way to determine which party owes the other is to have all of the items submitted simultaneously for a determination, which is what Big Rivers did when it filed the 2019 PSC case. Henderson, on the other hand, has picked one item where Big Rivers may owe Henderson and ignored others where Henderson owes Big Rivers.

Even if the PSC's determination falls short of an award of money damages, the claims and defenses and offsets under the Station Two Contracts at issue here will otherwise be adjudicated in those proceedings, along with the issue of what forum has jurisdiction to determine those matters. From there, it would be a simple matter for any party to take the PSC determination to an appropriate state court for enforcement. This Court need not engage in the question of PSC jurisdiction alongside the Related Proceedings, but should await the outcome of those proceedings in the interests of consistency and judicial economy.

² *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126 (Ky. App. 1983), cited by Henderson in its Response.

C. By Proceeding, this Court Would be Exercising Jurisdiction that is Presently Disputed in the Related Proceedings by the Parties.

By requesting denial of Big Rivers' motion, Henderson asks this Court to determine it has jurisdiction over the dispute between the parties. To proceed in this matter would run the risk of inconsistent rulings. The PSC's decision on jurisdiction will be appealed to Franklin Circuit Court, which will likely then be appealed (whatever the outcome) to the Court of Appeals. The Henderson Circuit Court should not further complicate this litigation by adding another court to decide the jurisdictional and substantive issues already being litigated in the Related Proceedings.

This case falls squarely within the ambit of the rule stated in *Brooks Erection Co. v. William R. Montgomery & Associates, Inc.*, 576 S.W.2d 273, 275 (Ky. App. 1979): "We think that the law is well settled that a second action based on the same cause will generally be abated where there is a prior action pending in a court of competent jurisdiction within the same state, between the same parties, involving the same or substantially the same subject matter and cause of action, and in which prior action the rights of the parties may be determined and adjudged." (emphasis removed). Big Rivers is requesting the Court to exercise its power to avoid potentially inconsistent actions where jurisdiction is in dispute.

Henderson does not address the cases cited by Big Rivers holding that courts should stay matters pending resolution of identical issues pending before an administrative agency. *Berg v. Cincinnati N. & C. R. Co.*, 56 F.Supp. 842, 847-848 (E.D.Ky. 1944); *Hardin v. Jefferson Co. Board of Education*, 558 S.W.3d 1, 10 (Ky. 2018) (circuit court erred when it did not grant a stay of the action to allow an administrative process to reach finality). These precedents also apply, making abeyance not merely a matter of discretion, but required due to the PSC Related Proceedings.

II. CONCLUSION

The most efficient and least complicating course of action is to stay this action pending the outcome of the Related Proceedings. That is what the Franklin Circuit Court did. The Related Proceedings will tell the Court what forum has jurisdiction, and, if the PSC has jurisdiction, determine the liabilities of the parties under the Station Two Contracts. The only issue possibly left for this Court to resolve would be enforcement of an award, assuming an award is not enforced by the PSC pursuant to its rates and service authority. The Court should stay all action in this case pending resolution of the Related Proceedings.

SULLIVAN MOUNTJOY, PSC

/s/ R. Michael Sullivan

James M. Miller

R. Michael Sullivan

100 St. Ann Street, P.O. Box 727

Owensboro, KY 42302-0727

(270) 926-4000 - telephone

jmiller@smlegal.com

msullivan@smlegal.com

Attorneys for Defendant, Big Rivers
Electric Corporation

CERTIFICATE OF SERVICE

I certify that on the 1st day of November, 2019, a true and correct copy of the foregoing was served, via electronic service (e-mail) pursuant to C.R. 5.02(2), as noted below, to the following persons:

H. Randall Redding, Esq.
Sharon W. Farmer, Esq.
King, Deep & Branaman
127 North Main Street
P.O. Box 43
Henderson, Kentucky 42419-0043

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

/s/ R. Michael Sullivan
R. Michael Sullivan

In the Matter of: CENTER SERVICES, INC...., 2000 WL 35951264...

2000 WL 35951264 (Ky.P.S.C.)

In the Matter of: CENTER SERVICES, INC. COMPLAINANT
v.
HIMA-SIBERT WATER DISTRICT DEFENDANT

Case No. 98-172

Kentucky Public Service Commission

May 1, 2000

ORDER

By the Commission

*1 Center Services, Inc. ("Center Services") brings a formal complaint against Hima-Sibert Water District ("Hima-Sibert") for recovery of \$20,200 paid for excessive water usage that allegedly resulted from the utility's negligent metering and billing. Hima-Sibert counterclaims for \$16,609 of unbilled water service that Center Services allegedly received from December 13, 1995 to December 12, 1997. Finding that the Commission lacks jurisdiction to award damages for negligent metering and billing, we dismiss the complaint. Further finding that Hima-Sibert overbilled Center Services \$2,508.70 between April 1996 and December 1997, we deny Hima-Sibert's counterclaim and direct the water utility to refund that amount to the Complainant.

STATEMENT OF THE CASE

Hima-Sibert, a water district organized pursuant to KRS Chapter 74, provides water service to portions of Clay County, Kentucky. It has no water production facilities, but instead purchases its water requirements from the city of Manchester, Kentucky.

Manchester Mall Associates owns a shopping center ("Manchester Mall") located near Manchester, Kentucky. This shopping center has approximately 26 tenant shops and stores. These tenants include a grocery, an auto parts store, a department store, and some general offices. Center Services, a Kentucky corporation, is Manchester Mall Associates' managing agent and operates the facility. It purchases water service from Hima-Sibert for the Manchester Mall and is billed for this service. It in turn bills the Manchester Mall's tenants for water service based upon the size of their rental space. With two exceptions, Center Services does not meter the water usage of any tenant.

In September or October 1994, Mike Centers, an employee of Seahorse Water Meter Service ("Seahorse") and a licensed meter tester, removed, tested and cleaned the water meter serving the Manchester Mall. Centers found that the meter had a defective chamber and was registering only 80 percent of water flow. Seahorse notified Joe T. Gregory, Hima-Sibert's manager, of the test results and advised that it did not have the necessary replacement parts or a replacement meter. Gregory directed that the defective meter be returned to service. Thereafter, Hima-Sibert billed Center Services based upon estimated usage.

According to Gregory and Centers, Gregory told an employee of Center Services that the meter was defective and that the shopping center was responsible for its replacement. Center Services denies that any of its employees were notified of the meter's condition. There is no evidence that Center Services was advised in writing of the meter's condition.

In 1995 Centers, who had since been hired as a meter reader for Hima-Sibert, discovered that the meter had totally ceased to function. He reported the problem to Gregory. Centers and Gregory contend that they advised an employee of Center Services of the meter problems. Gregory further states that he told Center Services that it was responsible for replacing the defective meter. Center Services denies that such conversations occurred. Hima-Sibert took no further action regarding the defective meter and continued to estimate the amount of water provided to the Manchester Mall for billing purposes.

In the Matter of: CENTER SERVICES, INC...., 2000 WL 35951264...

In December 1997, after the city of Manchester, Kentucky, which provides sanitary sewer service to the Manchester Mall, advised Hima-Sibert that its water service would be terminated if the defective meter was not replaced, the water district replaced the meter. Hima-Sibert then attempted to charge Center Services for the replacement's cost. When subsequently informed that it was responsible for the replacement's cost, the water district ceased its efforts to collect reimbursement for the meter and sought to bill Center Services for unbilled service.

On October 31, 1998, Hima-Sibert billed Center Services \$16,609.20 for unbilled water service received from January 1995 to December 1997. The water district determined the amount of unbilled service by averaging Center Services' water usage for the first nine months of 1998 and comparing this average to the billed monthly average for the 24-months.

Refusing to pay this bill, Center Services filed a complaint with the Commission. While not disputing that unbilled water service may have been provided, it contended that KRS 278.220¹ limited its liability to any unbilled service received from October 1995 to October 1997. It further contended that the calculation of any unbilled amount should be based upon its historical usage from December 1991 through January 1993 and from September 1994 through November 1995. Center Services asserted that, because of leaks within its own distribution system during other periods, an accurate assessment of its usage could only be determined using these periods.

During the discovery phase of this proceeding, Center Services amended its Complaint to request a damage award of \$32,411.07 from Hima-Sibert. It alleged that Hima-Sibert failed to provide an accurate, functioning meter to register its water usage and to advise it that all billings for water service were estimated. It further alleged that it overpaid \$12,210.75 for sanitary sewer services from November 1995 to January 1999 and \$20,200.32 for water services during the same period as a result of "inaccurate water usage resulting from Defendant's negligence."

In response to Center Services' Amended Complaint, Hima-Sibert moved for dismissal of those portions of the Amended Complaint that related to sanitary sewer service. It also counterclaimed for \$16,609.20 for unbilled water service that Center Services allegedly received through the defective water meter. Finding that we lacked jurisdiction over the charges that Manchester assessed to Center Services for sanitary sewer service and lacked authority to adjudicate claims arising out of a utility's negligence, we granted Hima-Sibert's motion.

DISCUSSION

Commission Jurisdiction

The Commission has limited powers over public utilities. Boone County Water and Sewer District v. Pub. Serv. Com'n, Ky., 949 S.W.2d 588, 591 (1997) ("The PSC is a creature of statute and has only such powers as have been granted to it by the General Assembly"). KRS 278.260 grants to the Commission only "original jurisdiction over complaints as to rates or service of any utility." No provision of KRS Chapter 278 confers upon us the authority to award damages resulting from a utility's negligence.

Center Services' Amended Complaint does not involve utility rates or service. It involves damages allegedly suffered because of Hima-Sibert's unreasonable and imprudent actions. It does not allege that it failed to receive the quantity of water billed or that it was billed at an improper rate. It instead alleges that, had the water district properly metered its water service, it would have discovered and repaired the leaks on its property earlier and thus avoided additional water consumption.

Kentucky courts have refused to extend the Commission's jurisdiction to include damage claims arising out of the negligent provision of utility service. In Carr v. Cincinnati Bell, Inc., Ky.App., 651 S.W.2d 126 (1983), a customer brought an action in Kenton Circuit Court seeking, among other things, compensatory damages for tortious breach of contract for telephone service. Holding that the Commission had exclusive jurisdiction over the matter, Kenton Circuit Court dismissed the action. The customer appealed to the Kentucky Court of Appeals. Reversing the circuit court's decision on this issue, that Court stated:

[A]ppellant seeks damages for breach of contract. Nowhere in Chapter 278 do we find a delegation of power to the PSC to

In the Matter of: CENTER SERVICES, INC., 2000 WL 35951264...

adjudicate contract claims for unliquidated damages. Nor would it be reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement. Kentucky Constitution Sec. 14.

Id. at 128.

Since we are without jurisdiction over the subject matter of Center Services' complaint, our only course of action is to dismiss its claim for damages.

Billing Adjustments

Both parties assert, and the evidence of record clearly shows, that the meter registering Center Services' water service was not functioning properly prior to December 1997. In such event, Administrative Regulation 807 KAR 5:006, Section 10(2), requires the water utility to "immediately determine the period during which the error has existed, and . . . recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer." Any readjustment must be based upon the period during which the error existed. Clearly, Center Services' monthly bills must be adjusted to reflect its actual usage.

The parties differ on the appropriate period upon which to base Center Services' usage. Hima-Sibert argues that historic usage should be based upon the Complainant's usage since December 1997. While Center Services concedes that meter readings made since January 1998 are accurate, it argues that it experienced several significant water line leaks between January 1998 and February 1999 and that use of this period to determine "normal" water usage, therefore, is inappropriate. The record shows that, despite drought conditions and a lack of any significant change in the vacancy rate in the Manchester Mall, Center Services' water usage for the period from March 1999 to September 1999 was significantly less than the same period in 1998.

The Commission finds that any adjustment should be based upon usage data from March 1999 to September 1999. The accuracy of Center Services' usage during this period is unquestioned. Moreover, in light of Hima-Sibert's knowing use of a defective meter for three years, it is not appropriate to require Center Services to prove that its facilities were properly functioning and not experiencing any major leaks during the period that the defective meter was in use. To do so would shift the burden of proof from the utility that failed to properly maintain its metering equipment to a customer who apparently had no knowledge of the defect.

After reviewing Hima-Sibert's billing records, we find that, during the period from March 1999 through September 1999, Center Services used an average of 211,833 gallons of water monthly. This monthly average results in an average monthly bill of \$737.75. A comparison of this monthly average with the amounts actually billed for the period from April 1996 through December 1997 shows that Hima-Sibert overbilled Center Services \$2,508.70 for water service during that period.² Our calculations are appended to this Order.

Utility Management

The Commission admonishes utility management for its conduct in this matter. For three years the water district's management knowingly allowed a defective meter to remain in place. But for Manchester's intervention and demand for the meter's replacement, it is likely that the defective meter would still be in service today. The utility's failure to act is even more egregious when one considers that the meter served one of Hima-Sibert's largest customers. Utility management apparently had no concern about the potential loss of revenue that the defective meter clearly represented.

As troubling as management's cavalier attitude toward the meter's potentially adverse effect on utility revenues is management's lack of knowledge of Commission regulations. It lacked even a basic knowledge of the utility's responsibility for the proper maintenance of its metering equipment and the replacement of defective equipment. Its assumption that its customers are responsible for the replacement of aging or defective equipment clearly illustrates this point.

In the Matter of: CENTER SERVICES, INC...., 2000 WL 35951264...

Hima-Sibert's management has a clear duty to the public to become fully apprised of all statutory and regulatory obligations, to perform those obligations to the fullest extent possible, and to take all reasonable measures to protect the financial integrity of the water district. The record strongly suggests that management failed to meet this duty. The record also suggests that Hima-Sibert and its management failed to comply with Administrative Regulation 807 KAR 5:066, Section 15(1).³ The Commission finds that, at a minimum, the utility and its management should explain why their conduct in this matter does not constitute a violation of that regulation. For this reason, the Commission has this day established a separate proceeding to address that question.⁴

SUMMARY

Having considered the evidence of record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. Center Services' claim for damages is dismissed for lack of subject matter jurisdiction.
2. Hima-Sibert's Counterclaim is denied.
3. Within 30 days of the date of this Order, Hima-Sibert shall refund \$2,508.70 to Center Services, Inc. for overcharges that occurred between April 1996 and December 1997.
4. Within 10 days of refunding the overcharges, Hima-Sibert shall advise the Commission in writing that the directed refund has been completed.

APPENDIX

**AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 98-172
DATED MAY 1, 2000**

CALCULATION OF AVERAGE MONTHLY USAGE

Month	Water Usage
March 1999	147,000
April 1999	171,000
May 1999	287,000
June 1999	240,000

In the Matter of: CENTER SERVICES, INC...., 2000 WL 35951264...

August 1999	221,000
September 1999	205,000
Total	1,271,000
Average Monthly Usage	211,833

AVERAGE MONTHLY RATE

RATE BLOCK	NUMBER OF GALLONS	RATE	TOTAL CHARGE PER RATE BLOCK
First 2,000 Gallons	2,000	\$12.75	\$ 12.75
Next 8,000 Gallons	8,000	\$4.35 per 1,000 gals	\$ 34.80
Next 10,000 Gallons	10,000	\$4.00 per 1,000 gals	\$ 40.00
Next 20,000 Gallons	20,000	\$3.70 per 1,000 gals	\$ 74.00
Over 40,000 Gallons	172,000	\$3.35 per 1,000 gals	\$ 576.20
TOTAL	212,000		\$ 737.75

AMOUNT OF OVERBILLING

Month	Total Amount Billed	Tax	Total Billed	Average Monthly Bill	Overbilled
--------------	----------------------------	------------	---------------------	-----------------------------	-------------------

In the Matter of: CENTER SERVICES, INC...., 2000 WL 35951264...

			Excluding Taxes	Excluding Taxes	Amount
April 1996	\$687.29	\$56. 75	\$630.54	\$737.85	(\$107.31)
May 1996	\$705.56	\$58. 26	\$647.30	\$737.85	(\$90.55)
June 1996	\$1,070.71	\$88. 41	\$982.30	\$737.85	\$244.45
July 1996	\$1,023.24	\$84. 49	\$938.75	\$737.85	\$200.90
August 1996	\$1,421.25	\$117 .75	\$1,303.50	\$737.85	\$565.65
September 1996	\$994.03	\$82. 08	\$911.95	\$737.85	\$174.10
October 1996	\$1,074.36	\$88. 71	\$985.65	\$737.85	\$247.80
November 1996	\$793.19	\$65. 49	\$727.70	\$737.85	(\$10.15)
December 1996	\$738.42	\$60. 97	\$677.45	\$737.85	(\$60.40)
January 1997	\$990.38	\$81. 78	\$908.60	\$737.85	\$170.75
February 1997	\$785.89	\$64. 89	\$721.00	\$737.85	(\$16.85)
March 1997	\$1,023.24	\$84. 49	\$938.75	\$737.85	\$200.90
April 1997	\$986.73	\$81. 48	\$905.25	\$737.85	\$167.40
May 1997	\$1,249.62	\$103 .18	\$1,146.44	\$737.85	\$408.59
June 1997	\$1,282.50	\$105 90	\$1,176.60	\$737.85	\$438.75
July 1997	\$1,136.44	\$93. 84	\$1,042.60	\$737.85	\$304.75
August 1997	\$986.73	\$81. 48	\$905.25	\$737.85	\$167.40

In the Matter of: CENTER SERVICES, INC.,..., 2000 WL 35951264...

September 1996	\$745.73	\$61. 58	\$684.15	\$737.85	(\$53.70)
October 1997	\$409.79	\$33. 84	\$375.95	\$737.85	(\$361.90)
November 1997	\$760.33	\$64. 06	\$696.27	\$737.85	(\$41.58)
December 1997	\$760.33	\$62. 78	\$697.55	\$737.85	(\$40.30)
TOTAL	\$19,625.76	\$1,6 22.2 1	\$18,003.55	\$15,494.85	\$2,508.70

Footnotes

- 1 All service supplied by a utility shall be billed within two (2) years of the service. No customer shall be liable for unbilled service after two (2) years from the date of the service, unless the customer obtained the service through fraud, theft, or deception.
- 2 In making our calculations, we have considered the four-year statute of limitations contained in KRS 355.2-725.
- 3 All meters used for measuring the quantity of water delivered to a customer shall be in good mechanical condition and shall be adequate in size and design for the type of service which they measure.
- 4 Case No. 2000- ___, Hima-Sibert Water District -- Alleged Violation of Administrative Regulation 807 KAR 5:066, Section 15(1).

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 4)** *Refer to PSC Initial Data request Number 6 dated May 19, 2020.*
2 *What is the source of the alleged obligation for HMPL to pay for the costs*
3 *identified in the response and the basis for Big Rivers' assertion that*
4 *Henderson has refused to pay?*

5 *a. Provide the case number for the filing(s) the costs were recovered.*
6 *b. Provide a complete accounting of the calculation of rates and*
7 *timing of the costs and the exhibit(s) or schedule(s) identifying the*
8 *expenses.*

9
10 **Response)** Please see the Station Two contracts, and the Application and Direct
11 Testimonies filed in this proceeding.

12 a. and b.
13 Please see Big Rivers' response to Item 6 of Commission Staff's First
14 Request for Information.

15
16 **Witness)** Paul G. Smith

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 5)** *Refer to the Direct Testimony of Robert W. Berry, page 6, lines 6-*
2 *22, through page 7, lines 1-8. Will Big Rivers acknowledge that the profitable*
3 *energy which was the subject of Henderson's claim for damages filed in the*
4 *Henderson Circuit Court, Civil Action No. 09-CI- 693, and resolved in the*
5 *December 2017 Settlement Agreement, is separate and distinct from the*
6 *unprofitable energy which was at issue in PSC Case No, 2016-278 and which*
7 *was addressed in the PSC Order entered January 5, 2018? If no, please*
8 *explain.*

9

10 **Response)** No, all of the energy in both cases is considered Excess Henderson
11 Energy regardless if it is profitable or not. The December 2017 Settlement
12 Agreement and Release (“Settlement Agreement”) clearly and plainly addresses
13 Henderson’s rights with respect to all “energy associated with Henderson’s reserved
14 generating capacity under the Power Sales Contract in excess of what is consumed
15 by Henderson and its inhabitants on an hourly basis as defined, used and/or
16 interpreted in the arbitration proceeding...” It was not limited to only profitable

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 Excess Henderson Energy. Likewise, the energy at issue in Case No. 2016-00278¹
2 was the Excess Henderson Energy that Big Rivers elected not to take. It was not
3 limited to only unprofitable Excess Henderson Energy.

4

5

6 **Witness)** Robert W. Berry

7

¹ See: *In the Matter of: Application of Big Rivers Electric Corporation for a Declaratory Order*
– Case No. 2016-00278.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 6)** *Please state the amount of revenue Big Rivers received from any*
2 *source from the sale of unprofitable energy which was unwanted by either*
3 *party to the Station Two contracts for the period beginning on June 1, 2016,*
4 *and ending on December 31, 2017.*

5

6 **Response)** Big Rivers received MISO revenue of \$10.696 million for Excess
7 Henderson Energy during the period June 1, 2016, through December 31, 2017.

8

9

10 **Witness)** Paul G. Smith

11

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 8)** *Please quantify the variable costs associated with the generation*
2 *of unprofitable energy unwanted by either party to the Station Two contracts*
3 *for the period beginning on June 1, 2016, and ending on December 31, 2017.*

4

5 **Response)** Big Rivers cannot quantify the variable costs associated with
6 Henderson's generation as Big Rivers does not have access to Henderson's fuel and
7 lime inventory cost.

8

9

10 **Witness)** Paul G. Smith

11

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 9)** *Will Big Rivers acknowledge that the party responsible for*
2 *paying the variable costs associated with the production of unprofitable*
3 *energy is also entitled to receive the revenue from the sale of that energy?*

4

5 **Response)** Please see Big Rivers' response to Item 13 of Henderson's First Request
6 for Information in this case.

7

8

9 **Witness)** Michael T. Pullen

10

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 10)** *Please quantify the variable costs associated with the generation*
2 *of all excess energy Big Rives took at the rate of \$1.50 per megawatt hour*
3 *during the period beginning on June 1, 2016 and ending on December 31,*
4 *2018. Please include in your response documentation supporting that figure.*

5

6 **Response)** Big Rivers objects to this request on the ground that it seeks information
7 that is not relevant and that it is not reasonably calculated to lead to the discovery of
8 admissible evidence. Big Rivers also objects because developing this original work
9 product would be unduly burdensome.

10

11

12 **Witness)** Paul G. Smith

13

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 11)** *Please disclose the amount of MISO revenue Big Rivers received*
2 *from any source from the sale of all energy which was generated at Station*
3 *Two between June 1, 2016, and January 31, 2019, and which Big Rivers took*
4 *at the rate of \$1.50 per megawatt hour. Please include in your response*
5 *documentation supporting that figure.*

6

7 **Response)** Please see the attached schedule.

8

9

10 **Witness)** Paul G. Smith

11

Big Rivers Electric Corporation

Case No. 2019-00269

MISO Revenue Received by Big Rivers for Station Two Energy

HMPL Compensated at the Rate of \$1.50 / MWh Per Contract

June 1, 2016 through December 31, 2017

Year	Month	Values					
		Sum of Excess "In"	MISO Revenue	MISO Admin Expense	Sum of Sch 24	Net Revenue to BREC	
2016	June	2,253	\$ 90,882.24	\$ 165.79	\$ 25.92	\$ 90,690.53	
	July	5,630	\$ 264,570.94	\$ 368.81	\$ 58.11	\$ 264,144.02	
	August	5,499	\$ 235,132.20	\$ 292.59	\$ 56.97	\$ 234,782.64	
	September	3,875	\$ 176,942.17	\$ 318.97	\$ 53.83	\$ 176,569.37	
	October	3,539	\$ 144,805.85	\$ 253.72	\$ 48.51	\$ 144,503.62	
	November	1,494	\$ 57,501.23	\$ 109.24	\$ 20.49	\$ 57,371.50	
	December	6,743	\$ 285,175.60	\$ 515.91	\$ 86.28	\$ 284,573.41	
	2017	January	3,852	\$ 159,802.62	\$ 260.17	\$ 46.67	\$ 159,495.78
		February	689	\$ 25,683.24	\$ 44.85	\$ 8.76	\$ 25,629.63
		March	4,478	\$ 177,499.61	\$ 401.98	\$ 59.10	\$ 177,038.53
		April	2,883	\$ 106,046.05	\$ 227.69	\$ 39.49	\$ 105,778.87
		May	2,659	\$ 101,191.84	\$ 210.89	\$ 35.67	\$ 100,945.28
June		3,083	\$ 126,307.35	\$ 229.39	\$ 34.52	\$ 126,043.44	
July		3,716	\$ 161,396.04	\$ 247.59	\$ 38.78	\$ 161,109.67	
August		2,237	\$ 93,566.65	\$ 153.25	\$ 24.38	\$ 93,389.02	
September		3,744	\$ 190,113.85	\$ 272.57	\$ 41.96	\$ 189,799.32	
October		1,573	\$ 61,670.94	\$ 166.46	\$ 19.81	\$ 61,484.67	
November		847	\$ 28,807.66	\$ 66.24	\$ 11.30	\$ 28,730.12	
December		-	\$ -	\$ -	\$ -	\$ -	
Grand Total		58794	\$ 2,487,096.08	\$ 4,306.11	\$ 710.55	\$ 2,482,079.42	

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 12)** *Please disclose the amount of revenue Big Rivers received from*
2 *the sale of all energy which was generated at Station Two between June 1,*
3 *2016 and January 31, 2019, and which Big Rivers took, less Big Rivers'*
4 *marginal cost of power.*

5

6 **Response)** Please see Big Rivers' response to Item 11 of Henderson's First Request
7 for Information. Big Rivers does not separately track the daily or hourly marginal
8 cost of Station Two generation.

9

10

11 **Witness)** Paul G. Smith

12

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 13)** *Does Big Rivers contend that Henderson is responsible (or*
2 *supplying the coal and/or paying the variable costs associated with the*
3 *generation of unprofitable energy unwanted by either party from June 1,*
4 *2016, through December 31, 2017, but is not entitled to the revenue received*
5 *from the sale of that energy? If so, please explain the basis of that position.*

6

7 **Response)** The December 2017 Settlement Agreement between the parties is clear
8 that, beginning on the day after Big Rivers paid Henderson the \$6,250,000 settlement
9 payment, Henderson was given the right to schedule the energy associated with its
10 reserved capacity not consumed by it or its inhabitants (*i.e.*, Excess Henderson
11 Energy), that Henderson would receive all revenues associated with the sale of that
12 excess energy, and that Henderson would pay all MISO costs and variable costs
13 associated with that excess energy. As such, in its calculations in its Application, Big
14 Rivers has credited Henderson with the revenues associated with all Excess
15 Henderson Energy beginning the day after the settlement payment.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 Prior to the settlement payment, as the Commission correctly found in Case
2 No. 2016-00278,¹ Big Rivers was not responsible for the variable costs associated with
3 the Excess Henderson Energy Big Rivers elected not to take. Where Big Rivers
4 elected to take the Excess Henderson Energy, Big Rivers is responsible for the
5 variable costs associated with that energy and is entitled to the revenues associated
6 with that energy. Where Big Rivers elected not to take the Excess Henderson Energy,
7 Henderson is responsible for the variable costs and is entitled to the revenues.
8 However, the settlement payment compensated Henderson for any claim it had or
9 could have had to the Excess Henderson Energy revenues prior to the settlement
10 payment. In Paragraph 4 of the Settlement Agreement, Henderson released:

11 any and all manner of actions, causes of action, suits, sums of money,
12 accountings, reckonings, covenants, controversies, agreements,
13 promises, remedies, amounts paid in settlement, compromises, losses,
14 rights of contribution, damages, judgments, executions, debts,
15 obligations, liabilities, claims and demands of any nature or kind
16 whatsoever, whether or not in contract, in equity, in tort or otherwise,
17 which Henderson ever had, now has, may now have or may hereafter
18 have against the Released Parties (or any of them) resulting from,
19 arising out of or in any manner relating to: (1) the generation,

¹ See: *In the Matter of: Application of Big Rivers Electric Corporation for a Declaratory Order*
– Case No. 2016-00278.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 production, use, sale or resale of “Disputed Excess Energy” as defined
2 herein, or the capacity, fixed, or variable costs associated with such
3 energy, including but not limited to those asserted or that could have
4 been asserted in, or that were or could have been in any way connected
5 with, the “Damages Suit” or the “Arbitration Proceeding;” and (2) any
6 obligations, past or future, of BREC to Henderson under the Power Sales
7 Contract or the Arbitration Proceeding related to, arising out of, or
8 concerning “Disputed Excess Energy” as defined herein, whether known
9 or unknown, accrued or unaccrued, asserted or unasserted, direct or
10 indirect, fixed, contingent or otherwise (collectively referred to as the
11 “Released Claims”).

12 As such, Henderson has already been paid for the revenues associated with the
13 Excess Henderson Energy Big Rivers elected not to take prior to the settlement
14 payment, and Big Rivers is simply asking the Commission to find that Henderson’s
15 fuel and reagent were used to produce that energy.

16

17

18 **Witness)** Paul G. Smith

19

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 14)** *Refer to the Direct Testimony of Paul G. Smith, page 8, lines 8-21.*

2 *a. Please provide a copy of the invoice referenced in lines 17-19.*

3

4 **Response)** See Application Exhibit 1 filed with Big Rivers' Application on July 31,
5 2019, and many of the monthly invoices attached to Henderson's First Request for
6 Information, and which are referenced in Item 15 of Henderson's First Request for
7 Information.

8

9

10 **Witness)** Paul G. Smith

11

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 15) *Please refer to the attached monthly invoices addressed to***
2 ***Henderson Municipal Power & Light.***

3 ***a. Will Big Rivers acknowledge that Big Rivers prepared the invoices?***

4 ***b. Will Big Rivers acknowledge that the invoices reflect the sum of***
5 ***what Big Rivers claims to have been a shortfall in Henderson's coal***
6 ***and lime supply for the time period beginning on June 1, 2016, and***
7 ***ending on January 31, 2019?***

8 ***c. Will Big Rivers acknowledge that the invoices reflect the amount Big***
9 ***Rivers claims to owe or to be owed for coal and lime consumed in the***
10 ***generation of unprofitable energy and Henderson's native load for***
11 ***the same time period?***

12 ***d. Will Big Rivers acknowledge that the invoices reflect the amount of***
13 ***MISO revenue that would be due to Henderson for the sale of***
14 ***unprofitable energy in the event Henderson had agreed to retain the***
15 ***unprofitable energy?***

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

- 1 *e. Will Big Rivers acknowledge that its position prior to the filing of*
2 *its application on July 31, 2019, was that Henderson was responsible*
3 *for supplying the coal and lime and/or paying other variable costs*
4 *associated with the production of unprofitable energy and was also*
5 *entitled to receive all revenue from the sale of that unprofitable*
6 *energy?*
- 7 *f. Will Big Rivers acknowledge that, in the event the PSC accepts the*
8 *referenced invoices as an accurate reflection of the parties'*
9 *respective financial positions regarding the generation of*
10 *unprofitable energy, payment of the invoices and remittance of the*
11 *associated revenue would resolve the financial dispute regarding*
12 *this issue?*
- 13 *g. Refer to the attached "Exhibit A, Big Rivers Electric Corporation*
14 *Summary of Revenues & Costs associated with Excess Henderson*
15 *Energy."*

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 *i. Will Big Rivers acknowledge that it prepared the referenced*
2 *exhibit?*

3 *ii. Will Big Rivers acknowledge that the scenario marked "HMPL*
4 *Coal When Available" reflects the financial calculations that*
5 *would apply where Big Rivers used Henderson's coal when*
6 *available to generate unprofitable energy and Henderson's*
7 *native load, and used Big Rivers' coal when Henderson's coal was*
8 *unavailable?*

9 *iii. Will Big Rivers acknowledge that the scenario marked "HMPL*
10 *Coal When Available" scenario represents the ultimate*
11 *resolution of the dispute referenced in Request 15(f)?*

12

13 **Response)**

14 a. Yes.

15 b. Denied. Exclusions from the referenced invoices include, but are not
16 limited to, certain native load amounts, certain coal stockpile physical

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

- 1 inventory adjustments, and the impact of the December 2017 Settlement
2 Agreement and Release which voided or modified the amount due in various
3 months.
- 4 c. Denied. See Big Rivers' response to sub-part b. above.
- 5 d. Denied. See Big Rivers' response to sub-part b. above. Additionally, all
6 Excess Henderson Energy that Big Rivers elected not to take belongs to
7 Henderson, whether it was profitable or unprofitable.
- 8 e. Denied. Big Rivers' position prior to the December 2017 Settlement
9 Agreement and Release was that Henderson was responsible for supplying
10 the coal and lime and/or paying other variable costs associated with the
11 production of Excess Henderson Energy that Big Rivers elected not to take
12 and was also entitled to receive all net revenue from the sale of that energy.
13 Big Rivers' offers made in the context of any settlement negotiations
14 subsequent to the December 2017 Settlement Agreement and Release are
15 not relevant to, and should not be admissible in, this proceeding.
- 16 f. Denied. See Big Rivers' response to sub-part b. above.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 g. Big Rivers objects to this request on the grounds that the referenced exhibit
2 was part of an offer made in the context of settlement negotiations, and is
3 not relevant to, and should not be admissible in, this proceeding.

4 i. Yes.

5 ii. Denied. The referenced document was prepared for settlement
6 discussion purposes. Additionally, all Excess Henderson Energy that
7 Big Rivers elected not to take belongs to Henderson, whether it was
8 profitable or unprofitable.

9 iii. Denied. See response to sub-part b. above.

10

11

12 **Witness)** Paul G. Smith

13

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 16)** *Does Big Rivers contend that excess energy generated at Station*
2 *Two between June 1, 2016 and January 4, 2018, belongs to Henderson if it is*
3 *uneconomic but belongs to Big Rivers if it is economic? If your response is in*
4 *the affirmative, please explain in detail the basis for your position.*

5

6 **Response)** Under the Power Sales Contract, as amended, Big Rivers had a
7 contractual right to take any Excess Henderson Energy Big Rivers elected to take in
8 its discretion. Thus, between June 1, 2016, and January 4, 2018, the Excess
9 Henderson Energy Big Rivers elected to take belonged to Big Rivers. The Excess
10 Henderson Energy Big Rivers elected not to take belonged to Henderson.

11 This issue was fully litigated in Case No. 2016-00278. As the Commission
12 found in its January 5, 2018, Order in that case, the Power Sales Contract, as
13 amended, “clearly and unambiguously provides Big Rivers the discretion to purchase
14 or not to purchase any Excess Henderson Energy. Because the Power Sales Contract
15 requires each party to pay for the variable costs associated with the power taken or
16 used by that party during any month, the Commission finds that Big Rivers is not

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 obligated, under the express terms of the Power Sales Contract, as amended, to pay
2 for any Excess Henderson Energy that is declined to be taken by Big Rivers at its
3 discretion.”

4

5

6 **Witness)** Michael T. Pullen

7

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 17)** *Will Big Rivers acknowledge that Big Rivers prepared the*
2 *attached FY 2018 Station Two Annual Settlement Summary?*

3

4 **Response)** Yes.

5

6

7 **Witness)** Paul G. Smith

8

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 18)** *Will Big Rivers acknowledge that the attached FY 2018 Station*
2 *Two Annual Settlement Summary indicates correctly that Big Rivers owes*
3 *Henderson \$1,649,922.53 as a result of the annual budget settlement process*
4 *for FY 2018?*

5

6 **Response)** Yes.

7

8

9 **Witness)** Paul G. Smith

10

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 19)** *Will Big Rivers acknowledge that Big Rivers has not paid*
2 *Henderson any of the amount owed as a result of the annual budget*
3 *settlement process for FY 2018?*

4

5 **Response)** Per the Station Two contracts, this amount is not owed to Henderson as
6 it is an offset against a larger amount receivable from Henderson.

7

8

9 **Witness)** Paul G. Smith

10

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 20)**¹ *Will Big Rivers acknowledge that Big Rivers prepared the*
2 *attached Station Two Settlement For the Period June 1, 2018 through*
3 *January 31, 2019?*

4

5 **Response)** Yes.

6

7

8 **Witness)** Paul G. Smith

9

¹ Mislabeled as Item 10 in City of Henderson, Kentucky, and Henderson Utility Commission, d/b/a Henderson Municipal Power & Light's First Request for Information dated May 22, 2020.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 21)** *Will Big Rivers acknowledge that the attached Station Two*
2 *Settlement for the Period June 1, 2018 through January 31, 2019, indicates*
3 *correctly that Big Rivers owes Henderson \$672,056.42 as a result of the*
4 *annual budget settlement process for FY 2019?*

5

6 **Response)** Denied. See Big Rivers' response to Item 5 of Commission Staff's Initial
7 Request for Information, dated May 19, 2020, in this case.

8

9

10 **Witness)** Paul G. Smith

11

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 22)** *Will Big Rivers acknowledge that it deducted severance costs*
2 *from the capacity payment Henderson made in FY 2019?*

3

4 **Response)** Big Rivers included severance costs related to Station Two operations in
5 the Annual Settlement for Fiscal Year 2018 / 2019.

6

7

8 **Witness)** Paul G. Smith

9

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 23)** *Will Big Rivers acknowledge that all employees who received*
2 *severance packages were Big Rivers employees and not Henderson*
3 *employees?*

4

5 **Response)** All employees who received severance were terminated as a result of the
6 closure of Henderson Municipal Power & Light's Station Two facility. Additionally,
7 although the Station Two contracts, except the Joint Facilities Agreement,
8 terminated May 1, 2018, when the Station Two units were no longer economically
9 viable, Big Rivers requested and received the Commission's approval to continue to
10 operate Station Two under the terms of the Station Two Contracts for up to an
11 additional 13 months to allow Henderson time to make alternate arrangements for
12 the operation of Station Two and Henderson's power supply needs. Big Rivers had
13 no contractual obligation to operate the Station Two units an additional 13 months;
14 however, Big Rivers believed it was reasonable to make this offer to Henderson, even
15 though Big Rivers was operating Station Two at a loss, and Henderson accepted Big
16 Rivers' offer. The Station Two units were actually operated an additional ten months

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 for the sole benefit of Henderson. It was necessary to offer severance to have the
2 personnel available for Big Rivers to be able to continue to operate Station Two
3 beyond the expiration of the Station Two Contracts (except the Joint Facilities
4 Agreement) for Henderson's sole benefit. In my opinion, if severance were not
5 offered, then many employees operating Station Two would not have remained
6 through the announced closure date, thus resulting in the inability to operate the
7 Station Two units the additional ten months.

8

9

10 **Witness)** Robert W. Berry

11

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 24)** *Will Big Rivers acknowledge that Henderson was not under a*
2 *legal obligation to contribute to costs associated with the severance packages*
3 *Big Rivers offered to its Station Two employees? If no, please describe the*
4 *legal obligation and cite to the authority that imposes such an obligation.*

5

6 **Response)** All employees who received severance were terminated as a result of the
7 closure of Henderson Municipal Power & Light's Station Two facility. The severance
8 costs incurred were reasonable and are customary costs of the long term operation of
9 a power plant.

10

11

12 **Witness)** Robert W. Berry

13

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 25)** *Will Big Rivers acknowledge that Henderson was not under a*
2 *contractual obligation to contribute to costs associated with the severance*
3 *packages Big Rivers offered to its Station Two employees? If no, please*
4 *describe the contractual obligation and cite to the contractual provision that*
5 *imposes such an obligation.*

6

7 **Response)** All employees who received severance were terminated as a result of the
8 closure of Henderson Municipal Power & Light's Station Two facility. The severance
9 costs incurred were reasonable and were necessary to enable to Big Rivers to continue
10 operating Station Two beyond the expiration of the Station Two Contracts (except the
11 Joint Facilities Agreement) for Henderson's sole benefit. Pursuant to the Station Two
12 Contracts, Henderson is obligated to pay its share of plant operating costs.

13

14

15 **Witness)** Robert W. Berry

16

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 26)** *Please provide Big Rivers' definition of the term*
2 *decommissioning as defined and accepted within the industry and provide*
3 *the basis of that understanding.*

4

5 **Response)** Please see Big Rivers' response to Item 10 of the Commission Staff's
6 First Request for Information and Big Rivers' Application, including the exhibits
7 thereto.

8

9

10 **Witness)** Robert W. Berry

11

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 27)** *Please describe Big Rivers' understanding of the term*
2 *"decommissioning" as referenced in the Station II contracts.*

3 *a. Please provide the source of Big Rivers' assertions concerning the*
4 *decommissioning process and the basis for its opinion concerning*
5 *the necessary scope and timing of decommissioning Station Two.*

6 *b. What legal or regulatory authority mandates decommissioning as*
7 *proposed by Big Rivers?*

8

9 **Response)** Please see Big Rivers' response to Item 10 of the Commission Staff's
10 First Request for Information and Big Rivers' Application, including the exhibits
11 thereto.

12

13

14 **Witness)** Robert W. Berry

15

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 Item 28) *Please describe the extent to which Big Rivers has either*
2 *decommissioned or participated in the decommissioning of any other coal-*
3 *fired generation plant. For each such plant please provide the name,*
4 *location, dates of decommissioning and extent to which each plant was*
5 *decommissioned and the approximate cost of decommissioning.*

6 a. *Describe the "decommissioning" process followed in relation to the*
7 *plant(s) described above.*

8 b. *Describe the timing of the decommissioning process, the date of each*
9 *step in the process and the cost of each step of the process.*

10 c. *Provide all reports, analyses, studies or other documentation*
11 *related to the decommissioning of the plant(s).*

12 d. *If the plant(s) have not been decommissioned, explain why and*
13 *provide all reports, analyses, studies or other documentation*
14 *related to the delay in the decommissioning of the plant(s)..*

15

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Response)** Big Rivers has not decommissioned or participated in the
2 decommissioning of any other coal-fired generation plant other than Station Two.

3 a. through d.

4 Not applicable

5

6

7 **Witness)** Michael T. Pullen

8

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 29)** *For each coal-fired generation plant identified in your response*
2 *to Request No. 10, please state whether asbestos was fully removed from the*
3 *plant and, if so, on what date and at what cost? If not, explain why asbestos*
4 *was not fully removed.*

5

6 **Response)** In responding to this question, Big Rivers assumes that this question is
7 referring to Item 28 not Item 10 of Henderson’s First Request for Information. Big
8 Rivers identified no plant in its response to Item 28.

9

10

11 **Witness)** Michael T. Pullen

12

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 30)** *For each coal-fired generation plant identified in your response*
2 *to Request No. 9, please state whether the plant has been demolished and) if*
3 *so) provide the date and cost of demolition. If not, explain why the plant has*
4 *not been demolished and provide all reports, analyses, studies or other*
5 *documentation related to the delay in the demolition of the plant(s).*

6

7 **Response)** In responding to this question, Big Rivers assumes that this question is
8 referring to Item 28 not Item 9 of Henderson's First Request for Information. Big
9 Rivers identified no plant in its response to Item 28.

10

11

12 **Witness)** Michael T. Pullen

13

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 31)** *Please describe to the best of your understanding the meaning of*
2 *the term "safe, dark, and dry" as accepted in the industry and as used in a*
3 *decommissioning context and describe in detail the steps necessary to bring*
4 *a coal-fired generation plant to "safe, dark, and dry" status. Provide all*
5 *documentation supporting your response.*

6

7 **Response)** Big Rivers was first introduced to the phrase "dry, dark, and safe" on
8 October 17, 2018, when Burns & McDonnell gave Big Rivers and Henderson an
9 overview of their Decommissioning and Demolition Services. Dry means that
10 materials such as water, chemicals, and oils are removed from the units. Dark means
11 that energy sources such as electricity and air are disconnected and isolated from the
12 units. Safe means that the site has been secured from a physical access standpoint
13 and that daily inspections are performed to ensure that hazards such as the asbestos
14 insulation systems remain safe until approval from Henderson is obtained to allow
15 its removal. These obligations arise out of the termination of the Station Two
16 Contracts. Bringing a retired coal-fired power plant to a "dry, dark, and safe"

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 condition is an obligation of the plant owner whether Station Two is decommissioned
2 or retired in place.

3 Since that meeting, Big Rivers referred to that phrase often when deciding
4 what activities were necessary to place Station Two in an appropriate condition after
5 its retirement on January 31, 2019, through the present time while Big Rivers waits
6 for the demolition and final decommissioning work to begin, or if Station Two is
7 retired in place. Please refer to my Direct Testimony, page 4, line 30 through page 5,
8 line 10 for the work that has been performed to get the units in a “dry, dark, and safe”
9 condition. If Station Two is decommissioned, then under Section 8 of the 1993
10 Amendments Big Rivers’ cost sharing would be 77.24%. However, if Station Two is
11 retired in place, then Big Rivers would have no contractual payment obligation and
12 Henderson’s share would be 100%.

13

14

15 **Witness)** Michael T. Pullen

16

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 32)** *Please state whether Big Rivers sought Henderson approval*
2 *concerning which activities would constitute rendering the plant "safe, dark,*
3 *and dry." Provide all documentation supporting your response.*

4

5 **Response)** Big Rivers discussed the obligations arising out of the termination of the
6 Station Two Contracts and activities associated with the shutdown of Station Two
7 with Mr. Ken Brooks during a meeting in the HMP&L board room on December 7,
8 2018. Among other things, obligations to render the plant "dry, dark, and safe" were
9 discussed including isolating energy sources, removing flammable materials,
10 removing chemicals, site security needs, aviation lighting, ongoing environmental
11 compliance, ongoing asbestos insulation maintenance, removing fuel, fuel oil, and
12 transformer oil. Mr. Brooks indicated that HMP&L wanted Big Rivers to perform
13 these activities as discussed. Big Rivers also presented Mr. Brooks with a draft
14 listing of Henderson's obligations arising out of the termination of the Station Two
15 Contracts and the activities associated with the plant shutdown and
16 decommissioning as well as a letter outlining the Station Two Ash Pond additional

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 compliance activities dated December 7, 2018. My handwritten notes and copies of
2 the activity list and letter are attached to this response.

3

4

5 **Witness)** Michael T. Pullen

6

Pullen Ken Brooks Meeting 12/7/2018

Shaw

L. Scott 1. Coal inventory remains concern at
L. Brooks Station Two.

Joella Wilson

✓ 2. Ash pond and environmental compliance.

✓ 3. How to leave units on ~~2/1/19~~ 2/1/19?

Energy sources - electricity, water, air

Flammable materials - oil, hydrogen (remove)

Chemicals - ammonia, chlorine (remove)

Site security

Aviation lights

Environmental compliance

Asbestos maintenance

fuel, fuel oil

transformer oil

✓ 4. Do you expect Big Rivers to perform any or all of these activities?

✓ 5. Property/casualty/liability insurance - Big Rivers is terminating coverage on 2/1/19.

6.

Delay unit prior to 4/17/19 (bottom ash)

Cap & close in place

3/8 year groundwater monitoring

periodic web site updates

If groundwater quality doesn't improve, other
corrective measures

Give Ken an estimate of ash pond closing

cost for their FY20 budget (6/1/20)

Draft letter for Title V, both parties

to sign - units are to be retired 2/1/19.

Estimation of HMPL Coal Inventory
 Including inventory adjustments and low chlorine coal shortfall
 As of November 30, 2018

Oct. 31 st :	48,319 tons (provided by Ken Brooks)
Deliveries:	+ 11,073 tons
Minus burn:	- 18,669 (PCM estimate)
Less inv adjmt 2016 (7,009 tons):	- 7,009 tons
Less inv adjmt 2018 (2,575 tons):	- 2,575 tons
Less low chlorine coal utilized by City in Jan: (9,618 tons):	- 9,618 tons
Nov 30, 2018 inventory:	<u>21,521 tons</u>
December 2018 estimated burn	<u>21,529 tons</u> (PCM estimate for HMPL native load only)
January 2019 estimated burn	<u>24,409 tons</u> (PCM estimate for HMPL native load only)

Dec 2500
 + 20,000
27,500 tons ordered - confirmed will be at

Started as if no coal on the ground.

Jan ~~20,000~~
19,000 looks to be short

\$1.79 pay for this }
\$1.74 cell for this }

Same thing for lime.

HMPL Station II
Impacted Plans and Permits

- KPDES Permit
- Title V Permit
- Best Management Practices Plan
- Ground Water Protection Plan
- Integrated Contingency Plan
- Oil Pollution Act Facility Response Plan
- Process Safety Management Plan
- Risk Management Plan
- Spill Prevention Control Countermeasures Plan
- Nuclear License
- Corps of Engineers Maintenance Dredging Permit
- Hazardous Waste Disposal Permit
- CCR Web Site

Homeland Security Inspection 2/5/19

From: Pullen, Mike
Sent: Thursday, December 06, 2018 5:25 PM
To: 'Scott, Keith L (Keith.Scott@bigrivers.com)'; Bunch, Gary
Subject: Station Two scope items

I've put together a list of items that should be included in the Station Two shutdown scope document. I'm sure there are others but this is a start from my perspective.

DRAFT- Discussion purposes ~~only~~ - To: Ken Brooks
From: Mike Pullen
12/7/18

1. Asbestos abatement
2. Electrical power disconnect
3. Water disconnect
4. Air disconnect
5. All water/steam spaces in the steam turbines, including the condenser, will be drained and opened.
6. Remove chemicals
 - a. Hydrogen
 - b. Sulfuric acid, other water treatment chemicals
 - c. Oils – Lubricating oil systems and hydraulic oil systems will be drained and the oil will be disposed of properly.
 - d. Freon will be removed and disposed of properly.
 - e. Ammonia
7. Remove coal
8. Maintain FAA stack lighting
9. Mooring cell warning lights remain in service
10. All batteries, including lead and nickel cadmium batteries will be removed and disposed of properly.
11. Mercury filled equipment and instruments will be removed and disposed of properly.
12. Relocate potable water line
13. Disconnect natural gas line to Reid
14. Disconnect hydrogen line to Reid
15. Disconnect fly ash lines to Reid
16. Install fencing between Reid and Station Two in the basement areas
17. Relocate backup feed for Microwave system from H2
18. Relocate electrical feeds for joint use coal handling equipment
19. Close ash pond
20. Install site security as required. All access into the plant, warehouse, and other Station Two structures will be secured.
21. Relocate controls for Reid 1 circulator for HWU
22. Remove fuel oil, gasoline
23. Remove industrial gases used for welding/cutting, refrigeration
24. Switchyard breakers will be opened. Switchyard disconnects will be opened and locked in the open position.
25. Oil filled transformers will be drained and the oil disposed of properly.
26. Responsibility for Property taxes

Case No. 2019-00269

Attachment for Response to HMPL 1-32

Witness: Michael T. Pullen

Page 5 of 10

27. Responsibility for insurance
28. Fire protection system will remain in service
29. Sump pumps will remain in service

MIKE PULLEN :: VP Production :: W 270.844.6186 :: C 618.638.3585
BIG RIVERS ELECTRIC CORP :: 201 Third Street :: Henderson, KY 42420



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

December 7, 2018

Mr. Ken Brooks
Power Supply Director
Henderson Municipal Power & Light
100 Fifth Street
P.O. Box 8
Henderson, KY 42419-0008

RE: STATION TWO ASH POND AND ADDITIONAL COMPLIANCE ACTIVITIES

Dear Ken:

As you know, HMP&L and Big Rivers have agreed to cease operations at Station Two effective February 1, 2019. Once Big Rivers is no longer the operator of Station Two, the City will, as the owner and operator of Station Two, become directly responsible for taking the requisite action to ensure Station Two remains in compliance with all federal and state environmental laws. To that end, I am writing to make you aware of certain obligations around the closure of the Station Two ash pond as well as corrective action that must be taken related to the detection of statistically significant groundwater exceedances detected at the Station Two ash pond.

Station Two Ash Pond Closure

As we discussed during our meeting on December 7, 2018, the HMP&L Station Two CCR surface impoundment ("ash pond") is unlined. Furthermore, as of October 17, 2018, testing at the ash pond revealed that it does not meet the aquifer separation requirement set forth in the CCR regulations nor did it pass the seismic test set forth in Section 257.63(a) of the CCR regulations. As such, these events triggered the closure requirements set forth in Section 257.101(b)(1), which when applied to Station Two, provides that within 6 months of October 17, 2018 (i.e. by April 17, 2019), the operator must cease placing CCR and non-CCR wastes in the ash pond and close the CCR Unit in accordance with the requirements of Section 257.102. While the EPA has proposed to allow an ash pond required to close under Section 257.101(b)(1) to continue to accept non-CCR waste if there is no alternative disposal capacity, there is currently no rule in place that allows for this course of action.

Big Rivers has already developed a closure plan for the HMP&L Station Two ash pond as is required by the CCR Rule. This, along with the results of the groundwater and seismic testing that has been performed, are posted on Big Rivers' Website under the

Case No. 2019-00269

Attachment for Response to HMPL 1-32
Your Touchstone Energy² Cooperative  Witness: Michael T. Pullen

Page 7 of 10

Environmental Services tab. It provides that closure will occur by dewatering and capping the unit in place. The estimated time for completing closure is five years. Section 257.102(3) provides commencement of closure occurs when:

- Any activities are taken to implement the written closure plan;
- The operator has submitted a closure permit application; or
- The operator has taken steps to comply with state standards for closure.

Therefore, HMPL must initiate one of these actions/activities with respect to the Station Two ash pond by April 17, 2019, unless alternate disposal capacity is shown to be unavailable for non-CCR wastes AND EPA adopts the amendment for non-CCR waste as part of Section 257.103. For example, HMPL may want to consider submittal of a closure plan to KDWM for the HMP&L Station Two ash pond by April 17, 2019. Another option HMP&L may want to consider is commencing dewatering by April 17, 2019, assuming continued disposal of non-CCR wastes is not permissible as discussed above.

Closure of the HMP&L Station Two ash pond must be completed within five years of commencement of closure unless an extension is granted. As such, closure may need to be completed as early as April 2024. An extension of up to two years for ash ponds smaller than 40 acres, such as the Station Two pond, is available if it is demonstrated that it is not feasible to complete closure within five years.

In summary, and subject to the above, below is the projected closure schedule for the HMP&L Station Two ash pond:

- Cease accepting CCR and non-CCR wastes by April 17, 2019
- Commence closure by April 17, 2019
- Complete closure by April 17, 2024

CORRECTIVE ACTION CONSIDERATION/SCHEDULE

Regardless of the closure schedule above which is triggered by the CCR Rule, there are additional actions which must be taken with respect to the Station Two ash pond as a result of statistically significant groundwater exceedances which were detected at the site of the Station Two ash pond by the October 15, 2018, trigger date. As a result, corrective measures assessment and selection of a corrective action remedy for the HMPL Station Two ash pond groundwater exceedances under Section 257.96 through 257.98 will need to be considered and coordinated with the HMP&L Station Two ash pond closure schedule. This will be an important consideration in the event HMP&L pursues

continued use of the ash pond for non-CCR waste for a period of time, assuming EPA adopts a final rule allowing that practice. Therefore, per the CCR Rule, the projected corrective measures assessment and corrective action scheduled for the HMPL Station Two ash pond is as follows:

Assessment of Corrective Measures for Groundwater

- Initiate corrective measures assessment by January 14, 2019 (assuming non "alternate source" demonstration attempted)
- Complete corrective measures assessment by April 15, 2019 (or June 14, 2019 if 60-day extension is used)

Selection of Corrective Action Remedy

- Initiation Trigger: Completion of corrective measures assessment
- Selection Schedule: Complete the "selection" "as soon as feasible"
 - Public notice of remedy selection 30 days in advance
 - Final remedy selection may have to be reviewed and approved by KDEP even if WINN Act regulations have not been adopted
 - Potential option if no WINN Act regulations are in effect is to select/confirm remedy via an Agreed Order
 - Final remedy selection could be in mid to late 2019
- Initiation of Corrective Action: Initiate corrective action within 90 days of remedy selection (potentially late 2019 to early 2020)
- Completion Schedule: Based on remedy schedule

ONGOING ENVIRONMENTAL REPORTING

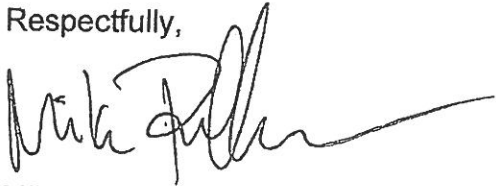
Finally, I wanted to again remind you about the ongoing environmental reporting obligations under the Title V permit as well as the KPDES Permit associated with Station Two that will need to be continued following the cessation of operations at Station Two. As was discussed with you during meetings held between you, Tom Shaw and others regarding environmental compliance at Station Two following the cessation of operations at Station Two on June 21 and 22, 2018, there will still remain various

Mr. Ken Brooks
December 7, 2018
Page Four

reports that must be filed in order to remain in compliance with environmental permits and regulations. In order to minimize those reports, I recommend that the City and Big Rivers notify the EPA that Station Two will permanently cease operations effective February 1, 2019, and request that it be removed from the Title V permit. This will minimize the amount of required reporting under that permit. In the event the City agrees with that course of action, please notify Big Rivers in writing of that agreement so that we can take the necessary action.

After you have had the opportunity to review the above, I would be happy to meet with you to go over any of these requirements and discuss coordinating the transfer to these responsibilities to HMP&L so that HMP&L will be in a position to move forward with these actions in a timely manner. As such, please contact me at your earliest convenience to so that we can set up a time to continue these discussions.

Respectfully,

A handwritten signature in black ink, appearing to read "Mike Pullen", with a long horizontal flourish extending to the right.

Mike Pullen
Vice President Power Production
Big Rivers Electric Corporation

cc: Robert W. Berry
Tom Shaw

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 33) *Refer to the Direct Testimony of Michael T. Pullen, page 4, lines***
2 ***28-33, and page 5, lines 1-10.***

3 ***a. On what basis did Big Rivers determine it was necessary to perform***
4 ***the work associated with placing Station Two in a “dry, dark, and***
5 ***safe” condition?***

6 ***b. How did Big Rivers determine the actions and activities needed to***
7 ***place Station Two in a “dry, dark, and safe” condition?***

8 ***c. What engineering analysis was performed to determine the steps***
9 ***needed to place Station Two in a “dry, dark, and safe” condition?***
10 ***Who performed that analysis?***

11 ***d. Please provide copies of all analyses, assessments, emails, and other***
12 ***documents associated with determining the steps needed to place***
13 ***Station Two in a “dry, dark, and safe” condition.***

14 ***e. What actions were considered as alternatives to placing Station***
15 ***Two in a “dry, dark, and safe” condition? Provide all documentation***

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 *addressing alternatives Big Rivers considered to placing Station*
2 *Two in a “dry, dark, and safe” condition.*

3 *f. Please identify every activity Big Rivers performed to place Station*
4 *Two in a “dry, dark, and safe” condition.*

5 *g. Please provide a spreadsheet listing in electronic format every*
6 *activity Big Rivers performed to place Station Two in a “dry, dark,*
7 *and safe” condition and identifying all costs for each of those*
8 *activities, all man hours, materials, material costs, disposal costs,*
9 *vendors or contractors used, date activities started and completed,*
10 *chemical and oils removed, etc.*

11

12 **Response)**

13 a. and b.

14 Please see Big Rivers’ response to Item 31 of Henderson’s First request for
15 Information.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

- 1 c. The steps needed to place Station Two in a “dry, dark, and safe” condition
2 were developed by Big Rivers’ management personnel experienced in
3 operating the Station Two units and other coal-fired generating units.
- 4 d. Please refer to the Excel file accompanying this response for the working
5 shutdown plan document that Big Rivers developed to place Station Two in
6 a “dry, dark, and safe” condition.
- 7 e. As stated in my Direct Testimony, pages 8 and 9, Big Rivers discussed
8 asbestos remediation and developing demolition bid specifications for
9 Station Two with Henderson on more than one occasion. However, in each
10 case, Henderson refused to participate or share in the cost of these
11 decommissioning activities. Therefore, to date, Big Rivers has performed
12 the necessary activities to maintain the plant in a “dry, dark, and safe”
13 condition.
- 14 f. Please refer to the response to sub-part d.
- 15 g. Please refer to the Excel file accompanying this response.

16

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1

2

3 **Witnesses)** Michael T. Pullen (*a. through f. only*) and

4 Paul G. Smith (*g. only*)

5

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 34)** *Refer to the Direct Testimony of Michael T. Pullen, page 8, lines*
2 *8-12.*

3 *a. Please identify the consultant referenced on line 11.*

4 *b. Please describe the process Big Rivers used to select this consultant.*

5 *c. Please provide all bid specifications used to select the consultant.*

6 *d. Please provide copies of all correspondence with the consultant*
7 *associated with preparation of decommissioning and*
8 *dismantlement bid specifications for Station Two.*

9 *e. Identify all other consultants from whom Big Rivers requested*
10 *proposals for preparation of decommissioning and dismantlement*
11 *bid specifications for Station Two. Provide copies of all*
12 *correspondence with those consultants.*

13 *f. Did the referenced consultant perform a site visit? If so, please*
14 *provide the date of the site visit and identify all persons who were*
15 *present.*

16

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Response)**

- 2 a. The consultant is Linebach Funkhouser, Inc. based in Louisville, Kentucky.
- 3 b. Henderson recommended this consultant to Big Rivers on October 10, 2018.
- 4 Linebach was the consulting firm that HMP&L used for the
- 5 decommissioning and demolition of its Station One plant. HMP&L
- 6 indicated it was pleased with the consultant's performance on that
- 7 decommissioning and demolition project.
- 8 c. Please see the attached **CONFIDENTIAL** Linebach Funkhouser proposal
- 9 dated December 21, 2018.
- 10 d. Please see the attached correspondence.
- 11 e. Big Rivers also obtained an engineering proposal from Burns & McDonnell
- 12 based in Kansas City, Missouri. Please see the attached **CONFIDENTIAL**
- 13 Burns & McDonnell proposal dated October 26, 2018.
- 14 f. Yes. Doug Linebach with Linebach Funkhouser visited the Station Two
- 15 facility on December 6, 2018. Keith Scott, Plant Manager; Gary Bunch,

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 Maintenance Manager; and Jeff Francis, Production Manager attended for
2 Big Rivers.

3

4

5 **Witness)** Michael T. Pullen

6

Pullen, Mike

From: Doug Linebach [REDACTED]
Sent: Thursday, December 13, 2018 3:21 PM
To: Scott, Keith
Subject: Proposal for Station Two
Attachments: Proposal.pdf

Hi Keith,

We appreciate the opportunity to have met with you guys last week and to provide you with the attached proposal. We have outlined all of the tasks that we think will be necessary to get Big Rivers through the process of demolishing Station Two. Please let us know if there are any questions or comments after you have had a chance to review the proposal. We would also be happy to come back and meet with you to discuss further, it that would be helpful.

Thanks again, and we look forward to hearing back from you.

Doug

Doug Linebach
Linebach Funkhouser, Inc.



Pullen, Mike

From: Doug Linebach [REDACTED]
Sent: Friday, December 21, 2018 8:28 AM
To: Scott, Keith
Subject: Revised Proposal
Attachments: Proposal.pdf

Good morning Scott,
Attached is our revised proposal based on our phone conversation Wednesday. Thanks again for the opportunity to provide Big Rivers with this proposal, and don't hesitate to call if you have any questions or need anything else. I will be out of the office most of next week, but I will be tracking emails, if you need something.

Have a Merry Christmas. Doug

Doug Linebach



Pullen, Mike

From: Joella Wilson [REDACTED]
Sent: Wednesday, October 10, 2018 8:09 AM
To: Pullen, Mike
Cc: Ken Brooks; Scott, Keith
Subject: Consulting firm HMP&L used for Station One

Mike,

Ken asked me to forward you the contact information for the consulting firm HMP&L used for the Demolition of Station One.

Linebach Funkhouser, Inc

[REDACTED]

Contact: Doug Linebach

[REDACTED]

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 35) *Refer to the Direct Testimony of Michael T. Pullen, page 8, lines***
2 ***20-21.***

3 ***a. What criteria was used to determine the need for asbestos***
4 ***abatement?***

5 ***b. Identify all areas of the plant which require asbestos abatement.***
6 ***Provide plant drawings identifying areas requiring asbestos***
7 ***abatement and showing precise locations where the asbestos is***
8 ***located.***

9 ***c. Describe how Big Rivers identified those areas requiring asbestos***
10 ***abatement.***

11 ***d. Describe the processes and methods used during the operation of***
12 ***Station Two to ensure asbestos did not become airborne, become an***
13 ***environmental hazard and/or a personnel hazard.***

14 ***e. Describe the process Big Rivers used to develop the specifications for***
15 ***asbestos abatement at Station Two.***

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

- 1 ***f. Provide copies of all correspondence containing reference to***
2 ***asbestos abatement specifications at Station Two.***
- 3 ***g. What alternatives did big Rivers consider for asbestos abatement at***
4 ***Station Two?***

5

6 **Response)**

- 7 a. As explained in the Direct Testimony of Jeffrey T. Kopp, page 7, lines 7-8,
8 friable asbestos-containing material is a safety concern due to the higher
9 likelihood of releasing fibers. Three of the major health effects associated
10 with asbestos exposure are lung cancer, mesothelioma, and asbestosis. Big
11 Rivers is very concerned that the asbestos containing material represents
12 a significant safety risk for the employees and contractors that continue to
13 work at the Sebree facility. Because Station Two is retired and will no
14 longer be operated, this risk can be completely eliminated by removal and
15 abatement of the asbestos containing material.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

- 1 b. Please see the bid specification document, entitled Henderson Municipal
2 Power & Light Station Two H1-H2 Insulation Removal and Asbestos
3 Abatement, provided in Big Rivers' response to Item 36b of Henderson's
4 First Request for Information.
- 5 c. Big Rivers relied on historical records of asbestos removal during the
6 operation of Station Two to identify areas that are non-asbestos insulation.
7 In addition, Big Rivers hired a contractor to test the insulation in different
8 parts of the plant to provide additional information regarding which plant
9 areas likely contained asbestos containing material.
- 10 d. Big Rivers utilized contractors to abate asbestos insulation and make
11 necessary repairs during the operation of Station Two.
- 12 e. Big Rivers drafted the initial bid specification based on the scope of
13 insulation removal necessary on Station Two and in compliance with the
14 City of Henderson's purchasing requirements. The draft specification was
15 provided to HMP&L for comments. Big Rivers reviewed those comments
16 and made the necessary revisions to the bid specification.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

- 1 f. See attached emails.
- 2 g. Until the asbestos containing material is removed from Station Two, Big
- 3 Rivers will continue to perform ongoing maintenance of the insulation
- 4 systems at Station Two.

5

6

7 **Witness)** Michael T. Pullen

8

Archived: Tuesday, June 02, 2020 9:47:58 AM

From: [Ken Brooks](#)

Sent: Fri, 1 Feb 2019 12:00:35

To: [Holmes, Mary](#)

Cc: [Joella Wilson](#) [Tammy Konsler Bunch](#), [Gary Scott](#), [Keith Pullen](#), [Mike](#)

Subject: RE: H-19-101 Asbestos Abatement

Sensitivity: Normal

Attachments:

[H-1 H-2 ASBESTOS ABATEMENT SPEC - DRAFT.docx](#)

Mary,
HMP&L's comments are attached.
I want to reiterate, HMP&L will not participate in or accept bids for, asbestos abatement at Station Two.
KMB

From: Holmes, Mary
Sent: Thursday, January 31, 2019 1:59 PM
To: Ken Brooks
Cc: Bunch, Gary
Subject: H-19-101 Asbestos Abatement

Ken,
Please find attached specification for the asbestos abatement. At this time, we do not have any of the dates in it but will insert once we know what they are.
Please let me know if you have any questions.
Thanks,

Mary Holmes

Procurement Agent II



The information contained in this transmission is intended only for the person or entity to which it is directly addressed or copied. It may contain material of confidential and/or private nature. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is not allowed. If you receive this message and the information contained therein by error, please contact the sender and delete the material from your/any storage medium.

Case No. 2019-00269
Attachment for Response to HMPL 1-35f
Witness: Michael T. Pullen

Archived: Tuesday, June 02, 2020 9:49:39 AM

From: [Ken Brooks](#)

Sent: Fri, 1 Feb 2019 12:52:09

To: [Pullen, Mike](#)

Cc: [Joella Wilson](#) [Tammy Konsler](#) [Holmes, Mary](#) [Bunch, Gary](#) [Scott, Keith](#)

Subject: RE: H-19-101 Asbestos Abatement

Sensitivity: Normal

Mike,
HMP&L has no objections.
KMB

From: Pullen, Mike

Sent: Friday, February 1, 2019 12:48 PM

To: Ken Brooks ; Holmes, Mary

Cc: Joella Wilson ; Tammy Konsler ; Bunch, Gary ; Scott, Keith

Subject: RE: H-19-101 Asbestos Abatement

Ken,

Do you object to Big Rivers advertising for bids at this time?

Mike

From: Ken Brooks [REDACTED]

Sent: Friday, February 01, 2019 12:00 PM

To: Holmes, Mary [REDACTED]

Cc: Joella Wilson [REDACTED]; Tammy Konsler [REDACTED]; Bunch, Gary [REDACTED]; Scott, Keith

[REDACTED] Pullen, Mike [REDACTED]

Subject: RE: H-19-101 Asbestos Abatement

Mary,

HMP&L's comments are attached.

I want to reiterate, HMP&L will not participate in or accept bids for, asbestos abatement at Station Two.

KMB

From: Holmes, Mary [REDACTED]

Sent: Thursday, January 31, 2019 1:59 PM

To: Ken Brooks [REDACTED]

Cc: Bunch, Gary [REDACTED]

Subject: H-19-101 Asbestos Abatement

Ken,

Please find attached specification for the asbestos abatement. At this time, we do not have any of the dates in it but will insert once we know what they are.

Please let me know if you have any questions.

Thanks,

Mary Holmes

Procurement Agent II

Big Rivers Electric Corporation

[REDACTED]

The information contained in this transmission is intended only for the person or entity to which it is directly addressed or copied. It may contain material of confidential and/or private nature. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is not allowed. If you receive this message and the information contained therein by error, please contact the sender and delete the material from your/any storage medium.

Case No. 2019-00269
Attachment for Response to HMPL 1-35f
Witness: Michael T. Pullen

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 36)** *Refer to the Direct Testimony of Michael T. Pullen, page 14, lines*
2 *7-14.*

3 *a. Who prepared the Request for Bids for asbestos abatement at*
4 *Station Two?*

5 *b. Please provide copies of the bid specifications used in the Request*
6 *for Bids for asbestos abatement advertised on May 30, 2019.*

7 *c. Please provide copies of all bid proposals for asbestos abatement at*
8 *Station Two.*

9 *d. Did the two (2) bidders perform a site walk down on Station Two? If*
10 *so, provide the date of the walk down and identify all persons*
11 *present during the walk down.*

12

13 **Response)**

14 a. Big Rivers prepared the Request for Bids. HMP&L reviewed the Request
15 for Bids and provided suggested changes to the document as it deemed

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 necessary. Big Rivers incorporated these changes prior to the issuance of
2 the Request for Bids.

3 b. Please see the attached Henderson Municipal Power & Light Station Two
4 H1-H2 Insulation Removal and Asbestos Abatement document.

5 c. Please see the following attached **CONFIDENTIAL** bid proposals.

6 i. General Insulation H-19-101A Bid;

7 ii. General Insulation H-19-101A Addendum 1;

8 iii. General Insulation H-19-101A Addendum 2; and

9 iv. Incorp Industries H-19-101A Bid.

10 d. Yes. See the attached sign-in sheet H-19-101A Pre Bid Attendance Sheet.

11

12

13 **Witness)** Michael T. Pullen

14



**HENDERSON MUNICIPAL POWER & LIGHT
STATION TWO**

**H-1& H-2
INSULATION REMOVAL
&
ASBESTOS ABATEMENT**

Specification H-19-101A

BID DUE DATE: June 12, 2019, 2:00 P.M. CST

PREBID DATE: MAY 30, 2019, 10:00 A.M. CST

Table of Contents

- 1. Site Description**
 - 2. Scope of Work**
 - 3. Instructions to Bidder**
 - 4. Owner and Operator to Provide**
 - 5. Specific Requirements**
 - 6. Environmental**
 - 7. Site Supervision**
 - 8. Specific Contract Terms**
-
- Appendix A: General Services Agreement**
- Appendix B: Equal Opportunity Addendum**
- Appendix C: Certification Regarding Debarment**
- Appendix D: Certification Regarding Lobbying**
- Appendix E: C-SCAP Program**
- Appendix F: Clarifications & Exceptions**
- Appendix G: Vendor Information Forms**
- Appendix H: W-9 Forms**
- Appendix I: Reciprocal Preference**
- Appendix J: Drawings**

1. Site Description

- 1.1. Throughout this Specification, "Owner" will mean the City of Henderson Utility Commission dba Henderson Municipal Power & Light (HMP&L), and the Operator will be known as Big Rivers Electric Corporation.
- 1.2. The HMPL Station Two power plant is comprised of two (2) one hundred seventy-five megawatt fossil fuel - fired units operated by Big Rivers Electric Corporation. The units are located approximately fifteen miles south of Henderson in Webster County at: 9000 Hwy 2096, Robards, KY 42452.

2. Scope of Work

- 2.1. Big Rivers Electric Corp. on behalf of Henderson Municipal Power and Light will be accepting bids to provide qualified supervision and labor, tools, machinery, appliances, equipment, materials, consumables, and services as required to perform the various functions related to the removal and proper disposal of insulation materials including associated metal lagging on the HMP&L 01 and 02 Units. Portions of the insulation will be asbestos containing materials and shall be removed and disposed of accordingly (29 CFR 1910.1001). The remaining portions of the insulation will be non-asbestos containing materials and shall be removed and disposed of as demolition debris.
- 2.2. If any conditions, circumstances or occurrences not covered in the Specification are encountered, or if there are any doubts as to the meaning, contact the Owner's designated representative.
- 2.3. The Contractor will not assign, or sublet any part of the Work or this Specification without first obtaining the Owner and Operator's written approval. Such approval, if given, will not relieve the Contractor from full responsibility for the fulfillment of all obligations under this Specification.
- 2.4. The Contractor will be allowed to locate an office/break/tool trailer on-site at no additional cost to Owner and Operator. Any location must have prior approval from the designated Operator representative.
- 2.5. The Contractor will only be allowed to operate Contractor owned and insured vehicles on the plant site. To facilitate proper identification of ownership of any vehicle entering the plant, the Contractor and any subcontractor vehicles will be clearly marked either by permanent logo or a temporary placard displayed on the dash.
- 2.6. Bidders providing union labor will furnish the Owner and Operator a current copy of the Union Agreement, setting forth the wage rates, overtime rates, fringe benefits, travel allowance, and work rules, applicable to the labor to be supplied under this Contract.

3. Instructions to Bidder

- 3.1. Pursuant to KRS 45A.343(2), Owner requires each Contractor or Supplier bidding on a contract, to reveal to the Utility Commission in writing any final determination of a violation by the Contractor or any Sub-contractor, within the previous five years, pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the Contractor or Subcontractor, and be in continuous compliance with the provisions of those chapters of Kentucky Revised Statute that apply to the Contractor or Subcontractor for the duration of the Specification.

- 3.2. The Contractor **will include an estimated duration/timeline, including mobilization, to complete this project as part of the Bid Proposal upon issuance of a Purchase Order.**
- 3.3. In accordance with Kentucky Revised Statutes (KRS) 45A.490 to 45A.494, prior to a contract being awarded to a bidder on a public agency contract, a resident bidder of the Commonwealth of Kentucky will be given a preference over a nonresident bidder registered in any state that gives or requires a preference over bidders from the other state. All Bidders must therefore complete and submit the following attached forms:
 - 3.3.1. RECIPROCAL PREFERENCE: (Effective February 4, 2011).
 - 3.3.2. REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS CLAIMING RESIDENT BIDDER.
- 3.4. Contractor agrees to defend, indemnify, and hold harmless the Owner and Operator, its directors, officers, employees, and agents from any and all damage, loss, claim, demand, suit, liability, penalty, or forfeiture of every kind and nature, including but not limited to costs and expenses of defending against the same and payment of any settlement or judgment therefore, by reason of (a) injuries or deaths to persons, (b) damages to property, (c) pollution, contamination of or other adverse effects on the environment, or (d) violations of government laws, regulations or orders, whether suffered by Owner or Operator or indirectly by reason of third party claims, demands or suits, resulting or alleged to have resulted from acts or omissions of Contractor, its employees, agents, subcontractors or other representatives, or from their presence on the premises of the Owner, or otherwise from performance of this Specification. This indemnity will survive termination or expiration of this Specification.
- 3.5. Bidders will submit a list of any Sub-contractors that may be used for this project. Include experience lists and reference contacts for all Sub-contractors.
- 3.6. **The proposal will include all costs to the Bidder, including freight, FOB job site, and all applicable taxes, i.e., sales, payroll, etc., and profit as a fixed price.**
- 3.7. The Bidder will itemize the bid to reflect total labor, equipment and materials separately.
- 3.8. All bids will be valid for ninety (90) days from the opening of the bid.
- 3.9. The Bidder may submit alternate bids, however, alternates will be considered only if a complete original bid is submitted.
- 3.10. Bidders will submit payment terms with this proposal. If a cash discount is not offered for early payment then terms will be Net 30 days.
- 3.11. **A pre-bid meeting** will be held at the HMP&L Station Two plant site on **May 30, 2019 @ 10:00 am (CST)**, at the Burns & Roe Building.
- 3.12. The proposal will be submitted as a **SEALED BID** with a public bid opening with the results read aloud. The Bidder will submit the bid in the envelope provided with the bid package. Big Rivers Electric Corporation will only accept bid proposals by mail or hand delivered. Fax proposals will not be accepted. Big Rivers Electric Corporation will require **four (4) sets of the bid proposals; one (1) signed original and three (3) copies.** **BIDS ARE DUE ON JUNE 12, 2019 BY 2:00 P.M.**

(CENTRAL STANDARD TIME). Bid proposals received after this date and time will be returned unopened. The bid proposals will be submitted to the Big Rivers Electric Corporation's Sourcing and Materials Department attn. of:

Mary Holmes
Sr. Procurement Agent
Big Rivers Electric Corporation
Reid/Green/Station Two
9000 State Highway 2096
Robards, KY 42452

- 3.13. Bidders will submit a **time and material rates** for any additional emerging work not specifically identified in this bid Specification. This cost will be inclusive of all labor, materials, equipment, consumables, waste disposal, and industrial hygiene requirements deemed necessary to complete any work determined to be emerging work by the Owner and/or Operator. If the Bidder charges a separate rate for overtime and or holiday pay, the Bidder will include a clear explanation of the overtime and holiday policies, and will include a list of all observed holidays.
- 3.14. This inquiry implies no obligation on the part of the Big Rivers Electric Corporation or the City of Henderson Utility Commission. The Bidder offers the prices, terms, and delivery herein set forth in this proposal.
- 3.15. There are no guarantees of the amount of work and no guarantees of the minimum number of man-hours are in this agreement.
- 3.16. Upon award, all work will be governed by the terms and conditions set forth in the Specification including, without limitation, the General Services Agreement.
- 3.17. The terms and conditions set forth in the attached Specification and any required submittals are an important consideration to BREC and the City of Henderson Utility Commission. Any deviations from or exceptions to the attached Specification or the submittals will impact BREC and the City of Henderson Utility Commission evaluation of the Bidder's proposal. **If there are no exceptions or clarifications please so indicate on the "Bid Clarifications and/or Exceptions" sheet.**
- 3.18. The Contractor will, upon bid award, submit a Certificate of Insurance naming Big Rivers Electric Corporation and the City of Henderson Utility Commission, as the holder of the certificate. Certificate will also show both entities as additional insured. Insurance coverage must meet as a minimum, the insurance requirements as specified in General Services Agreement (Appendix A).
- 3.19. **Any addenda to this bid package will be signed by the Bidder and will be returned with the sealed proposal.**
- 3.20. The Bidder will submit sufficient information and detail with the bid to permit full understanding and evaluation of the equipment and services being offered.
- 3.21. Any exception taken to the Specification will be justified in writing, i.e., safety, reliability, efficiency, and increase or decrease in cost.

- 3.22. Failure to follow any or all of the instructions listed in the "Instructions to Bidder" may lead to Bidder disqualification.
- 3.23. All expenses incurred by the Bidder in the development of this bid are the sole responsibility of the Bidder.
- 3.24. The Owner and Operator are committed to procuring safe results for all Purchase Orders. The Contractor and every on-site employee must be certified through and current in the C-SCAP Program. Contractor will comply with all applicable OSHA, KOSHA, EPA, BREC rules or other safety practices, rules and regulations that govern work while on the Owner and Operator's plant sites or properties under the control of the Owner and Operator. Contractor must also commit that all employees on the job site have received all applicable OSHA training for the tasks performed.
- 3.25. The City of Henderson Utility Commission reserves the right to reject any or all Bids, to waive informalities therein and to consider exceptions and clarifications therein in order to determine the lowest and best bid; to reject any or all non-conforming, non-responsive, unbalanced or conditional Bids; to reject the Bid of any Bidder if the Utility Commission believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability, or fails to meet any other pertinent standard or criteria established by the Utility Commission. The Utility Commission also reserves the right to negotiate contract terms with the Successful Bidder. By submitting a Bid to the Utility Commission, the Bidder agrees that such procedures will be without liability on the part of the Utility Commission for any damage or claim brought by the Bidder because of such rejections or procedures, nor will the Bidder seek any recourse of any kind against the Utility Commission because of such rejections or procedures. The filing of any Bid in response to this Invitation will constitute an agreement of the Bidder to these conditions.
- 3.26. The evaluation methodology that will be used to identify the winning bid includes, but is not limited to the following four elements: the Non-Responsiveness Test, the Price Evaluation, Qualification/Certification Evaluation, and the Technical Evaluation. The purpose of each element and the process employed in each are described in the following sections.

Non-Responsiveness Test:

The Non-Responsiveness Test is designed to identify and eliminate any proposal that has not provided the requested information in a proper format to allow an equitable evaluation to occur or that does not meet the requirements set forth in this RFQ. A bid deemed non-responsive by BREC and the City of Henderson Utility Commission may be rejected. Bidders are subject to disqualification for such things as failure to submit the proposal on or before the designated time and date. The City of Henderson Utility Commission may, in its discretion, disqualify a bid and drop it from further consideration for failure to submit a complete proposal in the form required or failure to provide additional supporting documentation or any clarification that may be requested by BREC and the City of Henderson Utility Commission subsequent to the submission of the proposal.

Price Evaluation:

The Price Evaluation is designed to identify and eliminate bids which are clearly more expensive than other compliant proposals received. This will be accomplished by ranking the bids, as well as the designated options, against each other according to price. Preliminary estimates of production cost effects, operation and maintenance costs, and other pertinent costs will be made and added to each proposal for evaluation purposes. BREC and the City of Henderson Utility Commission's evaluation

will also include an estimate of the negative impact of deviations or exceptions, if any, to the terms and conditions in the proposed Contract or in other agreements contemplated to be entered into. BREC and the City of Henderson Utility Commission expects the bid to contain an early payment discount structure which terms will also be part of BREC and the City of Henderson Utility Commission's evaluation.

Qualification/Certification Evaluation:

The Qualification/Certification Evaluation is designed to identify and eliminate bids that clearly demonstrate a lack of understanding or an inability to meet the intended Specification for this project. Big Rivers Electric Corporation requires all on-site contractors to complete the Contractor Certification process before any on-site work is awarded. Therefore, a winning Bidder will, among other things, submit or confirm on file the completed and fully executed General Services Agreement, and Contractor Safety Rules, and will agree that all site workers will be in compliance with the C_SCAP Program and any site specific safety requirements which will apply to all work.

Technical Evaluation:

The Technical Evaluation will consist of a comprehensive review that considers a number of price and non-price factors. The goal of the Technical Evaluation is to determine the options that best meet the needs of BREC and the City of Henderson Utility Commission for this project and technical options which improve the facility's overall cost, reliability and availability.

3.27. All questions should be directed to:

Mary Holmes

E-mail: Mary.Holmes@bigrivers.com

4. Owner and Operator to Provide

- 4.1. There will be a designated Operator representative on site, during day shift, to coordinate work schedules, safety issues, and tagging/lock-out requirements.
- 4.2. Compressed air will be supplied by existing piping and connections; hoses, couplers, safety clips and whip checks will not be provided.
- 4.3. Electrical connections as existing, 480 volt three phase (requiring a Russell-Stoll #3118W, 4 wire 4 pole, 30 amp, angle type, 250 VDC, 480 VAC male plug or equivalent), or 110 volt single phase 20 amp service; wiring and connections will not be provided.
- 4.4. Electrical connection requiring greater than 30 amp service will be provided by the plant; however, sufficient wiring will be provided by the Contractor. Electrical hook-ups and disconnects will be scheduled 24-hours in advance whenever possible.
- 4.5. The Operator may, at its sole discretion, provide tools and equipment for use by the Contractor.
- 4.6. Separate scrap metal and trash dumpsters will be provided on-site for disposal of **non-hazardous** waste materials.
- 4.7. Potable water is available at the plant site with the Contractor being responsible for providing his own water station (coolers) and cups as required. Water for construction wash-down of clean-up is available in limited quantities. Contractor will provide his own connections, piping and hoses.

5. Specific Requirements

5.1. Schedule Requirements

- 5.1.1. Time is of the essence in the completion of this project.
- 5.1.2. The scheduled commencement and completion dates for the project are critical to the timely completion of this project.
- 5.1.3. The Contractor will provide a daily project status update to the designated Operator representative.
- 5.1.4. The Contractor will adhere to the schedule provided by the Operator. The schedule provided within this Specification may be updated prior to the project; however task durations will remain constant. The Contractor will take any and all actions necessary to ensure scheduled completion.
- 5.1.5. If at any time during the progress of the work it is determined that the scheduled completion date cannot be met, the Owner and Operator reserves the right to take any action it deems necessary to ensure timely completion. Such actions will include, but are not limited to, procurement of third party services to augment or take over the completion of the project. The cost of such services or other remedies will be deducted from the Contractor's original bid price.
- 5.1.6. All shipping and receiving will be Monday – Friday between 7:00 am and 2:00 pm local time.

5.2. Prior to Commencement of Work

- 5.2.1. The Contractor and every on-site employee will comply with the Operator's red tag clearance procedure when accepting a clearance. The on-site superintendent will sign on, accepting the red tag clearance and a Contractor's copy of the clearance will be used by the on-site superintendent to document that all employees working on the project signed on and off of the clearance prior to the on-site superintendent releasing the Operator's clearance. Any person signing on a red tag clearance will do so in a clear and legible manner. It is a Contractor's responsibility to sign off all red tags when work is completed. If this is a persistent problem, or if the signature cannot be read, the Operator will require that another on-site superintendent be designated to oversee the project.
- 5.2.2. The Contractor's on-site employees will be in compliance with all C-SCAP requirements, and have attended the site specific safety orientation including the hazard awareness video prior to the date set for commencement of specified activities.
- 5.2.3. The Contractor will have a confined space procedure that complies with OSHA CFR 1910.146. This procedure must be equal to or better than Operator's confined space procedure. The Contractor will provide personnel qualified for confined space work, including but not limited to, Entrant Supervisor, Entrant, and Attendant. The confined space personnel will be qualified from the existing work force and will perform the confined space tasks as a function of the normally assigned service work at no additional cost. The Contractor will absorb all cost for the training of

its employees for confined space work. The Contractor will furnish, at no additional cost, all monitoring equipment, communication equipment, personal protective equipment, safety related items, and other items required to perform confined space work.

- 5.2.4. The Contractor will utilize all of the information presented in this document to be fully prepared to begin work at the specified commencement date and time. The Contractor will ensure that a copy of this document has been reviewed by and is in the possession of the on-site superintendent.

5.3. Contractor to Provide

- 5.3.1. The Contractor **will include an estimated duration/timeline for completion of this project** as part of the bid proposal.
- 5.3.2. The Contractor will provide all qualified supervision, labor, job management, materials, tools, equipment and consumables deemed necessary to ensure safe, proper and timely completion of the specified work.
- 5.3.3. The Contractor will ensure that all instructions and emergency warnings can be effectively and immediately communicated to all employees. Unless otherwise instructed the Operator requires that one (1) interpreter be provided for every eight (8) non-English speaking employees.
- 5.3.4. The Contractor will place all **non-hazardous** scrap materials in scrap metal or trash dumpsters provided by the Operator. The material must not be stacked beyond the top of the dumpster.
- 5.3.5. The Contractor will provide to the site security guard staff, a tool and equipment inventory list upon arrival and will allow inspection of tools and equipment upon arrival and departure.
- 5.3.6. The Contractor and everyone in his employee will sign in and out daily at the designated checkpoint.
- 5.3.7. The Contractor will provide adequate sanitary facilities at no additional cost to the Owner and Operator. Use of Owner and Operator facilities will not be permitted.
- 5.3.8. The Contractor will provide all spreaders, chokers, slings, shackles, eye bolts, jacks, hoists, chain falls and other lifting or rigging equipment necessary to position equipment on the job site along with documentation of proper training in the use of said equipment.
- 5.3.9. The Contractor will provide all necessary personnel protective equipment for each of its employees along with documentation of proper training in the use of said equipment.
- 5.3.10. The Contractor will protect its own and its Sub-contractors' employees and be responsible for their work until the Operator's acceptance of the entire project, and to protect the Owner and Operator's facilities, property, employees and third parties from damage or injury.
- 5.3.11. No person will perform any of the Work while under the influence of drugs or alcohol. No alcohol may be consumed within four (4) hours of the start of any person's performance of the Work or anytime during the workday. A person will be deemed under the influence of alcohol if a level of .02 percent blood alcohol or greater is found. In addition to the requirements of the

drug testing program, as set forth in Company's rules and regulations, all persons who will perform any of the Work will be subject to drug and alcohol testing under either of the following circumstances: (i) where the person's performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident which involves off-site medical treatment of any person; and (ii) where Company determines in its sole discretion that there is reasonable cause to believe such person is using drugs or alcohol or may otherwise be unfit for duty. Such persons will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible for administering and conducting drug and alcohol testing, as set forth herein, at Contractor's sole expense. As applicable and in addition to any other requirements under this Agreement, Contractor will develop and strictly comply with any and all drug testing requirements as required by applicable Laws or Regulations.

- 5.3.12. Contractor's employees working on-site will be required to complete a negative drug and alcohol pre-test within seven (7) days before reporting to work on-site at Big Rivers. The Contractor will conduct random drug and alcohol testing on ten percent (10%) of their on-site workforce assigned to Big Rivers within thirty (30) days of the start of Work. The Contractor will subsequently test ten percent (10%) of their on-site workforce assigned to Big Rivers on an on-going monthly basis for the duration of this outage. Big Rivers Corporate Health and Safety will be auditing Contractor compliance with these requirements. Testing costs are the responsibility of the Contractor. Testing should be conducted using a licensed health care facility or FDA-approved testing device [consisting of, at a minimum, a 10 panel drug test (including Amphetamines, Barbiturates, Benzodiazepines, Cannabinoids, Cocaine, Methaqualone, Opiate, Phencyclidine, Methadone, and Propoxyphene)] suitable for on-site testing and under the supervision of a certified Medical Review Officer. The Contractor is responsible for all testing and administrative costs associated with the random drug and alcohol testing requirement however, it is anticipated that any employee's time away from the job for random testing will occur during regularly scheduled work hours paid by Big Rivers. The confidentiality of individual test results for your employees should be maintained according to all applicable regulations. Big Rivers Corporate Health and Safety will randomly audit contractor testing programs to ensure requirements are met.
- 5.3.13. The Contractor will inform the Owner and Operator of any hazardous chemicals that will be transported or used on the plant site. Material Safety Data Sheets (MSDS) must be provided to the Safety Training Coordinator prior to use on the plant site and must be available at all times while on the plant site.
- 5.3.14. The Contractor will provide fork lifts of suitable type and capacity, along with any other mobile equipment necessary for the duration of the Planned Work Scope for the handling of Contractor's tools, equipment, & materials. Equipment Operators will be qualified for the specific equipment being operated.

5.4. Contractor Responsibilities

- 5.4.1. The Contractor will maintain qualified personnel capable of performing large scale asbestos abatement, competent scaffold builders, and necessary support personnel for the duration of the intended work scope.
- 5.4.2. The Contractor will provide proper hazardous waste containers for disposal of all asbestos containing materials. Timely removal of the hazardous waste containers from the plant site will be the responsibility of the Contractor including furnishing a Waste Management Manifest to the Operator for each hazardous waste shipment removed from the plant site.

- 5.4.3. All scaffolding will be erected in accordance with OSHA Sub Part L (1926.450). The scaffolding will be inspected daily with records retained for review as per the above referenced standard. The scaffolding will be tagged (heavy, medium or light duty) according to its capacity. Hand-rails, mid-rails and toe boards will be constructed on the scaffold when necessary to act as the primary fall protection according to the above referenced standard. All erected scaffolds will be inspected and tags updated daily prior to each shift for the duration of the project.
- 5.4.4. The Contractor will provide the following:
- 5.4.4.1. Scaffold equipment including freight cost
 - 5.4.4.2. Insulation removal and abatement materials and supplies
 - 5.4.4.3. Office/break trailer, storage trailer, and forklifts/mobile equipment (if required)
 - 5.4.4.4. Proper hazardous waste containers for disposal of all asbestos containing materials
 - 5.4.4.5. A completed Waste Management Manifest for each hazardous waste container removed from the plant site
 - 5.4.4.6. All required hazardous materials abatement containment structures erection, maintenance, and removal
 - 5.4.4.7. All required 3rd party industrial hygiene air monitoring and on-site sampling services, including proper documentation
 - 5.4.4.8. All scaffold builders' certification paperwork
 - 5.4.4.9. All scaffold workers training paperwork
 - 5.4.4.10. All abatement workers training and certification paperwork
- 5.4.5. The Contractor will provide all qualified supervision, labor, material, tools, consumables, and equipment to complete the following defined work scope. The Contractor will also be responsible for additional sampling and testing of insulation material to verify asbestos content, if warranted. The measurement provide are approximately only. The Contractor will perform field verification of measurements. The Contractor will include monies in their bid to cover this verification.
- 5.4.5.1. H-1 Main Steam and Cold Reheat Steam Piping: Removal and proper disposal of approximately 470 LF of asbestos containing pipe insulation and approximately 388 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: HE1-MS-HGR-ISO; HE1-CR-HGR-ISO; F2-Rev. 5.
 - 5.4.5.2. H-1 Hot Reheat Steam Piping: Removal and proper disposal of approximately 425 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: HE1-HS-HGR-ISO -Rev. 3.

- 5.4.5.3. H-1 Heater Vent Piping: Removal and proper disposal of approximately 350 LF of asbestos containing pipe insulation and approximately 50 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H1-VENTS; F7-Rev. 3
- 5.4.5.4. H1 Boiler Feed Water Piping: removal and proper disposal of approximately 1250 LF of asbestos containing pipe insulation and approximately 490 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H1 FEEDWATER-PAGE 1; H1 FEEDWATER-PAGE 2; F6-Rev. 4
- 5.4.5.5. H1 Extraction Steam Piping: Removal and proper disposal of approximately 770 LF of asbestos containing pipe insulation and approximately 350 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H1-EXTRACTIONS; F2-Rev. 5
- 5.4.5.6. H-1 Steam System Piping: Removal and proper disposal of approximately 1060 LF of asbestos containing insulation and approximately 1275 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H1-STEAM-SYS-PAGE 1; H1-STEAM-SYS-PAGE 2; H1 BD; F2-Rev. 5
- 5.4.5.7. H-1 Soot Blowing Steam Piping: Removal and proper disposal of approximately 850 LF of asbestos containing insulation and approximately 735LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H1-SOOTBLOWING; H1 AHS SHT.1; H1 AHS SHT.2; H1 AHS SHT.3; 69001M12G-1
- 5.4.5.8. H-1 Condensate & Feed Water Heater Drain Piping: Removal and proper disposal of approximately 350 LF of asbestos containing insulation and approximately 500 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H1-DRAINS; F8-Rev. 5
- 5.4.5.9. H-1 Condensate Piping: Removal and proper disposal of approximately 350 LF of asbestos containing insulation and approximately 220 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H1-CONDENSATE; F3-Rev. 7; F4-Rev. 4
- 5.4.5.10. H-1 Turbine Drain System Piping: Removal and proper disposal of approximately 140 LF of asbestos containing insulation and approximately 300 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: F22-Rev. 6
- 5.4.5.11. H-1 #1,2,3,4,5,6 Feed Water Heater Shells:
Removal and proper disposal of non-asbestos containing insulation including associated metal lagging.
- 5.4.5.12. H-1 Turbine Shell:
Removal and proper disposal of non-asbestos containing insulation Blankets.

- 5.4.5.13. H-2 Main Steam and Cold Reheat Steam Piping: Removal and proper disposal of approximately 550 LF of asbestos containing pipe insulation and approximately 303 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: HE2-MS-HGR-ISO; HE2-CR-HGR-ISO; F24 - Rev. 6
- 5.4.5.14. H-2 Hot Reheat Steam Piping: Removal and proper disposal
Approximately 425 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: HE2-HS-HGR- ISO -Rev. 3.
- 5.4.5.15. H-2 Heater Vent Piping: Removal and proper disposal of approximately 250 LF of asbestos containing pipe insulation and approximately 150 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H2-VENTS; F29-Rev. 5
- 5.4.5.16. H-2 Boiler Feed Water Piping: removal and proper disposal of approximately 1150 LF of asbestos containing pipe insulation and approximately 600 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H2-FEEDWATER-PAGE 1; H2-FEEDWATER-PAGE 2; F28-Rev. 6
- 5.4.5.17. H-2 Extraction Steam Piping: Removal and proper disposal of approximately 600 LF of asbestos containing pipe insulation and approximately 500 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H2-EXTRACTIONS; F24-Rev. 6
- 5.4.5.18. H-2 Steam System Piping: Removal and proper disposal of approximately 1010 LF of asbestos containing insulation and approximately 1325 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H2-STEAM-SYS-PAGE 1; H2-STEAM-SYS-PAGE 2; H2 BD; F24-Rev. 6
- 5.4.5.19. H-2 Soot Blowing Steam Piping: Removal and proper disposal of approximately 1300 LF of asbestos containing insulation and approximately 300 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H2-SOOTBLOWING; H2 AHS SHT.1; H2 AHS SHT.2; H1 AHS SHT.3; 69001M12G-1
- 5.4.5.20. H-2 Condensate & Feed Water Heater Drain Piping: Removal and proper disposal of approximately 350 LF of asbestos containing insulation and approximately 500 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H2-DRAINS; F30-Rev. 6
- 5.4.5.21. H-2 Condensate Piping: removal and proper disposal of approximately 250 LF of asbestos containing insulation and approximately 240 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H2-CONDENSATE; F25-Rev. 6; F26-Rev. 4
- 5.4.5.22. H2 Turbine Drain System Piping: Removal and proper disposal of approximately 110 LF of asbestos containing insulation and approximately 330 LF of non-asbestos containing pipe insulation including associated metal lagging. Reference DWG's: F44-Rev. 9

- 5.4.5.23. H-2 #1,2,3,4,5,6 Feed Water Heater Shells:
Removal and proper disposal of non-asbestos containing insulation including associated metal lagging.
- 5.4.5.24. H-2 Turbine Shell:
Removal and proper disposal of non-asbestos containing insulation Blankets.
- 5.4.5.25. #1 (South) Cooling Tower: Removal and proper disposal of approximately 25,960 SF of Transite panels covering the exterior surfaces of the cooling tower structure.
Reference DWG's: 4-67388; 4-67577; H-1347
- 5.4.5.26. #2 (North) Cooling Tower: Removal and proper disposal of approximately 24,948 SF of Transite panels covering the exterior surfaces of the cooling tower structure.
Reference DWG's: 4-67388; 4-67577; H-1347
- 5.4.6. The time of completion of the Work is a basic consideration of the Specification. The proposal will be based upon completion of the Work during an allotted time window. Contractor's schedule and support requirements must be defined and submitted to the Owner and Operator for approval. The approved schedule must be met.
- 5.4.7. The Contractor will be responsible for obtaining all required permits.
- 5.4.8. The Contractor will furnish a field service manager to act as coordinator, and field service supervisors/technicians to supervise, direct, and assist with equipment set-up and construction operations. These people are required be permanent employees of the Contractor who are thoroughly experienced in this type of work. *The Bidder, if asked, must supply a job history resume for each of the permanent employees who may be staffing this job.* Field service supervisors must be present during all activities. The Contractor's field service manager must be onsite to insure timely coordination of the activities involved to meet the schedule required by the Owner and Operator. *The Bidder, if asked, must provide a list of at least ten similar jobs that have been completed satisfactorily and provide references.*
- 5.4.9. The Contractor will discuss with the Operator's Project Proponent prior to mobilization to establish a list of support work needed from the Operator. The Contractor will confirm equipment placement, power requirements, and work scope with the Project Proponent.
- 5.4.10. The Contractor will prepare, and maintain throughout the duration of the job, a schedule with the work progression of individual job elements. The schedule will be up-dated regularly and will be available to the Owner and Operator for review at any time. The schedule will be broken down to show individual job elements.
- 5.4.11. The Contractor will furnish tools and equipment not specified as Owner furnished but necessary for the completion of the work. The Contractor will replace all lost or damaged Owner and Operator supplied tools.
- 5.4.12. The Owner and Operator reserves the right to assign extra work, other work, or work not defined for this project, in this Specification to other Contractors or in-house personnel.

- 5.4.13. The Contractor will abide by the items in this Specification unless Owner and Operator agree in writing to any changes. Changes must be made in the form of a written request.
- 5.4.14. The Contractor is required to report to Operator the total number of man-hours worked for all shifts no later than beginning of day shift every Monday. This report will include all man-hours worked by subcontractors that work for the Contractor. These hours must be tracked for plant safety reporting.
- 5.4.15. The criteria listed in this Specification should be used as a base line. Actual work required to perform this Specification may not be listed. It is expected that work required to access or reassemble specified work will be included as part of this Specification. The Specification entries may not be in chronological order or inclusive of all the job elements. It is the responsibility of the Contractor to realize and correct this.
- 5.4.16. **A mandatory pre-safety meeting will be conducted. The successful Bidder will be notified of the location, date, and time of this meeting.**
- 5.4.17. The Contractor will follow equipment manufacturer's recommended procedures. If these procedures cannot be followed, the Contractor will inform the Owner and Operator.
- 5.4.18. The Contractor will comply with the latest or amended version of the followings standards and codes, and with any and all other standards and codes that may be applicable:
- National Fire Protection Association (NFPA)
 - National Electrical Code (NEC)
 - Institute of Electrical and Electronic Engineers (IEEE)
 - National Electrical Manufacturers Association (NEMA)
 - Electrical Apparatus Service Association (EASA)
 - International Electrical Testing Association (NETA)
 - American Society for Testing and Materials (ASTM)
 - American National Standards Institute (ANSI)
 - Factory Mutual (FM)
 - American Society of Mechanical Engineers (ASME)
 - National Board Inspection Code (NBIC)

5.5. Owner and Operator Responsibilities

- 5.5.1. Operator's Hazard Communication program requires that Operator inform Contractors of any hazardous chemicals in the area where they will be working. Material Safety Data Sheets (MSDS) are available for any chemical on site. MSDS sheets can be reviewed in the Safety Coordinator's office.
- 5.5.2. The Operator will insure that all equipment is secured and "Red Tagged" prior to disassembly and repair work beginning.
- 5.5.3. The Operator will supply the following drawings to the Bidders:

Drawing List		
<u>Item#</u>	<u>Drawing Number</u>	<u>Description</u>
1	69001B5	General Arrangement of Riley Steam Generating Unit
2	HE1-MS-HGR-ISO	Main Steam Piping Asbestos Abatement Map Schematic
3	HE1-CR-HGR-ISO	Cold Reheat Steam Piping Asbestos Abatement Map Schematic
4	F2-Rev. 5	Steam – Flow Diagram S-Unit No. 2 (H1)
5	H1-VENTS	H1 Vent Steam Piping Asbestos Abatement Map Schematic
6	F7-Rev. 3	Closed Vents-Flow Diagram V – Unit No. H1
7	H1 FEEDWATER-PAGE 1	H1 Feed Water Piping Asbestos Abatement Map Schematic – Page 1
8	H1 FEEDWATER-PAGE 2	H1 Feed Water Piping Asbestos Abatement Map Schematic – Page 2
9	F6-Rev. 4	Feed Water-Flow Diagram F – Unit No. 2 (H1)
10	H1-EXTRACTIONS	H1 Extraction Steam Piping Asbestos Abatement Map Schematic
11	H1-STEAM-SYS-PAGE 1	H1 Steam System Piping Asbestos Abatement Map Schematic – Page 1
12	H1-STEAM-SYS-PAGE 2	H1 Steam System Piping Asbestos Abatement Map Schematic – Page 2
13	H1 BD	H1 Boiler Drains Piping Asbestos Abatement Map Schematic
14	H1-SOOTBLOWING	H1 Soot Blowing Steam Piping Asbestos Abatement Map Schematic
15	H1 AHS SHT.1	H1 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 1
16	H1 AHS SHT.2	H1 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 2
17	H1 AHS SHT.3	H1 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 3
18	69001M12G-1	Arrangement of Piping to Soot Blowers
19	H1-DRAINS	H1 Condensate & Feed Water Drain Piping Asbestos Abatement Map Schematic
20	F8-Rev. 5	Drips-Flow Diagram D – Unit 2 (H1)
21	H1-CONDENSATE	H1 Condensate Piping Asbestos Abatement Map Schematic
22	F3-Rev. 7	Condensate-Flow Diagram C – Unit No. 2 (H1)
23	F4-Rev. 4	Condensate-Flow Diagram C – Unit No. 2 (H1)
24	HE2-MS-HGR-ISO	Main Steam Piping Asbestos Abatement Map Schematic

25	HE2-CR-HGR-ISO	Cold Reheat Steam Piping Asbestos Abatement Map Schematic
26	F24-Rev. 6	Steam-Flow Diagram S – Unit No. 3 (H2)
27	H2-VENTS	H2 Vent Steam Piping Asbestos Abatement Map Schematic
28	F29-Rev. 5	Closed Vents-Flow Diagram V – Unit No. 3 (H2)
29	H2 FEEDWATER-PAGE 1	H2 Feed Water Piping Asbestos Abatement Map Schematic – Page 2
30	H2 FEEDWATER-PAGE 2	H2 Feed Water Piping Asbestos Abatement Map Schematic – Page 2
31	F28-Rev. 6	Feed Water-Flow Diagram F – Unit No. 3 (H2)
32	H2-EXTRACTIONS	H2 Extraction Steam Piping Asbestos Abatement Map Schematic
33	H2-STEAM-SYS-PAGE 1	H2 Steam System Piping Asbestos Abatement Map Schematic – Page 1
34	H2-STEAM-SYS-PAGE 2	H2 Steam System Piping Asbestos Abatement Map Schematic – Page 1
35	H2 BD	H2 Boiler Drains Piping Asbestos Abatement Map Schematic
36	H2 SOOTBLOWING	H-2 Soot Blowing Steam Piping Asbestos Abatement Map Schematic
37	H2 AHS SHT.1	H2 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 1
38	H2 AHS SHT.2	H2 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 2
39	H2 AHS SHT.3	H2 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 3
40	H2 DRAINS	H2 Condensate & Feed Water Drain Piping Asbestos Abatement Map Schematic
41	F30-Rev. 6	Drips-Flow Diagram D – Unit H2
42	H2-CONDENSATE	H1 Condensate Piping Asbestos Abatement Map Schematic
43	F25-Rev. 6	Condensate-Flow Diagram C – Unit No. 3 (H2)
44	F26-Rev. 4	Condensate-Flow Diagram C – Unit No. 3 (H2)
45	4-67388	Cooling Tower Plan & Elevation
46	4-67577	Cooling Tower Plan & Elevation
47	H-1347	Cooling Tower Fill & Drift Eliminator Layout
48	F51-Rev. 1	Piping Design Tables No. 1 thru No. 6
49	F52-Rev. 1	Piping Design Tables No. 7 thru No. 12
50	F53	Piping Design Tables No. 13 thru No. 18
51	F54	Piping Design Tables No. 19, 20 & Insulation Table
52	F22-Rev. 6	Drains & Misc. Turbine Piping-Flow Diagram TD – Unit No. 2 (H1)
53	F44-Rev. 9	Drains & Misc. Turbine Piping – Unit No. 3 (H2)

- 5.5.4. These drawings are intended to be conveyed only to the designated recipient(s) these drawings are confidential, intended only for the named recipient(s) above and may contain information that is privileged or proprietary. Unauthorized use, dissemination, distribution, or reproduction of these drawings is strictly prohibited and may be unlawful. These drawings will be returned to the sender upon completion of the designated task or project. If you have received these drawings in error or completed the designated task, please immediately notify the sender.

5.6. Emerging Work

- 5.6.1. During the project unanticipated needs may be encountered. If such needs are discovered during the project they will be communicated to the designated Operator representative by the Contractor's on-site supervisor as soon as possible .
- 5.6.2. The Bidder will obtain sufficient information to present a firm dollar quote based on the all-inclusive hourly rate provided with bid as per Section 3.13. for any emerging work for this project .
- 5.6.3. No additional work will be performed until the Contractor has been given written authorization to proceed by the Owner and Operator .

5.7. PROTECTION OF WORK AND PROPERTY

- 5.7.1. The Contractor will exercise care in the protection of materials and equipment furnished and/or installed under this Contract while they are in storage at the site.
- 5.7.2. Protection of equipment and materials while under control of the Contractor will be in accordance with Manufacturer or Supplier's recommendations, and will include but not be limited to the following:
- 5.7.2.1. For equipment requiring internal protection from moisture accumulation maintain drying heat or suitable moisture absorbing compound.
- 5.7.2.2. Equipment and material stored outdoors will be blocked up at least 6" above the ground and arranged for drainage.
- 5.7.3. The Contractor will provide for the safety and protection of the work as set forth. The Contractor will provide protection at all times against rain, wind, storms, frost, freezing, condensation, and heat so as to maintain all work, equipment, and materials free from damage. At the end of each work day all new work likely to be damaged will be covered.
- 5.7.4. The Operator will be notified immediately at any time operations are stopped due to conditions that make it impossible to continue operations safely or to obtain proper results.
- 5.7.5. The Contractor will provide for the safety and protection of existing property. Any damage to existing facilities resulting from construction operations will be reported immediately to the Operator thereof and promptly repaired or replaced by the Contractor.

- 5.7.6. The Contractor will provide adequate temporary supports, temporary rerouting of existing utilities and structures that are necessary to keep the existing plant facilities in continuous operation.
- 5.7.7. Before acceptance of work by Operator, the Contractor will restore all property affected by his operations to the satisfaction of the Owner.
- 5.7.8. The Contractor will take precautionary measures to prevent fires especially from welding operations. The Contractor will provide an adequate supply of approved blankets to prevent welding sparks from starting fires or damaging equipment. The Contractor will carefully supervise his operations and housekeeping to prevent fires. Storage of flammable materials such as paint, solvents, cleaning fluids, etc. will be in a separate building expressly for this purpose. Building will be equipped with a proper fire extinguisher and located as approved by the Operator. The Contractor's fire protection program will conform to applicable parts of National Fire Protection Association Bulletin No. 241, Building Construction Operations. When construction fires occur, all equipment provided under this and other contracts will be used effectively to control and extinguish the fire regardless of the cause. The Operator's production leader or the safety coordinator will be immediately notified of any fire, regardless of whether it has been extinguished or not. The Contractor will provide sufficient ABC Class fire extinguishers to protect the work in progress.
- 5.7.9. The Contractor will confine his operations to the plant areas where the Contractor's work is to be performed, and to those yard areas allocated to the Contractor within the Owner's and Operator's property boundaries. The Contractor will confine employee's parking to designated areas.
- 5.7.10. Whenever existing facilities require being taken out of service for new construction or connections of new work, the Contractor will schedule such work according to procedures agreed upon by Operator. The Contractor will plan all work for connections in advance as thoroughly and as quickly as possible, and will notify the Operator at least two working days before work begins. Arrangements will be made to make connections within the minimum time.
- 5.7.11. General cleanup requirements will apply on a daily basis. The premises will be kept free from accumulations of waste materials or rubbish caused by the Contractor's employees or work. In case of dispute, the Owner and Operator may remove the rubbish and charge the cost to the Contractor. The Contractor will perform periodic, continuous, immediate and final cleanup of his work and work areas. If Contractor does not clean the premises within sixteen (16) working hours after ordered, the Owner and Operator reserves the right to clean the premises and withhold his expense from payments due the Contractor.

5.8. Completion Requirements

- 5.8.1. The Contractor will notify the designated Operator representative upon completion of each phase of the work for inspection .
- 5.8.2. The Contractor will ensure that all discarded material and trash designated as **Hazardous or Non-Hazardous** are placed in the proper containers.

5.9. Warranty

5.9.1. The Contractor will warrant to the Owner that all work will be in accordance with this Specification and will be free from defects in material and workmanship. Prompt notice of all defects will be given to the Contractor. All defective work, whether or not in place, may be rejected, corrected or accepted by the Owner. The Contractor will warrant all work for a minimum of one year from the completion of the project. The Contractor may choose to extend the warranty period at his discretion. Within the warranty period, any work that is found to be defective, the Contractor will promptly, at its option, without cost to Owner, either correct such defective work, or, replace it with non-defective work. If Contractor does not promptly comply, or in an emergency where delay would cause serious risk of loss or damage, Owner may, upon written notice to the Contractor, have the defective work corrected or the rejected work removed and replaced, and all direct costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals) will be paid by Contractor.

6. Environmental

6.1. The Contractor will not discharge petroleum products anywhere on the plant site. Fuel, lubrication products and any other liquid consumables stored on-site will be in an appropriate tank or container with proper labeling. Use of the proper container and the Operator's approval of such containers in no way releases the Contractor from its responsibility to clean up any spills, discharges, or other releases.

7. Site Supervision

- 7.1. The Contractor will designate an on-site contact person with the authority to make decisions, correct problems and generally oversee the Contractor's operations. In the event the contact person is absent from the job site, an alternate contact person with full authority will be available.
- 7.2. The Contractor will provide in writing the name and phone number (office, home, pager and mobile as applicable) of the contact person and the alternate contact person(s) prior to the start of work hereunder and within one working day of any changes in the previously designated contact person.
- 7.3. To the extent possible, the on-site contact person will be the same from week to week to ensure job continuity.
- 7.4. The Contractor will provide after hours, emergency 24-hour per day contact list. The list will be prioritized as to the order that should be followed in notifying the Contractor.

8. Specific Contract Terms

8.1. Acceptance of Work

8.1.1. Work under this agreement will be acceptable once a thorough visual inspection by the designated Operator representative has been completed; however, this in no way releases the Contractor from any responsibility related to any warranty .

8.2. Payment

- 8.2.1. Payment will be lump sum upon successful completion of the work. Pricing will be shown on the Request for Quotation bid sheet included with this package .
- 8.2.2. All invoices (at a minimum) will be itemized to reflect labor, equipment and materials separately .
- 8.2.3. All invoices will reflect the Company assigned purchase order number .

8.3. Extras

- 8.3.1. The Contractor will be paid only in accordance with the price and payment terms set forth in the purchase order or as amended by written change order. No additional compensation will be paid without prior written approval by Owner and Operator.

8.4. Commencement and Completion Dates:

- 8.4.1. ***Work will tentatively commence on August 5, 2019.***
- 8.4.2. ***Work will be completed on or before February 7, 2020 .***
- 8.4.3. The proposal will be based upon completion of the work in accordance with the Owner's/Operator's scheduled dates as indicated above.
- 8.4.4. The actual start date will be determined after the contract is let. It will be necessary that the Contractor satisfy the Owner and Operator of their ability to complete the work within the stipulated time .
- 8.4.5. Contractor will be notified of any change in start date as soon as possible, but not less than 48 hours prior to the start date. The Owner or Operator will not pay any monetary charges from the Contractor for ANY rescheduling fees due to changes in the start date .

8.5. Termination

- 8.5.1. The Owner or Operator may stop work and/or remove the Contractor from the worksite which may lead to termination of this agreement by the Owner or Operator without further obligation to the Contractor, if the Contractor fails to observe safety requirements .

8.6. Notices

- 8.6.1. Any notice, request, or approval or other document required or permitted to be given under this contract will be in writing unless otherwise provided herein and will be deemed to have been sufficiently given if delivered in person, transmitted by fax followed by a hard copy, dispatched in the U.S. mails, postage prepaid for mailing by certified or registered mail, return receipt requested, or dispatched for delivery by other courier service providing a return receipt, addressed as follows :

8.6.2. If to Owner and Operator, addressed to:

Big Rivers Electric Corporation
Sebree Station
9000 Hwy 2096
Robards, KY 42452
Attention: Purchasing
Phone: 270-844-5963
Fax: 888-849-5024

8.6.3. If to Contractor, addressed to:

8.6.4. Either party hereto may change the person or address specified herein upon giving of written notice to the other party hereto of such changes .

APPENDIX A

**Big Rivers Electric Corporation
General Services Agreement**

This General Services Agreement (this "General Services Agreement") is made this _____ day of _____, 20____ by and between Big Rivers Electric Corporation ("Company") and _____ ("Contractor"), a _____ (list state of entity's organization and entity type, such as "Kentucky corporation" or "Kentucky limited liability company", etc.).

WHEREAS, Contractor desires the opportunity to provide goods and/or services to Big Rivers Electric Corporation from time to time, and Big Rivers Electric Corporation desire the opportunity to engage Contractor to provide such goods and/or services; and WHEREAS, the parties intend that this General Services Agreement sets forth the exclusive set of terms and conditions which shall govern the performance of the "Work" (as defined below) by Contractor for the Company should the Company engage Contractor to provide Work.

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 Agreement:** "Agreement" shall mean this General Services Agreement, along with any "Specifications, (as defined below) and/or Purchase Order (as defined below) issued by Company and/or ", etc. any other documentation as may be executed by the parties in accordance with Article 2, and/or other agreed collateral document pursuant to which the Work is to be performed.
- 1.2 Applicable Laws:** "Applicable Laws" shall mean any and all applicable federal, state, or local laws, regulations, codes, ordinances, administrative rules, court orders, permits or executive orders.
- 1.3 Contract Price:** "Contract Price" shall mean the aggregate of the particular consideration set forth in one or more Purchase Orders or other Statements of Work or as otherwise agreed upon. Unless otherwise agreed in writing, the Contract Price includes all applicable taxes, duties, fees, and assessments of any nature, including without limitation all sales and use taxes, due to any governmental authority with respect to the Work.
- 1.4 Contractor:** "Contractor" shall mean the entity designated as the "Contractor" in the opening paragraph of this Agreement.
- 1.5 Company:** "Company" shall mean Big Rivers Electric Corporation
- 1.6 Purchase Order:** Company may, at its discretion, issue its own "Purchase Order Standard Terms and Conditions" (collectively referred to as a "Purchase Order") that may supplement, but in no way or manner ever supersede, this Agreement with respect to any conflicting terms and conditions.
- 1.7 Specifications:** "Specifications" shall mean any specifications, instructions, drawings, schedules, a Purchase Order, contracts, scopes of work, and/or statements of work.
- 1.8 Work:** "Work" shall include those services and/or goods set forth in this Agreement.
- 1.9 Tools and Equipment:** "Tools and Equipment" shall mean any tools, equipment, rigging and other general supplies on the Company's premises where the Work is being performed that is either owned and/or leased by Company or by any of its Affiliates.

ARTICLE 2 SCOPE; BINDING EFFECT

Unless otherwise agreed in a writing executed by each of the parties which evidences a clear intention to supersede this Agreement, the parties intend that this Agreement apply to all transactions which may occur between the Company on one hand and Contractor on the other hand during the term of this Agreement and which are related to the provision of goods and/or services by Contractor for the benefit of the Company. Neither the Company makes any commitment to Contractor as to the exclusiveness of this relationship or as to the volume, if any, of business the Company will do with Contractor. The parties do, however, anticipate that the parties will agree from time to time for the performance of Work by Contractor. Such agreement for the provision of Work shall be reflected by (a) each of the parties executing a mutually acceptable Statement of Work under this Agreement or (b) Company providing a Purchase Order or other Statement of Work to Contractor and Contractor accepting such Purchase Order or other Statement of Work (including by commencing performance pursuant to such Purchase Order or other Statement of Work). In the event Company provides a Purchase Order or other Statement of Work to Contractor and Contractor commences performance, unless such Purchase Order or other Statement of Work expressly provides otherwise, Contractor hereby agrees to the formation of a binding agreement as described in the Purchase Order or other Statement of Work upon Contractor's commencement of performance, waives any argument that it might otherwise have under Applicable Laws that the Purchase Order should have been executed by each of the parties to be enforceable and further agrees to not contest the enforceability of such Purchase Order or other Statement of Work on those grounds, and agrees to not contest the admissibility of Company's records related to such Purchase Order

or other Statement of Work that are kept in the ordinary course by Company. In addition, in no event shall the terms and conditions of any proposal, Purchase Order or other Statement of Work, acknowledgement, invoice, or other document unilaterally issued by Contractor be binding upon Company without Company's explicit written acceptance thereof. Any Work performed by Contractor without Company's binding commitment for such Work either via a duly executed or accepted Purchase Order or other Statement of Work under this Agreement shall be at Contractor's sole risk and expense, and Company shall have no obligation to pay for any such Work.

ARTICLE 3 CONDITIONS AND RISKS OF WORK; LABOR HARMONY

Unless the applicable Statement of Work expressly provides otherwise, Contractor agrees that before beginning any Work Contractor shall carefully examine all conditions relevant to such Work and its surroundings, and, unless Contractor notifies Company in writing that it will not perform the Work under such conditions, Contractor shall assume the risk of such conditions and shall, regardless of such conditions, the expense, or difficulty of performing the Work, fully complete the Work for the stated Contract Price applicable to such Work without further recourse to Company. Without limiting the foregoing, Contractor specifically recognizes that Company and other parties may be working concurrently at the site. Information on the site of the Work and local conditions at such site furnished by Company in specifications, drawings, or otherwise is made without representation or warranty of any nature by Company, is not guaranteed by Company, and is furnished solely for the convenience of Contractor. All drawings and other documents, if any, required to be submitted to Company for review shall be submitted in accordance with the mutually agreed to schedule, and, if no schedule applies, such drawings or other documents shall be submitted by Contractor without unreasonable delay. No Work affected by such drawings and other documents shall be started until Contractor is authorized to do so by Company. In case of a conflict between or within instructions, specifications, drawings, schedules, Purchase Order(s) and/or other Statements of Work, Company shall resolve such conflict; and Company's resolution shall be binding on Contractor. Contractor agrees that all labor employed by Contractor, its agents, or subcontractors for Work on the premises of Company shall be in harmony with all other labor being used by Company or other contractors working on Company's premises. Contractor agrees to give Company immediate notice of any threatened or actual labor dispute and will provide assistance as determined necessary by Company to resolve any such dispute. Contractor, its agents, or subcontractors shall remove from Company's premises any person objected to by Company in association with the Work.

ARTICLE 4 COMPANY CHANGES IN WORK

The scope of and conditions applicable to the Work shall be subject to changes by Company from time to time. Such changes shall only be enforceable if documented in a writing executed by Company. Except as otherwise specifically set forth in this Agreement, changes in the scope of or conditions applicable to the Work may result in adjustments in the Contract Price and/or the Work schedule in accordance with this Article 4. If Contractor believes that adjustment of the Contract Price or the Work schedule is justified, whether as a result of a change made pursuant to this Article or as a result of any other circumstance, then Contractor shall (a) give Company written notice of its claim within five (5) business days after receipt of notice of such change or the occurrence of such circumstances and (b) shall supply a written statement supporting Contractor's claim within ten (10) business days after receipt of notice of such change or occurrence of such circumstances, which statement shall include Contractor's detailed estimate of the effect on the Contract Price and/or the Work schedule. Contractor agrees to continue performance of the Work during the time any claim hereunder is pending. Company shall not be bound to any adjustments in the Contract Price or the Work schedule unless expressly agreed to by Company in writing. Company will not be liable for, and Contractor waives, any claims of Contractor that Contractor knew or should have known and that were not reported by Contractor in accordance with the provisions of this Article.

ARTICLE 5 FORCE MAJEURE

Neither party shall be liable to the other for any damages for any failure to perform or for any delays or interruptions beyond that party's reasonable control in performing any of its obligations under this Agreement due to acts of God, fires, floods, earthquakes, riots, war, acts of terrorism, civil insurrection, acts of the public enemy, or acts or failures to act of civil or military authority, unless the time to perform is expressly guaranteed. Contractor shall advise Company immediately of any anticipated and actual failure, delay, or interruption and the cause and estimated duration of such event. Any such failure, delay, or interruption, even though existing on the date of this Agreement or on the date of the start of the Work, shall require Contractor to within five (5) days submit a recovery plan detailing the manner in which the failure, delay, or interruption shall be remedied and the revised schedule. Contractor shall diligently proceed with the Work notwithstanding the occurrence thereof. This Article shall apply only to the part of the Work directly affected by the particular failure, delay, or interruption, and shall not apply to the Work as a whole or any other unaffected part thereof.

ARTICLE 6 CONTRACTOR DELAYS

Time is an important and material consideration in the performance of this Agreement by Contractor. Contractor agrees to cooperate with Company in scheduling the Work so that the project and other activities at Company's site will progress with a minimum of delays. Company shall not be responsible for compensating Contractor for any costs of overtime or other premium time work unless Company has provided separate prior written authorization for additional compensation to Contractor, and, if

Company provides such written authorization, such additional compensation shall be limited to Contractor's actual cost of the premium portion of wages, craft fringe benefits, and payroll burdens. Contractor shall be liable for all failures, delays, and interruptions in performing any of its obligations under this Agreement which are not (a) caused by Company and reported in accordance with Article 4, (b) excused by Article 5, or (c) directed by Company pursuant to Article 7. Contractor shall, without adjustment to completion date or Contract Price, be obligated to make up time lost by such failures, delays, or interruptions. Company may suspend payments under this Agreement during the period of any such failure, delay, or interruption.

ARTICLE 7 COMPANY EXTENSIONS

Company shall have the right to extend schedules or suspend the Work, in whole or in part, at any time upon written notice to Contractor (except that in an emergency or in the event that Company identifies any safety concerns, Company may require an immediate suspension upon oral or written notice to Contractor). Contractor shall, upon receipt of such notice, immediately suspend or delay the Work. Contractor shall resume any suspended Work when directed by Company. If Contractor follows the requirements of Article 4, a mutually agreed equitable adjustment to the Contract Price or to the schedules for payments and performance of the remaining Work may be made to reflect Company's extension of schedules or suspension of the Work. Contractor shall provide Company all information Company shall request in connection with determining the amount of such equitable adjustment.

ARTICLE 8 INSPECTING, TESTING, AUDITING, AND USE OF TOOLS AND EQUIPMENT:

8.1 Right of Inspecting and Testing: Company reserves the right, but shall not be obligated, to appoint representatives to follow the progress of the Work with authority to suspend any Work not in compliance with this Agreement. The appointment or absence of an appointment, of such representatives by Company shall not have any effect on warranties. Acceptance or approval by Company's representative shall not be deemed to constitute final acceptance by Company, nor shall Company's inspection relieve Contractor of responsibility for proper performance of the Work. Inspection by Company's representative shall not be deemed to be supervision or direction by Company of Contractor, its agents, servants, or employees, but shall be only for the purpose of attempting to ensure that the Work complies with this Agreement. In the event Contractor fails to provide Company with reasonable facilities and access for inspection when advised, and if in the opinion of Company, it becomes necessary to dismantle the Work for such inspection, then Contractor shall bear the expenses of such dismantling and reassembly.

8.2 Right of Auditing: Contractor shall maintain complete records relating to any cost-based (i.e., Work not covered by firm prices) components of the Work billed under this Agreement or relating to the quantity of units billed under any unit price provisions of this Agreement (all the foregoing hereinafter referred to as "Records") for a minimum of five years following the latest of performance of, delivery to Company of, or payment by Company for, such Work or units. All such Records shall be open to inspection and subject to audit and reproduction during normal working hours, by Company or its authorized representatives to the extent necessary to adequately permit evaluation and verification of any invoices, payments, time sheets, or claims based on Contractor's actual costs incurred in the performance or delivery of Work under this Agreement. For the purpose of evaluating or verifying such actual or claimed costs, Company or its authorized representative shall have access to said Records at any time, including any time after final payment by Company to Contractor pursuant to this Agreement. All non-public information obtained in the course of such audits shall be held in confidence except pursuant to judicial and administrative order. Company or its authorized representative shall have access, during normal working hours, to all necessary Contractor facilities and shall be provided adequate and appropriate workspace to conduct audits in compliance with the provisions of this Article. Company shall give Contractor reasonable notice of intended audits. The rights of Company set forth in this paragraph shall survive the termination or expiration of this Agreement.

8.3 Use of Tools and Equipment: Company, in its sole discretion, may allow Contractor to use Company's Tools and Equipment for the Work and related activities at designated Company locations. Contractor shall indemnify and hold harmless Company and its Affiliates, including their respective officers, directors, shareholders, agents, members and employees (each an "Indemnified Party"), from and against any and all claims, damages, losses or liabilities arising out of, relating to, or in connection with, the use of Company's Tools and Equipment by Contractor, its agents, servants, employees or subcontractors, and will reimburse each Indemnified Party for all expenses (including attorney's fees and expenses) as they are incurred in connection with investigating, preparing or pursuing or defending any action, claim, suit or investigation or proceeding related to, arising out of, or in connection with, the use of Company's Tools and Equipment by Contractor, its agents, servants, employees or subcontractors, whether or not threatened or pending and whether or not any Indemnified Party is a party. Contractor, on behalf of itself or its agents, affiliates, officers and directors, and all of their predecessors, successors, assigns, heirs, executors and administrators, hereby irrevocably release, discharge, waive, relinquish and covenant not to sue, directly, derivatively or otherwise, Company and/or its Affiliates and each of their respective directors, officers, shareholders, members, partners (general or limited), employees and agents (including, without limitation, its financial advisors, counsel, proxy solicitors, information agents, depositories, consultants and public relations representatives) and all of their predecessors, successors, assigns, heirs, executors or administrators, and all persons acting in concert with any such person, with respect to any and all matters, actions causes of action (whether actually asserted or not), suits, damages, claims, or liabilities whatsoever, at law, equity or otherwise, arising out of, relating to, or in connection with the use of Company's Tools and Equipment by Contractor, its agents, servants, employees or subcontractors. Company shall in no event be liable for any claim whatsoever by or through Contractor, its employees, agents and/or subcontractors or by any third party, for any inoperability or failure of the Tools and Equipment to perform as designed or intended, whether such claim is based in warranty, contract, tort (including

negligence), strict liability or otherwise and whether for direct, incidental, consequential, special, exemplary or other damages. Contractor shall ensure that its employees, agents, subcontractors or servants shall inspect, exercise the appropriate level of care in the use, maintenance and repair of the Tools and Equipment, so as to minimize the incidence of casualties and injuries occurring in connection therewith.

ARTICLE 9 COMPLIANCE WITH APPLICABLE LAWS; SAFETY; DRUG AND ALCOHOL TESTING

9.1 Applicable Laws and Safety: Contractor agrees to protect its own and its subcontractors' employees and be responsible for their Work until Company's acceptance of the entire project and to protect Company's facilities, property, employees, and third parties from damage or injury. Contractor shall at all times be solely responsible for complying with all Applicable Laws and facility rules, including without limitation those relating to health and safety, in connection with the Work and for obtaining (but only as approved by Company) all permits and approvals necessary to perform the Work. Without limiting the foregoing, Contractor agrees to strictly abide by and observe all standards of the Occupational Safety & Health Administration (OSHA) which are applicable to the Work being performed now or in the future, as well as Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy which are both hereby incorporated by reference (Contractor hereby acknowledges receipt of a copy of such Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy) and any other rules and regulations of the Company, all of which are incorporated herein by reference. Contractor also agrees to be bound to any amendments and/or modifications that may be issued in the future by Company from time to time, with respect to Company's Contractor Code of Business Conduct and/or any of its related policies which are the subject of this Article 9. Contractor shall maintain the Work site in a safe and orderly condition at all times. Company shall have the right but not the obligation to review Contractor's compliance with safety and cleanup measures. In the event Contractor fails to keep the work area clean, Company shall have the right to perform such cleanup on behalf of, at the risk of and at the expense of Contractor. In the event Contractor subcontracts any of the Work, Contractor shall notify Company in writing of the identity of the subcontractor before utilizing the subcontractor. Contractor shall require all of its subcontractors to complete the safety and health questionnaire and checklists provided by Company and shall provide a copy of such documents to Company upon request. Contractor shall conduct, and require its subcontractors to conduct, safety audits and job briefings during performance of the Work. In the event a subcontractor has no procedure for conducting safety audits and job briefings, Contractor shall include the subcontractor in its safety audits and job briefings. All safety audits shall be documented in writing by the Contractor and its subcontractors. Contractor shall provide documentation of any and all audits identifying safety deficiencies and concerns and corrective action taken as a result of such audits to Company semi-monthly.

9.2 Hazards and Training: Contractor shall furnish adequate numbers of trained, qualified, and experienced personnel and appropriate safety and other equipment in first-class condition, suitable for performance of the Work. Such personnel shall be skilled and properly trained to perform the Work and recognize all hazards associated with the Work. Without limiting the foregoing, Contractor shall participate in any safety orientation or other of Company's familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Company. Contractor shall accept all equipment, structures, and property of Company as found and acknowledges it has inspected the property, has determined the hazards incident to working thereon or thereabouts, and has adopted suitable precautions and methods for the protection and safety of its employees and the property.

9.3 Drug and Alcohol: No person will perform any of the Work while under the influence of drugs or alcohol. No alcohol may be consumed within four (4) hours of the start of any person's performance of the Work or anytime during the workday. A person will be deemed under the influence of alcohol if a level of 0.02 percent blood alcohol or greater is found. In addition to the requirements of the drug testing program, as set forth in Company's rules and regulations, all persons who will perform any of the Work will be subject to drug and alcohol testing under either of the following circumstances: (i) where the person's performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident which involves off-site medical treatment of any person; and (ii) where Company determines in its sole discretion that there is reasonable cause to believe such person is using drugs or alcohol or may otherwise be unfit for duty. Such persons will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible for administering and conducting drug and alcohol testing, as set forth herein, at Contractor's sole expense. As applicable and in addition to any other requirements under this Agreement, Contractor shall develop and strictly comply with any and all drug testing requirements as required by Applicable Laws.

9.4 Drug and Alcohol Testing: Contractor's employees working on-site shall be required to complete a negative drug and alcohol pre-test within seven (7) days before reporting to work on-site at Big Rivers. The Contractor shall conduct random drug and alcohol testing on ten percent (10%) of their on-site workforce assigned to Big Rivers within thirty (30) days of the start of Work. The Contractor shall subsequently test ten percent (10%) of their on-site workforce assigned to Big Rivers on an on-going monthly basis for the duration of this outage. Big Rivers Corporate Health and Safety will be auditing Contractor compliance with these requirements. Testing costs are the responsibility of the Contractor. Testing should be conducted using a licensed health care facility or FDA-approved testing device consisting of, at a minimum, a 10 panel drug test (including Amphetamines, Barbiturates, Benzodiazepines, Cannabinoids, Cocaine, Methaqualone, Opiate, Phencyclidine, Methadone, and Propoxyphene) suitable for on-site testing and under the supervision of a certified Medical Review Officer. The Contractor is responsible for all testing and administrative costs associated with the random drug and alcohol testing requirement however, it is anticipated that any employee's time away from the job for random testing will occur

during regularly scheduled work hours paid by Big Rivers. The confidentiality of individual test results for your employees should be maintained according to all applicable regulations. Big Rivers Corporate Health and Safety will randomly audit contractor testing programs to ensure requirements are met.

9.5 Office of Compliance: The Company has an Office of Compliance. Should Contractor have actual knowledge of violations of any of the herein stated policies of conduct in this Article 9, or have a reasonable basis to believe that such violations will occur in the future, whether by its own employees, agents, representatives or subcontractors, or by another vendor and/or supplier of the Company and its employees, agents, representatives or subcontractors, or by any employee, agent and/or representative of Company, Contractor has an affirmative obligation to immediately report any such known, perceived and/or anticipated violations to the Company's Office.

ARTICLE 10 STATUS OF CONTRACTOR

Company does not reserve any right to control the methods or manner of performance of the Work by Contractor. Contractor, in performing the Work, shall not act as an agent or employee of Company, but shall be and act as an independent contractor and shall be free to perform the Work by such methods and in such manner as Contractor may choose, doing everything necessary to perform such Work properly and safely and having supervision over and responsibility for the safety and actions of its employees and the suitability of its equipment. Contractor's employees and subcontractors shall not be deemed to be employees of Company. Contractor agrees that if any portion of Contractor's Work is subcontracted, all such subcontractors shall be bound by and observe the conditions of this Agreement to the same extent as required of Contractor. In such event, Company strongly encourages the use of Minority Business Enterprises, Women Business Enterprises, and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that Company recognizes as proper.

ARTICLE 11 EQUAL EMPLOYMENT OPPORTUNITY

To the extent applicable, Contractor shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 CFR § 60-1.4(a) and (c), prohibiting employment discrimination against any employee or applicant because of race, color, religion, sex, or national origin; (ii) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 CFR § 60-250.4 relating to the employment and advancement of disabled veterans and Vietnam era veterans; (iii) Rehabilitation Act regulations set forth in 41 CFR § 60-741.4 relating to the employment and advancement of qualified disabled employees and applicants for employment; (iv) the clause known as "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" set forth in 15 USC § 637(d)(3); and (v) the subcontracting plan requirement set forth in 15 USC § 637(d).

ARTICLE 12 INDEMNITY BY CONTRACTOR

12.1 Indemnity: Contractor shall be responsible for and shall defend, indemnify, and save harmless Big Rivers Electric Corporation from any and all damage, loss, claim, demand, suit, liability, fine, penalty, or forfeiture of every kind and nature, including, but not limited to, costs and expenses, including professional fees and court costs of defending against the same and payment of any settlement or judgment therefor, by reason of:

- a. injuries or deaths to persons,
- b. damages to or destruction of real, personal, or intangible properties,
- c. violations of any other rights asserted against Big Rivers Electric Corporation, including patents, trademarks, trade names, copyrights, contract rights, and easements, or
- d. violations of governmental laws, regulations or orders whether suffered directly by Big Rivers Electric Corporation itself, or indirectly by reason of claims, demands or suits against it, resulting or alleged to have resulted from acts or omissions of Contractor, its employees, agents, business invitees, or other representatives or from their presence on the premises of Big Rivers Electric Corporation, either solely or in occurrence with any alleged joint negligence of Big Rivers Electric Corporation.

Big Rivers Electric Corporation shall be liable for its sole negligence and to the extent of its concurrent negligence. Indemnification of Big Rivers Electric Corporation includes its officers, employees, and agents.

ARTICLE 13 ENVIRONMENTAL

13.1 **Control:** As required under the OSHA Hazard Communication Standard (29 CFR 1910.1200) and certain other Applicable Laws, Contractor or its subcontractors shall provide Material Safety Data Sheets ("MSDS") covering any hazardous substances and materials furnished under or otherwise associated with the Work under this Agreement. Contractor and its subcontractors shall provide Company with either copies of the applicable MSDS or copies of a document certifying that no MSDS are required under any Applicable Laws in effect at the worksite. **No asbestos or lead containing materials shall be incorporated into any Work performed by Contractor or otherwise left on the Work site without the prior written approval of Company.** Contractor and its subcontractors shall be solely responsible for determining if any chemical or material furnished, used, applied, or stored or Work performed under this Agreement is subject to any Applicable Laws.

13.2 **Labeling:** Contractor and its subcontractors shall label hazardous substances and materials and train their employees in the safe usage and handling of such substances and materials as required under any Applicable Laws.

13.3 Releases: Contractor and its subcontractors shall be solely responsible for the management of any petroleum or hazardous substances and materials brought onto the Work site and shall prevent the release of petroleum or hazardous substances and materials into the environment. All petroleum or hazardous substances and materials shall be handled and stored according to Contractor's written Spill Prevention Control and Countermeasures Plan or Best Management Practices Plan as defined under the provisions of the Clean Water Act, as amended, if either such Plan must be maintained pursuant to Applicable Laws. Contractor shall provide secondary containment for the storage of petroleum or hazardous substances and materials. The prompt and proper clean-up of any spills, leaks, or other releases of petroleum or hazardous substances and materials resulting from the performance of the Work under this Agreement and the proper disposal of any residues shall be Contractor's sole responsibility, but Contractor shall give Company immediate notice of any such spills, leaks, or other releases. Contractor shall be solely responsible for the storage, removal, and disposal of any excess or unused quantities of chemicals and materials which Contractor causes to be brought to the Work site.

13.4 Generated Wastes: Unless Company and Contractor expressly agree otherwise in writing, Contractor and its subcontractors shall be solely responsible for any wastes generated in the course of the Work, and Contractor shall handle, store, and dispose of such wastes in accordance with any Applicable Laws.

13.5 Survival: The obligations set forth in this Article shall survive termination or expiration of this Agreement.

ARTICLE 14 INSURANCE

14.1 Contractor's Insurance Obligation: Contractor shall provide and maintain, and shall require any subcontractor to provide and maintain the following insurance (and, except with regard to Workers' Compensation), naming Company as additional insured and waiving rights of subrogation against Company and Company's insurance carrier(s)), and shall submit evidence of such coverage to Company prior to the start of the Work. Seller's liability shall not be limited to its insurance coverage.

14.2 Insurance: Seller shall furnish certificates of insurance, in the name of the Big Rivers Electric Corporation, evidencing insurance coverage of the following types of minimum amounts:

a. Workman's compensation and employer's liability insurance covering all employees who perform any of the obligations under the contract or Purchase Order, in the amounts required by law. If any employer or employee is not subject to the workers compensation laws of the governing state, then insurance shall be obtained voluntarily to provide coverage to the same extent as though the employer or employee were subject to such laws.

b. Comprehensive general liability insurance covering all operation under the contract or Purchase Order: bodily injury - \$1,000,000 each occurrence and aggregate; property damage -

\$1,000,000 each occurrence and aggregate. A combined single limit of \$1,000,000 for bodily injury and property damage liability is acceptable. The insurance may be in a policy or policies of insurance. A primary policy and an excess policy including the umbrella or catastrophe form is acceptable. Coverage should include contractual liability, broad form property damage liability, owners and contractor's protective (independent contractor's) liability, products and completed operations hazard, explosion, collapse, and underground property damage hazard.

c. Automotive liability insurance on all motor vehicles used in conjunction with the contract or Purchase Order, whether owned, non-owned, or hired; bodily injury - \$1,000,000 each person and \$1,000,000 each occurrence; property damage \$1,000,000 each occurrence. A combined single limit of \$1,000,000 for bodily injury and property damage liability is acceptable. The insurance may be in a policy or policies of insurance. A primary policy and an excess policy including the umbrella or catastrophe form is acceptable.

Certificates evidencing the insurance coverage's must be furnished before the commencement of work. If any work to be performed under this contract or Purchase Order is sublet, the contractor will be required to furnish proof of insurance from all subcontractors evidencing equal to or better coverage.

14.3 Quality of Insurance Coverage: The above policies to be provided by Contractor shall be written by insurance companies which are both licensed to do business in the state where the Work will be performed and either satisfactory to Company or having a Best Rating of not less than A-. These policies shall not be materially changed or canceled except with thirty (30) days written notice to Company from Contractor and the insurance carrier. Evidence of coverage, notification of cancellation or other changes shall be mailed to: Attn: Director, Supply Chain, Big Rivers Electric Corp., P.O. Box 24, Henderson, KY 42419.

14.4 Implication of Insurance: Company reserves the right to request and receive a summary of coverage of any of the above policies or endorsements; however, Company shall not be obligated to review any of Contractor's certificates of insurance, insurance policies, or endorsements, or to advise Contractor of any deficiencies in such documents. Any receipt of such documents or their review by Company shall not relieve Contractor from or be deemed a waiver of Company's rights to insist on strict fulfillment of Contractor's obligations under this Agreement.

14.5 Other Notices: Contractor shall provide notice of any accidents or claims at the Work site to Company's Manager, Risk Management at Big Rivers Electric Corporation., P.O. Box 24, Henderson, KY 42419 and Company's site authorized representative.

ARTICLE 15 WARRANTIES

Contractor warrants that:

a. the Work will conform to any applicable Specification / Statement of Work; and any materials supplied in connection therewith shall be new, unused, and free from defect;

- b. the Work will be suitable for the purposes specified by Company and will conform to each statement, representation, and description made by Contractor to Company;
- c. the Work is not and shall not be subject to any encumbrance, lien, security interest, patent, copyright or trademark claims, infringements, or other defects in title; and
- d. Any labor or services performed pursuant to this Agreement shall be performed in a competent, diligent, and timely manner in accordance with the highest professionally accepted standards.

Contractor shall respond in writing to any warranty claim by Company within five (5) business days of the delivery of notice of such claim to Contractor.

ARTICLE 16 OWNERSHIP OF INTELLECTUAL PROPERTY; PATENTS

16.1 Ownership: All inventions, discoveries, processes, methods, designs, drawings, blueprints, information, software, works of authorship and know-how, or the like, whether or not patentable or copyrightable (collectively, "Intellectual Property"), which Contractor conceives, develops, or begins to develop, either alone or in conjunction with Company or others, in connection with the Work, shall be "work made for hire" and the sole and exclusive property of Company. Upon request, Contractor shall promptly execute all applications, assignments, and other documents that Company shall deem necessary to apply for and obtain letters patent of the United States and/or copyright registration for the Intellectual Property and in order to evidence Company's sole ownership thereof.

16.2 Royalties and License Fees: Contractor shall pay all royalties and license fees which may be payable on account of the Work or any part thereof. In case any part of the Work is held in any suit to constitute infringement and its use is enjoined, Contractor within a reasonable time shall, at the election of Company and in addition to Contractor's obligations under Article 12, either (a) secure for Company the perpetual right to continue the use of such part of the Work by procuring for Company a royalty-free license or such other permission as will enable Contractor to secure the suspension of any injunction, or (b) replace at Contractor's own expense such part of the Work with a non-infringing part or modify it so that it becomes non-infringing (in either case with changes in functionality that are acceptable to Company).

ARTICLE 17 RELEASE OF LIENS

Contractor hereby releases for itself and its successors in interest, and for all subcontractors and their successors in interest, any and all claim or right of mechanics or any other type lien upon Company's or any other party's property, the Work, or any part thereof as a result of performing the Work. Contractor shall execute and deliver to Company such documents as may be required by Applicable Laws to make this release effective and shall give all required notices to subcontractors with respect to ensuring the effectiveness of the foregoing release against those parties. Contractor shall secure the removal of any lien that Contractor has agreed to release in this Article within five (5) working days of receipt of written notice from Company to remove such lien. If not timely removed, Company may remove the lien and charge all costs and expenses to Contractor, including without limitation costs of bonding off such lien.

ARTICLE 18 ASSIGNMENT OF AGREEMENT; SUBCONTRACTING

Upon prior written notice given to Company, Contractor shall not, by operation of law or otherwise, assign and/or subcontract any part of the Work or this Agreement without Company's prior written approval. Such approval, if given by Company, shall not relieve Contractor from full responsibility for the fulfillment of any and all obligations under this Agreement. Under any and all circumstances, any permitted assignee of Contractor, whether or not such assignee shall be a division, subsidiary and/or affiliate entity of Contractor, shall also be fully bound by the terms of this Agreement and, furthermore, upon request by Company, each of Contractor and its permitted assignee shall provide sufficient financial information, as determined by Company in its sole discretion, necessary to validate such assignee's credit worthiness and ability to perform under this Agreement.

ARTICLE 19 INVOICES AND EFFECT OF PAYMENTS

19.1 Invoices: Within a reasonable period of time following the end of each calendar month or other agreed period, Contractor shall submit an invoice to Company that complies with this Article. Payments shall be made within thirty (30) days of Company's receipt of Contractor's proper invoice, and, in the event that Company's payment is overdue, Contractor shall promptly provide Company with a notice that such payment is overdue. Contractor's invoices shall designate the Company location which is the responsible party. Such invoices shall reference the contract / Purchase Order number and shall also show labor, material, taxes paid (including without limitation sales and use taxes, duties, fees, and other assessments imposed by governmental authorities), freight, and all other charges (including without limitation equipment rental) as separate items. All invoices shall be submitted with supporting documentation and in acceptable form and quality to Company's authorized representative. Should Company dispute any invoice for any reason, payment on such invoice shall be made within thirty (30) days of the dispute resolution. Payment of the invoice shall not release Contractor from any of its obligations hereunder, including but not limited to its warranty and indemnity obligations. Invoices shall not be delivered with goods, unless expressly authorized by the Company, but all correspondence and packages related to this Agreement shall reference the Purchase Order / contract number assigned by Company.

19.2 Surcharges: All charges must be pre-approved and referenced within the purchase order or contract. Unapproved charges

will not be accepted and will cause the invoice to be rejected and returned. This includes, but is not limited to, surcharges, packing charges, core charges, deposits, and/or any other added costs.

19.3 Taxes (Projects): If Company provides Contractor with an exemption certificate demonstrating an exemption from sales or use taxes in Kentucky, then Contractor shall not withhold or pay Kentucky sales or use taxes to the extent such exemption certificate applies to the Work (such exemption does not and shall not apply to any materials consumed by Contractor in performing the Work). **Contractor agrees that it shall not rely upon Company's direct pay authorization in not withholding or paying Kentucky sales or use taxes.** If Company does not provide Contractor with an exemption certificate demonstrating an exemption from sales or use taxes in Kentucky, Contractor shall be solely responsible for paying all appropriate sales, use, and other taxes and duties (including without limitation sales or use tax with respect to materials purchased and consumed in connection with the Work) to, as well as filing appropriate returns with, the appropriate authorities. To the extent specifically included in the Contract Price, Contractor shall bill Company for and Company shall pay Contractor all such taxes and duties, but Company shall in no event be obligated for taxes and duties not specifically included in the Contract Price or for interest or penalties arising out of Contractor's failure to comply with its obligations under this Section.

Taxes (Goods): Do not bill Kentucky Sales Tax: Blanket Direct Pay Authorization maintained under 103 KAR 31:030, Permit # 108814.

19.4 Billing of Additional Work: All claims for payments of additions to the Purchase Order / Contract Price shall be shown on separate Contractor's invoices and must refer to the specific change order or written authorization issued by Company as a condition to being considered for payment.

19.5 Effect of Payments/Offset: No payments shall be considered as evidence of the performance of or acceptance of the Work, either in whole or in part, and all payments are subject to deduction for loss, damage, costs, or expenses for which Contractor may be liable under any Purchase Order or set-off hereunder. Company, without waiver or limitation of any rights or remedies of Company, shall be entitled from time to time to deduct from any and all amounts owing by Company to Contractor in connection with this Agreement or any other contract with Company any and all amounts owed by Contractor to Company in connection with this Agreement or any other contract with Company.

19.6 Evidence of Payment to Subcontractors: Contractor shall, if requested by Company, furnish Company with a certificate showing names of Contractor's suppliers and subcontractors hereunder, and certifying to Company that said suppliers and subcontractors have been paid in full.

ARTICLE 20 ROUTING OF SHIPMENTS

Company shall have the option of specifying the routing of shipments. If freight is included in the Contract Price, and such specified routing increases Contractor's shipping costs, Contractor shall immediately so notify Company, and should Company still specify the more expensive routing, then Company shall reimburse Contractor for the increase actually incurred thereby.

ARTICLE 21 TERM AND TERMINATION

21.1 Term: This Agreement shall commence on the date set forth above and shall survive in full force and effect until terminated as set forth below. A termination under this Article 21 based on certain Work shall only apply to the Statement of Work that covers such Work. Any Statements of Work that do not relate to such Work shall not be affected by such a termination.

21.2 Termination for Contractor's Breach: If the Work to be done under this Agreement shall be abandoned by Contractor, if this Agreement or any portion thereof shall be assigned by operation of law or otherwise, if the Work or any portion thereof is sublet by Contractor without the permission of Company, if Contractor is placed in bankruptcy, or if a receiver be appointed for its properties, if Contractor shall make an assignment for the benefit of creditors, if at any time the necessary progress of Work is not being maintained, or if Contractor is violating any of the conditions or agreements of this Agreement, or has executed this Agreement in bad faith, Company may, without prejudice to any other rights or remedies it may have as a result thereof, notify Contractor to discontinue any or all of the Work and terminate this Agreement in whole or part. In the event that Section 365(a) of the Bankruptcy Code or some successor law gives Contractor as debtor-in-possession the right to either accept or reject this Agreement, then Contractor agrees to file an appropriate motion with the Bankruptcy Court to either accept or reject this Agreement within twenty (20) days of the entry of the Order for Relief in the bankruptcy proceeding. Contractor and Company acknowledge and agree that said twenty (20) day period is reasonable under the circumstances. Contractor and Company also agree that if Company has not received notice that Contractor has filed a motion with the Bankruptcy Court to accept or reject this Agreement within said twenty (20) day period, then Company may file a motion with the Bankruptcy Court asking that this Agreement be accepted or rejected, and Contractor shall not oppose such motion.

21.3 Effect of Termination for Contractor's Breach: From the effective date of such termination notice, Contractor shall vacate the site, whereupon Company shall have the right but not the obligation to take possession of the Work wherever located, and Contractor shall cooperate with Company and cause Contractor's subcontractors to cooperate with Company so that Company can effect such possession. In obtaining replacement services, Company shall not be required to request multiple bids or obtain the lowest figures for completing the Work and may make such expenditures as shall best accomplish such completion and are reasonable given the circumstances. The expenses of completing the Work in excess of the unpaid portion of the Contract Price, together with any damages suffered by Company, shall be paid by Contractor, and Company shall have the right to set off such amounts from amounts due to Contractor.

21.4 Termination for Company’s Convenience: Company may terminate this Agreement or one or more Statements of Work in whole or in part for its own convenience by thirty (30) days written notice at any time. In such event, Company shall pay Contractor all direct labor and material costs incurred on the Work that is subject to such Termination prior to such notice, plus any reasonable unavoidable cancellation costs which Contractor may incur as a result of such termination, plus indirect costs or overhead on the portion of the Work completed, computed in accordance with generally accepted accounting principles less salvage value. As an alternative to salvage value reduction, Company shall have the right in its sole discretion to take possession of all or part of the Work.

ARTICLE 22 PUBLICITY

Contractor shall not issue news releases, publicize, or issue advertising pertaining to the Work or this Agreement without first obtaining the written approval of Company.

ARTICLE 23 CONFIDENTIAL INFORMATION

All information relating to the Work or the business of Company, including, but not limited to, drawings and specifications relating to the Work, and customer information, shall be held in confidence by Contractor and shall not be used by Contractor for any purpose other than for the performance of the Work or as authorized in writing by Company. In the event that the Contractor assigns the work to one or more subcontractors, a signed confidentiality agreement between the Contractor and each subcontractor(s) will be provided to the Company prior to the provision of any information described in the immediately preceding sentence or the performance of any Work by the subcontractor. All drawings, specifications, or documents furnished by Company to Contractor or developed in connection with the Work shall either be destroyed or returned to Company (including any copies thereof) upon request at any time.

ARTICLE 24 MISCELLANEOUS

24.1 Waiver: No waiver by Company of any provision herein or of a breach of any provision shall constitute a waiver of any other breach or of any other provision.

24.2 Headings: The headings of Articles, Sections, paragraphs, and other parts of this Agreement are for convenience only and do not define, limit, or construe the contents thereof.

24.3 Severability: If any provision of this Agreement shall be held invalid under law, such invalidity shall not affect any other provision or provisions hereof which are otherwise valid.

24.4 State Law Governing Agreement: This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky, without regard to its principles of conflicts of laws.

24.5 Enforcement of Rights: Company shall have the right to recover from Contractor all expenses, including but not limited to fees for and expenses of inside or outside counsel hired by Company, arising out of Contractor’s breach of this Agreement or any other action by Company to enforce or defend Company’s rights hereunder.

24.6 No Third Party Beneficiaries: Except for Contractor and Company, there are no intended third party beneficiaries of this Agreement and none may rely on this Agreement in making a claim against Company.

24.7 Notices: All notices and communications respecting this Agreement shall be in writing, shall be identified by the contract number, and shall be addressed as follows (which address either party may change upon five (5) days prior notice to the other party).

To Company:	To Contractor:
Big Rivers Electric Corp.	_____
Attn: Director, Supply Chain	_____
P.O. Box 24	_____
Henderson, Kentucky 42419	_____

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date set forth in the introductory paragraph of this Agreement.

COMPANY:	CONTRACTOR
Big Rivers Electric Corp.	_____
_____	_____

Name (Please Print)

Name (Please Print)

Title

Title

Signature

Signature

Date

Date

APPENDIX B

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0059. The time required to complete this information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

EQUAL OPPORTUNITY ADDENDUM
To Be Inserted in Construction Contracts and
Subcontracts, and Materials Contracts and Purchase Orders

PART I

The Contractor represents that:

It has does not have 100 or more employees, and if it has, that

It has has no furnished the Equal Employment Opportunity -- Employers Information Report EEO-1 Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Contractor agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Contractor agrees that if -it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than \$10,000, the Contractor will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

PART II

CERTIFICATION OF NONSEGREGATED FACILITIES

The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its -establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest-rooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

PART III

EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race,

color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965- and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with- the nondiscrimination clauses of this contract or with any of the said rules regulations or orders, this contract may be canceled, terminated or suspended in whole- or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11,246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The term "Contractor" shall also mean "Bidder" or " Seller" in case of materials and equipment contracts and purchase orders, and "Subcontractor" in the case of subcontracts.

The provisions of this addendum are not applicable to any contract or subcontract not exceeding \$10,000.

This addendum supersedes the similar representations and provisions which may be contained in the contract form to which this addendum is attached. The Contractor may disregard the superseded representations and provisions.

CONTRACTOR

By _____

TITLE

DATE

APPENDIX C

U.S. DEPARTMENT OF AGRICULTURE

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name(s) and Title(s) of Authorized Representative(s)

Signature(s)

Date

Form AD-1048 (1/92)

APPENDIX D

UNITED STATES DEPARTMENT OF AGRICULTURE

CERTIFICATION REGARDING LOBBYING - CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this

Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

UNITED STATES DEPARTMENT OF AGRICULTURE

NOTICE TO APPLICANTS - CERTIFICATION/DISCLOSURE REQUIREMENTS RELATED TO LOBBYING

Section 319 of Public Law 101-121 (31 U.S.C.), signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. Certain provisions of the law also apply to Federal commitments for loan guarantees and insurance; however, it provides exemptions for Indian tribes and tribal organizations.

Effective December 23, 1989, current and prospective recipients (and their sub-tier contractors and/or subgrantees) will be prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) on or after December 23, 1989, the law requires recipients and their sub-tier contractors and/or subgrantees to: (1) certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their sub-tier contractors or subgrantees will pay with profits or **nonappropriated** funds on or after December 23, 1989; and (3) file quarterly updates about the use of lobbyists if materials changes occur in their use. The law establishes civil penalties for noncompliance.

If you are a current recipient of funding or have an application, proposal, or bid pending as of December 23, 1989, the law will have the following immediate consequences for you:

- You are prohibited from using appropriated funds (other than profits from Federal contracts) on or after December 23, 1989, for lobbying Congress or any Federal agency in connection with a particular contract, grant, cooperative agreement, or loan;
- you are required to execute the attached certification at the time of submission of an application or before any action in excess of \$100,000 is awarded; and
- you will be required to complete the lobbying disclosure form if the disclosure requirements apply to you.

Regulations implementing Section 319 of Public Law 101-121 have been published as an Interim Final Rule by the Office of Management and Budget as Part III of the February 26, 1990, **Federal Register** (pages 6736-6746).

APPENDIX E



Your Touchstone Energy® Cooperative 

CONTRACTOR

SAFETY CREDENTIALS

ASSESSMENT

PROGRAM

Document 3.0

Big Rivers Electric Corporation Contractor Safety Rules

Company Name: _____

Address: Street/PO Box _____ City _____ State _____ Zip _____

Contact Person Name (Authorized Representative)	Signature	Email	Phone
--	-----------	-------	-------

(If someone other than the “Contact Person” is to receive the C-SCAP pocket card template, please provide the following)

Name: _____ **Email:** _____ **Phone:** _____

Big Rivers Electric Corporation (BREC) is committed to: maintaining a proactive safety, health, and loss prevention program designed to protect life and property; providing a work environment where recognized health/safety hazards are controlled; and in compliance with all applicable regulatory and legal requirements. BREC holds employee and Contractor safety as one of its most important corporate values. Accordingly, no job, operating condition, or urgency of service can ever justify endangering the health and well-being of any employee or Contractor.

These rules do not replace the contractors’ existing safety and health program(s), provided that their program(s) meet or exceed these and any additional site specific minimum requirements. Contractors’ employees’ not following applicable rules will be subject to removal from the job site.

The contractor is required to comply with all applicable federal and state safety laws and regulations. The contractor is responsible for conducting their work and activities safely. BREC expects and requires that contractors continuously update their employees with respect to safety issues relevant to the work and to take immediate corrective action when their employees violate safety rules or procedures.

Section I. General Safety Requirements

- Contractors will comply with all applicable federal and state regulations and BREC’s safety rules and programs relevant to the work performed.
- Contractors will be responsible for providing their employees, and any subcontracted employers with all information provided by BREC regarding:
 - Occupational health and safety;
 - Exposure to atmospheric health, serious physical or chemical hazards; and
 - Precautionary measures and procedures for performing the work.
- BREC’s policy prohibits the Contractor’s employees, agents or representatives from:
 - Consuming or possessing alcohol and/or non-prescription drugs while on BREC’s job sites, including the parking lots;
 - Reporting to perform work on BREC’s job sites with unauthorized drugs on his/her person or while under the influence of drugs or alcohol.
 - Performing work that involves operating heavy equipment or working at elevations when using prescribed medication that can cause drowsiness or otherwise impair the employee’s ability to perform the work in a safe manner.
- The following conduct is prohibited by BREC at and about the job site:
 - Theft, horseplay, gambling, sabotage or attempted sabotage.
 - Threatening, intimidating or abusing employees, customers, vendors or guests of BREC.
 - Fighting or creating or inciting a disturbance.
- Firearms and other weapons are not allowed on BREC’s job sites and/or facilities.
- BREC has a smoke-free policy within all its buildings.
- Attendance at job site safety meetings is required of the Contractor at the discretion of BREC’s designated representative. At least one representative of the Contractor will attend job safety meetings.

Document 3.0

8. The Contractor will report any Contractor employee Incident requiring medical attention to BREC's authorized representative immediately and provide a copy of the first report of injury. All injuries, requiring medical attention, must be reported within One (1) hour, even during off shifts.
9. Any Contractor's employee, who appears sick, extremely tired, or otherwise unable to perform his/her job in a safe manner will be reported to the Contractor's supervision for evaluation and possibly removed from the job site.
10. Contractors are responsible for establishing control measures to protect their employees, and/or employees under their control, from exposure to hazards (chemical, atmospheric health and physical) present at the job site.
11. The Contractor must provide electrical ground fault protection for employees using construction power (temporary branch circuits to include extension cords) through the use of approved ground fault circuit interrupters (GFCI). Additionally, Contractors must provide ground fault protection when using permanent facility power and using cord and plug equipment in wet or damp locations. Applies to 120-volt single phase 15 and 20-ampere receptacle outlets.
12. Contractor employees will work in full pants and shirts. Shorts and tank tops are not permitted unless otherwise specified. Some jobs will require wearing 100% cotton long sleeve shirts and pants, fire resistant (FR) clothing or ATPV (Arc Thermal Performance Value) rated clothing.
13. Contractors shall not transport employees in the beds of trucks.
14. All Contractors must receive authorization from BREC's authorized representative before performing work in areas posted as "**Dangerous or Hazardous.**"
15. Contractors will provide a competent person to the job site as required by state and federal OSHA standards.
16. Contractors shall provide at a minimum, one bilingual employee for every maximum, group of eight non-English speaking employees. Any deviation requires approval from the BREC President & CEO, plant General Manager, or Vice President.
17. All contractors conducting work that require the use of a respirator or where there may be potential for atmosphere contamination must be clean-shaven and provide a documented respirator fit test.

Print and sign name on following line to show understanding of the above;

DATE: _____

Section II. Hazard Specific Requirements

The Contractor will ensure that the Contractor's employees are properly equipped and trained to comply with Federal and State regulations, and BREC standards; including but not limited to the following:

- **Personal Protective Equipment (PPE)**
- **Fall Management (personal fall arrest systems, scaffolding, walking work surfaces, ladders and floor and wall openings)**
- **Chemical Safety/Hazard Communication**
- **Hazardous Waste and Chemical Spills**
- **Hot Work (Cutting and Welding)**
- **Asbestos**
- **High Voltage**
- **Control of Energy Sources (Lockout/Tagout)**
- **Trenching**
- **Confined Space Entry**

Section III. Enforcement of Safety Rules

The Contractor is responsible for the health and safety of employees under their control. Enforcement of these rules, as well as other recognized safety rules, is the responsibility of the Contractor. The evaluation does not constitute acceptance of the Contractor's safety programs or work practices nor, in any way relieve a Contractor of full responsibility for meeting all appropriate OSHA and other regulations to ensure the safety of employees under their control. Whenever there is a jurisdictional question of which standard will apply (e.g. Big Rivers or the Contractor's), the most stringent safety requirement will take precedence. The Contractor must

Document 3.0

document exceptions and attach them to this form. Contractors and their employees who do not follow these rules are subject to removal from this project, as well as being banned from future projects/contracts.

Document 3.0
Contractor Safety and Health Questionnaire and Checklist

Big Rivers Electric Corporation is committed to providing a safe and healthy workplace for its employees and the employees of Contractors. To qualify to perform work at BREC, companies must complete the Contractor Safety Credentials Assessment Program. To begin that process companies shall provide BREC the following information and agree to obtain the requested information from all subcontractors utilized, and to provide it upon request.

Please provide a brief description of the work activities to be conducted for Big Rivers: (Must be completed)

In the table below, provide the three most recent full years of history for the area or region for which this questionnaire applies. In addition, attach copies of applicable OSHA 300A Forms & verification of your workers comp. Experience Modification Rate (EMR)/discount information. Applications without copies of 300A forms and/or EMR may be delayed until received.

ITEM	DESCRIPTION	2018	2017	2016
A	Interstate Experience Modification Rate (EMR)			
B	Recordable Injury Incident Rate (RIR) = (# of Injuries x 200,000 ÷ Total Hours Worked)			
C	Lost Workday Injury and Illness Incident Rate (LWDIR) = (# of Lost-time Injuries and Illnesses x 200,000 ÷ Total Hours Worked)			
D	NAICS (North American industry Classification System) Code			
	Using the OSHA 300 Logs from the facilities providing labor, please provide the following:			
E	Severity Rate (Total days lost due to injury or industrial illness) = (Total # days away from work x 200,000 ÷ Total Hours Worked)			
F	Number of Injuries and Illnesses (Columns 1-6 of OSHA 300 Log)			
G	Number of Lost Workday Cases (Column H of OSHA 300 Log)			
H	Number of Injury Related Fatalities (Column G of OSHA 300 Log)			
I	Employee hours worked in each of the last 3 years (If unknown use # of employees x 2080)			
J	Total number of full time employees in each of the last 3 years			
K	Total number of temporary employees in each of the last 3 years			

Document 3.0

If more space is needed, please use reverse side(s) or separate sheet(s)

	Question	Y / N	Comments
1.	Does your company have a written safety and health program?		
2.	Does your company have a written Hazard Communication Program? Is it available for review?		
3.	Does your company have a written environmental compliance assurance program? Is it available for review?		
4.	Who in your company is responsible for coordinating your safety and health program? Name/Job Title: _____ Phone # () _____ Is safety and health a full time responsibility for this position?		
5.	Who conducts OSHA training for your employees? Name/Job Title: _____ Is this person an employee of your company or a consultant?		
6.	Has your company received a citation(s) from a regulatory agency during the last three years? If yes, describe citation(s). (Use additional sheet(s) if necessary)		
7.	Does your company perform safety audits/reviews? If yes, are safety audits documented?		
8.	Who reviews the safety audit/review and how often? Job Title: _____		
9.	Does your company provide/require the following? Hard Hats (ANSI-Z89.1)(29 CFR 1910.135) Foot Protection (ASTM-F2413)(29 CFR 1910.136) Eye Protection (ANSI-Z41.1)(29 CFR 1910.133) Hand Protection (ANSI-Z41.1)(29 CFR 1910.138) Hearing Protection (ANSI-Z41.1)(29 CFR 1910.95) Fall Protection (ANSI-Z41.1)(29 CFR 1926.501 or 1910.66) Respiratory Protection (ANSI-Z41.1)(29 CFR 1910.134) BREC does not provide PPE (Personal Protective Equipment) to Contractor personnel		
10.	In addition to regulatory required Personal Protective Equipment, what other PPE is required or supplied? If any, please describe or list: _____ _____		
11.	Does your company use temporary employees?		

Document 3.0

	<p>If yes, what percentage of the total hours worked last year was performed by temporary employees? _____ %</p> <p>If you are awarded a contract for work at BREC, what percentage of the estimated hours will be performed by temporary employees? _____ %</p> <p>How do you ensure that temporary employees have the required OSHA training?</p>		
12.	<p>Does your company have scheduled documented employee safety meetings?</p> <p>If yes, how often? _____</p>		
13.	<p>Who conducts the safety meetings?</p> <p>Job Title: _____</p>		
14.	<p>What manager(s)/supervisor(s) participate in the safety meetings?</p> <p>Job Titles: _____</p>		
15.	<p>Are meetings reviewed and critiqued by manager(s)/supervisor(s)?</p>		
16.	<p>Does your company hold on-site (tailgate/toolbox) safety meetings?</p> <p>If yes, how often? _____</p> <p>Who conducts these (tailgate/toolbox) safety meetings?</p> <p>Job Titles: _____</p> <p>Is documentation available for review?</p>		
17.	<p>Does your company have policy requiring written accident/incident reports?</p> <p>Are follow-up investigations conducted?</p> <p>If yes, are corrective actions taken to prevent future incidents?</p>		
18.	<p>Does your company document, investigate and discuss near miss incidents?</p> <p>If yes, is documentation available for review?</p>		
19.	<p>Are accident/incident reports reviewed by manager(s)/supervisor(s)?</p>		
20.	<p>Does your company have a written policy regarding drug screening or testing of your employees?</p> <p>If yes, is a copy available for review?</p>		

21.	<p>Indicate the circumstances in which your company employees may be subject to drug screening.</p> <p style="text-align: right;"> Employment Random Probable Cause Post-Incident Periodic Other </p>		
22.	<p>Does your company have a policy dealing with emergency actions to be taken should a chemical spill occur?</p>		
23.	<p>Are all documents, pertaining to this questionnaire available for auditing? If no, please explain.</p>		
24.	<p>Does your company use subcontractors? If you do use sub-contractors, do you qualify subcontractors based on their ability to address safety, health and environmental requirements? Do you verify that subcontractors meet regulatory requirements?</p>		
25.	<p>Do you employ "non-English" speaking persons or persons with limited English skills? If so, how do you insure that OSHA and your in-house safety programs are adequately communicated?</p>		
26.	<p>If you use or may use sub-contractors to assist with work conducted at Big Rivers Electric Corporation, please explain how you will verify that the employees of that sub-contractor have OSHA training that is commensurate for the tasks which they will be undertaking.</p>		
27.	<p>If you use or may use employees from a temporary labor pool or employees from a union hall, please explain how you will verify that the individuals have OSHA training that is commensurate for the tasks which they will be undertaking.</p>		
28.	<p>If you use or may use the services of employees from a different division of your corporation, please explain how you will verify that the individuals have OSHA training that is commensurate for the tasks which they will be undertaking.</p>		
29.	<p>Does your company provide and require the use of Class 2 & 3 traffic control garments to comply with work zone traffic control requirements?</p>		
30.	<p>Does your company require its employees to use arc protective clothing while conducting work in the vicinity of energized parts? If yes; what is the ATPV (Arc Thermal Performance Value) rating of the following items within your protective clothing system?</p> <p style="text-align: right;"> Shirt Pants Jacket/Coat Cover-all/Bibs Rain gear Traffic Control Garment </p> <p>Other: (please list) _____</p> <p>Have your employees received training on the hazards of electrical arcs? Have your employees received training on the proper use of your company arc protective clothing system?</p>		

Big Rivers Electric Corporation Contractor Health and Safety Training Acknowledgement Form

Please respond to all applicable items with “YES or NO”

PROGRAMS/TRAINING	REFERENCE SOURCE	WRITTEN PROGRAM Y/N	EMPLOYEES ARE TRAINED Y/N
Asbestos (awareness)	OSHA 29 CFR 1926.1101		
Asbestos Class I, II, and III (abatement)	OSHA 29 CFR 1926.1101		
Asbestos Class I, II and III (removal supervisor)	OSHA 29 CFR 1926.1101		
Bloodborne Pathogens	OSHA 29 CFR 1910.1030		
Chainsaw Safety	OSHA 29 CFR 1910.266		
Communications Facilities	OSHA 29 CFR 1910.269		
Confined Space Entry	OSHA 29 CFR 1910.146		
Crawler, Locomotive and Truck Cranes	OSHA 29 CFR 1910.180		
Daily Equipment Inspection/Walk-Around	OSHA 29 CFR 1910.1000; 29 CFR 1926.1101		
Electrical Safety	OSHA 29 CFR 1910.269		
Electrical Safety	OSHA 29 CFR 1910.332		
Emergency Action Plan	OSHA 29 CFR 1910.38		
Excavations	OSHA 29 CFR 1926.651		
Explosives	OSHA 29 CFR 1910.109		
Fall Protection	OSHA 29 CFR 1926.500		
Fire Extinguisher	OSHA 29 CFR 1910.157		
First Aid/CPR	OSHA 29 CFR 1910.151		
Forklifts	OSHA 29 CFR 1910.178		
Hand and Portable Power Tools and Equipment – General	OSHA 29 CFR 1910.241, 242, 243		
Hazard Communication	OSHA 29 CFR 1910.1200		
Hazwoper - Awareness Level	OSHA 29 CFR 1910.120		
Hazwoper 8 Hour	OSHA 29 CFR 1910.120		
Hazwoper 24 Hour	OSHA 29 CFR 1910.120		
Hazwoper 40 Hour	OSHA 29 CFR 1910.120		
Hazwoper Supervisor 8 Hour	OSHA 29 CFR 1910.120		
Hearing Conservation	OSHA 29 CFR 1910.95		
Incipient Fire Fighting	OSHA 29 CFR 1910.157		
Jacks	OSHA 29 CFR 1926.305		
Ladder Safety	OSHA 29 CFR 1926.1060		
Lead Worker	OSHA 29 CFR 1926.62		
Lead Supervisor	OSHA 29 CFR 1926.62		
Line-Clearance Tree Trimming Operations	OSHA 29 CFR 1910.269		
Lockout/Tagout Affected/Authorized Person	OSHA 29 CFR 1910.147		
Lockout/Tagout Affected/Authorized Person	OSHA 29 CFR 1910.269		

Mobile Cranes	OSHA 29 CFR 1926.550		
New Employee Orientation	OSHA 29 CFR 1910.119		
PROGRAMS/TRAINING	REFERENCE SOURCE	WRITTEN PROGRAM Y/N/NA	EMPLOYEES ARE TRAINED Y/N/NA
Overhead and Gantry Cranes	OSHA 29 CFR 1910.179		
Overhead Lines	OSHA 29 CFR 1910.269		
Oxygen-Fuel Gas Welding and Cutting	OSHA 29 CFR 1910.253		
Personal Protective Equipment	OSHA 29 CFR 1910.132		
Process Safety Management	OSHA 29 CFR 1910.119		
Radiation Awareness	902 KAR 100:019		
Respiratory Protection	OSHA 29 CFR 1910.134		
Rigging, Equipment & Material Handling	OSHA 29 CFR 1926.251		
Scaffolding (erector)	OSHA 29 CFR 1926.451		
Scaffolding (user)	OSHA 29 CFR 1926.451		
Servicing Rim Wheels	OSHA 29 CFR 1910.177		
Substations	OSHA 29 CFR 1910.269		
Trenching and Shoring	OSHA 29 CFR 1926.650; 651; 652; and Subpart P		
Underground Electrical Installations	OSHA 29 CFR 1910.269		
Work Zone Traffic Control	Manual on Uniform Traffic Control Devices		
Working on or Near Exposed Energized Parts	OSHA 29 CFR 1910.269		

Please provide any additional information that you feel would be valuable in this process:

(To be completed by Big Rivers Electric Corporation)

Company Name: _____ **Approved: Yes** _____ **No** _____

Sign & Date: _____
ET&S Representative


Sebree Representative

Wilson/Coleman Representative

Corporate Representative

APPENDIX F



Your Touchstone Energy® Cooperative 

BID CLARIFICATIONS AND/OR EXCEPTIONS

Bidder offers the following clarifications and/or exceptions taken to any requirement or provision of this Request For Quotation and any proposed modifications or replacement language for each clarification or exception (If none, so state)

Bidder understands that unless itemized above, no other clarifications or exceptions to this Request for Quotation are taken by the Bidder.

Bidder

Signature of Executing Party

Date

APPENDIX G



New Vendor/Vendor Information Change Form

All fields highlighted in **GRAY** indicate areas where information is **REQUIRED**.

1. Vendor Information

Vendor Name – Please enter company name. This field is limited to 35 characters.

A) Corporate Headquarters:

Street:	35 Characters or less
Town or City:	35 Characters or less
Zip/Postal Code:	
State/Prov.:	
Country:	
Telephone:	
Facsimile:	
Email address:	
Website:	

B) Ordering Address (where to send purchase orders)

Street:	35 Characters or less
Town or City:	35 Characters or less
Zip/Postal Code:	
State/Prov.:	
Country:	
Telephone:	
Email address:	
Sales Contact:	

--

C) Remit-To Address (where to send invoice payments)

Street:	35 Characters or less
Town or City:	35 Characters or less
Zip/Postal Code:	
State/Prov.:	
Country:	
Accounts Receivable Contact :	
Telephone:	

DUNS Numbering	(Data Universal Numbering System)
----------------	-----------------------------------

Apply for a [D-U-N-S Number](#), the industry standard for business listings

Do you accept Credit Cards? Yes _____ No _____
--

Definitions:

Corporate Headquarters – Most active office for your company that does business with Big Rivers Electric Corporation (BREC).

Ordering Address – Location(s) to which you wish BREC to SEND purchase orders. Use attachments as necessary.

Remit-to Address – Location to which you wish BREC to SEND invoice payments. Please attach copy of invoice for reference.

D) Payment Terms (If different then Net 30)

--

E) Supplier Type (Select one of the following)

<p>Attorney/Legal Services <input type="checkbox"/></p> <p>Charity/Contribution <input type="checkbox"/></p> <p>Coal/Natural Gas <input type="checkbox"/></p> <p>Contractor (Services Only) <input type="checkbox"/></p> <p>Professional Fees/Dues <input type="checkbox"/></p> <p>Retailer (Materials only) <input type="checkbox"/></p> <p>Other <input type="checkbox"/></p> <p>Specify Products and Services _____</p> <p>If you are a United States-based company, are you qualified as a Small Business concern? <input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>Is your Company union affiliated? <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, which union affiliated organization _____</p>	<p>Is your business one of the following (If yes, please include copy of certification) Check all the applicable categories:</p> <p>MBE <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>WBE <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Small Disadvantaged Business (SDB)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Veteran <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Service Disabled Veteran <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Hub Zone <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>Under 15 U.S.C. 645(d), any person who misrepresents its size status shall (1) be punished by a fine, imprisonment, or both; (2) be subject to administrative remedies; and (3) be ineligible for participation in programs conducted under the authority of the Small Business Act.</p>		
<p>_____ Signature of person providing information</p>	<p>_____ Title</p>	<p>_____ Date</p>
<p>Indicate the following special classifications:</p> <p><input type="checkbox"/> Standard Industry Code (SIC Code): _____</p> <p><input type="checkbox"/> North American Industry Code Standard (NAICS Code): _____</p> <p><input type="checkbox"/> European Classification Code (eClass Code): _____</p>		

F) Contact Information

Who can we contact if we have questions concerning your qualifications and/or this submission?

Name: _____

Telephone: _____

E-mail: _____

Who can we contact "AFTER HOURS" for EMERGENCY SERVICE requirements?

Name: _____

Telephone: _____

E-mail: _____

The following section is to be completed by BREC personnel only.

Date of Input:	Input By:			
Date of Certification:	Type of Certification:	GSA	PSA	Qualified
Is this Vendor Request for One Time use only? * Yes _____ No _____ *If yes, this vendor will have a future inactive date inserted at time of creation based on the Payment Terms.				

G) If you are a Foreign-based company, indicate your TAX/VAT Registration:

H) If you are a United States-based company, complete Form W-9 as indicated. We are required by law to obtain a tax identification number when making a reportable payment to you. Failure to provide this information could result in a tax withholding of 31% and you may be subject to a \$50 penalty imposed by the I.R.S. In completing Form W-9, be sure that you CHECK APPROPRIATE BOX FOR CORPORATION/SOLE PROPRIETORSHIP / PARTNERSHIP OR OTHER. If individual or sole proprietorship, please list individual's name (please print) and Social Security Number. Make sure that YOUR TAX ID NUMBER IS 9 DIGITS.

The Business Name listed here will appear on purchase orders and checks.

APPENDIX H

Form W-9 (Rev. October 2007) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give form to the requester. Do not send to the IRS.
Print or type see specific instructions on page 2	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see Instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number : : : : : :	OR
Employer identification number : : : : : :	

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶
	Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such businesses. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

APPENDIX I
Reciprocal Preference



Bid #: _____

RECIPROCAL PREFERENCE: (Effective February 4, 2011)

In accordance with Kentucky Revised Statutes (KRS) 45A.490 to 45A.494, prior to a contract being awarded to a bidder on a public agency contract, a resident bidder of the Commonwealth of Kentucky shall be given a preference over a nonresident bidder registered in any state that gives or requires a preference over bidders from the other state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.

Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its bid response a notarized affidavit (form attached) that affirms that it meets the criteria to be considered a resident bidder as set forth in KRS 45A.494(2). A nonresident bidder shall submit to HMPL, along with its bid response, a copy of its Certificate of Authority to transact business in the Commonwealth of Kentucky as filed with the Kentucky, Secretary of State. The location of the principal office identified therein shall be deemed the state of residency for that bidder. If the bidder is not required by law to obtain said Certificate, the state of residency for that bidder shall be deemed to be that which is identified in its mailing address as provided in its bid.

Bidders must select and check one option below and return this document with bid.

This company is a resident bidder of the Commonwealth of Kentucky or this company is a nonresident bidder meeting the following requirements:

1. Is authorized to transact business in the Commonwealth; and
2. Has for one year prior to and through the date of advertisement
 - a. Filed Kentucky corporate income taxes; and
 - b. Made payments to the Kentucky unemployment insurance fund established in KRS 341.49; and
 - c. Maintained a Kentucky workers' compensation policy in effect.

The Required Affidavit for Bidders, Offerors and Contractors Claiming Resident Bidder Status form attached must be completed and returned with bid.

This company is not a resident bidder nor does it meet the requirements as listed in Items 1 and 2 above for nonresident bidders claiming resident status in the Commonwealth.

What is your state of residency? _____

Does your state grant "Contract Bid Preference? (circle one) No / Yes

What is the Preference Percentage for your state? _____ %

Company

Signature

Date

Printed Name



Bid #: _____

REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS
CLAIMING RESIDENT BIDDER STATUS

FOR BIDS AND CONTRACTS IN GENERAL:

The bidder or offeror hereby swears and affirms under penalty of perjury that, in accordance with KRS 45A.494(2), the entity bidding is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:

1. Is authorized to transact business in the Commonwealth; and
2. Has for one year prior to and through the date of advertisement
 - a. Filed Kentucky corporate income taxes; and
 - b. Made payments to the Kentucky unemployment insurance fund established in KRS 341.49; and
 - c. Maintained a Kentucky workers' compensation policy in effect.

Henderson Municipal Power & Light reserves the right to request documentation supporting a bidder's claim of Resident Bidder Status. Failure to provide such documentation upon request may result in disqualification of the bidder or contract termination.

Signature Printed Name

Title Date

Company Name _____

Address _____

Subscribed and sworn to before me by:

(Affiant) (Title)

of _____ this _____ day of _____, 20____
(Company Name)

Notary Public My commission expires: _____

[seal of notary]

APPENDIX J
Drawings

Big Rivers Elec Corporation

HMP&L Station Two

PRE BID OPENING

RFQ # H-19-101A

H-1 & H-2 INSULATION REMOVAL & ABESTOS ABATEMENT

May 30 , 2019, 10:00 A.M. CST

Name	Company	Title	Telephone #/Fax #	
<p><i>mh</i> Mary Holmes</p>	<p>BREC</p>	<p>Procurement Agent II</p>		
<p><i>GB</i> Gary Bunch</p>	<p>BREC</p>	<p>Maintenance Manager</p>		
<p><i>JIM BECK</i></p>	<p><i>GENERAL INSULATION</i></p>	<p><i>SAFETY</i></p>		
<p><i>Lee Bearden</i></p>	<p><i>INcorp</i></p>	<p><i>PM/Estimator</i></p>		
<p><i>Bryan C. Lewis</i></p>	<p><i>NPS</i></p>	<p><i>PM/Estimator</i></p>		
<td data-bbox="558 933 1010 1027"> <td data-bbox="1010 933 1425 1027"> <td data-bbox="1425 933 1856 1027"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 933 2100 1027"> <p>/</p> </td> </td></td>	<td data-bbox="1010 933 1425 1027"> <td data-bbox="1425 933 1856 1027"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 933 2100 1027"> <p>/</p> </td> </td>	<td data-bbox="1425 933 1856 1027"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 933 2100 1027"> <p>/</p> </td>	<p>Ofc:</p> <p>Fax:</p>	<p>/</p>
<td data-bbox="558 1027 1010 1122"> <td data-bbox="1010 1027 1425 1122"> <td data-bbox="1425 1027 1856 1122"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1027 2100 1122"></td> </td></td>	<td data-bbox="1010 1027 1425 1122"> <td data-bbox="1425 1027 1856 1122"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1027 2100 1122"></td> </td>	<td data-bbox="1425 1027 1856 1122"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1027 2100 1122"></td>	<p>Ofc:</p> <p>Fax:</p>	
<td data-bbox="558 1122 1010 1216"> <td data-bbox="1010 1122 1425 1216"> <td data-bbox="1425 1122 1856 1216"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1122 2100 1216"></td> </td></td>	<td data-bbox="1010 1122 1425 1216"> <td data-bbox="1425 1122 1856 1216"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1122 2100 1216"></td> </td>	<td data-bbox="1425 1122 1856 1216"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1122 2100 1216"></td>	<p>Ofc:</p> <p>Fax:</p>	
<td data-bbox="558 1216 1010 1310"> <td data-bbox="1010 1216 1425 1310"> <td data-bbox="1425 1216 1856 1310"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1216 2100 1310"></td> </td></td>	<td data-bbox="1010 1216 1425 1310"> <td data-bbox="1425 1216 1856 1310"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1216 2100 1310"></td> </td>	<td data-bbox="1425 1216 1856 1310"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1216 2100 1310"></td>	<p>Ofc:</p> <p>Fax:</p>	
<td data-bbox="558 1310 1010 1404"> <td data-bbox="1010 1310 1425 1404"> <td data-bbox="1425 1310 1856 1404"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1310 2100 1404"></td> </td></td>	<td data-bbox="1010 1310 1425 1404"> <td data-bbox="1425 1310 1856 1404"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1310 2100 1404"></td> </td>	<td data-bbox="1425 1310 1856 1404"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1310 2100 1404"></td>	<p>Ofc:</p> <p>Fax:</p>	
<td data-bbox="558 1404 1010 1498"> <td data-bbox="1010 1404 1425 1498"> <td data-bbox="1425 1404 1856 1498"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1404 2100 1498"></td> </td></td>	<td data-bbox="1010 1404 1425 1498"> <td data-bbox="1425 1404 1856 1498"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1404 2100 1498"></td> </td>	<td data-bbox="1425 1404 1856 1498"> <p>Ofc:</p> <p>Fax:</p> </td> <td data-bbox="1856 1404 2100 1498"></td>	<p>Ofc:</p> <p>Fax:</p>	
<td data-bbox="558 1498 1010 1593"> <td data-bbox="1010 1498 1425 1593"> <td data-bbox="1425 1498 1856 1593"> <p>Ofc:</p> </td> <td data-bbox="1856 1498 2100 1593"></td> </td></td>	<td data-bbox="1010 1498 1425 1593"> <td data-bbox="1425 1498 1856 1593"> <p>Ofc:</p> </td> <td data-bbox="1856 1498 2100 1593"></td> </td>	<td data-bbox="1425 1498 1856 1593"> <p>Ofc:</p> </td> <td data-bbox="1856 1498 2100 1593"></td>	<p>Ofc:</p>	

Attachment for Response
Witness

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 37)** *Refer to the Direct Testimony of Jeffery T. Kopp, page 9, lines 1-*
2 *10:*

3 *a. How many power generation facilities has Burns & McDonnell*
4 *Engineering Co. Inc. (B&M) evaluated to determine the cost-*
5 *effectiveness of retiring in place as a long term post-retirement*
6 *solution? Please identify each such facility and the recommend-*
7 *ation B&M made with respect to each such facility.*

8 *b. Please quantify the minimum "carrying costs" associated with*
9 *retirement in place for each generation facility B&M has evaluated*
10 *to determine post-retirement options.*

11 *c. Please provide the studies which provide the basis of Mr. Kopp's*
12 *testimony that carrying costs associated with retirement in place*
13 *typically exceed demolition costs within five to seven years.*

14 *d. Please identify and provide copies of all post-retirement option*
15 *studies in which B&M has found that carrying costs associated with*

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 *retirement in place do not exceed demolition costs within five to*
2 *seven years.*

3 *e. Is Mr. Kopp aware of any power generation facilities that were not*
4 *demolished within five to seven years of plant retirement? Please*
5 *identify those facilities, including any industrial generation*
6 *facilities.*

7 *f. Has B&M performed a cost analysis to determine the cost of*
8 *maintaining Station Two in retired-in-place condition over a five to*
9 *seven year period? If so, provide copies of that analysis.*

10 *g. Has B&M performed a cost analysis to determine the cost of' fully*
11 *demolishing Station Two? If so, provide copies of that analysis.*

12 *h. Has B&M performed an analysis which compares retirement in*
13 *place to full demolition of Station Two on a life-cycle basis? If so,*
14 *provide copies of that analysis.*

15 *i. Please identify the key parameters and assumptions used in*
16 *performing an analysis comparing retirement in place to full*

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 *demolition of Station Two on a life-cycle basis. Include the following*
2 *parameters:*

3 *i. Time period for the assessment;*

4 *ii. Assumptions;*

5 *iii. Cost of capital;*

6 *iv. Amortization of costs;*

7 *v. Inflation rate;*

8 *vi. Contingencies;*

9 *vii. Level of accuracy of the assessment;*

10 *viii. Level of accuracy of cost estimates;*

11 *ix. Any other critical parameters.*

12

13 **Response)**

14 a. I have not performed research to determine all power generation facilities
15 that Burns & McDonnell Engineering Co. Inc. (“Burns & McDonnell”)
16 evaluated to determine the cost-effectiveness of retiring in place as a long-

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 term post-retirement solution. However, in my professional experience, not
2 many of these studies have been performed, since it can generally be
3 determined not to be a cost effective alternative without a study being
4 required. This is evident from the fact that any amount of carrying cost
5 during a retire-in-place scenario only increases the total cost over full
6 demolition, since placing a plant in retired-in-place status only delays full
7 demolition rather than avoiding it. When discussing with clients typical
8 carrying costs, *e.g.*, liability insurance, property taxes, security, main-
9 taining permits, performing structural inspections, *etc.*, during the retire-
10 in-place timeframe, the cross-over point for carrying costs under a retire-
11 in-place option compared to full demolition costs has generally been
12 expected to be in the range of five to seven years.

13 I have been involved in three studies in the past five years that
14 included estimating costs for placing facilities into a retired-in-place
15 condition.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

- 1 1. I was the project manager on a study for a confidential client in the
2 Midwest that included an evaluation of retire-in-place costs. The retire-
3 in-place scenario was ultimately dropped from consideration and not
4 included in the final report as it was deemed not to be a reasonable
5 alternative.
- 6 2. Another study, which I prepared for Duke Energy Kentucky in 2017 to
7 support depreciation rates in their rate case filing, considered retire-in-
8 place costs. Duke Energy Kentucky's Miami Fort Station Unit 5 was
9 evaluated for a retire-in-place scenario while an adjacent unit was to
10 remain in operation. The recommendation was to abate all asbestos,
11 demolish several pieces of equipment that may pose risks if not
12 maintained going forward, drain oil from equipment, cap the chimneys,
13 and place the unit into a retired-in-place condition until the time that
14 the adjacent units are taken out of service. At that time full demolition
15 of Miami Fort Unit 6 would occur. Costs for full demolition of Miami

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 Fort Unit 6 were also included in the report as future costs that would
2 need to be accounted for.

3 3. Lastly, I prepared a study for Big Rivers in 2016 for the Kenneth C.
4 Coleman Station and the Robert A. Reid Station. As part of that study,
5 a retire-in-place option was considered for the Robert A. Reid Station.

6 b. Regarding the three studies referenced in part a:

7 1. For the confidential client study, Burns & McDonnell had identified
8 approximately \$640,000 per year in annual carrying costs prior to
9 discontinuing that portion of the evaluation.

10 2. For the Duke Energy Kentucky study, Burns & McDonnell did not
11 provide carrying costs, since those costs were accounted for elsewhere in
12 Duke's operating budgets and were not to be included as part of
13 depreciation rates.

14 3. For the Big Rivers study, Burns & McDonnell identified approximately
15 \$1,085,000 per year in annual carrying costs.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

- 1 c. The confidential client study referenced in sub-parts a. and b. cannot be
2 provided due to confidentiality restrictions. Furthermore, that study does
3 not include carrying costs for a retire-in-place scenario, since that option
4 was dropped from consideration prior to completion of the study. The Duke
5 Energy Kentucky study was filed as JK-1 Attachment to my Direct
6 Testimony in Case No. 2017-00321.¹
- 7 d. The Big Rivers study referenced in sub-parts a. and b. is provided as a
8 **CONFIDENTIAL** attachment to Big Rivers' response to Item 1b of the
9 Commission Staff's Initial Request for Information in this case. That study
10 showed that carrying costs for the retire-in-place scenario at the Kenneth
11 C. Coleman Station would exceed full demolition costs in approximately 13
12 years.
- 13 e. I have not performed any research to identify any specific power generation
14 facilities that were not demolished within five to seven years of plant

¹ See: *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All other Required Approvals and Relief* – Case No. 2017-00321.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 retirement. However, in discussions with clients and performing site visits,
2 I have observed, or become aware of, power generating facilities that had
3 not yet been demolished since full plant retirement had not yet occurred,
4 similar to Miami Fort Unit 6. In those cases, full demolition was planned
5 to occur once all units were retired.

6 f. through i.

7 B&M has not performed this analysis.

8

9

10 **Witness)** Jeffrey T. Kopp

11

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 38)** *Refer to the Direct Testimony of Jeffery T. Kopp, page 10, lines 14-*
2 *21, through page 11 , lines 1-9:*

3 *a. On what basis has Mr. Kopp determined that Station Two should be*
4 *demolished and the site restored to conditions suitable for*
5 *industrial use?*

6 *b. Please identify any federal, state, or local regulations requiring*
7 *Station Two to be restored to conditions suitable for industrial use?*

8 *c. Please identify any federal, state, or local regulations which define*
9 *the site conditions required for restoration or a retired power*
10 *generation facility site to conditions suitable for industrial use.*

11 *d. How does B&M define the term "site conditions suitable for*
12 *industrial use?"*

13 *e. What is the source of B&M's definition of the term "site conditions*
14 *suitable for industrial use?"*

15 *f. What was the basis for B&M's determination that the Station Two*
16 *site should be returned to conditions suitable for industrial use?*

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 ***g. Has B&M performed an analysis to determine the cost of restoring***
2 ***the Station Two site to conditions suitable for industrial use? If so,***
3 ***provide a copy of that analysis.***

4
5 **Response)**

6 a. The recommendation that Station Two should be demolished and the site
7 restored to conditions suitable for industrial use is based on my experience
8 preparing decommissioning cost studies for various power generation
9 facility owners for various purposes throughout the country. Many of these
10 studies are utilized to set end of life costs in depreciation rate calculations
11 that are a portion of rates for regulated utilities. One source of information
12 on which I have relied for determining the basis of the site conditions after
13 decommissioning is Florida Administrative Code 25-6.04364 for Electric
14 Utilities Dismantlement Studies, a copy of which is attached to this
15 response. This code states that “Each utility that owns a generating unit
16 is required to establish a dismantlement accrual as approved by the

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 Commission to accumulate a reserve to meet all expenses at the time of
2 dismantlement.” The code defines dismantlement as “The process of safely
3 managing, removing, demolishing, disposing, or converting for reuse the
4 materials and equipment that remain at the generating unit following its
5 retirement from service and restoring the site to a marketable or useable
6 condition.” Restoring the site to conditions suitable for industrial use allow
7 the site to be reused by the utility for development of new power generating
8 facilities, or to sell the land to a buyer who will reuse the land for industrial
9 development, therefore, restoring it to a marketable or useable condition.

10 More specific to Kentucky, Burns & McDonnell prepared a
11 decommissioning study for Duke Energy Kentucky in which the basis was
12 to return all of their power generating facility sites to conditions suitable
13 for industrial use. This study was used to determine end-of-life costs that
14 were utilized in depreciation rate calculations that were presented in Duke
15 Energy Kentucky’s rate Case No. 2017-00321¹ before the Public Service

¹ See: *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge*

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 Commission of Kentucky (“the Commission”). In the Commission’s Order
2 dated April 13, 2018, Duke Kentucky’s depreciation rates were approved,
3 which included these end-of-life costs based on returning all of their power
4 generating facility sites to conditions suitable for industrial use

5 b. There are no federal, state, or local regulations specifically requiring
6 Station Two to be restored to conditions suitable for industrial use.
7 However, there are several federal regulations and laws with which Station
8 Two will need to comply, including but not limited to:

- 9 • 40 Code of Federal Regulations (“CFR”) 257 and 261; Hazardous and
10 Solid Waste Management System; Disposal of Coal Combustion
11 Residuals from Electric Utilities;
- 12 • 40 CFR 112.5; Spill Prevention Control and Countermeasure Plan;
- 13 • 40 CFR 122; National Pollutant Discharge Elimination System;
- 14 • 40 CFR Part 61 Subpart M; Notification required per National
15 Emission Standard for Asbestos;

Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All other Required Approvals and Relief – Case No. 2017-00321.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

- 1 • Surface Mining Control and Reclamation Act;
- 2 • Resource Conservation and Recovery Act.
- 3 c. There are no federal, state, or local regulations which specifically define the
- 4 site conditions required for restoration of a retired power generation facility
- 5 site to conditions suitable for industrial use.
- 6 d. Burns & McDonnell defines the term “site conditions suitable for industrial
- 7 use" as the following:
- 8 • Removing and properly disposing of regulated materials, including
- 9 asbestos;
- 10 • Removing all structures, equipment, and foundations to
- 11 approximately four feet below grade;
- 12 • Remediating any on-site contamination; and
- 13 • Grading the site to drain appropriately and providing erosion control
- 14 to the site area by either seeding areas or surfacing them with the
- 15 crushed concrete from demolition activities.
- 16 The site can remain in this state until it is sold or reused.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

- 1 e. The source of Burns & McDonnell's definition of the term "site conditions
2 suitable for industrial use" is our experience with preparing
3 decommissioning studies as well as our experience serving in an owner's
4 engineer role for power generation facilities during decommissioning.
5 These experiences have given us insights into the actual final site
6 conditions after decommissioning.
- 7 f. The basis for Burns & McDonnell's determination that the Station Two site
8 should be returned to conditions suitable for industrial use is our
9 experience with end-of-life costs used in depreciation calculations in rate
10 case filings. In all decommissioning studies that Burns & McDonnell has
11 prepared to support depreciation calculations, we have based the costs on
12 returning the sites to conditions suitable for industrial use. These
13 decommissioning costs, including this assumption, have be approved as the
14 basis of setting end-of-life costs in depreciation calculations by the Public
15 Service Commission of Kentucky, as well as commissions in Florida,
16 Indiana, New Mexico, Arizona, North Carolina, and South Carolina.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 g. Burns & McDonnell has not performed this analysis

2

3

4 **Witness)** Jeffrey T. Kopp

5

25-6.04364 Electric Utilities Dismantlement Studies.

(1) Each utility that owns a generating unit is required to establish a dismantlement accrual as approved by the Commission to accumulate a reserve to meet all expenses at the time of dismantlement. The purpose of the study required by subsection (3) is to obtain information to update cost estimates based on new developments, additional information, technological improvements, and forecasts; to evaluate alternative methodologies; and to revise the annual accrual needed to recover the costs. This rule does not apply to nuclear generating plants, which are addressed in Rule 25-6.04365, F.A.C.

(2) For the purpose of this rule, the following definitions shall apply:

(a) "Contingency Costs." A specific provision for unforeseeable elements of cost within the defined project scope.

(b) "Dismantlement." The process of safely managing, removing, demolishing, disposing, or converting for reuse the materials and equipment that remain at the generating unit following its retirement from service and restoring the site to a marketable or useable condition.

(c) "Dismantlement Costs." The costs for the ultimate physical removal and disposal of plant and site restoration, minus any attendant gross salvage amount, upon final retirement of the site or unit from service.

(3) Each utility shall file a dismantlement study for each generating site once every 4 years from the submission date of the previous study or pursuant to Commission order and within the time specified in the order. The study shall be site-specific unless a showing is made by the utility that a site-specific study is not possible. A utility may file a study sooner than 4 years. Each utility's dismantlement study shall include:

(a) A narrative describing each generating unit, including the in-service date and estimated retirement date.

(b) A list of all entities owning an interest in each generating unit and the percentage of ownership by each entity.

(c) The dismantlement study methodology.

(d) A summary of the major assumptions used in the study.

(e) The methodology selected to dismantle each generating unit and support for the selection.

(f) The methodology and escalation rates used in converting the current estimated dismantlement costs to future estimated dismantlement costs and supporting documentation and analyses.

(g) The total utility and jurisdictional dismantlement cost estimates in current dollars for each unit.

(h) The total utility and jurisdictional dismantlement cost estimates in future dollars for each unit.

(i) For each year, the estimated amount of dismantlement expenditures.

(j) The projected date each generating unit will cease operations.

(k) For each site, a comparison of the current approved annual dismantlement accruals with those proposed. Current accruals shall be identified as to the effective date and proposed accruals to the proposed effective date.

(l) A summary and explanation of material differences between the current study and the utility's last filed study including changes in methodology and assumptions.

(m) Supporting schedules, analyses, and data, including the contingency allowance, used in developing the dismantlement cost estimates and annual accruals proposed by the utility. Supporting schedules shall include the inflation analysis.

(4) The dismantlement annual accrual shall be calculated using the current cost estimates escalated to the expected dates of actual dismantlement. The future costs less amounts recovered to date shall then be discounted in a manner that accrues the costs over the remaining life span of the unit.

(5) Dismantlement accruals shall be recorded monthly to assure that the costs for dismantlement have been provided for at the time the production unit or site ceases operations.

(6) A utility shall not establish a new annual dismantlement accrual, revise its annual dismantlement accrual, or transfer a dismantlement reserve without prior Commission approval.

(7) The annual dismantlement accrual shall be a fixed dollar amount and shall be based on a 4-year average of the accruals related to the years between the dismantlement study reviews.

(8) The accumulated dismantlement reserve and accruals shall be maintained in a subaccount of Account 108 "Accumulated Depreciation" and separate from the accumulated depreciation reserve and expenses. Subsidiary records shall include sufficient detail to allow for separate site or unit reporting.

Rulemaking Authority 350.115, 350.127(2), 366.05(1) FS. Law Implemented 366.041, 366.05(1), 366.06(1) FS. History—New 12-30-03 Amended 4-28-16.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 39)** *Please define the term "maintenance" as used in the Station Two*
2 *contracts and provide the source of that definition.*

3 *a. Does Big Rivers contend that the definition provided in response to*
4 *the previous part of this request is the definition to be used in*
5 *interpreting the contracts at issue in this proceeding?*

6

7 **Response)** To the best of Big Rivers' knowledge, the term "maintenance" is not
8 specifically defined in the Station Two contracts. The term appears over 100 times
9 throughout the documents that make up the Station Two contracts and is used in the
10 contracts in connection with emergency power and energy, maintenance schedules of
11 generation and transmission facilities, energy charge, interconnection agreements,
12 joint use facilities, power plant construction and operation, and contract
13 amendments.

14 a. Big Rivers believes that the definition of the term maintenance as it relates
15 to obligations arising out of the Station Two contracts must be read to
16 include any ongoing maintenance, environmental remediation, and other

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 obligations required at Station Two to keep the facilities in a safe state and
2 preserve them from decline until such time as those facilities are fully
3 decommissioned and all environmental responsibilities or other obligations
4 arising out of the Station Two Contracts are satisfied.

5

6

7 **Witness)** Michael T. Pullen

8

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 **Item 40)** *Please describe in detail all activities which continue to occur at*
2 *Station Two and which you believe constitute maintenance.*

3

4 **Response)** Maintenance is an integral part of the decommissioning and/or
5 retirement in place process. In the context of the obligations arising out of the Station
6 Two Contracts, maintenance means all environmental remediation, asbestos
7 abatement, draining (lubricating oils, fuel oil, transformer oil), rerouting of utilities,
8 inventory of other regulated materials (PCB, fuels, hydraulic fluids, halon or other
9 fire protection chemicals, residual coal and ash, industrial gases), inspections
10 (structural integrity, insulation and lagging conditions, asbestos panel condition at
11 the cooling towers, proper operation of the basement sump pumps and the silo sump
12 pumps and proper operation of the lighting in the main corridors), KPDES required
13 sampling on outfall 004 (Station Two ash pond), groundwater monitoring wells for
14 the Station Two ash pond, preventative maintenance (flue gas chimney, stack
15 lighting, elevator and fire water system), safety procedures, security and all other
16 measures necessary to bring Station Two to a dry, dark, and safe condition prior to

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF RATE AND SERVICE STANDARDS
CASE NO. 2019-00269

**Response to the City of Henderson, Kentucky, and Henderson Utility
Commission, d/b/a Henderson Municipal Power & Light's
First Request for Information
dated May 22, 2020**

June 8, 2020

1 demolition (demolition will ultimately be required even if Station Two is initially
2 retired in place for a period of time); and then after demolition, maintenance means
3 restoring the site to a state that is suitable for future industrial use and all ongoing
4 environmental monitoring and environmental remediation that may be required in
5 the future.

6

7

8 **Witness)** Michael T. Pullen

9