

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 RATE AND SERVICE) 2019-00269
STANDARDS.)**

REBUTTAL TESTIMONY

FILED: August 25, 2020

ORIGINAL

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 RATE AND	)	2019-00269
SERVICE STANDARDS.)	

REBUTTAL TESTIMONY

OF

**ROBERT W. BERRY
PRESIDENT AND CHIEF EXECUTIVE OFFICER**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

Filed: August 25, 2020

REBUTTAL TESTIMONY
OF
ROBERT W. BERRY

Table of Contents

I.	INTRODUCTION	1
II.	DECOMMISSIONING COSTS	5
III.	DECOMMISSIONING OF THE STATION TWO ASH POND.....	18
IV.	SEVERANCE COSTS.....	19
V.	HISTORIC AND ONGOING GREEN LANDFILL WASTE DISPOSAL COSTS	22
VI.	EXCESS HENDERSON ENERGY AND HENDERSON NATIVE LOAD.....	26
VII.	CONCLUSION	30

REBUTTAL TESTIMONY
OF
ROBERT W. BERRY

1 **I. INTRODUCTION**

2 **Q. Please state your name, business address and occupation.**

3 A. My name is Robert W. Berry. I am employed by Big Rivers Electric Corporation
4 (“Big Rivers”), 201 Third Street, Henderson, Kentucky 42420 as its President
5 and Chief Executive Officer.

6 **Q. Did you submit Direct Testimony in this proceeding?**

7 A. Yes. I provided an overview of Big Rivers’ case and explained its requests for
8 relief including, but not limited to, its request for a finding that Henderson has
9 a current and ongoing contractual obligation to share in 22.76% of the costs of
10 decommissioning Station Two,¹ including the costs to decommission the Station
11 Two ash pond, as well as 100% of the “retirement in place” costs associated with
12 Station Two. I also addressed Big Rivers’ request for a finding that Henderson
13 is required to pay a portion of the Station Two severance costs and an ongoing
14 obligation to pay for disposal costs associated with Henderson’s Station Two

¹ Station Two is defined in the 2005 Amendment to the Station Two Contracts as the “City’s 350-megawatt generating station (rated on the date of the 2006 Amendments to Contracts at 312 MW net send out capability), located at a site on the Green River in Henderson County, Kentucky, and, to the extent furnished and owned by City, all auxiliary facilities, joint use facilities and related facilities, renewals, replacements, additions, expansions and improvements thereto, including the Station Two FGD System added thereto and the Station Two SCR System but excluding the City’s Transmission and Transformation Facilities...and excluding facilities furnished and owned by Big Rivers;” *See also* Direct Testimony of Michael T. Pullen, Exhibit 13.

1 waste that is currently stored in Big Rivers' Green Landfill. I also testified
2 regarding Excess Henderson Energy.

3 **Q. What is the purpose of your rebuttal testimony?**

4 A. The purpose of this testimony is to respond to the assertions contained in the
5 Direct Testimony of City of Henderson, Kentucky and Henderson Utility
6 Commission d/b/a Henderson Municipal Power & Light (collectively,
7 "Henderson" or "City") witness Heimgartner regarding decommissioning costs,
8 Excess Henderson Energy, and severance costs, and witness Moll regarding
9 historic and ongoing Station Two waste disposal costs.

10 With respect to decommissioning, the City's position is that Station Two
11 has been decommissioned once the plant was transitioned into "safe, dark, and
12 dry" status in April 2019.² In other words, Henderson contends that
13 decommissioning was completed more than a year ago and the City can now
14 abandon any further obligations with respect to Station Two. Henderson also
15 points to a July 2, 2020 Webster County Circuit Court decision which upheld the
16 validity of a deed provision calling for the property upon which part of Station
17 Two is located to revert to Big Rivers when plant operations and maintenance
18 cease and the bonds related to the completion of the plant are retired.³ The City
19 contends that if the land upon which part of Station Two ultimately reverts to

² Direct Testimony of Christopher Heimgartner at 20-21.

³ Id. at 21.

1 Big Rivers, then Big Rivers will be responsible for all future decommissioning
2 activities at Station Two, including environmental monitoring and remediation.

3 With respect to Excess Henderson Energy, Mr. Heimgartner attempts to
4 create a new category of Excess Henderson Energy by making a distinction
5 between “wanted” and “unwanted” energy to conclude that Big Rivers did not
6 comply with the Station Two Contracts or the Commission’s January 5, 2018
7 decision in Case No. 2018-00278.⁴

8 With respect to severance costs associated with Station Two, Henderson
9 claims that it is not contractually responsible for paying its share of those costs
10 and that it did not approve expenditure of those costs.⁵ The City also contests
11 Big Rivers’ calculation of the severance costs for which Henderson is responsible.

12 With respect to the landfill disposal costs associated with Henderson’s
13 share of Station Two ash pond dredgings, the City contends that it has no
14 ongoing obligation to pay for the future costs of maintaining its share of the
15 dredgings stored in the Green Landfill.⁶ With respect to historic landfill costs,
16 Henderson contends that Big Rivers’ cost-based disposal rate from 2014/2015 of
17 \$1.78/ton should be fixed through 2018/2019, despite significant cost increases
18 at the Green Landfill which caused the actual cost-based rate to be as high as
19 \$6.85/ton.⁷

⁴ Direct Testimony of Christopher Heimgartner at 17-19.

⁵ Id. at 21-22.

⁶ Id. at 22-23.

⁷ Direct Testimony of Barbara Moll; Exhibits Moll-3 and Moll-7.

1 **Q. Is Big Rivers sponsoring other witnesses on rebuttal?**

2 A. Yes. In addition to my testimony, Big Rivers presents the testimony of the
3 following witnesses:

- 4 • Paul G. Smith. Chief Financial Officer for Big Rivers;
- 5 • Michael T. Pullen. Executive Vice President of Operations for Big
6 Rivers;
- 7 • Mark Eacret. Vice President of Energy Services for Big Rivers;
- 8 • Michael W. Chambliss. Vice President of System Operations for Big
9 Rivers; and
- 10 • Jeffrey T. Kopp. Manager, Utility Consulting Department, Business &
11 Technology Solutions Division Burns & McDonnell.

12 As Big Rivers’ rebuttal witnesses explain, while complex, this case boils
13 down to a limited number of fundamental issues: 1) defining decommissioning
14 and enforcing each party’s contractual obligation to pay decommissioning or
15 “retirement in place” costs associated with Station Two, including the Station
16 Two ash pond and other joint-use facilities; 2) confirming that Henderson is
17 responsible for its share of historic and ongoing Green Landfill stackout and
18 disposal costs as well as the costs of decommissioning its portion of the Green
19 Landfill when the Green Station is retired sometime in the future; 3) enforcing
20 the Commission’s January 5, 2018 Order in Case No. 2016-000278 regarding
21 Excess Henderson Energy; 4) verifying the accuracy of Big Rivers’ calculations
22 with respect to MISO fees and severance costs for which Henderson is

1 responsible; and 5) clarifying that Big Rivers is allowed to continue utilizing
2 City-owned Joint Use Facilities that support the operation of its Green Station
3 and that the City is required to share in the cost of decommissioning those Joint
4 Use Facilities when Green is retired.

5 **II. DECOMMISSIONING COSTS**

6 **Q. What is your response to witness Heimgartner?**

7 A. I disagree with his assertion that Station Two was decommissioned as of April
8 2019. This assertion is contrary to Commission precedent, industry practice,
9 and my experience regarding decommissioning. In my professional opinion, the
10 City's litigation position has absolutely no engineering credibility.

11 **Q. Has Station Two been completely decommissioned as Henderson**
12 **claims?**

13 A. No. Station Two is currently being maintained in a retirement in place state.
14 "Retirement in place" occurs when a unit is removed from service and activities
15 are performed to maintain the unit in a "safe, dark, and dry" condition. Such
16 activities include removing any chemicals and consumables, draining oils,
17 encapsulating or remediating friable asbestos, deenergizing all equipment,
18 securing areas that no longer need to be accessed, and other activities deemed
19 necessary for the unit to remain in this condition for an extended period of time.⁸

⁸ Big Rivers Response to Henderson First Request for Information, Item Nos. 31 and 32.

1 “Retirement in place” also involves ongoing maintenance activities, such as
2 environmental remediation, asbestos abatement, draining (lubricating oils, fuel
3 oil, transformer oil), rerouting of utilities, inventory of other regulated materials
4 (PCB, fuels, hydraulic fluids, halon or other fire protection chemicals, residual
5 coal and ash, industrial gases), inspections (structural integrity, insulation and
6 lagging conditions, asbestos panel condition at the cooling towers, proper
7 operation of the basement sump pumps and the silo sump pumps and proper
8 operation of the lighting in the main corridors), Kentucky Pollutant Discharge
9 Elimination System required sampling on outfall 004 (Station Two ash pond),
10 groundwater monitoring wells for the Station Two ash pond, preventative
11 maintenance (flue gas chimney, stack lighting, elevator and fire water system),
12 safety procedures, security and all other measures necessary to bring and
13 maintain Station Two to a “safe, dark, and dry” condition prior to demolition.
14 Thus far, as an independent contractor, Big Rivers has supplied the operating
15 personnel, materials, supplies, and technical services required to maintain
16 Station Two in its current retirement in place condition. To date, the City has
17 not reimbursed Big Rivers for any of these retirement in place costs. This
18 amount is quantified by Mr. Smith.

19 **Q. What would decommissioning Station Two entail?**

20 A. As I have previously stated, in order to “decommission” Station Two consistent
21 with Commission precedent, industry practice, and my understanding of that
22 term based upon more than 39 years in the utility business operating,

1 maintaining and decommissioning generating facilities, Station Two would have
2 to be demolished, remediated, and restored to a state suitable for future
3 industrial use.⁹ The decommissioning process would also include all ongoing
4 maintenance, environmental monitoring, and environmental remediation that
5 may be required in the future.¹⁰

6 Commission precedent aligns with my definition of decommissioning.
7 Kentucky Power currently has a Big Sandy Decommissioning Rider (“BSDR”)
8 approved by the Commission in Case No. 2017-00179. In its annual BSDR
9 filings, Kentucky Power lists multiple decommissioning costs which it is
10 currently recovering from its ratepayers, including:

- 11 1. Fly ash pond closure;
- 12 2. Bottom ash pond closure;
- 13 3. Asbestos removal;
- 14 4. Demolition of boiler and turbine infrastructure continued, with
15 environmental remediation being performed;

⁹ Direct Testimony of Robert W. Berry at 36; Big Rivers Response to Staff First Request for Information, Item No. 10; Big Rivers Response to Staff First Request for Information, Item No. 1(b). (“The scope of the decommissioning includes asbestos removal; dismantling the boilers, steam turbine, precipitators, scrubbers, selective catalytic reactors, stacks, and transformers; on-site concrete crushing and disposal; debris removal; less salvage value for the scrap metal... The scope also includes decommissioning of the cooling water intake, grounds, fuel oil storage, balance of plant buildings, coal handling facilities and coal yard, and final grading and seeding of the site.” Big Rivers Response to Henderson First Request for Information, Item No. 38 (“In all decommissioning studies that Burns & McDonnell has prepared to support depreciation calculations, we have based the costs on returning the sites to conditions suitable for industrial use. These decommissioning costs, including this assumption, have be[en] approved as the basis of setting end-of-life costs in depreciation calculations by the Public Service Commission of Kentucky, as well as commissions in Florida, Indiana, New Mexico, Arizona, North Carolina, and South Carolina.”).

¹⁰ Big Rivers Response to Henderson First Request for Information, Item No. 38.

- 1 5. Removal of remaining coal related equipment;
- 2 6. Remove remaining BS2 structure entirely;
- 3 7. Remove fill slab portion of the foundation;
- 4 8. Remove underground piping and roadways;
- 5 9. Perform site grading;
- 6 10. Close stack penetration;
- 7 11. Relocate plant potable water line; and
- 8 12. Maintain safe plant environment and environmental compliance.¹¹

9 These costs are similar to the decommissioning costs that can be expected with
10 respect to Station Two.

11 Louisville Gas and Electric has recently completed the decommissioning
12 of its Paddy's Run and Cane Run coal-fired generating stations. Both coal-fired
13 stations were dismantled, environmentally remediated then demolished. The
14 Paddy's Run and Cane Run sites were both returned to green space.¹²

15 East Kentucky Power Cooperative recently completed the
16 decommissioning process for its Dale station. This included demolition, removal
17 of environmentally regulated materials such as asbestos, and conversion of the
18 plant to a brownfield site.¹³

¹¹ 2019 and 2020 Annual Filings of Kentucky Power Big Sandy Decommissioning Rider, Case No. 2017-00179, Post-Case Files (August 15, 2019 and August 11, 2020).

¹² Big Rivers Response to Staff First Request for Information, Item No. 10.

¹³ Id.

1 Henderson, despite its argument for Station Two to be retired in place,
2 not long ago completed the demolition of its Station One generating facility. This
3 included removal of asbestos, demolition of the power plant and smokestack, and
4 conversion of the site to a green space.

5 This Commission recently approved a depreciation study for Duke
6 Kentucky which incorporates decommissioning costs calculated based on
7 assumptions that full demolition would take place and the impacted sites would
8 be restored to a condition suitable for industrial use.¹⁴ Similar depreciation
9 studies have been approved throughout the country.¹⁵

10 The Electric Power Research Institute similarly defined
11 “decommissioning” in 2010 as “the process for removing from a plant site
12 structures, infrastructures, impacts, and other encumbrances that may be
13 present on a property. This includes environmental abatement and
14 decontamination within super structures; demolition of structures, foundations,
15 utilities, and other subsurface structures, remediation of impacts to the surface
16 and subsurface, and reclamation of the property depending on the designated
17 end use.”¹⁶

¹⁴ *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, Orders (April 13, 2018 and October 2, 2018).

¹⁵ Big Rivers Response to Henderson First Request for Information, Item No. 38.

¹⁶ Big Rivers Response to Staff First Request for Information, Item No. 10, Attachment 4.

1 The Edison Electric Institute defines the term decommissioning as
2 “removal of a utility plant from service and dismantling of same.”¹⁷

3 Station Two cannot realistically be considered to have been
4 “decommissioned” in April 2019 as Henderson alleges. At least not in any
5 engineering sense of the word. Since Station Two ceased producing electricity on
6 January 31, 2019, only maintenance has occurred at the main plant (ongoing
7 asbestos maintenance and abatement for safety, maintaining stack lighting in
8 accordance with Federal Aviation Administration regulations, maintaining
9 environmental permits, providing site security, maintaining fire protection and
10 building maintenance). No facilities have been dismantled nor has the site been
11 made suitable for future industrial use. Hence, there are many steps that must
12 still be taken in order for Station Two to reach “decommissioned” status. For
13 example, as discussed below, the Station Two ash pond must be decommissioned
14 in order to comply with the CCR Rule no later than April 2024. And the Station
15 Two ash pond dredgings currently stored in the Green Landfill will not be
16 decommissioned until the Landfill is itself decommissioned sometime in the
17 future. It is therefore baseless for Henderson to claim that its contractual
18 responsibility to share in decommissioning costs associated with Station Two
19 has already been met and it can now simply abandon its power plant.

20 **Q. Does Big Rivers recommend that Station Two be decommissioned?**

¹⁷ *Glossary of Electric Utility Terms*, Edison Electric Institute (1995) at 18.

1 A. Yes. Decommissioning is the prudent course of action with respect to Station
2 Two. As witness Kopp explains, the costs to maintain a generating facility in a
3 “retired in place” state will typically exceed the costs to fully decommission the
4 facility in approximately 5 to 7 years, absent a valid reason for delay.
5 Maintaining Station Two in a “retired in place” state indefinitely therefore only
6 increases Henderson’s total cost exposure compared to proceeding with
7 decommissioning the unit now.

8 Decommissioning is also in the public interest. Public safety concerns
9 surrounding Station Two will continue to exist if Station Two is not
10 decommissioned, including potential asbestos exposure to the more than 100
11 employees working at the Green plant, many of which are Henderson residents,
12 as well as to on-site contractors and the public in general. For example,
13 Henderson Station One caught fire while awaiting demolition, which could be a
14 catastrophic event if a similar occurrence happens at Station Two, with exposure
15 to the fire possibly spreading to, or collapsing on, the Green generating facility
16 with its 100+ employees. In addition, leaving rusting facilities in prime areas of
17 the Commonwealth (i.e. near rivers and electrical switch yards) rather than
18 restoring those areas to a condition suitable for future industrial use is not
19 conducive to economic development in Kentucky.

20 Finally, as explained earlier, decommissioning would be consistent with
21 Kentucky precedent regarding Kentucky Power, LG&E, EKPC, Duke Kentucky

1 and Henderson. In fact, I am not aware of any retired coal-fired power plant in
2 Kentucky that has not been, or is not planned to be, dismantled.

3 **Q. Is there a legal requirement for all of Station Two to be decommissioned**
4 **now?**

5 A. No. There is no legal requirement that all of Station Two be decommissioned at
6 this time. However, decommissioning of certain portions of Station Two is
7 mandatory. Mandatory decommissioning consists of those activities required by
8 federal regulations and laws, including:

- 9 1. 40 CFR 257 and 261, Hazardous and Solid Waste Management System;
10 Disposal of Coal Combustion Residuals (CCR);
- 11 2. 40 CFR 112.5, Spill Prevention Control and Countermeasure Plan;
- 12 3. 40 CFR 122, National Pollutant Discharge Elimination System;
- 13 4. 40 CFR Part 61 Subpart M, Notification required per National Emission
14 Standard for Asbestos;
- 15 5. Surface Mining Control Reclamation Act; and
- 16 6. Resource Conservation and Recovery Act.

17 Mandatory decommissioning must be done. The failure to do so can result in
18 civil and criminal penalties. The City has no choice.

19 Discretionary decommissioning activities do not have to be done
20 immediately. For example, there is no current legal requirement to take down
21 the 350-foot tall Station Two chimney. Discretionary decommissioning activities
22 can be avoided through retirement in place. In my professional opinion,

1 retirement in place is not prudent and will be more costly and more risky in the
2 long run than decommissioning the entire plant now. As the owner of Station
3 Two, the discretionary decision to retire in place is the City's. Decommissioning
4 the entire Station Two plant requires that it be demolished. Big Rivers cannot
5 demolish the City's property without its permission. Big Rivers only has a
6 contractual obligation to pay for a share of decommissioning. Big Rivers has no
7 contractual obligation to pay for retirement in place. For these reasons, the City
8 has full cost responsibility for all retirement in place costs.

9 **Q. For those portions of Station Two that are in fact decommissioned,**
10 **what is Henderson's required share of the associated costs?**

11 A. 22.76%, as required by Section 8 of the 1993 Amendments to the Station Two
12 Contracts. Big Rivers' share is 77.24%, or more than 3.5 times Henderson's
13 obligation.

14 **Q. If Henderson chooses to maintain some portions of Station Two in a**
15 **"retirement in place" state, what is the City's required share of the**
16 **associated costs?**

17 A. 100%. Big Rivers has no contractual obligation to share in the costs of
18 maintaining the City-owned Station Two in a "retired in place" state. Those
19 costs are Henderson's obligations - including public safety and environmental
20 obligations - arising out of the Station Two Contracts and are the City's
21 responsibility. Should Henderson choose to simply abandon Station Two, then
22 Henderson must bear any resulting costs including EPA penalties.

1 **Q. Has the City greatly benefited from its ownership of Station Two and**
2 **the operation of the plant by Big Rivers?**

3 A. Yes. As explained in my Direct Testimony, Henderson enjoyed the joint use
4 benefits and economies of scale of Station Two for decades. In its first full year
5 of operation, Henderson used only 17 MW out of Station Two’s net rated total
6 capacity of 300 MW, or only 5.67%.¹⁸ Station Two satisfied the City’s need for
7 capacity and the sale of surplus energy and capacity to Big Rivers made the plant
8 economically feasible,¹⁹ created opportunities for municipal expansion by
9 allowing for a comprehensive annexation program whereby Henderson’s
10 corporate limits could be increased by approximately three-fold,²⁰ resulted in
11 economies of scale,²¹ and produced substantial cost savings for Henderson (e.g.
12 reduced labor costs, transmission costs, landfill costs), and \$42.3 million in
13 capital cost savings related to the use of the Flue Gas Desulfurization (“FGD”)
14 equipment installed at the Green Station to be used as joint-use equipment for

¹⁸ Exhibit Pullen-1 at 1 of 3.

¹⁹ 1970 Power Sales Contract Section 1.4 “By its addition of Station Two, City will be able to provide more economical and reliable electric service to itself and its inhabitants, and through its sales of surplus electric power and energy to Big Rivers, as provided by this Agreement, City can assure the economic feasibility of such addition.”

²⁰ 1970 Power Plant Construction and Operation Agreement Section 1.5 “City is presently planning a comprehensive annexation program whereby the area of its corporate limits will be increased by approximately three-fold.” Section 1.6: “City’s consulting engineers have determined that City will require additional generating capabilities by the year 1973 in order to provide for the needs of its electric consumers. Said engineers have further determined and recommended to City that the most feasible and economical plan for providing the City’s present and anticipated electric generation needs is the construction by City of a relatively large and more efficient generating station, whereby City can provide adequate, low-cost power and energy for the present and future needs of its Municipal Electric Light & Power System...”

²¹ 1970 Joint Facilities Agreement 1.3: “It is recognized by the parties that material economies in construction and operation can be achieved through the joint use by both parties of certain operating facilities which serve as auxiliaries of their respective generating stations.”

1 the Station Two FGD in compliance with Clean Air Act Amendments.²² Since
2 Station Two went commercial, Henderson has consumed 19,500,000 MWh of its
3 energy - enough energy to supply the City's current native load for
4 approximately 31 years. And Henderson's customers currently enjoy
5 significantly lower electric rates than the customers of Kenergy, Jackson
6 Purchase, and Meade County.

7 Now that Henderson's Station Two benefits have ceased, the City seeks
8 to avoid the remaining costs associated with Station Two, essentially opting to
9 completely abandon the units and shirk all of its obligations related to shutting
10 down and cleaning up the facilities. The cleanup of Station Two after its
11 operating life was expressly contemplated in the 1993 Amendments and
12 Henderson should be held to its contractual commitments to share in the
13 decommissioning costs, or absorb all of the retirement in place costs of the power
14 plant it owns.

15 **Q. What can be done to bring a reasonable degree of certainty to the cost
16 estimate to fully decommission Station Two?**

17 **A.** The same process that is used for all large-scale projects at a generating facility
18 can be used for the decommissioning project. An experienced engineering firm
19 can be hired to draft a specific scope of work for the decommissioning project. A

²² Big Rivers Response to Staff First Request for Information, Item No. 4; 1993 Amendments at p. 2 "WHEREAS, certain facilities now owned by Big Rivers subject to certain mortgage liens, and used in operating the FDG System of Big Rivers' Green Generating Station, can be used jointly by the Green Station and Station Two, thus greatly reducing the cost of the Station Two FDG System," Big Rivers Response to Staff Second Request for Information, Item No. 2.

1 request for proposal (RFP) is then issued following all state law required
2 municipal bidding requirements. The responses to the RFP will provide a
3 reasonable degree of certainty to the expected cost to fully decommission Station
4 Two.

5 **Q. Does the July 2, 2020 Order of the Webster Circuit Court relieve**
6 **Henderson of its contractual obligation to share in the costs of**
7 **decommissioning Station Two?**

8 A. No. The decommissioning cost-sharing arrangement agreed upon in Section 8
9 of the 1993 Amendments was in no way contingent upon ownership of the land
10 upon which only a part of Station Two was built. Section 8 of the 1993
11 amendments to the Contracts simply states, "[i]f Big Rivers exercises its option
12 under Section 1.1...to extend the life of the Contracts for the operating life of
13 Station Two...the parties shall bear decommissioning costs of Station Two in the
14 proportions in which they shared capacity costs during the life of Station Two."
15 Hence, even if ultimately decided in Henderson's favor, the Webster Circuit
16 Court decision should have no impact on the Commission's decision in this
17 proceeding.

18 Other flaws surround Henderson's allegations with respect to the Webster
19 Circuit Court case. For instance, the land at issue in that case constitutes only
20 a portion of the property upon which Station Two was built and does not include
21 land where significant Station Two facilities, such as the Station Two ash pond,

1 are located.²³ Additionally, one of the conditions precedent to the land reversion
2 is that operations and maintenance must cease. But maintenance will not cease
3 as long as any of Station Two remains retired in place, and even after full
4 demolition and decommissioning ongoing environmental and groundwater
5 monitoring is required for at least 30 years. And the Webster Circuit Court
6 finding is far from final and is still subject to substantial litigation. But
7 discussion of these flaws is only peripheral to the larger point – Henderson’s
8 obligation arising out of the contracts to share in the costs of decommissioning
9 Station Two persists regardless of which party owns the land upon which a
10 portion of Station Two was built. The Webster Circuit Court decision therefore
11 does not provide a basis by which Henderson can evade its contractual obligation
12 to share in the costs of decommissioning Station Two.

13 **Q. Do Henderson’s audited financial statements reflect an obligation to**
14 **share in the cost of retiring Station Two?**

15 A. Yes. Contrary to their argument in this proceeding, Henderson’s audited
16 financial statements reflect an asset retirement obligation related to Station
17 Two, including the power plant, the ash pond and other joint-use facilities.
18 Indeed, Henderson footnotes clearly state the City is “...legally obligated to
19 remove asbestos, lead paint, and other contaminants located at the Station Two
20 facility”, that management is aware of “an asset retirement obligation related to

²³ I have attached a map of the Station Two/Reid/Green complex to my Rebuttal Testimony.

1 an ash pond located at the Station Two facility,” and recognized a significant
2 increase in their obligation based on revised estimates of costs to dismantle and
3 remove assets.²⁴ Despite arguing to the contrary in this proceeding, Henderson’s
4 financial statements and footnotes recognize and describe a multi-million dollar
5 retirement obligation related to Station Two, the ash pond and other joint-use
6 facilities.

7 **III. DECOMMISSIONING OF THE STATION TWO ASH POND**

8 **Q. Why is decommissioning of the Station Two ash pond particularly**
9 **critical?**

10 A. Decommissioning of the Station Two ash pond is required by the federal CCR
11 Rule to be completed by no later than April 2024. The failure to do so can result
12 in civil and criminal penalties. Ongoing groundwater monitoring is also required
13 to take place at the ash pond for thirty years after it is decommissioned. And if
14 new environmental regulations arise, there may be additional ash pond
15 decommissioning activities required. Given this federally-mandated timeline, it
16 is imperative that decommissioning begin at the Station Two ash pond soon.

17 Decommissioning the Station Two ash pond must go through the requisite
18 state law bidding requirements since it is City owned property. Big Rivers is not
19 authorized to initiate that bidding. But Henderson cannot avoid compliance with

²⁴ Henderson Response to Big Rivers First Request for Information, Item Nos. 1-31, Attachment
1 at 37.

1 federal law by refusing to follow state law bidding procedures. The City is
2 contractually obligated to faithfully obey and comply with existing and future
3 federal, state or local environmental laws, rules and regulations affecting
4 Station Two.²⁵ The City also agreed to obtain all necessary permits required to
5 enable it to operate and maintain its Station Two.²⁶

6 With the City's consent, Big Rivers acting as an independent contractor
7 can and will proceed with the actual work of capping the ash pond and
8 monitoring the groundwater as required by the CCR Rule, but only if Henderson
9 pays its 22.76% share of the associated costs as required by Section 8 of the 1993
10 Amendments. In the alternative, Henderson can take on this responsibility and
11 Big Rivers will pay the City our 77.24% share. We are indifferent, but refusal to
12 comply with the CCR Rule is not an option.

13 **IV. SEVERANCE COSTS**

14 **Q. Is Henderson contractually responsible for its share of Station Two**
15 **severance costs even though the City did not approve and verbally**
16 **contested responsibility for such costs?**

²⁵ 1970 Power Plant Construction and Operation Agreement Section 30.1 "City and Big Rivers will, at all times, faithfully obey and comply with existing and future laws, rules and regulations of federal, state and local governmental bodies lawfully affecting the operations and activities of and in connection with City's Station Two."

²⁶ 1970 Power Plant Construction and Operation Agreement Section 4.2 "City agrees to obtain all necessary permits for the construction and operation of its Station Two, moorage and associated facilities and further agrees to use its best efforts to cause any and all such permits to extend for a term equal to the term of this Agreement, or to obtain any new or additional permits required to enable it to operate and maintain its Station Two for such term."

1 A. Yes. Henderson witness Moll contends that “Big Rivers is not entitled to assign
2 unapproved costs to Henderson without contractual authority and with full
3 knowledge Henderson has no obligation to pay and has verbally contested
4 responsibility for the [severance] costs.”²⁷

5 Ms. Moll is not correct. Big Rivers did have contractual authority to assign
6 severance costs to the City. The Power Plant Construction and Operation
7 Agreement holds Big Rivers to a best efforts standard in the efficient and
8 economical operation of Station Two, and applies a reasonableness standard to
9 costs payable by the City. Section 13.4 of that Agreement provides that “Big
10 Rivers covenants and agrees that during the term of this Agreement it will at all
11 times operate City’s Station Two on a best efforts basis, in an efficient and
12 economical manner...” Section 13.6 of that Agreement provides that “City will
13 pay Big Rivers, on a monthly basis, its reasonable expenditures incurred in the
14 operation of City’s Station Two...” Regardless of whether the City pre-approved
15 or objected, the City has not demonstrated that the payment of severance was
16 either unreasonable, uneconomic or inefficient.

17 As documented in Case No. 2018-00146, Henderson requested that
18 Station Two continue to generate electricity past the point at which the station
19 was no longer economical to operate. Big Rivers’ decision to incur the severance
20 costs was reasonable and in accordance with Henderson’s request; therefore,
21 Henderson must now pay its share of those costs. As operator of Station Two for

²⁷ Direct Testimony of Barbara Moll at 8.

1 47 years, Big Rivers was required to use its best business judgment to efficiently
2 and economically manage its labor force, and it did so - to both Big Rivers' and
3 Henderson's benefit. For decades, Henderson did not contest that judgment.
4 Indeed, throughout the operation of Station Two, Henderson shared in Station-
5 Two-related labor costs, including retirement benefits, even for Big Rivers'
6 employees. Offering severance to the Station Two labor force was consistent
7 with customary practice within the utility industry, particularly for skilled
8 power plant workers. Because it pays the lion's share of Station two costs, Big
9 Rivers has absolutely no incentive to incur unnecessary costs. Now, however, the
10 City seeks to cherry-pick which Station Two costs it is willing to pay by second-
11 guessing Big Rivers' business judgment in several areas, including labor costs.
12 But as explained throughout this case record, Big Rivers' decisions as operator
13 of Station Two were reasonable.

14 The payment of severance solely benefitted Henderson. Had Station Two
15 been retired as soon as it was uneconomic, the City would not have had a power
16 supply. Station Two was uneconomic to Big Rivers for at least ten months before
17 its ultimate closure on February 1, 2019 and Big Rivers only agreed to operate
18 Station Two through that date per the City's request to as to have adequate time
19 to find an alternate supplier. Given Station Two's pending closure, Station Two
20 employees had good reason to seek employment elsewhere during that period, a
21 situation similar to what Henderson experienced when announcing the closure
22 of its Station One generating facility. The availability of severance provided an

1 incentive for Station Two employees to remain working at the facilities so that
2 Henderson would continue to have a power supply. Henderson should therefore
3 be held responsible for its share of the severance costs.

4 **V. HISTORIC AND ONGOING GREEN LANDFILL WASTE DISPOSAL**
5 **COSTS**

6 **Q. Does Henderson contest its contractual obligations to pay for disposal**
7 **costs associated with the City's Station Two waste in Big Rivers' Green**
8 **Landfill for the historic period 2015-2019?**

9 A. Yes. Despite previously approving and paying for its share of Station Two costs
10 for the period 2015-2017, the City now seeks to avoid paying for \$1.75 million of
11 actually incurred landfill costs for the period 2015-2019. As set forth in Exhibit
12 Moll-7, the City contends that Big Rivers' cost-based landfill disposal fee from
13 2014/2015 of \$1.78/ton should remain fixed through 2019. The City's makes this
14 claim despite significant cost increases at the landfill, particularly the vertical
15 expansion wall. For example, Big Rivers' actual landfill storage costs in
16 2016/2017 were \$6.85/ton. A cost-based rate for landfill storage increases or
17 decreases over time depending on actual circumstances, as do all cost-based
18 rates. The City's position of simply locking in the low point on the cost curve is
19 arbitrary. It would be equally arbitrary for Big Rivers to assert that the high
20 point on the cost curve should be locked in.

21 Henderson also claims that it should not pay for the costs of a vertical
22 expansion of the Green Landfill since it was unaware of and ultimately objected

1 to that expansion.²⁸ But the expansion which the City contests was reasonable
2 and necessary at the time in order to accommodate Henderson's Station Two
3 waste. But for the accumulation of the City's waste, the vertical expansion
4 would not have been necessary.

5 Big Rivers does not earn a profit on its landfill disposal charges to the
6 City. We only pass-through our actual costs and both parties pay exactly the
7 same rate. This has been a good deal for the City. Since 2015, Henderson has
8 saved \$3.1 million by using the Green Landfill at cost compared to trucking its
9 waste offsite and storing it in a commercial landfill. Accordingly, consistent with
10 its obligations arising out of the Station Two Contracts, Henderson should pay
11 the waste disposal costs associated with its share of the Station Two ash pond
12 dredgings. The City's request to avoid \$1.75 million of landfill costs for the period
13 2015-2019 should be rejected.

14 **Q. Does Henderson also seek to completely avoid paying for the ongoing**
15 **future costs of storing its Station Two waste in the Green Landfill?**

16 **A.** Yes. Henderson seemingly alleges that it was only responsible for haulage costs
17 associated with its share of Station Two ash pond dredgings, which it has
18 already paid.²⁹ But in the 1993 Amendments to the Station Two Contracts,
19 Henderson expressly agreed to pay a portion of the cost "of sludge stackout and

²⁸ Direct Testimony of Barbara Moll at 10.

²⁹ Direct Testimony of Christopher Heimgartner at 22-23; Direct Testimony of Barbara Moll at 9.

1 disposal (*including* haulage and deposit in appropriate landfills)” from Station
2 Two.³⁰ Therefore, Henderson’s contractual obligation with respect to the Station
3 Two ash pond dredgings includes haulage, but is not limited to haulage. The
4 sludge stackout and disposal process will be ongoing until the Green Landfill is
5 decommissioned sometime in the future.

6 Henderson’s claim that it no longer has an obligation to pay for ongoing
7 sludge stackout and disposal costs for its share of the Station Two waste stored
8 in the Green Landfill violates the Contract. Big Rivers has incurred and
9 continues to incur real costs to remain in compliance with numerous
10 environmental regulations in order to store the City’s Station Two ash pond
11 dredgings in its Green Landfill. And Big Rivers will continue to incur ongoing
12 capital and maintenance costs to ensure that this waste is properly stored within
13 the Landfill. At no point did Big Rivers take title to Henderson’s waste in that
14 Landfill, as the City seems to allege. In fact, Big Rivers would be legally
15 prohibited from doing so because of the nature of the Landfill permit.
16 Consequently, Henderson is responsible for its proportional share of the ongoing
17 costs associated with maintaining its waste in Big Rivers’ Landfill.

18 **Q. How do you respond to Mr. Heimgartner’s argument that the Joint**
19 **Facilities Agreement relieves the City of ongoing cost responsibility for**
20 **its Station Two ash pond dredgings stored in the Green landfill?**

³⁰ 1993 Amendments at 11-12 added new Section 3.4 to the Joint Facilities Agreement (emphasis added).

1 A. He is not correct. Mr. Heimgartner asserts that Section 6.1 of the 1970 Joint
2 Facilities Agreement only obligates Henderson to share in the cost of operating
3 and maintaining joint use facilities (including Station Two ash pond dredgings)
4 so as to assure the continuous operation of either parties' generating station.³¹
5 He then reasons that under Section 8.1 of the agreement this obligation only
6 remains in effect so long as either party operates or maintains a generating
7 station that is served by the joint use facility.³² Finally, he concludes that
8 because neither party is currently operating or maintaining a generating station
9 that is served by the Station Two ash pond dredgings, its ongoing obligation to
10 pay for its ash pond waste stored at the Green Landfill is over.³³

11 Mr. Heimgartner's analysis is fundamentally incorrect. While Station
12 Two is not being operated, it is certainly being maintained. Station Two is being
13 maintained in a retirement in place status until it can be fully demolished and
14 decommissioned.

15 In addition, his general analysis of the 1970 Joint Facilities Agreement is
16 contrary to the specific provisions of the 1993 Amendments. The 1993
17 Amendments authorized the construction of a scrubber at Station Two and
18 defined the parties' obligations regarding scrubber sludge stackout and disposal
19 at the Green Landfill. That specific and more recent provision should govern.

³¹ Direct Testimony of Christopher Heimgartner at 22.

³² Id.

³³ Id.

1 Finally, the City ignores the fact that the 1993 Amendments specifically
2 include the Station Two ash pond dredgings stored at the Green Landfill in the
3 definition of Station Two. Therefore, once the Green Landfill is itself
4 decommissioned at some point in the future, the Station Two ash pond dredgings
5 stored there will be subject to the Station Two decommissioning cost sharing
6 formula (77.24% Big Rivers/22.76% Henderson).³⁴

7

8 **Q. What is the City’s ongoing cost responsibility for its ash pond dredgings
9 being stored in the Green Landfill?**

10 A. When Big Rivers filed its Application in July of last year, the City’s share of
11 ongoing landfill costs was approximately 12%. Because Station Two is no longer
12 adding new waste to the landfill, but the Green Station is, that 12% number will
13 be reduced over time. Big Rivers proposal to bill the City monthly for the ongoing
14 costs of maintaining its waste in the Green landfill is reasonable and consistent
15 with the Station Two Contracts. Owning and benefiting from the cheap energy
16 produced by a coal-fired power plant for 47 years comes with certain residual
17 costs, and maintaining an environmentally compliant landfill is one of them.

18 **VI. EXCESS HENDERSON ENERGY AND HENDERSON NATIVE LOAD**

³⁴ The 1993 Amendments at 5 includes in the definition of Station Two joint use facilities “to the extent furnished and owned by City.” The 1993 Amendments Exhibit 1 at 1 of 3, PART B lists the “Joint Use Facilities Provided By and Owned By the City But Located on Big Rivers’ Property.” Item 15 of Part B is “Station Two Ash Pond Dredgings in Green Station Sludge Disposal Landfill adjacent to Green River south of Green Station.”

1 **Q. Can you please respond to the City’s position on Excess Henderson**
2 **Energy, and the related topic of Henderson Native Load?**

3 A. Yes. At pages 6-19 of his Direct Testimony, Mr. Heimgartner describes the
4 respective obligations of the parties regarding Excess Henderson Energy and
5 Henderson Native Load in terms of “wanted” versus “unwanted” energy.³⁵ These
6 terms are not in the Contracts, were not referenced or distinguished by the
7 Commission in its Order in Case No. 2016-00278, nor were they defined or
8 referenced in the December 2017 Settlement Agreement. Instead, these terms
9 merely serve to confuse.

10 **Q. Please describe the 2017 Settlement Agreement.**

11 A. The City and Big Rivers have a long and tortured history regarding EHE. This
12 includes an arbitration case that began in 2010 and a related civil action in
13 Henderson Circuit Court. The arbitration and civil action were both resolved by
14 the 2017 Settlement. The 2017 Settlement defined “Disputed Excess Energy” in
15 the same way that EHE was defined by the Commission in Case No. 2016-00278.
16 As set forth in the 2017 Settlement, “Disputed Excess Energy” means “energy
17 associated with Henderson’s reserved generating capacity under the Power
18 Sales Contract in excess of what is consumed by Henderson and its inhabitants
19 on an hourly basis...” The 2017 Settlement “releases, acquits, and forever
20 discharges...BREC...of and from any and all manner of actions, causes of action,

³⁵ Direct Testimony of Christopher Heimgartner at 17-19.

1 suits...liabilities, claims and demands of any nature or kind whatsoever,
2 whether or not in contract, in equity, in tort or otherwise, which Henderson ever
3 had, now has, may now have or may hereafter have against [Big Rivers]
4 ...resulting from, arising out of or in any manner relating to : (1) the generation,
5 production, use, sale or resale of “Disputed Excess Energy...” This language
6 could not be more comprehensive. The 2017 Settlement does not divide
7 “Disputed Excess Energy” into “wanted” and “unwanted” energy.

8 Such comprehensive language is not ambiguous and is reconfirmed by
9 Henderson’s own audited financial statements which state, “An offer to settle all
10 claims past, present and future, was accepted by the parties, and the \$6.25
11 million settlement was received on January 5, 2018.”³⁶

12 **Q. Are “wanted” and “unwanted” generation common issues for a utility**
13 **that generates electricity?**

14 **A.** No. The City’s new arguments are essentially a repackaging of those made and
15 rejected by the Commission in its January 5, 2018 Order in Case No. 2016-
16 00278. But the context for addressing the substance of the Excess Henderson
17 Energy issue remains the same, and it relates back to standard utility
18 economics.

19 The proper way to operate a power plant in MISO is to dispatch the plant
20 when its projected cost is less than market, and to remove the unit from service

³⁶ Henderson Response to Big Rivers First Request for Information, Item Nos. 31, Attachment 1
at 11.

1 and buy from the market when the market is projected to be more economic. For
2 years I tried to convince the City to allow Big Rivers to operate Station Two
3 according to these principles of economic commit and dispatch. But the City
4 refused. The City claimed that operating its Station Two was needed for rate
5 consistency³⁷ and reliability³⁸, even when the plant was producing excess energy
6 that had to be sold in the MISO market for a loss, and even though economic
7 purchases in the MISO market are much more reliable than an aging Station
8 Two. The City received the rate consistency and fictitious reliability that it
9 wanted. But those came at a cost. Now we are simply asking the Commission to
10 properly assign costs to the cost-causer, and to the ultimate receiver of the EHE,
11 which aligns with both the Commission’s Order in Case No. 2016-00278 and the
12 2017 Settlement Agreement.

13 The Henderson Native Load issue is the inverse. Instead of “Excess”
14 Henderson Energy, the issue is “Deficient” Henderson Energy. For long periods
15 of time the City did not maintain enough coal to serve its native load. During
16 these periods, Big Rivers provided the coal needed to operate Station Two in
17 order to keep the lights on in Henderson. The City sold this energy to its native

³⁷ Post-Hearing Brief of Henderson, Case No. 2016-00278 (March 14, 2017) at 12 (“The ownership and operation of Station Two enables Henderson to offer power to the city and its inhabitants at consistent rates that are not subject to market fluctuations. Henderson remains willing to explore all options for stemming losses associated with the production of uneconomic energy at Station Two, provided Henderson receives assurances that it will be able to maintain that consistency.”).

³⁸ Hearing Transcript of Henderson General Manager Gary Quick, Case No. 2016-00278, at 2:45:08-2:48:00 and 2:50:55-2:52:30 (idling one or both units at Station Two and purchasing from the MISO market could adversely affect reliability to the detriment of the citizens of Henderson).

1 load customers, collected the cost to generate this energy; but now refuses to
2 reimburse Big Rivers for that coal.

3 **VII. CONCLUSION**

4 **Q. Does this conclude your testimony?**

5 **A. Yes, it does.**

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 I prepared or supervised the preparation of the Rebuttal Testimony filed with this Verification, and that Rebuttal Testimony is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

Robert W Berry

Robert W. ("Bob") Berry

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Robert W. ("Bob") Berry on this the 25th day of August, 2020.

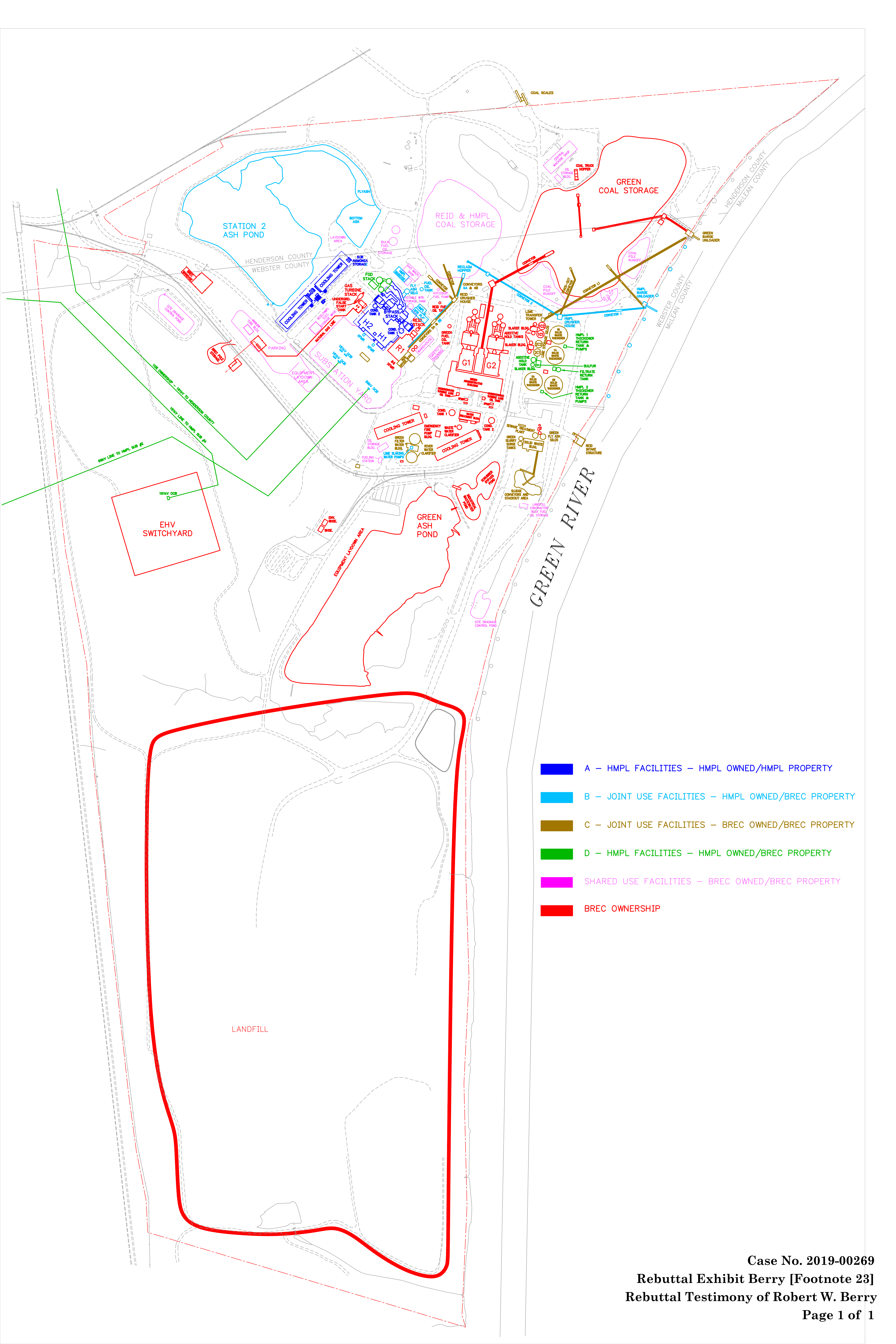
Joy P. Parsley

Notary Public, Kentucky State at Large

My Commission Expires _____

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





- A – HMPL FACILITIES – HMPL OWNED/HMPL PROPERTY
- B – JOINT USE FACILITIES – HMPL OWNED/BREC PROPERTY
- C – JOINT USE FACILITIES – BREC OWNED/BREC PROPERTY
- D – HMPL FACILITIES – HMPL OWNED/BREC PROPERTY
- SHARED USE FACILITIES – BREC OWNED/BREC PROPERTY
- BREC OWNERSHIP

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 RATE AND	)	2019-00269
SERVICE STANDARDS.)	

REBUTTAL TESTIMONY

OF

**PAUL G. SMITH
CHIEF FINANCIAL OFFICER**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

Filed: August 25, 2020

**REBUTTAL TESTIMONY
OF
PAUL G. SMITH**

Table of Contents

I.	INTRODUCTION.....	1
II.	EXCESS HENDERSON ENERGY.....	2
III.	HENDERSON NATIVE LOAD	9
IV.	OTHER OPERATING COSTS.....	10
	a. Landfill Expansion Costs.....	11
	b. MISO Fees.....	12
	c. Severance/Retention Costs To Keep Station Two Operational.....	13
	d. Capacity Requirement For Fiscal Year 2018/2019.....	14
V.	UPDATED SUMMARY OF AMOUNT DUE (TO)/FROM HENDERSON	17
VI.	COMMISSION JURISDICTION UNDER KRS 278.200.....	18
VII.	ONGOING ENFORCEMENT UNDER KRS 278.390	21
VIII.	CONCLUSION	30

REBUTTAL TESTIMONY
OF
PAUL G. SMITH

1 **I. INTRODUCTION**

2 **Q. Please state your name, business address and occupation.**

3 A. My name is Paul G. Smith, and my business address is 201 Third Street,
4 Henderson, Kentucky 42420. I am the Chief Financial Officer (“CFO”) for Big
5 Rivers Electric Corporation (“Big Rivers”).

6 **Q. Did you submit Direct Testimony in this proceeding?**

7 A. Yes. In my Direct Testimony I described and supported the Interim
8 Accounting Summary of amounts owed between Big Rivers and the City of
9 Henderson and the City of Henderson Utility Commission (collectively,
10 “Henderson”), as of June 30, 2019, and the methodology that was used to arrive
11 at the calculations set forth therein. I also discussed each party’s share of the
12 coal and reagent lime inventory remaining at Station Two on February 1, 2019.

13 **Q. What is the purpose of your rebuttal testimony?**

14 A. The purpose of this testimony is to respond to the assertions contained in the
15 Direct Testimony of Henderson witnesses Christopher Heimgartner and
16 Barbara Moll regarding Excess Henderson Energy (“EHE”), and other
17 amounts due to Big Rivers for Henderson Native Load, Other Operating Costs
18 and Decommissioning Costs. I have calculated the interest owed by Henderson

1 for costs dating as far back as 2010. I have prepared two alternative exhibits
2 of the amounts owed by the City. The first assumes that the City pays 22.76%
3 of decommissioning costs. The second assumes that the City pays 100% of
4 retirement in place costs. I also address Mr. Heimgartner's argument that the
5 Commission does not have jurisdiction to decide this case. Finally, I address
6 statements made in Mr. Heimgartner's Direct Testimony regarding the
7 legitimacy and enforcement of a potential Commission order requiring
8 Henderson to pay its share of decommissioning and/or retirement in place costs
9 at Station Two.

10 **II. EXCESS HENDERSON ENERGY**

11 **Q. Please explain the term "Excess Henderson Energy" or "EHE."**

12 A. Excess Henderson Energy represents the hourly difference between
13 Henderson's reserved capacity and the amount of capacity needed by
14 Henderson to serve its native load and for sale to third parties. EHE was
15 clearly and unambiguously defined by the Commission in its January 5, 2018
16 Order in Case No. 2016-00278. The Commission's January 5, 2018 Order (at
17 12-13) discusses EHE and Henderson's responsibility to pay for the variable
18 costs associated with EHE:

19 Having reviewed the record and, in particular, the 1998 amendments to
20 the Power Sales Contract, the Commission finds that the clear and
21 unambiguous terms as set forth in Section 3.8 of the 1998 amendments
22 allow Big Rivers the option, at its discretion, to either take or decline to
23 take any Excess Henderson Energy. Section 3.8(a) of the 1998

1 amendments provides that "[i]n the event that ... [Henderson] does not
2 take the full amount of energy associated with its reserved capacity from
3 Station Two... Big Rivers may, at its discretion, take and utilize all such
4 energy...not scheduled or taken by [Henderson] (the "Excess Henderson
5 Energy")" A plain reading of this section reveals that Excess Henderson
6 Energy constitutes energy that is not taken or scheduled by Henderson
7 within its reserved capacity. In other words, Excess Henderson Energy
8 is the difference between Henderson's reserved capacity under the
9 Power Sales Contract, or 115 MW as of 2016, and the amount of capacity
10 needed by Henderson to serve its native load and for sale by Henderson
11 to third-parties.

12 The Commission further finds that Big Rivers is not required to pay for
13 any variable costs associated with Excess Henderson Energy that Big
14 Rivers elects not to take.¹

15 **Q. For the period January 5, 2018 through January 31, 2019, what did Big**
16 **Rivers recommend regarding EHE?**

17 A. Big Rivers' Direct Testimony supported a calculation of the total amount due
18 to or from Henderson related to EHE based on the methodology approved by
19 the Commission in Case No. 2016-00278. Big Rivers followed the Commission
20 approved methodology precisely. This is shown in Exhibit Smith-2, attached to
21 my Direct Testimony.

22 **Q. Is Big Rivers seeking to relitigate the EHE issue for the period before**
23 **January 5, 2018?**

24 A. No. The EHE amount contained in Exhibit Smith-2 only relates to EHE from
25 January 5, 2018, through January 31, 2019. My calculation does not reach
26 back to the period of time prior to January 5, 2018 because Big Rivers and

¹ Order, Case No. 2016-00278 (January 5, 2018) at 12-13.

1 Henderson entered into a December 15, 2017 Settlement Agreement and
2 Release in Henderson Circuit Court Civil Action No. 09-CI-693 that resolved
3 all of Henderson’s claims relating to EHE prior to January 5, 2018 in exchange
4 for various consideration including a black box payment of \$6.25 million from
5 Big Rivers. The 2017 Settlement “forever discharges” Big Rivers from any
6 future claims and liabilities associated with EHE prior to January 5, 2018.² A
7 copy of the 2017 Settlement Agreement is included with Mr. Berry’s Direct
8 Testimony as Exhibit Berry-2.

9 **Q. Please summarize the key provisions of the 2017 Settlement**
10 **Agreement.**

² Section V., Paragraph 4 of the Settlement Agreement and Release provides:

In consideration of the mutual promises, covenants and agreements contained in this Agreement, the resolution and settlement of disputed claims and controversies, and other good and valuable consideration, the receipt and sufficiency of which are conclusively acknowledged, Henderson hereby releases, acquits, and forever discharges, individually and collectively, BREC and WKEC, along with their affiliates, parents, members, officers, directors, employees, agents, representatives, advisors, successors, predecessors, boards and assigns (collectively, the “Released Parties”) of and from any and all manner of actions, causes of action, suits, sums of money, accountings, reckonings, covenants, controversies, agreements, promises, remedies, amounts paid in settlement, compromises, losses, rights of contribution, damages, judgements, executions, debts, obligations, liabilities, claims and demands of any nature or kind whatsoever, whether or not in contract, in equity, in tort or otherwise, which Henderson ever had, now has, may now have or may hereafter have against the Released Parties (or any of them) resulting from, arising out of or in any manner relating to: (1); the generation, production, use, sale or resale of “Disputed Excess Energy” as defined herein, or the capacity, fixed, or variable costs associated with such energy, including but not limited to those asserted or that could have been asserted in, or that were or could have been in any way connected with, the “Damages Suit” or the “Arbitration Proceeding;” and (2) any obligations, past or future, of BREC to Henderson under the Power Sales Contract or the Arbitration Proceeding related to, arising out of , or concerning “Disputed Excess Energy” as defined herein, whether known or unknown, accrued or unaccrued, asserted or unasserted, direct or indirect, fixed, contingent or otherwise...

1 A. The 2017 Settlement defined “Disputed Excess Energy” in the same way that
2 EHE was defined by the Commission. As set forth in the 2017 Settlement,
3 “Disputed Excess Energy” means “energy associated with Henderson’s
4 reserved generating capacity under the Power Sales Contract in excess of what
5 is consumed by Henderson and its inhabitants on an hourly basis...” Most
6 importantly, the 2017 Settlement “releases, acquits, and forever
7 discharges...BREC...of and from any and all manner of actions, causes of
8 action, suits...liabilities, claims and demands of any nature or kind
9 whatsoever, whether or not in contract, in equity, in tort or otherwise, which
10 Henderson ever had, now has, may now have or may hereafter have against
11 [Big Rivers] ... resulting from, arising out of or in any manner relating to : (1)
12 the generation, production, use, sale or resale of “Disputed Excess Energy...”
13 This language is clear and unambiguous.

14 The 2017 Settlement is referenced in Henderson’s audited financial
15 statements, which are prepared by Henderson management and reviewed by
16 an independent auditor. The language in Henderson’s audited financial
17 statements is not ambiguous in describing the Settlement as, “An offer to settle
18 all claims past, present and future, was accepted by the parties, and the \$6.25
19 million settlement was received on January 5, 2018.” The City’s audited
20 financial statements are relied upon by their citizens, banks, lenders and the
21 financial markets in which their revenue bonds are traded.

1 **Q. What does Henderson recommend regarding EHE for the period**
2 **before January 5, 2018?**

3 A. The City wants to void the 2017 Settlement and relitigate the EHE issue for
4 the period before January 5, 2018 by creating a false distinction between
5 “wanted” and “unwanted” EHE. The Henderson witnesses argue that Exhibit
6 Smith-2 pertains to the generation of uneconomic energy which was
7 “unwanted” by either Henderson or Big Rivers, but which had to be generated
8 to keep the Station Two units in continuous operation. Henderson argues that
9 this energy was separate and distinct from the economic energy which both
10 parties “wanted”.³

11 **Q. Henderson draws a distinction between “wanted” and “unwanted”**
12 **EHE. Is this distinction relevant to the Commission’s previous**
13 **resolution of EHE issues or the 2017 Settlement Agreement between**
14 **Henderson and Big Rivers?**

15 A. No. The Commission did not make a distinction between, nor did it reference,
16 “wanted” or “unwanted” energy in its Order in Case No. 2016-00278.
17 Similarly, the 2017 Settlement Agreement also does not define or reference
18 “wanted” or “unwanted” energy. Both the Order and the Settlement
19 Agreement address the totality of EHE. Henderson attempts to use the

³ Direct Testimony of Barbara Moll at 5; Direct Testimony of Christopher Heimgartner at 17-19.

1 artificial “wanted/unwanted” distinction as a rationale to reach back and
2 improperly relitigate the period before January 5, 2018.

3 **Q. Did Big Rivers support the decision to generate EHE at Station Two**
4 **when the MISO energy price was less than the cost of generation?**

5 A. No. Big Rivers attempted for several years to inform Henderson as to the
6 uneconomic consequences of their demands that Station Two generate EHE
7 even when the MISO hourly energy price was less than the cost of Station Two
8 generation. Henderson was essentially losing money on each and every EHE
9 megawatt generated, during each and every hour the Station Two cost
10 exceeded the MISO energy price. Henderson refers to this generation as
11 “unwanted” energy, which is ironic given that Henderson demanded that the
12 energy be generated. The adverse impact of Henderson’s uneconomic EHE
13 dispatch decision was compounded by its similarly uneconomic dispatch
14 decision to serve its native load out of Station Two during time periods when
15 market energy purchases were less expensive, including many hours when
16 Henderson did not have sufficient fuel or reagents.

17 **Q. Do you agree with Henderson’s calculation of EHE as contained in**
18 **Exhibit Moll-2?**

19 A. No. Exhibit Moll-2 reaches all the way back to June 1, 2016. However, as
20 previously discussed, the 2017 Settlement Agreement resolved all of
21 Henderson’s claims relating to EHE up to January 5, 2018. That is why Big
22 Rivers paid the City \$6.25 million.

1 Furthermore, even if the Commission were inclined to relitigate the
2 EHE issue, the City’s calculation is not correct. Exhibit Moll-2 also includes
3 the coal, lime and fuel oil shortfall that Henderson did not have in inventory
4 and that was supplied by Big Rivers to serve Henderson’s native load. In other
5 words, Henderson did not have enough fuel and reagents and therefore relied
6 on Big Rivers to provide the inputs to keep the lights on in Henderson. The
7 energy generated and consumed by Henderson to serve its native load, for
8 which Henderson was deficient fuel and reagents, can then properly be
9 referred to as “Deficient” Henderson Energy. Exhibit Moll-2 amounts do not
10 relate solely to EHE as Henderson asserts, but also includes the fuel and
11 reagents provided by Big Rivers to generate “Deficient” Henderson Energy
12 that was generated to serve Henderson’s Native Load.

13 **Q. Is Henderson also seeking to relitigate in the Henderson Circuit Court**
14 **the EHE issue for the period before January 5, 2018?**

15 A. Yes. On August 3, 2020, Henderson filed a Petition for Declaratory Relief in
16 the Henderson Circuit Court (Case No. 20-CI-00413). The City is seeking to
17 have the Court reopen the 2017 Settlement Agreement based on the same
18 artificial distinction between “wanted” and “unwanted” EHE that the City
19 makes here.

20 **Q. What is Big Rivers’ defense in the City’s new EHE Henderson Circuit**
21 **Court proceeding?**

1 A. Our defense is the same as it is in this proceeding. That the 2017 Settlement
2 Agreement “forever discharges” Big Rivers from all claims and liabilities
3 “which Henderson ever had, now has, may now have or may hereafter have”
4 associated with “Disputed Excess Energy” for the period before January 5,
5 2018. Big Rivers will seek reimbursement for legal fees and may seek
6 sanctions because of this prohibited action.

7 **Q. Henderson claims E.ON issued the \$6.25 million payment to the City
8 as required by the December 2017 Settlement Agreement. Do you
9 agree?**

10 A. No. Big Rivers hand-delivered the Settlement payment to Henderson, which
11 was drawn on a Big Rivers bank account (see Rebuttal Exhibit Smith-1). As
12 clearly evidenced by Rebuttal Exhibit Smith-1, which includes the notice of
13 receipt signed by Henderson’s attorney, and Exhibit Berry-2, contrary to the
14 testimony of Henderson witnesses Mr. Heimgartner and Ms. Moll, the
15 Settlement payment of \$6.25 million was paid by Big Rivers and was not paid
16 by E.ON on behalf of Big Rivers, nor was E.ON a party to the 2017 Settlement
17 Agreement.

18 **III. HENDERSON NATIVE LOAD**

19 **Q. Does Exhibit Smith-3 reflect the amount due from Henderson related
20 to fuel and reagent shortfall to serve Henderson Native Load?**

1 A. Yes. Exhibit Smith-3 includes the variable costs related to Henderson’s coal,
2 lime and fuel oil shortfall until Station Two was retired on January 31, 2019,
3 as summarized on pages 10 and 11 of my Direct Testimony, and as described
4 earlier in my Rebuttal Testimony as “Deficient” Henderson Energy. The
5 calculation of the Henderson native load costs shown in Exhibit Smith-3
6 naturally result from precisely following the EHE methodology approved by
7 the Commission in its Order in Case No. 2016-00278. These costs are related
8 to coal shortfall, lime, fuel oil and coal survey adjustments supplied by Big
9 Rivers in order to generate the electricity to serve Henderson native load.
10 Henderson failed to supply the coal and other commodities to generate the
11 electricity used to serve its native load and has failed to reimburse Big Rivers
12 for these costs. The Commission’s January 5, 2018 Order in Case No. 2016-
13 00278 found that Big Rivers correctly applied the provisions of Section 3.8 of
14 the Power Sales Contract in calculating variable costs.

15 In sum, Big Rivers calculated the quantity of EHE and associated
16 variable costs between January 5, 2018 and January 31, 2019 (Exhibit Smith-
17 2) and the related amount of fuel and reagents provided by Big Rivers to
18 generate “Deficient” Henderson Energy to serve Henderson’s native load
19 (Exhibit Smith-3) by precisely applying the methodology adopted by the
20 Commission in Case No. 2016-00278. Therefore, the native load costs
21 contained in Exhibit Smith-3 should be approved.

22 **IV. OTHER OPERATING COSTS**

1 **a. Landfill Disposal And Storage Costs**

2 **Q. Do you agree with Henderson’s proposed landfill storage cost**
3 **adjustment contained in Exhibit Moll-3 and Exhibit Moll-7?**

4 A. No. Exhibit Moll-3 and Exhibit Moll-7 are based on several unreasonable
5 arguments and incorrect readings of the Station Two Contracts. First, as
6 explained in further detail in the Rebuttal Testimony of Mr. Berry,⁴
7 Henderson’s attempt to avoid paying \$1.75 million of its share of the costs
8 associated with the disposal of Station Two waste for the period 2015-2019
9 violates the terms of the 1993 Amendments to the Station Two Contracts.⁵
10 Paragraph 3.4 of the 1993 Amendments requires Henderson to pay its
11 allocated share of costs associated with the “sludge stackout and disposal
12 (including haulage and deposit in appropriate landfills)...” Exhibit Moll-3 and
13 Exhibit Moll-7 would arbitrarily allow the City to lock-in the 2014/2015 landfill
14 disposal rate of \$1.78/ton through 2019 whereas the actual cost-based rate
15 during that period was as high as \$6.85/ton. Henderson’s position would allow
16 it to only pay for “haulage” and not the other costs of stackout and disposal,
17 like the vertical wall expansion at the Green Landfill. This is not consistent
18 with the 1993 Amendments and should be rejected by the Commission.

19 Further, contrary to Ms. Moll’s Direct Testimony, Henderson was aware
20 of the landfill expansion plan. It is my understanding that Henderson

⁴ Rebuttal Testimony of Robert W. Berry at 23-26.

⁵ See Application, Exhibit 12 at 11-12.

1 employees Mr. Wayne Thompson, Mr. Gary Quick, and Mr. Ken Brooks were
2 all very familiar with the expansion project.

3 Lastly, Ms. Moll's proposed adjustment of the Fiscal Year 2015/2016 and
4 2016/2017 operating costs contradicts her explicit approval of the settlement
5 true-up amounts, and the exchange of the final payment in accordance with
6 her approval that Henderson processed and cashed for those respective years.
7 As history shows, Henderson does not accept and deposit payments for which
8 their entire claim, however small the difference, has not been satisfied.

9 **b. MISO Fees For Henderson Load And Generation**

10 **Q. Do you agree with Henderson's proposed MISO Fee adjustment c
11 ontained in Exhibit Moll-3?**

12 **A.** No. Exhibit Moll-3 attempts to avoid MISO fees totaling \$275,193 and
13 \$203,636 for Fiscal Years 2017-2018 and 2018-2019, respectively, which are
14 included in the annual settlement true-up amounts on Exhibit Smith-4, based
15 on its argument that Henderson was not obligated to pay these fees.⁶ The City
16 then uses these same arguments to oppose Big Rivers' collection of MISO fees
17 from 2010-2016, which have not yet been paid. As explained in the testimonies
18 of Mr. Eacret and Mr. Chambliss, Henderson is contractually obligated to
19 reimburse Big Rivers for the MISO fees incurred by Big Rivers on account of

⁶ See also Direct Testimony of Brad Bickett Direct at 4-19.

1 Henderson's load and generation.⁷ Exhibit Moll-3 incorrectly allows
2 Henderson to avoid these MISO charges.

3 **c. Severance/Retention Costs To Keep Station Two Operational**

4 **Q. Do you agree with Henderson's proposed Severance/Retention Cost**
5 **adjustment contained in Exhibit Moll-3?**

6 A. No. Exhibit Moll-3 proposes that Henderson avoid its share of Station Two
7 severance/retention costs. Henderson argues that it should not have to pay its
8 share of Station Two severance costs because Big Rivers assigned a portion of
9 these "costs to Henderson without contractual authority and with full
10 knowledge Henderson has no obligation to pay and has verbally contested
11 responsibility for the costs."⁸ This is simply an attempt to avoid reasonable
12 expenses incurred by Big Rivers in efficiently and economically operating
13 Station Two. As explained in the testimony of Mr. Berry,⁹ it was the business
14 judgment of Big Rivers, as the Station Two operator, to pay employee
15 severance/retention consistent with industry practice and to ensure the
16 extended operation of Station Two as demanded by Henderson.

17 Significantly, the disputed severance costs were incurred solely in order
18 to retain skilled employees that may otherwise have left during the additional

⁷ Direct Testimony of Mark J. Eacret at 5-9; Rebuttal Testimony of Mark J. Eacret at 4-11; Direct Testimony of Michael W. Chambliss at 10-11; Rebuttal Testimony of Michael W. Chambliss at 4-11.

⁸ Direct Testimony of Barbara Moll at 8.

⁹ Direct Testimony of Robert W. Berry at 29-32; Rebuttal Testimony of Robert W. Berry at 21-23.

1 nine-month period from May 1, 2018 through January 31, 2019 in which
2 Henderson requested, and Big Rivers agreed, to continue operating Station
3 Two so that Henderson could secure an alternative supplier. Unlike the City,
4 Big Rivers would have been better off financially if the skilled employees were
5 not retained and the uneconomic Station Two was retired earlier.

6 Big Rivers' position on severance/retention costs is fully authorized by
7 the Power Plant Construction And Operation Agreement. That Agreement
8 holds Big Rivers to a best efforts standard in its efficient and economical
9 operation of the plant, and applies a reasonableness standard to costs payable
10 by the City. Section 13.4 of that Agreement provides that "Big Rivers
11 covenants and agrees that during the term of this Agreement it will at all times
12 operate City's Station Two on a best efforts basis, in an efficient and
13 economical manner..." Section 13.6 of that Agreement provides that "City will
14 pay Big Rivers, on a monthly basis, its reasonable expenditures incurred in the
15 operation and maintenance of City's Station Two..." While the City objects to
16 the cost, it has not demonstrated that severance/retention payments were
17 inefficient, uneconomic or unreasonable. Therefore, those payments are
18 recoverable under the Contracts.

19 **d. Capacity Requirement For Fiscal Year 2018/2019**

20 **Q. Do you agree with Henderson's proposed Capacity Requirement**
21 **adjustment contained in Exhibit Moll-3?**

1 A. No, I do not agree with Henderson’s proposed Capacity Requirement
2 adjustment for two reasons. First, Exhibit Moll-3 contains an adjustment in
3 order to account for its argument that Big Rivers “unilaterally calculated the
4 amounts due in settlement of the Fiscal Year 2018-2019 budget on the false
5 assumption that Henderson had reserved 125 MW of capacity rather than the
6 115 MW Henderson actually reserved.”¹⁰ This creates a \$561,522 adjustment
7 in Henderson’s favor.¹¹ As explained in the testimonies of Mr. Eacret,¹²
8 Henderson attempted to reserve only 115 MW of capacity from Station Two for
9 Fiscal Year 2018/2019. By reserving less capacity than required, Henderson
10 artificially increased Big Rivers' share of the Station Two fixed costs that Big
11 Rivers was required to pay through Station Two Capacity Charges.
12 Henderson’s adjustment would require Big Rivers’ to pay a portion of the
13 capacity costs Henderson was required to reserve for Fiscal Year 2018/2019.
14 The Commission should reject Henderson’s attempt to shift capacity costs to
15 Big Rivers.

16 Second, Henderson’s proposed Capacity Requirement adjustment on
17 Exhibit Moll-3 is mathematically incorrect. The Fiscal Year 2018/2019 Station
18 Two total expense includes the severance/retention amount Ms. Moll
19 separately proposed for adjustment. By simply applying a capacity share

¹⁰ Direct Testimony of Barbara Moll at 6-7.

¹¹ Exhibit Moll-3.

¹² Direct Testimony of Mark J. Eacret at 4-5; Rebuttal Testimony of Mark J. Eacret at 11-13.

1 adjustment, Exhibit Moll-3 duplicates Henderson's adjustment related to the
2 severance cost. This mathematical error should be rejected.

3 **Q. Do you believe Big Rivers would have been better off financially if**
4 **Station Two had ceased operation before January 31, 2019?**

5 A. Yes. Big Rivers determined Station Two was no longer economical to operate
6 long before its filing in Case No. 2018-00146. Unfortunately, Henderson
7 demanded that the Station continue to be operated despite the uneconomical
8 results to both owners. For example, in fiscal year 2017/2018 Big Rivers
9 covered \$16 million of Station Two fixed costs while Henderson's allocation
10 was only \$9 million. Based on the energy received, Big Rivers' allocation of
11 fixed costs equated to \$82/MWh and Henderson's allocated fixed costs equated
12 to \$20/MWh. The fiscal year 2018/2019 economics were similar. Big Rivers'
13 share of Station Two fixed cost was \$10 million, or \$60/MWh whereas
14 Henderson's \$6 million allocation of fixed costs equated to \$19/MWh. As it
15 relates to Henderson's argument that it should be allowed to use Zonal
16 Resource Credits (ZRCs) instead of increasing its Station Two capacity
17 reservation in fiscal year 2018/2019, I would like to point out that the Station
18 Two fixed costs equated to approximately \$4.17 per kW-month, or \$136.99 per
19 MW-day, which is many, many times higher than the market price for ZRCs of
20 approximately \$10/MW-day. Henderson's effort to evade its share of Station
21 Two's fixed cost should be denied.

1 It is not surprising to learn that Henderson is challenging the prudent
2 and reasonably incurred landfill expansion costs, MISO fees, severance costs,
3 and capacity share costs even after Big Rivers had subsidized Henderson for
4 so many years. If Big Rivers had not filed its application in Case No. 2018-
5 00146, Henderson might still be demanding to operate an uneconomical
6 Station Two. For the reasons stated above, the Commission should reject
7 Henderson’s calculations for amounts due to, and from, Big Rivers for other
8 operating costs contained in Exhibit Moll-3 and approve the calculations
9 contained in Exhibit Smith-4.

10 **V. UPDATED SUMMARY OF AMOUNT DUE (TO)/FROM HENDERSON**

11 **Q. Please summarize the total amount due (to)/from Henderson for the**
12 **costs discussed above.**

13 **A. Following is a summary of the total amounts due (to)/from Henderson as of**
14 **June 30, 2020, assuming the City is allocated 22.76% of decommissioning costs,**
15 **as shown in Updated Exhibit Smith-1:**

16

Exhibit	Description	Amount Due (To)/From Henderson	Interest
Smith-2	Excess Henderson Energy	(\$ 3,310,482)	(\$ 439,052)
Smith-3	Henderson Native Load	4,693,587	838,054
Smith-4	Other Operating Costs	(941,581)	450,843
Smith-5	Decommissioning Costs	1,017,703	44,559
	Subtotal	1,459,227	\$ 894,404
	Interest	894,404	
	Total	<u>\$ 2,353,631</u>	

1
2
3
4
5
6

Assuming the Commission issues an order requiring Henderson to pay 100% of the retirement in place costs at Station Two, the total amount due (to)/from Henderson as of June 30, 2020 increases as follows, as shown in Exhibit Smith-1b:

<u>Exhibit</u>	<u>Description</u>	<u>Amount Due (To)/From Henderson</u>	<u>Interest</u>
Smith-2	Excess Henderson Energy	(\$ 3,310,482)	(\$ 439,052)
Smith-3	Henderson Native Load	4,693,587	838,054
Smith-4	Other Operating Costs	(941,581)	450,843
Smith-5b	Retirement in Place Costs	2,896,061	140,585
	Subtotal	3,337,585	\$ 990,430
	Interest	990,430	
	Total	<u>\$ 4,328,015</u>	

7

Q. The above table identifies the interest associated with the amounts due (to)/from Henderson. Is such interest included in the summary of amounts due (to)/from Henderson?

A. Yes. The interest, which is calculated on the monthly past due amount at a 6% interest rate, reflects the additional charge to Keep Big Rivers financially whole. Recovery of the interest is appropriate given the extended delay, and burdensome effort required to enforce collection of the amounts due from Henderson.

VI. COMMISSION JURISDICTION UNDER KRS 278.200

1 **Q. Does Henderson object to the Commission deciding the issues in this**
2 **proceeding?**

3 A. Yes. Mr. Heimgartner argues that the Commission should not decide this case
4 because it is his understanding that it is the Commission's job to regulate
5 utility rates and service standards neither of which is implicated in Big Rivers'
6 application. Mr. Heimgartner states that if "Big Rivers can invoke
7 Commission jurisdiction simply by claiming a contractual obligation might
8 eventually cause it to raise rates, then every person, branch of government,
9 and private business considering entering into a contract with a regulated
10 utility should exercise caution lest it find itself unwittingly subject to
11 Commission jurisdiction rather than the jurisdiction of the courts."¹³

12 **Q. Has the Commission already ruled on Henderson's argument that the**
13 **Commission lacks jurisdiction to decide this case?**

14 A. Yes. Similar to the Excess Henderson Energy issue, Mr. Heimgartner is also
15 attempting to re-litigate the jurisdictional issue that has already been decided
16 by the Commission. On September 9, 2019, Henderson filed a Motion to
17 Dismiss or alternatively to Hold in Abeyance, requesting that this case be
18 dismissed on the grounds that the Commission lacks jurisdiction to determine
19 the issues raised in Big Rivers' Application. On February 4, 2020, the
20 Commission denied Henderson's Motion to Dismiss. The Commission stated:

21 "Having reviewed Henderson's motion, BREC's response, and being
22 otherwise sufficiently advised, the Commission finds that the issues

¹³ Direct Testimony of Christopher Heimgartner at 13.

1 raised by BREC in its complaint involve the enforcement of the rates
2 and service standards contained in the Station Two Contracts. We note
3 that the Station Two Contracts involve a series of contracts related to
4 the operation of the Station Two generation facility and that those
5 contracts set forth the obligations and rights of BREC, a utility within
6 the Commission's regulatory jurisdiction, and the city of Henderson.

7 ***

8 The issues raised in BREC's complaint concern the amounts owed to
9 BREC under the Station Two Contracts; Henderson's share of the
10 decommissioning costs under Section 8 of the 1993 amendments;
11 Henderson's share of the costs of maintaining Station Two coal
12 combustion residuals that were disposed of at BREC's Green Station
13 landfill under various provisions of the Joint Facilities Agreement; and
14 BREC's ability to utilize city-owned joint use facilities in order to
15 continue operation of its Green generating units. These issues implicate
16 the service and rates under the various Station Two Contracts, and such
17 issues are clearly within the scope of the Commission's jurisdiction
18 under KRS 278.200.”¹⁴

19 The Commission has already denied Henderson’s arguments that the
20 Commission lacks jurisdiction to decide the issues presented in Big Rivers’
21 Application and testimony. There is no need for the Commission to address
22 this argument any further.

23 **Q. Do you agree with Mr. Heimgartner’s view that the Station Two**
24 **contracts do not have a direct impact on Big Rivers’ rates?**

25 **A.** No. The outcome of this case will have an immediate, automatic, and
26 significant effect on Big Rivers’ rates. The recovery of the Station Two ash pond
27 and landfill costs will impact the amount Big Rivers recovers in its monthly
28 environmental surcharge mechanism. Additionally, any extra dollar that Big
29 Rivers is required to pay for costs that are the responsibility of Henderson

¹⁴ Order (February 4, 2020) at 5-7.

1 related to EHE, Henderson native load or other operating costs will reduce the
2 amount of Member rate credits payable through the Member Rate Stability
3 Mechanism, or MRSM, and reduce the amount available to amortize the
4 smelter regulatory assets. Also, an adverse decision in this case could limit the
5 ability of Big Rivers to attain and maintain investment grade credit ratings
6 thus increasing borrowing costs and making transactions in the wholesale
7 market less profitable through increased credit requirements.

8 **VII. ONGOING ENFORCEMENT UNDER KRS 278.390**

9 **Q. Does Henderson raise concerns regarding the legitimacy and ongoing**
10 **enforcement of a potential Commission order granting the relief that**
11 **Big Rivers seeks in this proceeding?**

12 A. Yes. In his Direct Testimony Mr. Heimgartner makes several statements
13 questioning the legitimacy of any Commission order that requires Henderson
14 to pay for its share of decommissioning costs at Station Two. Mr. Heimgartner
15 states that Big Rivers is demanding “that Henderson agree to
16 decommissioning costs unlimited in scope and duration.”¹⁵ Later in his
17 Testimony Mr. Heimgartner states “Big Rivers also, among other things,
18 wants the Commission to simply rubber stamp those expenses Big Rivers
19 deems to be decommissioning expenses when even the power industry has not
20 adopted a universally applicable definition of what constitutes

¹⁵ Direct Testimony of Christopher Heimgartner at 12, lines 12-13.

1 decommissioning. The Commission simply is not designed to function in this
2 way.”¹⁶ And, “Big Rivers wants Henderson to incur unlimited and as-yet
3 unconfirmed decommissioning expenses based solely upon Big Rivers' notion
4 of what constitutes ‘prudent utility practice.’”¹⁷

5 **Q. Would a Commission Order requiring Henderson to pay its share of**
6 **Station Two decommissioning costs be a “rubber stamp” of any**
7 **expenses Big Rivers deems to be decommissioning expenses?**

8 A. No. Mr. Heimgartner’s characterization of the Commission process is
9 unfounded. Big Rivers has submitted testimony of several expert witnesses
10 that outline prudent decommissioning activities and describes the
11 decommissioning process as it relates to decommissioning obligations
12 associated with Station Two. Big Rivers has responded to discovery from the
13 Commission and Henderson regarding its decommissioning proposal and Big
14 Rivers’ expert witnesses will be subject to cross-examination at the evidentiary
15 hearing. Henderson has also submitted its own testimony and arguments in
16 order to present its view of what constitutes reasonable decommissioning
17 activities at Station Two.

18 After reviewing all evidence submitted by Big Rivers and Henderson,
19 the Commission will enter an order resolving the issues in this proceeding. As

¹⁶ Id. at 14, lines 13-16.

¹⁷ Id. at 16, lines 15-17.

1 detailed in my Direct Testimony,¹⁸ Big Rivers proposes that if the Commission
2 issues an order requiring Henderson to pay its share of the decommissioning
3 and/or retirement in place costs at Station Two the process in which this work
4 will be performed and billed to Henderson would be open, transparent and
5 subject to ongoing Commission oversight.

6 **Q. Mr. Heimgartner appears to imply Big Rivers is willing or**
7 **incentivized to incur increased or unlimited decommissioning costs**
8 **without regard to prudence or cost mitigation. Do you agree?**

9 A. Absolutely not. As a practical matter, Big Rivers' responsibility for
10 decommissioning costs will cover over 77.24% of these costs, or approximately
11 3.5 times the amount Henderson is obligated to pay. Big Rivers has every
12 desire and incentive to minimize Station Two decommissioning costs because
13 it will bear the majority of these costs. Big Rivers and its Members absolutely
14 oppose incurring "unlimited" and "unconfirmed" decommissioning expenses.

15 To address Mr Heimgartner's concern, Big Rivers is willing to allow
16 Henderson to manage the decommissioning process including compliance with
17 all current and future environmental regulations. If Henderson oversees the
18 decommissioning, Big Rivers continues to support the same Commission
19 review and reimbursement process I describe in my Direct Testimony and
20 below.

¹⁸ Direct Testimony of Paul G. Smith at 17.

1 **Q. At page 12 of his testimony, Mr. Heimgartner contends that granting**
2 **Big Rivers' Application would "threaten Henderson's financial**
3 **stability." Do you agree?**

4 A. No. First, Henderson Municipal Power & Light ("HMP&L") is in a very strong
5 financial position and enforcing the rates and service standards in the Station
6 Two Contracts will not change that position. According to Moody's December
7 10, 2019 credit opinion, HMP&L's credit rating is Baa1 stable, or three notches
8 above investment grade. HMP&L's unrestricted cash and discretionary funds
9 as of May 31, 2019 was approximately \$26.1 million, which is more than twice
10 the outstanding debt balance of \$10.76 million as of the same date. According
11 to Moody's, HMP&L has a "power cost adjustment mechanism that allows for
12 automatic monthly pass-through adjustments based on any unexpected
13 increase or decrease in power costs, thus avoiding calls on liquidity to address
14 variable costs not already incorporated in the existing rate level." Based on
15 Henderson's native load of approximately 600,000 MWh per year, a \$1/MWh
16 rate increase would generate about \$600,000 per year. HMP&L's rates are
17 about 26% below the rates charged by Big Rivers' Member-owners, and
18 Moody's notes that HMP&L's rates are about 15% below the state average.
19 Therefore, requiring Henderson to live up to its Station Two contractual
20 obligations can be readily absorbed without threatening Henderson's financial
21 stability.

1 Second, Henderson’s financial statements have already recognized the
2 financial impact of the decommissioning obligation. Contrary to their
3 arguments in this proceeding, the asset retirement obligation reflected in
4 Henderson’s financial statements quantify and reference Henderson’s
5 obligation to remove asbestos, lead paint, and other contaminants, their
6 obligation related to the ash pond, and an obligation to dismantle and remove
7 assets located at the Station Two facility. It is disingenuous for Henderson to
8 dispute their decommissioning obligation in this proceeding while at the same
9 time issue audited financial statements that acknowledge such obligation
10 exists to their banks, lenders, financial market investors, and City residents.

11 Due to Henderson’s very strong financial position, combined with the
12 multi-million dollar asset retirement obligation already reflected in
13 Henderson’s financial results, I vehemently disagree with any assertion that
14 Big Rivers’ proposals in this proceeding threaten Henderson’s financial
15 stability.

16 **Q. How should the Station Two contracts be enforced by the Commission**
17 **so that they are open, transparent and subject to ongoing Commission**
18 **oversite?**

19 **A.** It is my understanding that under KRS 278.200, the Commission has
20 supervisory authority over the rate and service standards in the Station Two

1 Contracts, as well as obligations arising out of the Contracts.¹⁹ Because of the
2 history of the parties being unable to resolve their differences, and the need to
3 bring those differences to the Commission for a resolution, Big Rivers believes
4 it is necessary for the Commission to establish a reasonable process for the
5 efficient processing of payments to Big Rivers relating to the Station Two
6 Contracts. As described in my Direct Testimony,²⁰ Big Rivers proposes a
7 monthly filing of charges like the monthly filings Big Rivers makes with
8 respect to its fuel adjustment clause, environmental surcharge, member rate
9 stability mechanism, and non-FAC Purchased Power Adjustment; along with
10 periodic reviews of those charges.

11 Big Rivers proposes that it file monthly with the Commission a charge
12 representing Henderson's share (based on the percentages described in this
13 filing) all Station Two Contract costs incurred by Big Rivers; 2) after filing with
14 the Commission, the monthly charge would be submitted to Henderson for
15 payment within thirty days; and 3) the charges would be subject to
16 comprehensive Commission review, audit, true-up and refund under whatever
17 schedule the Commission deems appropriate.

¹⁹ KRS 278.200 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.”

²⁰ Direct Testimony of Paul G. Smith at 17.

1 The review process would allow Henderson to participate and contest
2 any cost that it does not believe was reasonably incurred or was unreasonably
3 charged to it. An example-schedule of charges showing the type of invoice that
4 would be submitted to the Commission for ultimate payment by Henderson is
5 attached as Rebuttal Exhibit Smith-2 and Rebuttal Exhibit Smith-2b.

6 If the Commission approves this Application, then the first monthly
7 filing would include the net amount owed to Big Rivers for Excess Henderson
8 Energy, Henderson Native Load and Other Operating Costs. As of June 30
9 ,2020 this would be a payment from Henderson to Big Rivers of \$441,524 (plus
10 interest). Except for ongoing Green Landfill costs and interest, this amount is
11 fixed and will not change. In addition, the City will be billed for either: a)
12 22.76% of decommissioning costs (plus interest); or b) 100% of retirement in
13 place costs (plus interest). As of June 30, 2020, these amounts are shown on
14 Exhibit Smith-1 and Exhibit Smith-1b.

15 **Q. Is there a reason to be concerned that Henderson will refuse to follow**
16 **the Commission's Order in this case?**

17 A. Yes. As summarized in the Direct Testimony of Mr. Berry,²¹ Henderson has
18 refused to comply with the Commission's Order in Case No. 2016-00278
19 concerning EHE costs by not paying for the variable costs associated with EHE
20 as ordered by the Commission. By refusing to comply with the ongoing

²¹ Direct Testimony of Robert W. Berry at 6.

1 directives of the Commission’s Order, Henderson has treated its appeal of Case
2 No. 2016-00278 to the Franklin Circuit Court²² as if it effectively stays the
3 Order of the Commission. It is my understanding that, under KRS 278.390,
4 Commission orders continue in force until they are revoked by the Commission
5 or vacated by a court of competent jurisdiction and parties must comply with
6 Commission Orders while an appeal to the Franklin Circuit Court is pending.

7 As discussed above, Henderson has also not accepted the Commission’s
8 February 4, 2020 Order in this case denying Henderson’s Motion to Dismiss.
9 The Commission’s February 4, 2020 Order found that this case involves the
10 enforcement of the rates and service standards contained in the Station Two
11 Contracts and falls squarely within the Commission’s jurisdiction. Despite
12 this finding, Mr. Heimgartner continues to argue that the Commission does
13 not have jurisdiction over the Station Two Contracts contending that the
14 “issues remaining in dispute between Henderson and Big Rivers are so
15 complex in nature and so far removed from issues of utility rates or service, it
16 is difficult at first blush to understand why Big Rivers thinks the Commission
17 can or should get involved.”²³

18 Finally, Henderson has attempted to subvert the Commission’s
19 jurisdiction by filing numerous claims related to the Station Two Contracts at

²² Franklin Circuit Court, Case No. 18-CI-00078.

²³ Direct Testimony of Christopher Heimgartner at 13.

1 the Webster Circuit Court²⁴ and the Henderson Circuit Court.²⁵ These
2 collateral attacks on the Commission’s jurisdiction, along with Henderson’s
3 steadfast refusal to comply with the Commission’s Order concerning EHE,
4 raise serious concerns in my mind that Henderson may not comply with a
5 Commission order in this proceeding.

6 **Q. What should the Commission do if Henderson refuses to follow the**
7 **Commission’s Order in this case?**

8 A. The Legislature has given the Commission a very strong tool. If Henderson
9 refuses to comply with the Commission’s lawful Order by not paying its invoice
10 for its share of Station Two costs, then the Commission should seek to “compel
11 obedience” to its rate order at the Franklin Circuit Court pursuant to KRS
12 278.390. KRS 278.390- Enforcement of orders, states:

13 The commission may compel obedience to its lawful orders by
14 mandamus, injunction or other proper proceedings in the Franklin
15 Circuit Court or any other court of competent jurisdiction, and such
16 proceedings shall have priority over all pending cases. Every order
17 entered by the commission shall continue in force until the expiration of
18 the time, if any, named by the commission in the order, or until revoked
19 or modified by the commission, unless the order is suspended, or vacated
20 in whole or in part, by order or decree of a court of competent
21 jurisdiction.

22 KRS 278.390 was enacted so that the Commission can swiftly enforce
23 its lawful orders by filing a mandamus, injunction or other pleading at the
24 Franklin Circuit Court. Filings made pursuant to KRS 278.390 are given

²⁴ See Webster Circuit Case Nos. 18-CI-00020 and 20-CI-00073.

²⁵ See Henderson Circuit Case Nos. 19-CI-00504 and 20-CI-00413.

1 priority over all other pending cases on the Franklin Circuit Court docket. The
2 Commission has rarely needed to use KRS 278.390 because parties, in almost
3 all cases, comply with Commission Orders. In the unusual circumstance in
4 which a party fails to comply with a Commission Order the Commission should
5 not hesitate to “compel obedience” through KRS 278.390.

6 **VIII. CONCLUSION**

7 **Q. Does this conclude your testimony?**

8 **A. Yes, it does.**

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 I prepared or supervised the preparation of the Rebuttal Testimony filed with this Verification, and that Rebuttal Testimony is 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)

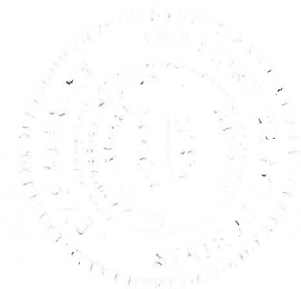
SUBSCRIBED AND SWORN TO before me by Paul G. Smith on this the 25th day of August, 2020.



Notary Public, Kentucky State at Large

My Commission Expires _____

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



ENDORSEMENT OF ATTACHED CHECK WILL ACKNOWLEDGE PAYMENT IN FULL OF ITEMS SET FORTH BELOW

VENDOR NO.
82530

Big Rivers Electric
P.O. Box 24
201 Third Street

NO. 578955
DATE 04-Jan-18

DATE	INVOICE NUMBER	DESCRIPTION	GROSS AMOUNT	DISCOUNT	NET AMOUNT
04-Jan-18	17787	Settlement Payment pursuant to Settlement Agreement and Release Dated December 15, 2017	6,250,000.00	0.00	6,250,000.00
TOTALS			6,250,000.00	0.00	6,250,000.00

REMOVE DOCUMENT ALONG THIS PERFORATION

THIS DOCUMENT IS PRINTED IN TWO COLORS. DO NOT ACCEPT UNLESS BLUE AND BURGUNDY ARE PRESENT.

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

Old National Bank
Member Old National Bancorp
P.O. Box 718 * Evansville, IN 47705

11-1
863

NO. 578955

DATE	NET AMOUNT
04-Jan-18	\$*****6,250,000.00

VOID AFTER 6 MONTHS
AFTER THIS DATE

PAY Six Million Two Hundred Fifty Thousand Dollars And Zero Cents*****

TO THE ORDER OF

**CITY OF HENDERSON, KENTUCKY AND CITY OF HENDERSON
UTILITY COMMISSION**

D/B/A Henderson Municipal Power & Light
HENDERSON, KY

Settlement Payment pursuant to Settlement Agreement
and Release Dated December 15, 2017

Robert W. Berry

SIGNATURE

Andrew N. Durbin

SIGNATURE

⑈ 578955⑈ ⑆0863000⑆2⑆ ⑆0585559⑈

"EXHIBIT A"

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

CITY OF HENDERSON, KENTUCKY AND CITY OF HENDERSON UTILITY
COMMISSION
D/B/A
HENDERSON, KY
United States



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

RECEIPT

The undersigned, as counsel for the City of Henderson, Kentucky (“City”), and the City of Henderson Utility Commission, D/B/A Henderson Municipal Power & Light (“HMP&L”), hereby confirms receipt of a check from Big Rivers Electric Corporation (“Big Rivers”) in the amount of \$6,250,000.00 payable to the order of the City and HMP&L (the “Check”), which Big Rivers has tendered to the undersigned pursuant to the Settlement Agreement and Release dated December 15, 2017 between the City, Henderson and Big Rivers. A copy of the Check is attached hereto as Exhibit A.

This 4~~7~~ day of January, 2018.

King, Deep and Branaman

By 

H. Randall Redding
Sharon W. Farmer
127 N. Main Street
P.O. Box 43
Henderson, KY 42419

Big Rivers Electric Corporation
Case No. 2019-00269
Station Two Decommissioning Cost Report
June 30, 2020

	Total Decommissioning Costs	Henderson Share
<u>Current Month</u>		
Ramp-Down Costs		
Station Two	\$ 154,350.66	\$ 35,130.21
CCR Incremental Costs	5,157.29	1,173.80
Ash Pond Closure	-	-
Auxiliary Power	3,400.75	774.01
Total	162,908.70	37,078.02
Landfill		
Slurry Wall	31,736.06	3,808.33
Leachate	(264.00)	(31.68)
Total	31,472.06	3,776.65
Other	-	-
Total Current Month	\$ 194,380.76	\$ 40,854.67
 <u>Project-to-Date</u>		
Total Project To Date	\$ 6,380,471.33	\$ 1,027,430.88
Payments Received		(9,727.84)
Subtotal		1,017,703.04
Interest		44,559.00
Balance Due		\$ 1,062,262.04

Submitted By: _____

Title: _____

Date Submitted: _____

Big Rivers Electric Corporation
Case No. 2019-00269
Station Two Decommissioning Cost Report
June 30, 2020

Month	Ramp-Down					Landfill			Other	Total	Henderson Balance Due	
	Station Two	CCR Incremental Costs	Ash Pond Closure	Auxiliary Power	Total	Slurry Wall	Leachate	Total	Transmission Assets	Amount	Payments Received	Balance Due
2019	January	\$ 47,196.52	\$ -	\$ -	\$ -	\$ 47,196.52	\$ -	\$ -	\$ -	\$ -	\$ 47,196.52	\$ -
	February	133,746.94	-	-	20,523.60	154,270.54	-	-	-	-	154,270.54	(4,640.39)
	March	118,959.12	-	-	13,730.35	132,689.47	-	-	-	-	132,689.47	(3,104.43)
	April	126,358.03	-	-	8,770.55	135,128.58	-	-	-	-	135,128.58	(1,983.02)
	May	67,995.09	18,857.61	-	5,265.19	92,117.89	-	-	-	-	92,117.89	-
	June	54,745.97	10,800.00	-	4,649.23	70,195.20	-	-	-	-	70,195.20	-
	July	21,060.19	21,003.30	-	5,471.11	47,534.60	-	-	-	-	47,534.60	-
	August	303,045.45	12,897.08	-	4,767.14	320,709.67	-	-	-	-	320,709.67	-
	September	96,559.69	2,361.41	-	5,022.21	103,943.31	-	-	-	-	103,943.31	-
	October	101,889.69	3,939.50	-	5,525.23	111,354.42	-	-	-	-	111,354.42	-
	November	104,642.25	5,355.21	-	7,558.70	117,556.16	-	-	-	-	117,556.16	-
	December	120,948.15	9,133.68	175,230.93	6,176.31	311,489.07	1,677,517.68	1,255,561.43	2,933,079.11	-	3,244,568.18	-
2020	January	137,619.15	-	-	6,284.43	143,903.58	65,936.28	146,359.16	212,295.44	122.31	356,321.33	-
	February	105,443.69	-	-	5,305.93	110,749.62	82,943.60	(1,481.76)	81,461.84	-	192,211.46	-
	March	79,120.73	6,368.45	-	4,834.20	90,323.38	134,150.20	1,157.55	135,307.75	-	225,631.13	-
	April	147,440.85	(7,057.14)	-	4,071.32	144,455.03	243,716.56	7,664.03	251,380.59	-	395,835.62	-
	May	126,539.98	4,470.79	-	4,310.06	135,320.83	276,618.58	26,887.08	303,505.66	-	438,826.49	-
	June	154,350.66	5,157.29	-	3,400.75	162,908.70	31,736.06	(264.00)	31,472.06	-	194,380.76	-
Total	\$ 2,047,662.15	\$ 93,287.18	\$ 175,230.93	\$ 115,666.31	\$ 2,431,846.57	\$ 2,512,618.96	\$ 1,435,883.49	\$ 3,948,502.45	\$ 122.31	\$ 6,380,471.33	\$ (9,727.84)	
Henderson Share												
Percentage	22.76%	22.76%	22.76%	22.76%		12.00%	12.00%		100.00%			
Amount	\$ 466,047.91	\$ 21,232.16	\$ 39,882.56	\$ 26,325.65	\$ 553,488.28	\$ 301,514.28	\$ 172,306.02	\$ 473,820.29	\$ 122.31	\$ 1,027,430.88	\$ (9,727.84)	\$ 1,017,703.04

Big Rivers Electric Corporation
Case No. 2019-00269
Station Two Decommissioning Cost Report
Retirement-In-Place
June 30, 2020

	Total Decommissioning Costs	Henderson Share
<u>Current Month</u>		
Ramp-Down Costs		
Station Two	\$ 154,350.66	\$ 154,350.66
CCR Incremental Costs	5,157.29	5,157.29
Ash Pond Closure	-	-
Auxiliary Power	3,400.75	3,400.75
Total	162,908.70	162,908.70
Landfill		
Slurry Wall	31,736.06	3,808.33
Leachate	(264.00)	(31.68)
Total	31,472.06	3,776.65
Other	-	-
Total Current Month	\$ 194,380.76	\$ 166,685.35

<u>Project-to-Date</u>		
Total Project To Date	\$ 6,380,471.33	\$ 2,905,789.17
Payments Received		(9,727.84)
Subtotal		2,896,061.33
Interest		140,585.00
Balance Due		\$ 3,036,646.33

Submitted By: _____

Title: _____

Date Submitted: _____

Big Rivers Electric Corporation
Case No. 2019-00269
Station Two Decommissioning Cost Report
Retirement-In-Place
June 30, 2020

Month	Ramp-Down					Landfill			Other	Total	Henderson Balance Due	
	Station Two	CCR Incremental Costs	Ash Pond Closure	Auxiliary Power	Total	Slurry Wall	Leachate	Total	Transmission Assets	Amount	Payments Received	Balance Due
2019	January	\$ 47,196.52	\$ -	\$ -	\$ -	\$ 47,196.52	\$ -	\$ -	\$ -	\$ -	\$ 47,196.52	\$ -
	February	133,746.94	-	-	20,523.60	154,270.54	-	-	-	-	154,270.54	(4,640.39)
	March	118,959.12	-	-	13,730.35	132,689.47	-	-	-	-	132,689.47	(3,104.43)
	April	126,358.03	-	-	8,770.55	135,128.58	-	-	-	-	135,128.58	(1,983.02)
	May	67,995.09	18,857.61	-	5,265.19	92,117.89	-	-	-	-	92,117.89	-
	June	54,745.97	10,800.00	-	4,649.23	70,195.20	-	-	-	-	70,195.20	-
	July	21,060.19	21,003.30	-	5,471.11	47,534.60	-	-	-	-	47,534.60	-
	August	303,045.45	12,897.08	-	4,767.14	320,709.67	-	-	-	-	320,709.67	-
	September	96,559.69	2,361.41	-	5,022.21	103,943.31	-	-	-	-	103,943.31	-
	October	101,889.69	3,939.50	-	5,525.23	111,354.42	-	-	-	-	111,354.42	-
	November	104,642.25	5,355.21	-	7,558.70	117,556.16	-	-	-	-	117,556.16	-
	December	120,948.15	9,133.68	175,230.93	6,176.31	311,489.07	1,677,517.68	1,255,561.43	2,933,079.11	-	3,244,568.18	-
2020	January	137,619.15	-	-	6,284.43	143,903.58	65,936.28	146,359.16	212,295.44	122.31	356,321.33	-
	February	105,443.69	-	-	5,305.93	110,749.62	82,943.60	(1,481.76)	81,461.84	-	192,211.46	-
	March	79,120.73	6,368.45	-	4,834.20	90,323.38	134,150.20	1,157.55	135,307.75	-	225,631.13	-
	April	147,440.85	(7,057.14)	-	4,071.32	144,455.03	243,716.56	7,664.03	251,380.59	-	395,835.62	-
	May	126,539.98	4,470.79	-	4,310.06	135,320.83	276,618.58	26,887.08	303,505.66	-	438,826.49	-
	June	154,350.66	5,157.29	-	3,400.75	162,908.70	31,736.06	(264.00)	31,472.06	-	194,380.76	-
Total	\$ 2,047,662.15	\$ 93,287.18	\$ 175,230.93	\$ 115,666.31	\$ 2,431,846.57	\$ 2,512,618.96	\$ 1,435,883.49	\$ 3,948,502.45	\$ 122.31	\$ 6,380,471.33	\$ (9,727.84)	
Henderson Share												
Percentage	100.00%	100.00%	100.00%	100.00%		12.00%	12.00%		100.00%			
Amount	\$ 2,047,662.15	\$ 93,287.18	\$ 175,230.93	\$ 115,666.31	\$ 2,431,846.57	\$ 301,514.28	\$ 172,306.02	\$ 473,820.29	\$ 122.31	\$ 2,905,789.17	\$ (9,727.84)	\$ 2,896,061.33

Big Rivers Electric Corporation
Interim Accounting Summary
Amounts Due (To) / From Henderson
Updated though June 30, 2020

<u>Description</u>	<u>Reference</u>	<u>Amount (\$)</u> <u>Due (To)/From</u>	<u>Interest (\$)</u>
Excess Henderson Energy	Exhibit Smith-2	(3,310,482)	(439,052)
Henderson Native Load	Exhibit Smith-3	4,693,587	838,054
Other Operating Costs	Exhibit Smith-4	(941,581)	450,843
Decommissioning Costs	Exhibit Smith-5	1,017,703	44,559
Subtotal		<u>1,459,227</u>	<u>894,404</u>
Interest		<u>894,404</u>	
Total		<u><u>2,353,631</u></u>	

Big Rivers Electric Corporation
Interim Accounting Summary
Assuming Retire-in-Place
Amounts Due (To) / From Henderson
Updated though June 30, 2020

<u>Description</u>	<u>Reference</u>	<u>Amount (\$)</u> <u>Due (To)/From</u>	<u>Interest (\$)</u>
Excess Henderson Energy	Exhibit Smith-2	(3,310,482)	(439,052)
Henderson Native Load	Exhibit Smith-3	4,693,587	838,054
Other Operating Costs	Exhibit Smith-4	(941,581)	450,843
Decommissioning: Retire-in-Place	Exhibit Smith-5	2,896,061	140,585
Subtotal		3,337,585	990,430
Interest		990,430	
Total		4,328,015	

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

Description	Amount (\$) Due (To)/From
MISO Revenue	(6,259,439)
Coal Shortfall Supplied by Big Rivers	2,301,641
Low Chlorine Coal Shortfall Supplied by Big Rivers	213,023
Fuel Oil Supplied by Big Rivers	371,131
2018 Coal Survey Adjustment Supplied by Big Rivers	39,384
2019 Coal Survey Adjustment Supplied by Big Rivers	23,778
Subtotal	(3,310,482)
Interest	(439,052)
Total Excess Henderson Energy	(3,749,534)

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

Description	Amount (\$) Due (To)/From
Coal Shortfall Supplied by Big Rivers	2,852,464
Low Chlorine Coal Shortfall Supplied by Big Rivers	273,213
Lime Shortfall Supplied by Big Rivers	145,588
Fuel Oil Supplied by Big Rivers	920,044
2016 Coal Survey Adjustment Supplied by Big Rivers	388,615
2018 Coal Survey Adjustment Supplied by Big Rivers	84,916
2019 Coal Survey Adjustment Supplied by Big Rivers	28,747
Subtotal	<u>4,693,587</u>
Interest	<u>838,054</u>
Total Henderson Native Load	<u><u>5,531,641</u></u>

Big Rivers Electric Corporation
Amounts Due (To) / From Henderson
Other Operating Costs
Updated through June 30, 2020

Description	Amount (\$) Due (To)/From
<u>Annual Settlement</u>	
Fiscal Year 2017 / 2018 Settlement True-up	(1,649,923)
Fiscal Year 2018 / 2019 Settlement True-up	(793,170)
<u>Auxiliary Power</u>	
October 2018 Auxiliary Power	21,155
November 2018 Auxiliary Power	17,886
December 2018 Auxiliary Power	13,815
January 2019 Auxiliary Power	25,895
<u>MISO Fees</u>	
December 2010 - May 2016	1,422,761
Subtotal	(941,581)
Interest	450,843
Total Other Operating Costs	1,010,774

Big Rivers Electric Corporation
Amounts Due (To) / From Henderson
Decommissioning Costs
***Updated through* June 30, 2020**

<u>Description</u>	<u>Amount (\$)</u> <u>Due (To)/From</u>
<u>Decommissioning Costs</u>	
January 2019 - June 2020	1,017,703
Subtotal	1,017,703
Interest	44,559
Total Decommissioning Costs	1,062,262

Big Rivers Electric Corporation
Amounts Due (To) / From Henderson
Decommissioning Costs: Retire-in-Place
Updated through June 30, 2020

<u>Description</u>	<u>Amount (\$)</u> <u>Due (To)/From</u>
<u>Decommissioning Costs: Retire-in-Place</u>	
January 2019 - June 2020	2,896,061
Subtotal	2,896,061
Interest	140,585
Total Decommissioning Costs: Retire-in-Place	3,036,646

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 RATE AND	)	2019-00269
SERVICE STANDARDS.)	

REBUTTAL TESTIMONY

OF

**MICHAEL T. PULLEN
EXECUTIVE VICE PRESIDENT OF OPERATIONS**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

Filed: August 25, 2020

**REBUTTAL TESTIMONY
OF
MICHAEL T. PULLEN**

Table of Contents

I.	INTRODUCTION	1
II.	DECOMMISSIONING OF STATION TWO	2
III.	JOINT USE FACILITIES.....	12
IV.	CONCLUSION.....	13

REBUTTAL TESTIMONY
OF
MICHAEL T. PULLEN

1 **I. INTRODUCTION**

2 **Q. Please state your name, business address and occupation.**

3 A. My name is Michael T. Pullen. My business address is 201 Third Street,
4 Henderson, Kentucky 42420. I am the Executive Vice President of Operations
5 for Big Rivers Electric Corporation (“Big Rivers”).

6 **Q. Did you submit Direct Testimony in this proceeding?**

7 A. Yes. I described the activities performed at Station Two since January 31,
8 2019 and the ongoing activities that will be required to fully decommission
9 Station Two, along with Henderson Utility Commission d/b/a Henderson
10 Municipal Power & Light’s (collectively, “Henderson” or “City”) contractual
11 obligation to share in 22.76% of the decommissioning costs. I also testified
12 regarding Big Rivers’ need to utilize certain City-owned Joint Use Facilities
13 that are part of Station Two in order to continue operating Big Rivers’ Green
14 Station and clarified which Joint Use Facilities are no longer needed and are
15 now ready to be decommissioned.

16 **Q. What is the purpose of your rebuttal testimony?**

17 A. The purpose of this testimony is to respond to the assertions contained in the
18 Direct Testimony of City witness Heimgartner regarding decommissioning and

1 the City's contractual obligations surrounding the Station Two Joint Use
2 Facilities.

3 **II. DECOMMISSIONING OF STATION TWO**

4 **Q. What is Henderson's position regarding the decommissioning of**
5 **Station Two?**

6 A. Henderson alleges that decommissioning of Station Two was completed as of
7 April 2019 and the City has no further contractual obligations with respect to
8 the decommissioning of Station Two.¹

9 **Q. Is Henderson correct?**

10 A. No. Station Two was not decommissioned in April of last year. As detailed in
11 the Rebuttal Testimony of Mr. Berry, there is absolutely no engineering
12 credibility to the assertion Station Two has already been decommissioned. In
13 my opinion, this assertion is not consistent with Kentucky precedent or
14 common industry practice, and is on its face absurd.

15 As discussed at length in Big Rivers' testimony, Henderson is
16 contractually obligated to pay 22.76% of the Station Two decommissioning
17 costs in accordance with the express language set forth under Section 8 of the
18 1993 Amendments to the Station Two Contracts. Because decommissioning of
19 Station Two has not yet occurred, Henderson's contractual obligations with

¹ Direct Testimony of Christopher Heimgartner at 20-21.

1 respect to Station Two decommissioning costs have not yet been satisfied. Big
2 Rivers is therefore asking the Commission to enforce those obligations.

3 Of critical importance is Commission enforcement of Henderson's
4 outstanding contractual and legal obligations with respect to the
5 decommissioning of the City-owned Station Two ash pond. Unlike other
6 portions of Station Two where completion of the decommissioning process is
7 discretionary and where "retirement in place" is an option, the ash pond is
8 subject to federal law mandating that it be decommissioned no later than April
9 2024. In light of this federal decommissioning mandate, the Station Two
10 Contracts require that the City proceed with decommissioning of the Station
11 Two ash pond and pay 22.76% of the associated costs.

12 **Q. Why must the Station Two ash pond be decommissioned no later than**
13 **April 2024?**

14 A. Ceasing operations at Station Two on February 1, 2019 triggered
15 environmental compliance requirements set forth in the Coal Combustion
16 Residuals ("CCR") Rule, 40 CFR 257 *et seq.* That Rule establishes technical
17 requirements for CCR landfills/surface impoundments in order to address
18 risks from coal ash disposal, such as leaking of contaminants into ground
19 water, blowing of contaminants into the air as dust, and the catastrophic
20 failure of coal ash surface impoundments. Once Station Two ceased
21 operations, the CCR Rule required decommissioning of the Station Two ash

1 pond by no later than April 17, 2024. Time is of the essence in completing the
2 CCR decommissioning process at the Station Two ash pond.

3 **Q. Who owns the Station Two ash pond?**

4 A. Henderson. The City owns the ash pond. As the 2005 Amendments to the
5 Station Two Contracts provide, Station Two is defined as the “City’s 350-
6 megawatt generating station (rated on the date of the 2006 Amendments to
7 Contracts at 312 MW net send out capability), located at a site on the Green
8 River in Henderson County, Kentucky, **and, to the extent furnished and**
9 **owned by City, all auxiliary facilities, joint use facilities and related**
10 **facilities**, renewals, replacements, additions, expansions and improvements
11 thereto, including the Station Two FGD System added thereto and the Station
12 Two SCR System but excluding the City’s Transmission and Transformation
13 Facilities...and excluding facilities furnished and owned by Big Rivers.”² The
14 Station Two ash pond is specifically identified as a City-owned “Joint Use
15 Facility” that is part of Station Two.³ Therefore, the Station Two ash pond is
16 included in the definition of Station Two and is owned by the City. A map of
17 Station Two, including the City’s Station Two ash pond and other Joint Use
18 Facilities, is attached as Rebuttal Exhibit Pullen–1.

² Emphasis added. In all relevant respects, the 1993 Amendments define Station Two in the same way. The 2005 Station Two Amendments added to the definition of Station Two an SCR System for NO_x compliance.

³ Direct Testimony of Michael T. Pullen, Exhibit 13; Exhibit 1 to the 1993 Amendments to the Station Two Contracts, Page 1, Part B.

1 In its August 6, 2020 environmental surcharge Order, the Commission
2 confirmed that the Station Two ash pond is owned by the City. “With respect
3 to Project 13-3, involving the Station Two ash pond closure, the Commission
4 finds that this project does not require a CPCN because Station Two is wholly
5 owned by the city of Henderson and is, therefore, exempt from the
6 requirements of KRS 278.020(1). This finding is consistent with our
7 determination in Case No. 2012-00063 involving the installation of emission
8 control monitors at Station Two as not requiring a CPCN due to the city of
9 Henderson’s ownership of Station Two.”⁴

10 **Q. Has Big Rivers taken necessary permitting steps to properly assign**
11 **the responsibility for Station Two to the City as the owner of the**
12 **assets?**

13 A. Yes. Regarding air permitting, the Kentucky Division of Air Quality issued a
14 new Title V Operating Permit V-19-020 on July 12, 2020 for Big Rivers’ Green
15 Station. The Executive Summary of the Title V permit states “On June 1, 2019
16 the City of Henderson became both the owner and sole operator of the
17 Henderson Station II whereby BREC no longer has common control over the
18 City’s stationary sources.”

19 My April 28, 2020 letter to Mr. Heimgartner states that “Big Rivers is no longer
20 an operator of the Station Two ash pond and that all future compliance

⁴ Order, Case No. 2019-00435 (August 6, 2020) Order at 20.

1 obligations under the CCR Rule with respect to the ash pond are the
2 responsibility of the City.” This recent action by the Kentucky Division of Air
3 Quality confirms that the City is responsible for the environmental compliance
4 at Station Two and any civil or criminal penalties for not complying with
5 regulations.

6 **Q. Is the City aware of the pressing need to decommission the Station**
7 **Two ash pond?**

8 A. Yes. As witness Heimgartner testifies, the City filed a Complaint at the
9 Webster Circuit Court in May 2020 disputing the amount of costs it owes, but
10 does not dispute that it has an obligation, with respect to decommissioning the
11 Station Two ash pond. Henderson’s Complaint recognizes that “[b]oth the
12 City’s Station Two plant and Big Rivers’ Reid plant have ceased to operate,
13 triggering requirements to close the ash pond in accordance with applicable
14 state and federal environmental regulations, including 40 CFR Part 257 (the
15 ‘CCR Rule’).”⁵

16 **Q. Is the City contractually obligated to decommission the Station Two**
17 **ash pond?**

18 A. Yes. Section 30.1 of the Power Plant Construction and Operation Agreement
19 provides that the “City and Big Rivers will, at all times, faithfully obey and
20 comply with existing and future laws, rules and regulations of federal, state or

⁵ Complaint at 3.

1 local governmental bodies lawfully affecting the operations and activities of
2 and in connection with City’s Station Two.”⁶ Compliance with the CCR Rule
3 requirements is therefore a service standard and obligation arising out of the
4 Station Two Contracts with which Henderson must comply.

5 **Q. Is the City legally and contractually obligated to decommission all of**
6 **Station Two?**

7 A. No, not all of Station Two is legally required to be decommissioned.
8 Decommissioning is required only when necessary to comply with federal,
9 state, or local mandates. If government mandates do not require
10 decommissioning of a given portion of Station Two, then “retirement in place”
11 is an option.

12 If the City elects “retirement in place” for part of its Station Two plant,
13 then Big Rivers would have no contractual obligation to share in any of the
14 costs. If the City imprudently elects the more expensive “retirement in place”
15 option, then it is contractually required to absorb all of the costs, including
16 ongoing maintenance costs to ensure that no Station Two facility poses a safety
17 hazard to ongoing employees of the Sebree facility, many of which are
18 Henderson citizens. Where “retirement in place” is an option,
19 decommissioning would merely be discretionary on the part of the City. But if
20 a government mandate, such as the CCR Rule, requires decommissioning of a

⁶ Application, Exhibit 9.

1 part of Station Two, then Henderson is contractually and legally obligated to
2 comply with that government mandate.⁷

3 While Henderson may need to bid out the decommissioning contracts
4 consistent with state law municipal bidding requirements, the City cannot
5 subvert federal mandates due to those bidding requirements. Failure to
6 comply with the CCR Rule would result in civil and criminal penalties.
7 Moreover, if the City does not wish to manage the mandated decommissioning
8 work, then with the City's consent Big Rivers will manage the work as an
9 independent contractor. In that case, however, Henderson would still be
10 contractually obligated to pay its portion of the decommissioning costs.

11 **Q. Has Henderson conceded in its Webster County Court action its**
12 **obligation to share in the costs of decommissioning the Station Two**
13 **ash pond?**

14 A. Yes. In its Webster County Circuit Court action, Henderson conceded its
15 obligation to share in Station Two ash pond decommissioning costs. However,
16 in this case, Henderson inconsistently argues to the Commission that it has no
17 contractual obligation for decommissioning costs since decommissioning was
18 completed more than a year ago. This is incorrect.

⁷ Several government mandates will require decommissioning of portions of Station Two, including 40 CFR 261; Hazardous and Solid Waste Management System; 40 CFR 112.5; Spill Prevention Control and Countermeasure Plan; 40 CFR 122; National Pollutant Discharge Elimination System; 40 CFR Part 61 Subpart M; Notification required per National Emission Standard for Asbestos; Surface Mining Control and Reclamation Act; Resource Conservation and Recovery Act. Big Rivers Response to Henderson First Request for Information, Item No. 38(b).

1 First, there is absolutely no engineering credibility to the assertion
2 Station Two has already been decommissioned. In my opinion, this assertion
3 is absurd.

4 Second, as discussed throughout Big Rivers' Application and Testimony,
5 Henderson agreed to share in the costs of decommissioning the Station Two
6 ash pond in Section 8 of the 1993 Amendments.⁸

7 Third, as further discussed in the testimony of Mr. Berry and Mr. Smith,
8 despite arguing before this Commission that it has no contractual obligation
9 for decommissioning, Henderson's audited financial statements acknowledge
10 its asset retirement obligation related to Station Two. Specifically, a footnote
11 to Henderson's financial statements state, Henderson is "legally obligated to
12 remove asbestos, lead paint, and other contaminants located at the Station
13 Two", and a subsequent footnote refers to the increase in Henderson's asset
14 retirement obligation to "dismantle and remove assets based on most recent
15 engineering study." Neither of these descriptions relate to decommissioning
16 an ash pond, and therefore must be considered an acknowledgement by
17 Henderson of their general plant decommissioning obligation.

18 Fourth, in its Webster Circuit Court Complaint, Henderson concedes
19 that under the Station Two Contracts it must share in the cost of
20 decommissioning the Station Two ash pond, stating that "Henderson has

⁸ Section 8 of the 1993 Amendments provides that "the parties shall bear decommissioning costs of Station Two in the proportions in which they shared capacity costs during the life of Station Two."

1 agreed to pay its proportionate share of reasonable expenses incurred by Big
2 Rivers in closing and maintaining post-closure care of the [Station Two] Ash
3 Pond in accordance with the contractual formula historically used to calculate
4 the parties' respective shares of ash-pond operating and maintenance
5 expenses.”⁹ Henderson thus agrees to share in a portion of the Station Two
6 ash pond decommissioning costs, but disputes the contractual methodology
7 used to calculate its share of the costs. Under the City’s Webster Circuit Court
8 methodology, Henderson would owe 18.87% of Station Two ash pond
9 decommissioning costs rather than 22.76%.¹⁰ Of course, in this case,
10 Henderson inconsistently argues to the Commission that its cost sharing
11 responsibility is zero.

12 **Q. Why is the City’s Webster Circuit Court cost-sharing methodology**
13 **incorrect?**

14 A. The City’s Webster Circuit Court methodology treats the Station Two ash pond
15 decommissioning costs as operations and maintenance (“O&M”) expenses
16 shared pursuant to Section 13.8(b) of the 1970 Power Plant Construction and
17 Operation Agreement. But the vast majority of the Station Two ash pond
18 decommissioning costs are capital expenditures, not O&M expenses. Indeed,
19 the estimated capital cost of decommissioning the Station Two Ash pond is over

⁹ Complaint at 3.

¹⁰ Complaint at 4.

1 \$13 million while the associated O&M expenses are estimated to be less than
2 \$25,000 annually.¹¹ Rather than using the general 1970 O&M cost sharing
3 provision (between the Reid and Station Two plants) as the basis for assessing
4 Henderson's responsibility for ash pond decommissioning costs, the City's cost
5 responsibility is required to be based upon the 22.76%/77.24% sharing
6 specifically set forth in Section 8 of the 1993 Amendments. The 1993
7 Amendments directly and most recently address decommissioning cost sharing
8 of Station Two.

9 **Q. Would a Webster Circuit Court Declaratory Order be binding on this**
10 **Commission?**

11 A. Since I am an electrical engineer with an MBA degree and not a lawyer, I am
12 not sure. But it is my understanding that the Commission has already denied
13 the City's motion to dismiss for lack of jurisdiction. Further, Kentucky has 120
14 counties. If each county court judge could weigh in on the ratemaking process,
15 the result would be chaos. It is my understanding that the Legislature vested
16 in the Commission exclusive jurisdiction over rate and service standards in
17 contracts between a utility and a city as well as obligations arising out of such
18 contracts.

¹¹ Big Rivers 2020 Environmental Compliance Plan, Case No. 2019-00435 (February 7, 2020) at 18.

1 **III. JOINT USE FACILITIES**

2 **Q. What is Henderson’s position regarding the Station Two Joint Use**
3 **Facilities?**

4 A. Henderson states that it does not object to Big Rivers’ use of certain Station
5 Two Joint Use Facilities necessary for continued operation of Big Rivers’ Green
6 Station. But the City does object to the sharing of decommissioning costs
7 associated with those Joint Use Facilities.¹² For example, with respect to the
8 allocation of ash pond decommissioning costs, the City believes that the
9 Webster County Circuit Court should decide that question, not the
10 Commission.

11 **Q. Given Henderson’s response, what do you recommend the**
12 **Commission find?**

13 A. I recommend that the Commission expressly find that Big Rivers is
14 contractually permitted to continue using the Joint Use Facilities listed in
15 Exhibit 12 of my Direct Testimony in the operation of the Green Station.¹³
16 While the Green Station is running, Big Rivers will pay 100% of the O&M costs
17 associated with utilization of those Joint Use Facilities. However, once the
18 Green Station is retired, any costs incurred to decommission those Joint Use

¹² Direct Testimony of Christopher Heimgartner at 23.

¹³ Attached to this Testimony again for ease of reference.

1 Facilities will be subject to the 22.76%/77.24% cost sharing set forth under
2 Section 8 of the 1993 Amendments.

3 With respect to the Joint Use Facilities listed in Exhibit 13 of my Direct
4 Testimony,¹⁴ including the Station Two ash pond and nineteen (19) other Joint
5 Use Facilities which are no longer used and useful for the production of
6 electricity, the Commission should find that Henderson must pay 22.76% of
7 any costs incurred to decommission those facilities.

8 **IV. CONCLUSION**

9 **Q. Does this conclude your testimony?**

10 **A.** Yes, it does.

¹⁴ Attached to this Testimony again for ease of reference.

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

VERIFICATION

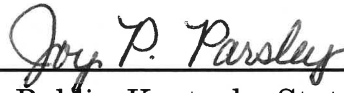
I, Michael T. ("Mike") Pullen, verify, state, and affirm that I prepared or supervised the preparation of the Rebuttal Testimony filed with this Verification, and that Rebuttal Testimony is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Michael T. ("Mike") Pullen

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Michael T. ("Mike") Pullen on this the 25th day of August, 2020.

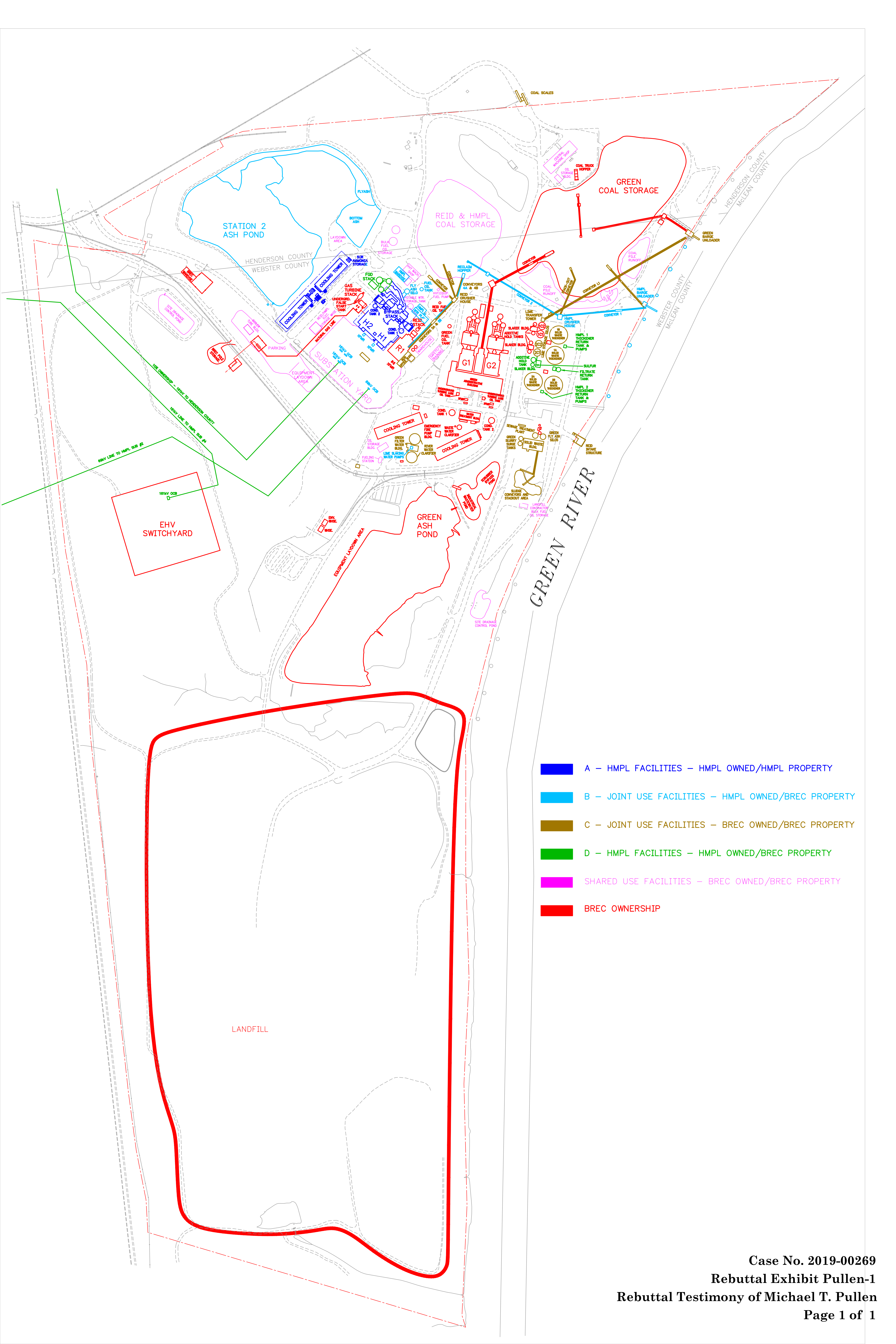


Notary Public, Kentucky State at Large

My Commission Expires _____

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





- A – HMPL FACILITIES – HMPL OWNED/HMPL PROPERTY
- B – JOINT USE FACILITIES – HMPL OWNED/BREC PROPERTY
- C – JOINT USE FACILITIES – BREC OWNED/BREC PROPERTY
- D – HMPL FACILITIES – HMPL OWNED/BREC PROPERTY
- SHARED USE FACILITIES – BREC OWNED/BREC PROPERTY
- BREC OWNERSHIP

Big Rivers Electric Corporation
Case No. 2019-00269
Existing HMPL Station Two Joint Use Facilities to Remain in Service

1. Barge Mooring Cells No. 1N, 2N, 3N, 4N, 1S, 2S, 3S, & 4S as shown on Burns & Roe Drawing No. 04-3280-S3200.
2. One Coal Barge Unloader, McDowell Wellman, 1000 net ton/hr. capacity.
3. One Coal Conveyor, 1 as shown on attached Exhibit 2.
4. One Crusher House fed by Conveyor No. 1.
5. Four 161KV Oil Circuit Breakers, General Electric, S/N 0139A7206208, 0139A7206209, 0139A7206212, 0139A7206213, located in Plant Switchyard.
6. One Lot of Line Terminal Structures, Bus, Relay Panels, etc., located in Plant Switchyard as shown on attached Exhibit 2.

Big Rivers Electric Corporation
Case No. 2019-00269
Existing HMPL Station Two Joint Use Facilities to be Decommissioned

1. Seven Coal Conveyors, 2, 3A, 3B, 4A, 4B, 5B & 6B as shown on attached Exhibit 2.
2. One Reclaim Hopper which feeds coal conveyors 4A & 4B.
3. One Water Treatment Plant with Demineralizer Building and associated equipment.
4. One 50,000-gallon capacity Fuel Oil Storage Tank & distribution system.
5. One Flyash Silo, Sump & System Components.
6. One prefab metal Warehouse adjacent to Fly Ash Silo.
7. Coal Handling Equipment as listed in Continuous Property Records.
8. One lot of Materials & Spare Parts in Big Rivers Warehouse No. 15 as defined by inventory control records.
9. One Ash Pond and Effluent Lines.
10. Circulating Water Lines as shown on attached Exhibit 2.
11. Two Step-Up Transformers, McGraw Edison, S/N C-04280-5-1, C-04280-5-2, located in Plant Switchyard.
12. Two Auxiliary Transformers, Westinghouse, S/N RCP 37261, RCP 37262, located in Plant Switchyard.
13. One Excitation Transformer, General Electric, S/N D-597562, located in Plant Switchyard.
14. One Tugboat - The "William Newman" 37 feet long, 21.27 gross tons, 14.0 net tons, coastguard capacity 350 HP. (Already decommissioned)
15. Station Two Ash Pond Dredgings in Green Station Sludge Disposal Landfill adjacent to Green River South of Green Station.
16. Two Lime Slaking Water Pumps and Lines to Slaking Building.
17. Two Pug Mill Mixers.
18. One Vacuum Filter and Associated Equipment Including Building Expansion as shown on attached Exhibit 2.
19. Two New Thickener Underflow Lines and Two Flow Monitors.
20. Two Control Systems on Big Rivers' Green Station Thickener Return Water Tanks..

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 RATE AND	)	2019-00269
SERVICE STANDARDS.)	

REBUTTAL TESTIMONY

OF

**MARK J. EACRET
VICE PRESIDENT OF ENERGY SERVICES**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

Filed: August 25, 2020

**REBUTTAL TESTIMONY
OF
MARK J. EACRET**

Table of Contents

I.	INTRODUCTION.....	1
II.	MISO FEES.....	2
III.	2018/2019 CAPACITY RESERVATION.....	10
IV.	CONCLUSION.....	12

REBUTTAL TESTIMONY
OF
MARK J. EACRET

1 **I. INTRODUCTION**

2 **Q. Please state your name, business address and occupation.**

3 A. My name is Mark Eacret. My business address is 201 Third Street, Henderson,
4 Kentucky 42420. I am the Vice President of Energy Services for Big Rivers
5 Electric Corporation (“Big Rivers”).

6 **Q. Did you submit Direct Testimony in this proceeding?**

7 A. Yes. I testified regarding the Midcontinent Independent System Operator Inc.
8 (“MISO”) fees that the City of Henderson and the City of Henderson Utility
9 Commission (collectively, "Henderson" or “City”) owe to Big Rivers for the period
10 from December 2010 through May 2016 as well as Henderson’s required capacity
11 reservation for Fiscal Year 2018/2019.

12 **Q. What is the purpose of your rebuttal testimony?**

13 A. The purpose of this testimony is to respond to the assertions contained in the
14 Direct Testimony of City witnesses Bickett and Brown regarding the level of
15 MISO fees owed to Big Rivers. I also address the claims of witnesses Bickett,
16 Moll, and Heimgartner regarding Henderson’s required capacity reservation for
17 Fiscal Year 2018/2019.

1 **II. MISO FEES**

2 **Q. What is Henderson’s position regarding the MISO fees it owes to Big**
3 **Rivers?**

4 A. Henderson claims that it is only required to pay \$38,512.03 of the \$1,422,761.54
5 (before interest) in MISO fees incurred by Big Rivers on Henderson’s behalf from
6 December 2010 through May 2016. The fees that Henderson accepts are those
7 associated with MISO Schedule 24 (Local Balancing Authority Cost Recovery).
8 While witness Brown indicates that Henderson may also be responsible for some
9 MISO Schedule 17 (Energy and Operating Reserve Markets Support
10 Administrative Service Cost Recovery Adder) fees, witness Bickett claims that
11 Henderson has no responsibility to pay the remaining non-Schedule 24 MISO
12 fees. In addition to protesting the payment of MISO fees from 2010-2016, Exhibit
13 Moll-3 seeks to avoid reimbursing Big Rivers for the MISO fees that the City
14 incurred in 2017-2019.

15 The non-Schedule 24 MISO fees generally fall into three buckets: 1)
16 Schedule 17 fees associated with energy and operating reserve markets support
17 administrative service (e.g. market modeling, market bidding support, market
18 settlements and billing, market monitor functions, etc.), totaling \$272,801.97; 2)
19 Operating reserve fees (e.g. spinning reserves, regulation, supplemental reserve
20 costs), totaling \$357,908.62; and 3) Schedule 23 fees (recovery of Schedule 10
21 and Schedule 17 costs from certain carved-out Grandfathered Agreements),
22 totaling \$753,538.92.

1 Henderson disputes the MISO Schedule 17 fees and operating reserve fees
2 on the basis that it was not a MISO “Market Participant” and did not require
3 the reserves during the period from December 2010 through May 2016,
4 respectively.¹ The City disputes the MISO Schedule 23 charges based upon its
5 allegations that Henderson did not require transmission service and that the
6 charges were a violation of the MISO tariff and/or result in double recovery.²

7 **Q. Do you agree with any of Henderson’s contentions with respect to MISO**
8 **fees?**

9 A. No. Henderson’s testimony fails to recognize that the City’s participation in
10 MISO, whether via Big Rivers acting as Market Participant or via the City
11 acting on its own behalf, was effectively required by federal law. As Henderson’s
12 May 31, 2019 Annual Report acknowledges, in June 2007, the North American
13 Electric Reliability Corporation (“NERC”) adopted new electric system
14 reliability standards for all electric utilities in the United States, which were
15 subsequently approved by the Federal Energy Regulatory Commission
16 (“FERC”). Henderson “is required to comply with the new reliability standards
17 and incurs administrative expenses related to NERC compliance.”³ In 2010, the
18 only feasible way for Henderson to satisfy the NERC reliability standards was

¹ Direct Testimony of Brad Bickett at 18-19; Direct Testimony of Seth Brown at 6.

² Direct Testimony of Brad Bickett at 18; Direct Testimony of Seth Brown at 7-8.

³ Henderson Response to Big Rivers First Request for Information, Item No. 31, Attachment 1
at 11.

1 to join MISO. Consequently, if Henderson’s load had not been registered in
2 MISO by 2010, the City would have been in violation of federal reliability
3 standards.

4 Henderson seemingly recognized its federal obligation at the time.
5 Indeed, in July 2009, the City signed a Memorandum of Understanding with Big
6 Rivers providing that Big Rivers would continue the Transmission Operations,
7 Generation Operations, and Balancing Authority functions for Henderson after
8 the Unwind Transaction with LG&E was complete, providing:

9 Subsequent to the Unwind Transaction, Big Rivers Electric Corporation
10 will continue to provide and be responsible for compliance with all TOP,
11 GOP, and BA Reliability Standard functions related to Henderson
12 Municipal Power and Light as those functions were provided by Big
13 Rivers Electric Corporation, Western Kentucky Energy Corporation, and
14 LG&E Energy Marketing, Inc. prior to the Unwind Transaction.”⁴

15 And compliance reports prepared by the SERC Reliability Corporation
16 confirm that Big Rivers was performing Balancing Authority, Transmission
17 Operator, Generator Owner, and LSE functions for Henderson in MISO effective
18 July 17, 2009. The SERC Compliance Audit of Big Rivers provides:

19 BREC also has two Coordinated Functional Registrations for the TO
20 function (CFR00091) and for the LSE function (CFR00092) with
21 Henderson Municipal Power & Light (HMP&L), and is registered as a
22 Joint Registration Organization (JRO00087) for the GO function with
23 HMP&L.⁵

⁴ Application, Exhibit 15.

⁵ SERC Reliability Corporation, Compliance Audit of Big Rivers SERC Reliability Corporation (June 8, 2013) at 3.

1 The SERC Compliance Audit of Henderson provides:

2 HMPL was also registered for a Coordinated Function Registration (CFR)
3 with Big Rivers Electric Corporation for the following compliance
4 responsibilities: TO functions (IRO-004 R4) and LSE functions (TOP-002
5 R3 & IRO-004 R4 (CFR-00092), effective July 17, 2009. The Reliability
6 Coordinator (RC, Balancing Authority (BA), and Transmission Operator
7 (TOP) for HMPL are as follows, respectively MISO is the RC for HMPL
8 and Big Rivers Electric Corporation is the BA and TOP for HMPL.⁶

9 Further, in May 2010, Henderson confirmed to MISO that it was
10 “agreeable to Big Rivers registering Henderson’s 105 MW (as of June 1).”⁷
11 However, even if Big Rivers had not registered the City’s load in MISO and
12 performed the requisite functions, Henderson would have been required to do so
13 itself and to incur the associated fees due to the NERC reliability standards.

14 **Q. If Henderson did not want Big Rivers to serve as its MISO Market**
15 **Participant in 2010, did the City have alternative options for**
16 **participation?**

17 A. Yes. As early as September 2010, the City was reminded by MISO of its ongoing
18 option to serve as its own Market Participant or to hire a third-party to serve as
19 Market Participant on its behalf.⁸ Yet the City chose not to invoke that option,
20 instead relying upon Big Rivers to act on its behalf in MISO until February 2019.
21 And now, when faced with a direct pass-through of costs that Henderson would
22 have had to incur if Big Rivers had not, the City essentially pretends that it did

⁶ SERC Reliability Corporation, Compliance Audit of Henderson (May 23, 2014) at 3.

⁷ Big Rivers Response to Henderson First Request for Information, Item No. 41, Attachment 2.

⁸ Big Rivers Response to Henderson First Request for Information, Item No. 41, Attachment 1.

1 not and was not required to participate in MISO from December 2010 through
2 May 2016. To compound the unreasonableness, Exhibit Moll-3 seeks to avoid
3 reimbursing Big Rivers for the MISO fees that the City incurred in 2017-2019.

4 **Q. Is Henderson currently utilizing alternative options for MISO**
5 **participation?**

6 A. Yes. Beginning around March 2019, Henderson began paying Gridforce Energy
7 Management, LLC (“Gridforce”) to perform Local Balancing Authority services
8 for the City in MISO at a cost of \$600,000 per year. Henderson pays this annual
9 cost *in addition to* the other applicable MISO fees to which the City is now
10 directly subject. Hence, under its current arrangement, Henderson is incurring
11 more than two times the annual MISO-related costs than the approximately
12 \$259,000 average annual cost that Big Rivers incurred on the City’s behalf and
13 seeks to collect in this case.

14 Before getting into the details of the MISO fees, the Commission should
15 step back and put this issue in perspective. Big Rivers was billed by MISO for
16 services provided to the City. Big Rivers paid MISO. We are now simply seeking
17 reimbursement from Henderson. Big Rivers was just a “middle-man”. We earned
18 no profit on the pass-through of the MISO charges. If MISO committed billing
19 errors with respect to the services provided to Henderson (which I do not believe
20 occurred), then the City’s claim is with MISO.

21 For more than a year Henderson has been billed directly by MISO. In
22 discovery, Big Rivers sought a detailed listing of the MISO fees that Henderson

1 is currently paying to MISO to shed light on the accuracy of MISO's past billing
2 practices. But the City refused to answer.⁹ Nor did the City disclose how much
3 it is currently paying MISO in its testimony. I suspect it is because that
4 information does not support the City's litigation position.

5 **Q. Should Henderson be permitted to avoid MISO Schedule 17 fees**
6 **because it did not act as its own Market Participant from December**
7 **2010 through May 2016?**

8 A. No. Had Big Rivers not served as Henderson's Market Participant in MISO for
9 the City's load during that period, Henderson would have had to do so itself or
10 find some other viable means to satisfy its NERC reliability requirements.
11 Because MISO membership was the only viable alternative to satisfy those
12 requirements in 2010, Henderson would have been subject to Schedule 17 fees
13 regardless. Accordingly, Henderson should not be permitted to avoid costs that
14 it directly caused simply because Big Rivers was the entity that registered
15 Henderson's load and generation in MISO.

16 **Q. Should Henderson be permitted to avoid MISO operating reserve fees**
17 **incurred from December 2010 through May 2016?**

⁹ Henderson Response to Big Rivers First Request for Information, Item No. 1-25(a).

1 A. No. The operating reserve fees in dispute are again, directly related to
2 Henderson's MISO generation and load. Because Henderson caused those fees
3 to be incurred, the City should have to pay those fees.

4 **Q. Should Henderson be permitted to avoid MISO Schedule 23 fees**
5 **incurred from December 2010 through May 2016?**

6 A. No. Contrary to Henderson's claims, the Schedule 23 fees: 1) are applicable to a
7 valid grandfathered transmission agreement; 2) are permitted by the MISO
8 tariff; and 3) do not constitute double recovery.

9 First, while witness Brown claims that the Grandfathered Agreement to
10 which Henderson was subject was likely a violation of the MISO tariff and
11 exempt from fees under MISO Schedule 23, his claim relies upon a misreading
12 of that tariff. GFAs No. 510 and 511 were filed by MISO in April 2010 in FERC
13 Docket No. ER10-1024 as a carved out GFA for the purposes of accommodating
14 BREC's integration into MISO. MISO's filing was approved by FERC via a letter
15 Order.

16 Thus, to be clear, while GFA 510 was deactivated by MISO pursuant to
17 BREC's request in 2019, for the relevant period, GFAs 510 and 511 were valid
18 GFAs under the MISO tariff for the purposes of allowing charges to Henderson.
19 Henderson presumably continues to use GFA 511 today for delivery of its SEPA
20 allocation.

21 Second, fees assessed under Schedule 23 represent administrative costs
22 applicable to customers under carved-out Grandfathered Agreements, not

1 transmission costs. Under GFA 510, Henderson did not pay a transmission
2 charge. The MISO tariff, page 2210, section 23, states the following: “The
3 purpose of this Schedule 23 is to provide a mechanism for the direct cost recovery
4 of Transmission Provider charges applicable to services provided to customers
5 under Carved-Out GFAs.” Therefore, Big Rivers incurred and paid Schedule 23
6 charges from MISO applicable to Henderson’s valid GFA 510. Big Rivers is
7 entitled to reimbursement for those payments.

8 Third, recovery of the MISO Schedule 23 fees would not result in a double
9 recovery. In his testimony, Mr. Brown describes the MISO costs being recovered
10 under Schedule 17 and his belief that “some” of those costs may be recoverable
11 from Henderson. The actual calculation of GFA-related Schedule 23 charges by
12 MISO is done so as to preclude double recovery of those costs. Regardless of
13 whether MISO committed a billing error, Big Rivers incurred these charges on
14 behalf of Henderson and is entitled to reimbursement.

15 **Q. Should Henderson be required to pay interest on the MISO fees that it**
16 **has refused to pay since 2010?**

17 **A.** Yes. The City should be required to pay interest on the amount of MISO fees
18 that were incurred as a direct result of the participation of its load and
19 generation in MISO since 2010. Interest is needed to make Big Rivers whole.

1 **III. 2018/2019 CAPACITY RESERVATION**

2 **Q. What is Henderson’s position regarding its MISO capacity reservation**
3 **for Fiscal Year 2018/2019?**

4 A. Henderson contends that it was not capacity deficient for Fiscal Year 2018/2019,
5 but claims that to the extent it was deficient, Big Rivers should have permitted
6 the City to use Zonal Resource Credits (“ZRCs”) to satisfy that deficiency.¹⁰

7 **Q. What is your response to the City’s contentions?**

8 A. As I explained in my Direct Testimony and the Exhibit 2 to that Testimony,
9 Henderson failed to satisfy its MISO Planning Reserve Margin Requirement
10 (“PRMR”) for Fiscal Year 2018/2019 in violation of the Power Sales Contract and
11 the System Reserves Agreement. While the City ultimately attempted to use 8
12 ZRCs to satisfy that capacity deficiency, Big Rivers reasonably rejected that
13 approach.

14 **Q. Why was Big Rivers’ rejection of the ZRC market purchase approach**
15 **mandated by the System Reserves Agreement as amended in 1998?**

16 A. Henderson’s attempted use of ZRC market purchases to satisfy its capacity
17 requirements is prohibited by the System Reserves Agreement as amended in
18 1998. Under Section 2.1 of the 1974 version of the System Reserves Agreement,
19 Henderson was authorized to meet its “minimum generating capacity equal to

¹⁰ Direct Testimony of Brad Bickett at 14-16

1 its system peak load during such contract year plus fifteen per cent (15%)”
2 through generation from “CITY’s Station One,” “reserved generation from
3 CITY’s Station Two,” and/or “firm capacity purchased or otherwise available
4 from others”.¹¹ In 1998, Section 2.1 of the System Reserves Agreement was
5 completely rewritten. Under the 1998 Amendments, Section 2.1 no longer allows
6 for the City to meet its capacity obligations through purchases. Therefore, the
7 attempted use of ZRC market purchases is not allowed. The 1998 Amendment
8 also replaced the 15% reserve margin with “system reserve capacity
9 requirements” as “required or imposed” by “any regional transmission authority
10 [MISO].”¹² Exhibit Eacret-2 to my Direct Testimony calculates the City’s
11 capacity reserve requirement according to MISO’s Resource Adequacy
12 Requirement as 124.7 MW. Only MISO requires or imposes a system reserves
13 requirement on Big Rivers and the City. Therefore, the 15% reserve margin
14 referenced in Mr. Bickett’s Direct Testimony at page 12 is superseded and
15 incorrect.

16 **Q. Does the Power Sales Contract also prohibit the City’s use of ZRC**
17 **market purchases to reduce its Station Two capacity obligation?**

18 A. Yes. Section 3 (Allocation of Capacity) of the Power Sales Contract provides that
19 Station Two capacity which is not allocated to Big Rivers as surplus, “shall be
20 reserved to” the City. The City cannot artificially reduce its capacity obligation

¹¹ Application, Exhibit 11 at 2-3.

¹² Application, Exhibit 13 at 10.

1 through market purchases of ZRCs for the sole purpose of shifting capacity costs
2 to Big Rivers. If it could, then the City could purchase its entire 125 MW capacity
3 obligation from the market (priced at about \$10/MW-day) and leave Big Rivers
4 with 100% of the Station Two fixed capacity costs (priced at about \$136.99/MW-
5 day). There is no provision of the Station Two Contracts which remotely allows
6 the City to pay the lower of cost or market for capacity.

7 **IV. CONCLUSION**

8 **Q. Does this conclude your testimony?**

9 **A. Yes, it does.**

BIG RIVERS ELECTRIC CORPORATION

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

VERIFICATION

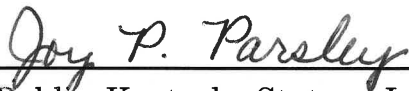
I, Mark J. Eacret, verify, state, and affirm that I prepared or supervised the preparation of the Rebuttal Testimony filed with this Verification, and that Rebuttal Testimony is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Mark J. Eacret

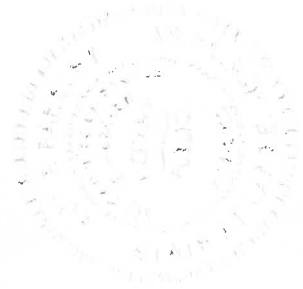
COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

25th SUBSCRIBED AND SWORN TO before me by Mark J. Eacret on this the
day of August, 2020.



Notary Public, Kentucky State at Large
My Commission Expires _____

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



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 RATE AND	)	2019-00269
SERVICE STANDARDS.)	

REBUTTAL TESTIMONY

OF

**MICHAEL W. CHAMBLISS
VICE PRESIDENT OF SYSTEM OPERATIONS**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

Filed: August 25, 2020

**REBUTTAL TESTIMONY
OF
MICHAEL W. CHAMBLISS**

Table of Contents

I.	INTRODUCTION.....	1
II.	MISO FEES RELATED TO NERC COMPLIANCE.....	2

REBUTTAL TESTIMONY
OF
MICHAEL W. CHAMBLISS

1 **I. INTRODUCTION**

2 **Q. Please state your name, business address and occupation.**

3 A. My name is Michael W. Chambliss. My business address is 201 Third Street,
4 Henderson, Kentucky 42420. I am the Vice President of System Operations for
5 Big Rivers Electric Corporation ("Big Rivers").

6 **Q. Did you submit Direct Testimony in this proceeding?**

7 A. Yes. In my Direct Testimony I described the circumstances giving rise to Big
8 Rivers joining MISO and registering Station Two and the load and generation
9 of the City of Henderson and the City of Henderson Utility Commission
10 (collectively, "Henderson" or "City") in the MISO market. I also provided a
11 summary of the Station Two contract provisions supporting Big Rivers' request
12 for reimbursement related to Henderson's obligation to pay its share of MISO
13 fees incurred by Big Rivers on account of Henderson's load and generation.

14 **Q. What is the purpose of your rebuttal testimony?**

15 A. The purpose of my rebuttal testimony is to address the Direct Testimony of
16 Henderson witness Brad Bickett. Mr. Bickett argues that Henderson should
17 not have to pay costs related to the contingency reserve requirement under the

1 North American Electric Reliability Corporation (“NERC”) while Big Rivers
2 acted as Henderson’s Market Participant.

3 **II. MISO FEES RELATED TO NERC COMPLIANCE**

4 **Q. Does Henderson dispute Big Rivers’ assertion that Henderson is**
5 **responsible to pay MISO fees related to NERC reliability**
6 **requirements?**

7 Yes, Mr. Bickett contends that Henderson is not responsible for paying certain
8 MISO fees incurred between December 2010 through May 2016 because,
9 according to Mr. Bickett, Big Rivers joined MISO in order to assist Big Rivers’
10 own compliance with NERC requirements and Henderson was not subject to
11 these NERC requirements.¹ In addition, On Exhibit Moll-3, Henderson seeks
12 to avoid reimbursing Big Rivers for the MISO fees that the City incurred in
13 2017-2019.

14 **Q. Do you agree with Mr. Bickett’s argument that Big Rivers’ decision to**
15 **join MISO was unrelated to Henderson Station Two and Henderson**
16 **load?**

17 No. As power plant owners, Henderson and Big Rivers were each required to
18 comply with reliability standards set by NERC. Henderson’s most recent
19 Financial Statement explains that in 2007, NERC adopted new electric system

¹ Direct Testimony of Brad Bickett at 16-19.

1 reliability standards for all electric utilities in the United States, stating that
2 “HMP&L is required to comply with the new reliability standards and incurs
3 administrative expenses related to NERC compliance.”²

4 In his Direct Testimony Mr. Bickett acknowledges, “Henderson’s load
5 and Station Two were represented in MISO by Big Rivers acting as Market
6 Participant on Henderson’s behalf.”³ As Henderson’s Market Participant, Big
7 Rivers provided Henderson with NERC compliance through Big Rivers’
8 membership in MISO. Station Two would not have operated in compliance
9 with NERC Standards if Big Rivers had not joined MISO.

10 **Q. On page 5 of Mr. Bickett’s Direct Testimony, Mr. Bickett states that**
11 **the Power Sales Contract and the System Reserves Agreement were**
12 **entered into prior to joining MISO, and neither were amended to**
13 **address a transition to MISO. Do you agree with Mr. Bickett’s**
14 **statement?**

15 A. No. The System Reserves Agreement was amended in 1998 to specifically
16 address and recognize a regional transmission authority, such as MISO. Since
17 the System Reserves agreement already had a provision to recognize a regional
18 transmission authority such as MISO, it required no additional amendment as
19 Mr. Bickett implies.

² Henderson Response to Big Rivers First Request for Information, Item No. 31, Attachment 1 at 11.

³ Direct Testimony of Brad Bickett at 5.

1 **Q. Did Henderson agree that it would satisfy its NERC requirements**
2 **through Big Rivers?**

3 A. Yes. In July of 2009, the City signed a Memorandum of Understanding with
4 Big Rivers providing that Big Rivers would continue the Transmission
5 Operations, Generation Operations, and Balancing Authority functions for
6 Henderson after the Unwind Transaction with LG&E was complete.⁴ The
7 Memorandum of Understanding states:

8 *“Subsequent to the Unwind Transaction, Big Rivers Electric Corporation*
9 *will continue to provide and be responsible for compliance with all TOP,*
10 *GOP, and BA Reliability Standard functions related to Henderson*
11 *Municipal Power and Light as those functions were provided by Big*
12 *Rivers Electric Corporation, Western Kentucky Energy Corporation, and*
13 *LG&E Energy Marketing, Inc. prior to the Unwind Transaction.”*

14 Compliance reports prepared by the SERC Reliability Corporation⁵ (“SERC”)
15 confirm that Big Rivers was performing Balancing Authority, Transmission
16 Operator, Generator Owner, and Load Serving Entity functions for Henderson
17 in MISO effective July 17, 2009. The SERC Compliance Audit of Big Rivers
18 (June 8, 2013 at 3) states:

19 *“BREC also has two Coordinated Functional Registrations for the TO*
20 *function (CFR00091) and for the LSE function (CFR00092) with*
21 *Henderson Municipal Power & Light (HMP&L), and is registered as a*
22 *Joint Registration Organization (JRO00087) for the GO function with*
23 *HMP&L”;*

⁴ Application, Exhibit 15.

⁵ The SERC Reliability Corporation is responsible for ensuring a reliable and secure electric grid across 16 southeastern and central states, including Kentucky. SERC is authorized to perform this responsibility under a FERC approved delegation agreement with NERC.

1 The SERC Compliance Audit of Henderson (May 23, 2014 at 3) states:

2 *“HMPL was also registered for a Coordinated Function Registration*
3 *(CFR) with Big Rivers Electric Corporation for the following compliance*
4 *responsibilities: TO functions (IRO-004 R4) and LSE functions (TOP-*
5 *002 R3 & IRO-004 R4 (CFR-00092), effective July 17, 2009. The*
6 *Reliability Coordinator (RC, Balancing Authority (BA), and*
7 *Transmission Operator (TOP) for HMPL are as follows, respectively*
8 *MISO is the RC for HMPL and Big Rivers Electric Corporation is the BA*
9 *and TOP for HMPL”).*

10 In May 2010, Henderson confirmed to MISO that it was “agreeable to Big
11 Rivers registering Henderson’s 105 MW (as of June 1).”⁶

12 Finally, as explained in my Direct Testimony, Section 2.1 of the System
13 'Reserves Agreement, as amended in 1998, states that Henderson will comply
14 with any requirements validly imposed by the NERC or any regional
15 transmission authority, such as MISO, upon Big Rivers based on Big Rivers'
16 role as control area operator (now commonly referred to as the Balancing
17 Authority) to the extent that such requirements imposed on Big Rivers are on
18 account of or due to the generation and/or load of Henderson. When Big Rivers
19 joined MISO, Big Rivers’ did so to meet its obligation in Section 3.2(a) of the
20 System Reserves Agreement, as amended in 1998. Big Rivers’ participation in
21 MISO did not change Henderson’s obligation in Section 2.2(b). Since
22 Henderson failed to meet its obligation, Big Rivers on behalf of Henderson and

⁶ Big Rivers Response to Henderson First Request for Information, Item No. 41, Attachment 2.

1 in conformance with Section 2.1 of the System Reserves Agreement, met
2 Henderson's contingency reserve requirement through MISO membership.

3 **Q. On page 6 of his Direct Testimony Mr. Bickett states that to his**
4 **“knowledge, neither Henderson Station Two nor the Henderson load**
5 **contributed to Big Rivers' inability to comply with the NERC**
6 **Balancing Authority requirements.” Do you agree?**

7 A. No. Henderson's load and generation contributed to Big Rivers' NERC
8 Balancing Authority requirements. Big Rivers and Henderson were parties to
9 a System Reserves Agreement, which described each party's obligations to
10 maintain certain reserves on each of their respective electric systems. Mr.
11 Bickett's argument that Big Rivers joining MISO had nothing to do with
12 Station Two or the Henderson load fails to acknowledge that the System
13 Reserves Agreement obligates Henderson to meet their own contingency
14 reserve requirements, as if they were an independent Control Area or
15 Balancing Authority. So their reserve requirement is the loss of their single
16 largest unit, not Big Rivers' single largest unit as stated by Mr. Bickett.

17 Big Rivers met Henderson's contractual requirement by joining MISO
18 and covering Henderson's obligation. Henderson did not meet its obligation
19 under the System Reserves Agreement, and without Big Rivers' meeting
20 Henderson's obligation on behalf of Henderson, Henderson would have had to
21 incur substantial additional costs on its own.

1 **Q. What steps did Big Rivers take in order to ensure that joining MISO**
2 **was the least-cost option for meeting NERC compliance?**

3 A. As explained in my Direct Testimony, Big Rivers commissioned Charles River
4 Associates ("CRA") to conduct an economic assessment of the options available
5 to Big Rivers for the supply of contingency reserves required by NERC
6 Standard BAL-002. The CRA Analysis concluded that Big Rivers had no viable
7 options for meeting its contingency reserve requirement other than with a
8 stand-alone self-supply plan or by joining MISO. Based on CRA's analysis,
9 joining MISO was the least costly alternative to ensure compliance with the
10 BAL-002 standard.⁷ The Commission agreed with this assessment, entering
11 an Order in Case No. 2010-00043 finding that Big Rivers' request to transfer
12 functional control of its transmission system to MISO was for a proper purpose
13 and in the public interest, and authorized Big Rivers to transfer functional
14 control of its transmission system to MISO.

15 **Q. Did Henderson benefit from Big Rivers' membership in MISO?**

16 A. Yes. As explained in my Direct Testimony,⁸ MISO is a NERC certified
17 Balancing Authority. As a member of MISO, Big Rivers was required to
18 register Station Two and Henderson's load because it was part of Big Rivers'
19 Control Area. This worked to the benefit of Henderson because once Big Rivers
20 joined MISO, Big Rivers became a MISO-Local Balancing Authority, operating

⁷ Direct Testimony of Michael W. Chambliss at 7-8.

⁸ Id. at 13.

1 in MISO's Balancing Authority Area. This reduced the contingency reserve
2 obligation associated with what had been the Big Rivers control area
3 substantially. As a Balancing Authority, both Henderson and Big Rivers were
4 now permitted to take advantage of the much lower obligation for Big Rivers'
5 Local Balancing Authority area that was part of the MISO Balancing
6 Authority, rather than each party's standby capacity obligations being based
7 on the NERC BAL-002 requirements. For an example, now that Henderson
8 has registered their load separately from Big Rivers, they are paying more
9 than double the amount to Gridforce Energy Management for the same
10 services Big Rivers supplied them by joining MISO. If the Commission orders
11 Henderson to pay the cost incurred by Big Rivers that was associated with
12 Henderson's load during the years December 2010 through February 2019, it
13 will still be a significant saving over what they are paying today for the same
14 services.

15 **Q. Has Big Rivers confused NERC Contingency Reserves and MISO**
16 **Planning Reserves as stated on page 9 of Mr. Bickett's Direct**
17 **Testimony?**

18 **A.** No. Henderson has an obligation through the System Reserves Agreement to
19 comply with both. As noted, Big Rivers was acting on behalf of Henderson, so
20 MISO Planning Reserves were required.

1 **Q. Do you agree with any of Henderson's contentions with respect to**
2 **MISO fees?**

3 A. No. Henderson's participation in MISO via Big Rivers acting as Market
4 Participant was necessary in order to meet Federal NERC requirements. Big
5 Rivers incurred charges on behalf of Henderson and is simply attempting to
6 collect these charges from the City so that they are not borne by Big Rivers'
7 Members.

8 **Q. What is your recommendation regarding MISO fees associated with**
9 **NERC compliance?**

10 A. The Commission should require Henderson to pay the MISO fees as calculated
11 by Big Rivers and described in the Direct and Rebuttal Testimonies of Mark
12 Eacret.

13 **Q. Does this conclude your testimony?**

14 A. Yes, it does.

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

VERIFICATION

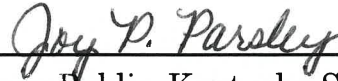
I, Michael W. ("Mike") Chambliss, verify, state, and affirm that I prepared or supervised the preparation of the Rebuttal Testimony filed with this Verification, and that Rebuttal Testimony is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Michael W. ("Mike") Chambliss

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

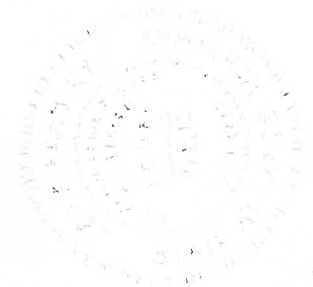
SUBSCRIBED AND SWORN TO before me by Michael W. ("Mike") Chambliss
on this the 25th day of August, 2020.



Notary Public, Kentucky State at Large

My Commission Expires _____

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



ORIGINAL



Your Touchstone Energy® Cooperative 

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

In the Matter of:

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

REBUTTAL TESTIMONY

OF

JEFFREY T. KOPP

**MANAGER, UTILITY CONSULTING DEPARTMENT, BUSINESS &
TECHNOLOGY SOLUTIONS DIVISION
BURNS & MCDONNELL ENGINEERING COMPANY, INC.**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

FILED: August 25, 2020

**DIRECT TESTIMONY
OF
JEFFREY T. KOPP**

Table of Contents

I.	INTRODUCTION	1
II.	PURPOSE OF TESTIMONY	2
III.	CONCLUSION	9

1 A. Yes, I have provided testimony regarding power plant decommissioning costs
2 as part of the development of depreciation rates. The Commissions before
3 which I have so testified, and the details thereof, were provided in Exhibit
4 Kopp-1 to my Direct Testimony filed on July 31, 2019, in this proceeding.

5

6 **Q. What recommendation are you making in your testimony?**

7 A. I recommend that the Commission find the decommissioning obligation of
8 Henderson Station Two includes activities performed to date to place the units
9 in a retired-in-place condition as well as future full demolition obligations. I
10 am not making any recommendation as to how the decommissioning or
11 retirement-in-place costs should be allocated between Big Rivers and
12 Henderson.

13

14 **II. PURPOSE OF TESTIMONY**

15 **Q. On whose behalf are you testifying in the proceeding?**

16 A. I am filing testimony on behalf of Big Rivers Electric Corporation (“Big
17 Rivers”).

18

19 **Q. What is the purpose of your direct testimony?**

20 A. The purpose of my testimony is to address intervenor testimony discussion on
21 decommissioning activities.

22

1 **Q. Have you reviewed the intervenor testimony filed in this proceeding**
2 **on July 14, 2020?**

3 A. Yes. I reviewed the Direct Testimony of Christopher Heimgartner, General
4 Manager of Henderson Municipal Power & Light, in particular part VII, which
5 discusses decommissioning costs.

6

7 **Q. At page 20 of his Testimony, Mr. Heimgartner states that “Henderson’s**
8 **position is that the Station Two plant has been decommissioned since**
9 **the plant was brought to “safe, dark, and dry” status in April 2019.”**
10 **Do you agree?**

11 A. No. I would agree that the decommissioning process has been started, but has
12 not been completed. As stated on page 5 of my previously filed Direct
13 Testimony (*emphasis*) –

14

15 Decommissioning is a process of removing a unit from service.
16 There are multiple steps in this process including shutting the
17 unit down, removing chemicals and consumables, deenergizing
18 equipment, *and* finally full demolition of equipment and
19 structures as well as site remediation activities. ... Eventually
20 full demolition and site remediation are required to return a site
21 to a safe and usable condition.

22

23 **Q. Which of the decommissioning activities are included in bringing the**
24 **unit to “safe, dark, and dry” status?**

1 A. This would include shutting the unit down, removing chemicals and
2 consumables, and deenergizing equipment.

3

4 **Q. Which decommissioning activities are excluded from bringing the**
5 **unit to “safe, dark, and dry” status and remain as outstanding items**
6 **to be completed?**

7 A. Full demolition of equipment and structures as well as site remediation
8 activities are still outstanding activities that need to be completed at some
9 point in time. These are the most significant and most costly items to be
10 completed as part of the decommissioning process.

11

12 **Q. Is it necessary to perform full demolition and site remediation**
13 **activities rather than leaving the unit in “safe, dark, and dry” status?**

14 A. Yes. There are several reasons that full demolition and site remediation
15 activities must be performed. First of all, full demolition and site remediation
16 is less costly than leaving a unit in “safe, dark, and dry” status. Since there
17 are carrying costs associated with the unit remaining in “safe, dark, and dry”
18 status, there is no upper limit on costs, and they will eventually exceed the
19 costs for full demolition and site remediation. Some examples of carrying costs
20 include, but are not limited to, maintaining operation of Federal Aviation
21 Administration ("FAA") warning lights on stacks, site security, maintaining
22 liability insurance and environmental permits, structural inspections of

1 stacks, and monitoring and maintenance of any encapsulated friable ACM (if
2 not remediated). All of these costs would be necessary to maintain a safe site
3 and be in compliance with applicable regulations. Furthermore, as stated in
4 my direct testimony at page 8, there are still liabilities and risks associated
5 with the unit remaining in this condition. Therefore, full demolition is the
6 prudent choice, and the less costly option in the long run, with a reduction in
7 liabilities and risks, including but not limited to fire, deterioration of
8 structures, etc..

9 **Q. At page 20 and 21 of his Testimony, Mr. Heimgartner states that “Big
10 Rivers has not cited any legal requirement or industrywide
11 justification for the plant to be decommissioned in the manner or to
12 the extent Big Rivers recommends.” Do you agree?**

13 A. No. I provide several industrywide justifications in my direct testimony. As
14 stated at page 9 of my direct testimony, we have evaluated options for retiring
15 a unit in place and found that eventually the carrying costs exceed the cost of
16 full demolition. A retire-in-place scenario is generally the same as making the
17 unit “safe, dark, and dry” as Mr. Heimgartner suggests. I further explain on
18 page 9 of my testimony, that plant owners really only consider the retire-in-
19 place scenario when they need to delay full demolition for one reason or
20 another, not as an alternative to ever performing full demolition.

21 At page 10 of my direct testimony, I further provide industrywide
22 justification that “In my experience in supporting rate cases for regulated

1 utilities, full demolition has been the basis of end of life costs used in
2 depreciation calculations for setting electric rates.”

3

4 **Q. Has the Kentucky Public Service commission previously provided an**
5 **opinion on what activities are included in decommissioning?**

6 A. I'm not aware of the Kentucky Public Service Commission specifically
7 providing an opinion regarding what activities are included in
8 decommissioning. However, my experience of full demolition serving as the
9 basis for depreciation for the purposes of setting electric utility rates, includes
10 the Public Service Commission of Kentucky approving depreciation
11 calculations based on full demolition. As stated in my Response to HMPL 1-
12 38, I prepared decommissioning costs for Duke Energy Kentucky's rate Case
13 No. 2017-00321, which were included in the depreciation calculations that
14 were approved by the Commission. Those decommissioning costs were based
15 on full demolition and site remediation being performed.

16

17 **Q. Did the Kentucky Public Service Commission allow for the**
18 **decommissioning costs in that case to be based on full demolition and**
19 **site remediation?**

20 A. Yes. I presented direct testimony in that case and sponsored my study as an
21 exhibit to my direct testimony. The full demolition basis was outlined in that

1 study. Ultimately, the study was accepted as part of the case, with no
2 adjustments.

3

4 **Q. Have other Public Service Commissions allowed for decommissioning**
5 **costs to be based on full demolition and site remediation?**

6 A. Yes. I have prepared decommissioning studies in the following states, all of
7 which were based on full demolition and site remediation activities being
8 performed, and the studies were accepted with those activities included.

9

- 10 • New Mexico,
- 11 • Texas,
- 12 • Indiana,
- 13 • Florida,
- 14 • North Carolina,
- 15 • South Carolina,
- 16 • Colorado, and
- 17 • Kentucky.

18

19 **Q. What is your understanding of the reason that full demolition and site**
20 **remediation has been accepted as an industrywide standard for**
21 **setting electric utility rates?**

1 A. My experience and understanding from participating in rate case proceedings
2 is that full demolition and site remediation serves as the basis of calculating
3 end of life costs in depreciation calculations for rate cases based on the
4 principle of intergenerational equity.

5

6 **Q. Can you please explain what you mean by the principle of**
7 **intergenerational equity?**

8 A. Yes. The principle of intergenerational equity is simply the concept of fairness
9 between generations. In the case of power generation, it means that the users
10 of electricity bear the full costs associated with generating that electricity.
11 This would include the end of life cost associated with decommissioning the
12 power generating facilities and equipment. Those end of life costs are then
13 spread over the life of the assets and recovered through a depreciation expense.

14

15 **Q. Why do those end of life costs need to include full demolition and site**
16 **remediation, rather than just bringing the unit to “safe, dark, and dry”**
17 **status?**

18 A. If a unit is only brought to a “safe, dark, and dry” status and never demolished,
19 then the carrying costs associated with the unit would need to be accounted for
20 in perpetuity. There would be no upper limit to those costs and they could not
21 be fully accounted for in depreciation calculations. In the case that the
22 carrying costs could not be fully accounted for, then those costs would need to

1 be recovered at some point in the future through other mechanisms, creating
2 intergenerational inequity, by passing those costs on to individuals who did
3 not receive the benefit of the electricity. If the unit were to be fully demolished
4 at some point in the future, then not only would the total cost be higher than
5 demolition alone, but if the demolition costs were not accounted for in
6 depreciation this would also create intergenerational inequity.

7

8 **III. CONCLUSION**

9 **Q. Are the costs that Big Rivers has incurred to place Henderson Station**
10 **Two in a retire-in-place condition, prudent costs?**

11 A. Yes.

12

13 **Q. Are there additional prudent decommissioning costs that still need to**
14 **be accounted for by Big Rivers?**

15 A. Yes. As of the date of my testimony, only partial costs have been incurred to
16 place the plant in a “cold, dark, and safe” condition. Throughout my testimony,
17 I have discussed some of the additional prudent costs that will need to be
18 accounted for by Big Rivers. In particular, future full demolition is prudent and
19 still needs to be accounted for by Big Rivers. And even after demolition and
20 site remediation, there will be ongoing costs for environmental monitoring
21 required in the future.

22

1 **Q. Does this conclude your rebuttal testimony?**

2 **A. Yes.**

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

VERIFICATION

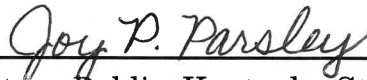
I, Jeffrey T. ("Jeff") Kopp, verify, state, and affirm that I prepared or supervised the preparation of the Rebuttal Testimony filed with this Verification, and that Rebuttal Testimony is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Jeffrey T. ("Jeff") Kopp

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Jeffrey T. ("Jeff") Kopp on this
the 25th day of August, 2020.



Notary Public, Kentucky State at Large

My Commission Expires _____

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

