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

IN THE MATTER OF:

ELECTRONIC APPLICATION OF)	
BIG RIVERS ELECTRIC CORPORATION)	Case No.
FOR APPROVAL OF SOLAR POWER)	2020-00183
CONTRACTS)	

**MOTION OF BIG RIVERS ELECTRIC CORPORATION TO
AMEND THE PROCEDURAL SCHEDULE**

1. Comes Big Rivers Electric Corporation ("*Big Rivers*"), by counsel and respectfully moves the Kentucky Public Service Commission ("*Commission*") for an order amending the procedural schedule in this matter. In support of this motion, Big Rivers states as follows:

2. The Commission established a procedural schedule by Order dated July 10, 2020. In its Order, the Commission set the procedural schedule with two rounds of discovery and Big Rivers' deadline to file rebuttal testimony no later than November 16, 2020.

3. Big Rivers respectfully requests the Commission modify the procedural schedule and issue a final order no later than September 28, 2020. The counterparties to the contracts had significant concerns about the uncertainty and delay arising out of Big Rivers having to file for Commission approval of the contracts, and they insisted on including provisions in the contracts to address those concerns, specifically:

1 a) under Section 2.9 “Buyer Conditions” of the Meade County
2 Solar and McCracken County Solar contracts, if the Commission
3 does not approve the contracts on or before 10/31/2020, Big
4 Rivers must terminate the contracts or it forfeits the right to
5 terminate. *See* Application Exhibit 2 at pages 19-20 and
6 Application Exhibit 3 pages 19-20;¹ and

7 b) under Section 2.1 of the Henderson Solar contract, should Big
8 Rivers fail to receive Commission approval by December 21,
9 2020, Henderson Solar may terminate the agreement. *See*
10 Application Exhibit 1, p. 17.²

11 4. Throughout the contract negotiations, Big Rivers required there to be a
12 provision in the contracts such that it would not be obligated to purchase any power
13 in the event the Commission did not approve the contracts. Community Energy
14 Solar insisted that the provision be in the form that Big Rivers could terminate the
15 Meade County Solar and McCracken County Solar contracts if the Commission did
16 not issue its approval by October 31, 2020, and that if Big Rivers does not terminate
17 by that date, it forfeits its right to terminate if the Commission does not approve the
18 contracts.

¹ Section 2.9 of each contract states in part “(b) If Buyer delivers written notice on or before October 31, 2020 that the Kentucky Public Service Commission has failed to approve this Agreement; provided Buyer shall promptly and no later than thirty (30) days following the date hereof properly file for approval by the Kentucky Public Service Commission and thereafter diligently pursue such approval . . .If Buyer delivers such a termination notice, neither Party shall have further liability or obligation hereunder (except for liabilities arising prior to such termination and liabilities arising out of a party’s obligations to indemnify the other Party) and Buyer shall promptly return any Credit support previously delivered by Seller.”

² Section 2.1 states in part “**Term.** . . . Each Party shall have the right to terminate this Agreement, without any further financial or other obligation by or to any Party as a result of such termination, by written notice to the other Party at any time between the 180th day and the 365th day following buyer’s application for such approvals, if prior to the date of such termination either or both of the Kentucky Public Service Commission and/or the Rural Utilities Service has not issued it respective approval.

1 5. Big Rivers cannot obligate itself to purchase power under those
2 contracts if the Commission has not issued a final, non-appealable order either
3 finding that the contracts do not require Commission approval or approving the
4 contracts. Because the Attorney General has filed a motion to intervene, Big Rivers
5 needs a final order by September 28, 2020, to allow for the 33-day appeal window to
6 expire before October 31, 2020. If Big Rivers does not have a final order by
7 September 28, or if an intervenor appeals or seeks rehearing of the final order, Big
8 Rivers will have no choice but to terminate the Meade County Solar and McCracken
9 County Solar contracts.

10 6. In regards to the Henderson Solar contract, Big Rivers believes the
11 solar developer has other parties interested in purchasing power from the subject
12 facility and that the developer may terminate the agreement if Commission
13 approval is not received by December 21, 2020.

14 7. Big Rivers has attached a proposed Amended Procedural Schedule,
15 attached hereto as Exhibit 1, which accelerates the Intervention Deadline to July
16 20, 2020, includes only one round of discovery to Big Rivers, and replaces the 14-day
17 windows between each subsequent deadline with 10-day windows, avoiding
18 weekend deadlines.

19 8. As the Commission noted in its July 10, 2020, Order, KRS 278.300
20 requires a final order to be issued within 60 days of the date of the filing of the
21 application, unless the deadline is extended for good cause. September 28, 2020, is
22 96 days from the date Big Rivers filed its application.

1 WHEREFORE, Big Rivers respectfully requests that the Commission enter
2 an order amending the procedural schedule to allow for a final order on or before
3 September 28, 2020.

4 On this 13th day of July, 2020.

5 Respectfully submitted,

6
7 */s/ Tyson Kamuf*
8

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BIG RIVERS' PROPOSED AMENDED PROCEDURAL SCHEDULE

Exhibit 1 to Big Rivers' Motion to Amend Procedural Schedule

Last day for intervention requests to be accepted..... 07/20/20

All initial requests for information to BREC shall
be filed no later than..... 07/30/20

BREC shall file responses to initial requests for
information no later than.....08/10/20

Intervenor testimony, if any, in verified prepared
form shall be filed no later than 08/20/20

All requests for information to Intervenors shall
be filed no later than..... 08/31/20

BREC shall file, in verified form, its rebuttal
testimony no later than 09/10/20

Last day for BREC to publish notice of hearing..... To be scheduled

Public Hearing to be held in Hearing Room 1
of the Commission's offices at 211 Sower Boulevard,
Frankfort, Kentucky, for the purpose of cross-examination
of witnesses of BREC and Intervenors..... To be scheduled

Post-Hearing Briefs, if any..... To be scheduled