

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

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR)	Case No. 2021-00378
ENFORCEMENT OF ORDER)	
)	

**REPLY OF BIG RIVERS ELECTRIC CORPORATION
TO CITY OF HENDERSON’S RESPONSE TO FILING OF
APPLICATION SUPPLEMENT AND BILLING SUMMARIES**

Big Rivers Electric Corporation (“Big Rivers”) submits this Reply to the Response (“Response”) filed by Henderson Utility Commission d/b/a Henderson Municipal Power & Light’s (collectively, “Henderson” or “City”) on December 30, 2021.

I. Henderson’s Refusal To Pay Non-Decommissioning Costs Owed To Big Rivers Pursuant To The Commission’s Order Highlights The Pressing Need For The Commission To Expeditiously Exercise Its Authority Under KRS 278.390.

In its Response, Henderson plainly concedes that it has not paid Big Rivers the \$214,398¹ in non-decommissioning costs that the Commission expressly directed Henderson to pay in its August 2, 2021 Order in Case No. 2019-00269 (“Order”) largely due to its disagreement with the Commission’s findings in that Order.

¹ See Order at 11 and 38. Total of all non-decommissioning costs as shown on Interim Accounting Summary = \$441,524 (Order at 11), minus Commission-ordered reduction to O&M or other costs of \$227,045 (Order at 38) = \$214,479

According to Henderson, the \$214,398 owed “*is based on a flawed premise that fails to credit Henderson with revenue associated with the sale of unprofitable energy [“EHE”]*.”² Henderson also complains that the \$214,398 owed includes the costs of “*a vertical landfill expansion which Big Rivers undertook in 2015 and which Henderson never approved.*”³ Consequently, Henderson argues that Big Rivers’ invoices cannot serve as a basis to collect the amounts owed to Big Rivers.⁴

Henderson’s abject refusal to comply with, or apparently even acknowledge the Commission’s Order in Case No. 2019-00269 underscores the need for the relief that Big Rivers requests in this case. Henderson comprehensively litigated the referenced EHE and vertical wall expansion issues in Case No. 2019-00269 and the Commission explicitly rejected the City’s arguments. Specifically, with respect to the EHE issue the Commission found:

*Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the December 15, 2017 Settlement Agreement and Release addressed any claims with respect to the EHE prior to January 5, 2018. The Commission further finds that BREC appropriately calculated the net of the EHE costs and revenues from January 5, 2018 forward, and the coal and lime shortfalls.*⁵

With respect to the vertical wall expansion issue, the Commission found:

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Henderson is responsible for the historical O&M costs through at least FY 2018/2019. The Commission finds that those costs were calculated consistent with the Station Two Contracts

² Henderson is referring to its arguments regarding Excess Henderson Energy or “EHE.” See Order, Case No. 2019-00269 (August 2, 2021) at 34-36.

³ Henderson Response at 3.

⁴ Id.

⁵ Order at 36.

including the 1993 Amendments thereto and that the costs for the vertical wall expansion were reasonable. There is really no dispute that at the time the vertical wall expansion was conceived that both parties intended to continue operating Station Two for many years and that the vertical wall expansion was necessary to ensure that the Green Landfill had the capacity to store existing waste from Station Two and to continue to accept additional waste from Station Two.”⁶

Henderson’s Response makes it abundantly clear that the City is now withholding payments expressly owed to Big Rivers pursuant to the Commission’s Order based upon arguments that were already fully considered and rejected by the Commission. Hence, it is becoming increasingly evident that the City will not comply with the Commission’s Order unless it is compelled to do so pursuant to KRS 278.390.

II. The Commission Should Adopt Big Rivers’ Proposed Streamlined Invoice Review Process For Decommissioning Costs.

In its Response, Henderson claims that it has not paid Big Rivers for certain invoiced decommissioning costs because Henderson has not yet verified the “*appropriateness*” of these costs.⁷ Henderson also objects to a Commission-supervised invoice review process because, in the City’s view, “[t]he process of reviewing, verifying, and approving this expenditure alone would require untold time and resources and place an unprecedented burden on the Commission.”⁸

Big Rivers strongly disagrees that a monthly/quarterly/annual review of disputed invoices would be overly burdensome to the Commission. The Commission’s

⁶ Order at 27-28.

⁷ Henderson Response at 1-2.

⁸ Id. at 2.

Order already contains specific instructions as to what decommissioning costs are required for Station Two and the extent to which Big Rivers and Henderson must share in paying these costs.⁹ The contemplated Commission review would simply involve verifying whether any individual decommissioning costs invoiced to Henderson by Big Rivers, which Henderson specifically disputes for reasons not already addressed by the Commission, are in compliance with the Order. However, any invoice review process should not provide an avenue for Henderson to simply continue to dispute invoices for reasons already addressed by the Commission. To do so would allow Henderson to, in effect, continue to re-litigate issues already ruled upon by the Commission. The proposed limited review process is squarely within the Commission's expertise and capabilities. And since Big Rivers must pay the vast majority of these decommissioning costs, it has every incentive to complete the process in a cost-effective manner.

The implied alternative offered by Henderson is that the City, without Commission oversight, would unilaterally determine "*the scope of specific projects*" and "*the appropriateness of their characterization as a decommissioning expense.*"¹⁰ The City's offer to take over the Commission's regulatory jurisdiction should be declined. Given Henderson's historic refusal to pay costs expressly owed to Big Rivers and incurred by Big Rivers on Henderson's behalf and Henderson's current refusal to even pay costs specifically ordered by the Commission, this is obviously an

⁹ Order at 29-37.

¹⁰ Henderson Response at 2.

unworkable solution. The Commission should determine whether any disputed decommissioning costs incurred and invoiced are consistent with its Order. Accordingly, the most efficient course of action is for Henderson to dispute any contested charges through a Commission-supervised invoice review process as Big Rivers requests.

Respectfully submitted,

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