

**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)

**RESPONSE TO ISSUES RAISED AT HEARING
BY BIG RIVERS ELECTRIC CORPORATION**

On November 29, 2021, the Kentucky Public Service Commission (“Commission”) held a hearing in this matter in order to address pending procedural issues. During that hearing, the Commission asked Big Rivers Electric Corporation (“Big Rivers”) about the scope of its requested relief in this case, and Big Rivers provided an initial response. Big Rivers believes that it is necessary to clarify its earlier response and provide greater specificity regarding its proposed path forward in this proceeding.

I. The Commission Should Immediately Exercise Its Enforcement Authority Under KRS 278.390.

Big Rivers is not requesting that the Commission delay the exercise of its enforcement authority under KRS 278.390. Indeed, Big Rivers urges the Commission to immediately seek enforcement of its August 2, 2021 Order in Case No. 2019-00269 at the Franklin Circuit Court. Otherwise, Henderson may continue simply refusing to pay the costs lawfully owed to Big Rivers pursuant to that Order based upon its unfounded claims that the Commission does not have statutory authority over the rates

and service standards set forth in the Station Two Contracts or that an appeal should somehow stay the applicability of a Commission order.

The Commission has already thoroughly vetted and addressed the accuracy of Big Rivers' calculations with respect to every cost category outside of the ongoing Station Two decommissioning expenses through its August 2, 2021 Order.¹ In accordance with that Order, the non-decommissioning costs owed to Big Rivers under the Station Two Contracts total \$214,400. This amount is specifically enumerated in the Order and will not change since it represents costs that are no longer ongoing.² The Commission has therefore already performed Henderson's requested invoice vetting with respect to all of the non-decommissioning-related costs in dispute. Henderson's failure to pay the \$214,400 owed to date is an ongoing violation of the Commission's Order that the Commission should immediately address pursuant to its authority under KRS 278.390.

II. The Commission Should Establish An Expedited Process By Which Henderson May Confirm The Accuracy Of Big Rivers' On-Going Monthly Decommissioning Cost Invoices.

A second matter addressed at the hearing that warrants further clarity is Big Rivers' requested approach to addressing any objections Henderson has regarding the accuracy of the invoices Big Rivers sends to the City pursuant to the Commission's August 2, 2021 Order. Decommissioning costs will be ongoing for many years until

¹ In its Order, the Commission determined Henderson's and Big Rivers' respective share of decommissioning cost responsibility but declined to specify an amount owed for decommissioning costs because "*decommissioning is ongoing.*" Order at 34.

² 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.

Station Two is demolished, the ash pond and landfill are closed, and the plant site is restored. Even after that, there will be ongoing environmental monitoring required by federal law. Those costs change monthly.

With respect to any ongoing decommissioning costs in dispute,³ Big Rivers respectfully requests that the Commission establish the following process: Each month, Big Rivers will file the invoice sent to Henderson at the Commission in the above-captioned docket on the same day the invoice is sent to the City, with a payment by Henderson due within thirty days. The Commission would then afford Henderson 15 days thereafter to file an objection to that monthly invoice in this docket. Any such objection should specifically reference which charges on the invoice Henderson objects to and the basis for that objection. Big Rivers would have 7 days to reply to any such objection. Any charges on the invoice to which Henderson does not object within the 15-day period will become immediately payable to Big Rivers. The Commission would then review the disputed portion of the invoice and determine whether the disputed amount is due to Big Rivers under the Station Two Contracts. This aligns with the monthly “*ongoing enforcement*” proposal that Big Rivers repeatedly advocated for in Case No. 2019-00269.⁴

Failure by Henderson to pay an invoiced decommissioning cost owed to Big Rivers after: 1) not submitting a timely objection; or 2) the issuance of a Commission

³ Big Rivers’ August 13, 2021 invoice reflected Henderson’s share of decommissioning costs through June 2021 and totaled \$1,498,063.95. Big Rivers’ November 2, 2021, invoice updated the City’s share of decommissioning costs to include the period July 1 through September 30, 2021 and reflects a total outstanding amount of decommissioning costs of \$1,693,385.41.

⁴ See Case No. 2019-00269, Application at 17 (July 31, 2019); Direct Testimony of Paul G. Smith at 17 (July 31, 2019); Rebuttal Testimony of Paul G. Smith at 21-30 (August 25, 2020); Brief of Big Rivers Electric Corporation at 78-82 (November 17, 2020).

ruling finding that the disputed cost is owed to Big Rivers would be a violation of the Commission's Order(s). Should such a violation occur, the Commission should immediately seek to compel obedience to its Order pursuant to KRS 278.390.

The proposed expedited invoice review process described herein provides Henderson with reasonable opportunity to contest any disputed decommissioning costs while also ensuring that Big Rivers may timely recover the costs owed to it under the Station Two Contracts. As explained in Big Rivers' previous filings in this matter, time is of the essence in decommissioning Station Two. Accordingly, Big Rivers respectfully requests that the Commission act quickly to establish the proposed invoice review process.

Respectfully submitted,

Tyson Kamuf, Esq.
Senthia Santana, Esq.
BIG RIVERS ELECTRIC
CORPORATION
201 Third Street, P.O. Box 24
Henderson, Kentucky 42419-0024
Ph: (270) 827-2561 Fax: (270) 844-6417
tysen.kamuf@bigrivers.com
senthia.santana@bigrivers.com

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

*COUNSEL FOR BIG RIVERS
ELECTRIC CORPORATION*

November 30, 2021