

**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. |) | |
| |) | |

**BIG RIVERS ELECTRIC CORPORATION'S
STATEMENT OF POSITION**

Pursuant to the Kentucky Public Service Commission's ("Commission") August 1, 2023 Order, Big Rivers Electric Corporation ("Big Rivers") provides its Statement of Position in this matter. As explained below, in the more than two-year period since the Commission issued its August 2, 2021 Order in Case No. 2019-00269 (referred to herein as the "2021 Order"), the City of Henderson, Kentucky and City of Henderson Utility Commission (collectively, "Henderson" or "City") has paid only 14% of its Commission-mandated share of Station Two decommissioning and operating costs (\$363,735 of the total \$2,604,635 due). Given Henderson's ongoing non-compliance with the Commission's Order, Big Rivers recommends that the Commission lift the abeyance that was established in this proceeding and take all appropriate action under KRS 278.390 to have the Franklin Circuit Court compel the City of Henderson, Kentucky and City of Henderson Utility Commission (collectively, "Henderson") to obey the Commission's 2021 Order.

BACKGROUND

On July 31, 2019, Big Rivers filed an Application with the Commission in Case No. 2019-00269, requesting an order enforcing the rates and service standards contained in the series of Commission-approved contracts between Henderson and Big Rivers related to the Station Two generating units (the "Station Two Contracts"). On August 2, 2021, the Commission issued its Order in that case finding that Henderson is required to pay its share of uncollected operating and decommissioning costs pursuant to the Station Two Contracts.¹

Upon issuance of the 2021 Order, Big Rivers calculated the amount that Henderson owed using the methodology outlined in the Order, including all disallowances required by the Commission. Big Rivers then delivered its first invoice to Henderson on August 13, 2021. Consistent with the Order, Big Rivers informed Henderson that it will issue additional invoices for decommissioning costs as they are incurred given that decommissioning of Station Two is an ongoing process.²

On August 27, 2021, Henderson appealed the 2021 Order to the Franklin Circuit Court in Civil Action No. 21-CI-00667 (consolidated with Civil Action No. 18-CI-00078).³ On September 17, 2021, Big Rivers submitted an Answer and

¹ Order, Case No. 2019-00269 (August 2, 2021) at 38. The 2021 Order requires Henderson “*to share in the costs of decommissioning Station Two and joint-use facilities...*”

² See 2021 Order at 34: “*Further, because the decommission costs are constantly in flux as decommissioning is ongoing, the Commission declines to find that there is a specific amount owed for decommissioning costs at this time. Rather, the Commission only finds that BREC and Henderson are responsible for decommissioning costs as described above.*”

³ Oral arguments and briefing is completed in the consolidated proceedings and the parties are awaiting a decision from the Franklin Circuit Court.

Counterclaim at the Franklin Circuit Court in Civil Action No. 21-CI-00667. Henderson subsequently moved to dismiss Big Rivers' Counterclaim.

As of September 29, 2021, Henderson had not paid any of the amounts due to Big Rivers in accordance with the Commission's 2021 Order. Consequently, on September 29, 2021, Big Rivers initiated this case requesting that the Commission expeditiously take all appropriate action to compel obedience to its Order, including compelling Henderson to obey the Order by mandamus, injunction, or other proper proceedings in the Franklin Circuit Court pursuant to KRS 278.390.

On October 11, 2021 the Commission issued an Order in this case holding Big Rivers' Application For Enforcement in abeyance (referenced herein as the "Abeyance Order").⁴ In order to avoid undue delay in enforcing the Commission's 2021 Order, Big Rivers attempted to simplify the proceedings at the Franklin Circuit Court by filing a Notice withdrawing its Counterclaim with prejudice at the Court on October 12, 2021,⁵ thus eliminating the controversy identified by the Commission as the reason for the abeyance. Citing this change in circumstance, Big Rivers filed a Motion to Lift the Abeyance on October 18, 2021. Big Rivers' Application for Enforcement has remained in abeyance since that time and the Franklin Circuit Court has not issued a final order on the pending appeals.

On August 1, 2023, the Commission issued an Order directing each party to explain its current position regarding whether this matter should remain in abeyance.

⁴ Order (October 11, 2021) at 2.

⁵ Franklin Circuit Court, Civil Action Nos. 18-CI-00078 & 21-CI-00667; Notice of Withdrawal of Counterclaim By Big Rivers electric Corporation (October 12, 2021).

STATEMENT OF POSITION

I. The Commission's Stated Rationale For Holding This Matter In Abeyance Is No Longer Applicable Due To Changed Circumstances.

In the Abeyance Order, the Commission found that this proceeding should be suspended until Henderson's Motion to Dismiss Big Rivers' Counterclaim at the Franklin Circuit Court was resolved, stating "*BREC's application is held in abeyance pending a ruling from the Franklin Circuit Court on Henderson's motion to dismiss BREC's counterclaim filed in Civil Action No. 21-CI-00667.*"⁶ However, the referenced Counterclaim is no longer pending at the Court (it was withdrawn with prejudice by Big Rivers on October 12, 2021 in light of the Abeyance Order).⁷ Henderson's Motion to Dismiss is now moot. Accordingly, because the Commission's stated reason for the abeyance has been removed, the abeyance should be lifted.

II. The Commission Should Take Action To Compel Obedience To Its 2021 Order.

A. Henderson Has Paid Only 14% Of The Costs Due To Big Rivers Under The 2021 Order.

Since August 2021, Big Rivers has delivered numerous invoices to Henderson, seeking reimbursement for the City's share of Station Two decommissioning and operating costs pursuant to the Commission's 2021 Order.⁸ The attached, Summary

⁶ Order (October 11, 2021) at 2.

⁷ Franklin Circuit Court, Civil Action Nos. 18-CI-00078 & 21-CI-00667; Notice of Withdrawal of Counterclaim by Big Rivers Electric Corporation (October 12, 2021).

⁸ "*The Commission also agrees with Henderson's contention that decommissioning of joint use facilities, where applicable, should be determined by the time-weighted capacity of the units supported by the facility as opposed to an allocation based solely on the shared capacity at Station Two, as that is the most reasonable method of cost allocation and is consistent with the intent of the Station Two Contracts.*" Order at 34.

of Outstanding Balance Due as of June 30, 2023 (“Summary”)⁹ details the 45 largely-unpaid invoices that Big Rivers has delivered to Henderson over the past two years.¹⁰

The invoices include \$2,390,236.42 of costs due to Big Rivers reflecting the share of decommissioning costs that Henderson is required to pay, pursuant to the 2021 Order. Per the 2021 Order, this sum reflects Henderson’s capacity reservation of 120 MW in fiscal year 2018/19, and includes the Reid Station in the calculation for the Station Two ash pond, resulting in an ash pond allocation of 18.90%, a landfill allocation of 9.88% pre-2021 and 9.81% in 2021, and a 22.65% allocation for other decommissioning costs. The invoices also include \$214,398.94 reflecting the final sum due to Big Rivers relating to all issues addressed in the 2021 Order, other than decommissioning costs. This sum reflects the amount contained in Big Rivers' Interim Accounting Summary, updated for costs through December 31, 2019 subject to the adjustments required by the 2021 Order.¹¹

As shown in the Summary, Big Rivers separates costs billed to Henderson into five main categories, each of which was specifically approved in the 2021 Order. Below is a brief explanation of these cost-categories and citations to the 2021 Order requiring Henderson to pay a defined share of these costs:

⁹ Attachment 1, Summary of Outstanding Balance Due as of June 30, 2023; and Attachment 2, Affidavit of Talina Mathews.

¹⁰ See attached Affidavit of Talina Mathews, Chief Financial Officer for Big Rivers, in support of the Summary of Outstanding Balance Due.

¹¹ The Commission made the following adjustments to Big Rivers’ Interim Accounting Summary:

- The Fiscal Year 2018/19 Annual Settlement True-Up amount was reduced to reflect Henderson's 120 MW reservation instead of 125 MW; and
- The projected severance costs contained in Big Rivers' original application were updated to reflect the actual severance costs incurred.

- **Ramp Down** – costs associated with the Commission’s approval of “*maintenance activities necessary to maintain the plant and the site in a safe, secure and legally compliant condition before demolition.*” The Commission required Henderson to pay a specific portion of these costs. 2021 Order at 33.
- **Asbestos & Demolition** – Henderson is required to pay asbestos and demolition costs pursuant to the Commission’s approval of Big Rivers’ proposed decommissioning process. The Commission stated that Big Rivers’ “*interpretation of the decommissioning process is consistent with previous Commission determinations (specifically citing asbestos removal and demolition costs).*” 2021 Order at 30-33.
- **Landfill Costs** – The Order states that “*The Commission also agrees with BREC that Henderson should be responsible for ongoing O&M at Green Landfill in any year following FY 2018/2019 despite the closure of Station Two...*” and, “*once Green Landfill stops serving a generating unit operated by BREC, then Henderson will be required to pay its share of the decommissioning costs for Green Landfill...*” 2021 Order at 28-29.
- **Ash Pond & CCR** – The Commission agreed with Big Rivers that Henderson cannot disclaim responsibility for Station Two ash pond dredgings once they are placed in the Green Landfill. The Order states that “*the 1993 Amendment, which more specifically relates to the dredgings that the cost provisions in the original contract, clearly contemplated that the parties would be responsible for their share of ongoing storage costs of the Stations Two dredgings, regardless of whether a generation facility was being operated with respect to the facility.*” 2021 Order at 27-28.
- **Excess Henderson Energy (EHE), HMP&L Native Load, MISO Fees, etc.** – The Commission’s 2021 Order addressed several, non-decommissioning issues and determined each parties’ respective cost responsibility for these items. Henderson continues to owe Big Rivers a total of \$214,398 for these items per the 2021 Order.

Since August 2021, Henderson has unilaterally decided which of the Commission-mandated costs assigned to the City would be paid and which would remain unpaid. For example, a close look at the Summary reveals that Henderson has paid most of the invoiced Asbestos & Demolition costs and Ash Pond & CCR costs but has paid none of its share of Ramp Down, Landfill, EHE, HMP&L Native Load,

and MISO fee costs. The chart below shows the amounts Henderson has paid toward each category of costs:¹²

| | Ramp Down | Asbestos & Demolition | Landfill | Ash Pond & CCR | EHE/MISO | Uncategorized | Total |
|-------------------------------|---------------------|-----------------------|-----------------------|-------------------|---------------------|--------------------------------|-----------------------|
| Total Amount Due | \$910,180.59 | \$246,330.81 | \$1,075,537.81 | \$158,187.21 | \$214,398.94 | | \$2,604,635.36 |
| Total Received from Henderson | \$0.00 | \$201,160.30 | \$0.00 | \$152,847.55 | \$0.00 | \$9,727.84 | \$363,735.69 |
| Total Outstanding | \$910,180.59 | \$45,170.51 | \$1,075,537.81 | \$5,339.66 | \$214,398.94 | \$9,727.84¹³ | \$2,240,899.67 |

As the chart reflects, over the past two years, Big Rivers has invoiced Henderson for amounts totaling \$2,604,635, and Henderson has paid only \$363,735 of the amount due. **The total unpaid amount due to Big Rivers stands at \$2,240,899 as of June 30, 2023.** Henderson’s now years-long practice of paying only the Station Two costs that the City believes it should pay is an attempt to put itself above the law by unilaterally determining which provisions of the 2021 Order it will obey and which it will ignore.

B. Neither Henderson’s Appeal Nor The Abeyance Order Relieved Henderson Of Its Ongoing Legal Obligation To Pay Station Two Costs As Ordered By The Commission.

Henderson’s appeal of the 2021 Order does not relieve the City of its current and ongoing legal obligation to pay the amounts due to Big Rivers pursuant to the 2021 Order. Under KRS 278.390, Commission orders continue in force until revoked by the Commission or vacated by a court of competent jurisdiction.¹⁴ As the Supreme

¹² Source: Summary of Outstanding Balance Due as of July 31, 2023 (attached).

¹³ Big Rivers received a payment of \$9,727.84 for Invoice BR06-2021. It is unclear what cost category this amount should be assigned to.

¹⁴ KRS 278.390 states in part “[e]very order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the

Court of Kentucky held in *Commonwealth v. South Central Bell Telephone Company*, 545 S.W.2d 927, 931(1976), “an order of the commission continues in force until revoked or modified by the commission or unless suspended or vacated in whole or in part by the Franklin Circuit Court.”¹⁵

Additionally, Henderson has been treating the Abeyance Order in this proceeding as if it effectively stays the Commission’s 2021 Order. The Abeyance Order in this proceeding does no such thing. The Commission did not hold its 2021 Order in abeyance, only Big Rivers’ Application for Enforcement of that 2021 Order.¹⁶ Henderson has a current and ongoing legal obligation to comply with the 2021 Order by paying Big Rivers for its share of decommissioning and Station Two operating costs. Neither Henderson’s appeal to the Franklin Circuit Court nor the Abeyance Order relieved Henderson of this obligation.

C. Henderson’s Persistent Non-Compliance With The Commission’s 2021 Order Is Harmful To Big Rivers And Its Members.

Big Rivers is committed to properly decommissioning Station Two in accordance with mandatory federal law and regulations and to paying its share of the associated costs pursuant to the 2021 Order. The hard work of decommissioning Station Two is ongoing and Big Rivers continues to incur significant costs in the process. Henderson’s non-compliance with the Commission’s 2021 Order during this process harms Big

commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.”

¹⁵ *Commonwealth v. South Central Bell Telephone Company*, 545 S.W.2d 927, 931 (1976) See also *Jent v. Ky. Utils. Co*, 332 S.W.3d 102, 105 (Ky App. 2010), in which The Kentucky Court of Appeals held that “the mere filing of an appeal does not stay the legal effectiveness of an order of the commission. Unless and until the order....is vacated, the order remains in effect.”

¹⁶ Abeyance Order: “BREC’s application is held in abeyance pending a ruling from the Franklin Circuit Court on Henderson’s motion to dismiss BREC’s counterclaim filed in Civil Action No. 21-CI-00667.”

Rivers and its Members in multiple ways.¹⁷ Any extra dollar that Big Rivers is required to pay for costs that are Henderson's responsibility will reduce the amount of Member rate credits payable through the Member Rate Stability Mechanism ("MRSM") and the amount available to amortize the smelter regulatory assets. Henderson's non-payment of Station Two costs can also impact the amount that Big Rivers recovers through its monthly environmental surcharge mechanism.¹⁸

Long-term, if Big Rivers is not able to collect the amounts owed by Henderson under the Commission's 2021 Order, then Big Rivers' ability to maintain investment-grade credit ratings could be impacted. This would increase borrowing costs and make transactions in the wholesale market less profitable due to increased credit requirements.¹⁹ Avoiding such negative financial impacts is why Big Rivers actively attempted to force the City to comply with the Commission's 2021 Order in this proceeding.

D. KRS 278.390 Grants The Commission Statutory Authority To Compel Obedience To Its Orders And The Commission Should Use Its Authority In This Instance.

The Legislature has provided a strong tool to empower the Commission to enforce its own Orders in KRS 278.390. That statute was enacted so that the Commission can swiftly enforce its lawful orders by filing a mandamus, injunction, or other pleading at the Franklin Circuit Court.²⁰ Filings made pursuant to KRS 278.390

¹⁷ See Application Of Big Rivers Electric Corporation For Enforcement Of Commission Order (September 29, 2021) at 11-12.

¹⁸ Attachment 2, Affidavit of Talina Mathews.

¹⁹ As a part of its Application in this case, Big Rivers submitted the Affidavit of Paul G. Smith, then-acting Chief Financial Officer of Big Rivers, attesting to the financial harm that will occur if Henderson does not pay the amounts owed to Big Rivers under the 2021 Order. See Attachment 2 to Application.

²⁰ KRS 278.390 states: "*The commission may compel obedience to its lawful orders by mandamus, injunction or other proper proceedings in the Franklin Circuit Court or any other court of competent*

are given priority over all other pending cases on the Franklin Circuit Court docket. This priority reflects the General Assembly's desire for the Commission to enforce its orders quickly and efficiently. The Franklin Circuit Court can also hold disobeying parties in contempt, as the Kentucky Supreme Court has recognized, explaining that "*KRS 278.390 gives the Commission specific authority to compel obedience to its orders by '...(in) mandamus, injunctions or other proper proceeding in the Franklin Circuit Court.'* Thus, the court could use its normal contempt power to enforce resulting judgments and orders."²¹

The Commission has exercised its authority under KRS 278.390 at least once before to enforce compliance with its orders. In *PSC v. Barnesburg Water Association, Inc. et al*, Franklin Circuit Court Civil Action 92-CI-01151, the Commission filed a Complaint pursuant to KRS 278.390, requesting that the Court enforce an order requiring several water utilities to complete a merger. The Commission's enforcement action was granted by Summary Judgment on July 31, 1995.²²

While KRS 278.390 has rarely been invoked at the Court because parties typically comply with Commission orders, the Commission has on occasion used its orders to remind parties of its enforcement authority under that statute. However, given Henderson's persistent defiance of the Commission's 2021 Order, this is one of

jurisdiction, and such proceedings shall have priority over all pending cases. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction."

²¹ *South Cent. Bell Tel. Co v. Utility Regulatory Com.*, 637 S.W.2d 649, 652 (1982).

²² See Attachment 5 to Application at 2.

those rare cases in which the Commission should act upon the enforcement authority granted by the Legislature to ensure that its 2021 Order is obeyed.

CONCLUSION

Big Rivers respectfully requests that the Commission lift the abeyance and take all appropriate action to compel obedience to its 2021 Order, including compelling Henderson to obey the 2021 Order by mandamus, injunction, or other proper proceedings in the Franklin Circuit Court or other court of competent jurisdiction pursuant to KRS 278.390.

Respectfully submitted,

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**COUNSEL FOR BIG RIVERS
ELECTRIC CORPORATION**

August 22, 2023

ATTACHMENT 1



Big Rivers Electric Corporation
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Date 7/31/2023

Summary of Outstanding Balance Due

| Description | Current Invoices | | | | | Past Due Invoices | | | | | Total Amount Due | | |
|----------------------------|-----------------------|-----------------------|----------|------------------|-------|------------------------|------------|-----------------------|------------|------------------|------------------|-------------------|-------------------|
| | Decommissioning Costs | | | | | Decommissioning Costs | | | | | | | |
| | Ramp Down | Asbestos & Demolition | Landfill | Ash Pond and CCR | Total | Station Two Operations | Ramp Down | Asbestos & Demolition | Landfill | Ash Pond and CCR | | Payments Received | Total Past Due |
| Excess Henderson Energy | \$ - | \$ - | \$ - | \$ - | \$ - | \$ (3,310,482.54) | \$ - | \$ - | \$ - | \$ - | \$ - | \$ (3,310,482.54) | \$ (3,310,482.54) |
| HMP&L Native Load | - | - | - | - | - | 4,693,587.29 | - | - | - | - | - | 4,693,587.29 | 4,693,587.29 |
| MISO Fees | - | - | - | - | - | 1,422,761.54 | - | - | - | - | - | 1,422,761.54 | 1,422,761.54 |
| FY 17/18 Annual Settlement | - | - | - | - | - | (1,649,922.53) | - | - | - | - | - | (1,649,922.53) | (1,649,922.53) |
| FY 18/19 Annual Settlement | - | - | - | - | - | (1,020,295.80) | - | - | - | - | - | (1,020,295.80) | (1,020,295.80) |
| Auxillary Power | - | - | - | - | - | 78,750.98 | - | - | - | - | - | 78,750.98 | 78,750.98 |
| Invoice BR32019 | - | - | - | - | - | 214,398.94 | - | - | - | - | - | 214,398.94 | 214,398.94 |
| Invoice BR06-2021 | - | - | - | - | - | - | 777,685.08 | - | 664,219.23 | - | (9,727.84) | 1,432,176.47 | 1,432,176.47 |
| Invoice BR07-2021 | - | - | - | - | - | - | 38,292.84 | - | 153,262.68 | - | - | 191,555.52 | 191,555.52 |
| Invoice BR08-2021 | - | - | - | - | - | - | - | - | 69,653.42 | (68,179.51) | 1,473.91 | 1,473.91 | |
| Invoice BR09-2021 | - | - | - | - | - | - | - | - | 2,720.84 | (2,674.87) | 45.97 | 45.97 | |
| Invoice BR10-2021 | - | - | - | - | - | - | 6,513.60 | - | 42,787.23 | - | - | 49,300.83 | 49,300.83 |
| Invoice BR11-2021 | - | - | - | - | - | - | - | - | 1,553.34 | (1,494.90) | 58.44 | 58.44 | |
| Invoice BR12-2021 | - | - | - | - | - | - | 525.73 | - | 44,813.23 | - | - | 45,338.96 | 45,338.96 |
| Invoice BR13-2021 | - | - | - | - | - | - | - | - | 666.87 | (616.87) | 50.00 | 50.00 | |
| Invoice BR14-2021 | - | - | - | - | - | - | 4,125.96 | - | 16,878.08 | - | - | 21,004.04 | 21,004.04 |
| Invoice BR01-2022 | - | - | - | - | - | - | - | - | 56.37 | - | 56.37 | 56.37 | |
| Invoice BR02-2022 | - | - | - | - | - | - | 5,592.08 | - | 12,765.49 | - | - | 18,357.57 | 18,357.57 |
| Invoice BR03-2022 | - | - | - | - | - | - | - | - | 608.63 | (551.30) | 57.33 | 57.33 | |
| Invoice BR04-2022 | - | - | - | - | - | - | 5,475.37 | - | 13,296.05 | - | - | 18,771.42 | 18,771.42 |
| Invoice BR05-2022 | - | - | - | - | - | - | - | - | 76.26 | (12.92) | 63.34 | 63.34 | |
| Invoice BR06-2022 | - | - | - | - | - | - | 23,042.19 | 110,985.00 | 11,720.23 | - | (110,985.00) | 34,762.42 | 34,762.42 |
| Invoice BR07-2022 | - | - | - | - | - | - | - | - | 24,918.98 | (24,840.25) | 78.73 | 78.73 | |
| Invoice BR08-2022 | - | - | - | - | - | - | 13,554.06 | 6,936.56 | 14,265.41 | - | (6,936.56) | 27,819.47 | 27,819.47 |
| Invoice BR09-2022 | - | - | - | - | - | - | - | - | 1,940.44 | (1,878.68) | 61.76 | 61.76 | |
| Invoice BR10-2022 | - | - | - | - | - | - | 6,204.68 | 6,936.56 | 14,926.36 | - | (6,936.56) | 21,131.04 | 21,131.04 |
| Invoice BR11-2022 | - | - | - | - | - | - | - | - | 20,765.49 | (20,765.49) | - | - | |
| Invoice BR12-2022 | - | - | - | - | - | - | 4,859.19 | 6,936.56 | 18,127.67 | - | (6,936.56) | 22,986.86 | 22,986.86 |
| Invoice BR13-2022 | - | - | - | - | - | - | - | - | 11,447.49 | (11,447.49) | - | - | |
| Invoice BR14-2022 | - | - | - | - | - | - | 3,563.98 | 13,873.12 | 18,263.34 | - | (13,873.13) | 21,827.31 | 21,827.31 |
| Invoice BR15-2022 | - | - | - | - | - | - | - | - | 6,088.68 | (6,088.68) | - | - | |
| Invoice BR16-2022 | - | - | - | - | - | - | 4,242.19 | - | 2,268.06 | - | - | 6,510.25 | 6,510.25 |
| Invoice BR17-2022 | - | - | - | - | - | - | - | - | 291.38 | (291.38) | - | - | |



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Date 7/31/2023

Summary of Outstanding Balance Due

| Description | Current Invoices | | | | | Station Two Operations | Past Due Invoices | | | | Payments Received | Total Past Due | Total Amount Due |
|-------------------|-----------------------|--------------------------|--------------------|---------------------|--------------------|------------------------------|-----------------------|--------------------------|------------------------|----------------------|------------------------|------------------------|------------------------|
| | Decommissioning Costs | | | | | | Decommissioning Costs | | | | | | |
| | Ramp Down | Asbestos & Demolition | Landfill | Ash Pond and CCR | Total | | Ramp Down | Asbestos & Demolition | Landfill | Ash Pond and CCR | | | |
| Invoice BR18-2022 | - | - | - | - | - | - | 2,026.38 | 6,936.56 | 13,498.70 | - | (6,936.56) | 15,525.08 | 15,525.08 |
| Invoice BR19-2022 | - | - | - | - | - | - | - | - | - | 182.67 | (182.67) | - | - |
| Invoice BR20-2022 | - | - | - | - | - | - | 1,336.94 | 6,936.56 | 3,723.23 | - | (6,936.56) | 5,060.17 | 5,060.17 |
| Invoice BR21-2022 | - | - | - | - | - | - | - | - | - | 54.53 | (54.53) | - | - |
| Invoice BR22-2022 | - | - | - | - | - | - | 1,336.50 | 29,586.56 | 2,770.35 | - | (6,936.56) | 26,756.85 | 26,756.85 |
| Invoice BR23-2022 | - | - | - | - | - | - | - | - | - | 12,230.04 | (12,230.04) | - | - |
| Invoice BR24-2022 | - | - | - | - | - | - | 3,166.30 | 6,936.56 | (2,750.15) | - | (6,936.56) | 416.15 | 416.15 |
| Invoice BR01-2023 | - | - | - | - | - | - | - | - | - | 85.73 | (85.73) | - | - |
| Invoice BR02-2023 | - | - | - | - | - | - | 705.78 | 15,583.97 | 3,289.93 | - | (6,936.56) | 12,643.12 | 12,643.12 |
| Invoice BR03-2023 | - | - | - | - | - | - | - | - | - | 97.77 | (97.77) | - | - |
| Invoice BR04-2023 | - | - | - | - | - | - | 3,164.46 | 13,873.12 | 4,827.99 | - | (13,873.13) | 7,992.44 | 7,992.44 |
| Invoice BR05-2023 | - | - | - | - | - | - | - | - | - | 4,820.72 | (1,354.47) | 3,466.25 | 3,466.25 |
| Invoice BR06-2023 | - | - | - | - | - | - | 3,212.58 | - | 7,870.45 | - | - | 11,083.03 | 11,083.03 |
| Invoice BR07-2023 | - | - | - | - | - | - | - | - | - | (3,373.24) | - | (3,373.24) | (3,373.24) |
| Invoice BR08-2023 | - | - | - | - | - | - | 394.81 | 6,936.56 | 1,181.46 | - | (6,936.56) | 1,576.27 | 1,576.27 |
| Invoice BR09-2023 | - | - | - | - | - | - | - | - | - | 3,200.33 | - | 3,200.33 | 3,200.33 |
| Invoice BR10-2023 | - | - | - | - | - | - | 768.04 | 13,873.12 | 8,699.69 | - | - | 23,340.85 | 23,340.85 |
| Invoice BR11-2023 | - | - | - | 100.47 | 100.47 | - | - | - | - | - | - | - | 100.47 |
| Invoice BR12-2023 | 391.85 | - | 4,833.10 | - | 5,224.95 | - | - | - | - | - | - | - | 5,224.95 |
| Total | \$ 391.85 | \$ - | \$ 4,833.10 | \$ 100.47 | \$ 5,325.42 | \$ 214,398.94 | \$ 909,788.74 | \$ 246,330.81 | \$ 1,070,704.71 | \$ 158,086.74 | \$ (363,735.69) | \$ 2,235,574.25 | \$ 2,240,899.67 |

ATTACHMENT 2

AFFIDAVIT OF TALINA MATHEWS

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

Talina Mathews being first duly sworn, deposes and states that:

1. My name is Talina Mathews, and my business address is 710 West Second Street, Owensboro, Kentucky 4231. I am the Chief Financial Officer ("CFO") for Big Rivers Electric Corporation ("Big Rivers").

Summary of Outstanding Balance Due as of June 30, 2023

2. Since taking the position of CFO for Big Rivers on August 16, 2022, I have prepared and/or, supervised the preparation of, invoices that were delivered to Henderson Municipal Power & Light ("HMP&L"), the City of Henderson, Kentucky and City of Henderson Utility Commission (collectively, "Henderson")
3. As of the date of this Affidavit, Big Rivers has sent approximately 45 invoices to Henderson Municipal Power & Light seeking reimbursement for the City's share of Station Two decommissioning and operating costs pursuant to the Commission's Final Order in Case No. 2019-00269.
4. The invoices include \$2,390,236.42 of costs due to Big Rivers from Henderson reflecting the share of decommissioning costs that Henderson is required to pay, pursuant to the Commission's Final Order in Case No. 2019-00269, through June 30 of 2023. This sum reflects HMP&L's capacity reservation of 120 MW in fiscal year 2018/19, and includes the Reid Station in the calculation for the Station Two ash pond, resulting in an ash pond allocation of 18.90%, a landfill allocation of 9.88% pre-2021 and 9.81% in 2021, and a 22.65% allocation for other decommissioning costs.
5. The invoices also include \$214,398.94 of costs due to Big Rivers from Henderson reflecting the final sum due to Big Rivers relating to all issues addressed in the Commission's Final Order in Case No. 2019-00269, other than decommissioning costs. This sum reflects the amount contained in Big Rivers' Interim Accounting Summary, updated for costs through December 31, 2019 subject to the following adjustments required by the Commission's Order:
 - a. The Fiscal Year 2018/19 Annual Settlement True-Up amount was reduced to reflect Henderson's 120 MW reservation instead of 125 MW; and
 - b. The projected severance costs contained in Big Rivers' original application were updated to reflect the actual severance costs incurred.
6. To the best of my knowledge, the attached Summary of Outstanding Balance Due as of June 30, 2023 accurately reflects that Big Rivers has invoiced Henderson for amounts totaling \$2,604,635, and Henderson has paid only \$363,735. The total unpaid amount due to Big Rivers currently stands at \$2,240,899.

7. As the Commission noted in its August 2, 2021 Order, the amount of decommissioning costs is in flux as decommissioning is ongoing. Therefore, Big Rivers will issue additional invoices to Henderson as decommissioning costs are incurred.

Financial Harm to Big Rivers

- 8. If Big Rivers is required to pay costs that are the responsibility of Henderson it will reduce the amount of Member rate credits payable through the Member Rate Stability Mechanism ("MRSM") and reduce the amount available to amortize the smelter regulatory assets.
- 9. The recovery of the Station Two ash pond and landfill costs will impact the amount that Big Rivers recovers in its monthly environmental surcharge mechanism.
- 10. The aforesaid testimony is true and correct to the best of his knowledge, information and belief.


Talina Mathews

Subscribed and sworn to or affirmed before me this 17th day of August, 2023, by Talina Mathews.


Notary Public

