

**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 |) | |
| |) | |

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR ENFORCEMENT OF COMMISSION ORDER**

INTRODUCTION

1. Big Rivers Electric Corporation (“Big Rivers”) files this Application pursuant to 807 KAR 5:001, Section 19, KRS 278.200, KRS 278.030, KRS 278.040, and KRS 278.390, requesting that the Commission take all appropriate action to enforce its August 2, 2021 Order in Case No. 2019-00269 (“Order”). Specifically, Big Rivers requests that the Commission exercise its authority under KRS 278.390 to enforce its lawful order by filing a mandamus, injunction, or other pleading at the Franklin Circuit Court in order to compel the City of Henderson, Kentucky, and the Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (jointly referenced hereinafter as "Henderson" or “City”) to obey the Commission’s Order. Otherwise, Henderson will continue to disregard the Commission’s statutory authority over the rates and service standards set forth in the Station Two Contracts.¹

¹ Those Contracts include the 1970 Power Sales Contract, the 1970 Power Plant Construction and Operation Agreement, the 1970 Joint Facilities Agreement, the 1974 System Reserves Agreement, as well as subsequent amendments thereto.

BACKGROUND

2. The Applicant, Big Rivers, is a rural electric cooperative corporation organized pursuant to KRS Chapter 279. Big Rivers' mailing address is P.O. Box 24, Henderson, Kentucky 42419-0024, and its street address is 201 Third Street, Henderson, Kentucky 42420. Big Rivers' address for electronic mail service is regulatory@bigrivers.com.²

3. Big Rivers owns generating assets and purchases, transmits, and sells electricity at wholesale. Its principal purpose is to satisfy the wholesale electricity requirements of its three distribution cooperative members: Jackson Purchase Energy Corporation, Kenergy Corp., and Meade County Rural Electric Cooperative Corporation (collectively, the "Members"). The Members in turn provide retail electric service to approximately 117,000 consumers/retail members located in 22 Western Kentucky counties: Ballard, Breckenridge, Caldwell, Carlisle, Crittenden, Daviess, Graves, Grayson, Hancock, Hardin, Henderson, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Meade, Muhlenberg, Ohio, Union, and Webster.

4. Big Rivers was incorporated in the Commonwealth of Kentucky on June 14, 1961, and hereby attests that it is currently in good standing in Kentucky.³

5. The City of Henderson is a municipality in Western Kentucky with a street address of 222 First Street, Henderson, Kentucky 42420, and a mailing address of P.O. Box 716, Henderson, Kentucky 42419-0716. The City of Henderson Utility Commission, d/b/a Henderson Municipal Power and Light, is a municipal utility organized under the laws of Kentucky with an address of 100 Fifth Street, Henderson, Kentucky 42420.

² 807 KAR 5:001 Section 14(1).

³ 807 KAR 5:001 Section 14(2).

6. Henderson owns a retired coal-fired electric generating station near Sebree, Kentucky, known as “Station Two.” Big Rivers has operated and maintained the Station Two units pursuant to a series of contracts that Henderson entered into with Big Rivers related to the Station Two generating units (the “Station Two Contracts”). The Contracts were originally executed on August 1, 1970 and subsequently approved by the Commission on October 22, 1970 in Case No. 5406. The initial Contracts were amended at least three times and those amendments were approved by the Commission.⁴

The Commission’s Decision in Case No. 2019-00269

7. Following the closure of Station Two on February 1, 2019, the City and Big Rivers were unable to reach an agreement regarding the parties’ respective rights and obligations under the Station Two Contracts, including the costs of decommissioning Station Two.

8. To resolve these issues, Big Rivers filed an Application on July 31, 2019 in Case No. 2019-00269. Big Rivers requested an order from the Commission enforcing the rates and service standards contained in the Station Two Contracts. Specifically, Big Rivers asked that the Commission 1) enforce the City’s obligation to pay for its share of Station Two decommissioning; 2) confirm the City’s responsibility to pay its share of costs related to the Green Landfill; 3) enforce the Commission’s January 5, 2018 Order in Case No. 2016-000278 regarding Excess Henderson Energy (“EHE”); 4) verify the accuracy of Big Rivers’ calculations of MISO fees incurred because of City load; 5) determine the City’s 2018/2019

⁴ See Case No. 94-032, Order (March 31, 1995) (approving 1993 Amendments); Case No. 1998-00267, Order (July 14, 1998) (approving 1998 Amendments); Case No. 2005-00532, Order (February 24, 2006) (approving 2005 Amendments).

capacity reservation pursuant to the MISO rules; 6) clarify that Big Rivers is allowed to continue utilizing City-owned Joint Use Facilities that support the operation of its Green Station; and 7) determine whether the payment of severance was reasonable.

9. On September 5, 2019, Henderson moved to dismiss the Commission proceeding for lack of jurisdiction or alternatively, to hold the Commission proceeding in abeyance pending resolution of associated matters pending in Kentucky Circuit Courts.

10. On February 4, 2020, the Commission issued an Order denying Henderson's motion, finding that the issues raised by Big Rivers "*implicate the service and rates under the various Station Two Contracts, and such issues are clearly within the scope of the Commission's jurisdiction under KRS 278.200.*"⁵ The Commission also denied the request for abeyance, noting that the Franklin Circuit Court had issued an order holding its case in abeyance pending the resolution of the Commission proceeding.⁶

11. After several rounds of discovery and the filing of Direct and Rebuttal Testimony by Big Rivers and Henderson, the Commission held an evidentiary hearing in Case No. 2019-00269 on October 22, 2020.

12. On August 2, 2021, the Commission issued its Order in Case No. 2019-00269. In its Order, the Commission reiterated that it has jurisdiction over the dispute between Big Rivers and the City under KRS 278.040 and KRS 278.200. The Commission also found that, with two changes, the Interim Accounting Summary filed with Big Rivers' application accurately calculated the amounts due pursuant to the Station Two Contracts and that,

⁵ Order, Case No. 2019-00269 (February 4, 2020) at 7.

⁶ Id. at 7.

subject to limited exceptions, Henderson is required, pursuant to the Station Two Contracts, to share in the costs of decommissioning Station Two and the Joint Use Facilities.⁷

13. Henderson filed a Notice of Appeal of the Commission's Order in Franklin Circuit Court on August 27, 2021 in Case No. 21-CI-00667.

Big Rivers Has Attempted To Collect Amounts Owed By Henderson

14. Upon issuance of the Commission's Order, Big Rivers calculated the amount that Henderson owes it as of June 30, 2021, using the methodology outlined in the Order. Big Rivers then invoiced Henderson for that amount on August 13, 2021.⁸

15. Big Rivers separated the amount owed it into two categories of costs. The first category included all costs other than decommissioning costs and totaled \$214,398. The second category included Henderson's share of Station Two decommissioning costs through June 2021 and totaled \$1,498,063. 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.

16. Big Rivers' invoices to Henderson followed the Commission's Order to the letter, including all disallowances required by that Order. Specifically, the Fiscal Year 2018/19 Annual Settlement True-Up amount was reduced to reflect Henderson's 120 MW reservation instead of 125 MW, and to include the actual severance costs incurred instead of the projected amount.⁹ Also, consistent with the Order, the decommissioning cost allocation for ash pond-related costs incorporated a Henderson capacity reservation of 120

⁷ Order, Case No. 2019-00269 (August 2, 2021) at 38.

⁸ See Attachment 1.

⁹ Order, Case No. 2019-00269 (August 2, 2021) at 38.

MW in fiscal year 2018/19, including a time-weighted capacity allocation, resulting in an allocation of 18.90% for the City. The allocation also incorporated a pre-2021 landfill allocation of 9.88% and a 2021 landfill allocation of 9.81% for the City.¹⁰ Consistent with the Order, Big Rivers' invoices allocated 22.65% of all other decommissioning costs to Henderson.

17. The Affidavit of Paul G. Smith, Chief Financial Officer of Big Rivers, attesting to the calculations used to prepare the invoices, is attached.¹¹

18. On September 13, 2021, Big Rivers sent a second letter to Henderson requesting payment of the August 13, 2021 invoice.¹² In that letter, Big Rivers gave Henderson notice that if the City did not pay the full amount of the invoice by September 23, 2021, Big Rivers would file an application with the Commission requesting that the Commission take all appropriate action to enforce its Order.

19. To date, Henderson has not paid any of the amounts due to Big Rivers pursuant to the Commission's Order.

The Commission Has Power To Compel Obedience To Its Lawful Orders

20. KRS 278.390 allows the Commission to protect the integrity of its orders if parties subject to those orders fail to comply. Under that statute, the Commission can "*compel obedience*" to its lawful orders by filing a mandamus, injunction, or other pleading at the Franklin Circuit Court. Specifically, KRS 278.390 provides:

¹⁰ Order, Case No. 2019-00269 (August 2, 2021) at 34.

¹¹ See Attachment 2; Affidavit of Paul G. Smith.

¹² See Attachment 3.

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 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. Filings made pursuant to KRS 278.390 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.

22. The Kentucky Supreme Court recognizes 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."¹³ Kentucky precedent provides that "[a] trial court has inherent power to punish individuals for contempt... and nearly unfettered discretion in issuing contempt citations."¹⁴

23. The Commission has rarely invoked KRS 278.390 because parties, in almost all cases, comply with Commission orders. However, the Commission has on occasion issued orders reminding parties of its ability to enforce its orders under KRS 278.390.¹⁵

¹³ *South Cent. Bell Tel. Co v. Utility Regulatory Com.*, 637 S.W.2d 649, 652 (1982).

¹⁴ *Ky. Ret. Sys. v. Foster*, 338 S.W.3d 788, 800 (Ky. App. 2010); *Crowder v. Rearden*, 296 S.W.3d 445, 450 (Ky. App. 2009) (citing *Newsome v. Commonwealth*, 35 S.W.3d 836, 839 (Ky. App. 2001); *Smith v. City of Loyall*, 702 S.W.2d 838, 839 (Ky. App. 1986)).

¹⁵ Case Nos. 7503, Order at 4; & 7505, Order at 3 (April 21, 1980); In both Orders the Commission stated: "No response to the above Order has been received as of the date of this Order; and the Utility is hereby reminded that it is in violation of an official Order of this Commission and is now subject to the provisions of KRS 278.390..."

24. The Commission has exercised its authority under KRS 278.390 at least once 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 stated in its complaint:

...the Commission requests the Court grant this proceeding priority over all pending cases pursuant to KRS 278.390 and enforce the Commission's February 22, 1988 Order...¹⁶

The Commission's enforcement action was granted by Summary Judgment on July 31, 1995.¹⁷ The Franklin Circuit Court held:

Plaintiff's [KPSC] Motion for Summary Judgment is GRANTED and the specific relief requested by the plaintiff in its Petition compelling compliance with the February 22, 1988 Order is Granted.

**Henderson's Appeal of the Commission's Order Does
Not Stay The Effectiveness of The Order**

25. Henderson's August 27, 2021 appeal of the Commission's Order does not relieve Henderson of its current legal responsibility to pay the amounts due to Big Rivers pursuant to the Order.

26. Under KRS 278.390, Commission orders continue in force until they are revoked by the Commission or vacated by a court of competent jurisdiction. Parties must therefore comply with Commission orders while an appeal to the Franklin Circuit Court is pending. For instance, in a base rate proceeding, a utility must adopt the rates established by the Commission unless and until those rates are overturned by the court.

¹⁶ See Attachment 4 at 5.

¹⁷ See Attachment 5 at 2.

27. The Kentucky Court of Appeals has 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.”*¹⁸

28. If Henderson successfully challenges the Order and a refund of costs paid by the City is required at the conclusion of its appeal, then Big Rivers would comply with that decision. Because of this refund safeguard, Henderson will be fully protected from complying with the Commission’s decision while an appeal is pending. But in the absence of any Court ruling vacating the Commission’s Order, that Order is effective, and Henderson must pay what is owed to Big Rivers during the pendency of any appeal.

Federal Law Requires Certain Decommissioning Activities In The Near Future

29. The Commission’s Order requires Henderson *“to share in the costs of decommissioning Station Two and joint-use facilities...”*¹⁹

30. The Order states that the term *“decommissioning”* should be interpreted to include *“the entire process associated with taking the plant out of service, demolishing the plant, and restoring the site to a state that is suitable for future industrial use;’... ‘ongoing environmental monitoring and any environmental remediation that may be required in the future’ and all maintenance activities necessary to maintain the plant and the site in a safe, secure and legally compliant condition before demolition.”*²⁰

¹⁸ *Jent v. Ky. Utils. Co.*, 332 S.W.3d 102, 105 (Ky App. 2010).

¹⁹ Order, Case No. 2019-00269 (August 2, 2021) at 38.

²⁰ *Id.* at 33.

31. Big Rivers is committed to paying for its share of decommissioning Station Two in accordance with the Commission's Order. The first, and most urgent, step in this process is to begin actions toward those portions of the decommissioning process that are mandatory as required by federal laws and regulations, including:

- *40 CFR 257 and 261, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals ("CCR")*
 - Required Compliance Activities at Station Two: Closure of the Station Two ash pond no later than April 2024 and ongoing groundwater monitoring for thirty years following closure.²¹
- *40 CFR 112.5, Spill Prevention Control and Countermeasure Plan*
 - Required Compliance Activities at Station Two: Removal and/or maintenance of hazardous waste (solvents, paints, etc.) on site.²²
- *40 CFR 122, National Pollutant Discharge Elimination System*
 - Required Compliance Activities at Station Two: Limiting runoff and discharge from Station Two ash pond and coal pile.²³
- *40 CFR Part 61 Subpart M, Notification required per National Emission Standard for Asbestos*
 - Required Compliance Activities at Station Two: Ongoing containment of any asbestos exposure.²⁴
- *Surface Mining Control Reclamation Act*
 - Required Compliance Activities at Station Two: Cleanup of Station Two coal pile and removal of any residual.²⁵
- *Resource Conservation and Recovery Act*

32. Mandatory decommissioning must be completed. The failure to do so can result in civil and criminal penalties.

²¹ Case No. 2019-00269; Tr. (October 22, 2020) at 9:49:55.

²² Case No. 2019-00269; Tr. (October 22, 2020) at 9:50:27.

²³ Case No. 2019-00269; Tr. (October 22, 2020) at 9:50:56.

²⁴ Case No. 2019-00269; Tr. (October 22, 2020) at 9:52:24.

²⁵ Case No. 2019-00269; Tr. (October 22, 2020) at 9:54:57.

33. The Affidavit of Michael T. Pullen, Chief Operating Officer for Big Rivers, attesting to the mandatory requirements relating to the decommissioning of Station Two, is attached to this Application.²⁶

34. Enforcement of the Commission's Order is also important because of the public safety concerns surrounding Station Two, including potential asbestos exposure to the more than 100 employees working at the Green plant (many of which are Henderson residents, as well as to on-site contractors and the public in general), will continue to exist if Station Two is not decommissioned.²⁷

**Big Rivers And Its Members Will Be Financially Harmed If
The Commission's Order Is Not Enforced**

35. Henderson's failure to comply with the Commission's Order will have an immediate and significant effect on Big Rivers' rates.

36. Any extra dollar that Big Rivers is required to pay for costs that are the responsibility of Henderson 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.

37. 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.

38. If Big Rivers is not able to collect the amounts owed by Henderson under the Commission's Order, Big Rivers' ability to maintain an investment grade credit ratings could also be impacted. This would increase borrowing costs and make transactions in the wholesale market less profitable through increased credit requirements.

²⁶ See Attachment 6; Affidavit of Michael T. Pullen.

²⁷ See Case No. 2019-00269; Rebuttal Testimony of Robert W. Berry, at 15.

39. The Affidavit of Paul G. Smith, 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 is attached.²⁸

CONCLUSION

WHEREFORE, Big Rivers respectfully requests that the Commission take all appropriate action to compel obedience to its August 2, 2021 Order in Case No. 2019-00269, including compelling Henderson to obey the 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

²⁸ See Attachment 2; Affidavit of Paul G. Smith.

ATTACHMENT 1



201 Third Street
P.O. Box 24
Henderson, KY 42419-0024
570-827-2561
www.bigrivers.com

VIA HAND DELIVERY AND CERTIFIED MAIL

August 13, 2021

Mr. Chris Heimgartner
General Manager
Henderson Municipal Power & Light
100 Fifth Street
Henderson, Kentucky 42420

Dear Chris:

Enclosed herein for payment are Big Rivers' invoices issued pursuant to the Kentucky Public Service Commission's August 2, 2021 Order in Case No. 2019-00269.

The first invoice amounts to \$214,398.94 which reflects the final sum due relating to all issues addressed in the Commission's Order other than decommissioning costs. The Fiscal Year 2018/19 Annual Settlement True-Up amount has been reduced to reflect Henderson's 120 MW reservation instead of 125 MW as previously stated by Big Rivers, and to include the actual severance costs incurred instead of the projected amount.

The second invoice amounts to \$1,498,063.95 which is the share of decommissioning costs that Henderson is required to pay, pursuant to the Commission's Order, through June of 2021. Per the Commission's Order, the decommissioning cost allocation reflects HMPL's capacity reservation of 120 MW in fiscal year 2018/19, includes the Reid Station in the calculation for the joint-use facilities (e.g. Station Two ash pond) resulting in an allocation of 18.90%, and reflects the landfill allocation of 9.88% pre-2021 and 9.81% in 2021. The supporting calculation for each allocation percentage is attached. As the Commission noted, the amount of decommissioning costs is in flux as decommissioning is ongoing. Therefore, Big Rivers will issue additional invoices to Henderson, monthly, as decommissioning costs are incurred.

Payment of the attached invoices is due immediately upon receipt.

If you have any questions about your invoices, please contact Big Rivers' Chief Financial Officer, Paul Smith at 270-844-6194, or paul.smith@bigrivers.com.

Sincerely,

Robert W. Berry
President and Chief Executive Officer
Big Rivers Electric Corporation



Big Rivers Electric Corporation
 P.O. Box 24
 201 Third Street
 Henderson, KY 42419-0024
 Ph (270) 827-2561 Fax (270) 827-2558

Invoice No. BR32019
 REVISED 8/13/2021

| | |
|---|----------------|
| Henderson Municipal Power & Light P.O. Box 8 Henderson, KY 42419-0008 | Date 8/13/2021 |
|---|----------------|

| Description | | Amount |
|--|---------------------|------------------|
| Excess Henderson Energy - MISO Revenue less Coal & Lime Shortfall | 01/05/18 - 05/31/19 | (\$3,310,482.54) |
| HMP&L Native Load Coal & Lime Shortfall | 01/05/18 - 05/31/19 | \$4,693,587.29 |
| MISO Fees | 12/01/10 - 05/31/16 | \$1,422,761.54 |
| FY 17/18 Annual Settlement True-Up | 06/01/17 - 05/31/18 | (\$1,649,922.53) |
| FY 18/19 Annual Settlement True-Up (Note 1) | 06/01/18 - 05/31/19 | (\$1,020,295.80) |
| Auxiliary Power | 10/01/18 - 01/31/19 | \$78,750.98 |
| Decommissioning Costs (Note 2) | | n/a |
| INVOICE INQUIRIES CONTACT: | | |
| Katie Cheatham | | |
| 270-844-6065 | | |
| katie_cheatham@bigrivers.com | | |
| Payment due immediately upon receipt | TOTAL | \$214,398.94 |

Note 1: Revised per Kentucky Public Service Commission Order in Case No. 2019-00269:

| | |
|-------------------------------------|-------------------------|
| Original Invoice BR2019 | \$ (649,850.80) |
| Adjust HMP&L 120 MW Reservation | (227,045.00) |
| Adjust Severance to Actual Cost | (143,400.00) |
| Revised FY 18/19 Settlement True-Up | <u>\$(1,020,295.80)</u> |

Note 2: Revised invoice excludes Decommissioning Costs, which is billed separately.



Big Rivers Electric Corporation
P.O. Box 24
201 Third Street
Henderson, KY 42419-0024
Ph (270) 827-2561 Fax (270) 827-2558

Invoice No. BR06-2021

| | |
|---|----------------|
| Henderson Municipal Power & Light P.O. Box 8 Henderson, KY 42419-0008 | Date 8/13/2021 |
|---|----------------|

| Description | | Amount |
|-----------------------|---------------------|----------------|
| Decommissioning Costs | 01/01/19 - 06/30/21 | \$1,498,063.95 |

INVOICE INQUIRIES CONTACT:
Katie Cheatham
270-844-6065
katie.cheatham@bigrivers.com

Payment due immediately upon receipt

TOTAL **\$1,498,063.95**

**BIG RIVERS ELECTRIC CORPORATION
STATION TWO CAPACITY SPLITS**

| Fiscal Year | STATION TWO (Capacity Reservation) | | | STATION TWO ASH POND (Capacity Reservation Including Reid) | | | |
|---------------------|---------------------------------------|---------------|----------------|---|-----------------|---------------|-------------------|
| | Big Rivers Share | HMPL Share | Station Two | Reid | Rivers Share | HMPL Share | Total Ash Pond |
| 6/01/73 - 5/31/74 | 162 | 13 | 175 | 65 | 227 | 13 | 240 |
| 6/01/74 - 5/31/75 | 283 | 17 | 300 | 65 | 348 | 17 | 365 |
| 6/01/75 - 5/31/76 | 271 | 18 | 289 | 65 | 336 | 18 | 354 |
| 6/01/76 - 5/31/77 | 267 | 22 | 289 | 65 | 332 | 22 | 354 |
| 6/01/77 - 5/31/78 | 262 | 27 | 289 | 65 | 327 | 27 | 354 |
| 6/01/78 - 5/31/79 | 262 | 34 | 296 | 65 | 327 | 34 | 361 |
| 6/01/79 - 5/31/80 | 256 | 41 | 297 | 65 | 321 | 41 | 362 |
| 6/01/80 - 5/31/81 | 256 | 40 | 296 | 65 | 321 | 40 | 361 |
| 6/01/81 - 5/31/82 | 253 | 43 | 296 | 65 | 318 | 43 | 361 |
| 6/01/82 - 5/31/83 | 253 | 43 | 296 | 65 | 318 | 43 | 361 |
| 6/01/83 - 5/31/84 | 270 | 45 | 315 | 65 | 335 | 45 | 380 |
| 6/01/84 - 5/31/85 | 268 | 47 | 315 | 65 | 333 | 47 | 380 |
| 6/01/85 - 5/31/86 | 271 | 44 | 315 | 65 | 336 | 44 | 380 |
| 6/01/86 - 5/31/87 | 271 | 44 | 315 | 65 | 336 | 44 | 380 |
| 6/01/87 - 5/31/88 | 270 | 45 | 315 | 65 | 335 | 45 | 380 |
| 6/01/88 - 5/31/89 | 269 | 46 | 315 | 65 | 334 | 46 | 380 |
| 6/01/89 - 5/31/90 | 264 | 51 | 315 | 65 | 329 | 51 | 380 |
| 6/01/90 - 5/31/91 | 264 | 51 | 315 | 65 | 329 | 51 | 380 |
| 6/01/91 - 5/31/92 | 263 | 52 | 315 | 65 | 328 | 52 | 380 |
| 6/01/92 - 5/31/93 | 262 | 53 | 315 | 65 | 327 | 53 | 380 |
| 6/01/93 - 5/31/94 | 261 | 54 | 315 | 65 | 326 | 54 | 380 |
| 6/01/94 - 5/31/95 | 258 | 57 | 315 | 65 | 323 | 57 | 380 |
| 6/01/95 - 5/31/96 | 250 | 62 | 312 | 65 | 315 | 62 | 377 |
| 6/01/96 - 5/31/97 | 250 | 62 | 312 | 65 | 315 | 62 | 377 |
| 6/01/97 - 5/31/98 | 247 | 65 | 312 | 65 | 312 | 65 | 377 |
| 6/01/98 - 5/31/99 | 246 | 66 | 312 | 65 | 311 | 66 | 377 |
| 6/01/99 - 5/31/00 | 232 | 80 | 312 | 65 | 297 | 80 | 377 |
| 6/01/00 - 5/31/01 | 225 | 87 | 312 | 65 | 290 | 87 | 377 |
| 6/01/01 - 5/31/02 | 220 | 92 | 312 | 65 | 285 | 92 | 377 |
| 6/01/02 - 5/31/03 | 217 | 95 | 312 | 65 | 282 | 95 | 377 |
| 6/01/03 - 5/31/04 | 217 | 95 | 312 | 65 | 282 | 95 | 377 |
| 6/01/04 - 5/31/05 | 217 | 95 | 312 | 65 | 282 | 95 | 377 |
| 6/01/05 - 5/31/06 | 217 | 95 | 312 | 65 | 282 | 95 | 377 |
| 6/01/06 - 5/31/07 | 217 | 95 | 312 | 65 | 282 | 95 | 377 |
| 6/01/07 - 5/31/08 | 217 | 95 | 312 | 65 | 282 | 95 | 377 |
| 6/01/08 - 5/31/09 | 217 | 95 | 312 | 65 | 282 | 95 | 377 |
| 6/01/09 - 5/31/10 | 212 | 100 | 312 | 65 | 277 | 100 | 377 |
| 6/01/10 - 5/31/11 | 207 | 105 | 312 | 65 | 272 | 105 | 377 |
| 6/01/11 - 5/31/12 | 202 | 110 | 312 | 65 | 267 | 110 | 377 |
| 6/01/12 - 5/31/13 | 197 | 115 | 312 | 65 | 262 | 115 | 377 |
| 6/01/13 - 5/31/14 | 197 | 115 | 312 | 65 | 262 | 115 | 377 |
| 6/01/14 - 5/31/15 | 197 | 115 | 312 | 65 | 262 | 115 | 377 |
| 6/01/15 - 5/31/16 | 197 | 115 | 312 | 65 | 262 | 115 | 377 |
| 6/01/16 - 5/31/17 | 197 | 115 | 312 | | 197 | 115 | 312 |
| 6/01/17 - 5/31/18 | 197 | 115 | 312 | | 197 | 115 | 312 |
| 6/01/18 - 5/31/19 | 192 | 120 | 312 | | 192 | 120 | 312 |
| Total (MW) | 10,900 | 3,191 | 14,091 | 2,795 | 13,695 | 3,191 | 16,886 |
| % Allocation | 77.35% | 22.65% | | | 81.10% | 18.90% | |

Poz-O-Tec Summary Sheet for Sebree Station

| YEAR/TONS | Total Sebree Station | | Station Two | | | | | | | | | | Total Sebree Station | | Reid Station | |
|---|---------------------------|---------------|-------------------|-----------------|------------------|---------------|------------------|--------------|--------------|------------|----------------|--------------|----------------------|--|--------------|--|
| | Poz-O-Tec Hauled Off-Site | Green Station | Total Station Two | Station Two (%) | BREC | BREC (%) | City | City (%) | Total Sebree | City % | Total Station | Total Reid | Reid % | | | |
| 2018 | 482,280 | 480,461 | 1,813 | 0% | 92 | 5% | 1,737 | 95% | 0.38% | 462,283 | | | | | | |
| 2019 | 636,506 | 573,318 | 123,188 | 18% | 34,761 | 28% | 98,427 | 72% | 12.79% | 636,506 | | | | | | |
| 2017 | 666,378 | 447,963 | 218,415 | 33% | 71,080 | 33% | 147,335 | 67% | 22.11% | 666,378 | | | | | | |
| 2016 | 841,346 | 505,944 | 336,001 | 50% | 183,023 | 54% | 152,978 | 46% | 18.17% | 841,346 | | | | | | |
| 2015 | 749,019 | 413,906 | 335,713 | 45% | 200,598 | 60% | 135,115 | 40% | 18.04% | 749,019 | | | | | | |
| 2014 | 1,032,187 | 603,851 | 428,326 | 41% | 304,910 | 71% | 123,426 | 29% | 11.96% | 1,032,187 | | | | | | |
| 2013 | 989,410 | 598,703 | 390,707 | 39% | 272,891 | 70% | 117,816 | 30% | 11.96% | 989,410 | | | | | | |
| 2012 | 899,440 | 505,972 | 394,068 | 44% | 273,107 | 69% | 120,961 | 31% | 13.45% | 899,440 | | | | | | |
| 2011 | 1,042,952 | 801,138 | 441,814 | 44% | 336,384 | 74% | 115,430 | 26% | 13.45% | 1,042,952 | | | | | | |
| 2010 | 1,067,894 | 800,306 | 487,588 | 44% | 339,797 | 73% | 105,791 | 27% | 11.07% | 1,067,894 | | | | | | |
| 2009 | 989,816 | 578,128 | 411,688 | 42% | 306,338 | 74% | 105,350 | 29% | 10.64% | 989,816 | | | | | | |
| 2008 | 1,044,589 | 580,703 | 363,866 | 35% | 284,767 | 70% | 108,380 | 30% | 10.38% | 1,044,589 | | | | | | |
| 2007 | 1,064,959 | 672,990 | 391,859 | 37% | 294,506 | 72% | 107,202 | 27% | 10.07% | 1,064,959 | | | | | | |
| 2006 | 1,270,139 | 862,923 | 408,066 | 32% | 307,093 | 73% | 100,973 | 25% | 7.99% | 1,270,139 | | | | | | |
| 2005 | 1,170,810 | 723,992 | 437,418 | 37% | 308,437 | 71% | 128,981 | 29% | 11.02% | 1,170,810 | | | | | | |
| 2004 | 989,737 | 670,581 | 419,158 | 38% | 297,269 | 71% | 121,887 | 29% | 11.32% | 989,737 | | | | | | |
| 2003 | 1,036,562 | 687,429 | 371,553 | 36% | 263,486 | 71% | 107,067 | 29% | 10.39% | 1,036,562 | | | | | | |
| 2002 | 1,024,930 | 623,021 | 401,509 | 39% | 281,502 | 70% | 120,007 | 30% | 11.25% | 1,024,930 | | | | | | |
| 2001 | 989,294 | 590,789 | 438,495 | 44% | 327,559 | 75% | 110,926 | 25% | 11.25% | 989,294 | | | | | | |
| 2000 | 944,453 | 551,669 | 382,825 | 42% | 267,528 | 68% | 125,297 | 32% | 13.27% | 944,453 | | | | | | |
| 1999 | 933,221 | 585,049 | 350,172 | 37% | 251,900 | 72% | 98,271 | 28% | 10.51% | 933,221 | | | | | | |
| 1998 | 1,022,393 | 653,348 | 389,644 | 64% | 281,998 | 76% | 87,046 | 24% | 8.51% | 1,022,393 | | | | | | |
| 1997 | 933,671 | 605,801 | 327,870 | 35% | 251,501 | 77% | 75,969 | 23% | 8.14% | 933,671 | | | | | | |
| 1996 | 977,317 | 684,139 | 313,178 | 32% | 242,046 | 77% | 71,132 | 23% | 7.28% | 977,317 | | | | | | |
| 1995 | 563,085 | 410,110 | 152,875 | 27% | 120,089 | 79% | 32,886 | 21% | 5.84% | 563,085 | | | | | | |
| | 23,407,017 | 132,633 | 8,687,653 | 37.12% | 6,054,064 | 25.86% | 2,633,589 | 11.25% | | 23,407,017 | | | | | | |
| | | 132,633 | 83,405 | | 34,305 | | 14,933 | | | | | | | | | |
| | | 23,274,384 | 8,639,426 | | 6,019,759 | | 2,518,567 | | | | | | | | | |
| Share of Poz-o-tec hauled off site | | | | | | | | | | | | | | | | |
| Poz-o-tec in the landfill | | | | | | | | | | | | | | | | |
| Pre-1995 Calculated Values | | | | | | | | | | | | | | | | |
| Prior to 1982 (Stored in Station Two ash pond) | | | | | | | | | | | | | | | | |
| 1982 to 1994 (Wash to Green IUCS) | | | | | | | | | | | | | | | | |
| 1982 to 1994 (Bottom ash to Station Two ash pond) | | | | | | | | | | | | | | | | |
| 1979 to 1994 Green Ash Produced | | | | | | | | | | | | | | | | |
| Pre-2020 GRAND TOTAL | | | 28,862,697 | 62.94% | 7,637,612 | 28.12% | 2,853,063 | 9.88% | | | 305,375 | 1.05% | | | | |
| 2020 | | | 229,416 | 100% | 0 | 0% | 0 | 0% | 0.00% | | 229,416 | | | | | |
| 2020 GRAND TOTAL | | | 29,092,113 | 63.23% | 7,637,612 | 28.91% | 2,853,063 | 9.81% | | | 305,375 | 1.05% | | | | |

Big Rivers Electric Corporation
A/R HMP&L - Decommissioning Costs

| STATION TWO | GROSS TOTAL | REID | GREEN | STATION TWO | MONTHS | | | | | | | | | | | |
|---|-----------------|-----------|---------|-----------------|--------------|---------------|--------------|--------------|--------------|--------------|--------------|---------------|--------------|---------------|---------------|---------------|
| | | | | | Jan-19 | Feb-19 | Mar-19 | Apr-19 | May-19 | Jun-19 | Jul-19 | Aug-19 | Sep-19 | Oct-19 | Nov-19 | Dec-19 |
| SI Only | \$ 3,092,434.88 | 28,370.29 | 141.77 | \$ 3,092,434.88 | \$ 33,249.06 | \$ 125,298.00 | \$ 99,116.61 | \$ 80,190.15 | \$ 34,627.55 | \$ 39,997.20 | \$ 21,308.47 | \$ 303,045.45 | \$ 96,559.69 | \$ 101,889.69 | \$ 104,642.25 | \$ 120,948.15 |
| RD/SII | 164,547.68 | 20.30 | 141.77 | 136,177.39 | 13,987.46 | 8,385.80 | 19,808.22 | 46,167.88 | 33,367.54 | 14,748.77 | (248.28) | - | - | - | - | - |
| RD/GN/SII | 259.50 | - | - | 97.43 | - | 63.14 | 34.29 | - | - | - | - | - | - | - | - | - |
| Auxiliary Power | 3,257,242.06 | 28,390.59 | 141.77 | 3,228,709.70 | 47,196.52 | 133,746.94 | 118,959.12 | 126,358.03 | 67,995.09 | 54,745.97 | 21,060.19 | 303,045.45 | 96,559.69 | 101,889.69 | 104,642.25 | 120,948.15 |
| Henderson Allocation Percentage - Decommission Rampdown & Aux Power Total | 204,778.51 | - | - | 204,778.51 | - | 20,523.60 | 13,730.35 | 8,770.55 | 5,265.19 | 4,649.23 | 5,471.11 | 4,767.14 | 5,022.21 | 5,525.23 | 7,558.70 | 6,176.31 |
| Henderson Allocation Percentage - Decommission Rampdown & Aux Power Total | 22.65% | - | - | 22.65% | 10.690.02 | 34,942.29 | 30,054.16 | 30,606.62 | 16,593.45 | 13,453.01 | 6,009.34 | 69,719.55 | 23,008.30 | 24,329.48 | 25,413.52 | 28,793.69 |
| STATION TWO ASH POND & CCR | 159,694.49 | - | (61.21) | 160,305.70 | - | - | - | - | 18,857.61 | 10,800.00 | 21,003.30 | 12,897.08 | 2,361.41 | 3,939.50 | 5,355.21 | 9,133.68 |
| CCR Incremental Costs - SI Only | 188,305.28 | - | - | 188,305.28 | - | - | - | - | - | - | - | - | - | - | - | 175,230.93 |
| Ash Pond Closure (BP2003300E) | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Henderson Allocation Percentage | 18.90% | - | - | 18.90% | - | - | - | - | 3,564.08 | 2,041.20 | 3,969.62 | 2,437.55 | 446.31 | 744.57 | 1,012.13 | 34,844.91 |
| Ash Pond & CCR Total | 65,887.48 | - | - | 65,887.48 | - | - | - | - | - | - | - | - | - | - | - | - |
| LANDFILL | 2,517,969.96 | - | - | 2,517,969.96 | - | - | - | - | - | - | - | - | - | - | - | 1,677,517.68 |
| Slurry Wall (BP19G200E) | 1,436,507.99 | - | - | 1,436,507.99 | - | - | - | - | - | - | - | - | - | - | - | 1,255,561.43 |
| Leachate (BP19G201E) | 2,781,034.41 | - | - | 2,781,034.41 | - | - | - | - | - | - | - | - | - | - | - | - |
| Landfill Drainage (BP2003301E) | 6,735,512.36 | - | - | 6,735,512.36 | - | - | - | - | - | - | - | - | - | - | - | 2,933,079.11 |
| Henderson Allocation Percentage - Landfill Decommission (Dec 2019 - Dec 2020) | 9.88% | - | - | 9.88% | 10,690.02 | 34,942.29 | 30,054.16 | 30,606.62 | 16,593.45 | 15,494.21 | 9,978.96 | 72,157.10 | 23,454.61 | 25,074.05 | 26,425.65 | 353,426.82 |
| Percentage - Landfill Decommission (Jan 2021 - Dec 2021) | 9.81% | - | - | 9.81% | - | - | - | - | - | - | - | - | - | - | - | - |
| Landfill Total | 664,219.23 | - | - | 664,219.23 | - | - | - | - | - | - | - | - | - | - | - | 289,788.22 |
| Total Decommissioning Amount Due From Henderson | \$ 1,507,791.79 | - | - | \$ 1,507,791.79 | \$ 10,690.02 | \$ 34,942.29 | \$ 30,054.16 | \$ 30,606.62 | \$ 20,157.53 | \$ 15,494.21 | \$ 9,978.96 | \$ 72,157.10 | \$ 23,454.61 | \$ 25,074.05 | \$ 26,425.65 | \$ 353,426.82 |
| Total Allocated Decommissioning Costs | 9,727.84 | - | - | 9,727.84 | 4,640.39 | 3,104.43 | 1,983.02 | - | - | - | - | - | - | - | - | - |
| 2019 Payments Received (Auxiliary Power Reb, Mar & Apr) | \$ 1,498,063.95 | - | - | \$ 1,498,063.95 | \$ 10,690.02 | \$ 30,301.90 | \$ 26,949.73 | \$ 28,623.60 | \$ 20,157.53 | \$ 15,494.21 | \$ 9,978.96 | \$ 72,157.10 | \$ 23,454.61 | \$ 25,074.05 | \$ 26,425.65 | \$ 353,426.82 |

ATTACHMENT 2

AFFIDAVIT OF PAUL G. SMITH

STATE OF KENTUCKY)
COUNTY OF Henderson)

Paul G. Smith being first duly sworn, deposes and states that:

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

August 13, 2021 Invoice

2. I prepared the invoices that were sent to Henderson Municipal Power & Light (“HMPL”) on August 13, 2021.
3. The first invoice for \$214,398.94 reflects the final sum due to Big Rivers relating to all issues addressed in the Commission’s August 2, 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 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.
4. The second invoice for \$1,498,063.95 reflects the share of decommissioning costs that Henderson is required to pay, pursuant to the Commission’s Order, through June of 2021. This sum reflects HMPL’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. 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

6. 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.
7. 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.
8. If Big Rivers is not able to collect the amounts owed by Henderson under the Commission’s August 2, Order; Big Rivers’ ability to maintain an investment grade

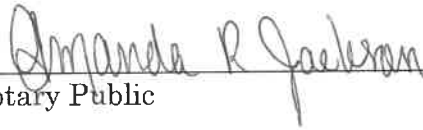
credit ratings could be impacted. This would increase borrowing costs and make transactions in the wholesale market less profitable through increased credit requirements.

9. The aforesaid testimony is true and correct to the best of his knowledge, information and belief.

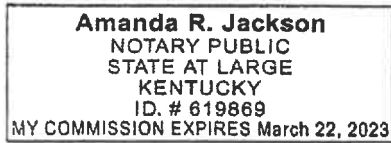


Paul G. Smith

Subscribed and sworn to or affirmed before me this ^{28th} day of September 2021, by Paul G. Smith.



Notary Public



ATTACHMENT 3



201 Third Street
P.O. Box 24
Henderson, KY 42419-0024
270-827-2361
www.bigrivers.com

September 13, 2021

Christopher Heimgartner
General Manager
Henderson Municipal Power & Light
100 Fifth Street
Henderson, Kentucky 42420

Dear Chris:

On August 13, 2021, Big Rivers sent Henderson Municipal Power & Light an invoice for payment amounting to \$214,398.94 relating to all costs other than decommissioning, and \$1,498,063.95 relating to Henderson's share of decommissioning costs through June of 2021, issued pursuant to the Kentucky Public Service Commission's August 2, 2021 Order in Case No. 2019-00269.

On August 17, 2021, Henderson's CFO, Barbara Moll, sent Big Rivers' CFO, Paul Smith, an email requesting additional supporting information concerning the costs other than decommissioning. Big Rivers provided the requested information, via email, to Henderson on August 27, 2021.

On August 17, 2021, Henderson's Power Supply Director, Brad Bickett, sent Big Rivers' CFO, Paul Smith, an email requesting supporting documentation for the decommissioning costs. Big Rivers provided the requested documents, via hand-delivery, to Henderson on September 2, 2021.

To date, Henderson has not paid any of the amounts due to Big Rivers pursuant to the Commission's Order. If Big Rivers does not receive full payment of its August 13, 2021 invoices by September 23, 2021, Big Rivers will file an application with the Commission requesting that the Commission take all appropriate action to enforce its Order.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Berry".

Robert W. Berry
President and Chief Executive Officer

ATTACHMENT 4

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 92-CI-
DIVISION NO.

92-CI-01151

II

PUBLIC SERVICE COMMISSION OF KENTUCKY

PLAINTIFF

VS.

VERIFIED COMPLAINT

BARNESBURG WATER ASSOCIATION, INC.

DEFENDANT

SERVE: Mr. L. D. Ball, President
Barnesburg Water Association, Inc.
1450 Pumphouse Road
Route 4
Somerset, Kentucky 42501

FILED

AUG 7 1992

and

ELIHU-TATEVILLE WATER ASSOCIATION, INC.

FRANKLIN CIRCUIT COURT
JANICE MARSHALL, CLERK DEFENDANT

SERVE: Kenneth D. Morrow, Manager
207 W. Mt. Vernon Street
Suite 100
Somerset, Kentucky 42501

and

NELSON VALLEY WATER ASSOCIATION, INC.

DEFENDANT

SERVE: Volando Taylor, President
P. O. Box 458
Somerset, Kentucky 42501

and

OAK HILL WATER ASSOCIATION, INC.

DEFENDANT

SERVE: Harry Turpin, President
404 South Main Street
Somerset, Kentucky 42501

and

PLEASANT HILL WATER DISTRICT

DEFENDANT

SERVE: L. Glen Neikirk, Chairman
420 McKee Circle
Somerset, Kentucky 42501

and

PULASKI COUNTY WATER DISTRICT NO. 2

DEFENDANT

SERVE: Mr. Winfred Compton, Chairman
P. O. Box 4123
Faubush, Kentucky 42532

* * * * *

Comes now the Plaintiff, Public Service Commission of Kentucky, by counsel, pursuant to KRS 278.390 and for its verified Complaint against the Defendants named herein states as follows:

COUNT I

1. Plaintiff, Public Service Commission of Kentucky, is a body corporate with the power to sue and be sued in its corporate name. The Commission is an agency of the Commonwealth of Kentucky vested with the jurisdiction and obligation to regulate public utilities and to enforce the laws of the Commonwealth relating thereto under the provisions of KRS Chapter 278.

2. Defendants, Pleasant Hill Water District, Pulaski County Water District No. 1, and Pulaski County Water District No. 2, are public utilities within the meaning of KRS 278.010, and are subject to the jurisdiction of the Commission under KRS Chapter 278. Defendants are water districts organized under KRS Chapter 74 who own and operate facilities used in connection with furnishing potable water to the public for compensation.

3. Defendants, Barnesburg Water Association, Inc., Elihu-Tateville Water Association, Inc., Nelson Valley Water Association, Inc., and Oak Hill Water Association, Inc., are public utilities within the meaning of KRS 278.010, and are subject to the jurisdiction of the Commission under KRS Chapter 278. Defendants are non-profit corporations formed under KRS Chapter 271 who own and operate facilities used in connection with furnishing potable water to the public for compensation.

4. On November 5 and 6, 1987 in Case No. 9967, the Commission held a public hearing regarding the proposed merger of three (3) water districts and six (6) water associations. The Commission issued its Order on February 22, 1988 directing that Pulaski County Water District, Pleasant Hill Water District and Oak Hill Water Association merge into a single water district. The Commission further ordered Barnesburg Water Association, Elihu-Tateville Water Association, and Nelson Valley Water Association merge into a single water association. The February 22, 1988 Order of the Commission is attached hereto and incorporated herein by reference as Exhibit 1.

5. In its final Order of February 22, 1988, the Commission exempted Bronston Water Association from either required merger.

6. In its final Order of February 22, 1988, the Commission exempted Pulaski County Water District No. 1 from merger due to a pending transfer of its assets to the city of Science Hill.

7. In its final Order of February 22, 1988, the Commission directed the affected utilities to "immediately" begin the work essential to accomplish merger.

8. The merged utilities were directed to file quarterly progress reports on the status of the ordered mergers. The first report was due March 15, 1988 and continuing quarterly thereafter.

9. By Order entered March 3, 1988, the Commission changed the date for its first quarterly progress report to June 15, 1988.

10. On March 24, 1988, Oak Hill Water Association petitioned the Public Service Commission for rehearing of its February 22, 1988 merger Order. The petition was rejected for filing due to the fact that the request was not timely filed pursuant to KRS 278.400.

11. On April 27, 1988, Oak Hill filed an appeal of the Commission's Order with Franklin Circuit Court. Oak Hill's appeal was dismissed by the Court by order entered October 9, 1991, for lack of subject matter jurisdiction. A copy of the Court's Judgment is attached as Exhibit 2. No other appeals were taken.

12. By letter dated October 5, 1988 the Commission was advised that an organizational meeting was held between Pleasant Hill Water District, Pulaski County Water District No. 2 and Oak Hill Water Association. No further progress on merger has been reported by any of these three defendants.

13. By letter dated October 25, 1988 the Commission was advised that Tateville Water Association had made several attempts to meet with Defendants Nelson Valley, Barnesburg, and Elihu-Rush Branch Associations. Subsequently, the Commission was advised that Tateville and Elihu-Rush Branch Associations had merged. Articles of Consolidation were filed with the Commission on March 27, 1991 reflecting that the newly created association, Elihu-Tateville Water Association had been created, and was operating as a "merged" water association. No reports have been received from Defendants Nelson Valley or Barnesburg Water Associations regarding their merger status or their intent to merge with Elihu-Tateville Water Association.

14. The Commission has received no reports from Pleasant Hill Water District, Pulaski County Water District No. 2 and Oak Hill Water Association regarding their merger status. Furthermore, the Commission has received no information regarding merger attempts from Oak Hill since Oak Hill's appeal was dismissed by this court on October 9, 1991.

15. The Commission's February 22, 1988 Order has not been revoked, modified, suspended or vacated and is now and has been at all times since entry in full force and effect. KRS 278.390.

16. The Commission has not been refused injunctive relief relating to this subject matter by this court or any other court.

WHEREFORE, the Commission requests the Court grant this proceeding priority over all pending cases pursuant to KRS 278.390 and enforce the Commission's February 22, 1988 Order by:

1. Mandatorily directing and permanently enjoining Pulaski County Water District No. 2, Pleasant Hill Water District and Oak Hill Water Association to complete all legal requirements necessary to effect a merger within 120 days and otherwise comply with the Commission's February 22, 1988 Order.

2. Mandatorily directing and permanently enjoining Barnesburg Water Association and Nelson Valley Water Association to complete all legal requirements necessary to effect merger with Elihu-Tateville Water Association within 120 days and otherwise comply with the Commission's February 22, 1988 Order.

3. Mandatorily directing and permanently enjoining Pulaski County Water District No. 2, Pleasant Hill Water District, Oak Hill Water Association, Barnesburg Water Association and Nelson Valley Water Association to file quarterly reports with the Commission giving complete details of all steps taken toward accomplishing merger and otherwise comply with the Commission's February 22, 1988 Order.

4. Grant the Commission its costs and attorney fees and such other relief as is just and equitable.

Respectfully submitted,

Rebecca Woodside Goodman
REBECCA WOODSIDE GOODMAN
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602
502/564-7347

Counsel for Public Service
Commission of Kentucky

ATTACHMENT 5

ENTERED

JUL 3 1 1995

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 92-CI-01151
DIVISION II

FRANKLIN CIRCUIT COURT
JANICE MARSHALL, CLERK

PUBLIC SERVICE COMMISSION OF KENTUCKY

PLAINTIFF

-vs-

SUMMARY JUDGMENT

BARNESBURG WATER ASSOCIATION, INC., ET AL.

DEFENDANTS

This action is before the Court on Motion by the plaintiff for Summary Judgment. Since there is no material factual issue and the plaintiff is entitled to Summary Judgment as a matter of law, the Motion of the plaintiff is GRANTED.

This is an action to enforce an Order of the plaintiff, Public Service Commission, entered on February 22, 1988 in Case No. 9967. The Order of the Commission ordered the merger of certain water districts in Pulaski County, including those of the defendants herein. This Final Order of the Commission was not properly appealed by any defendant.

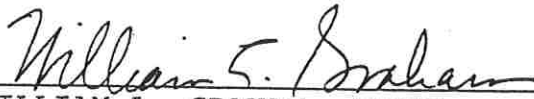
Having failed to follow the appropriate statutory procedures for appealing the Order of the Commission, this matter is res judicata. These defendants are therefore estopped from any collateral attack upon that Order. See Williamson v. Public Service Commission, Ky., 174 S.W.2d 526 (1943). Also, Ward v. Commonwealth of Kentucky, Natural Resources and Environmental

Protection Cabinet, Ky.App., 814 S.W.2d 589 (1991).

The argument of the defendants that the Order of the Commission is void as an unconstitutional exercise of power, is patently specious. The Commission had jurisdiction over these proceedings and these parties pursuant to Statute. All of the substantive complaints regarding this Order could have been, and should have been, raised on appeal. Defendants failed to avail themselves of the statutory right. They may not do so by collateral attack some five years later.

Plaintiff's Motion for Summary Judgment is GRANTED and the specific relief requested by the plaintiff in its Petition compelling compliance with the February 22, 1988 Order is GRANTED.

SO ORDERED this 31 day of July, 1995.


WILLIAM L. GRAHAM, JUDGE
FRANKLIN CIRCUIT COURT

DISTRIBUTION:

Hon. Rebecca W. Goodman
John R. Steffen
P O Box 615
Frankfort, Ky. 40602

Hon. Larry F. Sword
P O Box 1222
Somerset, Ky. 42502

Hon. Bruce Orwin
Suite A, 101 W. Columbia St.
Somerset, Ky. 42502

Hon. Frederick G. Neikirk
Pulaski County Attorney
P O Box 5
Somerset, Ky. 42501

Hon. Bruce F. Clark
421 West Main Street
Frankfort, Ky. 40601

Hon. Chris Gorman
The Attorney General
Capitol Building
Frankfort, Ky. 40601

ATTACHMENT 6

AFFIDAVIT OF MICHAEL T. PULLEN

STATE OF KENTUCKY)
COUNTY OF HENDERSON)

Michael T. Pullen being first duly sworn, deposes and states that:

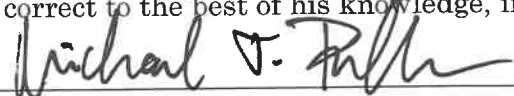
1. My name is Michael T. Pullen. My business address is 201 Third Street, Henderson, Kentucky 42420. I am the Chief Operating Officer for Big Rivers Electric Corporation ("Big Rivers").

2. Decommissioning of certain portions of Station Two is mandatory. Mandatory decommissioning consists of those activities required by federal regulations and laws, including:

- a. 40 CFR 257 and 261, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals (CCR);
- b. 40 CFR 112.5, Spill Prevention Control and Countermeasure Plan;
- c. 40 CFR 122, National Pollutant Discharge Elimination System;
- d. 40 CFR Part 61 Subpart M, Notification required per National Emission Standard for Asbestos;
- e. Surface Mining Control Reclamation Act; and
- f. Resource Conservation and Recovery Act.


4. Mandatory decommissioning must be done. The failure to do so can result in civil and criminal penalties.

5. The aforesaid testimony is true and correct to the best of his knowledge, information and belief.



Michael T. Pullen

Subscribed and sworn to or affirmed before me this ^{20th} day of September 2021, by Michael T. Pullen.



Notary Public

| |
|---|
| Amanda R. Jackson NOTARY PUBLIC STATE AT LARGE KENTUCKY ID. # 619869 MY COMMISSION EXPIRES March 22, 2023 |
|---|