

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

**IN THE MATTER OF:**

<b>APPLICATION OF BIG RIVERS</b>	)	
<b>ELECTRIC CORPORATION FOR</b>	)	<b>CASE NO. 2021-00378</b>
<b>ENFORCEMENT OF COMMISSION ORDER</b>	)	
	)	

---

**HENDERSON’S REPLY TO BIG RIVERS’ RESPONSE  
TO ISSUES RAISED AT HEARING**

---

The City of Henderson, Kentucky, and the Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (jointly “Henderson”) (“Intervenors”), by counsel, state as follows in reply to the arguments made by Big Rivers Electric Corp. (“Big Rivers”) before the Kentucky Public Service Commission (“Commission”) on November 29, 2021, and in a written pleading filed on November 30, 2021:

On November 29, 2021, the Commission held a hearing on its own motion to address Henderson’s pending motion to intervene and other procedural issues. Big Rivers seized the opportunity to renew its request for the Commission to create an “expedited process” (Big Rivers’ Response, p. 2) wherein the Commission would review monthly decommissioning invoices, allow for a perfunctory verification process to resolve any disputes over the proper allocation of expenses, and ultimately file a new enforcement action with the Franklin Circuit Court in each and every month that Henderson continues to dispute an expense. In other words, the Commission should cease to prioritize the regulation of utilities and act instead as an ongoing collection agent for Big Rivers. The Commission in issuing its August 2, 2021, Order in Case No. 2019-00269 rightly declined to undertake a daunting task Big Rivers admits will go on for “many years.” (Big Rivers’ Response, p. 2). To grant the relief Big Rivers requests, the Commission would have to

revisit the evidence submitted in Case No. 2019-00269 and expand the scope of its Order. The Commission must not allow Big Rivers a second bite at the apple.

Henderson objects to the reopening of Case No. 2019-00269 and to the issuance of a new or revised Order. The Commission's exercise of jurisdiction over these matters is disputed and the issue is pending before the Franklin Circuit Court. Any action the Commission takes now to enforce the Order could be rendered moot. An action to enforce a supplemental Order likewise would be subject to the jurisdictional challenge and would unnecessarily impose a significant burden on the Commission to review each of many invoices for multiple disputed contractual activities. In the alternative, and to the extent the Commission intends to establish the "ongoing enforcement" mechanism Big Rivers requests, the process Big Rivers proposes is unworkable. Big Rivers proposes the monthly submission of invoices to the Commission and 15 days after the submission date for Henderson to file an objection to one or more expenses. Big Rivers would then have seven days to reply. What would the reply consist of? Would Big Rivers be required to provide documentation sufficient for Henderson to verify the nature and proper allocation of the expense? Would documentation have to be provided in electronic, searchable format so as to allow Henderson to conduct an expedited review? What of those expenses Henderson is unable to verify due to insufficient documentation? Even if the Commission is inclined to establish a review process, the time frame Big Rivers would attach to the process is unrealistic for either party. For example, a recent exchange of information for the purpose of verifying ash-pond closure expenses exceeded 30 days and is still incomplete (see attached email correspondence). On November 2, 2021, Big Rivers invoiced Henderson for ash-pond closure expenses in the sum of \$69,653.42. Henderson requested supporting documentation and Big Rivers provided only a partial response. On November 24, 2021, Henderson sent Big Rivers a check in the sum of \$34,035.92, the amount

of purported decommissioning expenses Henderson had been able to verify. Big Rivers did not respond to additional requests for documentation until December 2, 2021. As evidenced by this single invoice, the process of review and verification of expenses is time-consuming and complex. Any mechanism for Commission review and approval would have to be subject to reasonable parameters, taking into consideration the time and personnel both the parties and the Commission would have to devote to the process. At a minimum, any such process should provide for a quarterly or semi-annual submission of decommissioning expenses, require sufficiently detailed documentation to make verification possible, require any requested documentation to be submitted in electronic, searchable format, and provide a sufficient time frame for review.

The Commission should deny Big Rivers' request to establish an "ongoing enforcement" process and decline to commit to bringing a never-ending series of enforcement actions in the Franklin Circuit Court. Based on Big Rivers' proposal, the Commission might well have to initiate twelve separate enforcement actions within a twelve-month period in the Franklin Circuit Court. Deferring a decision on the enforcement action pending the Court decision on jurisdiction is the more prudent use of time. Big Rivers argues it is being deprived of funds necessary for decommissioning and related expenses. But an Order for Henderson to pay money not conclusively owed to Big Rivers would deprive Henderson of disputed funds. If the Commission takes no action, each party simply maintains the status quo and ultimately either is reimbursed the legally owed amounts or absorbs the legally obligated expenses.

In the alternative, and to the extent the Commission intends to supplement, revise, amend, or replace its August 2, 2021, Order, the impact on Henderson is direct and clear and Henderson is entitled to intervene in Case No. 2021-00378, the proceeding in which Big Rivers seeks an enforcement action.

Respectfully submitted,

/s/H. Randall Redding

H. Randall Redding, Esq.

Sharon W. Farmer, Esq.

King, Deep & Branaman

127 North Main Street, P.O. Box 43

Henderson, Kentucky 42419-0043

Telephone: (270) 827-1852

rredding@kdblaw.com

sfarmer@kdblaw.com

*Attorneys for Henderson Utility Commission, d/b/a  
Henderson Municipal Power & Light*

/s/Dawn Kelsey

Dawn Kelsey, Esq.

City Attorney

City of Henderson

222 First Street

Henderson, Kentucky 42420

*Attorney for City of Henderson*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was forwarded this 6<sup>th</sup> day of December, 2021, via U.S. Mail, postage prepaid, or via facsimile, electronic mail, and/or hand delivery, to the following:

Tyson Kamuf, Esq.  
Senthia Santana, Esq.  
Big Rivers Electric Corp.  
201 Third Street, P.O. Box 727  
Henderson, Kentucky 42419-0024

Michael L. Kurtz  
Kurt J. Boehm  
Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

*Attorneys for Big Rivers Electric Corp.*

Original to:

Linda Bridwell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

/s/H. Randall Redding

## Sharon Farmer

---

**From:** Brad Bickett <bbickett@hmpl.net>  
**Sent:** Thursday, December 02, 2021 3:28 PM  
**To:** Mizell, Mike  
**Cc:** Joella Wilson  
**Subject:** RE: BREC Reid-HMP&L Ash Pond Closure and Remedy

Mike,

Thank you. We will review and let you know if there are any further questions.

On a related note, has Sargent & Lundy began work on the Ash Pond closure?

Brad

---

**From:** Mizell, Mike <Michael.Mizell@bigrivers.com>  
**Sent:** Thursday, December 2, 2021 3:17 PM  
**To:** Brad Bickett <bbickett@hmpl.net>  
**Cc:** Joella Wilson <JWilson@hmpl.net>  
**Subject:** RE: BREC Reid-HMP&L Ash Pond Closure and Remedy

**\*\* This message has originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email. \*\***

Brad

Attached below are responses prepared by our accounting folks as to the questions you raised. Please note that with regard to the 14 invoices, we have attached an electronic copy of those with this email. Additionally, our accounting department will be delivering the October invoices later today. I'm happy to sit down (or have our accounting folks sit down) and discuss any additional questions you may have. Feel free to call me to discuss as needed.

Thanks  
MSM

- Ash Pond Closure – Brenntag Mid South Inc – What is ash pond need for sulfuric acid and is container deposit refunded?  
Response: The sulfuric acid was used for pH adjustment in the HMP&L ash pond. The KPDES permit requires sampling on a weekly basis. The container deposit has not been refunded at this time.
- Ash Pond Closure – Burns and McDonnell PO 114088 - Why are majority expenses allocated to Reid-HMP&L Ash Pond?  
Response: Burns & McDonnell was contracted to perform a study for CCR and ELG compliance at Station Two, Coleman Station, and Green Station. This study was broken down in to 5 tasks. The work product from tasks 3, 4, and 5 were individually associated with each of the three stations and the total cost was charged to the associated station. Tasks 1 and 2 were performed to develop and produce specifications used in the bid packages for scopes of work to be performed at each individual station and provided information from each site that was needed for tasks 3, 4, and 5. These specifications were used in common for bidding the work at each station, hence the costs for tasks 1 and 2 were split 1/3 to each station. All tasks were split into sub-parts (if applicable) for units of property accounting purposes.

- Ash Pond Closure – Kentucky State Treasurer – Please provide invoices  
Response: These individual line items are for sales tax remitted to the Kentucky State Treasurer related to Brenntag invoice #BMS16437. A copy of the invoice is attached.
- CCR Incremental Costs – SII Only – General Insulation Invoices 38220, 38242, 38415, and 38426 – Please remove charges for work performed at Green Station.  
Response: Regarding the referenced invoices:
  - Invoices 38220 & 38426 – The vendor improperly labeled the face of these invoices. However, BREC attached a supporting email and photos of the work area to each invoice. The only area requiring hand mowing at the Sebree facility is along the Station Two ash pond. The Green Station ash pond does not require hand mowing.
  - Invoices 38242 & 38415 – The vendor improperly labeled the face of these invoices. However, the detailed timesheets from the vendor (attached to the invoices) state that the location of the work performed was HMP&L.
- CCR Incremental Costs – SII Only – There is a note that fourteen (14) invoices were previously provided as support for BREC invoice #BR22019. HMP&L has searched all files and confirmed that HMP&L does not have these invoices. Please provide these invoices (see end of list in “CCR Incremental Costs-SII Only.1.19-6.21.xlsx” for the invoices that are needed).  
Electronic copies of these invoices are attached to this email
- CCR Incremental Costs – SII Only – “Labor” - Please provide invoice or basis for charge.  
Response: The labor charges are for internal BREC labor inspections (no 3<sup>rd</sup> party invoices are available). The CCR rules require the ash pond to be inspected weekly to ensure there are no breaches or defects. Also, the groundwater from the monitoring wells that surround the ash pond are sampled on a semi-annual basis as required by the CCR regulations. These inspections and sampling procedures are performed by BREC employees.

---

**From:** Brad Bickett <[bbickett@hmpl.net](mailto:bbickett@hmpl.net)>  
**Sent:** Friday, November 5, 2021 9:06 AM  
**To:** Mizell, Mike <[Michael.Mizell@bigrivers.com](mailto:Michael.Mizell@bigrivers.com)>  
**Cc:** Joella Wilson <[JWilson@hmpl.net](mailto:JWilson@hmpl.net)>  
**Subject:** RE: BREC Reid-HMP&L Ash Pond Closure and Remedy

Mike,

HMP&L has completed the compiling and review of Ash Pond & CCR invoices which are listed in the attached spreadsheets. So that HMP&L can approve payment, please respond to the following items:

- Ash Pond Closure – Brenntag Mid South Inc – What is ash pond need for sulfuric acid and is container deposit refunded?
- Ash Pond Closure – Burns and McDonnell PO 114088 - Why are majority expenses allocated to Reid-HMP&L Ash Pond?
- Ash Pond Closure – Kentucky State Treasurer – Please provide invoices
- CCR Incremental Costs – SII Only – General Insulation Invoices 38220, 38242, 38415, and 38426 – Please remove charges for work performed at Green Station.
- CCR Incremental Costs – SII Only – There is a note that fourteen (14) invoices were previously provided as support for BREC invoice #BR22019. HMP&L has searched all files and confirmed that HMP&L does not have

these invoices. Please provide these invoices (see end of list in "CCR Incremental Costs-SII Only.1.19-6.21.xlsx" for the invoices that are needed).

- CCR Incremental Costs – SII Only – "Labor" - Please provide invoice or basis for charge.

Also, we are nearly complete with review of the Sargent & Lundy proposal.

Thank you,

Brad

---

**From:** Brad Bickett  
**Sent:** Tuesday, November 2, 2021 4:25 PM  
**To:** Mizell, Mike <[Michael.Mizell@bigrivers.com](mailto:Michael.Mizell@bigrivers.com)>  
**Cc:** Joella Wilson <[JWilson@hmpl.net](mailto:JWilson@hmpl.net)>  
**Subject:** RE: BREC Reid-HMP&L Ash Pond Closure and Remedy  
**Importance:** High

Mike,

HMP&L received an invoice today from Big Rivers for "Ash Pond & CCR" in total amount of \$69,653.42. HMP&L has reviewed and verified the supporting documents for the vendor work from 7/1/21-9/30/21 in amount of \$3,555.35. This amount is approved for payment (under protest at 18.90%). More information is needed for the "Labor" in amount of \$1,114.23.

Of the previously billed amounts from 1/1/19-6/30/21, HMP&L has reviewed the supporting documents for the invoiced \$188,305.28. Some of the amounts are verified, but the majority of these invoices are for reclassified work by Burns and McDonnell from mid-2019. The amount of work charged to Reid-HMP&L ash pond disproportionately large compared to the Green and Coleman ash ponds. More information is needed.

Of the previously billed amounts from 1/1/19-6/30/21, HMP&L has been unable to locate supporting documents for the invoiced amount of \$160,305.70. If the information is included with other invoices received for unrelated work, it will take more time for HMP&L to review and verify those amounts.

Let me know if HMP&L should go ahead and pay the verified amount (\$3,555.35) or if we can discuss.

Brad Bickett  
Power Supply Director  
Henderson Municipal Power & Light (HMP&L)  
100 Fifth Street, Henderson, KY 42420  
Phone: (270) 826-2726 Cell: (270) 724-0850

---

**From:** Brad Bickett  
**Sent:** Thursday, October 28, 2021 12:45 PM  
**To:** Mizell, Mike <[Michael.Mizell@bigrivers.com](mailto:Michael.Mizell@bigrivers.com)>  
**Cc:** Joella Wilson <[JWilson@hmpl.net](mailto:JWilson@hmpl.net)>  
**Subject:** Re: BREC Reid-HMP&L Ash Pond Closure and Remedy

Mike,



We will review and get back to you shortly. Sorry, I do not recall seeing any invoices related to the ash pond. Will you resend them to my attention?

Brad B

On Oct 28, 2021, at 1:12 PM, Mizell, Mike <[Michael.Mizell@bigrivers.com](mailto:Michael.Mizell@bigrivers.com)> wrote:

**\*\* This message has originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email. \*\***

Brad

As mentioned below, we have received a proposal from Sargent & Lundy to handle the work originally covered by the earlier AECOM proposal which you reviewed. The S&L proposal is very close to the AECOM proposal in both costs and schedule. Please review the attached and provide us with any comments, concerns, or questions that you may have. Once you have had a chance to comment on the proposal, we can move forward with the engagement to begin work on the engineering phase.

On a related note, we recently sent over a set of invoices that included invoices for the Station 2 pond closure and remediation work. Have you had a chance to review those invoices? Please let me know.

Thanks  
MSM

---

**From:** Mizell, Mike  
**Sent:** Thursday, October 21, 2021 2:58 PM  
**To:** 'Brad Bickett' <[bbickett@hmpl.net](mailto:bbickett@hmpl.net)>  
**Cc:** Joella Wilson <[JWilson@hmpl.net](mailto:JWilson@hmpl.net)>  
**Subject:** RE: BREC Reid-HMP&L Ash Pond Closure and Remedy

Brad,

Recently we have had several performance issues with AECOM that have caused concerns that, in turn, led me to request that Sargent & Lundy provide us with a proposal to handle the work originally covered by the AECOM proposal we previously sent to you. I expect to have that proposal from Sargent & Lundy in the next couple of days and will forward it to you for your review and any comments you may have. We do not anticipate it having any significant impact on the project schedule. Given the importance of this project, we just wanted to make sure that we have the best possible engineering team working on it. Please let me know if you have any questions about this.

Michael S Mizell  
Vice President Environmental Compliance  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
office: (270) 844-6178  
mobile: (615) 202-6776  
email: [michael.mizell@bigrivers.com](mailto:michael.mizell@bigrivers.com)



CONFIDENTIALITY STATEMENT:

This message potentially contains privileged and confidential information which is solely for the use of the intended recipient. If you are not the intended recipient, please be aware that any review, disclosure, copying, distribution, or use of the contents of this message is strictly prohibited. If you have received this message in error, please destroy it and notify the sender by reply email. Thank you.

---

**From:** Brad Bickett <[bbickett@hmpl.net](mailto:bbickett@hmpl.net)>  
**Sent:** Wednesday, October 20, 2021 2:10 PM  
**To:** Mizell, Mike <[Michael.Mizell@bigrivers.com](mailto:Michael.Mizell@bigrivers.com)>  
**Cc:** Joella Wilson <[JWilson@hmpl.net](mailto:JWilson@hmpl.net)>  
**Subject:** RE: BREC Reid-HMP&L Ash Pond Closure and Remedy

Mike,

If there has been progress on the ash pond, can we get an update?

Thanks,

Brad

---

**From:** Mizell, Mike <[Michael.Mizell@bigrivers.com](mailto:Michael.Mizell@bigrivers.com)>  
**Sent:** Friday, September 17, 2021 2:21 PM  
**To:** Brad Bickett <[bbickett@hmpl.net](mailto:bbickett@hmpl.net)>  
**Cc:** Joella Wilson <[JWilson@hmpl.net](mailto:JWilson@hmpl.net)>  
**Subject:** FW: BREC Reid-HMP&L Ash Pond Closure and Remedy

**\*\* This message has originated from an External Source. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email. \*\***

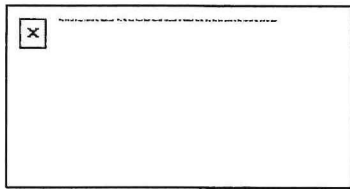
Brad

Thank you for your email response below. We appreciate HMPL's willingness to move forward with us in these important steps to close the Station Two ash pond to make sure that we maintain full compliance with the CCR rule. As has been the case, we will continue to coordinate closely with you throughout the process. Based on your email and your recent suggestion, we will complete the AECOM engineering services proposal for closure design and remedy selection for the ash pond. As you requested, that agreement will be between AECOM and Big Rivers but we will copy you on the information developed pursuant to that proposal and we will invoice the City for 18.90 percent of the costs incurred under that agreement as noted in your email below. In order to keep the process moving along, we intend to execute the engineering services proposal ASAP so that work can begin.

I will be the person responsible for managing this project on behalf of Big Rivers so please use me as your point of contact for this project moving forward. Mark Bertram will continue to assist me with the project. I have included all of my contact information below and you are welcome to contact me by whatever means work best for you including my cell phone.

Thanks  
MSM

Michael S Mizell  
Vice President Environmental Compliance  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
office: (270) 844-6178  
mobile: (615) 202-6776  
email: [michael.mizell@bigrivers.com](mailto:michael.mizell@bigrivers.com)



CONFIDENTIALITY STATEMENT:

This message potentially contains privileged and confidential information which is solely for the use of the intended recipient. If you are not the intended recipient, please be aware that any review, disclosure, copying, distribution, or use of the contents of this message is strictly prohibited. If you have received this message in error, please destroy it and notify the sender by reply email. Thank you.

---

**From:** Brad Bickett <[bbickett@hmpl.net](mailto:bbickett@hmpl.net)>  
**Sent:** Friday, September 17, 2021 11:14 AM  
**To:** Bertram, Mark <[Mark.Bertram@bigrivers.com](mailto:Mark.Bertram@bigrivers.com)>  
**Cc:** Joella Wilson <[JWilson@hmpl.net](mailto:JWilson@hmpl.net)>  
**Subject:** BREC Reid-HMP&L Ash Pond Closure and R medy

Mark:

As you are aware, HMPL wishes to cooperate in the closing of the Reid-HMPL Ash Pond and is agreeable to pay its 18.87 percent share of ash-pond closure expenses in accordance with the terms of the Station Two contracts. HMPL continues to contest liability for the additional .03 percent of expenses Big Rivers wishes to collect from HMPL as a result of the Kentucky Public Service Commission Order, which is now on appeal in the Franklin Circuit Court. However, in the spirit of cooperation and in the interest of proceeding with closure activities to ensure compliance with the CCR Rule, HMPL will advance 18.90 percent of those expenses incurred and properly attributable to the closure of the Reid-HMPL Ash Pond. Please note that HMPL accepts responsibility only for its 18.87 share of these expenses. The additional .03 percent will be paid under protest and subject to refund.

Kind regards,

Brad Bickett  
Power Supply Director  
Henderson Municipal Power & Light (HMP&L)  
100 Fifth Street, Henderson, KY 42420  
Phone: (270) 826-2726 Cell: (270) 724-0850

<BREC Reid HMPL SI Closure GW Remediation Proposal\_21-10-22.pdf>