

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

IN THE MATTER OF:

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

**RESPONSE TO FILING OF
APPLICATION SUPPLEMENT AND BILLING SUMMARIES**

The City of Henderson, Kentucky, and Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (jointly “Henderson”) (“Intervenors”), by counsel, hereby contest the billing summaries filed by Big Rivers Electric Corp. (“Big Rivers”) on November 12, 2021, and December 14, 2021, and object to the filing of any cumulative future summaries on the grounds the calculations reflected therein are inaccurate, do not reflect the proper allocation of disputed expenses, are unsupported by verified invoices, and claim sums which are either not owed by Henderson and/or which Henderson has already paid. Henderson further renews its objection to Big Rivers’ request for the Commission to issue a new or revised Order in Case No. 2019-00269, which is currently on appeal in the Franklin Circuit Court, and/or to establish an “ongoing enforcement” mechanism for the review and approval of monthly invoices.

The documentation Big Rivers submitted to Henderson – but did not file with the Commission – in support of its billing summaries confirms the improper billing of expenses unrelated to Station Two and illustrates the complexity of the task Big Rivers wants the Commission to undertake on a permanent basis. For example, a summary of expenses Big Rivers purportedly incurred between July 1, 2021, and September 30, 2021 (see **Attachment 1**), includes

\$145,824 in “Ramp Down” expenses, which Big Rivers has characterized as a subset of decommissioning expenses. A partial itemization (see **Attachment 2**) indicates \$15,641 was for work related to a gas turbine that has nothing to do with Station Two. Because individual invoices were not submitted alongside the itemization, Henderson has been unable to verify the scope of specific projects or the appropriateness of their categorization as a decommissioning expense. The process of reviewing, verifying, and approving this expenditure alone would require untold time and resources and place an unprecedented burden on the Commission. The scenario would repeat itself again and again.

Meanwhile, Henderson continues to carry out an orderly review and verification process which ultimately results in prompt payment of those expenses properly allocated to Henderson. For example, Big Rivers acknowledges Henderson has paid most expenses incurred in relation to the closure of the Ash Pond, albeit with a percentage being paid under protest and still subject to challenge (Big Rivers’ Second Supplement to Application, p. 3) (Henderson calculates its share of ash-pond closure expenses at 18.87 percent, compared to 18.90 percent reflected in Big Rivers’ invoices. Any “ramp down” expenses properly allocated to Henderson should be at a rate of 22.61 percent versus the 22.65 percent reflected in Big Rivers’ calculations).

Additionally, Henderson is in the process of reviewing bids submitted in response to Big Rivers’ proposal to remove asbestos and insulation and/or demolish the retired Station Two units.

Big Rivers’ billing summaries also are flawed because certain expenses Big Rivers claims are fixed and not subject to change are anything but. Each of the summaries submitted to Henderson and filed with the Commission claims \$214,398 due from Henderson to Big Rivers for “Station Two Operations,” a category Big Rivers defines to include all expenses other than decommissioning and ash-pond closure costs. Big Rivers is correct that the sum is unchanged from

previous invoices. But the figure is based on a flawed premise that fails to credit Henderson with substantial sums dramatically affecting the bottom line, including but not limited to revenue associated with the sale of unprofitable energy.

The number also includes sums Big Rivers collected from Henderson as part of its annual capacity payment during the last two years of Station Two's operation, but are now due to be refunded as part of the budget-settlement process. For example, Big Rivers' proposed operating budgets for 2017-2018 and 2018-2019 included projected costs of \$386,361 and \$287,992 respectively for a vertical landfill expansion which Big Rivers undertook in 2015 and which Henderson never approved. Additionally, any expenses Henderson purportedly owed Big Rivers for maintaining the Station Two scrubber sludge and ash-pond dredgings in the Green Landfill were paid as part of Big Rivers' "landfill usage fee," which was fixed at \$1.077 per ton pursuant to a letter dated May 5, 1995, and which remains unchanged (see **Attachment 3**). While the cost of hauling scrubber sludge was subject to fluctuation, costs covered in the landfill usage fee were to "hold firm." The rate of \$1.077 per ton includes .017 cents per ton for operation and maintenance costs and .015 cents per ton for future capital expenditures, such as the vertical landfill expansion (see **Attachment 4**). As a result of these wrongfully withheld refunds and other miscalculations, the figures contained in Big Rivers' billing summaries cannot serve as the basis of any action to pursue a judgment against Henderson. Additionally, the monthly process for Commission review and approval of decommissioning invoices is unworkable, poses an undue burden on the Commission and on the parties, and should not be considered.

For all of the foregoing reasons, the Commission should exclude from consideration any billing summaries Big Rivers has filed or will file in the future and should deny Big Rivers' request to establish a mechanism of ongoing enforcement.

Respectfully submitted,

/s/H. Randall Redding

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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 30th 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

Big Rivers Electric Corporation
A/R HMP&L - Decommissioning Costs (July 1, 2021 - September 30, 2021)
BR07-2021 Supporting Details

	GROSS TOTAL	REID	GREEN	STATION TWO	Supporting Spreadsheets	
					TOTAL GROSS	TOTAL NET
RAMP DOWN						
SII Only (ST2CLOSE)	\$ 145,824.58			\$ 145,824.58	\$ 145,824.58	\$ 33,029.27
RD/SII (RHCLOSE)	-			-		
RD/GN/SII (RGHCLOSE)	-			-		
	145,824.58	-	-	145,824.58	145,824.58	33,029.27
<u>Auxiliary Power</u>	23,238.71			23,238.71	23,238.71	5,263.57
Henderson Allocation						
Percentage - Decommission				22.65%		
Rampdown & Aux Power Total				38,292.84	169,063.29	38,292.84
<u>Landfill</u>						
Slurry Wall (BP19G200E)	-			-	-	-
Leachate (BP19G201E)	-			-	-	-
Landfill Closure	15,000.00			15,000.00	15,000.00	1,471.50
Landfill Drainage (BP20G203E)	1,547,310.74			1,547,310.74	1,547,310.74	151,791.18
	1,562,310.74	-	-	1,562,310.74	1,562,310.74	153,262.68
Henderson Allocation						
2021 Percentage - Landfill Decommission				9.81%		
Landfill Total				153,262.68	1,562,310.74	153,262.68
Balance Due From Henderson				191,555.52		191,555.52

BIG RIVERS ELECTRIC CORPORATION

May 5, 1995

Kendel Bryan
General Manager
City of Henderson Utility Commission
P. O. Box 8
Henderson, Kentucky 42420

Dear Kendel:

Big Rivers is proposing the following rates for disposal of the City's portion of scrubber sludge waste generated from the operation of the scrubber at HMP&L Station Two:

<u>Rate</u>	<u>Description of Service</u>
\$1.740	Charah Environmental, Inc., Hauling
1.077	Big Rivers, Green Landfill Usage Fee
<u>1.024</u>	Big Rivers, Stabilization Lime
\$3.841	

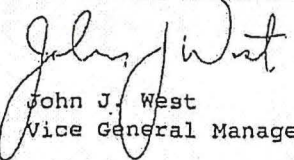
Big Rivers will escalate the rate paid to Charah in accordance with the contract and adjust the price per ton accordingly. Also, the \$1.024 rate for lime stabilization will be increased or decreased to reflect the actual cost. Big Rivers will hold firm for the length of this agreement the \$1.077 rate for Green Landfill usage fee.

Actual tonnage for disposal will be calculated for HMP&L Station Two and Green Station as defined in the May 1, 1993 Amendments Section 7.3, which added new subparagraphs to Section 3 of the Joint Facilities Agreement.

If you have any questions or need additional information, please do not hesitate to call.

Sincerely yours,

BIG RIVERS ELECTRIC CORPORATION


John J. West
Vice General Manager of Finance

xc: Paul Schmitz
Richard Greenwell
C. William Blackburn

Post Office Box 24, Henderson, KY 42420 Telephone 502-827-2561

Exhibit Moll-5

ATTACHMENT - 3

BIG RIVERS ELECTRIC CORPORATION

May 8, 1995

Kendel Bryan
General Manager
City of Henderson Utility Commission
P. O. Box 8
Henderson, Kentucky 42420

Dear Kendel:

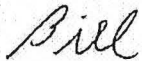
As requested in our meeting on Friday May 5, 1995, we are providing a break down of the \$1.077 proposed charges for Big Rivers Green Landfill Usage Fee. The following list is by major category:

<u>Rate</u>	<u>Description of Service</u>
\$0.710	Additional Cost for New Landfill Location
.238	Capital Costs To-Date for Green Landfill
.015	Future Capital Expenditures
.017	Operation and Maintenance Costs
.097	Future Cover Deficiency
<u>\$1.077</u>	Big Rivers, Green Landfill Usage Fee

If you have any questions or need additional information, please do not hesitate to call.

Sincerely yours,

BIG RIVERS ELECTRIC CORPORATION



C. William Blackburn, CMA
Manger of General Accounting

xc: Paul Schmitz
Richard Greenwell
John J. West