

ORIGINAL



COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

ELECTRONIC APPLICATION OF)	
BIG RIVERS ELECTRIC CORPORATION)	Case No.
FOR ANNUAL REVIEW OF ITS MRSM)	2022-00028
CHARGE FOR CALENDAR YEAR 2021)	

**Verified Application
and
Exhibits**

FILED: February 28, 2022

ORIGINAL

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION FOR ANNUAL REVIEW
OF ITS MRSM CHARGE FOR CALENDAR YEAR 2021
CASE NO. 2022-00028**

VERIFICATION

I, Paul G. Smith, Chief Financial Officer for Big Rivers Electric Corporation, hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief.

Paul Smith

Paul G. Smith

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

28th SUBSCRIBED AND SWORN TO before me by Paul G. Smith on this the
day of February 2022.

Amanda R. Jackson

Notary Public, Kentucky State at Large

Kentucky ID Number

619869

My Commission Expires

March 22, 2023

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

1 address is 201 Third Street, Henderson, Kentucky 42420. Its address for
2 electronic mail service is regulatory@bigrivers.com. 807 KAR 5:001, Section
3 14(1).

4 2. Pursuant to 807 KAR 5:001, Section 14(1), Big Rivers states that
5 this Application and the supporting exhibits, which are incorporated herein by
6 reference, contain fully the facts on which the relief requested by Big Rivers is
7 based.

8 3. A complete copy of the public portions of this Application has been
9 sent to the Attorney General and counsel for Kentucky Industrial Utility
10 Customers, Inc.

11 4. No tariff change is contemplated and so notice pursuant to 807
12 KAR 5:011 Section 8 is not required.

13 5. Big Rivers owns generating assets and purchases, transmits, and
14 sells electricity at wholesale. Its principal purpose is to provide the wholesale
15 electricity requirements of its three Member–Owner distribution electric
16 cooperatives: Jackson Purchase Energy Corporation (“Jackson Purchase”),
17 Kenergy Corp. (“Kenergy”), and Meade County Rural Electric Cooperative
18 Corporation (“Meade County”) (collectively, “the Member–Owners”). The three
19 Member–Owners in turn provide retail electric service to approximately 119,600
20 consumers/retail members located in 22 western Kentucky counties: Ballard,
21 Breckenridge, Caldwell, Carlisle, Crittenden, Daviess, Graves, Grayson,

1 Hancock, Hardin, Henderson, Hopkins, Livingston, Lyon, Marshall, McCracken,
2 McLean, Meade, Muhlenberg, Ohio, Union, and Webster.

3 6. Big Rivers was incorporated in the Commonwealth of Kentucky on
4 June 14, 1961, and hereby attests that it is currently in good standing in
5 Kentucky. 807 KAR 5:001, Section 14(2).

6 7. A table of each regulatory requirement or Commission-ordered
7 requirement for filing, cross-referenced to the location in this Application where
8 the requirement is satisfied, is attached hereto as Exhibit A.

9 **II. BACKGROUND**

10 **A. Case Number 2020-00064**

11 8. On February 28, 2020, Big Rivers filed an application requesting
12 that the Commission authorize Big Rivers to modify its Member Rate Stability
13 Mechanism (“MRSM”) Tariff to provide a monthly bill credit, increase
14 amortization of the Smelter Loss Mitigation (“SLM”) Regulatory Assets, take
15 additional steps to mitigate the loss of 850 MW of load when two aluminum
16 smelters left the Big Rivers system in 2013-2014, which represented more than
17 one-half of its total native load, and restore Big Rivers’ investment grade credit
18 rating from all three major ratings agencies.³

19 9. On May 29, 2020, Big Rivers, Kentucky Industrial Utility
20 Customers, Inc. (“KIUC”), and the Attorney General of the Commonwealth of

³ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval To Modify Its MRSM Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief*, P.S.C. Case No. 2020-00064.

1 Kentucky, by and through the Office of Rate Intervention (“Attorney General”),
2 filed a unanimous Settlement Agreement, Stipulation, and Recommendation
3 (“Settlement Agreement”), wherein Big Rivers agreed, starting in 2021 and each
4 calendar year thereafter (through 2043), and no later than February 28 of each
5 calendar year, to provide the Commission, the Attorney General, and the KIUC
6 with a report regarding nine identified matters.⁴

7 10. The Commission’s final order in Case No. 2020-00064 (“June 25,
8 2020 Order”) approved the Settlement Agreement, subject to modifications and
9 deletions, and clarified the forum in which the report would be presented,
10 finding that Big Rivers “should file a formal docketed proceeding in the form of
11 an annual application to revise its MRSMS rates that should include all
12 information laid out in the settlement and this Order.”⁵

13 11. Big Rivers’ filed its first formal docketed proceeding pursuant to
14 the June 25, 2020 Order on February 26, 2021, in Case No. 2021-00061.⁶ The
15 Commission issued its Final Order in Case No. 2021-00061 on June 9, 2021,
16 approving the relief Big Rivers sought⁷ and continuing Big Rivers’ requirement

⁴ Case No. 2020-00064, Settlement Agreement, Stipulation, and Recommendation, P.S.C. Case No. 2020-00064 (May 29, 2020).

⁵ Case No. 2020-00064, Order at page 21 (June 25, 2020).

⁶ See *In the Matter of: Electronic Application of Big Rivers Electric Corporation For Review of Its MRSMS Charge for Calendar Year 2020*, P.S.C. Case No. 2021-00061.

⁷ The June 25, 2020 Order at Ordering Paragraphs 1 and 2 authorized Big Rivers to use \$11.0 million of the TIER Credit Regulatory Liability amount to reduce the SLM Regulatory Assets, to amortize \$289,406.91 in expenses incurred in Case No. 2019-00435 over three years, and to recover this amount through the environmental surcharge mechanism.

1 to file annually an application pursuant to ordering paragraph 10 of the June 25,
2 2020 Order in Case No. 2020-0064.⁸

3 **B. Case Number 2019-00365**

4 12. On September 26, 2019, Big Rivers and Meade County RECC
5 submitted their joint application, seeking an order from the Commission
6 approving: 1) the retail contract for electric service between Meade County and
7 Nucor Corporation (“Nucor”) executed September 9, 2019 (the “Retail
8 Agreement”); 2) a related Wholesale Agreement between Big Rivers and Meade
9 County executed September 18, 2019 (with the Retail Agreement collectively the
10 “Nucor Contracts”); and 3) the establishment of a modified version of the Large
11 Industrial Customer Expansion (“LICX”) tariff that was originally in effect from
12 2000 through 2014.⁹

13 13. Commission approval of the Nucor Contracts and the LICX tariff
14 was necessary to facilitate the construction of a new Nucor facility in
15 Brandenburg, Meade County, Kentucky that will significantly bolster the
16 Commonwealth’s economy by creating 400 direct jobs (at an annual average
17 wage of \$72,000), over 2,600 indirect jobs, \$189 million in annual labor income,

⁸ See Case No. 2021-00061, Order (June 25, 2020) at Ordering Paragraph No. 3 (“The filing shall contain the information set forth in the June 25, 2020 Order in Case No. 2020-00064 and ordering paragraph 6 of the August 17, 2020 Order in Case No. 2019-00365”).

⁹ *In the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Corporation and Meade County Rural Electric Cooperative Corporation for Approval of Contracts for Electric Service with Nucor Corporation and Application of Big Rivers Electric Corporation for Approval of Tariff*, P.S.C. Case No. 2019-00365.

1 \$14.3 million in annual state and local tax revenues, and approximately \$360
2 million in annual gross domestic product (“GDP”) once fully operational.¹⁰

3 14. On August 17, 2020, the Commission granted Big Rivers and
4 Meade County RECC the relief they sought and directed them to file, as part of
5 Big Rivers’ annual filing required in Case No. 2020-00064, information detailing
6 the financial impacts of the Nucor retail service agreement and the impact the
7 Nucor load has had on Big Rivers’ credit ratings.¹¹

8 15. Through this filing, Big Rivers seeks to comply with the
9 Commission’s Orders in the above described two proceedings.

10

11 **III. RESPONSE TO THE JUNE 25, 2020 ORDER**

12 16. In compliance with the Commission’s June 25, 2020 Order, Big
13 Rivers is filing information and documents related to: (1) matters identified in
14 the Settlement Agreement as set forth in the Order;¹² (2) Big Rivers’ current
15 Member Equity Balance and the minimum required by its loan covenants;¹³ (3)

¹⁰ *In the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Corporation and Meade County Rural Electric Cooperative Corporation For (1) Approval of Contracts For Electric Service with Nucor Corporation, and (2) Approval of Tariff*, P.S.C. Case No. 2019-00365, Application, Direct Testimony of Robert W. Berry, Exhibit Berry-4 (Sept. 26, 2019).

¹¹ *Id.*, Ordering Paragraph No. 6 (Aug. 17, 2020).

¹² Case No. 2019-00064, Order at page 16 (June 25, 2020) (directing Big Rivers to “file by February 28, an application to adjust its MRSMS rates, containing at minimum the information contained in the Settlement [Agreement], as modified herein”).

¹³ *Id.* at page 21.

1 the reasonableness of any 2020 decommissioning costs;¹⁴ and (4) detailed
2 descriptions of all actions Big Rivers has taken to minimize decommissioning
3 costs.¹⁵

4 17. The Settlement Agreement identified nine categories of information
5 to be included in this annual proceeding:

- 6 a. Year-end TIER calculation for the prior calendar year;
- 7 b. The amount of the New TIER Credit that will flow through the
8 MRSM Rider during the following twelve months;
- 9 c. The amount charged to depreciation and amortization expense
10 for recovery of the SLM Regulatory Assets in the prior
11 calendar year, that will reduce the SLM Regulatory Assets
12 balance;
- 13 d. Status of the amortization of the SLM Regulatory Assets;
- 14 e. Interest savings gained (annualized) once investment grade
15 ratings are received from at least two of the three rating
16 agencies;
- 17 f. Status of and expected decommissioning costs of Coleman
18 Station and Reid Station Unit 1, and the total and Big Rivers'
19 estimated share of the decommissioning costs associated with
20 Station Two; and

¹⁴ *Id.* at page 21.

¹⁵ *Id.*

1 g. A copy of any proposal to decommission Coleman Station, Reid
2 Station Unit 1, and Station Two that was awarded in the prior
3 year.¹⁶

4 18. The Direct Testimony of Paul G. Smith attached to this Application
5 as Exhibit B responds to the first five subparts (a. through e.) and provides Big
6 Rivers' current Member Equity Balance and the minimum required by its loan
7 covenants, pursuant to the June 25, 2020 Order.¹⁷

8 19. The Direct Testimony of Nathaniel A. ("Nathan") Berry attached to
9 this Application as Exhibit C responds to the remaining two subparts (f. and g.).
10 Additionally, Mr. Nathan Berry's Direct Testimony describes the actions Big
11 Rivers has taken to minimize decommissioning costs and supports the
12 reasonableness of the decommissioning expenses.¹⁸

13 20. The Direct Testimony of Michael S. Mizell attached to this
14 Application as Exhibit D expounds Mr. Berry's testimony by providing
15 information as related to the ash-pond closures and environmental matters.

16 21. The decommissioning of Coleman Station, Reid Unit 1, and Station
17 Two are currently at various stages, as fully discussed in Mr. Berry's and Mr.
18 Mizell's testimonies. However, Big Rivers and its expert consultants have and
19 will continue to examine each decommissioning project to ensure it is a
20 reasonable, necessary, and cost-effective course of action to promote the best

¹⁶ June 25, 2020 Order at page 16

¹⁷ June 25, 2020 Order at page 21.

¹⁸ *Id.*

1 interests of Big Rivers' Member-Owners, consistent with Big Rivers' obligations
2 under law, including increasingly-stringent environmental standards and
3 restrictions.

4

5 **IV. RESPONSE TO THE COMMISSION'S AUGUST 17, 2020 ORDER**

6 22. In its final Order in Case No. 2019-00365, the Commission granted
7 Big Rivers and Meade County the relief they sought and directed them to file, as
8 part of this proceeding, information detailing the financial impacts of the Nucor
9 retail service agreement and the impact the Nucor load has had on Big Rivers'
10 credit ratings.¹⁹

11 23. While Nucor has not completed construction of its new
12 Brandenburg, Kentucky, facility and therefore, has not begun operations or
13 taken service under the Nucor Contracts, Meade County has provided
14 construction power under standard tariff rates to the Nucor construction site.
15 Paul G. Smith's Direct Testimony provides the confidential details of the 2021
16 billing for these services to Nucor.

17 24. Securing the Nucor load has already had a positive impact on Big
18 Rivers' credit ratings. In fact, Big Rivers' 2021 report on its MRSM discussed

¹⁹ *In the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Corporation and Meade County Rural Electric Cooperative Corporation For (1) Approval of Contracts For Electric Service with Nucor Corporation, and (2) Approval of Tariff*, P.S.C. Case No. 2019-00365, Order, Ordering Paragraph No. 6 (August 17, 2020).

1 Big Rivers’ receipt of its second investment grade credit rating. On June 28,
2 2021, S&P Globing Ratings raised to ‘BBB-‘ from ‘BB+.’

3 25. Receiving investment grade ratings has also resulted in Big Rivers
4 recognizing significant annual interest savings under the 2020 CFC Revolving
5 Credit Facility,²⁰ as fully discussed in Mr. Smith’s Direct Testimony.²¹

6

7 **V. BIG RIVERS’ PROPOSED ADJUSTMENTS AND ALTERATIONS**

8 26. The Commission’s June 25, 2020, Order also stated that this
9 annual proceeding would allow Big Rivers “to propose adjustments and
10 alterations as it deems necessary.”²² Big Rivers is not proposing any
11 adjustments or alterations to its MRSM credit in this proceeding.
12 However, as fully explained in Mr. Smith Direct Testimony, and in accordance
13 with the Commission’s Order in Case No. 2020-00064, the regulatory liability
14 account balance exceeds the required \$9 million minimum. Big Rivers proposes
15 to use the regulatory liability balance in excess of the \$9 million minimum, every
16 year, to reduce the balance of SLM Regulatory Assets as approved in Case No.
17 2020-00064, as presented in the Direct Testimony of Paul G. Smith attached to
18 this Application as Exhibit B.

19

²⁰ *In the Matter of: Electronic Application of Big Rivers Electric Corporation For Approval To Issue Evidences of Indebtedness*, P.S.C. Case No. 2020-00129, Order (May 8, 2020) (approving the 2020 CFC Revolving Credit Facility).

²¹ See Exhibit Smith-6 to the Direct Testimony of Paul G. Smith.

²² Case No. 2020-00064, Order at Page 21 (June 25, 2020).

1 WHEREFORE, Big Rivers requests an Order from the Commission:

2 1. Authorizing Big Rivers to automatically use the regulatory liability
3 amount in excess of the \$9 million minimum, every year, to reduce the balance
4 of SLM Regulatory Assets; and

5 2. Granting Big Rivers all other relief to which it may appear entitled.

6

7 On this the 28th day of February, 2022

8

9

Respectfully submitted,

10

**BIG RIVERS ELECTRIC
CORPORATION**

11

12

13

/s/ Senthia Santana

14

15

Senthia Santana

16

Tyson Kamuf

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Counsel to Big Rivers Electric Corporation

25

**REFERENCES FOR COMPLIANCE WITH STATUTORY AND REGULATORY
FILING REQUIREMENTS**

Big Rivers Electric Corporation's Annual MRSM Application

Law / Regulation	Filing Requirement	Location in Application
807 KAR 5:001 Section 14(1)	The full name, mailing address, and electronic mail address of the Applicant	Application ¶ 1
807 KAR 5:001 Section 14(1)	A request for the order, authorization, permission or certificate desired	Application ¶ 26 and page 11
807 KAR 5:001 Section 14(1)	A reference to the particular provision of law authorizing the relief requested	Application page 1
807 KAR 5:001 Section 14(1)	The facts on which the application is based	Application ¶¶ 8-26 and Testimonies
807 KAR 5:001 Section 14(2)	State and date of incorporation; attest to good standing in state	Application ¶ 6
P.S.C. Case No. 2020-00064		
PSC Order Case No. 2020-00064, Final Order (June 25, 2020)	Filing Requirement Pursuant to Ordering Paragraph No. 10.	Location in Application
Pg. 21 of Final Order	Formal docketed proceeding in the form of an annual application to revise MRSM rates, including all information laid out in the Settlement and Order.	The Application was filed Feb. 28, 2022.
Per Settlement Agreement / Pg. 16 of Final Order	Calculation of year-end TIER for prior calendar year.	Smith Testimony & Exhibit Smith-2
Per Settlement Agreement / Pg. 16 of Final Order	The amount of the New TIER Credit that will flow through the MRSM Rider during the following twelve months.	Smith Testimony & Exhibit Smith-3

**REFERENCES FOR COMPLIANCE WITH STATUTORY AND REGULATORY
FILING REQUIREMENTS**

Big Rivers Electric Corporation's Annual MRSM Application

	P.S.C. Case No. 2020-00064	
PSC Order Case No. 2020-00064, Final Order (June 25, 2020)	Filing Requirement Pursuant to Ordering Paragraph No. 10.	Location in Application
Per Settlement Agreement / Pg. 16 of Final Order	The amount to charge to depreciation and amortization expense for recovery of the Smelter Loss Mitigation Regulatory Assets in the prior calendar year, which will result in the reduction of the balance of Smelter Loss Mitigation Regulatory Assets.	Smith Testimony & Exhibit Smith-4
Per Settlement Agreement / Pg. 16 of Final Order	The overall status of the amortization of the Smelter Loss Mitigation Regulatory Assets	Smith Testimony & Exhibit Smith-4
Per Settlement Agreement / Pg. 16 of Final Order	Once investment grade ratings are received from at least two of the three rating agencies, all interest savings gained (annualized) as a result thereof.	Smith Testimony & Exhibit Smith-5
Per Settlement Agreement / Pg. 16 of Final Order	The status of and anticipated decommissioning costs expected to be incurred by Big Rivers for each of the Coleman Station, Reid Station Unit 1, and Station Two (including the total anticipated decommissioning costs of Station Two and Big Rivers' estimated share of such costs.	Berry and Mizell Testimonies
Per Settlement Agreement / Pg. 16 of Final Order	A copy of any awarded proposals for the decommissioning of the Coleman Station, Reid Station Unit 1, and Station Two in the prior year.	Berry Testimony & Exhibit Berry-2
Per Settlement Agreement / Pg. 21 of Final Order	Current Member equity balance and minimum required by the loan covenants.	Smith Testimony
Per Settlement Agreement / Pg. 21 of Final Order	The reasonableness of any 2021 decommission costs and detailed descriptions of all actions Big Rivers has taken to minimize decommission costs.	Berry Testimony

**REFERENCES FOR COMPLIANCE WITH STATUTORY AND REGULATORY
FILING REQUIREMENTS**

Big Rivers Electric Corporation's Annual MRSM Application

P.S.C. Case No. 2019-00365		
PSC Order Case No. 2019-00365 Final Order (Aug. 17, 2020)	Filing Requirement Pursuant to Ordering Paragraph No. 6	Location in Application
Ordering Paragraph No. 6	Information detailing the financial impacts of the Nucor retail service agreements in 2020 and the impact the Nucor load has had on Big Rivers' credit ratings	Smith Testimony



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

In the Matter of:

ELECTRONIC APPLICATION OF)	
BIG RIVERS ELECTRIC CORPORATION)	Case No.
FOR ANNUAL REVIEW OF ITS MRSM CHARGE)	2022-00028
FOR THE CALENDAR YEAR 2021)	

DIRECT TESTIMONY

OF

**PAUL G. SMITH
CHIEF FINANCIAL OFFICER**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

FILED: February 28, 2022

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION FOR ANNUAL REVIEW
OF ITS MRSM CHARGE FOR CALENDAR YEAR 2021
CASE NO. 2022-00028**

VERIFICATION

I, Paul G. Smith, verify, state, and affirm that I prepared or supervised the preparation of the Direct Testimony filed with this Verification, and that Direct Testimony is true and accurate to the best of my knowledge, information, and belief after a reasonable inquiry.

Paul Smith

Paul G. Smith

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

28th SUBSCRIBED AND SWORN TO before me by Paul G. Smith on this the
day of February 2022.

Amanda R. Jackson

Notary Public, Kentucky State at Large

Kentucky ID Number

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My Commission Expires

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**DIRECT TESTIMONY
OF
PAUL G. SMITH**

Table of Contents

	<u>Page</u>
I. INTRODUCTION	1
II. JUNE 25, 2020, ORDER IN CASE NO. 2020-00064	7
III. AUGUST 17, 2020, ORDER IN CASE NO. 2019-00365.....	12
IV. CONCLUSION	14

1 **DIRECT TESTIMONY**

2 **OF**

3 **PAUL G. SMITH**

4 **I. INTRODUCTION**

5 **Q. Please state your name, business address and occupation.**

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

9
10 **Q. Please summarize your education and professional experience.**

11 A. I received a Bachelor of Science degree in Industrial Management from
12 Purdue University and a Masters of Business Administration degree, with
13 honors, from the University of Chicago. I am a Certified Public Accountant
14 in the State of Ohio and a member of the American Institute of Certified
15 Public Accountants. I am a past member of the Edison Electric Institute
16 (“EEI”) Economic Regulation and Competition Committee and the EEI
17 Budgeting and Financial Forecasting Committee.

18 I began my career in 1982 as a public accountant in the Chicago office
19 of Deloitte & Touche, and from 1984 to 1987 in the Indianapolis office of
20 Crowe, Chizek & Co. Beginning in 1987, I held various analyst and
21 managerial positions with Duke Energy Corporation, and its predecessor
22 companies including Cinergy Corp. (“Cinergy”) and Public Service Indiana,

1 in Budgets and Forecasts, Rates and Regulatory Affairs, Investor Relations,
2 and the International Business Unit. Beginning in 2001, I was appointed to
3 various executive level positions, including General Manager of Budgets and
4 Forecasts with responsibility for Cinergy's financial planning and analysis
5 department, Vice President of Rates with responsibility for all state and
6 federal regulated rate matters including revenue requirements, cost-of-
7 service and rate design for Duke Energy Kentucky, Inc. and Duke Energy
8 Ohio, Inc., and Vice President of Retail Marketing with responsibility for all
9 activities to launch a start-up, competitive retail energy business.

10 In 2012, I joined NextEra Energy Transmission, the competitive
11 transmission development subsidiary of NextEra Energy, Inc., as Senior
12 Director of Business Management. My responsibilities included managing
13 all financial activities for the competitive transmission business, including
14 accounting and financial reporting, budgeting and financial planning, and
15 corporate development analytics. In addition, I was responsible for the
16 compliance function and directing the preparation of state, Regional
17 Transmission Organization, and Federal Energy Regulatory Commission
18 ("FERC") revenue requirement filings.

19 In 2018, I accepted the position of CFO at Big Rivers.
20

1 **Q. Please summarize your duties at Big Rivers.**

2 A. As CFO, I am responsible for all financial, regulatory, strategic planning and
3 risk management activities. Such activities include accounting and financial
4 reporting, payroll, budgets, finance, tax, rates and regulatory affairs, risk
5 management and strategic planning.

6

7 **Q. Have you previously testified before the Kentucky Public Service
8 Commission (“Commission”)?**

9 A. Yes. Most recently, I submitted written and oral testimony on behalf of Big
10 Rivers in Case No. 2021-00289,¹ in which Big Rivers and Kenergy Corp. are
11 seeking the Commission’s authority to implement a new Large Industrial
12 Customer Standby Service tariff; in Case No. 2020-00299,² in which Big
13 Rivers is presented its 2020 Integrated Resource Plan; and in Case No. 2019-
14 00269,³ in which Big Rivers requested the Commission to enforce the series
15 of contracts between Big Rivers and the City of Henderson and the City of
16 Henderson Utility Commission related to the William L. Newman Station
17 Two generating plant and associated facilities. I also submitted testimony

¹ *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff* (filed June 24, 2021).

² *In the Matter of: Electronic 2020 Integrated Resource Plan of Big Rivers Electric Corporation* (filed Sept. 21, 2020).

³ *In the Matter of: Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (filed July 31, 2019).

1 on behalf of Big Rivers in Case No. 2021-00314,⁴ in which Big Rivers sought
2 and obtained a Certificate of Public Convenience and Necessity (“CPCN”) to
3 construct a new headquarters; in Case No. 2021-00079,⁵ in which Big Rivers
4 sought and obtained a CPCN to convert the generating units at its Green
5 Station to burn natural gas; and in Case No.2021-00061,⁶ in which Big
6 Rivers submitted its annual report regarding its MRSM. I also provided
7 testimony in Case No. 2020-00183⁷, in which Big Rivers sought and obtained
8 approval of solar power purchase contracts; in Case No. 2019-00435,⁸ in
9 which the Company sought and obtained an order from the Commission
10 approving its 2020 Environmental Compliance Plan, and authority to
11 recover costs through a revised Environmental Surcharge (the “2020 ECP
12 Case”) and I testified in support of Big Rivers’ Application to modify its
13 MRSM Tariff, Times Interest Earned Ratio (“TIER”) Credit and other

⁴ *In the Matter of: Electronic Application Of Big Rivers Electric Corporation For A Certificate Of Convenience And Necessity Authorizing Construction Of A New Headquarters Facility And An Order Authorizing Big Rivers To Sell Its Existing Headquarters Facility* (filed Aug. 26, 2021).

⁵ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity Authorizing the Conversion of the Green Station Units to Natural Gas-Fired Units and an Order Approving the Establishment of a Regulatory Asset* (filed Mar. 1, 2021).

⁶ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Annual Report on MRSM Credit* (filed Feb. 26, 2021).

⁷ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts* (filed June 24, 2020).

⁸ *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2020 Environmental Compliance Plan, Authority to Recover Costs Through a Revised Environmental Surcharge and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief* (filed Feb. 7, 2020).

1 related relief, in Case No. 2020-00064.⁹ I submitted testimony in support of
2 the Joint Application filed by Big Rivers and Meade County Rural Electric
3 Cooperative Corporation (“Meade County RECC”) in Case No. 2019-00365,¹⁰
4 in which the Commission approved contracts to provide electric service to a
5 new facility to be developed by Nucor Corporation (“Nucor”) in Brandenburg,
6 Meade County, Kentucky. I also responded to requests for information in
7 Case No. 2020-00153¹¹ and Case No 2020-00291,¹² in which Big Rivers
8 sought and obtained, authorization to issue evidence of indebtedness.

9 I have also testified on behalf of Duke Energy Kentucky, Inc.,
10 including in Case No. 2006-00172,¹³ in which Duke sought an increase in
11 rates, and in Case No. 2008-00495,¹⁴ in which Duke sought approval of
12 energy efficiency programs and an energy efficiency rider. Additionally, I

⁹ *In the Matter of: Application of Big Rivers Electric Corporation for Approval to Modify its MRSM Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief*, (filed Feb. 28, 2020).

¹⁰ *In the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff* (filed Sept. 26, 2019).

¹¹ *In the Matter of: Electronic Application of Big Rivers Electric Corporation For Approval to Issue Evidences of Indebtedness*, Responses to Commission Staff’s Initial Request for Information dated June 28, 2020 (filed July 6, 2020).

¹² *In the Matter of: Electronic Application of Big Rivers Electric Corporation For Approval to Issue Evidences of Indebtedness*, Responses to Commission Staff’s Initial Request for Information dated October 7, 2020 (filed Oct. 12, 2020).

¹³ *In the Matter of: An Adjustment of the Electric Rates of the Union Light, Heat and Power Company D/B/A Duke Energy Kentucky, Inc.* (filed Dec. 21, 2006).

¹⁴ *In the Matter of: Application of Duke Energy Kentucky, Inc. for Approval of Energy Efficiency Plan including an Energy Efficiency Rider and Portfolio of Energy Efficiency Programs*, Order (Jan. 29, 2010).

1 have testified before The Public Utilities Commission of Ohio, the Indiana
2 Utility Regulatory Commission, and FERC. My professional experience is
3 summarized in Exhibit Smith-1.

4
5 **Q. What is the purpose of your testimony in this proceeding?**

6 A. The purpose of my testimony is: (i) to provide information pursuant to
7 Ordering Paragraph 10 of the Commission's June 25, 2020, Order in Case
8 No. 2020-00064¹⁵ ("the June 25, 2020 Order"); (ii) to provide information
9 pursuant to Ordering Paragraph No. 6 of the Commission's August 17, 2020,
10 Order in Case No. 2019-00365;¹⁶ and (iii) to present Big Rivers' proposal
11 regarding the automatic utilization of the regulatory liability balance in
12 excess of the \$9 million minimum, every year, to reduce the balance of SLM
13 Regulatory Assets as approved in Case No. 2020-00064.

14

15 **Q. Are you sponsoring any exhibits?**

16 A. Yes. The following exhibits were prepared by me or under my supervision:

17

- Exhibit Smith-1: Professional Summary

¹⁵ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRS M Tariff, Cease Deferring Depreciation Expense, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief, Order (June 25, 2020).*

¹⁶ *In the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Corporation and Meade County Rural Electric Cooperative Corporation For (1) Approval of Contracts For Electric Service with Nucor Corporation, and (2) Approval of Tariff, P.S.C. Case No. 2019-00365, Order (Aug. 17, 2020).*

- 1 • Exhibit Smith-2: 2021 Year-End TIER Credit Calculation;
- 2 • Exhibit Smith-3: Amount of the New TIER Credit to Flow Through
- 3 the MRSM Rider During 2022; and Allocation of Monthly Bill Credit
- 4 to Customer Classes;
- 5 • Exhibit Smith-4: 2021 Amount Charged to Depreciation and
- 6 Amortization Expense for Recovery of SLM Regulatory Assets;
- 7 • Exhibit Smith-5: 2021 Interest Savings Attributable to Investment
- 8 Grade Credit Rating;
- 9 • Exhibit Smith-6: S&P Global Rating Action dated June 28, 2021

10 **II. JUNE 25, 2020, ORDER IN CASE NO. 2020-00064**

11 **Q. Please identify the information you will be providing pursuant to**

12 **the Ordering Paragraph 10 of the Commission’s June 25, 2020, Order**

13 **in Case No. 2020-00064.**

14 A. I will provide information specifically addressing the first five matters

15 identified in the May 29, 2020, Settlement Agreement among Big Rivers, the

16 Kentucky Industrial Utility Customers, Inc. and the Office of the Attorney

17 General of the Commonwealth of Kentucky, as set forth in the Commission’s

18 June 25, 2020 Order:¹⁷

19 a. Year-end TIER calculation for the prior calendar year;

¹⁷ Case No. 2020-00064, Order at page 16 (June 25, 2020).

- 1 b. The amount of the New TIER Credit that will flow through the
2 MRSM Rider during the following twelve months;
- 3 c. The amount charged to depreciation and amortization expense for
4 recovery of the SLM Regulatory Assets in the prior calendar year,
5 that will reduce the SLM Regulatory Assets balance;
- 6 d. Status of the amortization of the SLM Regulatory Assets; and
- 7 e. Interest savings gained (annualized) once investment grade
8 ratings are received from at least two of the three rating agencies.

9 I will also provide Big Rivers' current Member equity balance and the
10 minimum required by its loan covenants as specified in the June 25, 2020
11 Order.¹⁸

12

13 **Q. What is the Year-end TIER calculation for the prior calendar year?**

14 A. As shown on Exhibit Smith-2, the 2021 pre-TIER Credit net margins
15 (excluding the equity utilization of \$84.9 million) are \$54.1 million, which
16 equates to a TIER of 2.70. In accordance with the Commission's Order in
17 Case No. 2020-00064, such financial results prompt the recording of a New
18 TIER Credit of \$44.5 million, resulting in reported net margins of \$9.5
19 million which equates to the targeted approved TIER of 1.30 (excluding the
20 equity utilization previously mentioned).

21

¹⁸ *Id.* at page 21.

1 **Q. Please identify the amount of the New TIER Credit that will flow**
2 **through the MRSM Rider during the following twelve months.**

3 A. In accordance with the Commission's Order in Case No. 2020-00064, \$26.7
4 million (60%) of the New TIER Credit will be recorded as a regulatory
5 liability to reduce the SLM Regulatory Assets, and \$17.8 million (40%) of
6 the New TIER Credit will flow through the MRSM Rider in 2022.
7 As shown on Exhibit Smith-3, the amount of the New TIER Credit to flow
8 through the MRSM Rider in 2022 is to be credited to Rural and Large
9 Industrial customers based on a two-part allocation: 1) the first \$0.7 million
10 is assigned to Rural customers, and 2) the balance of the New TIER Credit
11 is allocated to each customer class based on their respective 2022 revenue.
12 Of the total \$17.8 million MRSM Rider bill credits in 2022, \$14.2 million
13 will be credited to Rural customers and \$3.6 million will be credited to
14 Large Industrial customers. Accordingly, \$1.5 million (Rural: \$1.2 million
15 and Large Industrial: \$0.3 million) will be credited each month in 2022.

16
17 **Q. Please provide the amount charged to depreciation and**
18 **amortization expense for recovery of the SLM Regulatory Assets in**
19 **the prior calendar year, which will reduce the SLM Regulatory**
20 **Assets balance.**

21 A. Based on the 2021 New TIER Credit calculation, as referenced above, \$26.7
22 million was charged to amortization expense for recovery of the SLM

1 Regulatory Assets. This amount is currently recorded as a regulatory
2 liability per Case No. 2020-00064. In accordance with the Commission's
3 Order, the regulatory liability account balance exceeds the required \$9
4 million minimum; accordingly, Big Rivers proposes to annually utilize the
5 regulatory liability amount in excess of \$9 million, or \$26.7 million in 2021,
6 to reduce the SLM Regulatory Assets in 2022.

7
8 **Q. Please identify the Member equity balance utilized to reduce the**
9 **SLM Regulatory Assets.**

10 A. At December 31, 2020, Big Rivers' Member equity balance was \$531.5
11 million and the minimum required by its loan covenants was \$425.3 million
12 Of the \$106.2 million excess equity, \$84.9 million (80%) was recorded as a
13 reduction in the SLM Regulatory Asset balance in 2021 in accordance with
14 the Order in 2020-00064.

15
16 **Q. Please explain the status of the amortization of the SLM Regulatory**
17 **Assets.**

18 A. Big Rivers began amortizing the SLM Regulatory Assets in January 2021.
19 This amortization resulted in a reduction to the Smelter Loss Mitigation
20 Regulatory Assets by \$13.0 million. Additionally, the SLM Regulatory
21 Assets were reduced in 2021 by recording the one time equity headroom
22 adjustment of \$84.9 million against the SLM Regulatory Assets, as ordered

1 in the final order in Case No. 2020-00064. As ordered in the final order in
2 Case No. 2021-00061, the SLM Regulatory Assets were reduced in 2021 by
3 \$11.0 million as a result of utilizing the excess 2020 TIER Credit Regulatory
4 Liability.

5 The total balance of the SLM Regulatory Assets as of January 1, 2021
6 was approximately \$385.0 million. As of December 31, 2021, the SLM
7 Regulatory Asset total balance decreased to approximately \$281.1 million,
8 excluding the regulatory liability balance of \$35.7 million, as indicated in
9 Exhibit Smith-4. The December 2021 balance of each of the SLM Regulatory
10 Assets is included in Exhibit Smith-4.

11

12 **Q. Please explain the annual interest savings realized by receiving an**
13 **investment grade rating from at least two of the three rating**
14 **agencies.**

15 A. With the S&P Global Ratings (“S&P”) credit rating upgrade in June, 2021,
16 Big Rivers has reestablished investment grade credit ratings from all three
17 rating agencies,¹⁹ thereby reducing fees on the CFC Revolving Credit
18 Facility. Based on the discounted fee structure, Big Rivers will recognize
19 annual interest savings of approximately \$165,000. Please see Exhibit
20 Smith-5 showing Big Rivers’ interest savings and Exhibit Smith-6, a copy
21 of the S&P Global Rating Action dated June 28, 2021.

¹⁹ On June 28, 2021, S&P assigned Big Rivers an investment grade rating, BBB-.

1 **III. AUGUST 17, 2020, ORDER IN CASE NO. 2019-00365**

2 **Q. What relief did Big Rivers seek in Case No. 2019-00365?**

3 A. In Case No. 2019-00365, Big Rivers and Meade County RECC filed a joint
4 application seeking approval of a retail contract for electric service between
5 Meade County RECC and Nucor and a related wholesale letter agreement
6 between Big Rivers and Meade County RECC, to facilitate the construction
7 of a new Nucor facility in Brandenburg, Kentucky. Big Rivers also sought
8 approval to establish a modified version of the Large Industrial Customer
9 Expansion (“LICX”) tariff that was in effect from 2000 through 2014.

10

11 **Q. Did the Commission grant the relief Big Rivers sought, and how does
12 the final order in Case No. 2019-00435 relate to this proceeding?**

13 A. Yes, the Commission made the proposed LICX Tariff effective on and after
14 the date of entry of its final order, August 17, 2020. Ordering Paragraph 6
15 of the final order in that case stated: “BREC and Meade County RECC shall
16 file as part of BREC’s annual filing required by ordering paragraph 10 of the
17 Commission’s June 25, 2020 Ordering Case No. 2020-00064 information
18 detailing the financial impacts of the Nucor retail electric service agreement
19 and the impact the Nucor load has had on BREC’s credit ratings.”

20

21

1 **Q What were the financial impacts of the Nucor retail service**
2 **agreement in 2021?**

3 A. The Nucor facility in Brandenburg is still under construction and has not yet
4 begun taking service under the retail service agreement approved in Case
5 No. 2019-00365. That agreement will take effect shortly before or at the time
6 of the Commercial Operation Date of the Nucor facility. Until then, during
7 the construction phase, Nucor takes service for construction power through
8 a standard Meade County RECC tariff under Big Rivers' Rural tariff. In
9 2021, Meade County RECC billed Nucor a total amount of approximately
10 [REDACTED], which includes initial temporary service, construction trailers, and
11 primary metering.

12
13 **Q What impact has the Nucor load had on Big Rivers' credit ratings in**
14 **2021?**

15 A. In addition to what was reported in 2021, S&P's Rating Action report noted,
16 "Although the municipal contracts expire in 2026 (240 MW) and 2029 (100
17 MW), BREC projects that adding Nucor sales will reduce market exposure
18 to modest, single-digit percentage levels. Nucor will add to the BREC
19 system's industrial concentration."

20

1 **IV. CONCLUSION**

2 **Q. Please summarize the relief requested by Big Rivers in this**
3 **proceeding?**

4 A. As outlined above and in accordance with the Commission's Order, the
5 regulatory liability account balance exceeds the required \$9 million
6 minimum; accordingly, Big Rivers proposes to annually use the regulatory
7 liability amount in excess of \$9 million, or \$26.7 million in 2021, to further
8 reduce the SLM Regulatory Assets in 2022. For avoidance of doubt, Big
9 Rivers is proposing that the excess of the regulatory liability balance above
10 \$9 million be allowed to automatically reduce the regulatory asset at year-
11 end as opposed to waiting for explicit approval in the subsequent year, as
12 currently perceived to be necessary.

13

14 **Q. Does this conclude your testimony?**

15 A. Yes.

Professional Summary

Paul G. Smith
Vice President and Chief Financial Officer
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420
Phone: 270-844-6194

Professional Experience

Big Rivers Electric Corporation
Vice President and Chief Financial Officer — 2018 to present

NextEra Energy Transmission
Senior Director Business Management 2012-2018

Duke Energy
Vice President Retail Marketing 2010-2011
Vice President Rates 2006-2009
General Manager Budgets & Forecasts 2001-2005
Manager UK Distribution Price Control 1998-2000
Manager Revenue Requirements 1996-1997
Various Financial Positions of increasing responsibility 1987-1995

Crowe, Chizek & Co (CPA) 1984-1986

Touche, Ross & Co (CPA) 1982 - 1983

Education

Master of Business Administration
University of Chicago

Bachelor of Science Industrial Management (Computer Science Minor)
Purdue University

Big Rivers Electric Corporation
Case No. 2022-00028
TIER Credit Calculation

TIER CREDIT			<u>12/31/2021</u>
(1)	Interest Charges on Secured Obligations (gross)		31,830,181.3500
(2)	Net Margin for a 1.30 TIER		9,549,054.4000
(3)	Actual Net Margin (excluding Jan 2021 Equity Adjustment)		54,091,996.4800
(4)	TIER CREDIT	[(3) - (2)]	44,542,942.0800
(5)	Regulatory Liability		26,725,765.2500
(6)	MRSM Liability - Rural		14,232,326.4900
(7)	MRSM Liability - Large Industrial		3,584,850.3400
(8)	Total MRSM	[(6) + (7)]	17,817,176.8300
(9)	TIER CREDIT	[(5) + (8)]	44,542,942.0800

Big Rivers Electric Corporation
Case No. 2022-00028
Allocation of Monthly Bill Credit to Customer Classes

2021 New TIER Credit (Total)	\$44,542,942.08
<u>Annual</u> Amount to Refund as Monthly Bill Credit starting with January 2022 service month	\$17,817,176.83
<u>Monthly</u> Amount to Refund as Monthly Bill Credit starting with January 2022 service month	\$1,484,764.74

	<u>Total</u>	<u>Rural</u>	<u>Large Industrial</u>
<u>Rural & Large Industrial Customer Percentage Allocation:</u>			
2021 Member Revenue (Excluding EDR Sales)	\$221,251,897.74	\$174,915,029.30	\$46,336,868.44
Less: Sales not FAC applicable	0.00	0.00	0.00
2021 Adjusted Revenue for MRSM Purposes	\$221,251,897.74	\$174,915,029.30	\$46,336,868.44
Allocation of Monthly Bill Credit	100.0000%	79.0570%	20.9430%
<u>Rural & Large Industrial Customer Dollar Allocation:</u>			
Rural and Large Industrial Customer Bill Credit Allocation	\$17,117,176.83	\$13,532,326.49	\$3,584,850.34
Rural Initial Credit	700,000.00	700,000.00	0.00
Total Billed in 2022 MRSM	17,817,176.83	\$14,232,326.49	\$3,584,850.34
2022 Monthly Bill Credit (12 equal monthly installments)	\$1,484,764.74	\$1,186,027.21	\$298,737.53

Big Rivers Electric Corporation
Case No. 2022-00028
Regulatory Asset Schedule

	Focused Management <u>Audit</u>	Wilson Station Deferred <u>Depreciation</u>	Coleman Station Deferred <u>Depreciation</u>	Reid Station Unit #1 <u>Decommission</u>	Station Two <u>Decommission</u>	Coleman Station <u>Decommission</u>	<u>Total</u>
December 2019 Regulatory Assets	\$ 676	\$ 120,544	\$ 37,245	\$ -	\$ 90,424	\$ -	\$ 248,889
2020 Deferred Depreciation	-	20,838	4,368	-	-	-	25,206
Reid Unit #1 Retirement	-			7,769			7,769
Station Two Decommissioning	-				1,678		1,678
Coleman Station Retirement	-					129,869	129,869
Less: 2019 Station Two TIER Credit	-	-	(27,743)	-	-	-	(27,743)
Less: Demand-Side Management Credit	(676)	(29)	-	-	-	-	(705)
December 2020 Regulatory Assets	-	141,353	13,870	7,769	92,102	129,869	384,963
Reid Unit #1 Decommissioning	-	-	-	1,573	-	-	1,573
Station Two Decommissioning	-	-	-	-	855	-	855
Coleman Station Decommissioning	-	-	-	-	-	2,746	2,746
Less: 2020 Excess TIER Credit	-	(11,000)	-	-	-	-	(11,000)
Less: Equity Headroom Utilization	-	(84,945)	-	-	-	-	(84,945)
Less: 2021 Monthly Amortization	-	(13,044)	-	-	-	-	(13,044)
December 2021 Regulatory Assets	-	32,364	13,870	9,342	92,957	132,615	281,148

**Big Rivers Electric Corporation
Case No. 2022-00028
Regulatory Asset Schedule**

	Focused Management <u>Audit</u>	Wilson Station Deferred <u>Depreciation</u>	Coleman Station Deferred <u>Depreciation</u>	Reid Station Unit #1 <u>Decommission</u>	Station Two <u>Decommission</u>	Coleman Station <u>Decommission</u>	<u>Total</u>
December 2021 Regulatory Assets from Prior Page	-	32,364	13,870	9,342	92,957	132,615	281,148
December 2021 Regulatory Liability ¹	-	(32,364)	(3,362)	-	-	-	(35,726)
December 2021 Net Regulatory Assets	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 10,508</u>	<u>\$ 9,342</u>	<u>\$ 92,957</u>	<u>\$ 132,615</u>	<u>\$ 245,422</u>

Note: 1.- Regulatory Liability amount includes the \$9,000 minimum balance carried-forward from 2020, plus 2021 Excess TIER Credit of \$26,726.
The 2021 Excess TIER Credit of \$26,726 is proposed in this proceeding to reduce the Regulatory Assets in 2022.

Big Rivers Electric Corporation
Case No. 2022-00028
2021 Interest Savings

	\$150m Facility- Non-Investment Grade Level V	\$150m Facility- Investment Grade Level IV	<i>Difference</i>
Amounts & Terms:			
Total Facility Amount:	\$ 150,000,000	\$ 150,000,000	\$ -
Term (Years):	3	3	-
Secured/ Unsecured:	Secured	Secured	
Fees:			
One-Time/ Up-Front Fee:			
Arranger Fee (% of Total Facility)	0.008%	0.008%	0.000%
Arranger Fee (\$ Amt.)	\$ 10,000	\$ 10,000	\$ -
Upfront Fee (% of Total Facility)	0.175%	0.175%	0.000%
Upfront Fee (\$ Amt.)	\$ 262,500	\$ 262,500	\$ -
Annual Fees:			
Annual Facility Fee (% of Total Facility) <i>(per Pricing Grid)</i> ⁽¹⁾	0.350%	0.250%	0.100%
Annual Facility Fee (\$ Amt.) ⁽¹⁾	\$ 525,000	\$ 375,000	\$ 150,000
Annual Admin. Fee (% of Total Facility)	0.016%	0.016%	0.000%
Annual Admin. Fee (\$ Amt.)	\$ 20,000	\$ 20,000	\$ -

Big Rivers Electric Corporation
Case No. 2022-00028
2021 Interest Savings

	\$150m Facility- Non-Investment Grade Level V	\$150m Facility- Investment Grade Level IV	<i>Difference</i>
Letter of Credit (L/C) Fees:			
L/C Fronting Fee (% of Total L/Cs Outstanding)	0.125%	0.125%	0.000%
L/C Fronting Fee (Annual \$ Amt. Assuming \$10MM L/Cs Outstanding)	\$ 12,500	\$ 12,500	\$ -
L/C Participant Fee (% of Total L/Cs Outstanding) (per Pricing Grid) ⁽¹⁾	1.650%	1.500%	0.150%
L/C Fronting Fee (Annual \$ Amt. Assuming \$10MM L/Cs Outstanding)	\$ 165,000	\$ 150,000	\$ 15,000
Total Upfront Fees (one-time fees)	\$ 272,500	\$ 272,500	\$ -
Total Annual Fees	\$ 545,000	\$ 395,000	\$ 150,000
Total Letter of Credit Fees (assuming \$5MM outstanding)	\$ 177,500	\$ 162,500	\$ 15,000

⁽¹⁾ Based on Big Rivers' current credit ratings and ratings-based pricing grid per existing 2020 agreement (see below).

 = Big Rivers' current credit ratings and applicable Pricing Level as of 2/1/2022.

		Ratings			Big Rivers' Rates	
Pricing Level	S&P	Moody's	Fitch	L/C Part. Fee & LIBO Margin	Annual Facility Fee	
I.	≥ A-	≥ A3	≥ A-	1.000%	0.125%	
II.	BBB+	Baa1	BBB+	1.100%	0.150%	
III.	BBB	Baa2	BBB	1.300%	0.200%	
IV.	BBB-	Baa3	BBB-	1.500%	0.250%	
V.	BB+	Ba1	BB+	1.650%	0.350%	
VI.	BB	Ba2	BB	2.125%	0.375%	
VII.	≤ BB-	≤ Ba3	≤ BB-	2.300%	0.500%	

RatingsDirect®

Summary:

Big Rivers Electric Corp., Kentucky; Rural Electric Coop

Primary Credit Analyst:

David N Bodek, New York + 1 (212) 438 7969; david.bodek@spglobal.com

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Table Of Contents

Rating Action

Stable Outlook

Credit Opinion

Related Research

Summary:

Big Rivers Electric Corp., Kentucky; Rural Electric Coop

Credit Profile

Big Rivers Electric Corp. ICR

Long Term Rating

BBB-/Stable

Upgraded

Rating Action

S&P Global Ratings raised to 'BBB-' from 'BB+' its issuer credit rating on Big Rivers Electric Corp. (BREC), Ky. The outlook is stable.

Credit overview

The higher rating reflects the enhanced revenue-stream stability we expect the utility will derive from a member utility's significant and imminent retail load addition and the predictable revenues from off-system sales to municipal utilities under intermediate-term contracts. We believe these developments will complement Big Rivers' consistently strong financial margins by sharply reducing dependence on sales of surplus generation output in competitive markets. Moreover, management forecasts halving debt through the end of the decade, which will contribute to favorable leverage metrics.

Although we believe management actions and load growth should enhance revenue-stream predictability and stability, we nevertheless associate operational risks with this utility that constrain the rating. These exposures include:

- An extremely high coal concentration that accounted for 100% of self-generation in 2018-2020 and 70%-80% of energy sold;
- The potential costs of substituting cleaner generation resources for existing generation to comply with regulatory and legislative carbon-reduction initiatives;
- The BREC system's significant reliance on revenues from industrial customers; and
- The service territory's weak income levels.

BREC is a generation and transmission cooperative serving three member distribution cooperatives.

Following the loss of two smelter loads in 2013, BREC has relied on sales of surplus energy production in competitive wholesale markets to augment member revenues. We view market sales as exposing utilities to unpredictable revenues. Sales to members provided 72% of operating revenues in 2020, with the balance principally coming from market sales. However, BREC projects market revenues will decline to nominal levels by 2023 as its members add a 200-megawatt (MW) load from steel manufacturer Nucor Corp. and power sales continue under multi-year contracts between BREC and municipal utility systems. BREC projects that Nucor will account for approximately 20% of its post-2022 electric sales. Although the municipal contracts expire in 2026 (240 MW) and 2029 (100 MW), BREC

projects that adding Nucor sales will reduce market exposure to modest, single-digit percentage levels. Nucor will add to the BREC system's industrial concentration.

Unlike many other cooperative utilities, BREC does not have autonomous rate-setting authority. Rather, the Kentucky Public Service Commission (PSC) establishes the cooperative's wholesale rates and its members' retail rates.

Tempering the absence of rate-setting autonomy is a history of supportive regulatory decisions and utility projections of modest rate increases.

The stable outlook reflects improved prospects for stable financial performance based on sales to non-member municipal utilities and the imminent commencement of sales to Nucor. We expect these developments will sharply reduce BREC's reliance on volatile market prices for energy sales.

Environmental, social and governance (ESG) factors

We believe BREC's generation fleet presents significant environmental exposures as the national focus on reducing greenhouse gas emissions advances. The use of coal to produce electricity continued to represent almost 100% of the utility's self-generation in 2020 and 80% of the electricity BREC sold that year. Management recently received PSC approval to convert its Green generating station to burn natural gas. However, the Wilson generating station, which supports a greater share of self-generation, will continue to burn coal. Wilson accounted for two-thirds of 2020 generation from owned resources and Green, only one-third.

EIA data show that residential rates are 10%-13% higher than state averages in 2019, which we view as creating social risks that could limit financial flexibility, especially if the utility needs to secure cleaner generation resources while recovering undepreciated costs of existing resources. The state's high poverty rate, which pervades portions of the service territory, compounds affordability issues and social risks.

We believe management demonstrated favorable governance attributes through its pursuit of contracts for sales of the output of surplus generation capacity to non-member utilities to temper market exposure. Securing contracted and off-system sales also allocated to non-members fixed costs that were historically absorbed by smelter loads prior to their 2013 departure. The utility also benefits from a proactive regulator that in addition to overseeing the utility's rates, has demonstrated a commitment to monitoring management and board actions.

Stable Outlook

Downside scenario

We could lower the rating if the utility cannot sustain sound financial performance because of carbon-reduction costs or economic dislocations among the utility's industrial customers.

Upside scenario

Although management has made considerable strides in enhancing the stability and predictability of the revenue stream, we do not expect to raise the rating within our two-year outlook horizon. We believe the utility faces several material exposures that strong financial metrics do not fully offset. The exposures include a substantial carbon dependence, a significant reliance on industrial customers, and rates that we consider high relative to low income levels.

Credit Opinion

BREC reported \$700 million of debt as of Dec. 31, 2020, and projects reporting \$840 million of debt at year-end 2021, reflecting additional issuance. Nevertheless, the utility projects halving debt balances incrementally by the end of the decade and maintaining a favorable debt-to-capitalization ratio for a cooperative utility of 57%-65% through 2024. The utility also projects robust debt service coverage metrics of at least 1.7x through 2024, with the exception of lower coverage in 2023, due to that year's large maturity. Unrestricted balance sheet cash, together with capacity remaining under committed lines, provided liquidity equivalent to more than eight months' operating expense, net of depreciation.

Related Research

- Through The ESG Lens 2.0: A Deeper Dive Into U.S. Public Finance Credit Factors, April 28, 2020

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at www.standardandpoors.com for further information. Complete ratings information is available to subscribers of RatingsDirect at www.capitaliq.com. All ratings affected by this rating action can be found on S&P Global Ratings' public website at www.standardandpoors.com. Use the Ratings search box located in the left column.

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ORIGINAL



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

In the Matter of:

ELECTRONIC APPLICATION OF)	
BIG RIVERS ELECTRIC CORPORATION)	Case No.
FOR ANNUAL REVIEW OF ITS MRSM)	2022-00028
CHARGE FOR CALENDAR YEAR 2021)	

DIRECT TESTIMONY

OF

**NATHANIAL A. BERRY
VICE PRESIDENT OF PRODUCTION**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

FILED: February 28, 2022

Application Exhibit C

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION FOR ANNUAL REVIEW
OF ITS MRSM CHARGE FOR CALENDAR YEAR 2021
CASE NO. 2022-00028**

VERIFICATION

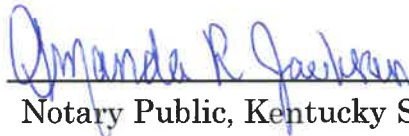
I, Nathaniel A. ("Nathan") Berry, verify, state, and affirm that I prepared or supervised the preparation of the Direct Testimony filed with this Verification, and that Direct Testimony is true and accurate to the best of my knowledge, information, and belief after a reasonable inquiry.



Nathaniel A. ("Nathan") Berry

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Nathaniel A. ("Nathan") Berry
on this the 28th day of February 2022.



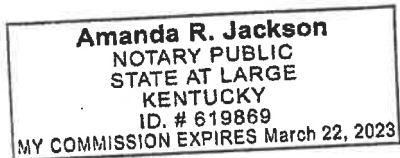
Notary Public, Kentucky State at Large

Kentucky ID Number

619869

My Commission Expires

March 22, 2023



**DIRECT TESTIMONY
OF
Nathanial A. Berry**

Table of Contents

I. INTRODUCTION	1
II. STATUS OF DECOMMISSIONING	4
A. COLEMAN STATION.....	4
B. REID STATION UNIT 1	5
C. STATION TWO	7
III. AWARDED PROPOSALS FOR DECOMMISSIONING.....	11
IV. REASONABLENESS OF DECOMMISSIONING COSTS	11
V. CONCLUSION	13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

DIRECT TESTIMONY
OF
NATHANIAL A. BERRY

I. INTRODUCTION

Q. Please state your name, business address and occupation.

A. My name is Nathaniel (“Nathan”) A. Berry. My business address is 201 Third Street, Henderson, Kentucky 42420. I am the Vice President of Production for Big Rivers Electric Corporation (“Big Rivers”).

Q. Please summarize your education and professional experience.

A. I graduated from the Rochester Institute of Technology in 2008 with a Bachelor of Science in Mechanical Engineering. I worked at Louisville Gas & Electric from 2007 to 2008, Duke Energy from 2008-2013, and Alabama Power Company from 2013-2017. I began my career with Big Rivers in 2017 and have served in a variety of production managerial roles including Production Manager and Plant Manager. Currently, I serve as the Vice President of Production for Big Rivers. My professional experience is summarized in Exhibit Berry-1.

1 **Q. Please summarize your duties at Big Rivers.**

2 A. As the Vice President of Production, I oversee all activities related to the
3 operation and maintenance of the corporation's coal and gas-fired
4 generating facilities, including fuel procurement and management, and
5 power plant engineering and construction.

6
7 **Q. Have you previously testified before the Kentucky Public Service
8 Commission ("Commission")?**

9 A. Yes. I provided written and oral testimony before the Commission on
10 behalf of Big Rivers in Case No. 2020-00299,¹ in which Big Rivers
11 presented its 2020 Integrated Resource Plan.

12
13 **Q. Please identify the information you will be providing pursuant to
14 Ordering Paragraph 10 of the June 25, 2020, Order in Case No.
15 2020-00064.**

16 A. I will provide information specifically in regard to the last two matters
17 identified in May 29, 2020, Settlement Agreement, as set forth in the
18 Commission's Order.² The matters include:

¹ *In the Matter of: Electronic 2020 Integrated Resource Plan of Big Rivers Electric Corporation*
(Filed Sept. 21, 2020).

² *Id.* at page16.

- 1 1. The status of and expected decommissioning costs of Coleman
2 Station and Reid Station Unit 1, and Big Rivers' estimated share of
3 costs associated with Station Two; and
4 2. A copy of any proposal to decommission Coleman Station, Reid
5 Station Unit 1, and Station Two that was awarded in 2021.

6 I will also support the reasonableness of the decommissioning costs
7 and provide detailed descriptions of all actions Big Rivers has taken to
8 minimize decommissioning costs.³ The Direct Testimony of Michael Mizell,
9 Big Rivers' Vice President of Environmental Compliance, attached to the
10 Application as Exhibit D, provides additional information regarding the
11 status of decommissioning activities related to the ash-pond closures and
12 environmental compliance matters.

13

14 **Q. Are you sponsoring any Exhibits?**

15 A. Yes. The following exhibits were prepared by me or under my supervision:

- 16 • Exhibit Berry-1 - Professional Summary;
17 • Exhibit Berry-2 – Awarded Proposal

18

³ See *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRSM Tariff, Cease Deferring Depreciation Expense, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief*, P.S.C. Case No. 2020-00064, Order (June 25, 2020), at page 21.

1 **II. STATUS OF DECOMMISSIONING**

2 **A. COLEMAN STATION**

3 **Q. What is the status of decommissioning of the Coleman Station?**

4 A. The asbestos has been removed from the Coleman plant site and demolition
5 has started. The primary areas of demolition are the surrounding buildings
6 and the flue gas desulfurization (“FGD”) preparation building. The
7 complete demolition of Coleman Station is estimated to be complete by July
8 2022.

9 The Direct Testimony of Michael Mizell provides additional
10 information regarding the status of Coleman Station decommissioning
11 activities related to closure of Coleman Station’s three ash ponds, which is
12 “Project 13-2” of Big Rivers’ 2020 Environmental Compliance Plan.⁴

13

14 **Q. Please detail the anticipated decommissioning costs expected to be**
15 **incurred by Big Rivers for the Coleman Station.**

16 A. Big Rivers’ Application in Case No. 2021-00061⁵ (the “2021 MRS
17 Application”) included as Exhibit Pullen-2 a copy of the CDS full proposal

⁴ See *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2020 Environmental Compliance Plan, Authority to Recover Costs Through a Revised Environmental Surcharge and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief*, Case No. 2019-00435, Application (filed Feb. 7, 2020).

⁵ *In the Matter of: Electronic Application of Big Rivers Electric Corporation For Review Of Its MRS Credit for Calendar Year 2020*, Case No. 2021-00061, Application (filed Feb. 26, 2021).

1 and revised bid for work related to the Coleman Station decommissioning,
2 with an estimated cost of \$2,702,345.00. As stated above, the project is
3 estimated to be completed in July 2022, at this cost. There is no new
4 information to report and no additional proposals were awarded in 2021 for
5 the decommissioning of the Coleman Station.

6 B. REID STATION UNIT 1

7 **Q. What is the status of decommissioning of Reid Station Unit 1?**

8 A. Reid Station Unit 1 (*Reid Unit 1*) was retired on September 30, 2020.

9 Due to it being adjacent to Henderson Station Two, Reid Unit 1 is expected
10 to be fully decommissioned in connection with the full decommissioning of
11 Station Two. Big Rivers is prepared to begin the full decommissioning
12 process at Reid Unit 1 and Station Two. However, as the Commission is
13 aware, outstanding issues between Big Rivers and Henderson⁶ related to
14 the decommissioning of Station Two has delayed the decommissioning of
15 Station Two. Nevertheless, Big Rivers recently awarded a contract for
16 decommissioning of Station Two as discussed more fully below.

17 Big Rivers has proceeded with certain decommissioning activities,
18 such as making the unit “dry, dark, and safe” as well as asbestos and
19 insulation abatement at Reid Unit 1. As discussed in Big Rivers’ 2021

⁶ “Henderson” means the City of Henderson, Kentucky, and the Henderson Utility Commission d/b/a Henderson Municipal Power & Light (“HMPL”).

1 MRSM Application, the asbestos and insulation abatement project was
2 awarded to General Insulation. In fact, the asbestos and insulation
3 removal was completed in September 2021. No additional proposals were
4 awarded in 2021 for the decommissioning of Reid Unit 1.

5
6 **Q. Please detail the anticipated decommissioning costs expected to be**
7 **incurred by Big Rivers for the Reid Station Unit 1.**

8 A. The 2016 Burns & McDonnell Decommissioning Cost Estimate Study for
9 Coleman Station and Reid Station Unit provides the ongoing costs for the
10 retirement in place of Reid Unit 1, which is equivalent to the costs Big
11 Rivers anticipates incurring until full decommissioning begins and while
12 waiting for the issues in Case No. 2019-00269 to be resolved. Big Rivers
13 previously provided the Commission a copy of this study, in response to the
14 Commission Staff's Initial Request for Information in Case No. 2020-00064.

15 General Insulation's proposal, provided as Exhibit Pullen-3 in Case
16 No. 2021-00061, showed the anticipated cost of asbestos and insulation
17 removal is \$840,513.00. The project was completed in September 2021, at
18 this cost.

19

1 C. STATION TWO

2 **Q. What is the status of decommissioning of Station Two?**

3 A. As the Commission is aware, Big Rivers began the process of
4 decommissioning the Station Two site by starting to transition the plant
5 into a “safe, dark, and dry” status to prepare the plant to undergo full
6 decommissioning in the near future.⁷ Michael T. Pullen’s Direct Testimony
7 in Case No. 2019-00269 detailed the work already performed to get the
8 units in a “dry, dark, and safe” condition and Big Rivers’ continuing work to
9 maintain the units in a dry, dark and safe condition until the Station Two
10 site is fully decommissioned.⁸

11 Big Rivers is prepared to continue with the full decommissioning
12 process for Station Two, including decommissioning any joint use facilities
13 as Big Rivers ceases to utilize them. However, full decommissioning has
14 been delayed due to the outstanding issues between Big Rivers and
15 Henderson related to the decommissioning of Station Two. Nevertheless,
16 Big Rivers recently awarded a contract for Station Two decommissioning
17 activities.

⁷ See *In the Matter of: Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards*, P.S.C. Case No. 2019-00269, Application Exhibit 4, Direct Testimony of Michael T. Pullen at pages 4-5.

⁸ Henderson has appealed the Commission’s August 2, 2021, Order to the Franklin Circuit Court in consolidated Case No. 18-CI-00078.

1 Henderson has yet to fully reimburse Big Rivers for its share of the
2 outstanding decommissioning costs, as required by the Commission's
3 August 2, 2021 Order in Case No. 2019-00269.⁹ On September 29, 2021,
4 Big Rivers filed an application seeking enforcement of the Commission's
5 Order.¹⁰ This Application and the two Supplements to the Application
6 filed November 12, 2021 and December 14, 2021, fully describe the
7 amounts owed by Henderson to Big Rivers pursuant to the Commission's
8 August 2, 2021, Order, as of December 3, 2021.

9
10 **Q. Please detail the anticipated decommissioning costs expected to be**
11 **incurred by Big Rivers for Station Two (including the total**
12 **anticipated decommissioning costs and Big Rivers' estimated share**
13 **of such costs).**

14 A. Pursuant to the Commission's August 2, 2021, Order in Case No. 2019-
15 00269, Big Rivers anticipates its share of the costs to fully decommission
16 Station Two, will include its share of the costs to fully decommission the
17 Station Two site, the Station Two ash pond, the ash pond dredgings in the
18 Green landfill, and all other joint use facilities, either now (if Big Rivers is

⁹ *In the Matter of: Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards*, P.S.C. Case No. 2019-00269.

¹⁰ *In the Matter of: Big Rivers Electric Corporation Application for Enforcement of Commission Order*, P.S.C. Case No. 2021-00378.

1 no longer going to utilize them) or in the future (once Big Rivers ceases to
2 utilize them).

3 Until the Station Two site is fully decommissioned, including
4 dismantling the generating units and restoring the site to a condition
5 suitable for industrial use, there will continue to be ongoing maintenance
6 associated with the Station Two site, including routine maintenance costs
7 such as maintaining stack lighting in accordance with Federal Aviation
8 Administration regulations, providing site security, and maintaining the
9 fire protection system and the asbestos insulation. Big Rivers estimated
10 that there will be approximately \$750,000 in annual maintenance expenses
11 on an ongoing basis until the Station Two site is fully decommissioned.¹¹

12 As fully discussed in Michael Pullen's Direct Testimony in Big
13 Rivers' Application in Case No. 2019-00269,¹² Big Rivers received two firm
14 price proposals to remove asbestos and non-asbestos insulation from the
15 Station Two units, ranging from approximately \$1.6 million to \$2.8 million.

16 Subsequently, Big Rivers continued the competitive bidding process
17 and received additional proposals for insulation removal and asbestos
18 abatement for Station Two, which also included structural demolition. Big

¹¹ *In the Matter of: Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards*, P.S.C. Case No. 2019-00269, Direct Testimony of Michael T. Pullen, at page 11.

¹² *In the Matter of: Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards*, P.S.C. Case No. 2019-00269 (filed July 31, 2019).

1 Rivers recommended the award of a contract for these services to FED
2 Environmental, LLC at a total cost of \$1,051,800. The contract was
3 approved by the Henderson Utility Commission on January 31, 2022.

4 This contract does not include the decommissioning costs of certain
5 joint use facilities, such as the costs to close the Station Two ash pond or
6 future costs relating to environmental monitoring and any required
7 environmental remediation.¹³ In addition, the contract cost does not
8 include the ongoing costs that are attributable to Henderson's use of the
9 Big Rivers Green Station landfill, which is the repository for Station Two
10 ash pond dredgings that are owned by Henderson and are listed as a joint
11 use facility in Exhibit 1 to the 1993 Amendments to Contracts. Like with
12 the Station Two ash pond, there will be future costs associated with the
13 Station Two ash pond dredgings in the Big Rivers landfill, such as
14 environmental monitoring costs and the costs for any required
15 environmental remediation, as well as the costs to close the landfill at the
16 end of its life, for which Henderson will be responsible for its share under
17 the terms of the Station Two Contracts.

¹³ In its 2021 MRS M Application, Big Rivers estimated the costs associated with closing the ash pond to be in the range of \$13.3 million, with annual estimated costs of \$25,000 for ground watering monitoring for thirty years.

1 **III. AWARDED PROPOSALS FOR DECOMMISSIONING**

2 **Q. Were any proposals for the decommissioning of the Coleman**
3 **Station, Reid Station Unit 1, or Station Two awarded in the prior**
4 **year?**

5 A. No new proposals for the decommissioning of the Coleman Station or Reid
6 Station Unit 1 were awarded in the prior year. Big Rivers' 2021 MRSM
7 Application included a copy of the CDS proposal for the demolition and
8 abatement of Coleman Station and a copy of General Insulation's proposal
9 for asbestos and insulation removal at Reid Unit one, as Exhibits Pullen-2
10 and Pullen-3. Recently, a proposal for insulation and asbestos removal and
11 demolition at Station Two was awarded. A copy of the awarded proposal is
12 attached to this testimony as, Exhibit Berry-2.

13

14 **IV. REASONABLENESS OF DECOMMISSIONING COSTS**

15 **Q. Are the 2021 decommissioning costs reasonable?**

16 A. Yes. Big Rivers' 2021 MRSM Application discussed the careful, detailed,
17 internal and external scrutiny of the decommissioning plans of the
18 Coleman Station, to ensure the decommissioning process includes only
19 reasonable measures necessary and appropriate for continued
20 environmental compliance and appropriate reuse of the site.¹⁴ Once the

¹⁴ Case No. 2021-00061, Application Exhibit B, Direct Testimony of Michael T. Pullen.

1 decommissioning plan for Coleman Station was designed and upon
2 receiving regulatory approval, Big Rivers completed detailed engineering
3 work to allow for competitive bidding of the construction and procurement
4 work. The bids were evaluated based on cost, schedule, conformance to bid
5 specifications, and demonstrated experience in safely and efficiently doing
6 the type of work.

7 As also discussed in Big River's 2021 MRSM Application, regarding
8 Station Two because Big Rivers could not unilaterally dismantle City-
9 owned property, until Henderson agreed to award the contract for Station
10 Two decommissioning, Big Rivers has continued to maintain the Station
11 Two site in accordance with the law (such as the FAA regulations with
12 respect to stack lighting) and prudent utility practice (such as doing walk
13 downs of the Station Two site to ensure that it does not become a hazard to
14 nearby people or properties).

15

16 **Q. Please provide detailed descriptions of all actions Big Rivers has**
17 **taken to minimize decommissioning costs?**

18 A. As the Commission is aware, Big Rivers minimized the Coleman Station
19 decommissioning costs through the reuse of the Coleman Station's FGD

1 and associated equipment.¹⁵ Additionally, as part of the contract with
2 CDS for decommissioning of the Coleman Station,¹⁶ the contractor will take
3 all material suitable for scrap, and the expected proceeds from the sale of
4 this scrap material was included in the CDS price for decommissioning as
5 an offset to their costs.

6 After competitive bidding of the asbestos and insulation abatement
7 project at Reid Unit 1, Big Rivers evaluated the bids based on cost,
8 schedule, conformance to bid specifications, and demonstrated experience
9 in safely and efficiently doing the type of work. This process is designed to
10 minimize the decommissioning costs.

11

12 **V. CONCLUSION**

13 **Q. Does this conclude your testimony?**

14 **A. Yes, it does.**

¹⁵ Big Rivers received Commission approval to reuse the FGD system at Big Rivers' Coleman Station by moving it to the Wilson Station in P.S.C. Case No. 2019-00435 ("Project 12").

¹⁶ A copy of the CDS contract was provided in Big Rivers' 2021 MRSM Application in P.S.C. Case No. 2021-00061.

Professional Summary

Nathanial A. Berry
Vice President of Production
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420
Phone: 270-844-6117

Professional Experience

Big Rivers Electric Corporation
Vice President of Production – 2021 to present
Plant Manager – 2018-2021
Production Manager – 2017-2018

Alabama Power Company
Production Supervisor – 2015-2017
Engineering Supervisor – 2013-2015

Duke Energy
Boiler System Engineer – 2008-2013

Louisville Gas & Electric
Maintenance Supervisor – 2007-2008

Education

Bachelor of Science Mechanical Engineering
Rochester Institute of Technology



**HENDERSON MUNICIPAL POWER & LIGHT
STATION TWO**

**H-1 & H-2
INSULATION REMOVAL AND ASBESTOS
ABATEMENT**

Specification H-21-103

BID DUE DATE: NOVEMBER 16, 2021, 2:00 P.M. CST
PREBID DATE: NOVEMBER 09, 2021, 9:00 A.M. CST

Table of Contents

- 1. Site Description**
 - 2. Scope of Work**
 - 3. Instructions to Bidder**
 - 4. Owner and Operator to Provide**
 - 5. Specific Requirements**
 - 6. Environmental**
 - 7. Site Supervision**
 - 8. Specific Contract Terms**
-
- Appendix A: General Services Agreement**
- Appendix B: Equal Opportunity Addendum**
- Appendix C: Certification Regarding Debarment**
- Appendix D: Certification Regarding Lobbying**
- Appendix E: C-SCAP Program**
- Appendix F: Clarifications & Exceptions**
- Appendix G: Vendor Information Forms**
- Appendix H: W-9 Forms**
- Appendix I: Price Sheet**
- Appendix J: Reciprocal Preference**
- Appendix K: Drawings**

1. Site Description

- 1.1. Throughout this Specification, "Owner" will mean the City of Henderson Utility Commission dba Henderson Municipal Power & Light (HMP&L), and the Operator will be known as Big Rivers Electric Corporation.
- 1.2. The HMPL Station Two power plant is comprised of two (2) one hundred seventy-five megawatt fossil fuel - fired units operated by Big Rivers Electric Corporation. The units are located approximately fifteen miles south of Henderson in Webster County at: 9000 Hwy 2096, Robards, KY 42452.

2. Scope of Work

- 2.1. Big Rivers Electric Corp. on behalf of Henderson Municipal Power and Light will be accepting bids to provide qualified supervision and labor, tools, machinery, appliances, equipment, materials, consumables, and services as required to perform the various functions related to the removal and proper disposal of all insulation materials, insulation containing asbestos, and wiring containing rockbestos including associated metal lagging on the HMP&L Units 1 and 2.
- 2.2. If any conditions, circumstances or occurrences not covered in the Specification are encountered, or if there are any doubts as to the meaning, contact the Owner's designated representative.
- 2.3. The Contractor will not assign, or sublet any part of the Work or this Specification without first obtaining the Owner and Operator's written approval. Such approval, if given, will not relieve the Contractor from full responsibility for the fulfillment of all obligations under this Specification.
- 2.4. The Contractor will be allowed to locate an office/break/tool trailer on-site at no additional cost to Owner and Operator. Any location must have prior approval from the designated Operator representative.
- 2.5. The Contractor will only be allowed to operate Contractor owned and insured vehicles on the plant site. To facilitate proper identification of ownership of any vehicle entering the plant, the Contractor and any subcontractor vehicles will be clearly marked either by permanent logo or a temporary placard displayed on the dash.
- 2.6. Bidders providing union labor will furnish the Owner and Operator a current copy of the Union Agreement, setting forth the wage rates, overtime rates, fringe benefits, travel allowance, and work rules, applicable to the labor to be supplied under this Contract.

3. Instructions to Bidder

- 3.1. Pursuant to KRS 45A.343(2), Owner requires each Contractor or Supplier bidding on a contract, to reveal to the Utility Commission in writing any final determination of a violation by the Contractor or any Sub-contractor, within the previous five years, pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the Contractor or Subcontractor, and be in continuous compliance with the provisions of those chapters of Kentucky Revised Statute that apply to the Contractor or Subcontractor for the duration of the Specification.
- 3.2. The Contractor **will include an estimated duration/timeline, including mobilization, to complete this project as part of the Bid Proposal upon issuance of a Purchase Order.**
- 3.3. In accordance with Kentucky Revised Statutes (KRS) 45A.490 to 45A.494, prior to a contract being awarded to a bidder on a public agency contract, a resident bidder of the Commonwealth of Kentucky will be given a preference over a nonresident bidder registered in any state that gives or requires a preference over bidders from the other state. All Bidders must therefore complete and submit the following attached forms:
 - 3.3.1. RECIPROCAL PREFERENCE: (Effective February 4, 2011).
 - 3.3.2. REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS CLAIMING RESIDENT BIDDER.
- 3.4. Contractor agrees to defend, indemnify, and hold harmless the Owner and Operator, its directors, officers, employees, and agents from any and all damage, loss, claim, demand, suit, liability, penalty, or forfeiture of every kind and nature, including but not limited to costs and expenses of defending against the same and payment of any settlement or judgment therefore, by reason of (a) injuries or deaths to persons, (b) damages to property, (c) pollution, contamination of or other adverse effects on the environment, or (d) violations of government laws, regulations or orders, whether suffered by Owner or Operator or indirectly by reason of third party claims, demands or suits, resulting or alleged to have resulted from acts or omissions of Contractor, its employees, agents, subcontractors or other representatives, or from their presence on the premises of the Owner, or otherwise from performance of this Specification. This indemnity will survive termination or expiration of this Specification.
- 3.5. Bidders will submit a list of any Sub-contractors that may be used for this project. Include experience lists and reference contacts for all Sub-contractors.
- 3.6. **The proposal will include all costs to the Bidder, including freight, FOB job site, and all applicable taxes, i.e., sales, payroll, etc., and profit as a fixed price. *NOTE: If you take an exception to including sales tax in your bid, we will calculate 6% sales tax and add to the evaluation of your bid.***

- 3.7. The Bidder will itemize the bid to reflect total labor, equipment and materials separately. Use the worksheet in **Appendix I** for pricing breakdown by project.
- 3.8. All bids will be valid for ninety (90) days from the opening of the bid.
- 3.9. The Bidder may submit alternate bids, however, alternates will be considered only if a complete original bid is submitted.
- 3.10. Bidders will submit payment terms with this proposal. If a cash discount is not offered for early payment then terms will be Net 30 days.
- 3.11. A pre-bid meeting will be held at the HMP&L Station Two plant site on November 09, 2021 @ 9:00 am, at the Burns & Roe Building.**
- 3.12. The proposal will be submitted as a **SEALED BID** with a public bid opening with the results read aloud. The Bidder will submit the bid in the envelope provided with the bid package. Big Rivers Electric Corporation will only accept bid proposals by mail or hand delivered. Fax proposals will not be accepted. Big Rivers Electric Corporation will require **four (4) sets of the bid proposals; one (1) signed original and three (3) copies. BIDS ARE DUE ON NOVEMBER 16, 2021 BY 2:00 P.M. (CENTRAL STANDARD TIME).** Bid proposals received after this date and time will be returned unopened. The bid proposals will be submitted to the Big Rivers Electric Corporation's Sourcing and Materials Department attn. of:
- Mary Holmes
Sr. Procurement Agent
Big Rivers Electric Corporation
Reid/Green/Station Two
9000 State Highway 2096
Robards, KY 42452
- 3.13. Bidders will provide a **per hour** cost for any additional emerging work not specifically identified in this bid Specification. This cost will be inclusive of all labor, materials, equipment, consumables, waste disposal, and industrial hygiene requirements deemed necessary to complete any work determined to be emerging work by the Owner and/or Operator. If the Bidder charges a separate rate for overtime and or holiday pay, the Bidder will include a clear explanation of the overtime and holiday policies, and will include a list of all observed holidays.
- 3.14. This inquiry implies no obligation on the part of the Big Rivers Electric Corporation or the City of Henderson Utility Commission. The Bidder offers the prices, terms, and delivery herein set forth in this proposal.
- 3.15. There are no guarantees of the amount of work and no guarantees of the minimum number of man-hours are in this agreement.

- 3.16. Upon award, all work will be governed by the terms and conditions set forth in the Specification including, without limitation, the General Services Agreement.
- 3.17. The terms and conditions set forth in the attached Specification and any required submittals are an important consideration to BREC and the City of Henderson Utility Commission. Any deviations from or exceptions to the attached Specification or the submittals will impact BREC and the City of Henderson Utility Commission evaluation of the Bidder's proposal. **If there are no exceptions or clarifications please so indicate on the "Bid Clarifications and/or Exceptions" sheet.**
- 3.18. The Contractor will, upon bid award, submit a Certificate of Insurance naming Big Rivers Electric Corporation and the City of Henderson Utility Commission, as the holder of the certificate. Certificate will also show both entities as additional insured. Insurance coverage must meet as a minimum, the insurance requirements as specified in General Services Agreement (Appendix A).
- 3.19. **Any addenda to this bid package will be signed by the Bidder and will be returned with the sealed proposal.**
- 3.20. The Bidder will submit sufficient information and detail with the bid to permit full understanding and evaluation of the equipment and services being offered.
- 3.21. Any exception taken to the Specification will be justified in writing, i.e., safety, reliability, efficiency, and increase or decrease in cost.
- 3.22. Failure to follow any or all of the instructions listed in the "Instructions to Bidder" may lead to Bidder disqualification.
- 3.23. All expenses incurred by the Bidder in the development of this bid are the sole responsibility of the Bidder.
- 3.24. The Owner and Operator are committed to procuring safe results for all Purchase Orders. The Contractor and every on-site employee must be certified through and current in the C-SCAP Program. Contractor will comply with all applicable OSHA, KOSHA, EPA, BREC rules or other safety practices, rules and regulations that govern work while on the Owner and Operator's plant sites or properties under the control of the Owner and Operator. Contractor must also commit that all employees on the job site have received all applicable OSHA training for the tasks performed.
- 3.25. The City of Henderson Utility Commission reserves the right to reject any or all Bids, to waive informalities therein and to consider exceptions and clarifications therein in order to determine the lowest and best bid; to reject any or all non-conforming, non-responsive, unbalanced or conditional Bids; to reject the Bid of any Bidder if the Utility Commission believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability, or fails to meet any other pertinent standard

or criteria established by the Utility Commission. The Utility Commission also reserves the right to negotiate contract terms with the Successful Bidder. By submitting a Bid to the Utility Commission, the Bidder agrees that such procedures will be without liability on the part of the Utility Commission for any damage or claim brought by the Bidder because of such rejections or procedures, nor will the Bidder seek any recourse of any kind against the Utility Commission because of such rejections or procedures. The filing of any Bid in response to this Invitation will constitute an agreement of the Bidder to these conditions.

- 3.26. The evaluation methodology that will be used to identify the winning bid includes, but is not limited to the following four elements: the Non-Responsiveness Test, the Price Evaluation, Qualification/Certification Evaluation, and the Technical Evaluation. The purpose of each element and the process employed in each are described in the following sections.

Non-Responsiveness Test:

The Non-Responsiveness Test is designed to identify and eliminate any proposal that has not provided the requested information in a proper format to allow an equitable evaluation to occur or that does not meet the requirements set forth in this RFQ. A bid deemed non-responsive by BREC and the City of Henderson Utility Commission may be rejected. Bidders are subject to disqualification for such things as failure to submit the proposal on or before the designated time and date. The City of Henderson Utility Commission may, in its discretion, disqualify a bid and drop it from further consideration for failure to submit a complete proposal in the form required or failure to provide additional supporting documentation or any clarification that may be requested by BREC and the City of Henderson Utility Commission subsequent to the submission of the proposal.

Price Evaluation:

The Price Evaluation is designed to identify and eliminate bids which are clearly more expensive than other compliant proposals received. This will be accomplished by ranking the bids, as well as the designated options, against each other according to price. Preliminary estimates of production cost effects, operation and maintenance costs, and other pertinent costs will be made and added to each proposal for evaluation purposes. BREC and the City of Henderson Utility Commission's evaluation will also include an estimate of the negative impact of deviations or exceptions, if any, to the terms and conditions in the proposed Contract or in other agreements contemplated to be entered into. BREC and the City of Henderson Utility Commission expects the bid to contain an early payment discount structure which terms will also be part of BREC and the City of Henderson Utility Commission's evaluation.

Qualification/Certification Evaluation:

The Qualification/Certification Evaluation is designed to identify and eliminate bids that clearly demonstrate a lack of understanding or an inability to meet the intended Specification for this project. Big Rivers Electric Corporation requires all on-site contractors to complete the Contractor Certification process before any on-site work is

awarded. Therefore, a winning Bidder will, among other things, submit or confirm on file the completed and fully executed General Services Agreement, and Contractor Safety Rules, and will agree that all site workers will be in compliance with the C_SCAP Program and any site specific safety requirements which will apply to all work.

Technical Evaluation:

The Technical Evaluation will consist of a comprehensive review that considers a number of price and non-price factors. The goal of the Technical Evaluation is to determine the options that best meet the needs of BREC and the City of Henderson Utility Commission for this project and technical options which improve the facility's overall cost, reliability and availability.

3.27. All questions should be directed to:

Mary Holmes

E-mail: Mary.Holmes@bigrivers.com

4. Owner and Operator to Provide

- 4.1. There will be a designated Operator representative on site, during day shift, to coordinate work schedules, safety issues, and tagging/lock-out requirements.
- 4.2. Compressed air will not be supplied.
- 4.3. Electrical connections as existing, 480 volt three phase (requiring a Russell-Stoll #3118W, 4 wire 4 pole, 30 amp, angle type, 250 VDC, 480 VAC male plug or equivalent), or 110 volt single phase 20 amp service; wiring and connections will not be provided.
- 4.4. Electrical connection requiring greater than 30 amp service will be provided by the plant; however, sufficient wiring will be provided by the Contractor. Electrical hook-ups and disconnects will be scheduled 24-hours in advance whenever possible.
- 4.5. The Operator may, at its sole discretion, provide tools and equipment for use by the Contractor.
- 4.6. Separate scrap metal and trash dumpsters will be provided on-site for disposal of **non-hazardous** waste materials.
- 4.7. Potable water is available at the plant site with the Contractor being responsible for providing his own water station (coolers) and cups as required. Water for construction wash-down of clean-up is available in limited quantities. Contractor will provide his own connections, piping and hoses.

5. Specific Requirements

5.1. Schedule Requirements

- 5.1.1. The Contractor will provide a daily project status update to the designated Operator representative.
- 5.1.2. The Contractor will adhere to the schedule provided by the Operator. The schedule provided within this Specification may be updated prior to the project; however task durations will remain constant. The Contractor will take any and all actions necessary to ensure scheduled completion.
- 5.1.3. If at any time during the progress of the work it is determined that the scheduled completion date cannot be met, the Owner and Operator reserves the right to take any action it deems necessary to ensure timely completion. Such actions will include, but are not limited to, procurement of third party services to augment or take over the completion of the project. The cost of such services or other remedies will be deducted from the Contractor's original bid price.
- 5.1.4. All shipping and receiving will be Monday – Friday between 7:00 am and 2:00 pm local time.

5.2. Prior to Commencement of Work

- 5.2.1. The Contractor and every on-site employee will comply with the Operator's red tag clearance procedure when accepting a clearance. The on-site superintendent will sign on, accepting the red tag clearance and a Contractor's copy of the clearance will be used by the on-site superintendent to document that all employees working on the project signed on and off of the clearance prior to the on-site superintendent releasing the Operator's clearance. Any person signing on a red tag clearance will do so in a clear and legible manner. It is a Contractor's responsibility to sign off all red tags when work is completed. If this is a persistent problem, or if the signature cannot be read, the Operator will require that another on-site superintendent be designated to oversee the project.
- 5.2.2. The Contractor's on-site employees will be in compliance with all C-SCAP requirements, and have attended the site specific safety orientation including the hazard awareness video prior to the date set for commencement of specified activities.
- 5.2.3. The Contractor will have a confined space procedure that complies with OSHA CFR 1910.146. This procedure must be equal to or better than Operator's confined space procedure. The Contractor will provide personnel qualified for confined space work, including but not limited to, Entrant Supervisor, Entrant, and Attendant. The confined space personnel will be qualified from the existing work force and will perform the confined space tasks as a function of the normally assigned service work at no additional cost. The Contractor will absorb all cost for the training of its employees for confined space work. The Contractor will furnish,

at no additional cost, all monitoring equipment, communication equipment, personal protective equipment, safety related items, and other items required to perform confined space work.

- 5.2.4. The Contractor will utilize all of the information presented in this document to be fully prepared to begin work at the specified commencement date and time. The Contractor will ensure that a copy of this document has been reviewed by and is in the possession of the on-site superintendent.

5.3. Contractor to Provide

- 5.3.1. The Contractor **will include an estimated duration/timeline for completion of this project** as part of the bid proposal.
- 5.3.2. The Contractor will provide all qualified supervision, labor, job management, materials, tools, equipment and consumables deemed necessary to ensure safe, proper and timely completion of the specified work.
- 5.3.3. The Contractor will ensure that all instructions and emergency warnings can be effectively and immediately communicated to all employees. Unless otherwise instructed the Operator requires that one (1) interpreter be provided for every eight (8) non-English speaking employees.
- 5.3.4. The Contractor will place all **non-hazardous** scrap materials in scrap metal or trash dumpsters provided by the Operator. The material must not be stacked beyond the top of the dumpster.
- 5.3.5. The Contractor will provide to the site security guard staff, a tool and equipment inventory list upon arrival and will allow inspection of tools and equipment upon arrival and departure.
- 5.3.6. The Contractor and everyone in his employee will sign in and out daily at the designated checkpoint.
- 5.3.7. The Contractor will provide adequate sanitary facilities at no additional cost to the Owner and Operator. Use of Owner and Operator facilities will not be permitted.
- 5.3.8. The Contractor will provide all spreaders, chokers, slings, shackles, eye bolts, jacks, hoists, chain falls and other lifting or rigging equipment necessary to position equipment on the job site along with documentation of proper training in the use of said equipment.

- 5.3.9. The Contractor will provide all necessary personnel protective equipment for each of its employees along with documentation of proper training in the use of said equipment.
- 5.3.10. The Contractor will protect its own and its Sub-contractors' employees and be responsible for their work until the Operator's acceptance of the entire project, and to protect the Owner and Operator's facilities, property, employees and third parties from damage or injury.
- 5.3.11. No person will perform any of the Work while under the influence of drugs or alcohol. No alcohol may be consumed within four (4) hours of the start of any person's performance of the Work or anytime during the workday. A person will be deemed under the influence of alcohol if a level of 0.02 percent blood alcohol or greater is found. In addition to the requirements of the drug testing program, as set forth in Company's rules and regulations, all persons who will perform any of the Work will be subject to drug and alcohol testing under either of the following circumstances: (i) where the person's performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident which involves off-site medical treatment of any person; and (ii) where Company determines in its sole discretion that there is reasonable cause to believe such person is using drugs or alcohol or may otherwise be unfit for duty. Such persons will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible for administering and conducting drug and alcohol testing, as set forth herein, at Contractor's sole expense. As applicable and in addition to any other requirements under this Agreement, Contractor shall develop and strictly comply with any and all drug testing requirements as required by Applicable Laws.
- 5.3.12. Contractor's employees working on-site shall be required to complete a negative drug and alcohol pre-test within seven (7) days before reporting to work on-site at Big Rivers. The Contractor shall conduct random drug and alcohol testing on ten percent (10%) of their on-site workforce assigned to Big Rivers within thirty (30) days of the start of Work. The Contractor shall subsequently test ten percent (10%) of their on-site workforce assigned to Big Rivers on an on-going monthly basis for the duration of the contract or outage. Big Rivers reserves the right to audit the Contractor's compliance with these requirements. Testing costs are the responsibility of the Contractor. Testing should be conducted using a licensed health care facility or FDA-approved testing device consisting of, at a minimum, a 10 panel drug test (including Amphetamines, Barbiturates, Benzodiazepines, Cannabinoids, Cocaine, Methaqualone, Opiate, Phencyclidine, Methadone, and Propoxyphene) suitable for on-site testing and under the supervision of a certified Medical Review Officer. The Contractor is responsible for all testing and administrative costs associated with the random drug and alcohol testing requirement however, it is anticipated that any employee's time away from the job for random testing will

occur during regularly scheduled work hours paid by Big Rivers. The confidentiality of individual test results for your employees should be maintained according to all applicable regulations. Big Rivers will randomly audit contractor testing programs to ensure requirements are met.

- 5.3.13. Due to the Covid-19 pandemic, Big Rivers requires all persons coming onto the properties to have their temperature taken each day before entering the facility by the security guards onsite. If a temperature of 100.4° or higher is recorded, that person will not be allowed to enter site. Workers must have and wear a facial mask when social distancing is not possible.
- 5.3.14. The Contractor will inform the Owner and Operator of any hazardous chemicals that will be transported or used on the plant site. Material Safety Data Sheets (MSDS) must be provided to the Safety Training Coordinator prior to use on the plant site and must be available at all times while on the plant site.
- 5.3.15. The Contractor will provide fork lifts of suitable type and capacity, along with any other mobile equipment necessary for the duration of the Planned Work Scope for the handling of Contractor's tools, equipment, & materials. Equipment Operators will be qualified for the specific equipment being operated.

5.4. Contractor Responsibilities

- 5.4.1. The Contractor will maintain qualified personnel capable of performing large scale insulation removal and asbestos and rockbestos abatement, competent scaffold builders, and necessary support personnel for the duration of the intended work scope.
- 5.4.2. The Contractor will provide proper hazardous waste containers for disposal of all asbestos containing materials. Timely removal of the hazardous waste containers from the plant site will be the responsibility of the Contractor including furnishing a Waste Management Manifest to the Operator for each hazardous waste shipment removed from the plant site.
- 5.4.3. All scaffolding will be erected in accordance with OSHA Sub Part L (1926.450). The scaffolding will be inspected daily with records retained for review as per the above referenced standard. The scaffolding will be tagged (heavy, medium or light duty) according to its capacity. Hand-rails, mid-rails and toe boards will be constructed on the scaffold when necessary to act as the primary fall protection according to the above referenced standard. All erected scaffolds will be inspected and tags updated daily prior to each shift for the duration of the project.
- 5.4.4. The Contractor will provide the following:
- 5.4.4.1. Scaffold equipment including freight cost

- 5.4.4.2. Insulation removal and asbestos abatement materials and supplies
- 5.4.4.3. Office/break trailer, storage trailer, and forklifts/mobile equipment (if required)
- 5.4.4.4. Proper hazardous waste containers for disposal of all asbestos containing materials
- 5.4.4.5. A completed Waste Management Manifest for each hazardous waste container removed from the plant site
- 5.4.4.6. All required hazardous materials abatement containment structures erection, maintenance, and removal
- 5.4.4.7. The industrial hygiene air monitoring and on-site sampling services will be provided by a 3rd party hired by Big Rivers
- 5.4.4.8. All scaffold builders' certification paperwork
- 5.4.4.9. All scaffold workers training paperwork
- 5.4.4.10. All abatement workers training and certification paperwork
- 5.4.5. The Contractor will provide all qualified supervision, labor, material, tools, consumables, and equipment to remove all insulation, lagging, etc, including but not limited to the following defined work scope:
 - 5.4.5.1. H-1 Main Steam and Cold Reheat Steam Piping: Removal and proper disposal of approximately 470 LF of asbestos containing pipe insulation including associated metal lagging. Reference DWG's: HE1-MS-HGR-ISO; HE1-CR-HGR-ISO; F2 - Rev. 5
 - 5.4.5.2. H-1 Heater Vent Piping: Removal and proper disposal of approximately 350 LF of asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H1-VENTS; F7-Rev. 3
 - 5.4.5.3. H1 Boiler Feed Water Piping: removal and proper disposal of approximately 1250 LF of asbestos containing pipe insulation and associated metal lagging. Reference DWG's: H1 FEEDWATER-PAGE 1; H1 FEEDWATER-PAGE 2; F6-Rev. 4
 - 5.4.5.4. H1 Extraction Steam Piping: Removal and proper disposal of approximately 770 LF of asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H1-EXTRACTIONS; F2-Rev. 5

- 5.4.5.5. H-1 Steam System Piping: Removal and proper disposal of approximately 1060 LF of asbestos containing insulation and associated metal lagging. Includes east and west side Down-comer Piping, Low Pressure Steam System Piping, & Building Heating Steam Piping. Reference DWG's: H1-STEAM-SYS-PAGE 1; H1-STEAM-SYS-PAGE 2; H1 BD; F2-Rev. 5
- 5.4.5.6. H-1 Soot Blowing Steam Piping: Removal and proper disposal of approximately 850 LF of asbestos containing insulation and associated metal lagging. Reference DWG's: H1-SOOTBLOWING; H1 AHS SHT.1; H1 AHS SHT.2; H1 AHS SHT.3; 69001M12G-1
- 5.4.5.7. H-1 Condensate & Feed Water Heater Drain Piping: Removal and proper disposal of approximately 350 LF of asbestos containing insulation and associated metal lagging. Reference DWG's: H1-DRAINS; F8-Rev. 5
- 5.4.5.8. H-1 Condensate Piping: Removal and proper disposal of approximately 350 LF of asbestos containing insulation and associated metal lagging. Reference DWG's: H1-CONDENSATE; F3-Rev. 7; F4-Rev. 4
- 5.4.5.9. H-1 Turbine Drain System Piping: Removal and proper disposal of approximately 140 LF of asbestos containing insulation and associated metal lagging. Reference DWG's: F22-Rev. 6
- 5.4.5.10. H-2 Main Steam and Cold Reheat Steam Piping: Removal and proper disposal of approximately 550 LF of asbestos containing pipe insulation including associated metal lagging. Reference DWG's: HE2-MS-HGR-ISO; HE2-CR-HGR-ISO; F24 - Rev. 6
- 5.4.5.11. H-2 Heater Vent Piping: Removal and proper disposal of approximately 250 LF of asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H2-VENTS; F29-Rev. 5
- 5.4.5.12. H-2 Boiler Feed Water Piping: removal and proper disposal of approximately 1150 LF of asbestos containing pipe insulation and associated metal lagging. Reference DWG's: H2-FEEDWATER-PAGE 1; H2-FEEDWATER-PAGE 2; F28-Rev. 6
- 5.4.5.13. H-2 Extraction Steam Piping: Removal and proper disposal of approximately 600 LF of asbestos containing pipe insulation including associated metal lagging. Reference DWG's: H2-EXTRACTIONS; F24-Rev. 6

- 5.4.5.14. H-2 Steam System Piping: Removal and proper disposal of approximately 1010 LF of asbestos containing insulation and associated metal lagging. Includes east and west side Down-comer Piping, Low Pressure Steam System Piping, & Building Heating Steam Piping. Reference DWG's: H2-STEAM-SYS-PAGE 1; H2-STEAM-SYS-PAGE 2; H2 BD; F24-Rev. 6
- 5.4.5.15. H-2 Soot Blowing Steam Piping: Removal and proper disposal of approximately 1300 LF of asbestos containing insulation and associated metal lagging. Reference DWG's: H2-SOOTBLOWING; H2 AHS SHT.1; H2 AHS SHT.2; H1 AHS SHT.3; 69001M12G-1
- 5.4.5.16. H-2 Condensate & Feed Water Heater Drain Piping: Removal and proper disposal of approximately 350 LF of asbestos containing insulation and associated metal lagging. Reference DWG's: H2-DRAINS; F30-Rev. 6
- 5.4.5.17. H-2 Condensate Piping: removal and proper disposal of approximately 250 LF of asbestos containing insulation and associated metal lagging. Reference DWG's: H2-CONDENSATE; F25-Rev. 6; F26-Rev. 4
- 5.4.5.18. H2 Turbine Drain System Piping: Removal and proper disposal of approximately 110 LF of asbestos containing insulation and associated metal lagging. Reference DWG's: F44-Rev. 9
- 5.4.5.19. #1 (South) Cooling Tower: Removal and proper disposal of approximately 25,960 SF of Transite panels covering the exterior surfaces of the cooling tower structure. Reference DWG's: 4-67388; 4-67577; H-1347
- 5.4.5.20. #2 (North) Cooling Tower: Removal and proper disposal of approximately 24,948 SF of Transite panels covering the exterior surfaces of the cooling tower structure. Reference DWG's: 4-67388; 4-67577; H-1347
- 5.4.6. The time of completion of the Work is a basic consideration of the Specification. Contractor's schedule and support requirements must be defined and submitted to the Owner and Operator for approval. The approved schedule must be met.
- 5.4.7. The Contractor will be responsible for obtaining all required permits.
- 5.4.8. The Contractor will furnish a field service manager to act as coordinator, and field service supervisors/technicians to supervise, direct, and assist with equipment set-up and construction operations. These people are required be permanent employees of the Contractor who are thoroughly experienced in this

type of work. *The Bidder, if asked, must supply a job history resume for each of the permanent employees who may be staffing this job.* Field service supervisors must be present during all activities. The Contractor's field service manager must be onsite to insure timely coordination of the activities involved to meet the schedule required by the Owner and Operator. *The Bidder, if asked, must provide a list of at least ten similar jobs that have been completed satisfactorily and provide references.*

- 5.4.9. The Contractor will discuss with the Operator's Project Proponent prior to mobilization to establish a list of support work needed from the Operator. The Contractor will confirm equipment placement, power requirements, and work scope with the Project Proponent.
- 5.4.10. The Contractor will prepare, and maintain throughout the duration of the job, a schedule with the work progression of individual job elements. The schedule will be up-dated regularly and will be available to the Owner and Operator for review at any time. The schedule will be broken down to show individual job elements.
- 5.4.11. The Contractor will furnish tools and equipment not specified as Owner furnished but necessary for the completion of the work. The Contractor will replace all lost or damaged Owner and Operator supplied tools.
- 5.4.12. The Owner and Operator reserves the right to assign extra work, other work, or work not defined for this project, in this Specification to other Contractors or in-house personnel.
- 5.4.13. The Contractor will abide by the items in this Specification unless Owner and Operator agree in writing to any changes. Changes must be made in the form of a written request.
- 5.4.14. The Contractor is required to report to Operator the total number of man-hours worked for all shifts no later than beginning of day shift every Monday. This report will include all man-hours worked by subcontractors that work for the Contractor. These hours must be tracked for plant safety reporting.
- 5.4.15. The criteria listed in this Specification should be used as a base line. Actual work required to perform this Specification may not be listed. It is expected that work required to access or reassemble specified work will be included as part of this Specification. The Specification entries may not be in chronological order or inclusive of all the job elements. It is the responsibility of the Contractor to realize and correct this.
- 5.4.16. **A mandatory pre-safety meeting will be conducted. The successful Bidder will be notified of the location, date, and time of this meeting.**

- 5.4.17. The Contractor will follow equipment manufacturer's recommended procedures. If these procedures cannot be followed, the Contractor will inform the Owner and Operator.
- 5.4.18. The Contractor will comply with the latest or amended version of the followings standards and codes, and with any and all other standards and codes that may be applicable:
- National Fire Protection Association (NFPA)
 - National Electrical Code (NEC)
 - Institute of Electrical and Electronic Engineers (IEEE)
 - National Electrical Manufacturers Association (NEMA)
 - Electrical Apparatus Service Association (EASA)
 - International Electrical Testing Association (NETA)
 - American Society for Testing and Materials (ASTM)
 - American National Standards Institute (ANSI)
 - Factory Mutual (FM)
 - American Society of Mechanical Engineers (ASME)
 - National Board Inspection Code (NBIC)

5.5. Owner and Operator Responsibilities

- 5.5.1. Operator's Hazard Communication program requires that Operator inform Contractors of any hazardous chemicals in the area where they will be working. Material Safety Data Sheets (MSDS) are available for any chemical on site. MSDS sheets can be reviewed in the Safety Coordinator's office.
- 5.5.2. The Operator will insure that all equipment is secured and "Red Tagged" prior to disassembly and repair work beginning.
- 5.5.3. The Operator will supply the following drawings to the Bidders:

Drawing List		
<u>Item#</u>	<u>Drawing Number</u>	<u>Description</u>
1	69001B5	General Arrangement of Riley Steam Generating Unit
2	HE1-MS-HGR-ISO	Main Steam Piping Asbestos Abatement Map Schematic
3	HE1-CR-HGR-ISO	Cold Reheat Steam Piping Asbestos Abatement Map Schematic
4	F2-Rev. 5	Steam – Flow Diagram S-Unit No. 2 (H1)
5	H1-VENTS	H1 Vent Steam Piping Asbestos Abatement Map Schematic

6	F7-Rev. 3	Closed Vents-Flow Diagram V – Unit No. H1
7	H1 FEEDWATER-PAGE 1	H1 Feed Water Piping Asbestos Abatement Map Schematic – Page 1
8	H1 FEEDWATER-PAGE 2	H1 Feed Water Piping Asbestos Abatement Map Schematic – Page 2
9	F6-Rev. 4	Feed Water-Flow Diagram F – Unit No. 2 (H1)
10	H1-EXTRACTIONS	H1 Extraction Steam Piping Asbestos Abatement Map Schematic
11	H1-STEAM-SYS-PAGE 1	H1 Steam System Piping Asbestos Abatement Map Schematic – Page 1
12	H1-STEAM-SYS-PAGE 2	H1 Steam System Piping Asbestos Abatement Map Schematic – Page 2
13	H1 BD	H1 Boiler Drains Piping Asbestos Abatement Map Schematic
14	H1-SOOTBLOWING	H1 Soot Blowing Steam Piping Asbestos Abatement Map Schematic
15	H1 AHS SHT.1	H1 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 1
16	H1 AHS SHT.2	H1 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 2
17	H1 AHS SHT.3	H1 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 3
18	69001M12G-1	Arrangement of Piping to Soot Blowers
19	H1-DRAINS	H1 Condensate & Feed Water Drain Piping Asbestos Abatement Map Schematic
20	F8-Rev. 5	Drips-Flow Diagram D – Unit 2 (H1)
21	H1-CONDENSATE	H1 Condensate Piping Asbestos Abatement Map Schematic
22	F3-Rev. 7	Condensate-Flow Diagram C – Unit No. 2 (H1)
23	F4-Rev. 4	Condensate-Flow Diagram C – Unit No. 2 (H1)
24	HE2-MS-HGR-ISO	Main Steam Piping Asbestos Abatement Map Schematic
25	HE2-CR-HGR-ISO	Cold Reheat Steam Piping Asbestos Abatement Map Schematic
26	F24-Rev. 6	Steam-Flow Diagram S – Unit No. 3 (H2)
27	H2-VENTS	H2 Vent Steam Piping Asbestos Abatement Map Schematic
28	F29-Rev. 5	Closed Vents-Flow Diagram V – Unit No. 3 (H2)
29	H2 FEEDWATER-PAGE 1	H2 Feed Water Piping Asbestos Abatement Map Schematic – Page 2
30	H2 FEEDWATER-PAGE 2	H2 Feed Water Piping Asbestos Abatement Map Schematic – Page 2

31	F28-Rev. 6	Feed Water-Flow Diagram F – Unit No. 3 (H2)
32	H2-EXTRACTIONS	H2 Extraction Steam Piping Asbestos Abatement Map Schematic
33	H2-STEAM-SYS-PAGE 1	H2 Steam System Piping Asbestos Abatement Map Schematic – Page 1
34	H2-STEAM-SYS-PAGE 2	H2 Steam System Piping Asbestos Abatement Map Schematic – Page 1
35	H2 BD	H2 Boiler Drains Piping Asbestos Abatement Map Schematic
36	H2 SOOTBLOWING	H-2 Soot Blowing Steam Piping Asbestos Abatement Map Schematic
37	H2 AHS SHT.1	H2 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 1
38	H2 AHS SHT.2	H2 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 2
39	H2 AHS SHT.3	H2 Air Heater Soot Blowing Steam Piping Asbestos Abatement Map Schematic – Page 3
40	H2 DRAINS	H2 Condensate & Feed Water Drain Piping Asbestos Abatement Map Schematic
41	F30-Rev. 6	Drips-Flow Diagram D – Unit H2
42	H2-CONDENSATE	H1 Condensate Piping Asbestos Abatement Map Schematic
43	F25-Rev. 6	Condensate-Flow Diagram C – Unit No. 3 (H2)
44	F26-Rev. 4	Condensate-Flow Diagram C – Unit No. 3 (H2)
45	4-67388	Cooling Tower Plan & Elevation
46	4-67577	Cooling Tower Plan & Elevation
47	H-1347	Cooling Tower Fill & Drift Eliminator Layout
48	F51-Rev. 1	Piping Design Tables No. 1 thru No. 6
49	F52-Rev. 1	Piping Design Tables No. 7 thru No. 12
50	F53	Piping Design Tables No. 13 thru No. 18
51	F54	Piping Design Tables No. 19, 20 & Insulation Table
52	F22-Rev. 6	Drains & Misc. Turbine Piping-Flow Diagram TD – Unit No. 2 (H1)
53	F44-Rev. 9	Drains & Misc. Turbine Piping – Unit No. 3 (H2)

- 5.5.4. These drawings are intended to be conveyed only to the designated recipient(s) these drawings are confidential, intended only for the named recipient(s) above and may contain information that is privileged or proprietary. Unauthorized use, dissemination, distribution, or reproduction of these drawings is strictly prohibited and may be unlawful. These drawings will be returned to the sender upon completion of the designated task or project. If you have received these drawings in error or completed the designated task, please immediately notify the sender.

5.6. Emerging Work

- 5.6.1. During the project unanticipated needs may be encountered. If such needs are discovered during the project they will be communicated to the designated Operator representative by the Contractor's on-site supervisor as soon as possible .
- 5.6.2. The Bidder will obtain sufficient information to present a firm dollar quote based on the all-inclusive hourly rate provided with bid as per Section 3.13. for any emerging work for this project .
- 5.6.3. No additional work will be performed until the Contractor has been given written authorization to proceed by the Owner and Operator .

5.7. PROTECTION OF WORK AND PROPERTY

- 5.7.1. The Contractor will exercise care in the protection of materials and equipment furnished and/or installed under this Contract while they are in storage at the site.
 - 5.7.2. Protection of equipment and materials while under control of the Contractor will be in accordance with Manufacturer or Supplier's recommendations, and will include but not be limited to the following:
 - 5.7.2.1. For equipment requiring internal protection from moisture accumulation maintain drying heat or suitable moisture absorbing compound.
 - 5.7.2.2. Equipment and material stored outdoors will be blocked up at least 6" above the ground and arranged for drainage.
 - 5.7.3. The Contractor will provide for the safety and protection of the work as set forth. The Contractor will provide protection at all times against rain, wind, storms, frost, freezing, condensation, and heat so as to maintain all work, equipment, and materials free from damage. At the end of each work day all new work likely to be damaged will be covered.
 - 5.7.4. The Operator will be notified immediately at any time operations are stopped due to conditions that make it impossible to continue operations safely or to obtain proper results.
 - 5.7.5. The Contractor will provide for the safety and protection of existing property. Any damage to existing facilities resulting from construction operations will be reported immediately to the Operator thereof and promptly repaired or replaced by the Contractor.

- 5.7.6. The Contractor will provide adequate temporary supports, temporary rerouting of existing utilities and structures that are necessary to keep the existing plant facilities in continuous operation.
- 5.7.7. Before acceptance of work by Operator, the Contractor will restore all property affected by his operations to the satisfaction of the Owner.
- 5.7.8. The Contractor will take precautionary measures to prevent fires especially from welding operations. The Contractor will provide an adequate supply of approved blankets to prevent welding sparks from starting fires or damaging equipment. The Contractor will carefully supervise his operations and housekeeping to prevent fires. Storage of flammable materials such as paint, solvents, cleaning fluids, etc. will be in a separate building expressly for this purpose. Building will be equipped with a proper fire extinguisher and located as approved by the Operator. The Contractor's fire protection program will conform to applicable parts of National Fire Protection Association Bulletin No. 241, Building Construction Operations. When construction fires occur, all equipment provided under this and other contracts will be used effectively to control and extinguish the fire regardless of the cause. The Operator's production leader or the safety coordinator will be immediately notified of any fire, regardless of whether it has been extinguished or not. The Contractor will provide sufficient ABC Class fire extinguishers to protect the work in progress.
- 5.7.9. The Contractor will confine his operations to the plant areas where the Contractor's work is to be performed, and to those yard areas allocated to the Contractor within the Owner's and Operator's property boundaries. The Contractor will confine employee's parking to designated areas.
- 5.7.10. Whenever existing facilities require being taken out of service for new construction or connections of new work, the Contractor will schedule such work according to procedures agreed upon by Operator. The Contractor will plan all work for connections in advance as thoroughly and as quickly as possible, and will notify the Operator at least two working days before work begins. Arrangements will be made to make connections within the minimum time.
- 5.7.11. General cleanup requirements will apply on a daily basis. The premises will be kept free from accumulations of waste materials or rubbish caused by the Contractor's employees or work. In case of dispute, the Owner and Operator may remove the rubbish and charge the cost to the Contractor. The Contractor will perform periodic, continuous, immediate and final cleanup of his work and work areas. If Contractor does not clean the premises within sixteen (16) working hours after ordered, the Owner and Operator reserves the right to clean the premises and withhold his expense from payments due the Contractor.

5.8. Completion Requirements

- 5.8.1. The Contractor will notify the designated Operator representative upon completion of each phase of the work for inspection .
- 5.8.2. The Contractor will ensure that all discarded material and trash designated as **Hazardous or Non-Hazardous** are placed in the proper containers.

5.9. **Warranty**

- 5.9.1. The Contractor will warrant to the Owner that all work will be in accordance with this Specification and will be free from defects in material and workmanship. Prompt notice of all defects will be given to the Contractor. All defective work, whether or not in place, may be rejected, corrected or accepted by the Owner. The Contractor will warrant all work for a minimum of one year from the completion of the project. The Contractor may choose to extend the warranty period at his discretion. Within the warranty period, any work that is found to be defective, the Contractor will promptly, at its option, without cost to Owner, either correct such defective work, or, replace it with non-defective work. If Contractor does not promptly comply, or in an emergency where delay would cause serious risk of loss or damage, Owner may, upon written notice to the Contractor, have the defective work corrected or the rejected work removed and replaced, and all direct costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals) will be paid by Contractor.

6. **Environmental**

- 6.1. The Contractor will not discharge petroleum products or any other chemicals anywhere on the plant site. Fuel, lubrication products and any other liquid combustible/flammable consumables stored on-site will be in an appropriate tank or container with proper labeling. Use of the proper container and the Operator's approval of such containers in no way releases the Contractor from its responsibility to clean up any spills, discharges, or other releases.

7. **Site Supervision**

- 7.1. The Contractor will designate an on-site contact person with the authority to make decisions, correct problems and generally oversee the Contractor's operations. In the event the contact person is absent from the job site, an alternate contact person with full authority will be available.
- 7.2. The Contractor will provide in writing the name and phone number (office, home, pager and mobile as applicable) of the contact person and the alternate contact person(s) prior to the start of work hereunder and within one working day of any changes in the previously designated contact person.

- 7.3. To the extent possible, the on-site contact person will be the same from week to week to ensure job continuity.
- 7.4. The Contractor will provide after hours, emergency 24-hour per day contact list. The list will be prioritized as to the order that should be followed in notifying the Contractor.

8. Specific Contract Terms

8.1. Acceptance of Work

- 8.1.1. Work under this agreement will be acceptable once a thorough visual inspection by the designated Operator representative has been completed; however, this in no way releases the Contractor from any responsibility related to any warranty .

8.2. Payment

- 8.2.1. Payment will be lump sum upon successful completion of the work. Pricing will be shown on the Request for Quotation bid sheet included with this package .
- 8.2.2. All invoices (at a minimum) will be itemized to reflect labor, equipment and materials separately .
- 8.2.3. All invoices will reflect the Company assigned purchase order number .

8.3. Extras

- 8.3.1. The Contractor will be paid only in accordance with the price and payment terms set forth in the purchase order or as amended by written change order. No additional compensation will be paid without prior written approval by Owner and Operator.

8.4. Commencement and Completion Dates:

- 8.4.1. The proposal will be based upon completion of the work in accordance with the Owner's/Operator's scheduled dates as indicated above.
- 8.4.2. The actual start date will be determined after the contract is let. It will be necessary that the Contractor satisfy the Owner and Operator of their ability to complete the work within the stipulated time .
- 8.4.3. Contractor will be notified of any change in start date as soon as possible, but not less than 48 hours prior to the start date. The Owner or Operator will not pay any monetary charges from the Contractor for ANY rescheduling fees due to changes in the start date .

8.5. Termination

8.5.1. The Owner or Operator may stop work and/or remove the Contractor from the worksite which may lead to termination of this agreement by the Owner or Operator without further obligation to the Contractor, if the Contractor fails to observe safety requirements .

8.6. Notices

8.6.1. Any notice, request, or approval or other document required or permitted to be given under this contract will be in writing unless otherwise provided herein and will be deemed to have been sufficiently given if delivered in person, transmitted by fax followed by a hard copy, dispatched in the U.S. mails, postage prepaid for mailing by certified or registered mail, return receipt requested, or dispatched for delivery by other courier service providing a return receipt, addressed as follows :

8.6.2. If to Owner and Operator, addressed to:

Big Rivers Electric Corporation
Sebree Station
9000 Hwy 2096
Robards, KY 42452
Attention: Purchasing
Phone: 270-844-5963
Fax: 888-849-5024

8.6.3. If to Contractor, addressed to:

8.6.4. Either party hereto may change the person or address specified herein upon giving of written notice to the other party hereto of such changes .

APPENDIX A

General Services Agreement

Must be filled out and returned if not on file with Big Rivers

**Big Rivers Electric Corporation
General Services Agreement**

This General Services Agreement (this "General Services Agreement") is made this _____ day of _____, 20____ by and between Big Rivers Electric Corporation ("Company") and _____ ("Contractor"), a _____ (list state of entity's organization and entity type, such as "Kentucky corporation" or "Kentucky limited liability company", etc.).

WHEREAS, Contractor desires the opportunity to provide goods and/or services to Big Rivers Electric Corporation from time to time, and Big Rivers Electric Corporation desire the opportunity to engage Contractor to provide such goods and/or services; and

WHEREAS, the parties intend that this General Services Agreement sets forth the exclusive set of terms and conditions which shall govern the performance of the "Work" (as defined below) by Contractor for the Company should the Company engage Contractor to provide Work.

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 Agreement:** "Agreement" shall mean this General Services Agreement, along with any "Specifications, (as defined below) and/or Purchase Order (as defined below) issued by Company and/or ", etc. any other documentation as may be executed by the parties in accordance with Article 2, and/or other agreed collateral document pursuant to which the Work is to be performed.
- 1.2 Applicable Laws:** "Applicable Laws" shall mean any and all applicable federal, state, or local laws, regulations, codes, ordinances, administrative rules, court orders, permits or executive orders.
- 1.3 Contract Price:** "Contract Price" shall mean the aggregate of the particular consideration set forth in one or more Purchase Orders or other Statements of Work or as otherwise agreed upon. Unless otherwise agreed in writing, the Contract Price includes all applicable taxes, duties, fees, and assessments of any nature, including without limitation all sales and use taxes, due to any governmental authority with respect to the Work.
- 1.4 Contractor:** "Contractor" shall mean the entity designated as the "Contractor" in the opening paragraph of this Agreement.
- 1.5 Company:** "Company" shall mean Big Rivers Electric Corporation
- 1.6 Purchase Order:** "Purchase Order" shall mean the numerically controlled, principle contract document that incorporates, by reference, the agreed-to scope of Work and/or Specification; all exhibits of the scope of Work and/or Specification; any mutually agreed-to amendments to the Purchase Order, Work, or Specification; and any mutually agreed-to change orders to the Purchase Order, Work, or Specification. Company may, at its discretion, issue its "Purchase Order Standard Terms and Conditions" (collectively referred to as a "Purchase Order") that may supplement, but in no way or manner ever supersede, this Agreement with respect to any conflicting terms and conditions.
- 1.7 Specifications:** "Specifications" shall mean any specifications, instructions, drawings, schedules, a Purchase Order, contracts, scopes of work, and/or statements of work.
- 1.8 Work:** "Work" shall include those services and/or goods set forth in this Agreement.
- 1.9 Tools and Equipment:** "Tools and Equipment" shall mean any tools, equipment, rigging and other general supplies on the Company's premises where the Work is being performed that is either owned and/or leased by Company or by any of its Affiliates.

ARTICLE 2 SCOPE; BINDING EFFECT

Unless otherwise agreed in a writing executed by each of the parties which evidences a clear intention to supersede this Agreement, the parties intend that this Agreement apply to all transactions which may occur between the Company on one hand and Contractor on the other hand during the term of this Agreement and which are related to the provision of goods and/or services by Contractor for the benefit of the Company. Neither the Company makes any commitment to Contractor as to the exclusiveness of this relationship or as to the volume, if any, of business the Company will do with Contractor. The parties do, however, anticipate that the parties will agree from time to time for the performance of Work by Contractor. Such agreement for the provision of Work shall be reflected by (a) each of the parties executing a mutually acceptable Statement of Work under this Agreement or (b) Company providing a Purchase Order or other Statement of Work to Contractor and Contractor accepting such Purchase Order or other Statement of Work (including by commencing performance pursuant to such Purchase Order or other Statement of Work). In the event Company provides a Purchase Order or other Statement of Work to Contractor and Contractor commences performance, unless such Purchase Order or other Statement of Work expressly provides otherwise, Contractor hereby agrees to the formation of a binding agreement as described in the Purchase Order or other Statement of Work upon Contractor's commencement of performance, waives any argument that it might otherwise have under Applicable Laws that the Purchase Order should have been executed by each of the parties to be enforceable and further agrees to not contest the enforceability of such Purchase Order or other Statement of Work on those grounds, and agrees to not contest the admissibility of Company's records related to such Purchase Order or other Statement of Work that are kept in the ordinary course by Company. In addition, in no event shall the terms and conditions of any proposal, Purchase Order or other Statement of Work, acknowledgement, invoice, or other document unilaterally issued by Contractor be binding upon Company without Company's explicit written acceptance thereof. Any Work performed by Contractor without Company's binding commitment for such Work either via a duly executed or accepted Purchase Order or other Statement of Work under this Agreement shall be at Contractor's sole risk and expense, and Company shall have no obligation to pay for any such Work.

ARTICLE 3 CONDITIONS AND RISKS OF WORK; LABOR HARMONY

Unless the applicable Statement of Work expressly provides otherwise, Contractor agrees that before beginning any Work Contractor shall carefully examine all conditions relevant to such Work and its surroundings, and, unless Contractor notifies Company in writing that it will not perform the Work under such conditions, Contractor shall assume the risk of such conditions and shall, regardless of such conditions, the expense, or difficulty of performing the Work, fully complete the Work for the stated Contract Price applicable to such Work without further recourse to Company. Without limiting the foregoing, Contractor specifically recognizes that Company and other parties may be working concurrently at the site. Information on the site of the Work and local conditions at such site furnished by Company in specifications, drawings, or otherwise is made without representation or warranty of any nature by Company, is not guaranteed by Company, and is furnished solely for the convenience of Contractor. All drawings and other documents, if any, required to be submitted to Company for review shall be submitted in accordance with the mutually agreed to schedule, and, if no schedule applies, such drawings or other documents shall be submitted by Contractor without unreasonable delay. No Work affected by such drawings and other documents shall be started until Contractor is authorized to do so by Company. In case of a conflict between or within instructions, specifications, drawings, schedules, Purchase Order(s) and/or other Statements of Work, Company shall resolve such conflict; and Company's resolution shall be binding on Contractor. Contractor agrees that all labor employed by Contractor, its agents, or subcontractors for Work on the premises of Company shall be in harmony with all other labor being used by Company or other contractors working on Company's premises. Contractor agrees to give Company immediate notice of any threatened or actual labor dispute and will provide assistance as determined necessary by Company to resolve any such dispute. Contractor, its agents, or subcontractors shall remove from Company's premises any person objected to by Company in association with the Work.

ARTICLE 4 COMPANY CHANGES IN WORK

The scope of and conditions applicable to the Work shall be subject to changes by Company from time to time. Such changes shall only be enforceable if documented in a writing executed by Company. Except as otherwise specifically set forth in this Agreement, changes in the scope of or conditions applicable to the Work may result in adjustments in the Contract Price and/or the Work schedule in accordance with this Article 4. If Contractor believes that adjustment of the Contract Price or the Work schedule is justified, whether as a result of a change made pursuant to this Article or as a result of any other circumstance, then Contractor shall (a) give Company

written notice of its claim within five (5) business days after receipt of notice of such change or the occurrence of such circumstances and (b) shall supply a written statement supporting Contractor's claim within ten (10) business days after receipt of notice of such change or occurrence of such circumstances, which statement shall include Contractor's detailed estimate of the effect on the Contract Price and/or the Work schedule. Contractor agrees to continue performance of the Work during the time any claim hereunder is pending. Company shall not be bound to any adjustments in the Contract Price or the Work schedule unless expressly agreed to by Company in writing. Company will not be liable for, and Contractor waives, any claims of Contractor that Contractor knew or should have known and that were not reported by Contractor in accordance with the provisions of this Article.

ARTICLE 5 FORCE MAJEURE

Neither party shall be liable to the other for any damages for any failure to perform or for any delays or interruptions beyond that party's reasonable control in performing any of its obligations under this Agreement due to acts of God, fires, floods, earthquakes, riots, war, acts of terrorism, civil insurrection, acts of the public enemy, or acts or failures to act of civil or military authority, unless the time to perform is expressly guaranteed. Contractor shall advise Company immediately of any anticipated and actual failure, delay, or interruption and the cause and estimated duration of such event. Any such failure, delay, or interruption, even though existing on the date of this Agreement or on the date of the start of the Work, shall require Contractor to within five (5) days submit a recovery plan detailing the manner in which the failure, delay, or interruption shall be remedied and the revised schedule. Contractor shall diligently proceed with the Work notwithstanding the occurrence thereof. This Article shall apply only to the part of the Work directly affected by the particular failure, delay, or interruption, and shall not apply to the Work as a whole or any other unaffected part thereof.

ARTICLE 6 CONTRACTOR DELAYS

Time is an important and material consideration in the performance of this Agreement by Contractor. Contractor agrees to cooperate with Company in scheduling the Work so that the project and other activities at Company's site will progress with a minimum of delays. Company shall not be responsible for compensating Contractor for any costs of overtime or other premium time work unless Company has provided separate prior written authorization for additional compensation to Contractor, and, if Company provides such written authorization, such additional compensation shall be limited to Contractor's actual cost of the premium portion of wages, craft fringe benefits, and payroll burdens. Contractor shall be liable for all failures, delays, and interruptions in performing any of its obligations under this Agreement which are not (a) caused by Company and reported in accordance with Article 4, (b) excused by Article 5, or (c) directed by Company pursuant to Article 7. Contractor shall, without adjustment to completion date or Contract Price, be obligated to make up time lost by such failures, delays, or interruptions. Company may suspend payments under this Agreement during the period of any such failure, delay, or interruption.

ARTICLE 7 COMPANY EXTENSIONS

Company shall have the right to extend schedules or suspend the Work, in whole or in part, at any time upon written notice to Contractor (except that in an emergency or in the event that Company identifies any safety concerns, Company may require an immediate suspension upon oral or written notice to Contractor). Contractor shall, upon receipt of such notice, immediately suspend or delay the Work. Contractor shall resume any suspended Work when directed by Company. If Contractor follows the requirements of Article 4, a mutually agreed equitable adjustment to the Contract Price or to the schedules for payments and performance of the remaining Work may be made to reflect Company's extension of schedules or suspension of the Work. Contractor shall provide Company all information Company shall request in connection with determining the amount of such equitable adjustment.

ARTICLE 8 INSPECTING, TESTING, AUDITING, AND USE OF TOOLS AND EQUIPMENT:

8.1 Right of Inspecting and Testing: Company reserves the right, but shall not be obligated, to appoint representatives to follow the progress of the Work with authority to suspend any Work not in compliance with this Agreement. The appointment or absence of an appointment, of such representatives by Company shall not have any effect on warranties. Acceptance or approval by Company's representative shall not be deemed to constitute final acceptance by Company, nor shall Company's inspection relieve Contractor of responsibility for proper performance of the Work. Inspection by Company's representative shall not be deemed to be supervision or direction by Company of Contractor, its agents, servants, or employees, but shall be only for the purpose of attempting to ensure that the Work complies with this Agreement. In the event Contractor fails to provide Company with reasonable facilities and access for inspection when advised, and if in the opinion of Company, it becomes

necessary to dismantle the Work for such inspection, then Contractor shall bear the expenses of such dismantling and reassembly.

8.2 Right of Auditing: Contractor shall maintain complete records relating to any cost-based (i.e., Work not covered by firm prices) components of the Work billed under this Agreement or relating to the quantity of units billed under any unit price provisions of this Agreement (all the foregoing hereinafter referred to as "Records") for a minimum of five years following the latest of performance of, delivery to Company of, or payment by Company for, such Work or units. All such Records shall be open to inspection and subject to audit and reproduction during normal working hours, by Company or its authorized representatives to the extent necessary to adequately permit evaluation and verification of any invoices, payments, time sheets, or claims based on Contractor's actual costs incurred in the performance or delivery of Work under this Agreement. For the purpose of evaluating or verifying such actual or claimed costs, Company or its authorized representative shall have access to said Records at any time, including any time after final payment by Company to Contractor pursuant to this Agreement. All non-public information obtained in the course of such audits shall be held in confidence except pursuant to judicial and administrative order. Company or its authorized representative shall have access, during normal working hours, to all necessary Contractor facilities and shall be provided adequate and appropriate workspace to conduct audits in compliance with the provisions of this Article. Company shall give Contractor reasonable notice of intended audits. The rights of Company set forth in this paragraph shall survive the termination or expiration of this Agreement.

8.3 Use of Tools and Equipment: Company, in its sole discretion, may allow Contractor to use Company's Tools and Equipment for the Work and related activities at designated Company locations. Contractor shall indemnify and hold harmless Company and its Affiliates, including their respective officers, directors, shareholders, agents, members and employees (each an "Indemnified Party"), from and against any and all claims, damages, losses or liabilities arising out of, relating to, or in connection with, the use of Company's Tools and Equipment by Contractor, its agents, servants, employees or subcontractors, and will reimburse each Indemnified Party for all expenses (including attorney's fees and expenses) as they are incurred in connection with investigating, preparing or pursuing or defending any action, claim, suit or investigation or proceeding related to, arising out of, or in connection with, the use of Company's Tools and Equipment by Contractor, its agents, servants, employees or subcontractors, whether or not threatened or pending and whether or not any Indemnified Party is a party. Contractor, on behalf of itself or its agents, affiliates, officers and directors, and all of their predecessors, successors, assigns, heirs, executors and administrators, hereby irrevocably release, discharge, waive, relinquish and covenant not to sue, directly, derivatively or otherwise, Company and/or its Affiliates and each of their respective directors, officers, shareholders, members, partners (general or limited), employees and agents (including, without limitation, its financial advisors, counsel, proxy solicitors, information agents, depositories, consultants and public relations representatives) and all of their predecessors, successors, assigns, heirs, executors or administrators, and all persons acting in concert with any such person, with respect to any and all matters, actions causes of action (whether actually asserted or not), suits, damages, claims, or liabilities whatsoever, at law, equity or otherwise, arising out of, relating to, or in connection with the use of Company's Tools and Equipment by Contractor, its agents, servants, employees or subcontractors. Company shall in no event be liable for any claim whatsoever by or through Contractor, its employees, agents and/or subcontractors or by any third party, for any inoperability or failure of the Tools and Equipment to perform as designed or intended, whether such claim is based in warranty, contract, tort (including negligence), strict liability or otherwise and whether for direct, incidental, consequential, special, exemplary or other damages. Contractor shall ensure that its employees, agents, subcontractors or servants shall inspect, exercise the appropriate level of care in the use, maintenance and repair of the Tools and Equipment, so as to minimize the incidence of casualties and injuries occurring in connection therewith.

ARTICLE 9 COMPLIANCE WITH APPLICABLE LAWS; SAFETY; DRUG AND ALCOHOL TESTING

9.1 Applicable Laws and Safety: Contractor agrees to protect its own and its subcontractors' employees and be responsible for their Work until Company's acceptance of the entire project and to protect Company's facilities, property, employees, and third parties from damage or injury. Contractor shall at all times be solely responsible for complying with all Applicable Laws and facility rules, including without limitation those relating to health and safety, in connection with the Work and for obtaining (but only as approved by Company) all permits and approvals necessary to perform the Work. Without limiting the foregoing, Contractor agrees to strictly abide by and observe all standards of the Occupational Safety & Health Administration (OSHA) which are applicable to the Work being performed now or in the future, as well as Company's Contractor Code of Business Conduct and

Company's Contractor/Subcontractor Safety Policy which are both hereby incorporated by reference (Contractor hereby acknowledges receipt of a copy of such Company's Contractor Code of Business Conduct and Company's Contractor/Subcontractor Safety Policy) and any other rules and regulations of the Company, all of which are incorporated herein by reference. Contractor also agrees to be bound to any amendments and/or modifications that may be issued in the future by Company from time to time, with respect to Company's Contractor Code of Business Conduct and/or any of its related policies which are the subject of this Article 9. Contractor shall maintain the Work site in a safe and orderly condition at all times. Company shall have the right but not the obligation to review Contractor's compliance with safety and cleanup measures. In the event Contractor fails to keep the work area clean, Company shall have the right to perform such cleanup on behalf of, at the risk of and at the expense of Contractor. In the event Contractor subcontracts any of the Work, Contractor shall notify Company in writing of the identity of the subcontractor before utilizing the subcontractor. Contractor shall require all of its subcontractors to complete the safety and health questionnaire and checklists provided by Company and shall provide a copy of such documents to Company upon request. Contractor shall conduct, and require its subcontractors to conduct, safety audits and job briefings during performance of the Work. In the event a subcontractor has no procedure for conducting safety audits and job briefings, Contractor shall include the subcontractor in its safety audits and job briefings. All safety audits shall be documented in writing by the Contractor and its subcontractors. Contractor shall provide documentation of any and all audits identifying safety deficiencies and concerns and corrective action taken as a result of such audits to Company semi-monthly.

9.2 Hazards and Training: Contractor shall furnish adequate numbers of trained, qualified, and experienced personnel and appropriate safety and other equipment in first-class condition, suitable for performance of the Work. Such personnel shall be skilled and properly trained to perform the Work and recognize all hazards associated with the Work. Without limiting the foregoing, Contractor shall participate in any safety orientation or other of Company's familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Company. Contractor shall accept all equipment, structures, and property of Company as found and acknowledges it has inspected the property, has determined the hazards incident to working thereon or thereabouts, and has adopted suitable precautions and methods for the protection and safety of its employees and the property.

9.3 Drug and Alcohol: No person will perform any of the Work while under the influence of drugs or alcohol. No alcohol may be consumed within four (4) hours of the start of any person's performance of the Work or anytime during the workday. A person will be deemed under the influence of alcohol if a level of 0.02 percent blood alcohol or greater is found. In addition to the requirements of the drug testing program, as set forth in Company's rules and regulations, all persons who will perform any of the Work will be subject to drug and alcohol testing under either of the following circumstances: (i) where the person's performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident which involves off-site medical treatment of any person; and (ii) where Company determines in its sole discretion that there is reasonable cause to believe such person is using drugs or alcohol or may otherwise be unfit for duty. Such persons will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible for administering and conducting drug and alcohol testing, as set forth herein, at Contractor's sole expense. As applicable and in addition to any other requirements under this Agreement, Contractor shall develop and strictly comply with any and all drug testing requirements as required by Applicable Laws.

9.4 Drug and Alcohol Testing: Contractor's employees working on-site shall be required to complete a negative drug and alcohol pre-test within seven (7) days before reporting to work on-site at Big Rivers. The Contractor shall conduct random drug and alcohol testing on ten percent (10%) of their on-site workforce assigned to Big Rivers within thirty (30) days of the start of Work. The Contractor shall subsequently test ten percent (10%) of their on-site workforce assigned to Big Rivers on an on-going monthly basis for the duration of the contract or outage. Big Rivers reserves the right to audit the Contractor's compliance with these requirements. Testing costs are the responsibility of the Contractor. Testing should be conducted using a licensed health care facility or FDA-approved testing device consisting of, at a minimum, a 10 panel drug test (including Amphetamines, Barbiturates, Benzodiazepines, Cannabinoids, Cocaine, Methaqualone, Opiate, Phencyclidine, Methadone, and Propoxyphene) suitable for on-site testing and under the supervision of a certified Medical Review Officer. The Contractor is responsible for all testing and administrative costs associated with the random drug and alcohol testing requirement however, it is anticipated that any employee's time away from the job for random testing will occur during regularly scheduled work hours paid by Big Rivers. The confidentiality of individual test results for your employees should be maintained according to all applicable regulations. Big Rivers will randomly audit contractor testing programs to ensure requirements are met.

9.5 Office of Compliance: The Company has an Office of Compliance. Should Contractor have actual knowledge of violations of any of the herein stated policies of conduct in this Article 9, or have a reasonable basis

to believe that such violations will occur in the future, whether by its own employees, agents, representatives or subcontractors, or by another vendor and/or supplier of the Company and its employees, agents, representatives or subcontractors, or by any employee, agent and/or representative of Company, Contractor has an affirmative obligation to immediately report any such known, perceived and/or anticipated violations to the Company's Office.

ARTICLE 10 STATUS OF CONTRACTOR

Company does not reserve any right to control the methods or manner of performance of the Work by Contractor. Contractor, in performing the Work, shall not act as an agent or employee of Company, but shall be and act as an independent contractor and shall be free to perform the Work by such methods and in such manner as Contractor may choose, doing everything necessary to perform such Work properly and safely and having supervision over and responsibility for the safety and actions of its employees and the suitability of its equipment. Contractor's employees and subcontractors shall not be deemed to be employees of Company. Contractor agrees that if any portion of Contractor's Work is subcontracted, all such subcontractors shall be bound by and observe the conditions of this Agreement to the same extent as required of Contractor. In such event, Company strongly encourages the use of Minority Business Enterprises, Women Business Enterprises, and Disadvantaged Business Enterprises, as defined under federal law and as certified by a certifying agency that Company recognizes as proper.

ARTICLE 11 EQUAL EMPLOYMENT OPPORTUNITY

To the extent applicable, Contractor shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 CFR § 60-1.4(a) and (c), prohibiting employment discrimination against any employee or applicant because of race, color, religion, sex, or national origin; (ii) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 CFR § 60-250.4 relating to the employment and advancement of disabled veterans and Vietnam era veterans; (iii) Rehabilitation Act regulations set forth in 41 CFR § 60-741.4 relating to the employment and advancement of qualified disabled employees and applicants for employment; (iv) the clause known as "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" set forth in 15 USC § 637(d)(3); and (v) the subcontracting plan requirement set forth in 15 USC § 637(d).

ARTICLE 12 INDEMNITY BY CONTRACTOR

- 12.1 Indemnity: Contractor shall be responsible for and shall defend, indemnify, and save harmless Big Rivers Electric Corporation from any and all damage, loss, claim, demand, suit, liability, fine, penalty, or forfeiture of every kind and nature, including, but not limited to, costs and expenses, including professional fees and court costs of defending against the same and payment of any settlement or judgment therefor, by reason of:
- a. injuries or deaths to persons,
 - b. damages to or destruction of real, personal, or intangible properties,
 - c. violations of any other rights asserted against Big Rivers Electric Corporation, including patents, trademarks, trade names, copyrights, contract rights, and easements, or
 - d. violations of governmental laws, regulations or orders whether suffered directly by Big Rivers Electric Corporation itself, or indirectly by reason of claims, demands or suits against it, resulting or alleged to have resulted from acts or omissions of Contractor, its employees, agents, business invitees, or other representatives or from their presence on the premises of Big Rivers Electric Corporation, either solely or in occurrence with any alleged joint negligence of Big Rivers Electric Corporation.
- Big Rivers Electric Corporation shall be liable for its sole negligence and to the extent of its concurrent negligence. Indemnification of Big Rivers Electric Corporation includes its officers, employees, and agents.

ARTICLE 13 ENVIRONMENTAL

13.1 **Control:** As required under the OSHA Hazard Communication Standard (29 CFR 1910.1200) and certain other Applicable Laws, Contractor or its subcontractors shall provide Material Safety Data Sheets ("MSDS") covering any hazardous substances and materials furnished under or otherwise associated with the Work under this Agreement. Contractor and its subcontractors shall provide Company with either copies of the applicable MSDS or copies of a document certifying that no MSDS are required under any Applicable Laws in effect at the worksite. **No asbestos or lead containing materials shall be incorporated into any Work performed by Contractor or otherwise left on the Work site without the prior written approval of Company.** Contractor and its subcontractors shall be solely responsible for determining if any chemical or material furnished, used, applied, or stored or Work performed under this Agreement is subject to any Applicable Laws.

13.2 Labeling: Contractor and its subcontractors shall label hazardous substances and materials and train their employees in the safe usage and handling of such substances and materials as required under any Applicable Laws.

13.3 Releases: Contractor and its subcontractors shall be solely responsible for the management of any petroleum or hazardous substances and materials brought onto the Work site and shall prevent the release of petroleum or hazardous substances and materials into the environment. All petroleum or hazardous substances and materials shall be handled and stored according to Contractor's written Spill Prevention Control and Countermeasures Plan or Best Management Practices Plan as defined under the provisions of the Clean Water Act, as amended, if either such Plan must be maintained pursuant to Applicable Laws. Contractor shall provide secondary containment for the storage of petroleum or hazardous substances and materials. The prompt and proper clean-up of any spills, leaks, or other releases of petroleum or hazardous substances and materials resulting from the performance of the Work under this Agreement and the proper disposal of any residues shall be Contractor's sole responsibility, but Contractor shall give Company immediate notice of any such spills, leaks, or other releases. Contractor shall be solely responsible for the storage, removal, and disposal of any excess or unused quantities of chemicals and materials which Contractor causes to be brought to the Work site.

13.4 Generated Wastes: Unless Company and Contractor expressly agree otherwise in writing, Contractor and its subcontractors shall be solely responsible for any wastes generated in the course of the Work, and Contractor shall handle, store, and dispose of such wastes in accordance with any Applicable Laws.

13.5 Survival: The obligations set forth in this Article shall survive termination or expiration of this Agreement.

ARTICLE 14 INSURANCE

14.1 Contractor's Insurance Obligation: Contractor shall provide and maintain, and shall require any subcontractor to provide and maintain the following insurance (and, except with regard to Workers' Compensation), naming Company as additional insured and waiving rights of subrogation against Company and Company's insurance carrier(s)), and shall submit evidence of such coverage to Company prior to the start of the Work. Seller's liability shall not be limited to its insurance coverage.

14.2 Insurance: Seller shall furnish certificates of insurance, in the name of the Big Rivers Electric Corporation, evidencing insurance coverage of the following types of minimum amounts:

- a. Workman's compensation and employer's liability insurance covering all employees who perform any of the obligations under the contract or Purchase Order, in the amounts required by law. If any employer or employee is not subject to the workers compensation laws of the governing state, then insurance shall be obtained voluntarily to provide coverage to the same extent as though the employer or employee were subject to such laws.
- b. Comprehensive general liability insurance covering all operation under the contract or Purchase Order:
 - bodily injury - \$1,000,000 each occurrence and aggregate; property damage - \$1,000,000 each occurrence and aggregate. A combined single limit of \$1,000,000 for bodily injury and property damage liability is acceptable. The insurance may be in a policy or policies of insurance. A primary policy and an excess policy including the umbrella or catastrophe form is acceptable. Coverage should include contractual liability, broad form property damage liability, owner's and contractor's protective (independent contractor's) liability, products and completed operations hazard, explosion, collapse, and underground property damage hazard.
- c. Automotive liability insurance on all motor vehicles used in conjunction with the contract or Purchase Order, whether owned, non-owned, or hired; bodily injury - \$1,000,000 each person and \$1,000,000 each occurrence; property damage \$1,000,000 each occurrence. A combined single limit of \$1,000,000 for bodily injury and property damage liability is acceptable. The insurance may be in a policy or policies of insurance. A primary policy and an excess policy including the umbrella or catastrophe form is acceptable. Certificates evidencing the insurance coverage's must be furnished before the commencement of work. If any work to be performed under this contract or Purchase Order is sublet, the contractor will be required to furnish proof of insurance from all subcontractors evidencing equal to or better coverage.

14.3 Quality of Insurance Coverage: The above policies to be provided by Contractor shall be written by insurance companies which are both licensed to do business in the state where the Work will be performed and either satisfactory to Company or having a Best Rating of not less than A-. These policies shall not be materially changed or canceled except with thirty (30) days written notice to Company from Contractor and the insurance carrier. Evidence of coverage, notification of cancellation or other changes shall be mailed to: Attn: Director, Supply Chain, Big Rivers Electric Corp., P.O. Box 24, Henderson, KY 42419.

14.4 Implication of Insurance: Company reserves the right to request and receive a summary of coverage of any of the above policies or endorsements; however, Company shall not be obligated to review any of Contractor's certificates of insurance, insurance policies, or endorsements, or to advise Contractor of any deficiencies in such documents. Any receipt of such documents or their review by Company shall not relieve Contractor from or be deemed a waiver of Company's rights to insist on strict fulfillment of Contractor's obligations under this Agreement.

14.5 Other Notices: Contractor shall provide notice of any accidents or claims at the Work site to Company's Manager, Risk Management at Big Rivers Electric Corporation., P.O. Box 24, Henderson, KY 42419 and Company's site authorized representative.

ARTICLE 15 WARRANTIES

Contractor warrants that:

- a. the Work will conform to any applicable Specification / Statement of Work; and any materials supplied in connection therewith shall be new, unused, and free from defect;
 - b. the Work will be suitable for the purposes specified by Company and will conform to each statement, representation, and description made by Contractor to Company;
 - c. the Work is not and shall not be subject to any encumbrance, lien, security interest, patent, copyright or trademark claims, infringements, or other defects in title; and
 - d. any labor or services performed pursuant to this Agreement shall be performed in a competent, diligent, and timely manner in accordance with the highest professionally accepted standards.
- Contractor shall respond in writing to any warranty claim by Company within five (5) business days of the delivery of notice of such claim to Contractor.

ARTICLE 16 OWNERSHIP OF INTELLECTUAL PROPERTY; PATENTS

16.1 Ownership: All inventions, discoveries, processes, methods, designs, drawings, blueprints, information, software, works of authorship and know-how, or the like, whether or not patentable or copyrightable (collectively, "Intellectual Property"), which Contractor conceives, develops, or begins to develop, either alone or in conjunction with Company or others, in connection with the Work, shall be "work made for hire" and the sole and exclusive property of Company. Upon request, Contractor shall promptly execute all applications, assignments, and other documents that Company shall deem necessary to apply for and obtain letters patent of the United States and/or copyright registration for the Intellectual Property and in order to evidence Company's sole ownership thereof.

16.2 Royalties and License Fees: Contractor shall pay all royalties and license fees which may be payable on account of the Work or any part thereof. In case any part of the Work is held in any suit to constitute infringement and its use is enjoined, Contractor within a reasonable time shall, at the election of Company and in addition to Contractor's obligations under Article 12, either (a) secure for Company the perpetual right to continue the use of such part of the Work by procuring for Company a royalty-free license or such other permission as will enable Contractor to secure the suspension of any injunction, or (b) replace at Contractor's own expense such part of the Work with a non-infringing part or modify it so that it becomes non-infringing (in either case with changes in functionality that are acceptable to Company).

ARTICLE 17 RELEASE OF LIENS

Contractor hereby releases for itself and its successors in interest, and for all subcontractors and their successors in interest, any and all claim or right of mechanics or any other type lien upon Company's or any other party's property, the Work, or any part thereof as a result of performing the Work. Contractor shall execute and deliver to Company such documents as may be required by Applicable Laws to make this release effective and shall give all required notices to subcontractors with respect to ensuring the effectiveness of the foregoing release against those parties. Contractor shall secure the removal of any lien that Contractor has agreed to release in this Article within five (5) working days of receipt of written notice from Company to remove such lien. If not timely removed, Company may remove the lien and charge all costs and expenses to Contractor, including without limitation costs of bonding off such lien.

ARTICLE 18 ASSIGNMENT OF AGREEMENT; SUBCONTRACTING

Upon prior written notice given to Company, Contractor shall not, by operation of law or otherwise, assign and/or subcontract any part of the Work or this Agreement without Company's prior written approval. Such approval, if given by Company, shall not relieve Contractor from full responsibility for the fulfillment of any and all obligations

under this Agreement. Under any and all circumstances, any permitted assignee of Contractor, whether or not such assignee shall be a division, subsidiary and/or affiliate entity of Contractor, shall also be fully bound by the terms of this Agreement and, furthermore, upon request by Company, each of Contractor and its permitted assignee shall provide sufficient financial information, as determined by Company in its sole discretion, necessary to validate such assignee's credit worthiness and ability to perform under this Agreement.

ARTICLE 19 INVOICES AND EFFECT OF PAYMENTS

19.1 Invoices: Within a reasonable period of time following the end of each calendar month or other agreed period, Contractor shall submit an invoice to Company that complies with this Article. Payments shall be made within thirty (30) days of Company's receipt of Contractor's proper invoice, and, in the event that Company's payment is overdue, Contractor shall promptly provide Company with a notice that such payment is overdue. Contractor's invoices shall designate the Company location which is the responsible party. Such invoices shall reference the contract / Purchase Order number and shall also show labor, material, taxes paid (including without limitation sales and use taxes, duties, fees, and other assessments imposed by governmental authorities), freight, and all other charges (including without limitation equipment rental) as separate items. All invoices shall be submitted with supporting documentation and in acceptable form and quality to Company's authorized representative. Should Company dispute any invoice for any reason, payment on such invoice shall be made within thirty (30) days of the dispute resolution. Payment of the invoice shall not release Contractor from any of its obligations hereunder, including but not limited to its warranty and indemnity obligations. Invoices shall not be delivered with goods, unless expressly authorized by the Company, but all correspondence and packages related to this Agreement shall reference the Purchase Order / contract number assigned by Company.

19.2 Surcharges: All charges must be pre-approved and referenced within the purchase order or contract. Unapproved charges will not be accepted and will cause the invoice to be rejected and returned. This includes, but is not limited to, surcharges, packing charges, core charges, deposits, and/or any other added costs.

19.3 Taxes: Do not bill Kentucky Sales Tax: Blanket Direct Pay Authorization maintained under 103 KAR 31:030, Permit # 108814, for the various company locations. Company will determine its tax obligation and pay the tax directly to the Kentucky Department of Revenue. Contractor shall list amounts for materials and labor/services separately on the invoice.

19.4 Billing of Additional Work: All claims for payments of additions to the Purchase Order / Contract Price shall be shown on separate Contractor's invoices and must refer to the specific change order or written authorization issued by Company as a condition to being considered for payment.

19.5 Effect of Payments/Offset: No payments shall be considered as evidence of the performance of or acceptance of the Work, either in whole or in part, and all payments are subject to deduction for loss, damage, costs, or expenses for which Contractor may be liable under any Purchase Order or set-off hereunder. Company, without waiver or limitation of any rights or remedies of Company, shall be entitled from time to time to deduct from any and all amounts owing by Company to Contractor in connection with this Agreement or any other contract with Company any and all amounts owed by Contractor to Company in connection with this Agreement or any other contract with Company.

19.6 Evidence of Payment to Subcontractors: Contractor shall, if requested by Company, furnish Company with a certificate showing names of Contractor's suppliers and subcontractors hereunder, and certifying to Company that said suppliers and subcontractors have been paid in full.

ARTICLE 20 ROUTING OF SHIPMENTS

Company shall have the option of specifying the routing of shipments. If freight is included in the Contract Price, and such specified routing increases Contractor's shipping costs, Contractor shall immediately so notify Company, and should Company still specify the more expensive routing, then Company shall reimburse Contractor for the increase actually incurred thereby.

ARTICLE 21 TERM AND TERMINATION

21.1 Term: This Agreement shall commence on the date set forth above and shall survive in full force and effect until terminated as set forth below. A termination under this Article 21 based on certain Work shall only apply to the Statement of Work that covers such Work. Any Statements of Work that do not relate to such Work shall not be affected by such a termination.

21.2 Termination for Contractor's Breach: If the Work to be done under this Agreement shall be abandoned by Contractor, if this Agreement or any portion thereof shall be assigned by operation of law or otherwise,

if the Work or any portion thereof is sublet by Contractor without the permission of Company, if Contractor is placed in bankruptcy, or if a receiver be appointed for its properties, if Contractor shall make an assignment for the benefit of creditors, if at any time the necessary progress of Work is not being maintained, or if Contractor is violating any of the conditions or agreements of this Agreement, or has executed this Agreement in bad faith, Company may, without prejudice to any other rights or remedies it may have as a result thereof, notify Contractor to discontinue any or all of the Work and terminate this Agreement in whole or part. In the event that Section 365(a) of the Bankruptcy Code or some successor law gives Contractor as debtor-in-possession the right to either accept or reject this Agreement, then Contractor agrees to file an appropriate motion with the Bankruptcy Court to either accept or reject this Agreement within twenty (20) days of the entry of the Order for Relief in the bankruptcy proceeding. Contractor and Company acknowledge and agree that said twenty (20) day period is reasonable under the circumstances. Contractor and Company also agree that if Company has not received notice that Contractor has filed a motion with the Bankruptcy Court to accept or reject this Agreement within said twenty (20) day period, then Company may file a motion with the Bankruptcy Court asking that this Agreement be accepted or rejected, and Contractor shall not oppose such motion.

21.3 Effect of Termination for Contractor's Breach: From the effective date of such termination notice, Contractor shall vacate the site, whereupon Company shall have the right but not the obligation to take possession of the Work wherever located, and Contractor shall cooperate with Company and cause Contractor's subcontractors to cooperate with Company so that Company can effect such possession. In obtaining replacement services, Company shall not be required to request multiple bids or obtain the lowest figures for completing the Work and may make such expenditures as shall best accomplish such completion and are reasonable given the circumstances. The expenses of completing the Work in excess of the unpaid portion of the Contract Price, together with any damages suffered by Company, shall be paid by Contractor, and Company shall have the right to set off such amounts from amounts due to Contractor.

21.4 Termination for Company's Convenience: Company may terminate this Agreement or one or more Statements of Work in whole or in part for its own convenience by thirty (30) days written notice at any time. In such event, Company shall pay Contractor all direct labor and material costs incurred on the Work that is subject to such Termination prior to such notice, plus any reasonable unavoidable cancellation costs which Contractor may incur as a result of such termination, plus indirect costs or overhead on the portion of the Work completed, computed in accordance with generally accepted accounting principles less salvage value. As an alternative to salvage value reduction, Company shall have the right in its sole discretion to take possession of all or part of the Work.

ARTICLE 22 PUBLICITY

Contractor shall not issue news releases, publicize, or issue advertising pertaining to the Work or this Agreement without first obtaining the written approval of Company.

ARTICLE 23 CONFIDENTIAL INFORMATION

All information relating to the Work or the business of Company, including, but not limited to, drawings and specifications relating to the Work, and customer information, shall be held in confidence by Contractor and shall not be used by Contractor for any purpose other than for the performance of the Work or as authorized in writing by Company. In the event that the Contractor assigns the work to one or more subcontractors, a signed confidentiality agreement between the Contractor and each subcontractor(s) will be provided to the Company prior to the provision of any information described in the immediately preceding sentence or the performance of any Work by the subcontractor. All drawings, specifications, or documents furnished by Company to Contractor or developed in connection with the Work shall either be destroyed or returned to Company (including any copies thereof) upon request at any time.

ARTICLE 24 MISCELLANEOUS

24.1 Waiver: No waiver by Company of any provision herein or of a breach of any provision shall constitute a waiver of any other breach or of any other provision.

24.2 Headings: The headings of Articles, Sections, paragraphs, and other parts of this Agreement are for convenience only and do not define, limit, or construe the contents thereof.

24.3 Severability: If any provision of this Agreement shall be held invalid under law, such invalidity shall not affect any other provision or provisions hereof which are otherwise valid.

24.4 State Law Governing Agreement: This Agreement shall be governed by, and construed in accordance

with, the laws of the Commonwealth of Kentucky, without regard to its principles of conflicts of laws.

24.5 Enforcement of Rights: Company shall have the right to recover from Contractor all expenses, including but not limited to fees for and expenses of inside or outside counsel hired by Company, arising out of Contractor's breach of this Agreement or any other action by Company to enforce or defend Company's rights hereunder.

24.6 No Third Party Beneficiaries: Except for Contractor and Company, there are no intended third party beneficiaries of this Agreement and none may rely on this Agreement in making a claim against Company.

24.7 Notices: All notices and communications respecting this Agreement shall be in writing, shall be identified by the contract number, and shall be addressed as follows (which address either party may change upon five (5) days prior notice to the other party).

To Company:

To Contractor:

Big Rivers Electric Corp. _____

Attn: Director, Supply Chain _____

P.O. Box 24 _____

Henderson, Kentucky 42419 _____

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date set forth in the introductory paragraph of this Agreement.

COMPANY:

CONTRACTOR

Big Rivers Electric Corp. _____

Name (Please Print)

Name (Please Print)

Title

Title

Signature

Signature

Date

Date

APPENDIX B

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0059. The time required to complete this information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

EQUAL OPPORTUNITY ADDENDUM
To Be Inserted in Construction Contracts and
Subcontracts, and Materials Contracts and Purchase Orders

PART I

The Contractor represents that:

It has does not have 100 or more employees, and if it has, that

It has has no furnished the Equal Employment Opportunity -- Employers Information Report EEO-1 Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Contractor agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Contractor agrees that if -it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than \$10,000, the Contractor will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

PART II

CERTIFICATION OF NONSEGREGATED FACILITIES

The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its -establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest-rooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

PART III

EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race,

color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11,246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The term "Contractor" shall also mean "Bidder" or " Seller" in case of materials and equipment contracts and purchase orders, and "Subcontractor" in the case of subcontracts.

The provisions of this addendum are not applicable to any contract or subcontract not exceeding \$10,000.

This addendum supersedes the similar representations and provisions which may be contained in the contract form to which this addendum is attached. The Contractor may disregard the superseded representations and provisions.

CONTRACTOR
By _____

TITLE

DATE

RUS FORM 270 REV 7-70

APPENDIX C

U.S. DEPARTMENT OF AGRICULTURE

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name(s) and Title(s) of Authorized Representative(s)

Signature(s)

Date

Form AD-1048 (1/92)

APPENDIX D

UNITED STATES DEPARTMENT OF AGRICULTURE

**CERTIFICATION REGARDING LOBBYING - CONTRACTS, GRANTS, LOANS
AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this

Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

UNITED STATES DEPARTMENT OF AGRICULTURE

**NOTICE TO APPLICANTS - CERTIFICATION/DISCLOSURE REQUIREMENTS
RELATED TO LOBBYING**

Section 319 of Public Law 101-121 (31 U.S.C.), signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. Certain provisions of the law also apply to Federal commitments for loan guarantees and insurance; however, it provides exemptions for Indian tribes and tribal organizations.

Effective December 23, 1989, current and prospective recipients (and their subtier contractors and/or subgrantees) will be prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) on or after December 23, 1989, the law requires recipients and their subtier contractors and/or subgrantees to: (1) certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or **nonappropriated** funds on or after December 23, 1989; and (3) file quarterly updates about the use of lobbyists if materials changes occur in their use. The law establishes civil penalties for noncompliance.

If you are a current recipient of funding or have an application, proposal, or bid pending as of December 23, 1989, the law will have the following immediate consequences for you:

- You are prohibited from using appropriated funds (other than profits from Federal contracts) on or after December 23, 1989, for lobbying Congress or any Federal agency in connection with a particular contract, grant, cooperative agreement, or loan;
- you are required to execute the attached certification at the time of submission of an application or before any action in excess of \$100,000 is awarded; and
- you will be required to complete the lobbying disclosure form if the disclosure requirements apply to you.

Regulations implementing Section 319 of Public Law 101-121 have been published as an Interim Final Rule by the Office of Management and Budget as Part III of the February 26, 1990, **Federal Register** (pages 6736-6746).

APPENDIX E



CONTRACTOR

SAFETY CREDENTIALS

ASSESSMENT

PROGRAM

Sebree Station

H-21-103

Big Rivers Electric Corporation Contractor Safety Rules

Company Name: _____ Date: _____

Address: Street/PO Box _____ City _____ State _____ Zip _____

Contact Person Name (Authorized Representative)	Signature	Email	Phone
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(If someone other than the “Contact Person” is to receive the C-SCAP pocket card template, please provide the following)

Name: _____ **Email:** _____ **Phone:** _____

Big Rivers Electric Corporation (BREC) is committed to: maintaining a proactive safety, health, and loss prevention program designed to protect life and property; providing a work environment where recognized health/safety hazards are controlled; and in compliance with all applicable regulatory and legal requirements. BREC holds employee and Contractor safety as one of its most important corporate values. Accordingly, no job, operating condition, or urgency of service can ever justify endangering the health and well-being of any employee or Contractor.

These rules do not replace the contractors’ existing safety and health program(s), provided that their program(s) meet or exceed these and any additional site specific minimum requirements. Contractors’ employees’ not following applicable rules will be subject to removal from the job site.

The contractor is required to comply with all applicable federal and state safety laws and regulations. The contractor is responsible for conducting their work and activities safely. BREC expects and requires that contractors continuously update their employees with respect to safety issues relevant to the work and to take immediate corrective action when their employees violate safety rules or procedures.

Section I. General Safety Requirements

1. Contractors will comply with all applicable federal and state regulations and BREC’s safety rules and programs relevant to the work performed.
2. Contractors will be responsible for providing their employees, and any subcontracted employers with all information provided by BREC regarding:
 - Occupational health and safety;
 - Exposure to atmospheric health, serious physical or chemical hazards; and
 - Precautionary measures and procedures for performing the work.
3. BREC’s policy prohibits the Contractor’s employees, agents or representatives from:
 - Consuming or possessing alcohol and/or non-prescription drugs while on BREC’s job sites, including the parking lots;
 - Reporting to perform work on BREC’s job sites with unauthorized drugs on his/her person or while under the influence of drugs or alcohol.
 - Performing work that involves operating heavy equipment or working at elevations when using prescribed medication that can cause drowsiness or otherwise impair the employee’s ability to perform the work in a safe manner.
4. The following conduct is prohibited by BREC at and about the job site:
 - Theft, horseplay, gambling, sabotage or attempted sabotage.
 - Threatening, intimidating or abusing employees, customers, vendors or guests of BREC.
 - Fighting or creating or inciting a disturbance.
5. Firearms and other weapons are not allowed on BREC’s job sites and/or facilities.
6. BREC has a smoke-free policy within all its buildings.
7. Attendance at job site safety meetings is required of the Contractor at the discretion of BREC’s designated representative. At least one representative of the Contractor will attend job safety meetings.
8. The Contractor will report any Contractor Employee Incident requiring medical attention to BREC’s authorized representative immediately and provide a copy of the first report of injury. All injuries, requiring medical attention, must be reported within One (1) hour, even during off shifts.

Sebree Station

H-21-103

9. Any Contractor employee, who appears sick, extremely tired, or otherwise unable to perform his/her job in a safe manner will be reported to the Contractor's supervision for evaluation and possibly removed from the job site.
10. Contractors are responsible for establishing control measures to protect their employees, and/or employees under their control, from exposure to hazards (chemical, atmospheric health and physical) present at the job site.
11. The Contractor must provide electrical ground fault protection for employees using construction power (temporary branch circuits to include extension cords) through the use of approved ground fault circuit interrupters (GFCI). Additionally, Contractors must provide ground fault protection when using permanent facility power and using cord and plug equipment in wet or damp locations. Applies to 120-volt single phase 15 and 20-ampere receptacle outlets.
12. Contractor employees will work in full pants and shirts. Shorts and tank tops are not permitted unless otherwise specified. Some jobs will require wearing 100% cotton long sleeve shirts and pants, fire resistant (FR) clothing or ATPV (Arc Thermal Performance Value) rated clothing.
13. Contractors shall not transport employees in the beds of trucks.
14. All Contractors must receive authorization from BREC's authorized representative before performing work in areas posted as "**Dangerous or Hazardous.**"
15. Contractors will provide a competent person to the job site as required by state and federal OSHA standards.
16. Contractors shall provide at a minimum, one bilingual employee for every maximum, group of eight non-English speaking employees. Any deviation requires approval from the BREC President & CEO, plant General Manager, or Vice President.
17. All contractors conducting work that require the use of a respirator or where there may be potential for atmosphere contamination must be clean-shaven and provide a documented respirator fit test.

Print and sign name on following line to show understanding of the above;

DATE: _____

Section II. Hazard Specific Requirements

The Contractor will ensure that the Contractor's employees are properly equipped and trained to comply with Federal and State regulations, and BREC standards; including but not limited to the following:

- **Personal Protective Equipment (PPE)**
- **Fall Management (personal fall arrest systems, scaffolding, walking work surfaces, ladders and floor/wall openings)**
- **Chemical Safety/Hazard Communication**
- **Hazardous Waste and Chemical Spills**
- **Hot Work (Cutting and Welding)**
- **Asbestos**
- **High Voltage**
- **Control of Energy Sources (Lockout/Tagout)**
- **Trenching**
- **Confined Space Entry**

Section III. Enforcement of Safety Rules

The Contractor is responsible for the health and safety of employees under their control. Enforcement of these rules, as well as other recognized safety rules, is the responsibility of the Contractor. The evaluation does not constitute acceptance of the Contractor's safety programs or work practices nor, in any way relieve a Contractor of full responsibility for meeting all appropriate OSHA and other regulations to ensure the safety of employees under their control. Whenever there is a jurisdictional question of which standard will apply (e.g. Big Rivers or the Contractor's), the most stringent safety requirement will take precedence. The Contractor must document exceptions and attach them to this form. Contractors and their employees who do not follow these rules are subject to removal from this project, as well as being banned from future projects/contracts.

Document 3.0

Contractor Safety and Health Questionnaire and Checklist

Big Rivers Electric Corporation is committed to providing a safe and healthy workplace for its employees and the employees of Contractors. To qualify to perform work at BREC; companies, including sub-contractors, must complete the Contractor Safety Credentials Assessment Program. As mentioned above, sub-contractors are also required to complete the Contractor Safety Credentials Assessment Program for their company as well.

To begin that process companies shall provide BREC the following information and agree to notify all potential sub-contractors of the C-SCAP requirement.

Please provide a brief description of the work activities to be conducted for Big Rivers:

(Must be completed)

In the table below, provide the three most recent full years of history for the area or region for which this questionnaire applies. In addition, attach copies of applicable OSHA 300A Forms & verification of your workers comp. Experience Modification Rate (EMR)/discount information. Applications without copies of 300A forms and/or EMR may be delayed until received. If your workers compensation insurer does not provide an EMR for your company, an explanation from the workers compensation insurer must be provided with the C-SCAP submittal.

ITEM	DESCRIPTION	2020	2019	2018
A	Interstate Experience Modification Rate (EMR)			
B	Recordable Injury Incident Rate (RIR) = (# of Injuries x 200,000 ÷ Total Hours Worked)			
C	Lost Workday Injury and Illness Incident Rate (LWDIR) = (# of Lost-time Injuries and Illnesses x 200,000 ÷ Total Hours Worked)			
D	NAICS (North American industry Classification System) Code			
E	Using the OSHA 300 Logs from the facilities providing labor, please provide the following: Severity Rate (Total days lost due to injury or industrial illness) = (Total # days away from work x 200,000 ÷ Total Hours Worked)			
F	Number of Injuries and Illnesses (Columns 1-6 of OSHA 300 Log)			
G	Number of Lost Workday Cases (Column H of OSHA 300 Log)			
H	Number of Injury Related Fatalities (Column G of OSHA 300 Log)			
I	Employee hours worked in each of the last 3 years (If unknown use # of employees x 2080)			
J	Total number of full time employees in each of the last 3 years			
K	Total number of temporary employees in each of the last 3 years			

If more space is needed, please use reverse side(s) or separate sheet(s)

	Question	Y / N	Comments
1.	Does your company have a written safety and health program?		
2.	Does your company have a written Hazard Communication Program?		
	Is it available for review?		
3.	Does your company have a written environmental compliance assurance program?		
	Is it available for review?		
4.	Who in your company is responsible for coordinating your safety and health program?		
	Name/Job Title: _____		
	Phone # () _____ Is safety and health a full time responsibility for this position?		
5.	Who conducts OSHA training for your employees?		
	Name/Job Title: _____		
	Is this person an employee of your company or a consultant?		
6.	Has your company received a citation(s) from a regulatory agency during the last three years?		
	If yes, describe citation(s). (Use additional sheet(s) if necessary)		
7.	Does your company perform safety audits/reviews?		
	If yes, are safety audits documented?		
8.	Who reviews the safety audit/review and how often?		
	Job Title: _____		
9.	Does your company provide/require the following?		
	Hard Hats (ANSI-Z89.1)(29 CFR 1910.135		
	Foot Protection (ASTM-F2413)(29 CFR 1910.136)		
	Eye Protection (ANSI-Z41.1)(29 CFR 1910.133)		
	Hand Protection (ANSI-Z41.1)(29 CFR 1910.138)		
	Hearing Protection (ANSI-Z41.1)(29 CFR 1910.95)		
	Fall Protection (ANSI-Z41.1)(29 CFR 1926.501 or 1910.66)		
	Respiratory Protection (ANSI-Z41.1)(29 CFR 1910.134)		
BREC does not provide PPE (Personal Protective Equipment) to Contractor personnel			
10.	In addition to regulatory required Personal Protective Equipment, what other PPE is required or supplied?		
	If any, please describe or list: _____ _____		

11.	Does your company use temporary employees?		
	If yes, what percentage of the total hours worked last year was performed by temporary employees? _____ %		
11.	If you are awarded a contract for work at BREC, what percentage of the estimated hours will be performed by temporary employees? _____ %		
	How do you ensure that temporary employees have the required OSHA training?		
12.	Does your company have scheduled documented employee safety meetings?		
	If yes, how often? _____		
13.	Who conducts the safety meetings?		
	Job Title: _____		
14.	What manager(s)/supervisor(s) participate in the safety meetings?		
	Job Titles: _____		
15.	Are meetings reviewed and critiqued by manager(s)/supervisor(s)?		
16.	Does your company hold on-site (tailgate/toolbox) safety meetings?		
	If yes, how often? _____		
	Who conducts these (tailgate/toolbox) safety meetings?		
	Job Titles: _____		
17.	Is documentation available for review?		
	Does your company have policy requiring written accident/incident reports?		
	Are follow-up investigations conducted?		
	If yes, are corrective actions taken to prevent future incidents?		
18.	Does your company document, investigate and discuss near miss incidents?		
	If yes, is documentation available for review?		
19.	Are accident/incident reports reviewed by manager(s)/supervisor(s)?		
20.	Does your company have a written policy regarding drug screening or testing of your employees?		
	If yes, is a copy available for review?		

21.	<p>Indicate the circumstances in which your company employees may be subject to drug screening.</p> <p style="text-align: right;">Employment Random Probable Cause Post-Incident Other</p>		
22.	<p>Does your company have a policy dealing with emergency actions to be taken should a chemical spill occur?</p>		
23.	<p>Are all documents, pertaining to this questionnaire available for auditing? If no, please explain.</p>		
24.	<p>Does your company use subcontractors? If you do use sub-contractors, do you qualify subcontractors based on their ability to address safety, health and environmental requirements? Do you verify that subcontractors meet regulatory requirements?</p>		
25.	<p>Do you employ "non-English" speaking persons or persons with limited English skills? If so, how do you insure that OSHA and your in-house safety programs are adequately communicated?</p>		
26.	<p>If you use or may use sub-contractors to assist with work conducted at Big Rivers Electric Corporation, please explain how you will verify that the employees of that sub-contractor have OSHA training that is commensurate for the tasks which they will be undertaking.</p>		
27.	<p>If you use or may use employees from a temporary labor pool or employees from a union hall, please explain how you will verify that the individuals have OSHA training that is commensurate for the tasks which they will be undertaking.</p>		
28.	<p>If you use or may use the services of employees from a different division of your corporation, please explain how you will verify that the individuals have OSHA training that is commensurate for the tasks which they will be undertaking.</p>		
29.	<p>Does your company provide and require the use of Class 2 & 3 traffic control garments to comply with work zone traffic control requirements?</p>		
30.	<p>Does your company require its employees to use arc protective clothing while conducting work in the vicinity of energized parts? If yes; what is the ATPV (Arc Thermal Performance Value) rating of the following items within your protective clothing system? <div style="text-align: right;"> Shirt Pants Jacket/Coat Cover-all/Bibs Rain gear Traffic Control Garment </div> <p>Other: (please list) _____</p> <p>Have your employees received training on the hazards of electrical arcs?</p> <p>Have your employees received training on the proper use of your company arc protective clothing system?</p> </p>		

Big Rivers Electric Corporation Contractor Health and Safety Training Acknowledgement Form

Please respond to all applicable items with “YES or NO”

PROGRAMS/TRAINING	REFERENCE SOURCE	WRITTEN PROGRAM Y/N	EMPLOYEES ARE TRAINED Y/N
Asbestos (awareness)	OSHA 29 CFR 1926.1101		
Asbestos Class I, II, and III (abatement)	OSHA 29 CFR 1926.1101		
Asbestos Class I, II and III (removal supervisor)	OSHA 29 CFR 1926.1101		
Bloodborne Pathogens	OSHA 29 CFR 1910.1030		
Chainsaw Safety	OSHA 29 CFR 1910.266		
Communications Facilities	OSHA 29 CFR 1910.269		
Confined Space Entry	OSHA 29 CFR 1910.146		
Crawler, Locomotive and Truck Cranes	OSHA 29 CFR 1910.180		
Daily Equipment Inspection/Walk-Around	OSHA 29 CFR 1910.1000; 29 CFR 1926.1101		
Electrical Safety	OSHA 29 CFR 1910.269		
Electrical Safety	OSHA 29 CFR 1910.332		
Emergency Action Plan	OSHA 29 CFR 1910.38		
Excavations	OSHA 29 CFR 1926.651		
Explosives	OSHA 29 CFR 1910.109		
Fall Protection	OSHA 29 CFR 1926.500		
Fire Extinguisher	OSHA 29 CFR 1910.157		
First Aid/CPR	OSHA 29 CFR 1910.151		
Forklifts	OSHA 29 CFR 1910.178		
Hand and Portable Power Tools and Equipment – General	OSHA 29 CFR 1910.241, 242, 243		
Hazard Communication	OSHA 29 CFR 1910.1200		
Hazwoper - Awareness Level	OSHA 29 CFR 1910.120		
Hazwoper 8 Hour	OSHA 29 CFR 1910.120		
Hazwoper 24 Hour	OSHA 29 CFR 1910.120		
Hazwoper 40 Hour	OSHA 29 CFR 1910.120		
Hazwoper Supervisor 8 Hour	OSHA 29 CFR 1910.120		
Hearing Conservation	OSHA 29 CFR 1910.95		
Incipient Fire Fighting	OSHA 29 CFR 1910.157		
Jacks	OSHA 29 CFR 1926.305		
Ladder Safety	OSHA 29 CFR 1926.1060		
Lead Worker	OSHA 29 CFR 1926.62		

Lead Supervisor	OSHA 29 CFR 1926.62		
Line-Clearance Tree Trimming Operations	OSHA 29 CFR 1910.269		
Lockout/Tagout Affected/Authorized Person	OSHA 29 CFR 1910.147		
Lockout/Tagout Affected/Authorized Person	OSHA 29 CFR 1910.269		
Mobile Cranes	OSHA 29 CFR 1926.550		
PROGRAMS/TRAINING	REFERENCE SOURCE	WRITTEN PROGRAM Y/N	EMPLOYEES ARE TRAINED Y/N
New Employee Orientation	OSHA 29 CFR 1910.119		
Overhead and Gantry Cranes	OSHA 29 CFR 1910.179		
Overhead Lines	OSHA 29 CFR 1910.269		
Oxygen-Fuel Gas Welding and Cutting	OSHA 29 CFR 1910.253		
Personal Protective Equipment	OSHA 29 CFR 1910.132		
Process Safety Management	OSHA 29 CFR 1910.119		
Radiation Awareness	902 KAR 100:019		
Respiratory Protection	OSHA 29 CFR 1910.134		
Rigging, Equipment & Material Handling	OSHA 29 CFR 1926.251		
Scaffolding (erector)	OSHA 29 CFR 1926.451		
Scaffolding (user)	OSHA 29 CFR 1926.451		
Servicing Rim Wheels	OSHA 29 CFR 1910.177		
Substations	OSHA 29 CFR 1910.269		
Trenching and Shoring	OSHA 29 CFR 1926.650; 651; 652; and Subpart P		
Underground Electrical Installations	OSHA 29 CFR 1910.269		
Work Zone Traffic Control	Manual on Uniform Traffic Control Devices		
Working on or Near Exposed Energized Parts	OSHA 29 CFR 1910.269		

Please provide any additional information that you feel would be valuable in this process:

(To be completed by Big Rivers Electric Corporation)

Company Name: _____ **Approved:** Yes ____ No

Sebree Station

H-21-103

Sign & Date: _____

ET&S Representative

Sebree Representative

Wilson/Coleman Representative

Corporate Representative

APPENDIX F



BID CLARIFICATIONS AND/OR EXCEPTIONS

Bidder offers the following clarifications and/or exceptions taken to any requirement or provision of this Request For Quotation and any proposed modifications or replacement language for each clarification or exception (If none, so state)

Bidder understands that unless itemized above, no other clarifications or exceptions to this Request for Quotation are taken by the Bidder.

Bidder

Signature of Executing Party

Date

APPENDIX G



New Vendor/Vendor Information Change Form

All fields highlighted in GRAY indicate areas where information is REQUIRED.

1. Vendor Information

Vendor Name – Please enter company name. This field is limited to 35 characters.

A) Corporate Headquarters:

Form with fields: Street, Town or City, Zip/Postal Code, State/Prov., Country, Telephone, Facsimile, Email address, Website. Each field has a 35 character limit.

B) Ordering Address (where to send purchase orders)

Form with fields: Street, Town or City, Zip/Postal Code, State/Prov., Country, Telephone, Email address, Sales Contact. Each field has a 35 character limit.

Large empty rectangular box for additional information.

C) Remit-To Address (where to send invoice payments)

Form with fields: Street, Town or City, Zip/Postal Code, State/Prov., Country, Accounts Receivable Contact, Telephone. Each field has a 35 character limit.

DUNS Numbering field with 9 vertical lines and text: (Data Universal Numbering System)

Apply for a D-U-N-S Number, the industry standard for business listings

Do you accept Credit Cards? Yes ___ No ___

Definitions:

Corporate Headquarters – Most active office for your company that does business with Big Rivers Electric Corporation (BREC).

Ordering Address – Location(s) to which you wish BREC to SEND purchase orders. Use attachments as necessary.

Remit-to Address – Location to which you wish BREC to SEND invoice payments. Please attach copy of invoice for reference.

D) Payment Terms (If different then Net 30)

E) Supplier Type (Select one of the following)

<p>Attorney/Legal Services <input type="checkbox"/></p> <p>Charity/Contribution <input type="checkbox"/></p> <p>Coal/Natural Gas Contractor (Services Only) <input type="checkbox"/></p> <p>Professional Fees/Dues <input type="checkbox"/></p> <p>Retailer (Materials only) <input type="checkbox"/></p> <p>Other <input type="checkbox"/></p> <p>Specify Products and Services _____</p> <p>If you are a United States-based company, are you qualified as a Small Business concern? <input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>Is your Company union affiliated? <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, which union affiliated organization _____</p>	<p>Is your business one of the following (If yes, please include copy of certification) Check all the applicable categories:</p> <p>MBE <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>WBE <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Small Disadvantaged Business (SDB)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Veteran <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Service Disabled Veteran <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Hub Zone <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>Under 15 U.S.C. 645(d), any person who misrepresents its size status shall (1) be punished by a fine, imprisonment, or both; (2) be subject to administrative remedies; and (3) be ineligible for participation in programs conducted under the authority of the Small Business Act.</p>		
<p>_____ Signature of person providing information</p>	<p>_____ Title</p>	<p>_____ Date</p>
<p>Indicate the following special classifications:</p> <p><input type="checkbox"/> Standard Industry Code (SIC Code): _____</p> <p><input type="checkbox"/> North American Industry Code Standard (NAICS Code): _____</p> <p><input type="checkbox"/> European Classification Code (eClass Code): _____</p>		

F) Contact Information

Who can we contact if we have questions concerning your qualifications and/or this submission?

Name: _____

Telephone: _____

E-mail: _____

Who can we contact "AFTER HOURS" for EMERGENCY SERVICE requirements?

Name: _____

Telephone: _____

E-mail: _____

The following section is to be completed by BREC personnel only.

Date of Input:	Input By:			
Date of Certification:	Type of Certification:	GSA	PSA	Qualified
Is this Vendor Request for One Time use only? * Yes _____ No _____ *If yes, this vendor will have a future inactive date inserted at time of creation based on the Payment Terms.				

G) If you are a Foreign-based company, indicate your TAX/VAT Registration:

H) If you are a United States-based company, complete Form W-9 as indicated. We are required by law to obtain a tax identification number when making a reportable payment to you. Failure to provide this information could result in a tax withholding of 31% and you may be subject to a \$50 penalty imposed by the I.R.S. In completing Form W-9, be sure that you CHECK APPROPRIATE BOX FOR CORPORATION/SOLE PROPRIETORSHIP / PARTNERSHIP OR OTHER. If individual or sole proprietorship, please list individual's name (please print) and Social Security Number. Make sure that YOUR TAX ID NUMBER IS 9 DIGITS.

The Business Name listed here will appear on purchase orders and checks.

APPENDIX H

Form W-9 (Rev. October 2007) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give form to the requester. Do not send to the IRS.
Print or type see specific instructions on page 2	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3. Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number	
OR	
Employer identification number	

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶
	Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such businesses. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

APPENDIX I

BID SHEET

Company Name: _____

The Bidder agrees to perform all the work described in the specification and other attached documents for the following firm lump sum price:

Labor	
Equipment	
Materials	

Taxes required to be included per 3.6. Are taxes included? Please circle one:	Yes	No		
Freight required to be included per 3.6. Is freight included? Please circle one:	Yes	No		
Provide Cost +% for any additional materials for emerging work	Cost + _____ %			
Did you include your Labor Rates? Please circle one:	Yes	No		
Does your company utilize union labor per Sec. 2.6? Please circle one	Yes	No		

APPENDIX J



Bid #: _____

RECIPROCAL PREFERENCE: (Effective February 4, 2011)

In accordance with Kentucky Revised Statutes (KRS) 45A.490 to 45A.494, prior to a contract being awarded to a bidder on a public agency contract, a resident bidder of the Commonwealth of Kentucky shall be given a preference over a nonresident bidder registered in any state that gives or requires a preference over bidders from the other state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.

Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its bid response a notarized affidavit (form attached) that affirms that it meets the criteria to be considered a resident bidder as set forth in KRS 45A.494(2). A nonresident bidder shall submit to HMPL, along with its bid response, a copy of its Certificate of Authority to transact business in the Commonwealth of Kentucky as filed with the Kentucky, Secretary of State. The location of the principal office identified therein shall be deemed the state of residency for that bidder. If the bidder is not required by law to obtain said Certificate, the state of residency for that bidder shall be deemed to be that which is identified in its mailing address as provided in its bid.

Bidders must select and check one option below and return this document with bid.

This company is a resident bidder of the Commonwealth of Kentucky or this company is a nonresident bidder meeting the following requirements:

1. Is authorized to transact business in the Commonwealth; and
2. Has for one year prior to and through the date of advertisement
 - a. Filed Kentucky corporate income taxes; and
 - b. Made payments to the Kentucky unemployment insurance fund established in KRS 341.49; and
 - c. Maintained a Kentucky workers' compensation policy in effect.

The Required Affidavit for Bidders, Offerors and Contractors Claiming Resident Bidder Status form attached must be completed and returned with bid.

This company is not a resident bidder nor does it meet the requirements as listed in Items 1 and 2 above for nonresident bidders claiming resident status in the Commonwealth.

What is your state of residency? _____

Does your state grant "Contract Bid Preference? (circle one) No / Yes

What is the Preference Percentage for your state? _____ %

Company

Signature

Date

Printed Name



Bid #: _____

REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS
CLAIMING RESIDENT BIDDER STATUS

FOR BIDS AND CONTRACTS IN GENERAL:

The bidder or offeror hereby swears and affirms under penalty of perjury that, in accordance with KRS 45A.494(2), the entity bidding is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:

1. Is authorized to transact business in the Commonwealth; and
2. Has for one year prior to and through the date of advertisement
 - a. Filed Kentucky corporate income taxes; and
 - b. Made payments to the Kentucky unemployment insurance fund established in KRS 341.49; and
 - c. Maintained a Kentucky workers' compensation policy in effect.

Henderson Municipal Power & Light reserves the right to request documentation supporting a bidder's claim of Resident Bidder Status. Failure to provide such documentation upon request may result in disqualification of the bidder or contract termination.

_____ Signature	_____ Printed Name
_____ Title	_____ Date
Company Name _____	
Address _____	

Subscribed and sworn to before me by:

_____ (Affiant)	_____ (Title)
of _____ (Company Name)	this _____ day of _____, 20____

_____ Notary Public	My commission expires: _____
------------------------	------------------------------

[seal of notary]

APPENDIX K

BID SHEET

COMPANY NAME: FED ENVIRONMENTAL LLC

The Bidder agrees to perform the all work described in this specification and other attached documents for the following firm lump sum price:

Labor	\$773,500
Equipment	320,000
Materials	302,480

(\$1,395,980) (ALTERNATE BID ATTACHED)

Taxes required to be included per 3.6. Are taxes included? Please circle one:	<input checked="" type="radio"/> Yes	<input type="radio"/> No		
Freight required to be included per 3.6. Is Freight included? Please circle one:	<input checked="" type="radio"/> Yes	<input type="radio"/> No		
Provide Cost + % for any additional Materials for Emerging Work	Cost + 10 %			
Did you include your Labor Rates? Please circle one:	<input checked="" type="radio"/> Yes	<input type="radio"/> No		
Does your company utilize union labor per Sec. 2.6? Please circle one:	<input type="radio"/> Yes	<input checked="" type="radio"/> No		



FED Environmental LLC

2431 Isle Ln
Port Allen, LA 70767
1-833-333-2019
www.fedenvironmental.com

December 7, 21

BIG RIVER ALTERNATE BID THAT INCLUDES STACK DEMO & BUDGET NUMBER FOR SOIL REMEDIATION

FED Environmental LLC and Wilmar Contracting as subcontractor agrees to offer full-scale demolition services on units 1 & 2 including the stack. This is to include any and all structures, rolling stock and auxiliary equipment contained within. This includes both ferrous and non-ferrous materials.

Cost of alternate Demo bid to Big Rivers is \$980,000.00 to include the following:

- Asbestos abatement on Unit 1 and 2
- Demolition of Units 1 & 2 which includes the additional maintenance and storage buildings
- Demolition of the concrete stack with MCC building to be protected

Qualifications;

- Stack to be free of any environmental contamination including Asbestos, Mastic, Silica or Radiation
- Stack will be the last structure to demo
- Any radioactive material if any to be remediated by others or reimbursable
- All permits by owner

BUDGET FOR SOIL REMOVAL AND REPLACEMENT APROXIMATLEY 6.5AC (ESTIMATED 21,000 CUBIC YARD)

Budget number to Big Rivers for soil removal is \$3,372,850.00 to include the following:

- Removal and disposal of approximately 21,000 cubic yards of coal contaminated soil
- Replacement and compaction of approximately 25,000 Cubic Yards of clean soil

Qualifications;

- All engineering by others or reimbursable
- Any dewatering by others or reimbursable
- Any contaminated soil deeper than 2ft needing removed and replaced to be reimbursable

Total for Full Demolition and Soil Remediation = \$4,352,850.00

ORIGINAL



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

In the Matter of:

ELECTRONIC APPLICATION OF)	
BIG RIVERS ELECTRIC CORPORATION)	Case No.
FOR ANNUAL REVIEW OF ITS MRSM)	2022-00028
CHARGE FOR CALENDAR YEAR 2021)	

DIRECT TESTIMONY

OF

**MICHAEL S. MIZELL
VICE PRESIDENT OF ENVIRONMENTAL COMPLIANCE**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

FILED: February 28, 2022

Application Exhibit D

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION FOR ANNUAL REVIEW
OF ITS MRSM CHARGE FOR CALENDAR YEAR 2021
CASE NO. 2022-00028**


VERIFICATION

I, Michael Mizell, verify, state, and affirm that I prepared or supervised the preparation of the Direct Testimony filed with this Verification, and that Direct Testimony is true and accurate to the best of my knowledge, information, and belief after a reasonable inquiry.


Michael Mizell

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

22nd SUBSCRIBED AND SWORN TO before me by Michael Mizell on this the
day of February 2022.


Notary Public, Kentucky State at Large
Kentucky ID Number 18198169
My Commission Expires March 22, 2023

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

DIRECT TESTIMONY

OF

Michael S. Mizell

Table of Contents

I. INTRODUCTION 1

II. STATUS OF DECOMMISSIONING 4

 A. COLEMAN STATION..... 4

 B. STATION TWO 5

III. CONCLUSION 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
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DIRECT TESTIMONY
OF
MICHAEL S. MIZELL

I. INTRODUCTION

Q. Please state your name, business address and occupation.

A. My name is Michael Mizell. My business address is 201 Third Street, Henderson, Kentucky 42420. I am the Vice President of Environmental Compliance for Big Rivers Electric Corporation (“Big Rivers”).

Q. Please summarize your education and professional experience.

A. I graduated from Nova Southeastern University, Business in Fort Lauderdale, Florida in 1994, with a Bachelor of Science degree and Cumberland School of Law at Samford University in Birmingham, Alabama in 1997, with a Juris Doctorate. I began my career with Big Rivers in 2020, as the Vice President of Environmental compliance. My professional experience is summarized in Exhibit Mizell-1.

Q. Please summarize your duties at Big Rivers.

A. I am responsible for all environmental compliance activities across Big Rivers. This includes compliance with all State and Federal environmental

1 regulations, interactions with State and Federal agencies regarding such
2 regulations and monitoring the development of new environmental
3 regulations that have the potential to impact Big Rivers or its
4 Member/Owners. In addition to these responsibilities, I oversee all
5 activities related to the purchasing activities for the corporation.

6 **Q. Have you previously testified before the Kentucky Public Service
7 Commission (“Commission”)?**

8 A. Yes. I provided written responses to information requests and oral
9 testimony on behalf of Big Rivers in Case No. 2020-00299,¹ in which Big
10 Rivers presented its 2020 Integrated Resource Plan.

11

12 **Q. What is the purpose of your testimony in this proceeding?**

13 A. The purpose of my testimony is to provide additional information
14 regarding certain decommissioning activities as related to environmental
15 compliance. My testimony supplements the Direct Testimony of Nathan
16 Berry, which is attached to the Application as Exhibit C.

17

¹ *In the Matter of: Electronic 2020 Integrated Resource Plan of Big Rivers Electric Corporation*
(Filed Sept. 21, 2020).

1 **Q. Please identify the information you will be providing pursuant to**
2 **Ordering Paragraph 10 of the June 25, 2020, Order in Case No.**
3 **2020-00064.**

4 A. I will provide information regarding one matter identified in the May 29,
5 2020, Settlement Agreement, as set forth in the Commission's Order,² the
6 status of decommissioning of the Coleman Station and Henderson Station
7 Two, as related to ash pond closures and environmental compliance.

8

9 **Q. Are you sponsoring any Exhibits?**

10 A. Yes. I have prepared the following exhibit to my testimony.

11 • Exhibit Mizell-1 – Professional Summary

12

² See *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRSB Tariff, Cease Deferring Depreciation Expense, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief*, P.S.C. Case No. 2020-00064, Order (June 25, 2020), at page 16.

1 **II. STATUS OF DECOMMISSIONING**

2 **A. COLEMAN STATION**

3 **Q. What is the status of decommissioning of the Coleman Station, as**
4 **related to ash ponds and/or any other environmental compliance**
5 **matters?**

6 A. Coleman Station includes three coal ash ponds, known as the South Pond
7 (approximately ninety-four (94) acres in size), Sluice Pond (approximately
8 forty-nine (49) acres in size), and North Pond (approximately sixty (60)
9 acres in size). The closure of these ponds is “Project 13-2” of Big Rivers’
10 2020 Environmental Compliance Plan.³ Big Rivers plans to close these
11 ponds by capping them in place with a cover system, as outlined in the Coal
12 Combustion Residuals (“CCR”) Rule.⁴ From start to finish, the closure of
13 the Coleman Station ash ponds is expected to take approximately five (5)
14 years. Big Rivers is currently awaiting the issuance of final U.S.
15 Environmental Protection Agency (“EPA”) Coal Combustion Residual

³ See *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2020 Environmental Compliance Plan, Authority to Recover Costs Through a Revised Environmental Surcharge and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief*, Case No. 2019-00435, Application (filed Feb. 7, 2020).

⁴ See *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2020 Environmental Compliance Plan, Authority to Recover Costs Through a Revised Environmental Surcharge and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief*, Case No. 2019-00435, Application Exhibit E, Direct Testimony of Michael T. Pullen at page 39.

1 regulations for CCR disposal sites such as the Coleman Station ash ponds
2 prior to finalizing detailed engineering design in order to begin the
3 competitive bid process for the Coleman Station ash pond closure as
4 discussed in the Direct Testimony of Michael T. Pullen in Case No. 2019-
5 00435. EPA is not expected to publish its rule for these types of ash ponds
6 until late 2022.

7
8 B. STATION TWO

9 **Q. What is the status of decommissioning of Station Two as it relates
10 to ash ponds and/or any other environmental compliance matters?**

11 A. As discussed in Big Rivers' Application in Case No. 2021-00061⁵ (the "2021
12 MRSB Application"), the retirement of the Henderson Station Two
13 generating units in February of 2019, triggered an obligation for
14 Henderson to decommission the Station Two ash pond by April of 2024.
15 Big Rivers proposed to close the approximately 24-acre ash pond by capping
16 it in place with a cover system, as outlined in the CCR Rule.

17 Work on the ash pond closure began in late 2021 with the
18 engagement of an external engineering consulting firm, which was engaged
19 to develop a clear geologic understanding of the area around the Station

⁵ *In the Matter of: Electronic Application of Big Rivers Electric Corporation For Review Of Its MRSB Credit for Calendar Year 2020*, Case No. 2021-00061, Application (filed Feb. 26, 2021).

1 Two ash pond. This research will allow for the development of a specific
2 closure plan as well as any remedial actions necessary to ameliorate any
3 impacts to ground water that are a result of the presence of the ash pond.
4 This engineering and geotechnical work is scheduled to be completed in
5 December of 2022 and actual closure construction activities will commence
6 shortly thereafter. This project is currently on schedule to meet the EPA
7 mandated closure date of April 2024.

8

9 **III. CONCLUSION**

10

11 **Q. Does this conclude your testimony?**

12 **A. Yes, it does.**

PROFESSIONAL SUMMARY

MICHAEL S. MIZELL

Vice President of Environmental Compliance
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420

PROFESSIONAL EXPERIENCE

BIG RIVERS ELECTRIC CORPORATION, Henderson, KY
Vice President of Environmental Compliance - 2020 to Present

ICE MILLER, Indianapolis, IN
Senior Strategic Advisor- 2017 to 2019

AES CORPORATION (NYSE: AES), Arlington, VA
Vice President, Regulated Utilities –
AES US Services, LLC, Indianapolis, IN (2015 to 2017)
Senior Vice President and General Counsel -
AES US Services, LLC, Indianapolis, IN (2013 to 2015)

DAYTON POWER & LIGHT, INC., Dayton, OH
Senior Vice President and General Counsel - 2012 to 2013

ENERGY DEVELOPMENTS, LTD., Australia
General Counsel and Company Secretary - 2011 to 2012
Energy Developments, Inc., Nashville, TN

WALLER LANSDEN DORTCH & DAVIS, PLLC, Nashville, TN
Partner, Head of Energy and Environment Practice (2006-2010)
Partner (2004-2010)
Associate (1997-2004)

EDUCATION & CERTIFICATIONS

AES Global Leadership Program, Georgetown University, McDonough
School of Business, 2016

J.D., Cumberland School of Law at Samford University, Birmingham, AL, 1997
B.S., Nova Southeastern University, Business, Fort Lauderdale, FL, 1994