

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

**ELECTRONIC APPLICATION OF)
BIG RIVERS ELECTRIC CORPORATION) Case No. 2022-00296
FOR APPROVAL OF AMENDMENT)
TO POWER PURCHASE AGREEMENT)**

INITIAL DATA REQUESTS OF THE ATTORNEY GENERAL

Come now the Attorney General of the Commonwealth of Kentucky, by his Office of Rate Intervention (“Attorney General”), and submits these Data Requests to Big Rivers Electric Corporation (hereinafter “BREC” or “company”) to be answered by February 10, 2023, in accord with the following:

- (1) In each case where a request seeks data provided in response to a staff request, reference to the appropriate requested item will be deemed a satisfactory response.
- (2) Identify the witness who will be prepared to answer questions concerning each request.
- (3) Repeat the question to which each response is intended to refer.
- (4) These requests shall be deemed continuing so as to require further and supplemental responses if the companies receive or generate additional information within the scope of these requests between the time of the response and the time of any hearing conducted hereon.
- (5) Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association, be accompanied by a signed

certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

(6) If you believe any request appears confusing, please request clarification directly from undersigned Counsel.

(7) To the extent that the specific document, workpaper or information as requested does not exist, but a similar document, workpaper or information does exist, provide the similar document, workpaper, or information.

(8) To the extent that any request may be answered by way of a computer printout, please identify each variable contained in the printout which would not be self-evident to a person not familiar with the printout.

(9) If the company has objections to any request on the grounds that the requested information is proprietary in nature, or for any other reason, notify undersigned Counsel as soon as possible, and in accordance with Commission direction.

(10) As used herein, the words "document" or "documents" are to be construed broadly and shall mean the original of the same (and all non-identical copies or drafts thereof) and if the original is not available, the best copy available. These terms shall include all information recorded in any written, graphic or other tangible form and shall include, without limiting the generality of the foregoing, all reports; memoranda; books or notebooks; written or recorded statements, interviews, affidavits and depositions; all letters or correspondence; telegrams, cables and telex messages; contracts, leases, insurance policies or other

agreements; warnings and caution/hazard notices or labels; mechanical and electronic recordings and all information so stored, or transcripts of such recordings; calendars, appointment books, schedules, agendas and diary entries; notes or memoranda of conversations (telephonic or otherwise), meetings or conferences; legal pleadings and transcripts of legal proceedings; maps, models, charts, diagrams, graphs and other demonstrative materials; financial statements, annual reports, balance sheets and other accounting records; quotations or offers; bulletins, newsletters, pamphlets, brochures and all other similar publications; summaries or compilations of data; deeds, titles, or other instruments of ownership; blueprints and specifications; manuals, guidelines, regulations, procedures, policies and instructional materials of any type; photographs or pictures, film, microfilm and microfiche; videotapes; articles; announcements and notices of any type; surveys, studies, evaluations, tests and all research and development (R&D) materials; newspaper clippings and press releases; time cards, employee schedules or rosters, and other payroll records; cancelled checks, invoices, bills and receipts; and writings of any kind and all other tangible things upon which any handwriting, typing, printing, drawings, representations, graphic matter, magnetic or electrical impulses, or other forms of communication are recorded or produced, including audio and video recordings, computer stored information (whether or not in printout form), computer-readable media or other electronically maintained or transmitted information regardless of the media or format in which they are stored, and all other rough drafts, revised drafts

(including all handwritten notes or other marks on the same) and copies of documents as hereinbefore defined by whatever means made.

(11) For any document withheld on the basis of privilege, state the following: date; author; addressee; indicated or blind copies; all persons to whom distributed, shown, or explained; and, the nature and legal basis for the privilege asserted.

(12) In the event any document called for has been destroyed or transferred beyond the control of the company, please state: the identity of the person by whom it was destroyed or transferred, and the person authorizing the destruction or transfer; the time, place, and method of destruction or transfer; and, the reason(s) for its destruction or transfer. If destroyed or disposed of by operation of a retention policy, state the retention policy.

(13) Provide written responses, together with any and all exhibits pertaining thereto, in one or more bound volumes, separately indexed and tabbed by each response, in compliance with Kentucky Public Service Commission Regulations.

(14) "And" and "or" should be considered to be both conjunctive and disjunctive, unless specifically stated otherwise.

(15) "Each" and "any" should be considered to be both singular and plural, unless specifically stated otherwise.

Respectfully submitted,

DANIEL J. CAMERON
ATTORNEY GENERAL



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Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that, on January 26, 2023, an electronic copy of the foregoing was served via the Commission's electronic filing system.

this 26th day of January, 2023.

A handwritten signature in blue ink, appearing to read "J. Michael New". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Assistant Attorney General

Data Requests

1. Provide copies of all written communications between BREC and National Grid Renewables and its representatives related to the amendment of the PPA.
2. Discuss generally whether, when considering whether a power purchase agreement (“PPA”) will provide benefit to ratepayers, the Commission should consider the risk that the project developer or operator will become, “unwilling to move forward with their project,” after the Commission approves the agreement.
 - a. Discuss how the Commission should quantify the cost of that risk when comparing the cost of a PPA to that of an alternate source of owned generation or procured energy.
3. Confirm that:
 - a. The per mWh contract price (such as the \$29.60/mWh rate found in Exhibit 5.1 of the Original PPA or \$38.10 in the proposed amendment) is not guaranteed or fixed, but is subject to continual renegotiation based on the project developer’s economic analysis of whether, at any point in time, it is in its economic interest to sell to the utility at that rate or, alternatively, pay the credit support penalty and sell the output to another buyer.
 - b. If the risk of energy shortfalls in MISO and elsewhere persist or increase, the value of the generation subject to the PPA will increase, making it increasingly likely that the PPA developer/operator will again become “unwilling” to provide the generation contemplated by the PPA.
4. Confirm that, if the company were to build, own, and operate a traditional source of utility-owned generation, or its own solar generation, there would be no risk that the generation of that project could later be withheld based on changed economics.
5. Confirm that ratepayers could face increased costs in the future if the PPA developer/operator again becomes “unwilling” to sell its output at the contract

price, and if market conditions dictate a higher price for replacement generation at that time.

6. Confirm that ratepayers could face increased costs in the event of the PPA operator's "unwillingness" to sell its output at the contract price in the future, because ratepayers could have been investing the funds paid to the PPA operator in other generation investments that would not be subject to the evolving economic expectations of third parties.
7. See Direct Testimony of Mark Eacret at Page 17-18 of 19. Discuss why the Commission should approve a PPA [REDACTED].
8. Calculate the levelized per mWh market price that would be required in order for the difference between the net present value of the PPA at that market price to exceed the net present value of the PPA under the proposed contract price (plus all applicable costs to be paid by ratepayers under the proposed PPA) by the amount of the proposed credit support penalty, [REDACTED]. Provide a detailed calculation.
9. See Direct Testimony of Mark Eacret at Page 17 of 19. Provide copies of the April 1, 2022 RFP and all proposals received in response to the RFP.
10. See Application at numerical paragraph 23 where it states, the renewable energy proposed to be procured under the PPA is, "still needed to satisfy Big Rivers' obligations to provide solar power to Meade County RECC necessary for Meade County RECC to supply solar power to Nucor Corporation ("Nucor").
 - a. Confirm the revenues generated by Meade County RECC and BREC related to its sales to Nucor are sufficient to fully cover the costs of the procurement considered under the proposed amended PPA, including all costs (costs of energy, network upgrade costs, etc.).
 - b. Confirm the revenues generated by Meade County RECC and BREC related to its sales to Nucor are sufficient to contribute to the fixed costs of Meade County RECC and BREC ratepayers.

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- c. Provide a detailed analysis supporting the confirmation requested in A and B.
 - d. Discuss whether Meade County RECC and BREC maintain sufficient capacity and energy to serve the Nucor load if the developer operator of the PPA fails or refuses to supply the contemplated generation.
 - e. Would a failure or refusal of the developer/operator to supply the contracted generation cause the Meade County RECC and BREC to resort to market purchases that could potentially increase costs for all ratepayers?
11. See Direct Testimony of Mark Eacret at Page 16 of 19 where it states, “[w]ith the new contract terms and updated assumptions, the value of the PPA to our Members actually increases to \$85.9 million,” from \$58.1 million.
- a. Confirm that the “increase” in value represents only a comparison of the “value” of the Original PPA based on the terms and the market conditions at the time of its approval compared to the proposed PPA and the current market conditions.
 - b. See Direct Testimony of Mark Eacret at Page 17 of 19. Confirm that the value of the original PPA, originally \$58.1 million, would be \$127.7 million based on today’s market conditions.
 - c. Confirm that the developer’s “unwillingness to move forward with the project” under the terms of the original PPA has cost ratepayers at least \$41.8 million in lost value.
12. See Direct Testimony of Mark Eacret at Page 9 of 19 where it states that, “NGR asserted that it would not be able to finance the project without ‘mutually beneficial revisions’ to the contract.”
- a. Confirm that National Grid Renewables (“NGR”) is a subsidiary of National Grid, PLC.

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- b. Confirm that National Grid, PLC is an international company with assets in excess of \$60 billion.
 - c. Confirm that it is inaccurate that NGR “would not be able to finance the project” under the original contract terms.
 - d. Confirm that, instead, NGR simply decided that, based on an ineffectually low credit support penalty, it was no longer in its economic interest to develop the project.
13. Confirm that, if NGR decides in the future that it is unwilling to develop the project or supply the output from the project, threatening to trigger the credit support penalty and end the agreement, ratepayers are subject to risk of the loss and/or further erosion of value.
14. When considering whether to continue to do business with NGR or engage with an alternative partner to develop a project, did BREC place a financial value on the fact that NGR became “unwilling” to perform under the original PPA? If so, how much is that value?
15. Explain whether credit support or liquidated damages provisions of the contract discriminate between the pre-construction and post-construction phase of the project.
16. Confirm that, if a purchased power project is fully developed and provides energy on which the company relies to meet the energy needs of its ratepayers, the risk to the utility associated with the sudden withholding of that needed generation is greater than the risk associated with a developer’s failure to complete development of a project initially. Thus, a completed and operating generation source on which the utility relies is riskier than an undeveloped project on which the utility has yet to rely.
17. Provide an assessment of BREC’s current and near-term position with respect to capacity need and energy load and the associated generation and/or procurement needed to serve that load. Further, provide a forecasted reserve margin for two scenarios: (a) if the amended PPA is approved and (b) if it is denied.

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18. Summarize communication with and from Nucor related to the amended PPA.

- a. If the amended PPA is rejected, will BREC be required to make alternative arrangements to meet contractual obligations to Nucor?
 - i. If so, provide a copy of the contract including those requirements.
 - ii. If so, discuss the steps BREC will take to meet those obligations.
- b. Provide copies of all written communications between Nucor and BREC related to the amendment of the PPA.