



COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

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

Big Rivers Electric Corporation's

**Response to the Initial Data Requests
of the Attorney General dated January 26, 2023**

**Redacted Attachment to
Big Rivers' Response to
Item No. 1**

**Filed with Motion For
Confidential Treatment**

**Pursuant to Commission Order,
Dated August 3, 2023**

RE- FILED: August 31, 2023

From: Eacret, Mark
Sent: Thursday, September 8, 2022 12:02 PM
Cc: Berry, Bob; Kamuf, Tyson; Berry, Nathan; Mathews, Talina
Subject: Amendments
Attachments: National Grid Amendments Final Executed.pdf

Drew,

Attached are the fully executed amendments. We are working on the regulatory filings now.

**FIRST AMENDMENT TO
POWER PURCHASE AGREEMENT
(RENEWABLE ENERGY-SOLAR)**

This First Amendment to Power Purchase Agreement (Renewable Energy-Solar) (this “**Amendment**”) by and between Unbridled Solar, LLC, a Delaware limited liability company formerly known as Henderson Solar, LLC (“**Seller**”), and Big Rivers Electric Corporation, a Kentucky rural electric cooperative corporation (“**Buyer**”), is entered into and made effective as of September 7th, 2022 (the “**Amendment Effective Date**”). Buyer and Seller are sometimes referred to herein collectively as the “**Parties**,” and each as a “**Party**.”

RECITALS

WHEREAS, the Parties entered into that certain Power Purchase Agreement (Renewable Energy-Solar), dated May 26, 2020 (the “**PPA**”); and

WHEREAS, pursuant to Section 21 of the PPA, any modification of the PPA shall be in writing and executed by the Parties.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree, intending to be legally bound, to amend the PPA as follows:

AGREEMENT

1. **Defined Terms.** Capitalized terms not otherwise defined in this Amendment shall have the meanings set forth in the PPA, as amended.

2. **Amendments.** The PPA is hereby amended as follows:

(a) In the second “WHEREAS” clause in the recitals to the PPA, the reference to [REDACTED] is deleted and replaced with [REDACTED].

(b) The following amendments are made to Section 1.1 of the PPA:

(i) A new definition of “**Amendment Approval Date**” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“**Amendment Approval Date**” means the date upon which Seller has received written notice from Buyer that both the Kentucky Public Service Commission and the Rural Utilities Service have approved the First Amendment.

(ii) In the first sentence of the definition of “**Commercial Operation**” the words “ninety percent (90%) of” are added immediately following the words “not less than”.

(iii) In the definition of “**Delay Damages**” the reference to [REDACTED] is

deleted and replaced with [REDACTED]”.

(iv) The definition of “Expected Energy” is deleted in its entirety and replaced with the following:

“Expected Energy” means [REDACTED] [REDACTED] of Net Output during the first Contract Year, measured at the Point of Delivery; [REDACTED] of Net Output during the second Contract Year, measured at the Point of Delivery; and thereafter, Expected Energy will be the annual generation predicted by the Solar Performance Modeling Program for the Facility as constructed, *multiplied by* the measured plane of array irradiance derived from the same satellite data source used in the Solar Performance Modeling Program, *divided by* the Solar Performance Modeling Program's expected plane of array irradiance, taking into account an annual degradation factor of 0.5% per Contract Year. Seller estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly output set forth in Exhibit A. Seller acknowledges that Buyer will include Buyer's Interest in Buyer's resource planning. Buyer acknowledges that solar exposure is a variable resource and that the Facility's actual annual output of Net Output and RECs in the ordinary course of any given Contract Year will be subject to variation caused by differences in the solar exposure at the Facility from Contract Year to Contract Year; provided, however, that nothing in this sentence affects or reduces Seller's obligations hereunder.

(v) A new definition of “First Amendment” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“First Amendment” means that certain First Amendment to this Agreement between the Parties dated August 29, 2022.

(vi) A new definition of “Interconnection Provider Delay” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“Interconnection Provider Delay” means, in the event Interconnection Provider has not provided backfeed power to the Facility in connection with the interconnection of the Facility to the System, through no fault of Seller, on or before [REDACTED], a period of days equal the sum of (a) the day-for-day period thereafter until the date Interconnection Provider provides such backfeed power to the Facility and (b) seven (7) days. For example, if the Interconnection Provider provides such backfeed power on [REDACTED], then the Scheduled Commercial Operation Date of [REDACTED] would be extended by seventeen (17) days.

(vii) The definition of “Network Upgrade Costs” is deleted in its entirety and replaced with the following:

“Network Upgrade Costs” means all costs and expenses for Network Upgrades (as such term is defined in the Tariff) and also includes

costs and expenses payable to any Affected System Operator and defined in and required under the Generation Interconnection Agreement and/or Provisional Generator Interconnection Agreement.

(viii) A new definition of “**Provisional Generator Interconnection Agreement**” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“**Provisional Generator Interconnection Agreement**” is defined in Attachment X to the Tariff and includes any similar provisional or conditional Generation Interconnection Agreement pursuant to which the Transmission Provider provides Provisional Interconnection Service (as defined in Attachment X to the Tariff) or similar service to the Facility.

(ix) A new definition of “**Provisional Interconnection Study**” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“**Provisional Interconnection Study**” is defined in Attachment X to the Tariff.

(x) A new definition of “**Regulatory Approval Delay**” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“**Regulatory Approval Delay**” means, in the event the Kentucky Public Service Commission and the Rural Utilities Service have not approved the First Amendment on or before October 1, 2022, a day-for-day period equal to the period commencing on and including October 1, 2022 and ending on the Amendment Approval Date.

(xi) The definition of “**Scheduled Commercial Operation Date**” is deleted in its entirety and replaced with the following:

“**Scheduled Commercial Operation Date**” means [REDACTED] which date shall be subject to extension for each event of Interconnection Provider Delay and/or Regulatory Approval Delay (if applicable).

(c) A new Section 4.4.3 is added to the PPA and reads as follows:

4.4.3 Potential Provisional GIA Curtailment. In the event the Net Output of the Facility is curtailed pursuant to limitations or restrictions imposed pursuant to or in connection with the Provisional Generator Interconnection Agreement (including in connection with any quarterly operating limits imposed upon the Facility), then Seller shall notify Buyer of such limitations or restrictions and Buyer will use commercially reasonable efforts to assist Seller’s commercially reasonable efforts to mitigate or reduce any adverse effects of such limitations or restrictions to both parties, including by providing Seller and the Facility with access to any surplus interconnection service (or similar service) that is or is reasonably expected

to be available at or in connection with any power or energy plants owned by Buyer or its Affiliates.

(d) Section 5.2.2 of the PPA is deleted in its entirety and replaced with the following:

5.2.2 Network Upgrades.

(a) Notwithstanding anything to the contrary in this PPA:

(i) the Generation Interconnection Agreement may be a Provisional Generator Interconnection Agreement, at Buyer's sole option, which may limit the operations of the Facility and the delivery of Net Output therefrom, and may require Network Upgrade Costs to interconnect the Facility to the System to allow the Facility to operate and deliver Net Output to the Point of Delivery at the Expected Nameplate Capacity Rating;

(ii) excepting the Interconnection Facilities of the Facility (which shall remain the responsibility of Seller and Seller shall be responsible for the costs and expenses thereof), in the event Buyer has not timely exercised its rights to terminate this Agreement pursuant to Section 5.2.2(b) below, Buyer shall be responsible for the payment of, and pay for (or, to the extent paid or incurred by Seller or its Affiliates, reimburse Seller for), all Network Upgrade Costs required in connection with the Facility's interconnection to the System at the Expected Nameplate Capacity Rating; and

(iii) except as otherwise expressly set forth herein, Seller shall be responsible for legal and ministerial costs in obtaining the permanent Generation Interconnection Agreement; provided, however, that if additional Network Upgrade Costs are included in or imposed pursuant to the permanent Generation Interconnection Agreement, then Buyer shall be responsible for and shall pay such costs as described above.

(b) Provided this Agreement has not been earlier terminated, Seller shall pay for the Network Upgrade Costs pursuant to the terms and conditions of the Provisional Generator Interconnection Agreement and Buyer agrees to reimburse Seller for such amount of Network Upgrade Costs no later than ten (10) Business Days following receipt of notice and reasonable evidence from Seller of Seller's payment thereof and receipt by Buyer of Seller's invoice for the applicable costs. The Parties acknowledge and agree that (i) Seller will be responsible for providing security required under Attachment X of the Tariff to proceed with the Facility's interconnection process thereunder, (ii) that such security may be used by the Transmission Provider to pay for such Network Upgrade Costs, and (iii)

the use by Transmission Provider of such security to pay for such Network Upgrade Costs shall not affect Buyer's obligation to, and Buyer shall, reimburse Seller for such amounts.

(c) In the event the Network Upgrade Costs reflected in the Provisional Interconnection Study are in excess of \$10,000,000, then Buyer shall deposit an amount equal to such amount of Network Upgrade Costs into an escrow account with a state- or federally-chartered commercial bank with net assets of at least \$1 billion. Such escrow account shall be governed by an escrow agreement in form mutually satisfactory to Seller, Buyer and the escrow agent (each acting reasonably), provided that (i) Seller shall hold a first and exclusive perfected security interest in the funds in such escrow account, (ii) Seller shall be permitted unilaterally to draw down any amount therein in the event Buyer fails to timely reimburse Seller as described in Section 5.2.2(b) regardless of any protest by Buyer or any other party liable thereon (provided that nothing in the escrow agreement shall preclude any protest against Seller by Buyer, following any draw, that such draw did not comply with this Agreement), and (iii) Buyer shall pay all fees and expenses of the escrow agent. All investment income on such escrow account shall be taxable to, and accrue for the benefit of, Buyer.

(e) Seller shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of Buyer under this Section 5.2.2. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation, and that any liability limits contained herein shall not operate to limit the exercise of Seller's remedies in equity to cause Buyer to perform its obligations under this Section 5.2.2.

(e) In Section 6.3 of the PPA, each of the references to "Section 5.2.2" are deleted and replaced with "Sections 4.4.3 and 5.2.2."

(f) In Section 8.1 of the PPA, clause (i) thereof is deleted in its entirety and replaced with the following: "(i) for the period commencing thirty (30) days following the Amendment Approval Date and ending on the Commercial Operation Date, [REDACTED] and".

(g) Section 12.1.7 of the PPA is deleted in its entirety and replaced with the following:

12.1.7 Consequential Damages. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY

CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, DELAY DAMAGES, BUYER AND SELLER COST TO COVER DAMAGES, SECTION 11.2.3 CAPACITY RIGHTS LOSS DAMAGES, INDEMNIFICATION FOR THIRD PARTY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

(h) In Section 22.1 of the PPA, the reference to “Henderson Solar, LLC” is deleted and replaced with “Unbridled Solar, LLC.”

(i) Exhibit A to the PPA is deleted and replaced with the Exhibit A to this Amendment.

(j) In Exhibit B to the PPA, the reference to [REDACTED]” is deleted and replaced with [REDACTED] and each reference to [REDACTED]” is replaced with [REDACTED]

(k) Exhibit 5.1 to the PPA is deleted and replaced with Exhibit 5.1 to this Amendment.

3. PSC Approval. This Amendment shall become effective upon the Amendment Approval Date; provided, that Buyer shall use its commercially reasonable efforts to file this Amendment with Kentucky Public Service Commission and the Rural Utilities Service as soon as reasonably practicable following the Amendment Effective Date and to achieve the Amendment Approval Date as soon as reasonably practicable thereafter.

4. Replacement of Credit Support. Buyer agrees that, in the event Seller desires to replace (rather than increase via a supplemental instrument) the current Credit Support in place under the PPA with the Credit Support required pursuant to this Amendment, Buyer shall concurrently return such current Credit Support to Seller without offset or deduction at the time Seller provides such replacement Credit Support.

5. Limited Effect and Binding Agreement. Except as specified in this Amendment, all terms and conditions of the PPA shall continue in full force and effect. Following the date of the PPA, Seller underwent a change in its name from “Henderson Solar, LLC” to “Unbridled Solar, LLC” and Seller acknowledges and agrees that it is responsible for all of Seller’s liabilities and obligations under the PPA, as amended, as a party thereto.

6. Entire Agreement. This Amendment, the PPA and the other documents related thereto, including all schedules and exhibits thereto, constitute the entire agreement of the Parties with respect to the subject matter hereof and thereof, and supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. This Amendment may not be modified, amended or terminated except by a written instrument specifically referring to this Amendment or the PPA signed by all the Parties hereto or thereto, as the case may be.

7. Headings. Captions and headings used in this Amendment are for ease of reference only and do not constitute a part of this Amendment.

8. Governing Law. This Amendment shall be interpreted and enforced in accordance with the laws of the Commonwealth of Kentucky, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

9. Partial Invalidity. The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms hereof shall remain in effect. The Parties shall use best efforts to amend this Amendment to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Amendment in all material respects.

10. Counterparts. This Amendment may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

11. Imaged Agreement: Electronic Signatures. Any original executed copy of this Amendment or any other related document may be electronically copied or photocopied and stored electronically (“Imaged Agreement”). If an Imaged Agreement is introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, neither Party shall object to the admissibility of the Imaged Agreement on the basis that such was not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence. Without limiting the foregoing, electronic signatures (including documents executed and delivered through DocuSign or similar third party electronic signature capture service providers) shall be deemed original signatures for purposes of this Amendment and all matters related thereto, with such electronic signatures having the same legal effect as original signatures. The Parties agree that this Amendment, any addendum or amendment hereto or any other document necessary for the consummation of the transactions contemplated by this Amendment may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act, and any applicable state Law. Any document accepted, executed or agreed to in conformity with such laws will be binding on the Parties the same as if it were physically executed and delivered.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Amendment Effective Date.

Seller:

UNBRIDLED SOLAR, LLC

By: 

Name: Robert W. Berry

Its: Authorized Signer

Buyer:

BIG RIVERS ELECTRIC CORPORATION

By: 

Name: Robert W. Berry

Its: President + CEO

EXHIBIT A

ESTIMATED OUTPUT

Seller to provide one (1) electronic and hard copy of the solar plant performance estimation report using PVSYST or a comparable solar performance modeling program including, at a minimum, estimated hourly MW generation output in MWh/h for the Facility. Upon Commercial Operations, Seller shall provide an updated **Exhibit A** based on completed construction and Seller's designated Licensed Professional Engineer will provide certification as part of Commercial Operations that the estimated energy output included in such updated **Exhibit A** is correct as calculated using PVSYST or comparable solar performance modeling program.



All amounts are based on an estimate of the first full Contract Year, which shall be reduced by an annual degradation factor of 0.5% per Contract Year.

EXHIBIT 5.1

CONTRACT PRICE

The Contract Price is \$38.10 / MWh throughout the Term.

From: Drew D. Terwilliger <[REDACTED]>
Sent: Wednesday, September 7, 2022 2:04 PM
Cc: Berry, Bob; Blake E. Nixon
Subject: [BULK] Unbridled Solar PPA Amendment
Attachments: Unbridled Solar PPA Amendment 1 (partially executed).pdf

Mark,

We have received our board approval today. Attached is a partially executed copy of the Unbridled Solar PPA Amendment. Please review, countersign, and send back a copy for our records and we can get the Provisional GIA process going asap.

-Drew



Drew D. Terwilliger
Vice President - Commercial



8400 Normandale Lake Boulevard, Suite 1200 | Bloomington, MN 55437

**FIRST AMENDMENT TO
POWER PURCHASE AGREEMENT
(RENEWABLE ENERGY-SOLAR)**

This First Amendment to Power Purchase Agreement (Renewable Energy-Solar) (this “**Amendment**”) by and between Unbridled Solar, LLC, a Delaware limited liability company formerly known as Henderson Solar, LLC (“**Seller**”), and Big Rivers Electric Corporation, a Kentucky rural electric cooperative corporation (“**Buyer**”), is entered into and made effective as of September 7th, 2022 (the “**Amendment Effective Date**”). Buyer and Seller are sometimes referred to herein collectively as the “**Parties**,” and each as a “**Party**.”

RECITALS

WHEREAS, the Parties entered into that certain Power Purchase Agreement (Renewable Energy-Solar), dated May 26, 2020 (the “**PPA**”); and

WHEREAS, pursuant to Section 21 of the PPA, any modification of the PPA shall be in writing and executed by the Parties.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree, intending to be legally bound, to amend the PPA as follows:

AGREEMENT

1. Defined Terms. Capitalized terms not otherwise defined in this Amendment shall have the meanings set forth in the PPA, as amended.

2. Amendments. The PPA is hereby amended as follows:

(a) In the second “WHEREAS” clause in the recitals to the PPA, the reference to [REDACTED] is deleted and replaced with [REDACTED].

(b) The following amendments are made to Section 1.1 of the PPA:

(i) A new definition of “**Amendment Approval Date**” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“**Amendment Approval Date**” means the date upon which Seller has received written notice from Buyer that both the Kentucky Public Service Commission and the Rural Utilities Service have approved the First Amendment.

(ii) In the first sentence of the definition of “**Commercial Operation**” the words “ninety percent (90%) of” are added immediately following the words “not less than”.

(iii) In the definition of “**Delay Damages**” the reference to [REDACTED] is

deleted and replaced with [REDACTED].

(iv) The definition of “**Expected Energy**” is deleted in its entirety and replaced with the following:

“**Expected Energy**” means [REDACTED] of Net Output during the first Contract Year, measured at the Point of Delivery; [REDACTED] of Net Output during the second Contract Year, measured at the Point of Delivery; and thereafter, Expected Energy will be the annual generation predicted by the Solar Performance Modeling Program for the Facility as constructed, *multiplied by* the measured plane of array irradiance derived from the same satellite data source used in the Solar Performance Modeling Program, *divided by* the Solar Performance Modeling Program's expected plane of array irradiance, taking into account an annual degradation factor of 0.5% per Contract Year. Seller estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly output set forth in **Exhibit A**. Seller acknowledges that Buyer will include Buyer's Interest in Buyer's resource planning. Buyer acknowledges that solar exposure is a variable resource and that the Facility's actual annual output of Net Output and RECs in the ordinary course of any given Contract Year will be subject to variation caused by differences in the solar exposure at the Facility from Contract Year to Contract Year; provided, however, that nothing in this sentence affects or reduces Seller's obligations hereunder.

(v) A new definition of “**First Amendment**” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“**First Amendment**” means that certain First Amendment to this Agreement between the Parties dated August 29, 2022.

(vi) A new definition of “**Interconnection Provider Delay**” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“**Interconnection Provider Delay**” means, in the event Interconnection Provider has not provided backfeed power to the Facility in connection with the interconnection of the Facility to the System, through no fault of Seller, on or before [REDACTED], a period of days equal the sum of (a) the day-for-day period thereafter until the date Interconnection Provider provides such backfeed power to the Facility and (b) seven (7) days. For example, if the Interconnection Provider provides such backfeed power on [REDACTED], then the Scheduled Commercial Operation Date of [REDACTED] would be extended by seventeen (17) days.

(vii) The definition of “**Network Upgrade Costs**” is deleted in its entirety and replaced with the following:

“**Network Upgrade Costs**” means all costs and expenses for Network Upgrades (as such term is defined in the Tariff) and also includes

costs and expenses payable to any Affected System Operator and defined in and required under the Generation Interconnection Agreement and/or Provisional Generator Interconnection Agreement.

(viii) A new definition of “**Provisional Generator Interconnection Agreement**” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“**Provisional Generator Interconnection Agreement**” is defined in Attachment X to the Tariff and includes any similar provisional or conditional Generation Interconnection Agreement pursuant to which the Transmission Provider provides Provisional Interconnection Service (as defined in Attachment X to the Tariff) or similar service to the Facility.

(ix) A new definition of “**Provisional Interconnection Study**” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“**Provisional Interconnection Study**” is defined in Attachment X to the Tariff.

(x) A new definition of “**Regulatory Approval Delay**” is added in the appropriate alphabetical location in Section 1.1 of the PPA and reads as follows:

“**Regulatory Approval Delay**” means, in the event the Kentucky Public Service Commission and the Rural Utilities Service have not approved the First Amendment on or before October 1, 2022, a day-for-day period equal to the period commencing on and including October 1, 2022 and ending on the Amendment Approval Date.

(xi) The definition of “**Scheduled Commercial Operation Date**” is deleted in its entirety and replaced with the following:

“**Scheduled Commercial Operation Date**” means [REDACTED] which date shall be subject to extension for each event of Interconnection Provider Delay and/or Regulatory Approval Delay (if applicable).

(c) A new Section 4.4.3 is added to the PPA and reads as follows:

4.4.3 Potential Provisional GIA Curtailment. In the event the Net Output of the Facility is curtailed pursuant to limitations or restrictions imposed pursuant to or in connection with the Provisional Generator Interconnection Agreement (including in connection with any quarterly operating limits imposed upon the Facility), then Seller shall notify Buyer of such limitations or restrictions and Buyer will use commercially reasonable efforts to assist Seller’s commercially reasonable efforts to mitigate or reduce any adverse effects of such limitations or restrictions to both parties, including by providing Seller and the Facility with access to any surplus interconnection service (or similar service) that is or is reasonably expected

to be available at or in connection with any power or energy plants owned by Buyer or its Affiliates.

following: (d) Section 5.2.2 of the PPA is deleted in its entirety and replaced with the

5.2.2 Network Upgrades.

(a) Notwithstanding anything to the contrary in this PPA:

(i) the Generation Interconnection Agreement may be a Provisional Generator Interconnection Agreement, at Buyer's sole option, which may limit the operations of the Facility and the delivery of Net Output therefrom, and may require Network Upgrade Costs to interconnect the Facility to the System to allow the Facility to operate and deliver Net Output to the Point of Delivery at the Expected Nameplate Capacity Rating;

(ii) excepting the Interconnection Facilities of the Facility (which shall remain the responsibility of Seller and Seller shall be responsible for the costs and expenses thereof), in the event Buyer has not timely exercised its rights to terminate this Agreement pursuant to Section 5.2.2(b) below, Buyer shall be responsible for the payment of, and pay for (or, to the extent paid or incurred by Seller or its Affiliates, reimburse Seller for), all Network Upgrade Costs required in connection with the Facility's interconnection to the System at the Expected Nameplate Capacity Rating; and

(iii) except as otherwise expressly set forth herein, Seller shall be responsible for legal and ministerial costs in obtaining the permanent Generation Interconnection Agreement; provided, however, that if additional Network Upgrade Costs are included in or imposed pursuant to the permanent Generation Interconnection Agreement, then Buyer shall be responsible for and shall pay such costs as described above.

(b) Provided this Agreement has not been earlier terminated, Seller shall pay for the Network Upgrade Costs pursuant to the terms and conditions of the Provisional Generator Interconnection Agreement and Buyer agrees to reimburse Seller for such amount of Network Upgrade Costs no later than ten (10) Business Days following receipt of notice and reasonable evidence from Seller of Seller's payment thereof and receipt by Buyer of Seller's invoice for the applicable costs. The Parties acknowledge and agree that (i) Seller will be responsible for providing security required under Attachment X of the Tariff to proceed with the Facility's interconnection process thereunder, (ii) that such security may be used by the Transmission Provider to pay for such Network Upgrade Costs, and (iii)

the use by Transmission Provider of such security to pay for such Network Upgrade Costs shall not affect Buyer's obligation to, and Buyer shall, reimburse Seller for such amounts.

(c) In the event the Network Upgrade Costs reflected in the Provisional Interconnection Study are in excess of \$10,000,000, then Buyer shall deposit an amount equal to such amount of Network Upgrade Costs into an escrow account with a state- or federally-chartered commercial bank with net assets of at least \$1 billion. Such escrow account shall be governed by an escrow agreement in form mutually satisfactory to Seller, Buyer and the escrow agent (each acting reasonably), provided that (i) Seller shall hold a first and exclusive perfected security interest in the funds in such escrow account, (ii) Seller shall be permitted unilaterally to draw down any amount therein in the event Buyer fails to timely reimburse Seller as described in Section 5.2.2(b) regardless of any protest by Buyer or any other party liable thereon (provided that nothing in the escrow agreement shall preclude any protest against Seller by Buyer, following any draw, that such draw did not comply with this Agreement), and (iii) Buyer shall pay all fees and expenses of the escrow agent. All investment income on such escrow account shall be taxable to, and accrue for the benefit of, Buyer.

(e) Seller shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of Buyer under this Section 5.2.2. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation, and that any liability limits contained herein shall not operate to limit the exercise of Seller's remedies in equity to cause Buyer to perform its obligations under this Section 5.2.2.

(e) In Section 6.3 of the PPA, each of the references to "Section 5.2.2" are deleted and replaced with "Sections 4.4.3 and 5.2.2."

(f) In Section 8.1 of the PPA, clause (i) thereof is deleted in its entirety and replaced with the following: "(i) for the period commencing thirty (30) days following the Amendment Approval Date and ending on the Commercial Operation Date, [REDACTED] and".

(g) Section 12.1.7 of the PPA is deleted in its entirety and replaced with the following:

12.1.7 Consequential Damages. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY

CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, DELAY DAMAGES, BUYER AND SELLER COST TO COVER DAMAGES, SECTION 11.2.3 CAPACITY RIGHTS LOSS DAMAGES, INDEMNIFICATION FOR THIRD PARTY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

(h) In Section 22.1 of the PPA, the reference to “Henderson Solar, LLC” is deleted and replaced with “Unbridled Solar, LLC.”

(i) **Exhibit A** to the PPA is deleted and replaced with the **Exhibit A** to this Amendment.

(j) In **Exhibit B** to the PPA, the reference to [REDACTED] is deleted and replaced with [REDACTED] and each reference to [REDACTED] is replaced with [REDACTED].

(k) **Exhibit 5.1** to the PPA is deleted and replaced with **Exhibit 5.1** to this Amendment.

3. PSC Approval. This Amendment shall become effective upon the Amendment Approval Date; provided, that Buyer shall use its commercially reasonable efforts to file this Amendment with Kentucky Public Service Commission and the Rural Utilities Service as soon as reasonably practicable following the Amendment Effective Date and to achieve the Amendment Approval Date as soon as reasonably practicable thereafter.

4. Replacement of Credit Support. Buyer agrees that, in the event Seller desires to replace (rather than increase via a supplemental instrument) the current Credit Support in place under the PPA with the Credit Support required pursuant to this Amendment, Buyer shall concurrently return such current Credit Support to Seller without offset or deduction at the time Seller provides such replacement Credit Support.

5. Limited Effect and Binding Agreement. Except as specified in this Amendment, all terms and conditions of the PPA shall continue in full force and effect. Following the date of the PPA, Seller underwent a change in its name from “Henderson Solar, LLC” to “Unbridled Solar, LLC” and Seller acknowledges and agrees that it is responsible for all of Seller’s liabilities and obligations under the PPA, as amended, as a party thereto.

6. Entire Agreement. This Amendment, the PPA and the other documents related thereto, including all schedules and exhibits thereto, constitute the entire agreement of the Parties with respect to the subject matter hereof and thereof, and supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. This Amendment may not be modified, amended or terminated except by a written instrument specifically referring to this Amendment or the PPA signed by all the Parties hereto or thereto, as the case may be.

7. Headings. Captions and headings used in this Amendment are for ease of reference only and do not constitute a part of this Amendment.

8. Governing Law. This Amendment shall be interpreted and enforced in accordance with the laws of the Commonwealth of Kentucky, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

9. Partial Invalidity. The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms hereof shall remain in effect. The Parties shall use best efforts to amend this Amendment to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Amendment in all material respects.

10. Counterparts. This Amendment may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

11. Imaged Agreement: Electronic Signatures. Any original executed copy of this Amendment or any other related document may be electronically copied or photocopied and stored electronically (“**Imaged Agreement**”). If an Imaged Agreement is introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, neither Party shall object to the admissibility of the Imaged Agreement on the basis that such was not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence. Without limiting the foregoing, electronic signatures (including documents executed and delivered through DocuSign or similar third party electronic signature capture service providers) shall be deemed original signatures for purposes of this Amendment and all matters related thereto, with such electronic signatures having the same legal effect as original signatures. The Parties agree that this Amendment, any addendum or amendment hereto or any other document necessary for the consummation of the transactions contemplated by this Amendment may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act, and any applicable state Law. Any document accepted, executed or agreed to in conformity with such laws will be binding on the Parties the same as if it were physically executed and delivered.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Amendment Effective Date.

Seller:

UNBRIDLED SOLAR, LLC

By: 
Name: Blake Nixon
Its: Authorized Signer

Buyer:

BIG RIVERS ELECTRIC CORPORATION

By: _____
Name: _____
Its: _____

EXHIBIT A

ESTIMATED OUTPUT

Seller to provide one (1) electronic and hard copy of the solar plant performance estimation report using PVSYST or a comparable solar performance modeling program including, at a minimum, estimated hourly MW generation output in MWh/h for the Facility. Upon Commercial Operations, Seller shall provide an updated **Exhibit A** based on completed construction and Seller's designated Licensed Professional Engineer will provide certification as part of Commercial Operations that the estimated energy output included in such updated **Exhibit A** is correct as calculated using PVSYST or comparable solar performance modeling program.



All amounts are based on an estimate of the first full Contract Year, which shall be reduced by an annual degradation factor of 0.5% per Contract Year.

EXHIBIT 5.1

CONTRACT PRICE

The Contract Price is \$38.10 / MWh throughout the Term.