

116.0.3

Contract 220

U. S. DEPARTMENT OF AGRICULTURE
RURAL ELECTRIFICATION ADMINISTRATION

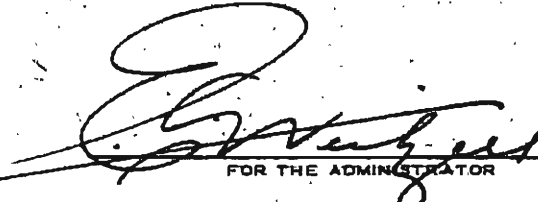
REA BORROWER DESIGNATION Kentucky 62 Big Rivers

THE WITHIN Power Plant Construction and Operation Agreement
dated August 1, 1970, with the City of Henderson, Kentucky

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE
TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE
PURPOSES OF SUCH CONTRACT.

DATED

MAR 26 1971


FOR THE ADMINISTRATOR

Deputy Administrator

~~File~~ : 116.0.3

POWER PLANT CONSTRUCTION AND OPERATION AGREEMENT
BETWEEN
CITY OF HENDERSON, KENTUCKY
and
BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION

August 1, 1970

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POWER PLANT CONSTRUCTION AND OPERATION AGREEMENT

THIS AGREEMENT made and entered into as of August 1, 1970 by and between CITY OF HENDERSON, KENTUCKY, hereinafter referred to as CITY, and BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION, a Kentucky Corporation with principal offices in Henderson, Kentucky, hereinafter referred to as BIG RIVERS.

WITNESSETH THAT:

PART I

STIPULATIONS AND DEFINITIONS

SECTION 1 - STIPULATIONS

1.1 City owns and operates an electric generating and distribution system (Municipal Electric Light & Power System) with total generating capability of forty-eight thousand (48,000) kilowatts and firm system capacity of twenty-two thousand (22,000) kilowatts, with which it serves the needs of City and its inhabitants for electric power and energy.

1.2 Big Rivers owns and operates electric generating stations and related transmission facilities with present generating capacity (including capacity under construction) of five hundred ninety thousand (590,000) kilowatts with which it supplies power and energy to its member Rural Electric Co-operative Corporations, which in turn serve the local consumers in their respective service areas.

See 1993 Amendments
Tab 15

1.3 The electric systems of City, Big Rivers, Southern Illinois Power Co-operative, an Illinois Corporation, and Hoosier Energy Division of Indiana Statewide Rural Electric, Inc., an Indiana Corporation, are interconnected to form what is known as the KII Pool under provisions of an interconnection agreement of April 1, 1968.

1.4 City's present system load is in excess of the firm capacity of its Municipal Power & Light System and it provides its deficient needs through the provisions of the KII Pool Agreement.

1.5 City is presently planning a comprehensive annexation program whereby the area of its corporate limits will be increased by approximately three-fold.

1.6 City's consulting engineers have determined that City will require additional generating capabilities by the year 1973 in order to provide for the needs of its electric consumers. Said engineers have further determined and recommended to City that the most feasible and economical plan for providing the City's present and anticipated electric generation needs is the construction by City of a relatively large and more efficient generating station, whereby City can provide adequate, low-cost power and energy for the present and future needs of its Municipal Electric Light & Power System, with interim sales of surplus power and energy: (a) to Big Rivers as provided in the parties' Power Sales Agreement of even date herewith; (b) through the provisions of the KII Pool Agreement; (c) or otherwise.

1.7 City's consulting engineers have reported that the site of City's present generating plant is inadequate for the addition of the required generating facilities and that

space requirements and the growing need and public demand for control of the urban environment make the selection of a remote, rural site most desirable.

1.8 City's consulting engineers have determined and recommended to City that the most feasible and economical plan for the City's addition of such generating station is the establishment of a new generating station, presently consisting of two, one hundred seventy-five (175) megawatt, coal-fired, steam-electric generators, with provisions for the future addition of other generating units, at a site on the Green River in Henderson County Kentucky, adjacent to the Reid Station of Big Rivers, and so arranged as to provide for the joint utilization by City and Big Rivers of auxiliary facilities and operating personnel in such manner as to achieve optimum economies in construction and operation, all as authorized by KRS 96.520, as amended. The addition of such generating station to City's electric facilities would provide City a firm system capacity of two hundred twenty-three thousand (223,000) kilowatts, which is estimated to meet City's needs for electric power and energy for an additional twenty (20) years.

1.9 Big Rivers has agreed, subject to the terms of this Agreement that it will sell and convey such site and all required easements to City, that it will permit City to construct its generating station in the manner so recommended by its consulting engineers, and that it will enter into a power sales agreement with City for the purchase of all surplus capacity and related.

energy available from time to time from said generating station.

1.10 City has accepted the determinations and recommendations of its consulting engineers and has determined to proceed with the design, construction, start-up and operation of such electric generating station (hereinafter referred to as Station Two) subject to the terms and provisions of this Agreement and other Agreements referred to herein.

1.11 City has employed the services of a nationally recognized engineering firm to design and supervise construction of its Station Two; has employed the services of financial advisers to assist in the sale of sufficient revenue bonds with which to finance the acquisition, construction and start-up of said Station Two and has employed the services of nationally recognized bond counsel. Upon the execution and approval of this Agreement City will direct its said employees to proceed with the performance of such services.

SECTION 2 - DEFINITIONS

2.1 Existing System: The electric utility system by which City serves the needs of City and its inhabitants (and some non-inhabitants) at the time of the execution of this Agreement, and all additions, expansions and improvements thereto and renewals and replacements thereof hereafter made, other than Station Two.

2.2 Station Two: City's proposed 350-megawatt generating station and all auxiliary facilities, joint use facilities

(provided by City) and other related facilities to be constructed at a site on Green River in Henderson County, Kentucky, together with all additions, expansions and improvements thereto and renewals and replacements thereof (which shall not include the City Transmission and Transformation Facilities as herein defined).

2.3 Auxiliary Facilities: Power plant facilities which are physically separated from the steam generators, turbines and electric generators comprising the generating station, and which are required for the operation, maintenance and/or control thereof, and/or the delivery of power and energy therefrom, but excluding the City Transmission and Transformation Facilities.

2.4 Joint Use Facilities: Auxiliary facilities which are so constructed and/or arranged as to be useful to City and Big Rivers in the operation, maintenance and control of their respective generating stations.

2.5 Date of Commercial Operation: The date upon which the first unit of City's Station Two has been placed in normal continuous operation so as to produce power and energy in a commercially acceptable manner.

2.6 Contract Year: With respect to the first contract year, the period from Date of Commercial Operation or June 30, 1974, whichever shall first occur, to and including the next succeeding December 31, and thereafter, the successive twelve-month periods beginning January 1 and ending December 31.

2.7 Monthly Billing Period: Each calendar month of any Contract Year.

2.8 Bond Ordinance: The Electric Light & Power Revenue Bond Ordinance adopted by City authorizing the issuance of Station Two Bonds, together with ordinances supplemental thereto

*all also
2.802 Amendments
Section 02*

section 103
or amendatory thereof.

all amendments # 2 2.9 Station Two Bonds (the Bonds): The Electric Light & Power Revenue Bonds authorized, sold and issued by City pursuant to the Bond Ordinance, to provide for the costs of acquisition, construction and start-up of City Station Two and shall include: (i) the Electric Light & Power Revenue Bonds, Station Two Series authorized and issued under the Bond Ordinance; and (ii) additional Bonds, if any, authorized and issued under the Bond Ordinance to provide for such costs of Station Two in excess of original estimates.

2.10 City Transmission and Transformation Facilities: The transmission and transformation facilities to be provided by City connecting Station Two to City's Existing System.

2.11 Trustee: The Trustee appointed pursuant to the Bond Ordinance.

2.12 (new in 2002 Amends. Section 104)

2.33

PART II
FACILITIES

SECTION 3 - ACQUISITION OF SITE

3.1 Big Rivers agrees to sell and convey to City a site and necessary easements and rights-of-way for City's construction and operation of its Station Two, all in accordance with the parties Purchase-Sale Agreement of even date herewith.

3.2 Such site, easements and rights-of-way shall be conveyed and/or granted to City free and clear of any encumbrances whatsoever which would have priority over the rights of the holders of City's Electric Revenue Bonds.

3.3 (new in 2002 Amends. Section 201)

SECTION 4 - CONSTRUCTION OF PLANT

*See 1992 Amendment
Tab 15*

4.1 City will direct its employed engineering firm to proceed immediately with the design and development of plans and specifications for the construction of Station Two, consisting of two, one hundred seventy-five (175) megawatt coal-fired, steam-electric generating units, with all necessary auxiliary facilities, with such arrangement as will provide for the joint use by City and Big Rivers of auxiliary facilities and operating personnel so as to result in optimum economies of construction and operation. Such plans and specifications shall be subject to prior approval by City and, to the extent that Big Rivers' Reid Station is affected thereby, by Big Rivers.

4.2 City agrees to obtain all necessary permits for the construction and operation of its Station Two, moorage and associated facilities and further agrees to use its best efforts to cause any and all of such permits to extend for a term equal to the term of this Agreement, or to obtain any new or additional permits required to enable it to operate and maintain its Station Two for such term.

4.3 Upon completion by the engineers of such plans and specifications, and upon approval thereof by City and Big Rivers, as hereinabove provided, City will diligently proceed with the construction of Station Two in the most economical and efficient manner, consistent with good utility practices, and in such manner as to least interfere with the continued operation by Big Rivers of its Reid Station during the period of construction and the start-up of such facilities.

4.4 Big Rivers will provide construction assistance to City during the design, construction and start-up of City's Station Two in accordance with the provisions of Section 11, Construction Assistance, of this Agreement.

new 4.5 >
THRU 4.11

See Amendments 1993 Tab 15

new 4.12 - 4.21
(see 2002 Amendments)
section 302

SECTION 5 - TRANSMISSION AND TRANSFORMATION FACILITIES

5.1 Adequate switchyard and 161 KV step-up transformers will be provided by City as a part of Station Two.

5.2 City will provide, at its own cost, one 69 KV transmission line and related transformation facilities connecting its Station Two to its Existing System (herein referred to as City Transmission and Transformation Facilities), with provision for increasing of transmission capacity to meet City's future needs.

5.3 Big Rivers will maintain at all times and provide for City's use, at no cost to City, surplus capacity on its two existing 69 KV transmission lines from point of City's Station Two switchyard to points of substations of City's Existing System, and will likewise provide for City's use any surplus capacity on additional transmission facilities which Big Rivers may hereafter construct in such a manner as to permit the transmission of electric energy from City's Station Two to its Existing System. In its use of such transmission facilities, City will not, in any manner, disrupt or adversely affect Big Rivers' service to its own customers.

5.4 Any transmission facilities required by City in addition to those provided as hereinabove recited, shall be provided by City at its own cost.

SECTION 6 - JOINT USE FACILITIES

6.1 City and Big Rivers mutually agree that they will each provide such joint use facilities as are determined by the City's employed engineering firm (and approved by City and Big Rivers) to be furnished by each, respectively, and will each provide, on a best efforts basis, for the continued operation and maintenance thereof for the joint use and benefit of the parties, all as provided in the parties' Joint Facilities Agreement of even date herewith.

SECTION 7 - FUEL SUPPLY

7.1 An initial coal supply will be established out of the proceeds of the Station Two Bonds as a facility of City's Station Two. Bond proceeds in the amount of \$465,000 will be allotted therefore.

7.2 Such coal supply will be maintained as a fuel reserve throughout the term of this Agreement through the addition of replacement fuels as such reserve is from time to time, consumed in the operation of City's Station Two.

7.3 Start-up fuels will be supplied by Big Rivers as provided in Section 12, Start-Up Assistance.

SECTION 8 - GENERAL PLANT EQUIPMENT

8.1 City will acquire out of the proceeds of the Station Two Bonds, as part of the initial facilities of Station Two, general plant equipment sufficient to efficiently operate and maintain Station Two.

SECTION 9 - CAPITAL FUNDS AND ACCOUNTS

*also see
2002 Renewals
Section 203*

9.1 The following capital funds and accounts (among others) will be established out of the proceeds of the Station Two Bonds as facilities of City's Station Two:

*see table
19.0*

(a) a Station Two Account in the Operating & Maintenance Fund (hereinafter referred to as the Station Two O & M Account) in the amount of \$500,000.00.

Item 7

(b) a Debt Reserve Account in the amount required therefore under provisions of the Bond Ordinance, hereinafter referred to as the Station Two Debt Reserve Account.

(c) a Station Two Account in the Renewals and Replacements Fund (hereinafter referred to as the Station Two R. & R. Account) in the amount of \$750,000.00.

9.2 Such accounts and funds shall be held, managed, controlled, invested, expended, applied and maintained as provided by the Bond Ordinance and the parties' Power Sales Contract of even date herewith.

SECTION 10 - SALE OF BONDS

10.1 City will authorize, sell and issue its Station Two Bonds bearing an average interest rate and maturity schedule acceptable to City with final maturity of not less than thirty (30) years from date of issuance, in a principal amount of \$76,000,000. The City shall also use its best efforts to sell and issue any additional Bonds required to provide for costs of Station Two in excess of original estimates.

10.2 The proceeds of such Bonds will be held, managed, controlled, invested, expended and applied as provided by the

Bond Ordinance.

PART III

CONSTRUCTION, START-UP AND OPERATION

SECTION 11 - CONSTRUCTION ASSISTANCE

11.1 In connection with the acquisition and construction of City's Station Two, Big Rivers will provide to City, at the costs hereinafter recited, construction services and facilities as follows:

(a) advice on the selection of the most economical and feasible power plant design.

(b) review and recommendation on approval of plans and specifications.

(c) evaluation of all construction and equipment bids and proposals; recommendation on contract awards and purchases.

(d) coordination and supervision of all contractors and/or suppliers engaged in the actual construction of Station Two.

(e) complete accounting services for all phases of acquisition and construction of Station Two.

(f) compilation of a complete and accurate record of all drawings, specifications, contracts, reports, test results, correspondence and other written materials pertinent to the acquisition and construction of Station Two.

(g) witnessing of all testing of materials and/or equipment incorporated into Station Two.

(h) providing water and electric service required in the construction of Station Two.

(i) furnishing, at no charge, space in Big Rivers Reid

Station for City's consulting and construction engineers.

(j) providing such other assistance, services and/or facilities in connection with the acquisition and construction of Station Two as may from time to time be agreed upon by the parties.

11.2 City will reimburse Big Rivers for all its reasonable out-of-pocket expenses in providing the services and facilities enumerated in Section 11.1, plus an additional overhead allowance in the amount of twenty per cent (20%) on all such labor costs and ten per cent (10%) on all such materials and supplies. Such costs will be paid from the proceeds of Station Two Bonds.

11.3 It is understood that the services to be performed by Big Rivers under the provisions of this Section 11 are on an advisory basis, and that City has the right to make all final determinations in connection therewith. However, to the extent that the design and/or construction of Station Two shall have a material effect upon the economical and/or continuous operation of Big Rivers Reid generating plant, Big Rivers shall have the right of approval or disapproval of such determinations by City.

11.4 City will provide adequate Builders Risk Insurance covering the complete construction and installation of its Station Two and shall further provide adequate insurance for protection of Big Rivers Reid Station and related facilities against damages from construction operations. The costs of such insurance will be paid out of the proceeds of the Station Two Bonds.

SECTION 12 - START-UP ASSISTANCE

12.1 Big Rivers will provide to City, at the costs hereinafter recited, technical skills, labor, fuels, materials and other services required for starting up and placing into commercial operation City's Station Two.

12.2 Operating tests of all equipment and auxiliary facilities of Station Two will be performed by or under the direction of Big Rivers, and suitable reports thereof will be made to City. Big Rivers will direct City's engineers, contractors and suppliers in the making of all changes, adjustments, repairs, replacements, alterations or additions required in order to place City's Station Two and its various components into commercial operation and in compliance with the plans and specifications therefore adopted by City. Big Rivers will place Station Two into commercial operation as soon as reasonably possible and will immediately notify City thereof.

12.3 City will reimburse Big Rivers for its reasonable out-of-pocket expenses in providing the start-up assistance, services and/or materials referred to in this Section 12, plus an additional overhead allowance in the amount of twenty per cent (20%) on all such labor costs and ten per cent (10%) on all such materials, except fuels. Fuels will be furnished at cost. Such costs will be paid from the proceeds of the Station Two Bonds.

12.4 Electric energy produced from each unit of City's Station Two during start-up and prior to the Date of Commercial Operation shall be marketed wherever and whenever possible.

All amounts received from such sales of energy shall be for the account of City and shall be applied to the costs of construction of City's Station Two.

SECTION 13 - OPERATION, MAINTENANCE AND CONTROL

13.1 Except as otherwise provided herein, City shall have full ownership, management, operation and control of its Station Two.

13.2 Subject to City's ownership, management and control, during the term of this Agreement Big Rivers will provide, as an independent contractor, all operating personnel, materials, supplies and technical services required for the continuous operation of City's Station Two so as to fulfill City's obligations (a) to provide the needs of City and its inhabitants as defined in the Power Sales Contract, (b) to Big Rivers as provided in the Power Sales Contract, (c) to the KII Pool members, as provided in the KII Pool Agreement and (d) to others to whom City may, from time to time, become contractually obligated in connection with its Station Two.

13.3 Purchases of materials and supplies required in the operation and maintenance of City's Station Two shall be made for City's account, subject to approval and acceptance by City and in compliance with all laws applicable thereto.

13.4 Big Rivers covenants and agrees that during the term of this Agreement it will at all times operate City's Station Two on a best efforts basis, in an efficient and economical manner, and will maintain, preserve and keep said Station Two and every

part and parcel thereof in good repair, working order and condition, and will, from time to time, make all necessary and proper repairs, renewals and replacements thereto so that at all times the business to be carried on by City in connection therewith shall be properly and efficiently conducted.

13.5 Big Rivers will keep and maintain complete and accurate records of its operation and maintenance of City's Station Two, including without limitation: (a) the continued output of Station Two and the uses thereof by City, Big Rivers and others, (b) the continued input of labor, materials, supplies and services to Station Two, (c) records of all maintenance and repairs to Station Two, (d) records of all renewals and replacements of Station Two, (e) records of Station Two fuel consumptions, replacements and reserves, (f) current inventories of all supplies, equipment and replacement parts maintained in connection with Station Two, (g) such other records as shall be of assistance to City in the ownership, operation, maintenance, management and control of Station Two.

13.6 City will pay Big Rivers, on a monthly basis, its reasonable expenditures incurred in the operation and maintenance of City's Station Two under the terms of this Agreement, as defined and allocated to City's Station Two under the provisions of Section 13.8 - Allocation of Costs, plus an additional payment of fourteen and one-half (14 1/2) cents per month, per kilowatt of the total capacity of Station Two, as such total capacity is from time to time determined and established as provided in the parties Power Sales Contract of even date herewith.

(all Sect. 5-6 of 1993 Amend memb)

1

13.7 Such payments to Big Rivers by City shall be made monthly on the basis of the Annual Budget then in effect, and in accordance with the provisions of Sections 14 and 18 of this Agreement.

13.8 Allocation of Costs:

It is recognized that Big Rivers will operate and maintain its Reid Generating Station with the same operating personnel and facilities as it will use for the operation of City's Station Two. For purposes of defining and allocating the costs thereof the parties agree as follows:

(a) the following costs of operation and maintenance will be allocated to the particular generating station to which they are applied, and will be charged directly to such generating station:

(1) Costs of materials, supplies and fuels attributable directly to a generating plant.

(2) Costs of repairs, maintenance and spare parts attributable directly to a generating plant.

(3) Costs of renewals, replacements and additions attributable directly to a generating plant.

(4) Costs of emergency and/or maintenance capacity and energy attributable directly to a generating plant.

(5) Property taxes validly imposed upon each party's plant and related facilities.

(6) Costs of insurance attributable to a generating plant.

(b) The following costs of operation and maintenance will be allocated between Big Rivers Reid Station and City's Station

175
65

Two on the basis of each generating station's total capacity
as related to the sum of such total capacities:

(1) All operating labor and fuel handling labor.
(2) All maintenance labor common to both plants.
(3) All supplies common to both plants.
(4) All maintenance materials common to both plants.
(5) All costs of operation, maintenance, repair,
addition, renewal and replacement of joint use facilities as
described in Section 6 of this Agreement.

(6) All applicable taxes except property taxes on
plant and taxes directly attributable to cost of fuels and/or
sales of power and energy.

(7) All administrative costs.

(8) Costs of professional services.

(9) All costs of accounting and records keeping.

(10) All remaining costs of insurance.

(11) All other costs of operation and maintenance not
otherwise allocated under the provisions of this Section 13.

(c) Each party will provide its own fuels for the
operation of City's Station Two.

(d) Each party will bear its own costs for construction,
operation, maintenance and repair of its transmission and trans-
formation facilities beyond points of delivery from the Station
Two Switchyard. Big Rivers will make no charge to City for the
use of Big Rivers' transmission facilities from point of City's
Station Two switchyard to the several substations of City's
Existing System.

(e) Big Rivers will keep adequate records of the costs of operating and maintaining City's Station Two and its Reid Station, and the allocation of such costs to City's Station Two, and will make such records available to City and its representatives at all reasonable times and places.

13.9 Right to Intervene

Should Big Rivers at any time during the term of this Agreement fail, for any reason whatsoever, to provide, on a best efforts basis, the continuous and economical operation of City's Station Two as provided in this Agreement, then City shall have the right to immediately take over the complete operation and maintenance of its Station Two and all auxiliary facilities and joint use facilities required in the operation thereof, and to continue the operation and maintenance thereof under the terms and provisions of this Agreement until it shall be determined that Big Rivers is able to properly resume such operation and maintenance in the manner provided in this Agreement.

13.10 Each of the parties hereby grants to the other all reasonable rights of access, ingress and egress to the generating plant, joint use facilities, auxiliary facilities, related facilities, transmission and transformation facilities and such other lands, properties and/or facilities as shall be necessary, advisable or convenient in order to efficiently and continuously carry on the operation of City's Station Two and Big Rivers' Reid Station under the terms and provisions of this Agreement.

PART IV

BUDGETING, ACCOUNTING AND BILLING

SECTION 14 - BUDGETING

14.1 Prior to the commencement of each Contract Year and so as to comply with the provisions of the Bond Ordinance there shall be prepared by Big Rivers and submitted to City a proposed operating budget for such Contract Year. Big Rivers will provide therewith all data and information necessary or convenient for City's review and evaluation of such proposed operating budget.

14.2 The proposed operating budget and all supporting data and information will be reviewed by City and upon approval thereof, including any amendments thereof or additions thereto, by City, City will adopt such budget as the Annual Budget for the coming Contract Year.

14.3 Upon its adoption by City, and its approval by Big Rivers, the Annual Budget will become the basis for payments to Big Rivers for the operating and maintenance of City's Station Two during the Contract Year for which it is adopted.

14.4 The Annual Budget may be amended by the parties as provided in the Bond Ordinance.

*also see
2002 Amendment
Section 204*

SECTION 15 - ACCOUNTING AND AUDITING

15.1 Big Rivers will keep and maintain complete and accurate books, records and accounts of its operation and maintenance of City's Station Two all in accordance with the rules and regulations prescribed by any governmental agency having jurisdiction thereof, the provisions of the Bond Ordinance relating thereto, and in accordance with the uniform system of

accounts prescribed by the Federal Power Commission. All such records shall be available for inspection and utilization by City and its representatives at all reasonable times and places.

15.2 Such books, records and accounts shall be subject to annual audit as provided in the Bond Ordinance.

*All 2002 Amendments
Section 205*

SECTION 16 - BILLING AND PAYMENTS

16.1 On or before the twentieth day of each calendar month of the Contract Year Big Rivers will present to City a statement of payment due covering the operation and maintenance of City's Station Two for the Monthly Billing Period just ended, such statement showing in detail the costs and charges included therein, with proper vouchers substantiating such charges. Such statements, when approved by the City, will become the basis for actual charges by Big Rivers to City for the operation and maintenance of City's Station Two for such Monthly Billing Period and shall be the basis for adjustments, if any, as provided in Section 16.6 hereof.

16.2 Monthly payments to Big Rivers for the operation and maintenance of City's Station Two shall be made on the basis of the Annual Budget then in effect, and shall be due and payable currently, for each Monthly Billing Period on or before the twentieth day of such month. Payments shall be deemed complete upon the posting thereof in the regular United States Mail, properly addressed and affixed with postage.

16.3 If any such payment or portion thereof is not paid when due as herein provided, a penalty in the amount of one per

cent (1%) of the unpaid amount may, at the option of Big Rivers, be added thereto at the commencement of each thirty (30) day period thereafter, and due and payable therewith. Provided however that in the case of a bona fide dispute as to the amount of any such monthly payment, then the delayed payment charge will be applicable only to that unpaid portion thereof which is not reasonably in dispute.

16.4 Off-Setting Accounts

The City shall have the right to off-set accounts payable to Big Rivers against accounts receivable from Big Rivers under the provisions of the parties Power Sales Contract, or otherwise. Off-setting of accounts shall be employed in determining any delayed payment charges as provided herein.

16.5 Big Rivers shall have the right at any time, and from time to time, to require City to give bond (either cash or with corporate surety acceptable to Big Rivers) for the payment to Big Rivers of operating and maintenance charges as provided in this Agreement, less the amount of any off-setting payments due from Big Rivers to City under the provisions of the parties' Power Sales Contract, for a period of time not exceeding two Monthly Billing Periods during any Contract Year. The amount of any such bond shall be adjusted in order to be applicable to the current Contract Year. The cost of any such surety bond shall be charged as a Station Two operating expense.

16.6 On or before one hundred twenty (120) days after the end of each Contract Year, Big Rivers shall submit to City

a detailed summary of its monthly statements for payment for the operation and maintenance of City's Station Two, showing the actual charges due to be paid to Big Rivers by City for the entire Contract Year based upon the annual audit of accounts provided for in Section 15.2. If, on the basis of such summary the actual aggregate operation and maintenance charges for such Contract Year exceeded the amounts paid to Big Rivers under the Annual Budget, or otherwise, then City shall pay to Big Rivers promptly the amount to which Big Rivers is so entitled. If, on the basis of such summary, the actual aggregate payments made to Big Rivers for operation and maintenance of City's Station Two under provisions of the Annual Budget, or otherwise, exceeded the actual amount due therefore, then such excess shall be credited against City's next monthly payment or payments to Big Rivers due hereunder, or paid to City if no such payments are due to Big Rivers.

SECTION 17 - METERING, METER TESTING AND BILLING ADJUSTMENTS

17.1 Printing Demand Meters, or equivalent meters, with a sixty (60) minute demand interval, which will meter kilowatts, and suitable watthour meters which will meter kilowatt hours shall be used to meter the delivery of power and energy from City's Station Two. The metered kilowatt demand of City, Big Rivers and others from City's Station Two shall be the means of measuring the capacity of City's Station Two used by each. The metered kilowatt hours of energy used by City, Big Rivers and others from City's Station Two shall be the basis for fuel replacements to the Station Two fuel reserve as provided in Section 7 hereof.

17.2 The meters will be arranged so as to provide a

total measurement of kilowatt demand and a total measurement of kilowatt hours delivered to City and others from City's Station Two.

17.3 Big Rivers will make such tests and inspections of said meters as may be necessary to maintain them at the highest practical commercial standard of accuracy, with tests performed at intervals of not more than twelve months. Big Rivers will advise City promptly of the results of all such tests. City will be given prior notice of and may have representatives present at such tests and inspections. Big Rivers will make additional tests of said meters at the reasonable request of City and in the presence of City's representatives.

17.4 Big Rivers will make all meter readings and/or recordings necessary to provide an accurate report of the kilowatt demand and consumption of electric energy by City, Big Rivers and others from City's Station Two during each Monthly Billing Period, and at the end of each Monthly Billing Period will promptly report to City thereon.

17.5 The metered kilowatt hours of energy used by City, Big Rivers and others from City's Station Two shall be the basis for fuel replacements to the Station Two fuel reserve. Big Rivers shall at all times accurately measure and record the heat content and quantity of all fuels consumed in the operation of Section Two, and shall properly allocate and report to City at the end of each Monthly Billing Period the fuels consumed by City, Big Rivers and others through their respective uses of electric energy from City's Station Two.

SECTION 18 - INSURANCE

18.1 Except to the extent that City's Station Two is insured during construction, installation and other acquisition thereof by City, its contractors and/or suppliers, at all times during the term of this Agreement City shall maintain at least the following insurance on its Station Two, the costs thereof prior to Date of Commercial Operation to be paid as a construction cost, and thereafter as an operating expense:

(a) fire, extended coverage and vandalism, broad form, in an amount at least equal to ninety per cent (90%) of the full insurable value of City's Station Two, Twenty-Five Thousand Dollars (\$25,000) deductible, against loss or damage from fire, lightning, tornado, windstorm, flood or wavewash, hail, explosion, riot, riot attending a strike, civil commotion, vandalism and malicious mischief, aircraft, vehicles and smoke. In determining the full insurable value recognition of risks applicable to individual coverages shall be taken into consideration and such value with respect thereto shall be established as would be carried in accordance with sound business practices for electric utilities.

(b) A standard form of comprehensive general liability insurance against claims for personal injury (including wrongful death) and property damage with minimum limits as follows:

- (1) personal injury, \$1,000,000 each person
\$1,000,000 each occurrence
- (2) property damage, \$1,000,000 each occurrence

(c) A standard form of comprehensive automobile liability insurance with minimum limits as follows:

- (1) personal injury, \$ 500,000 each person
\$1,000,000 each occurrence
- (2) property damage, \$ 100,000 each occurrence
100,000 aggregate

(d) Workmen's Compensation Insurance as required by the laws of Kentucky.

(e) Prior to the initial firing of the boiler, broad form boiler and machinery breakdown, in the minimum amount of \$7,000,000 for Unit One and an additional \$7,000,000 for Unit Two, \$200,000 deductible.

(f) Inland Marine Insurance on all off-highway vehicles and Marine Insurance on docks, barges, work boats and other marine items, in amounts equal to maximum insurable values.

18.2 Such insurance shall provide coverage for City, and for Big Rivers to the extent that risk of loss shall be imposed on Big Rivers through the provisions of this Agreement and other agreements herein referred to.

18.3 Such insurance will be obtained by Big Rivers for the account of City, subject to approval and acceptance by City.

18.4 During the term of this Agreement all insurance proceeds from policies obtained pursuant to this Section shall be paid and applied by the City, Big Rivers and/or the insurance company or companies providing same in accordance with the provisions of the Bond Ordinance.

*also All
2002 Amendments
Section 206*

18.5 In case of any damage, destruction, accident, occurrence or other loss covered in part or in full by any such insurance policy or policies, Big Rivers shall give prompt notice thereof to City, the Trustee, and the insurance company or companies providing coverage therefore.

PART V
GENERAL PROVISIONS

SECTION 19 - CONSTRUCTION AND OPERATING STANDARDS

19.1 City's Station Two and its auxiliary facilities, joint use facilities and other related facilities which are the subject of this Agreement shall be constructed, operated and maintained in accordance with standards and specifications equal to those provided by the National Electric Safety Code of the United States Bureau of Standards, and as required by any regulatory authority having jurisdiction thereof.

SECTION 20 - INSPECTIONS, RIGHT OF ACCESS

20.1 Each party hereto shall permit the duly authorized representatives and employees of the other party to enter upon its premises for the purpose of reading or checking meters, inspecting, testing, repairing, renewing or replacing any or all of the facilities and equipment owned by the other party located on such premises, or for the purpose of performing any other work necessary in order to carry out the provisions of this Agreement. Such inspections shall be conducted so as not to interfere with the scheduled operation of such plants.

20.2 Each party shall be responsible for the safety of its own representatives and employees when on the premises of the other pursuant to the right of access granted in this Agreement, and shall hold harmless and indemnify the party granting access from any loss or damage whatsoever by reason of any injury, including death, of such representatives and/or employees, unless the same shall be due to the negligence or willful misconduct of the party granting such access or its authorized agents or employees.

SECTION 21 - RELATIONSHIP OF THE PARTIES

21.1 Except as otherwise specifically provided herein, the terms of this Agreement shall not be construed as an agreement for partnership, joint venture, association or other relationship whereby either party shall be responsible for the obligations and/or liabilities of the other party hereto.

21.2 Except as otherwise specifically provided herein, neither party to this Agreement shall be liable for any act, omission or legal obligation of the other party hereto with respect to: (a) the parties to this Agreement, (b) the agents, servants and/or employees of the parties to this Agreement, or (c) any persons, corporations or other entities not a party to this Agreement.

21.3 Except as otherwise specifically provided herein, neither party to this Agreement shall, by reason of the provisions hereof, be deemed a principal, agent, sub-contractor or employee

of the other party hereto, nor shall either party to this Agreement have the authority to bind the other party to this Agreement to any contract or any other obligation, without specific written authority therefore.

SECTION 22 - INDEMNIFICATION

22.1 Big Rivers, as operator of City's Station Two assumes full responsibility and liability for the maintenance and operation of the same, on a best efforts basis, and shall indemnify and save harmless the City from all liability and expense on account of any and all damages, claims or actions, including injury to or death of persons or damage to property arising from any act or accident in connection with the operation and maintenance of City's Station Two and all facilities related thereto, caused by the negligence or any malfeasance or nonfeasance of Big Rivers, its agents, servants and/or employees; and the City shall indemnify and save harmless Big Rivers from all liability and expense on account of any damages, claims or actions including injury to or death of persons or property arising from any act or accident caused by the negligence or any malfeasance or nonfeasance of the City, its agents, servants and/or employees.

SECTION 23 - UNCONTROLLABLE FORCES:

23.1 Neither party hereto shall be considered in default or breach with respect to any obligation under this Agreement if prevented from fulfilling such obligation by

reason of an Uncontrollable Force. Any party unable to fulfill any obligation by reason of Uncontrollable Forces shall exercise due diligence to remove such disability as soon as reasonably possible.

23.2 The term "Uncontrollable Force" shall mean any force which is not within the control of any party to this Agreement, and which by exercise of due diligence and foresight could not reasonably have been avoided, including, but not limited to; an act of God, fire, flood, earthquake, explosion, strike, sabotage, an act of the public enemy, civil or military authority, including court orders, injunctions, and orders of government agencies having proper jurisdiction, insurrection or riot, an act of the elements, failure of equipment, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers.

SECTION 24 - ARBITRATION

24.1 Any controversy or claim arising out of, or relating to this Agreement or the breach thereof, including disagreements between the Trustee and either or both parties to this Agreement, may be submitted to Arbitration at the time, in the manner and upon the terms agreed upon by the parties.

24.2 Arbitrations shall not be considered the sole or exclusive means of settling controversies which may arise under the terms and provisions of this Agreement, nor shall Arbitration be considered a condition precedent to any action in court of law or equity or proceedings before any governmental agency or regulatory body having jurisdiction thereof.

SECTION 25 - DEFAULT

25.1 In the event of a default by either party in the performance of any one or more of the provisions of this Agreement, the aggrieved party shall, in addition to the remedies specified in this Agreement, have the right to use and employ all rights and remedies available through courts of law and/or equity, governmental agencies and/or regulatory bodies having jurisdiction thereof.

SECTION 26 - WAIVER

26.1 The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

SECTION 27 - NOTICES

27.1 Any payment, written notice, demand or request required or permitted under this Agreement shall be deemed properly given to or served upon the recipient when posted through the regular United States mail, properly addressed, and affixed with postage as follows:

to City:	General Manager, Municipal Power & Light P.O. Box 8 Henderson, Kentucky 42420
to Big Rivers:	Manager, Big Rivers R.E.C.C. P.O. Box 24 Henderson, Kentucky 42420

to the Trustee: as established pursuant to the Bond Ordinance.

27.2 The designation of the person to be notified, or the addresses of such persons, may be changed at any time upon written notice to the other parties.

PART VI
OTHER PROVISIONS

SECTION 28 - COMPLIANCE WITH BOND ORDINANCE

28.1 This Agreement shall be subject to the terms and provisions of the Bond Ordinance. City and Big Rivers agree that they will not amend, modify or otherwise alter this Agreement in any manner that will conflict with the provisions of the Bond Ordinance as the same may, from time to time, exist.

*also see
2002
Amendment
Section 207*

SECTION 29 - ADDITIONAL GENERATING UNITS

29.1 It is understood and agreed that, space being available, additional generating units may be added to City's Station Two during the term of this Agreement in order to provide for the future and expanding needs of City and its inhabitants for electric power and energy with sales of surplus power and energy to Big Rivers, subject to mutual agreement of the parties as to the terms and conditions applicable thereto.

SECTION 30 - COMPLIANCE WITH GOVERNMENTAL REGULATIONS

30.1 City and Big Rivers will, at all times, faithfully obey and comply with existing and future laws, rules and reg-

ulations of federal, state or local governmental bodies lawfully affecting the operations and activities of and in connection with City's Station Two.

SECTION 31 - OBLIGATIONS OF THE PARTIES

31.1 All sums payable by the City under the terms and provisions of this Agreement shall be payable and borne solely from the revenues of City's electric utility system, including its Existing System, its Station Two generating plant and such other additions, extensions or facilities as it may from time to time own and/or operate, and from the proceeds of its Electric Revenue Bonds. No debt or obligation of City under this Agreement shall constitute a general obligation of the City.

31.2 City covenants that it will, subject to the approval of any regulatory bodies having jurisdiction thereof, at all times maintain rates for services rendered by its electric utility system which will be sufficient to adequately meet the costs of ownership, proper operation and maintenance thereof, including the costs of operation and maintenance of its Station Two, as provided in this Agreement.

SECTION 32 - CITY INCLUDES UTILITY COMMISSION

32.2 It is recognized by the parties that the City operates, manages and controls its electric utility system through its City of Henderson Utility Commission, appointed pursuant to KRS. 96.530. All references to City under the terms and provisions of this Agreement shall include its City of Henderson Utility Commission to the extent applicable.

32.2 The parties agree that all rights and obligations of City under the terms and provisions of this Agreement shall also constitute rights and obligations of the City of Henderson Utility Commission. By its execution of this Agreement the City of Henderson Utility Commission covenants and agrees that all references to City under the terms and provisions of this Agreement shall include the City of Henderson Utility Commission, and that it shall be obligated under this Agreement accordingly.

SECTION 33 - TERM AND TERMINATION

33.1 The term of this Agreement shall commence upon the execution hereof by City and Big Rivers and shall terminate on October 31, in the year Two Thousand and Three (2003) unless otherwise terminated as hereinafter provided.

33.2 Notwithstanding the provision of Section 33.1, this Agreement shall terminate in event of the termination of the parties Power Sales Agreement of even date herewith, as provided therein.

SECTION 34 - SALE OR OTHER DISPOSITION OF PLANT.

34.1 City and Big Rivers mutually agree that neither will sell or otherwise dispose of its electric generating plant and auxiliary facilities (referring to City's Station Two, Big Rivers' Reid Station, all auxiliary facilities, joint use facilities and alterations and additions thereof) unless the same has been

*see 1993
Amend.
July 15
Sept 01
see
1998
Amend.
Sept. 1*

offered to the other party hereto in writing, and such other party has failed, for a period of one year, after receipt of such offer to accept same and pay the purchase price or other agreed consideration therefor. After such one-year period, or upon written refusal of said offer, whichever first occurs, the selling party may proceed to make such sale or other disposition to others not a party to this Agreement upon at least equal terms or conditions. Provided however, that if such sale or disposition to others, not a party to this Agreement, shall not have occurred within the one-year period immediately following termination of the other parties right to accept said offer, no such sale or other disposition shall thereafter be made by the selling party without again first offering same to the other party to this Agreement as above provided.

34.2 Any sale, assignment or other disposition by either party to others not a party to this Agreement shall be made subject to all of the rights, obligations, terms and conditions of this Agreement, the Joint Facilities Agreement, the parties Power Sales Contract, the parties real estate Purchase-Sale Agreement and any amendments or additions thereto which are then applicable, and it shall be a condition of such sale or other disposition that the purchaser or acquirer thereof assume all of the obligations of the disposing party under the terms of said Agreements.

34.3 The provisions of this Section 34 pertaining to City's sale or other disposition of its Station Two and other facilities mentioned herein shall be subject to all laws applicable thereto.

SECTION 35 - AMENDMENTS

35.1 No amendments of this Agreement shall be effective unless reduced to writing and executed by all parties hereto.

35.2 It is understood that Big Rivers may not agree to any amendment, modification or alteration of this Agreement without first obtaining approval of the Administrator of the Rural Electrification Administration.

SECTION 36 - SEVERABILITY

36.1 In the event that any part of this Agreement is declared illegal or no longer in force by reason of an order issued by a court or regulatory body of competent jurisdiction, all remaining portions of this Agreement which are not affected by such order shall continue in full force and effect.

SECTION 37 - ASSIGNMENT

37.1 This Agreement shall be binding upon the parties hereto, their respective successors and assigns. Provided however, that this Agreement shall not be assigned by either party (except for an assignment by Big Rivers to the United States of America) without the written consent of the other party, and any such assignment shall be subject to the provisions of Section 34.2 of this Agreement.

SECTION 38 - APPROVAL

38.1 This Agreement shall be subject to the approval

of all local, state or federal regulatory bodies having jurisdiction thereof and shall become effective only upon the execution thereof by the parties and approval by the Administrator of the Rural Electrification Administration.

SECTION 39 - CONDITIONS PRECEDENT

39.1 This Agreement in its entirety is entered into subject to the following express conditions precedent:

(a) That the parties shall enter into and execute the Power Sales Contract, the real estate Purchase-Sale Agreement and the Joint Facilities Agreement which are referred to in this Agreement.

(b) That the parties shall be able to obtain all approvals and authorizations from public authorities and the Administrator of the Rural Electrification Administration necessary to enable them lawfully to enter into and carry out this Agreement, and other Agreements referred to in Section 39.1 (a).

(c) That the City shall be able to issue and sell its Station Two Bonds bearing a rate of interest and maturity schedule acceptable to City, with a final maturity of not less than thirty years from date of issuance, in the principal sum of \$76,000,000.

(d) That all conditions precedent recited in the parties Power Sales Contract, the real estate Purchase-Sale Agreement and the Joint Facilities Agreement have occurred.

39.2 If all of the said conditions precedent do not occur within one year from the date hereof, this Agreement shall

be void and all rights hereunder shall terminate unless the parties agree in writing to extend the time for the happening of said conditions precedent.

SECTION 40 - AUTHORITY TO EXECUTE

40.1 This Agreement is executed by the duly authorized officers or representatives of the parties pursuant to authority granted to each of them by the lawful action of their respective official commissions or boards.

Executed at Henderson, Kentucky this ____ day of _____, 19 ____.

CITY OF HENDERSON, KENTUCKY

BY William L. Newman
William L. Newman, Mayor

ATTEST:

Theresa Crafton
City Clerk
(City Seal)

CITY OF HENDERSON UTILITY COMMISSION

BY Louis Hatchett
Louis Hatchett

ATTEST:

Dudley H. Emerson
Secretary

BIG RIVERS RURAL ELECTRIC CO-OPERATIVE
CORPORATION

BY Robert Reid Sr.
Robert Reid, Sr., President

ATTEST:

D.B. Wilson
D.B. Wilson, Secretary

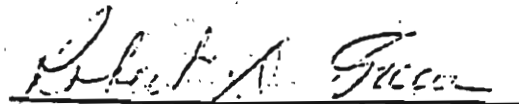
This instrument prepared by:

of WEST MARKWELL & BRYANT
Suite 320 - Imperial Building
110 Third Street
Henderson, Kentucky 42420

EXCERPT FROM MINUTES OF REGULAR MEETING OF BOARD OF DIRECTORS
OF BIG RIVERS RURAL ELECTRIC COOPERATIVE CORPORATION
HELD IN HENDERSON, KENTUCKY, ON AUGUST 21, 1970

After thorough discussion it was moved by Robert D. Green seconded by D. B. Wilson that Big Rivers execute the Power Sales Contract, the Power Plant Construction and Operation Agreement and the Joint Facilities Agreement and to approve the Electric Light and Power Revenue Bond Ordinance to be adopted August 27, 1970. Motion carried.

I, Robert D. Green, Vice President
of Board of Directors of Big Rivers
Rural Electric Cooperative Corporation
hereby certify that the above is a
true and correct excerpt from the
minutes of the regular meeting of said
corporation held on August 21, 1970.


Robert D. Green, Vice President