

POWER SALES CONTRACT  
BETWEEN  
CITY OF HENDERSON, KENTUCKY  
and  
BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION

August 1, 1970

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## POWER SALES CONTRACT

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 will construct as an addition to its municipal electric system two 175-megawatt coal-fired, steam-electric generators with all necessary auxiliary facilities at a site on the Green River in Henderson County, Kentucky with which it will provide the immediate and future needs of City and its inhabitants for electric power and energy. Such generating station shall be hereinafter referred to as Station Two.

1.2 Upon the completion of Station Two City will have electric power and energy surplus to the immediate needs of City and its inhabitants, which surplus power and energy can, pursuant to the authority of KRS 96.520 as amended, be sold to other public utilities in this state whose rates and services are regulated by the Kentucky Public Service Commission.

1.3 Big Rivers, which is a public utility in this state whose rates and services are regulated by the Kentucky Public Service Commission, is desirous of purchasing the surplus power and energy from time to time available from City's municipal electric system, including its proposed Station Two, and is willing to execute and fulfill the terms of this Agreement entitling it to take, and obligating it to pay for such surplus electric power and energy, subject to the terms and conditions recited herein.

1.4 By its addition of Station Two, City will be able to provide more economical and reliable electric service to itself and its inhabitants, and through its sales of surplus electric power and energy to Big Rivers, as provided by this Agreement, City can assure the economic feasibility of such addition.

## 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

also see  
1901 Amend mnd  
definitions  
sections 101

see Amendment = 1  
tab 6

then see 1993  
Amendments  
tab 15

~~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

plus  
Amendment #1  
tab 6

also see  
2002 Amendment  
section 1A3

*section 104*  
Two Bonds, together with ordinances supplemental thereto or amendatory thereof.

*See Amendment # 2 Tab 6* **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's Station Two and shall include: (i) the Electric Light & Power Revenue Bonds, Station Two Series authorized and issued under the Bond Ordinance; (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; and (iii) subject to the written approval of Big Rivers, additional Bonds, if any, authorized and issued under the Bond Ordinance to finance any Additional Project (as defined in the Bond Ordinance) for Station Two.

**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

### PLANT CAPACITY AND OUTPUT

## SECTION 3 - ALLOCATION OF CAPACITY

**3.1** Subject to the allocation of surplus capacity to Big

*also see 2002 Amends Section 301*



Rivers as hereinafter provided, the total capacity and output of City's Station Two shall be reserved to and available for use by City for the purpose of supplying the needs of City and its inhabitants for electric power and energy in excess of the capabilities, from time to time, of its Existing System.

3.2 The "needs of City and its inhabitants" as used herein shall mean the needs of City for electric power and energy necessary in the operation of its governmental and proprietary facilities, and the retail sales of electric power and energy by City's Existing System to City's inhabitants, present and future, and those non-inhabitants which City is serving at the time of the execution of this Agreement.

3.3 The surplus capacity of City's Station Two will be allotted to Big Rivers on the basis of five years' advance written notice from City, and Big Rivers shall have the right to receive, and the obligation to take and pay for the capacity of City's Station Two so allotted to it in the manner herein provided. Upon the execution and approval of this Agreement, City will designate in writing Big Rivers' capacity allocation from Station Two for the Contract Years or portions thereof occurring too soon to permit five years' advance notice as hereinabove provided.

3.4 City agrees that it will not, after the execution and approval of this Agreement, (1) make any dispositions to others for resale of its generating capacity, except for the purpose of disposing of any surpluses resulting from good faith

see 1993  
Amendments  
tab 15

see 1998  
Amendments  
tab 37

over-estimates of its needs, or (2) add any commercial or industrial customers in excess of ten (10) megawatts each to its electric system, if to do either (1) or (2), as the case may be, would require the withdrawal of additional capacity from its Existing System and/or from Units One and Two of its Station Two. Expansions in the ordinary course of business of any commercial or industrial plants being served by City at the time of the execution of this Agreement shall not be considered added commercial or industrial customers for the purposes of this Agreement. Surplus capacity as referred to in (1) above shall be first offered to Big Rivers at City's cost.

3.5 Big Rivers shall have the right to receive, and the obligation to take and pay for the surplus capacity of City's Station Two allotted to it at any particular date as herein provided. Surplus capacity as herein used shall mean the Total Capacity of City's Station Two as then determined under Section 3.6, less that amount of such capacity at the time reserved to City as herein provided.

3.6 The Total Capacity of Station Two as referred to herein shall be the total continuous net send-out capability of all generating units in Station Two as determined by annual tests, made in the month of August, of at least twenty-four hours' duration under actual load carrying condition, when the equipment is operated at rated pressure and temperature with all auxiliary equipment in service, and at a power factor of

then see 1993  
Amendments  
tab 15

approximately ninety per cent (90%). The measurements will be made at the 161 KV metering points of the Station Two Switchyard.

(3.7) The total continuous net send-out capability of each new unit of Station Two shall be tested on or before the Date of Commercial Operation thereof, if operationally possible, and the capacity as thus determined will remain the established Total Capacity of such unit until the first annual August test thereof, but shall not exceed a rating of 175 megawatts. If such test of any unit is deferred, the Total Capacity of such unit will be considered 175 megawatts until such test is made. As of June 30, 1974 the Total Capacity of Station Two shall be considered as 350 megawatts unless otherwise established by actual test with both units operational.

*See 1993 Amendment Tab 15*

(3.8) *See 1998 Amendment Tab 37 Vol IV City unused, reserved capacity*

#### SECTION 4 - ALLOCATION OF ENERGY

4.1 Big Rivers shall be entitled at all times to take from Station Two energy associated with its allotted net capacity. Each party will be charged with its proportionate share of Station Two capacity required to operate Station Two auxiliary facilities.

#### SECTION 5 - STANDBY CAPACITY

5.1 Big Rivers' right to the use of surplus capacity of City's Station Two as provided in this Agreement shall be subject to the prior right of City to take its reserved capacity

from either generating unit of its Station Two, and in the event of an emergency or maintenance outage of either generating unit of City's Station Two, City's right to receive its reserved capacity from Station Two shall have priority.

*also see 2002 Amends Section 301A & 302*  
SECTION (6) - PAYMENT FOR CAPACITY; FUEL REQUIREMENTS

(6.1) Commencing with the Date of Commercial Operation or June 30, 1974, whichever shall first occur, Big Rivers shall pay to the Trustee, capacity charges as hereinafter defined on the surplus capacity of Station Two allotted to it as provided in Section 3, Allocation of Capacity.

*AK 10993 Amends Section 303*  
(6.2) Capacity charges to Big Rivers for any Monthly Billing Period shall be the same proportion of the total capacity costs of City's Station Two for such Monthly Billing Period as Big Rivers' allocation of surplus capacity of Station Two during such Monthly Billing Period bears to the total capacity of City's Station Two for such Monthly Billing Period as established pursuant to Section 3 of this Agreement.

*also see 2002 Amends Section 304*  
(6.3) The total capacity costs of City's Station Two for each Monthly Billing Period shall be City's total costs resulting from the ownership, operation and maintenance of, and renewals and replacements to its Station Two, except costs of fuels for Station Two. Such costs shall include, but are not limited to:

(a) Debt Service (as defined in the Bond Ordinance) for such Monthly Billing Period with respect to the Station Two Bonds.

(b) One-twelfth (1/12) of all costs associated with the

operation and maintenance of Station Two during such Contract Year, including, without limitation, all costs properly chargeable to F.P.C. Accounts 408, 500, 502, 505, 506, 510, 511, 512, 513, 514 and 924, and fiscal agency costs and expenses allocable to Station Two.

(c) The amount which City is required under the Bond Ordinance to pay during such Monthly Billing Period into (i) the Station Two Account in the Operation and Maintenance Fund (Station Two O. & M. Account), so as to restore the minimum balance required to be maintained therein, and (ii) the Station Two Account in the Renewals and Replacements Fund (Station Two R. & R. Account) so as to restore the minimum balance required to be maintained therein.

(d) Costs of renewals, replacements and additions (when such additions are agreed to by Big Rivers) which are not provided for through (i) funds available in the Station Two R. & R. Account in the Renewals and Replacements Fund, (ii) proceeds of insurance, or (iii) funds available from proceeds of bonds.

(e) One-twelfth (1/12) of all costs of administration and general expense for Station Two during such Contract Year, and including, but not limited to, costs properly includible in F.P.C. Accounts 920, 921, 923, 924, 925, 926, 928 and 930.

(f) Any amounts paid or payable to Big Rivers for such Monthly Billing Period under terms of the parties' Power Plant Construction and Operation Agreement (except any delayed payment penalties as therein provided) not included in the foregoing.

(g) Any other costs associated with Station Two which are not included in Paragraphs (a) through (f) hereof.

In the event any Contract Year shall embrace eleven or fewer months the fraction expressed in the foregoing paragraphs (b) and (e) shall be adjusted by substituting a denominator equal to such number of months.

For the purposes of paragraph (a) of this Section, Station Two Bonds shall not include that principal amount of Bonds determined by the Consulting Engineer under the Bond Ordinance on or prior to the beginning of the first Contract Year to be attributable to the costs of the City's Transmission or Transformation Facilities and other improvements of City's Existing System. The Principal Installments due for any year of such Bonds so excluded shall be deemed to be that amount of the Principal Installments of the Electric Light & Power Revenue Bonds, Station Two Series, due for such year which bears the same proportion to said Principal Installments for the Electric Light & Power Revenue Bonds, Station Two Series, as the principal amount of such Bonds so excluded bears to the aggregate principal amount of Electric Light & Power Revenue Bonds, Station Two Series.

6.4 Net interest earned on the following funds under the Bond Ordinance and paid into the Electric Revenue Fund thereunder shall be applied as an offset to Capacity Costs: (i) amounts shown in the Debt Service Account in the Debt Service Fund and applicable to the Station Two Bonds; (ii) amounts shown in the Debt Reserve Account in the Debt Service Fund as the

required reserve with respect to the Station Two Bonds, and amounts in the Station Two Accounts in the Operating & Maintenance Fund, Renewals & Replacements Fund, and the General Reserve Fund; (iii) insurance proceeds pending application with respect to Station Two.

6.5 Any tax lawfully imposed upon City in connection with the allocation of Station Two capacity and/or associated energy to Big Rivers shall be paid in its entirety by Big Rivers in addition to the capacity charges hereinabove referred to.

6.6 Additional Payments: In addition to the payments <sup>all 1993</sup> agreed to be made by Big Rivers to City under the terms and <sup>Amendment</sup> ~~pro- tabs~~ visions of this Agreement, in consideration for City's allocation to Big Rivers of the surplus capacity and energy of City's Station Two as provided in Section 3 hereof, Big Rivers covenants and agrees that during the original term only of this Agreement it will pay monthly to City, to the account of City's Existing System additional sums, based upon the amount of net capacity from time to time allocated from City's Station Two to Big Rivers, as follows:

(a) for each Monthly Billing Period during which Big Rivers' allocation of net capacity from City's Station Two is equal to or exceeds 250 megawatts, a sum of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33).

(b) for each Monthly Billing Period during which Big Rivers' allocation of net capacity from City's Station Two is

less than 250 megawatts and is equal to or exceeds 150 megawatts, a sum of Five Thousand Five Hundred Fifty-Five Dollars and Fifty-Six Cents (\$5,555.56).

(c) for each Monthly Billing Period during which Big Rivers' allocation of net capacity from City's Station Two is less than 150 megawatts and is equal to or exceeds 50 megawatts, a sum of Two Thousand Seven Hundred Seventy-Seven Dollars and Seventy-Eight Cents (\$2,777.78).

*new(d)* → **6.7** Fuel Requirements: Big Rivers and City shall each provide, at its own cost, the full replacement of all fuels consumed from the Station Two fuel reserve for the production of electric energy used by it during each month. If at any time during the term of this Contract the Station Two coal reserve shall fall below a full thirty (30) days' supply, then upon written demand by either party or the Consulting Engineer under the Bond Ordinance, both parties shall increase their respective monthly additions to the coal reserve by five per cent (5%) until the coal reserve is restored to the amount specified in such demand, not to exceed forty-five (45) days' supply for City's Station Two. Fuel consumption by each party will be determined on the basis of measured quantities, adjusted for heat content, and attributed to the parties on the basis of their respective uses of electric energy from City's Station Two during each month.

*all also  
002  
mon  
305*

## SECTION 7 - CHARACTER OF SERVICE

7.1 Service to Big Rivers from City's Station Two shall



be at 161 KV, 3 phase 60 cycles, unless otherwise agreed upon by the parties.

## SECTION 8 - METERING, METER TESTING AND BILLING ADJUSTMENT

8.1 Printing Demand Meters, or equivalent meters, with a sixty (60) minute demand interval, which will meter kilowatts, and suitable watt-hour 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 6.7 hereof.

8.2 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, Big Rivers and others from City's Station Two.

8.3 Tests and inspections of said meters shall be made 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 be advised promptly of the results of all such tests. Big Rivers will be given prior notice of and may have representatives present at such tests and inspections. Additional tests of said meters

will be made at the reasonable request of Big Rivers and in the presence of its representatives.

8.4 If such periodic or additional tests show that a meter used for recording capacity and/or energy uses is accurate within one per cent (1%) slow or fast, no correction shall be made in such recordings. If any such tests show that such meter is inaccurate by more than one per cent (1%) slow or fast, correction shall be made in such recordings for the period during which the parties agree that the inaccuracy existed.

8.5 City's kilowatt demand and energy uses from its Station Two shall be metered at the following points:

(a) at point of City's Station Two switchyard where delivery is taken over City Transmission and Transformation Facilities.

(b) at point of City's Existing System substations where delivery is taken over Big Rivers' transmission system, with appropriate additions for ordinary transmission losses.

8.6 All of City's metering points shall be hourly summarized so as to determine City's aggregate hourly kilowatt demand and total energy uses from Station Two.

8.7 Big Rivers' kilowatt demand and energy uses from City's Station Two shall be metered at point of City's Station Two switchyard.

8.8 All meter readings and/or recordings necessary to provide an accurate report of kilowatt demand and electric energy uses from City's Station Two during each Monthly Billing Period

shall be promptly made. At the end of each Monthly Billing Period a report shall be promptly made to Big Rivers of the kilowatt demand and electric energy uses from City's Station Two by City, Big Rivers and others during such Monthly Billing Period.

#### SECTION 9 - BILLING AND PAYMENTS

9.1 On or before the twentieth day of each calendar month during each Contract Year Big Rivers shall pay to City's Trustee, appointed under the Bond Ordinance, all capacity charges due from it in accordance with Section 6 hereof for its allotted Station Two capacity during the current Monthly Billing Period. Such payments shall be made on the basis of the Annual Budget in effect for the applicable Monthly Billing Period. Payments shall be deemed complete upon the posting thereof in the regular United States mail, properly addressed and affixed with postage.

*also see  
2002 Amend  
Section 306.*

9.2 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 City, be added thereto at the commencement of each thirty-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 payment, the delayed payment penalty will be applicable only to that unpaid portion of the invoice which is not reasonably in dispute.

also see  
1992 amendments  
to 307

9.3 Off-Setting Accounts: Big Rivers shall have the right to off-set accounts payable under this Agreement by any payments due it under Section 13.6 of the parties' Power Plant Construction and Operation Agreement of even date herewith and thereupon shall pay to the Trustee under the Bond Ordinance any remaining balance of the off-set account. Off-setting of accounts shall be employed in determining any delayed payment charges as provided herein.

see 1993  
Amendments  
Feb 15

9.4 On or before one hundred twenty (120) days after the end of each Contract Year there shall be submitted to Big Rivers a detailed statement of the actual capacity costs for all Monthly Billing Periods of such Contract Year, based on the annual audit of accounts provided for in Section 11.

also  
see 2002  
amendments

If, on the basis of such statement the actual aggregate capacity costs for said Contract Year exceeded the estimate thereof in the Annual Budget on the basis of which Big Rivers has made payments, Big Rivers shall pay promptly to the Trustee appointed under the Bond Ordinance the additional amount to which the City is entitled. If, on the basis of such statement the actual aggregate capacity costs for said Contract Year are less than the estimate thereof in the Annual Budget on the basis of which Big Rivers has made payments, such excess shall be credited against Big Rivers' next monthly payment or payments hereunder, or paid to Big Rivers if no such payments are due from Big Rivers.

SECTION 10 - OBLIGATIONS OF THE PARTIES

10.1 All obligations of City under the terms and provisions of this Agreement shall be the sole obligations of City's

electric utility system, including its Existing System, its Station Two generating plant and such other additions, extensions and facilities that it may from time to time own and/or operate. No debt or obligation of City under this Agreement shall constitute a general obligation of the City.

10.2 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 proper operation and maintenance thereof, to provide for the depreciation thereof through renewals and replacements, or otherwise, and to provide for the full and prompt payment of all obligations of City on all of its outstanding Electric Revenue Bonds, including without limitation its Station Two Bonds.

10.3 All obligations and sums payable by Big Rivers under the terms and provisions of this Agreement shall constitute a general obligation of Big Rivers, and Big Rivers 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 systems and such other business activities in which it shall engage for compensation, which will be sufficient to adequately make the full and prompt payment and performance of all its obligations to the Trustee for the Bonds under the terms and provisions of this Agreement.

SECTION 11 - ANNUAL AUDIT

*See also  
2002 Amendments  
Section 309*

11.1 An annual audit of the financial accounts of the City's Station Two shall be made in accordance with the provisions of the Bond Ordinance. Big Rivers shall be entitled to timely receipt of copies of the annual audit report.

11.2 Big Rivers shall have the right, at all reasonable times, to examine the books, accounts and records of City's Station Two in order to determine the accuracy of charges being made to it under the provisions of this Agreement.

PART III

GENERAL PROVISIONS

SECTION 12 - OPERATING STANDARDS

12.1 City will operate and maintain, under the provisions of the Power Plant Construction and Operation Agreement, the generating station, auxiliary facilities, joint use facilities and other related facilities comprising its Station Two, 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 13 - UNCONTROLLABLE FORCES - CONTINUING OBLIGATION FOR PAYMENTS

13.1 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.

13.2 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.

13.3 Anything to the contrary in this Contract notwithstanding, Big Rivers shall have a continuing obligation to make payments for capacity as provided in this Agreement, whether or not City's Station Two is inoperable or the operation thereof is interrupted, suspended or interfered with in whole or in part for any cause whatsoever, including Uncontrollable Forces.

#### SECTION 14 - ARBITRATION

14.1 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.

14.2 Arbitration 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 15 - DEFAULT

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

*new 15.2  
new 15.3*

*add 1993 Amendments  
Tab 15*

#### SECTION 16 - WAIVER

16.1 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 such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.



SECTION 17 - NOTICES

17.1 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 and Light  
                              P.O. Box 8  
                              Henderson, Kentucky 42420

to Big Rivers:            Manager  
                              Big Rivers RECC  
                              P.O. Box 24  
                              Henderson, Kentucky 42420

to the Trustee:           as established by the Bond Ordinance.

17.2 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 IV

OTHER PROVISIONS

SECTION 18 - COMPLIANCE WITH BOND ORDINANCE

18.1 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 impair or adversely affect the security

*see also  
2002 Amend  
that Sect. 310*

afforded by the provisions of this Agreement to the holders of the City's Electric Revenue Bonds, including Station Two Bonds, for the payment of principal, interest and premium, if any, thereon, so long as any of such Bonds are outstanding and unpaid, or until provision is irrevocably made for the payment thereof.

SECTION 19 - MAINTENANCE OF RESERVES:

*see tab 12a*  
**19.1** City covenants and agrees that during the term of this Agreement, and any renewals or extensions thereof, it will continue to keep and maintain, in the manner provided in the Bond Ordinance and the supplemental ordinance providing for the Station Two Bonds, as operating facilities of its Station Two, the Station Two O. & M. Account, the Station Two R. & R. Account and the Station Two fuel reserve, all as provided under the terms of this Agreement and the parties' Power Plant Construction and Operation Agreement of even date herewith.

*also see 1998 Amendments 311*  
*19.3*  
*also Station II Agreement Sect. 4.4.10*  
*19.2*  
*see 1998 Amendments Vol. IV tab 37*  
*re-allocation for R & R fund.*  
*also see 1998 Amendments section 312 4B13*  
SECTION 20 - CITY INCLUDES UTILITY COMMISSION

20.1 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.

20.2 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.

← New Section 21  
See Amend #14 #2  
Tab 6

<sup>1</sup>SECTION 21 - TERM AND TERMINATION See Amendment #3 Tab 6

<sup>2</sup>21.1 The term of this Agreement shall commence upon the execution hereof by City and Big Rivers and shall terminate on October 31, 2003 unless otherwise terminated as hereinafter provided.

<sup>2</sup>21.2 Big Rivers shall have the option of extending the term of this Agreement for two successive five-year terms provided that at least five years' advance written notice of each such extension is given to City. Such extension or extensions shall be upon the same terms and conditions applicable to the original term of this Agreement, except as otherwise provided in Section 6.6 hereof.

see 1993  
Amend.  
Tab 15

see 1998  
Amendment  
Section 1  
Tab 37  
Vol. IV

<sup>2</sup>21.3 Notwithstanding the provisions of Sections 21.1 and 21.2, this Agreement and any options herein granted shall terminate as soon as Big Rivers' allocation of capacity from City's Station Two shall be zero.

<sup>3</sup>SECTION 22 - AMENDMENTS See Amendment #1 Tab 6

<sup>3</sup>22.1 No amendments of this Agreement shall be effective unless reduced to writing and executed by all parties hereto.

<sup>3</sup>2.2 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.

<sup>4</sup>SECTION 23 - SEVERABILITY

*see Amendment #1 tab 6*

<sup>4</sup>23.1 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.

<sup>5</sup>SECTION 24 - ASSIGNMENT

*see Amendment #1 tab 6*

<sup>5</sup>24.1 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.

<sup>6</sup>SECTION 25 - APPROVAL

*see Amendment #1 tab 6*

<sup>6</sup>25.1 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 2<sup>7</sup> - CONDITIONS PRECEDENT

*see Amendment #1 tab 6*

2<sup>7</sup>.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 Plant Construction and Operation Agreement, the real estate Purchase-Sale Agreement and the Joint Facilities Agreement, all of even date herewith.

(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.

(c) That the City shall be able to issue and sell its Station Two Bonds with rates of interest and schedule of maturities acceptable to City and Big Rivers, with a final maturity of not less than thirty years from date of issuance, in the principal sum of \$76,000,000.00.

2<sup>7</sup>.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 2<sup>8</sup> - AUTHORITY TO EXECUTE

*see Amendment #1 tab 6*

*Economic Development Board  
also see 1998  
Amendment  
Vol III tab 37*

2<sup>8</sup>.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:

Pheresa Crafton  
City Clerk  
(City Seal)

CITY OF HENDERSON UTILITY COMMISSION

BY Louis Hatchett  
Louis Hatchett, Chairman

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

Approved copy  
116.0:2:1

Contract 219

U. S. DEPARTMENT OF AGRICULTURE  
RURAL ELECTRIFICATION ADMINISTRATION

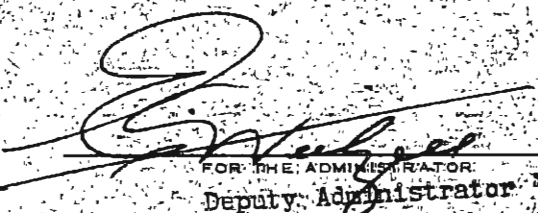
REA BORROWER DESIGNATION: Kentucky 62 Big Rivers

THE WITHIN: Amendment No. 1 dated March 2, 1971, to Power Sales  
Contract 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

116.0.2.1  
3-2-71

Amendment #1

POWER SALES CONTRACT  
BETWEEN  
CITY OF HENDERSON, KENTUCKY  
AND  
BIG RIVERS RURAL ELECTRIC CO-OPERATIVE CORPORATION



POWER SALES CONTRACT

Amendment #1

The Power Sales Contract entered into as of August 1, 1970 by and between the City of Henderson, Kentucky and Big Rivers Rural Electric Co-operative Corporation is hereby amended in the following particulars:

1. Section 2.2 is amended so as when amended the same shall read as follows:

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 (which shall not include the City Transmission and Transformation Facilities as herein defined).

2. Section 2.6 is amended so as when amended the same shall read as follows:

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; provided that in the event that City shall exercise its right under the Bond Ordinance to change from a calendar year accounting period, as shall be specified in a Supplemental Ordinance adopted in accordance with the Bond Ordinance, the term Contract Year as used herein shall thereupon refer to the same period as such new fiscal year accounting period with such changes in the accounting and budgeting procedures, including the adoption of a new Annual Budget hereunder, as shall be necessary or appropriate to effect such change in the Contract Year.

3. Section 3.6 is amended so as when amended the same shall read as follows:

3.6 The Total Capacity of Station Two as referred to herein shall be the average of the total continuous net sendout capability of all generating units in Station Two as determined by semi-annual tests, made in the months of August and January, of at least twenty-four hours' duration under actual load carrying condition, when the equipment is operated at rated pressure and temperature with all auxiliary equipment in service, and at a power factor of approximately ninety per cent

(90%). The measurement will be made at the 161 KV metering points of the Station Two Switchyard.

4. SECTION 21 - TERM AND TERMINATION, and subsections 21.1, 21.2, and 21.3 are renumbered so as to be SECTION 22 - TERM AND TERMINATION and subsections 22.1, 22.2 and 22.3. A new Section 21 with subsections 21.1, 21.2 and 21.3 is added to read as follows:

SECTION 21 - HENDERSON-DAVIESS AND CITY ELECTRIC SYSTEMS

21.1 The parties mutually agree that the Henderson-Daviess System and the City Electric System, as described in the City's Revised Request for Ruling, dated December 1970 and filed with the Internal Revenue Service (a copy of which has been delivered to Big Rivers), will be operated in the manner prescribed in said Revised Request for Ruling, so as to preclude any distribution of any of the generating capacity of said Henderson-Daviess System and said City Electric System outside the area of Henderson and Daviess Counties except as described in said Revised Request for Ruling.

21.2 It is understood by the parties, however, that the requirement of Section 21.1 hereof will no longer be effective in the event and to the extent that

any change in the applicable statute, regulations or rulings of the Internal Revenue Service should occur pursuant to which interest on the Bonds would remain exempt from federal income taxation in the absence of compliance with such requirement.

21.3 Big Rivers covenants and agrees to save harmless and indemnify City for any loss or damage whatsoever arising out of Big Rivers' violations, if any, of the provisions of Section 21 of this contract.

5. SECTION 22 - AMENDMENTS and its subsections 22.1 and 22.2 are renumbered so as to be SECTION 23 - AMENDMENTS and subsections 23.1 and 23.2.

6. SECTION 23 - SEVERABILITY and its subsection 23.1 are renumbered so as to be SECTION 24 - SEVERABILITY and subsection 24.1.

7. SECTION 24 - ASSIGNMENT and its subsection 24.1 are renumbered so as to be SECTION 25 - ASSIGNMENT and subsection 25.1.

8. SECTION 25 - APPROVAL and its subsection 25.1 are renumbered so as to be SECTION 26 - APPROVAL and subsection 26.1.

9. SECTION 26 - CONDITIONS PRECEDENT and its subsections 26.1 and 26.2 are renumbered so as to be SECTION 27 - CONDITIONS PRECEDENT and subsections 27.1 and 27.2.

10. SECTION 27 - AUTHORITY TO EXECUTE and its subsection 27.1 are renumbered so as to be SECTION 28 - AUTHORITY TO EXECUTE and subsection 28.1.

All provisions of the parties' Power Sales Contract of August 27, 1970 not herein amended shall remain in full force and effect as originally adopted.

Executed at Henderson, Kentucky this 2nd day of March, 1971.

CITY OF HENDERSON, KENTUCKY

BY William L. Newman  
William L. Newman, Mayor

ATTEST:

Thom Crofton  
City Clerk

(City Seal)

CITY OF HENDERSON UTILITY COMMISSION

BY Louis Hatchett  
Louis Hatchett, Chairman

ATTEST:

Dudley H. Everson  
Secretary

BIG RIVERS RURAL ELECTRIC  
CO-OPERATIVE CORPORATION

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

ATTEST:

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

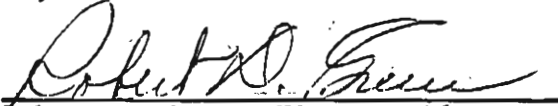
This instrument prepared by:

W. A. B. [Signature]  
of WEST MARKWELL & BRYANT  
Suite 380 - Imperial Building  
110 Third Street  
Henderson, Kentucky 42420

EXCERPT FROM THE MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS  
OF BIG RIVERS RURAL ELECTRIC COOPERATIVE CORPORATION  
HELD IN HENDERSON, KENTUCKY, ON  
FEBRUARY 26, 1971

Upon motion of D. B. Wilson seconded by Robert D. Green it was moved that Amendment #1 to Power Sales Contract between the City of Henderson and Big Rivers and Amendment #1 to the Power Plant Construction and Operation Agreement between the City of Henderson and Big Rivers be approved. Motion carried.

I, Robert D. Green, Vice President of the 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 special meeting of said corporation held on February 26, 1971.

  
Robert D. Green, Vice President

116.0.2.2  
3-1-73

POWER SALES CONTRACT

Amendment #2

The Power Sales Contract entered into as of August 1, 1970, as amended by Amendment #1 entered into as of March 2, 1971 ("Power Sales Contract"), by and between the City of Henderson, Kentucky and Big Rivers Rural Electric Co-Operative Corporation is hereby further amended in the following particulars:

1. Section 2.9 is amended to read as follows:

"2.9. Station Two Bonds (the Bonds): The Electric Light and 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's Station Two and shall mean and include: (i) the Electric Light and Power Revenue Refunding Bonds, Station Two Series dated March 1, 1973, authorized under the Bond Ordinance to refund the Electric Light and Power Revenue Bonds, Station Two Series dated March 1, 1971, issued under the Bond Ordinance; (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; and (iii) subject to the written approval of Big Rivers, additional bonds, if any, authorized and issued under the Bond Ordinance to finance



any Additional Project (as defined in the Bond Ordinance for Station Two."

2. Section 21.2 is amended to read as follows:

"21.2. It is understood by the parties, however, that the requirement of Section 21.1 hereof will no longer be effective in the event and to the extent that any change in the applicable statute, regulations or rulings of the Internal Revenue Service should occur pursuant to which interest on the Bonds, including the Electric Light and Power Revenue Refunding Bonds, Station Two Series dated March 1, 1973 and the Electric Light and Power Revenue Bonds, Station Two Series dated March 1, 1971, issued under the Bond Ordinance, would remain exempt from federal income taxation in the absence of compliance with such requirement."

3. The parties to this Amendment #2 hereby agree that all references to the Power Sales Contract in the Power Plant Construction and Operation Agreement dated August 1, 1970, as amended, and the Joint Facilities Agreement dated August 1, 1970, both by and between the parties hereto, shall be deemed to include and refer to the Power Sales Contract, as amended by this Amendment #2.

4. All provisions of the Power Sales Contract shall remain in full force and effect, except as amended by this Amendment #2.



BIG RIVERS RURAL ELECTRIC CO-OPERATIVE  
CORPORATION

By Robert D. Green  
, President

ATTEST:

John R. Hadden

This instrument prepared by:

Winton Hulbuck