

File # 11-11-11
11-11-11

U. S. DEPARTMENT OF AGRICULTURE
RURAL ELECTRIFICATION ADMINISTRATION

REBORROWER DESIGNATION Kentucky 62 Big Rivers

THE WITHIN Spare Transformer Agreement dated July 11, 1972

in the City of Henderson Utility Commission, 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

11/11/72

FOR THE ADMINISTRATION

11/11/72
in the Administration

SPARE TRANSFORMER AGREEMENT

AGREEMENT between CITY OF HENDERSON UTILITY COMMISSION, CITY OF HENDERSON, KENTUCKY (City) and BIG RIVERS RURAL ELECTRIC COOPERATIVE CORPORATION of Henderson, Kentucky (Big Rivers).

WITNESSETH:

WHEREAS the parties own and operate electric generating facilities, hereinafter described, which utilize stepup power transformers as necessary components in the supplying of electric service to their respective consumers, and

WHEREAS it is the desire of the parties to jointly acquire, own and utilize a spare 161 KV stepup power transformer so as to provide for the contingency of transformer failure in their respective electric facilities, and to define herein the terms and provisions under which such acquisition, ownership and utilization shall occur.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein made, it is hereby stipulated, covenanted and agreed as follows:

1. **Generating Facilities:** The electric generating facilities to which this agreement shall apply are as follows:

a. City's Station Two electric generating plant in Henderson County, Kentucky, Units 1 and 2.

b. Big Rivers' Coleman Station, Hancock County, Kentucky, Units 1, 2 and 3.

c. Such additional generating facilities as either of the parties may hereafter acquire.

2. Acquisition of Spare Transformer: The parties shall jointly acquire, through competitive bidding procedures as required of City by law, one 175-196 MVA, 17,500 volts (Delta) primary to 161,000 volts (Grounded Wye) secondary standby generator stepup transformer and accessories (hereinafter referred to as "spare transformer") and services and materials in connection therewith, all as specified by Burns and McDonnell Engineering Company of Kansas City, Missouri (Engineers), copy of which specification is attached herewith and made a part hereof; one, new or used depressed center rail car suitable for rail transportation of the spare transformer between the parties' electric generating stations, in accordance with the Engineers' specifications attached herewith as a part hereof; and all other accessories, materials, labors and/or services reasonably required to complete all facilities necessary for the parties' joint ownership, storage and use of the spare transformer which is the subject of this agreement, all of which shall be performed in accordance with the specifications

attached herewith and such other plans and/or specifications as shall be mutually agreed upon by the parties.

3. Ownership and Costs of Acquisition: The costs of acquisition of the spare transformer, rail car, materials, labor and services defined in paragraph 2 hereof shall be paid by the parties as follows:

City - Forty Per Cent (40%)

Big Rivers - Sixty Per Cent (60%)

and the ownership thereof shall be vested in the parties in the same proportions as hereinabove stated.

4. Maintenance and Storage; Costs: The spare transformer and rail car to be acquired by the parties pursuant to this agreement shall be stored, from time to time, at either City's Station Two or Big Rivers' Coleman Plant. The party having such storage shall provide all materials and/or services required to properly maintain the standby transformer and rail car in good repair and working condition, and to protect the same from damage and deterioration. The reasonable costs of such storage, maintenance and protection shall be borne by the parties in the same ratio as their respective interests of ownership therein. The methods of maintenance and storage shall be as recommended by the Engineers. Costs of maintenance during use of the spare transformer shall be borne in accordance

with the provisions of paragraph 6 hereof.

5. Right to Use; Priority: Each of the parties shall have the right to use the spare transformer during the continuance of any maintenance or emergency outage of a generator stepup transformer of its generating facilities as defined in paragraph 1, provided that the party using such spare transformer shall make diligent effort to return the same to storage as soon as practicable. Priority for the use of the spare transformer shall go to the party first experiencing a transformer outage. During periods of transformer outages on both of the parties' generating facilities, the parties shall share the capacity of the spare transformer in proportion to their interests in ownership thereof as defined in paragraph 3.

6. Costs of Use: The party using the spare transformer in the operation of its generating facilities shall pay all costs incurred in removing from storage, transporting, readying for operation, installation, use, maintenance during use, and return to storage in as good condition of maintenance and repair as when taken, reasonable wear excepted, and upon the discontinuance of use thereof shall return the same to storage. If the parties jointly share the capacity of the spare transformer

they shall jointly pay the costs defined in this paragraph in proportion to the megawatt days of capacity used by each party, from the date of energization to the date of de-energization of the spare transformer.

7. Costs of Major Repair; In the event of the failure of the spare transformer or major damage thereto during the use thereof by either party, the costs of restoring the spare transformer to useful condition and reasonable state of repair shall be borne by the parties as follows:

a. To the extent that such damage is caused by the negligence of a party in its use thereof, by such party.

b. To the extent not the result of any such negligence, by the parties in proportion to their interests in ownership thereof.

8. Use by Others or for other Purposes: By mutual consent of the parties the spare transformer may be used by others or may be used by the parties for purposes other than as a generator stepup transformer under such terms and conditions, and for such period of time as the parties may agree. All money or other consideration received from others for the use thereof shall be first applied to the payment of costs incurred in providing such use to others, any restoration costs and costs of returning to storage, with any remaining considerations to be credited to the parties in proportion to their respective interests of ownership as provided in paragraph 3.

9. Insurance: Each of the parties shall obtain

endorsements of their respective power plant casualty insurance policies so as to provide fire, extended coverage and vandalism, broad form, insurance coverage of the spare transformer, rail car and related facilities during such time as the same may be located at the parties' generating stations, respectively, with loss payable clause for the benefit of the other party in proportion to its interest in ownership as provided in paragraph 3. Costs of such insurance shall be paid by the parties in proportion to their respective interests in ownership. Cost of insurance shall be the increase, if any, in insurance premiums of each parties' generating facilities by reason of the addition of the spare transformer, rail car and related facilities to the parties' insurance policies.

10. Accounting Records: Each party will keep and maintain complete and accurate books, records and accounts of its storage, maintenance and use of the spare transformer, rail car and related facilities, all in accordance with rules and regulations prescribed by any governmental agency having jurisdiction thereof, and in accordance with the uniform system of accounts prescribed by the Federal Power Commission. All such records shall be available for inspection by the other party and its representatives at all reasonable times and places.

11. Billing and Payments: On or before the twentieth day of each calendar month of the contract term the parties will present to each other statements of payments due covering the storage, maintenance and/or use of the spare transformer, rail car and related facilities for the monthly billing period just ended, such statement showing in detail the costs and charges included therein, with proper vouchers substantiating such charges. Monthly payments by the parties shall be due and payable currently, for each monthly billing period on or before the thirtieth 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. The parties shall have the right to off-set such accounts payable against accounts receivable.

12. Construction and Operating Standards: The spare transformer and 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.

13. Inspections, Right of Access: Each party hereto shall permit the duly authorized representatives and employees of the other party to enter upon its premises for the purpose of inspecting, testing, repairing, renewing or replacing any or all of the facilities and equipment which are the subject of this Agreement, or for the purpose of performing any other work necessary in order to carry out the provisions of this Agreement. 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.

14. Relationship of the Parties: 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. 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.

15. Uncontrollable Forces: 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. 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 because of

the effect of similar causes on suppliers or carriers.

16. Arbitration: Any controversy or claim arising out of, or relating to this Agreement or the breach thereof may be submitted to Arbitration at the time, in the manner and upon the terms agreed upon by the parties. 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.

17. Default: 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.

18. Waiver: 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.

19. Notices: 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 RECC

P. O. Box 24

Henderson, Kentucky 42420

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.

20. Compliance With Governmental Regulations: City and Big Rivers will, at all times, faithfully obey and comply with existing and future laws, rules and regulations of federal, state or local governmental bodies lawfully affecting the operations and activities which are the subject of this Agreement.

21. Term and Termination: 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 by mutual agreement of the parties.

22. Sale Or Other Disposition of Facilities: City and Big Rivers mutually agree that neither will sell or otherwise dispose of its interest in the spare transformer, rail car and related facilities which are the subject of this Agreement unless the same has been offered to the other party hereto in writing, and such other party has failed, for a period of six months, after receipt of such offer to accept same and pay the purchase price or other agreed consideration therefor. After such six months 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 six months period immediately following the 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. 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, 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 this Agreement. The provisions of this paragraph 22 pertaining to City's sale or other disposition shall be subject to all laws applicable thereto.

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

24. Severability: 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.

25. Assignment: 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, an assignment by City to a receiver pursuant to its Electric Light and Power Revenue Bond Ordinances of August 27, 1970, as amended, or an assignment by either party to a successor in interest in connection with an assignment or transfer of the generating facilities to which this agreement applies) without the written consent of the other party.

26. Approval: 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.

27. Station Two Agreements: It is mutually agreed that the spare transformer, rail car and related facilities which are the subject of this Agreement to the extent of City's rights, obligations and ownership therein, shall be considered a facility of City's Station Two Electric Generating Station, Units One and Two, and as such are subject to the provisions of the parties' Power Plant Construction and Operation Agreement Power Sales Contract and Joint Facilities Agreement dated August 27, 1970, as amended, and the provisions of the City of Henderson Electric Light and Power Revenue Bond Ordinance of August 27, 1970, as amended.

28. It is further agreed that if Big Rivers elects to have the spare transformer which is the subject of this agreement manufactured so as to have the additional capability of operating at 13,800 volts (delta) to 67,000 volts (grounded wye),

secondary at a capacity of 90/100.8 MVA by changing internal terminal board connections (as outlined in specifications prepared by the Engineers and attached herewith) then Big Rivers may employ the use of the spare transformer and accessories at its Reid Station, Henderson County, Kentucky, under the same terms and conditions as hereinabove provided. In the event of such elections, Big Rivers shall pay all costs of acquisition of the spare transformer and related facilities in excess of those costs which would have been incurred by the parties in the event that such elections had not been made by Big Rivers.

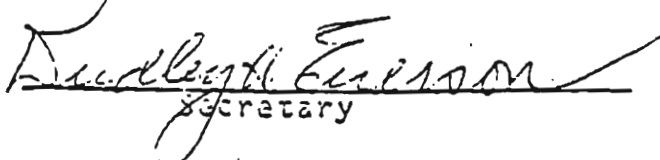
29. Authority to Execute: This Agreement is executed by the duly authorized officers or representatives of the parties pursuant to authority granted to each of them by the lawful action of their respective official commissions or boards.

EXECUTED at Henderson, Kentucky, this 11th day of July, 1972.

CITY OF HENDERSON UTILITY COMMISSION
CITY OF HENDERSON, KENTUCKY

By: 
Louis Hatchett, Chairman

ATTEST:


Secretary

BIG RIVERS RURAL ELECTRIC
COOPERATIVE CORPORATION

By:

Robert D. Green
Robert D. Green, President

ATTEST:

Texal Brooks
Texal Brooks, Secretary

This Instrument Prepared by

of WEST BRYANT & TERNES
Attorneys at Law
Suite 380 - Imperial Building
110 Third Street
Henderson, Kentucky 42420

EXCERPT FROM THE MINUTES OF REGULAR MEETING OF BOARD OF DIRECTORS
OF BIG RIVERS RURAL ELECTRIC COOPERATIVE CORPORATION
HELD IN HENDERSON, KENTUCKY, ON
JULY 14, 1972

Upon the motion of D. B. Wilson, seconded by Texal Brooks, it was moved that spare transformer agreement between the Henderson MP&L and Big Rivers be approved. Motion carried unanimously.

I, Robert D. Green, 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 Regular Meeting
of said corporation held on
July 14, 1972.

