

C#A56

116:0.18.1

U.S. DEPARTMENT OF AGRICULTURE
RURAL ELECTRIFICATION ADMINISTRATION

REA BORROWER DESIGNATION Kentucky 62 Big Rivers

THE WITHIN Agreement dated March 14, 1995, among Big Rivers Electric Corporation,
the City of Henderson, and the City of Henderson, Water & Sewer Commission

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


FOR THE ADMINISTRATOR

DATED

5/17/95

Pursuant to the Department of Agriculture Reorganization Act of 1994 (Title II of Public Law No. 103-354), the United States Secretary of Agriculture simultaneously abolished the Rural Electrification Administration (REA) and established the Rural Utilities Service (RUS) to succeed REA as the agency for carrying out electric and telephone loan program activities authorized by law, including the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.)

AGREEMENT

This Agreement is made and entered into on this the 14th day of March, 1995, by and among the City of Henderson, a municipal corporation and city of the third class organized under the laws of Kentucky, acting by and through its Municipal Water & Sewer Commission, of P. O. Box 341, 111 Fifth Street, Henderson, Kentucky 42420, ("Commission"), Big Rivers Electric Corporation, a rural electric cooperative corporation organized under Kentucky Revised Statutes Chapter 279, P. O. Box 24, 201 Third Street, Henderson, Kentucky 42420 ("Big Rivers"), and City of Henderson, Kentucky, a municipal corporation and city of the third class organized under the laws of Kentucky, of 222 First Street, Henderson, Kentucky 42420, referred to herein as "City".

WITNESSETH:

Whereas, the Commission is planning to construct new water and waste water treatment plants on property located near the Big Rivers Reid/Green generating station complex to service a facility to be constructed by Hudson Foods, Inc.; and

Whereas, the Commission and Big Rivers have agreed that economic development and the local economy would benefit from Big Rivers agreeing that the Commission may utilize the existing Big Rivers water intake and discharge facilities rather than constructing new facilities for water intake and discharge;

Now, therefore, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. RAW WATER.

A. Big Rivers shall make available to the Commission at the point where the Commission's proposed raw water supply line ties into the Big Rivers Reid Unit 84" circulating water (cw) inlet line, up to five million gallons per day of raw water. *ten*

B. The Commission shall locate its raw water transfer pumps off-site from Big Rivers property. Big Rivers does not guarantee any minimum line pressure available to the transfer pumps.

2. EFFLUENT FROM COMMISSION TREATMENT FACILITY.

A. Big Rivers agrees to accept from the Commission at the point where the Commission's proposed waste water treatment plant effluent line ties into the Big Rivers Reid Unit 84" cw discharge line, up to five million gallons per day of effluent from the Commission's proposed waste water treatment plant ("effluent"). *ten*

B. The term effluent, as used in this agreement, shall mean the discharge from the Commission's proposed waste water treatment plant after final treatment but before entering the receiving waters. The Commission shall analyze effluent samples, according to the requirements of 40 CFR Part 136, at least monthly, and the Commission's effluent shall stay within the "Monthly Average" quality limits as defined in Big Rivers discharge permit (see Appendix A, attached). The results of the foregoing analysis shall be provided to Big Rivers upon receipt by the Commission. Any change in analysis methods, frequency, or quality limits in Big

Rivers' discharge permit will automatically constitute a like change in this contract (i.e. the Commission shall always be responsible for causing its effluent to meet the same quality parameters as set forth in Big Rivers' discharge permit). Changes in Big Rivers' discharge permit shall not render this contract invalid, or entitle the Commission to any additional compensation or reimbursement.

C. In addition to analyzing its effluent samples as often as needed to assure compliance with Big Rivers discharge permit, the Commission shall also keep a one month running supply of effluent samples, covering three, distinct twenty-four (24) hour periods, preserved according to the requirements of 40 CFR Part 136, from the effluent sent to Big Rivers. These samples shall be labeled with the date and time they were taken, and shall be made available to Big Rivers upon request in the event analysis is desired.

D. The Commission shall install a sampling port in its sewage effluent line immediately prior to the tie-in with Big Rivers 84" cw discharge line (subject to accessibility and Big Rivers' approval of location). This port will serve as a method of Big Rivers performing random checks on the quality of the incoming waste water treatment plant effluent. The sampling ports from which the Commission shall take all of the samples required in this agreement may be either the port on Big Rivers' property (identified above), or a separate port located at the nearest accessible point after final treatment but prior to actual

discharge into the receiving waters.

E. The Commission shall be responsible for increased monitoring costs incurred by Big Rivers associated with the combination of the waste treatment plant effluent and the cw discharge line.

F. Big Rivers reserves the right to refrain from accepting any effluent from the Commission that Big Rivers knows to be non-compliant, and to continue to refuse acceptance of effluent from the Commission until the Commission demonstrates, to the satisfaction of Big Rivers, that the effluent complies with the requirements of Big Rivers' discharge permit. If compliance problems persist, Big Rivers may terminate this agreement upon twelve (12) months written notice.

3. AVAILABILITY.

Big Rivers shall have the right to take both the cw inlet and discharge lines out of service for periods of up to 24 hours at a time to perform maintenance and inspection. The frequency and timing of these 24 hour periods shall be at Big Rivers' discretion, provided that Big Rivers shall give the Commission a minimum of twenty-four (24) hours advance notice of its plans. This paragraph shall not apply to a forced outage of the cw system.

4. FACILITIES TO BE PROVIDED BY THE COMMISSION.

A. The Commission shall have sole responsibility for the design, construction, operation, and maintenance of its proposed raw water supply line and treated waste water effluent

line, including all costs associated with those tasks. The design and location of those facilities shall be subject to approval by Big Rivers. The Commission shall also pay or reimburse Big Rivers for any costs related to tying the Commission's lines to Big Rivers' cw line.

B. The safety memorandum attached hereto as Appendix B shall be appended to all construction contracts for construction of facilities by the Commission on premises owned by Big Rivers.

C. The following insurance requirements shall be included in all construction contracts for work on Big Rivers' property:

Contractor shall furnish certificates of insurance, in the name of Big Rivers Electric Corporation, evidencing insurance coverages of the following types and minimum amounts:

(1) Workers compensation and employers liability insurance covering all employees who perform any of the obligations under the contract, in amounts required by law. If any employer or employee is not subject to the workers compensation laws of the governing state, then insurance shall be obtained voluntarily to provide coverage to the same extent as though the employer or employee were subject to such laws.

(2) Comprehensive general liability insurance covering all operations under the contract: bodily injury - \$1,000,000 each occurrence and aggregate; property damage - \$1,000,000 each occurrence and aggregate. A combined single limit of \$1,000,000 for bodily injury and property damage liability is acceptable. This insurance may be in a policy or policies of insurance. A primary policy and an excess policy including the umbrella or catastrophe form is acceptable. Coverage should include contractual liability, broad form property damage liability, owner's and contractor's protective (independent contractor's) liability, products and completed operations hazard, explosion, collapse, and underground property damage hazard.

(3) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired: bodily injury - \$1,000,000 each person and \$1,000,000 each occurrence; property damage - \$1,000,000 each occurrence. A combined single limit of \$1,000,000 for bodily injury and property damage liability is acceptable. This insurance may be in a policy or policies of insurance. A primary policy and an excess policy including the umbrella or catastrophe form is acceptable.

Certificates evidencing the insurance coverages must be furnished before the commencement of work. The certificates must include a provision that no change in, or cancellation of, any policy listed in the certificates will be made without thirty (30) days written notice to Big Rivers Electric Corporation. If any work to be performed under this contract is sublet, the contractor will be required to arrange for insurance as herein provided.

D. The Commission or its contractor/employees shall be responsible for the location and avoidance of all existing underground facilities (e.g. power and control cables, piping, ductbanks, foundations, etc.). Big Rivers will provide the Commission with appropriate drawings, but the Commission will be financially responsible to Big Rivers for any facilities owned by Big Rivers which are damaged during construction conducted under the Commission's supervision or the supervision of the Commission's contractor.

E. All underground piping installed by the Commission or its contractors shall be detectable by means of a tracer cable the full length of the piping run on Big Rivers' property. The tracer cable shall be insulated but not shielded, 12 gauge copper wire. The cables shall be color marked according to the American Public Works Association (APWA): green for storm and sanitary sewers and drain lines, and blue for water, irrigation, or

slurry lines. the tracer cable shall be stubbed up at both ends of the line on Big Rivers' property (and in between if greater than 2500 feet). The tracer cable shall be detectable by a Metrotech model 810 locator.

F. The design for the EFM line shall include an isolation valve just upstream of the point where that line discharges into the Big Rivers cw line.

G. The Commission shall provide Big Rivers with "As-Built" drawings of all equipment installed on Big Rivers' property within one month of the completion of such installation.

5. WATER/SEWAGE SERVICE TO BIG RIVERS.

A. The Commission shall provide potable water service to the Big Rivers Reid/Green/HMP&L complex (expected to average 20,000 GPD, but as high as 60,000 GPD for the first 24 months of this agreement) free of charge during the term of this agreement.

B. The Commission shall provide sewage service to the Big Rivers Reid/Green/HMP&L complex (expected to average 20,000 GPD) free of charge during the term of this agreement.

C. Big Rivers shall have sole responsibility for the design, construction, operation, and maintenance of the potable water line and the sewage service lines, including all costs associated with those tasks. The Commission shall not charge a connection fee for either line.

D. Big Rivers agrees to sign the usual potable water and sewer service agreements required by Commission, provided

that such agreement shall not be inconsistent with the provisions of this agreement.

6. PUMPING COSTS.

A. To recoup pumping costs due to the Commission's percentage use of the Reid cw pumps, a per gallon pumping cost will be determined based on power costs. The Commission will be invoiced for these charges directly by Big Rivers, on a monthly basis, according to the number of gallons provided as shown on the Commission's calibrated flow meter. This per gallon pumping cost shall be determined by the following formulas and examples using a weighted average of the "power cost" [RUS Form 12d (Rev. 12/84), Section E, Line 25] and "net generation" [RUS Form 12d (Rev. 12/84), Section B, Line 8] values for Big Rivers' Reid Plant and Big Rivers' share of the HMP&L Station Two plant. The formula in subparagraph i), below, represents the power consumption requirements of the cw pumps.

i)
$$\frac{(1.73) \times (198.3 \text{ A}) \times (4160 \text{ V}) \times (0.8 \text{ PF}) \times (8766 \text{ HRS/YR})}{1000} = 10,008,145 \text{ KWH/YR}$$

1000

Primarily, these cw pumps are powered from the Reid plant. The Power Cost will be weighted, however, to reflect that the Reid plant is not always in operation, in which case the pumps are powered from the HMP&L plant. An example of the annual pumping costs based on this data is:

ii) Total Power Costs = \$39,125,395*

Total Net Generation = 1,536,895,400*

*Sum of Reid and Big Rivers' share of HMP&L costs and energy generation from both plants.

$$\text{Weighted Power Cost} = \frac{\$39,125,395}{1,536,895,400 \text{ kWh}} = \$0.0255/\text{kWh}$$

Big Rivers' Total Annual Pumping Costs:

$$(10,008,145 \text{ kWh}) \times (0.0255/\text{kWh}) = \$254,782$$

The cw pumps run at 67,000 GPM which is 35,239,320,000 gal/yr. Therefore, the annual pumping cost per gallon is:

iii) $(\$254,782)/(35,239,320,000 \text{ gal.}) = \$0.00000723/\text{gal.}$

To continue this example, the Commission's water plant would require 4,000,000 gallons per day at full capacity. This equals 1,461,000,000 gallons per year. Using iii), the pro rata pumping costs the Commission would be required to reimburse to Big Rivers would equal:

iv) $(1,461,000,000 \text{ gal.}) \times (\$0.00000723) = \underline{\$10,563}$

Each January, the power cost in formula (ii) above will be replaced with the yearly average of the preceding 12 months. Also, if the cw pump motors are ever replaced, the above formulas shall be revised by the new motor's nameplate data, if different.

7. INDEMNIFICATION.

A. The Commission shall be responsible for and shall defend, indemnify and save harmless Big Rivers from any and all damage, loss, claim, demand, suit, liability, fine, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses, including professional fees and court costs of defending against the same and payment of any settlement or judgment therefor, by reason of (1) injuries or deaths to persons,

(2) damages to or destruction of real, personal or intangible properties, (3) violations of any other rights asserted against Big Rivers, including patents, trademarks, trade names, copyrights, contract rights, and easements, or (4) violations of governmental laws, regulations or orders whether suffered directly by Big Rivers itself, or indirectly by reason of claims, demands or suits against it, resulting or alleged to have resulted from acts or omissions of the Commission, its employees, agents, business invitees, or other representatives or from their presence on the premises of Big Rivers, either solely or in concurrence with any alleged joint negligence of Big Rivers. Big Rivers shall be liable for its sole active negligence. Indemnification of Big Rivers Electric Corporation includes its officers, employees and agents.

B. The Commission shall be responsible for all property damage, fines, penalties and costs of corrective action resulting from non-compliance by the Commission's effluent with Big Rivers' KPDES permit and paragraph 2 of this agreement.

8. ENTIRE AGREEMENT.

This document contains the entire agreement of the parties hereto, and supersedes any prior agreements on the subject matter, whether oral or written.

9. TERM.

This Agreement shall remain in effect for a period of one (1) year from the date first hereinabove written, and shall automatically renew for successive one (1) year terms until terminated by either party upon twenty-four (24) months written

notice.

10. AMENDMENT.

This Agreement may not be amended except in writing, signed by all parties hereto.

11. SUCCESSORS AND ASSIGNMENT.

This Agreement shall be binding upon the parties hereto, their successors and assigns and may not be assigned by any party without the consent and writing of each of the other parties.

12. SURVIVAL.

The invalidity of any provision or provisions in this Agreement shall not affect the validity of the remaining provisions.

13. APPROVALS.

The effective date of this Agreement shall be postponed until it is approved, in writing, by the Rural Utilities Service of the United States Department of Agriculture ("RUS"), or until RUS disclaims, in writing, any requirement for approval of this Agreement by RUS.

14. FORCE MAJEURE.

If Big Rivers is rendered unable, wholly or in part, by force majeure or other forces beyond its control to carry out its obligations under this Agreement, upon Big Rivers giving the Commission notice and reasonably full particulars of such force majeure or force beyond its control, in writing, within a reasonable time after the occurrence of the cause relied on, then the obligations of Big Rivers under this Agreement, so far into the

extent they are affected by such force majeure, or force beyond the control of Big Rivers, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, so far as is practicable, be remedied with all reasonable dispatch. The term "force majeure", as used herein, shall mean an act of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of government, either federal or state, civil or military, civil disturbances, explosions, breakage of or accident to machinery or other facilities, inability to obtain necessary materials, supplies or permits, due to existing or future rules, regulations, orders, laws or proclamations of government authorities, either federal or state, which are not reasonably within the control of Big Rivers.

15. OBLIGATIONS OF COMMISSION.

Commission shall furnish, install, maintain and operate such facilities and equipment as may be necessary to enable it to receive raw water at the delivery point, to deliver effluent at the delivery point, and to afford reasonable protection to the facilities of Big Rivers and the Commission.

16. RIGHT OF ACCESS.

Big Rivers grants to the Commission the right of access to property owned by Big Rivers to install, maintain, operate, repair, and renew any and all equipment, apparatus, and devices owned by the Commission and necessary in the performance of this

Agreement, provided that Big Rivers shall have the right to approve the location of all such facilities.

17. RIGHT OF REMOVAL.

Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed by the Commission on the premises of Big Rivers shall be and remain the property of the Commission, and upon the termination of this Agreement, the Commission shall remove such facility from the premises of Big Rivers or shall otherwise decommission such facilities in accordance with accepted practice at the time. The rights granted Commission under paragraph 16, above, shall expire upon the removal, decommissioning or abandonment of such facilities.

18. REMEDIES OF PARTIES.

Waiver at any time by either party of rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter.

19. NOTICES.

Any written notice, demand or request required or authorized under this Agreement shall be deemed properly given to or served upon a party if mailed, delivered, or otherwise transmitted to a party at the following address:

City of Henderson
Water & Sewer Commission
P. O. Box 341
111 Fifth Street
Henderson, Kentucky 42420

Big Rivers Electric Corporation
201 Third Street
P.O. Box 24
Henderson, KY 42420

City of Henderson, Kentucky
222 First Street
Henderson, Kentucky 42420

20. REPORTS AND INFORMATION.

A party hereto shall furnish to the other, upon request, such reports and information as are reasonably related to the performance by the party of its obligations under this agreement.

21. AGREEMENT AND RIGHTS OF CITY.

The City has executed this agreement solely to evidence its consent to the activities covered by this agreement which affect or could affect (1) facilities owned in whole or part by the City or (2) rights and obligations of the City and Big Rivers under the various contracts entered into between those parties in connection with the construction, maintenance and operation of the HMP&L Station Two generating station. By joining in this agreement, the City does not assume any of the obligations of Big Rivers hereunder. The indemnification obligation of Commission to Big Rivers under paragraph 7 of this agreement shall extend to the City.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be subscribed by their duly authorized representatives as of the day and year first hereinabove written.

DATE: 2-24-95

CITY OF HENDERSON, WATER & SEWER
COMMISSION

BY: *James P. Hayer*

DATE: 2-23-95

BIG RIVERS ELECTRIC CORPORATION

BY: *Morton Henshaw*

DATE: 3-14-95

CITY OF HENDERSON, KENTUCKY

BY: *d. i. [signature]*