

HMP&L

HENDERSON MUNICIPAL POWER & LIGHT

File # 110.0.21.15
Copy: B. Blackburn
- J. Milley
- P. Burton

Rec'd 7/2/04
[Signature]

TAD 50

July 2, 2004

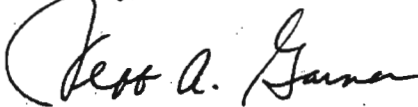
Mr. David Spainhoward
Big Rivers Electric Corp.
201 Third Street
Henderson, KY 42420

RE: HMP&L's SEPA Contract

Dear Mr. Spainhoward:

Pursuant to Mike Thompson's phone request, I am forwarding a copy of HMP&L's contract with SEPA. HMP&L requests to have a copy of Big Rivers' SEPA contract as well.

Sincerely,



Jeff A. Garner
General Manager

Enclosure: SEPA Contract

Contract No.
89-00-1501-1140
12/15/98

CONTRACT

executed by

THE UNITED STATES OF AMERICA

acting by and through the

SOUTHEASTERN POWER ADMINISTRATION

and

UTILITY COMMISSION FOR

THE CITY OF HENDERSON, KENTUCKY

0.1 THIS CONTRACT executed as of June 30, 1998, by and between the UNITED STATES OF AMERICA (hereinafter called the Government), Department of Energy, acting by and through the Southeastern Power Administrator (hereinafter called the Administrator), and UTILITY COMMISSION FOR THE CITY OF HENDERSON, KENTUCKY (hereinafter called the Purchaser), a municipal corporation organized and existing under the laws of the Commonwealth of Kentucky;

W I T N E S S E T H : That,

0.2 WHEREAS the Secretary of Energy is authorized by Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) to

transmit and dispose of electric power and energy generated at reservoir projects under the control of the Department of the Army, and the Secretary of Energy by Interim Management Directive No. 0204 dated October 3, 1977, as extended, has delegated to the Administrator his authority under said Section 5 with respect to projects then or thereafter constructed in the States of West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Kentucky; and

0.3 WHEREAS the Department of the Army has constructed reservoir projects in the Cumberland River Basin known as the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (hereinafter collectively called the Cumberland Projects), together with generating facilities whose output not required in the operation of the projects shall be disposed of by the Administrator; and

0.4 WHEREAS on August 5, 1993, 58 Federal Register 41762, the Administrator issued a written power marketing policy for the Cumberland System of Projects which, among other things, designates the marketing area and specifies the allocation of power within and without the Tennessee Valley Authority (hereinafter called TVA) area; and

0.5 WHEREAS said Section 5 of the Flood Control Act of 1944 directs that preference in the sale of such power and energy be given to public bodies and cooperatives; and

0.6 WHEREAS the Purchaser, a public body under the Flood Control Act of 1944, and eligible for an allocation of Cumberland power pursuant to the aforesaid written power marketing policy, is engaged primarily in the business of selling electric power to retail customers and owns and operates a distribution system in the State of Kentucky which is interconnected with Big Rivers Electric Corporation (hereinafter called Big Rivers) which is connected to delivery points with TVA; and

0.7 WHEREAS the Administrator has entered into an agreement executed October 1, 1997, Contract No. 89-00-1501-1129 (hereinafter called Government-TVA Contract), whereby the Cumberland Projects will be operated and TVA transmission facilities will be utilized to implement the aforesaid written power marketing policy, including delivery of the Purchaser's allocation to delivery points between Big Rivers and TVA; and

0.8 WHEREAS the parties hereto have agreed to sell and purchase power on the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

Section 1. Effective Date and Term of Contract.

This Contract shall become effective and all obligations of the parties hereto with respect to the delivery of power hereunder and payment therefor shall commence at midnight, June 30,

1998, and shall continue in effect until terminated on June 30 of any year by the Purchaser upon written notice given to the Administrator not less than thirty-seven (37) months in advance of the date of termination specified therein or by the Administrator upon written notice given to the Purchaser of not less than thirty-six (36) months in advance of the date of termination specified therein; provided, that no such termination shall be effective prior to midnight, June 30, 2017. This Contract shall be contingent upon the Government securing alternate arrangements for the necessary services in the event of termination or cancellation of the Government-TVA Contract.

Section 2. Capacity To Be Made Available.

The Administrator will make available to the Purchaser and the Purchaser will accept delivery of 12,000 kilowatts of dependable capacity for the purposes specified in this Contract.

Section 3. Energy To Be Made Available.

3.1 The Administrator shall make available each contract year to the Purchaser from the Cumberland Projects through TVA's delivery points with Big Rivers and the Purchaser will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. For the purposes of this Contract, a contract year is defined as the twelve (12) months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract

year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Purchaser's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Purchaser's contract demand. The Purchaser may request and the Administrator may approve energy scheduled for a month greater than 240 hours per kilowatt of the Purchaser's contract demand; provided, that the combined schedule of all of the Administrator's Other Customers (customers located outside the TVA area receiving Cumberland power) does not exceed 240 hours per kilowatt of the total contract demands of these customers; provided further, that, if at the beginning of any month hydrological conditions have caused the water elevation at Wolf Creek, Dale Hollow, or Center Hill to be less than two (2) feet above its bottom operating curve, the maximum amount available during the month shall not exceed 220 hours per kilowatt of total Other Customers contract demand. Schedules showing monthly quantities of allocated energy for the contract year shall be furnished to Big Rivers' designated operating representative with a copy to the Administrator's designated operating representative ten (10) days prior to the beginning of each contract year. Schedules showing monthly quantities of allocated energy for the contract year may be revised by the Purchaser at any time and schedules and revisions thereof shall become effective upon reasonable advance notice; provided,

that such revised schedules shall reflect a contract year total allocation of 1500 kilowatt-hours for each kilowatt of contract demand. Revised schedules shall be furnished to the Administrator's designated operating representative.

3.2 In addition, schedules showing a breakdown of each monthly quantity into weeks shall be furnished to the Big Rivers' designated operating representative with a copy to the Administrator's designated operating representative ten (10) days prior to the beginning of each month. Under this Contract, the seven-day week shall commence at the beginning of Sunday and extend to the end of Saturday.

3.3 Weekly schedules showing hourly quantities of energy to be delivered the following week shall be furnished by the Purchaser on Wednesday prior to the beginning of the week to the Big Rivers' designated operating representative with a copy to the Administrator's designated operating representative, and energy shall be taken by the Purchaser in accordance with such hourly schedules, subject to change only if unforeseen circumstances arise which necessitate such change.

3.4 In the event interruptions at the delivery points with TVA prevent or reduce the delivery of scheduled power, such power will be appropriately rescheduled.

3.5 Notwithstanding other provisions of this Contract, the Purchaser will accept delivery and pay for during a contract

year 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand, except for provisions cited in subsection 3.4.

3.6 Also, notwithstanding the above provisions of Section 3, all scheduling by the Purchaser will be done through the Big Rivers' operating representative, and Big Rivers shall furnish the combined Henderson-Big Rivers schedules to the Administrator's designated operating representative. The Purchaser shall furnish the necessary information in a timely manner to the Big Rivers' operating representative (with a copy to the Administrator's operating representative) so as to allow Big Rivers to meet the deadlines stated in this section.

Section 4. Points of Delivery and Characteristics of Capacity and Energy.

Electric capacity and energy supplied to the Purchaser will be three-phase alternating current at a nominal frequency of sixty hertz and will be delivered at points of delivery between Big Rivers and TVA. The Purchaser will be responsible for the transmission of its power from the points of delivery to its system.

Section 5. Measurement of Capacity and Energy.

Electric capacity and energy delivered hereunder to the Purchaser will be accounted for at or as of the points of delivery specified in Section 4.

Section 6. Capacity and Energy Accounting.

Capacity and energy from the Cumberland Projects under this Contract shall be accounted for on the basis of capacity made available pursuant to Section 2 and energy scheduled pursuant to Section 3. Energy scheduled for any week which falls within two (2) months shall be divided between the months on the basis of the schedules furnished by the Purchaser.

Section 7. Rates for Capacity and Energy Made Available to Purchaser.

7.1 The Purchaser will pay the Government each billing month for capacity and energy made available and delivered by the Government in accordance with the wholesale power rate schedule CBR-1-C, a copy of which is attached hereto.

7.2 The rates specified in this Section 7 are subject to interim confirmation and approval by the Deputy Secretary of the Department of Energy and subject to final confirmation and approval by the Federal Energy Regulatory Commission.

7.3 The rates and charges for the sale of capacity and energy under this Contract shall be subject to adjustment on July 1, 1999, and thereafter at successive intervals of one (1) year; provided that any adjusted rates or charges shall not become effective unless and until confirmed and approved on an interim basis by the Deputy Secretary of the Department of Energy and subject to final confirmation and approval by the Federal Energy Regulatory Commission; provided further, that the Government may

extend any rate adjustment date up to one (1) year. The Government shall notify the Purchaser in writing at least three (3) months prior to the effective date of any proposed adjustment in rates and charges, including the amount of such proposed adjustment and the reasons therefor. The Government shall also notify the Purchaser promptly in writing of any adjustments in rates and charges when confirmed and approved by the Federal Energy Regulatory Commission. If such adjusted rates and charges result in increased costs to the Purchaser, it may cancel this Contract, upon giving the Government written notice of cancellation within thirty (30) days after receipt of notice from the Government advising of such adjusted rates and charges, such cancellation shall become effective at a time specified by the Purchaser not less than one (1) year nor more than three (3) years from the effective date of the adjusted rates and charges; provided, however, that the Purchaser shall pay the adjusted rates and charges from the date they become effective until the effective date of cancellation.

Section 8. Billing and Payments.

8.1 The billing month under this Contract shall end at 2400 hours C.D.T. or C.S.T., whichever is currently effective on the last day of each calendar month.

8.2 Bills for each month's service furnished by the Administrator under this Contract shall be mailed as soon as

practicable after the end of the billing month and shall be paid on or before the twentieth day following the date of mailing.

Section 9. Nonpayment of Bills.

If the Purchaser fails to pay any amount due under this Contract within twenty (20) days from the date of mailing of applicable bills, such amount shall be considered overdue and an interest charge or charges will be added equal to the sum of (1) \$150.00 and (2) an amount calculated in the following manner: the current or other appropriate value of funds as determined by the U. S. Department of Treasury pursuant to the Treasury Fiscal Requirements Manual is to be applied on a daily basis to the unpaid portion of the bill for each day of the period from and after the due date to and including the date of payment in full.

Section 10. Service Interruptions.

10.1 No credit shall be allowed the Purchaser for any interruption or curtailment of scheduled capacity and energy delivery to the Purchaser's system for the account of the Administrator resulting from conditions on the Purchaser's power system, or for any interruption or curtailment of capacity and energy which has been planned and agreed to in advance by the operating representatives of the parties. All such agreements shall be confirmed in writing.

10.2 When capacity and energy delivery to the Purchaser's system for the account of the Administrator is reduced

or interrupted and such reduction is not due to conditions on the Purchaser's system, or has not been planned and agreed to in advance, the monthly demand charge for capacity made available under Section 2 shall be reduced as to the kilowatts of such scheduled capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\begin{array}{r} \text{Number of kilowatts} \\ \text{unavailable for at} \\ \text{least 12 hours in} \\ \text{any calendar day} \end{array} \quad \times \quad \begin{array}{r} \text{Monthly Capacity Charge} \\ \text{Number of days in} \\ \text{billing month} \end{array}$$

Section 11. Uncontrollable Forces.

Neither party hereto shall be considered to be in default in respect of any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, including but not limited to failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, materials or equipment shortages, fuel curtailment or shortage, or restraint by court or public authority which by exercise of reasonable diligence and foresight could not have been avoided, but excluding drought. Either party rendered unable to fulfill any obligation by reason of an uncontrollable force shall remove such inability with all reasonable dispatch.

Section 12. Provisions Relative to Employment.

During the performance of this Contract, the Purchaser agrees as follows:

(a) The Purchaser will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Purchaser will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Purchaser agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The Purchaser will, in all solicitations or advertisements for employees placed by or on behalf of the Purchaser, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Purchaser will send to each labor union or representative of workers with which they have a collective

bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Purchaser's commitment under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Purchaser will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Purchaser will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Purchaser's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Purchaser may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and

remedies involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Purchaser will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Purchaser will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Purchaser becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Purchaser may request the United States to enter into such litigation to protect the interest of the United States.

Section 13. Notices.

Except as otherwise specified herein, any notice required or authorized by this Contract shall be deemed properly given on behalf of the Purchaser if mailed, postage prepaid, to the Administrator at the address shown on the signature page hereof, and on behalf of the Administrator if mailed, postage prepaid, to the official representative of the Purchaser at the address shown

on the signature page hereof. The designation of the person to represent either party for such purposes or the address of such person may be changed at any time by similar notice.

Section 14. Officials Not to Benefit.

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.

Section 15. Waivers.

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

Section 16. Transfer of Interest in Contract.

No voluntary transfer of this Contract or of the rights of the Purchaser hereunder shall be made without the written approval of the Secretary of Energy; provided, that any successor to or assignee of the rights of the Purchaser, whether by voluntary transfer, legislatively authorized sale, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of this Contract to the same extent as though such successor or assignee were the original contractor hereunder; provided further, that the execution of a mortgage or trust deed,

or judicial or foreclosure sale made thereunder, shall not be deemed voluntary transfers within the meaning of this Section 16.

Section 17. Termination of Existing Contract.

The existing contract between the Administrator and the Purchaser dated June 30, 1984, as amended, (designated as Contract No. 89-00-1501-638) will be replaced by this Contract as of its effective date; however, all liabilities accrued under the terms of the existing contract shall be preserved.

Section 18. Portability of Allocations.

18.1 Due to the uncertainty of the future of the electric utility industry with respect to power suppliers, transmission access, ancillary services, and a myriad of unresolved issues, the Administrator plans to formulate a Power Marketing Policy on the allocation and portability of Government power (hereinafter called Policy). The Policy will be developed with full public participation and review.

18.2 The Parties hereto agree that if the Policy should contain provisions contrary to contract provisions in this Contract, the Parties hereto will, where necessary, modify this Contract, or operating procedures under this Contract, to accommodate the provisions of the Policy.

Section 19. Reimbursable Work Account.

19.1 A Reimbursable Work Account may be established for operations and maintenance expenses of both the U. S. Army Corps of

Engineers and the Administrator, and improvements, replacements, and rehabilitation expenses at the Projects. The Account may be established for the Southeastern Federal Power Program, individual systems of Projects, or a portion of a system of Projects. Subsequent to a determination by the Administrator and the Corps of Engineers, if necessary, for the need for customer funding, approval for the establishment and utilization of the Account for specific purposes will be by agreement of preference customers and the Corps of Engineers. The Parties acknowledge that all Reimbursable Work Accounts will also require Budget approval by Congress, the Department of Energy, and the Office of Management and Budget.

19.2 It is acknowledged by both parties that this Section 19 may need to be adjusted to meet specific requirements of Congress in granting the Administrator permission to use Alternative Funding.

Section 20. Energy and Economic Efficiency Measures.

Each customer that purchases the Government's power is encouraged to participate in an integrated resource plan that considers both supply and demand side alternatives. It is recognized that some Government customers are members of a power supply organization that does resource planning for its customers (i.e., power supply cooperatives and joint action agencies). Where a customer, or a power supply organization that does resource

planning for a Government customer, is responsible to a regulatory body or another governmental agency for an integrated resource plan, the customer will make a copy of such integrated resource plan available to the Administrator. All Government customers shall agree to encourage the efficient use of energy by ultimate consumers.

Section 21. Contingent Upon Appropriations.

This Contract is made contingent upon Congress making available the necessary funds to enable the Administrator to carry out the provisions of this Contract. In the event such appropriation or other provision for payment is not made, this Contract shall be subject to termination or renegotiation.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the day and year first above.

UNITED STATES OF AMERICA
Department of Energy

By Charles L. Beardsley
Administrator
Southeastern Power Administration
2 South Public Square
Elberton, Georgia 30635-2496

UTILITY COMMISSION FOR
THE CITY OF HENDERSON, KENTUCKY

By B. E. Higgins
Chairman of the Utility Commission
100 Fifth Street
Henderson, Kentucky 42420

(SEAL)

ATTEST:

William L. Smith
Secretary

Attachment

The rate schedule below was approved on a final basis by the Federal Energy Regulatory Commission on December 14, 1994, for the period from July 1, 1994, through June 30, 1999, in Docket Number EF94-3021-000. The rate schedule is attached to this contract to provide the current rate for capacity, energy, and additional energy. If any other language in this attached rate schedule conflicts with the main body of the contract, the language in the main body of the contract prevails.

United States
Department of Energy
Southeastern Power Administration

Wholesale Power Rate Schedule CBR-1-C

Availability:

This rate schedule shall be available to Big Rivers Electric Corporation and includes the City of Henderson, Kentucky, (hereinafter called the Customer).

Applicability:

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Wholesale Power Rate Schedule CBR-1-C

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge:

\$2.738 per kilowatt/month of total contract demand

Energy Charge:

None

Energy to be Furnished by the Government:

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month:

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service:

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Wholesale Power Rate Schedule CBR-1-C

Service Interruption:

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

Number of kilowatts unavailable for at least 12 hours in any calendar day	<u>Monthly capacity charge</u> X number of days in billing month	<u>Contract demand</u> X 880,000 kilowatts
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July 1, 1994