

COMMISSION RESOLUTION #2011-07

116.0.16.18

COPY

**RESOLUTION AUTHORIZING EXECUTION
OF DESIGNATED REPRESENTATIVE/ALTERNATE
DESIGNATED REPRESENTATIVE APPOINTMENT
AGREEMENT FOR STATION TWO POWER PLANT**

WHEREAS, pursuant to the requirements of the Federal Clean Air Act, the City of Henderson Utility Commission is required to designate a representative and alternate representative for the NOx Budget Trading Program ("NOx Budget Trading Program"), the Clean Air Interstate Rule SO2 and NOx Trading Program ("CAIR Trading Program"), the Acid Rain Program of the federal Clean Air Act, as amended ("Acid Rain Program"), and the Greenhouse Gas Reporting Program ("GHG Program") (collectively referred to as "Air Programs"); and

WHEREAS, a copy of an Agreement appointing Mark Bertram, 201 Third Street; Post Office Box 24; Henderson, Kentucky 42419, as the Designated Representative, and Tom Shaw, 201 Third Street; Post Office Box 24; Henderson, Kentucky 42419, as the Alternate Designated Representative, is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED by the City of Henderson Utility Commission, that the Chairman is hereby authorized and directed to execute the aforesaid Designated Representative/Alternate Designated Representative Appointment Agreement for Station Two on behalf of the City of Henderson Utility Commission.

On motion of Commissioner Jenkins, seconded by Commissioner Risch, that the foregoing Resolution be adopted, the vote was called. On roll call the vote stood:

Commissioner Hopper	<u>absent</u>
Commissioner Risch	<u>aye</u>
Commissioner Jenkins	<u>aye</u>
Commissioner Vickers	<u>aye</u>
Chairman Smith	<u>aye</u>

WHEREUPON, Chairman Smith declared the Resolution adopted, affixed his signature and the date thereto and ordered that the same be recorded.

ATTEST:

Ron Jenkins
Ron Jenkins, Secretary

William L. Smith
William L. Smith, Chairman
8/2/11
Date

RESOLUTION NO. 72-11

RESOLUTION AUTHORIZING EXECUTION
OF DESIGNATED REPRESENTATIVE/ALTERNATE
DESIGNATED REPRESENTATIVE APPOINTMENT
AGREEMENT FOR STATION TWO POWER PLANT

WHEREAS, pursuant to the requirements of the Federal Clean Air Act, the City of Henderson is required to designate a representative and alternate representative for the U. S. Environmental Protection Agency to represent the City's Station Two power plant for the NOx Budget Trading Program ("NOx Budget Trading Program"), the Clean Air Interstate Rule SO2 and NOx Trading Program ("CAIR Trading Program"), the Acid Rain Program of the federal Clean Air Act, as amended ("Acid Rain Program"), and the Greenhouse Gas Reporting Program ("GHG Program") (collectively referred to as "Air Programs"); and

WHEREAS, a copy of an Agreement appointing Mark Bertram, 201 Third Street; Post Office Box 24; Henderson, Kentucky 42419 ("Noland") as the Designated Representative, and Tom Shaw, 201 Third Street; Post Office Box 24; Henderson, Kentucky 42419 ("Shaw"), as the Alternate Designated Representative, is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED by the City of Henderson, Kentucky, that the Mayor is hereby authorized and directed to execute the aforesaid Designated Representative/Alternate Designated Representative Appointment Agreement for Station Two on behalf of the City.

On motion of Commissioner Mike Farmer, seconded by Commissioner Alan Taylor, that the foregoing Resolution be adopted, the vote was called. On roll call the vote stood:

Commissioner Pruitt:	<u>ABSENT</u>	Commissioner Farmer:	<u>AYE</u>
Commissioner Taylor:	<u>AYE</u>	Mayor Austin:	<u>AYE</u>
Commissioner Mills:	<u>AYE</u>		

WHEREUPON, Mayor Austin declared the Resolution adopted, affixed his signature and the date thereto and ordered that the same be recorded.

ATTEST:

Carolyn Williams
Carolyn Williams, City Clerk

Steve Austin
Steve Austin, Mayor
Date: August 9, 2011

APPROVED AS TO FORM AND
LEGALITY THIS 4th DAY OF
AUGUST, 2011.

By: Joseph E. Ternes, Jr.
Joseph E. Ternes, Jr.
City Attorney

**AMENDED DESIGNATED REPRESENTATIVE/ALTERNATE DESIGNATED
REPRESENTATIVE APPOINTMENT AGREEMENT**

This Amended Designated Representative/Alternative Designated Representative Appointment Agreement (this "Agreement") is made and entered into on this 9th day of August, 2011, by and between the City of Henderson Utility Commission, 100 Fifth Street, Henderson, Kentucky 42420 (the "Commission") and City of Henderson, Kentucky, City Hall, P.O. Box 716, Kentucky 42419 (the Commission and the City of Henderson being referred to collectively as the ("Owner"); Big Rivers Electric Corporation, a Kentucky rural electric cooperative ("Operator"); Mark Bertram, 201 Third Street; Post Office Box 24; Henderson, Kentucky 42419 ("Bertram") and Tom Shaw, 201 Third Street; Post Office Box 24; Henderson, Kentucky 42419 ("Shaw").

WHEREAS, Owner owns an electric generating station known as Henderson Station Two, Units 1 and 2 (collectively, the "Source"); and

WHEREAS, the Owner and Operator have entered certain leasehold operating agreements, pursuant to which the Operator operates the Source, including multiple Agreements dated August 1, 1970, as amended (the "Operating Agreements"); and

WHEREAS, the Source is subject to the requirements of the NOx Budget Trading Program ("NOx Budget Trading Program"), the Clean Air Interstate Rule SO2 and NOx Trading Program ("CAIR Trading Program"), the Acid Rain Program of the federal Clean Air Act, as amended ("Acid Rain Program") and the Greenhouse Gas Reporting Program ("GHG Program") (collectively referred to as "Air Programs"); and

WHEREAS, in order to comply with the requirements of the Air Programs regarding selection of a "Designated Representative" and "Alternate Designated Representative" and a "NOx Authorized Account Representative" and "Alternate NOx

Authorized Account Representative" for the Source, Owner, Operator, Bertram, and Shaw have made this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to provide clear representations upon which the parties may rely, Owner, Operator, Bertram, and Shaw agree as follows:

1. **Appointment of Designated Representative and Alternate Designated Representative.** Effective on August 9, _____, 2011, Bertram is hereby appointed the Designated Representative and Shaw is hereby appointed the Alternate Designated Representative of Owner and Operator for the Source for purposes of the CAIR Trading Program, the Acid Rain Program and the GHG Program. In addition, in conjunction with their duties as Designated Representative and Alternate Designated Representative, Bertram is hereby appointed as the NOx Authorized Account Representative and Shaw is hereby appointed as the Alternate NOx Authorized Account Representative for the Source for purposes of the NOx Budget Trading Program. As used hereafter in this Agreement, the terms "Designated Representative" and "Alternate Designated Representative" shall also encompass the NOx Authorized Account Representative and Alternate NOx Authorized Account Representative. In accordance with the provisions of the Air Programs, such individuals are authorized by Owner and Operator to represent and legally bind Owner and Operator in matters relating to the Air Programs, including the holding, transfer and/or disposition of emission allowances allocated by the United States Environmental Protection Agency to the Source, and the submission of and

compliance with permits, permit applications, and compliance plans for the Source.

2. Authority and Duties of Designated Representative/Alternate Designated Representative. Owner and Operator agree that the Designated Representative shall have all necessary authority, cooperation and resources to carry out his duties and responsibilities under the Air Programs on behalf of Owner and Operator. Owner and Operator agree that the Alternate Designated Representative may act on behalf of the Designated Representative from time to time but only with respect to those matters specifically delegated to the Alternate Designated Representative by the Designated Representative. The Designated Representative may designate agents to carry out specific duties and responsibilities under the Air Program in accordance with the procedures adopted by the U.S. EPA provided that he obtains the prior written approval of Owner and Operator. Owner and Operator recognize and agree that they will be legally bound by the actions, inactions, or submissions of Bertram and Shaw relating to their capacity as the Designated Representative and Alternate Designated Representative, respectively, of Owner and Operator, and that they will be bound by any administrative or court order regarding Air Programs matters issued to the Designated Representative and/or the Alternate Designated Representative. The Designated Representative or Alternate Designated Representative, as the case may be, shall obtain the consent of Owner and Operator before exercising his authority if the exercise of such authority could have a material financial or operational impact on Owner or Operator, or both. Owner and Operator shall each designate a representative from whom the Designated Representative and Alternate Designated Representative may obtain approval for the exercise of such authority. Bertram and Shaw agree to fully and faithfully

perform their duties as Designated Representative and Alternate Designated Representative, respectively, in accordance with the Air Programs, the terms of this Agreement and all other applicable laws, rules and regulations.

3. Indemnification by Operator of Designated Representative and Alternate Designated Representative. In light of the potential personal liability to which the Designated Representative and Alternate Designated Representative may be exposed by accepting appointments as Designated Representative and Alternate Designated Representative for the Source:

a. except as provided in subparagraph (b) of this paragraph, Operator agrees to indemnify and hold the Designated Representative and Alternate Designated Representative harmless from liability for any claims, damages, fines, penalties, reasonable expenses and reasonable attorneys fees (collectively, "Damages"), even though caused or contributed to by his own negligence, incurred by him because he is or was the Designated Representative or the Alternate Designated Representative of Owner and Operator under this Agreement;

b. Neither the Designated Representative nor Alternate Designated Representative shall be entitled to indemnity if:

(1) his action or failure to act giving rise to the indemnification claim or related Damages resulted in an improper personal benefit to him; or

(2) his action or failure to act giving rise to the indemnification claim or related Damages was intentional with knowledge of the implications of such action or failure to act; and

c. Operator shall advance the Designated Representative or Alternate

Designated Representative expenses reimbursable under this paragraph if the Designated Representative or the Alternate Designated Representative:

(1) furnishes Operator a written affirmation of his good faith belief that he is entitled to indemnification under the standards established by this paragraph, and

(2) furnishes Operator a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he is not entitled to indemnification.

In the event any claim or action by the Designated Representative or Alternate Designated Representative against Operator for indemnification under this Paragraph 3, or the Damages relating thereto, result from or arise out of any action or failure to act by Owner or any of its employees, agents or representatives where there was a duty to refrain from so acting, or to so act, whether individually or on behalf of Operator under applicable laws, rules or regulations or the provisions of this Agreement or the Operating Agreements, then Owner agrees to indemnify and hold harmless Operator from and against all Damages that Operator may incur by reason of that action or claim by the Designated Representative or Alternate Designated Representative, as applicable.

4. **Term.** This Agreement shall become effective as of August 9, 2011, and shall remain in full force and effect as to each of Bertram and Shaw until Bertram is replaced as the Designated Representative and Shaw is replaced as the Alternate Designated Representative, respectively, in accordance with the provisions of the Air Programs, and this Agreement, provided, however, that the indemnity provisions

of this Agreement shall survive any termination of this Agreement. Operator may, with Owner's approval, remove and replace Bertram as Designated Representative and/or Shaw as Alternate Designated Representative at any time upon written notice to that person and Owner, and appointment of another person as Designated Representative and/or Alternate Designated Representative. Operator agrees that it will replace Bertram as Designated Representative and/or Shaw as Alternate Designated Representative within thirty (30) days after receipt of written notice from either individual that he desires to resign his position (which he may do at any time, in his discretion).

5. **Notice.** All notices and other communications to each party under this Agreement shall be in writing and shall be sent by first-class U.S. Mail, postage prepaid, or by facsimile to the following addresses or to such other address as the party entitled to notice shall have identified in writing:

Addressed to:

City of Henderson Utility Commission
100 Fifth Street
Henderson, Kentucky 42420
Attn: General Manager

City of Henderson, Kentucky
City Hall
P.O. Box 716
Henderson, Kentucky 42419
Attn: City Attorney

Addressed to:

Big Rivers Electric Corp
201 Third Street
Post Office Box 24
Henderson, Kentucky 42419
Attn: Mark Bailey

With a copy to:

Sullivan Mountjoy Stainback & Miller, P.S.C.
100 Ann Street
Post Office Box 727
Owensboro, Kentucky 42302-0727
Attn: James M. Miller, Esq.

Addressed to:

Mark Bertram
Big Rivers Electric Corp
201 Third Street
Post Office Box 24
Henderson, Kentucky 42419

Addressed to:

Tom Shaw
Big Rivers Electric Corp
201 Third Street
Post Office Box 24
Henderson, Kentucky 42419

6. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

7. **Survival.** This Agreement shall be binding upon the parties hereto, and their respective heirs, successor, assigns and personal representatives.

8. **Authority.** Owner and Operator each represent that this Agreement has been executed by their respective authorized representatives.

9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

CITY OF HENDERSON UTILITY COMMISSION

By: William L. Smith

Print Name: William L. Smith, DDS

Title: Chairman

CITY OF HENDERSON

By: Steve Austin

Print Name: Steve Austin

Title: Mayor

BIG RIVERS ELECTRIC CORPORATION

By: Mark A. Bailey

Print Name: Mark A. Bailey

Title: President and CEO

MARK BERTRAM

Mark Bertram

TOM SHAW

Tom Shaw

**EXCERPT FROM THE MINUTES OF REGULAR MEETING
OF THE BOARD OF DIRECTORS
OF BIG RIVERS ELECTRIC CORPORATION
HELD IN HENDERSON, KENTUCKY, ON
JUNE 17, 2011**

After an explanation by Al Yockey at the board work session regarding the proposed Designated Representative/Alternate Designated Representative Appointment Agreement change, Director Elliott moved that the following resolutions be approved:

RESOLVED, in order to appoint Tom Shaw and Mark Bertram as "Designated Representatives" on behalf of the City and HMP&L with respect to Station Two, and to provide such Designated Representatives certain indemnities against personal liability arising from such appointment (other than liabilities arising from acts or failures to act resulting in personal benefit to such Designated Representatives, or acts or failures to act intentionally made with knowledge of the implications of such acts or failures to act), that each of the officers of the Corporation be, and each of them hereby is, authorized and directed to execute and deliver on behalf of Big Rivers the Designated Representative/Alternate Designated Representative Appointment Agreement, substantially in the form presented to the Board of Directors and

FURTHER RESOLVED, that in order to appoint Tom Shaw and Mark Bertram as "Designated Representatives" on behalf of Big Rivers with respect to the electric generating stations known as Plant Coleman, Plant Green, Plant Wilson and Plant Reid, and to provide such Designated Representatives certain indemnities against personal liability arising from such appointment (other than liabilities arising from acts or failures to act resulting in personal benefit to such Designated Representatives, or acts or failures to act intentionally made with knowledge of the implications of such acts or failures to act), that each of the officers of the Corporation be, and each of them hereby is, authorized and directed to execute and deliver on behalf of Big Rivers the Designated Representative/Alternate Designated Representative Appointment Agreement, substantially in the form presented to the Board of Directors. The motion was seconded and unanimously adopted.

I, Paula Mitchell, Executive Secretary of the Board of Directors of Big Rivers Electric Corporation, hereby certify that the above is a true and correct excerpt from the minutes of the Regular Meeting of the Board of Directors of said Corporation held on 6-17-11.

Paula Mitchell