

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR)	CASE NO.
ENFORCEMENT OF RATES AND SERVICE)	2019-00269
STANDARDS)	

COMMISSION STAFF'S INITIAL REQUEST FOR INFORMATION
TO BIG RIVERS ELECTRIC CORPORATION

Big Rivers Electric Corporation (BREC), pursuant to 807 KAR 5:001, is to file with the Commission an electronic version of the following information. The information requested herein is due on June 8, 2020. The Commission directs BREC to the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085¹ regarding filings with the Commission. The Commission expects the original documents to be filed with the Commission within 30 days of the lifting of the current state of emergency. All responses in paper medium shall be appropriately bound, tabbed, and indexed. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

Each response shall include the name of the witness responsible for responding to the questions related to the information provided. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the

¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5–6. Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 24, 2020), Order at 1–3.

preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

BREC shall make timely amendment to any prior response if BREC obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect. For any request to which BREC fails or refuses to furnish all or part of the requested information, BREC shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

Careful attention shall be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request. When applicable, the requested information shall be separately provided for total company operations and jurisdictional operations. When filing a paper containing personal information, BREC shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

1. Refer to the application, paragraph 14, and the informal conference memorandum filed into the record on March 9, 2020.

- a. Provide an update to the negotiations between the parties in this proceeding and identify the issues upon which the parties are in agreement and those which they are not in agreement with respect to BREC's application and the proposed Settlement Agreement, as of this date.

b. Identify and explain all decommissioning costs BREC is proposing to recover, the source of the proposed costs, and provide any studies, appraisals, etc., related thereto.

2. Refer to the application, paragraph 17. Provide the status of the Station Two Bond issuance to extent of BREC's knowledge on this matter as of this date.

3. Refer to the application, paragraph 37.

a. State whether BREC will incur any costs related to the operation of the Green Station landfill once the Station Two ash pond coal ash residuals are decommissioned. If so, provide a schedule of such costs.

b. Provide a schedule of all actual historical costs incurred and expected future costs BREC expects to incur and recover relative to the Henderson contracts in this proceeding, broken down by the operating facilities and joint facilities by account (number and name of account) by year.

4. Refer to the application, paragraph 38. Identify and explain the parties' contractual obligations with respect to the Joint Facilities Agreement and provide a comparison of the financial impacts with respect to each party's position.

5. Refer to the application, Exhibit 1, and BREC's Motion to Amend Exhibits, filed on January 21, 2020. Provide an updated itemization of the costs and expenses shown on this exhibit along with the support or cost justification for each item.

6. Refer to the Direct Testimony of Robert W. Berry (Berry Testimony), page 18.

a. Provide a complete list of all costs borne by BREC that Henderson was obligated, but refused, to pay, which BREC has passed through to its Member Cooperatives.

b. Provide the rate mechanism through which BREC passed these costs to its Member Cooperatives.

7. Refer to Berry Testimony, page 19 of 53, and Exhibit Berry-2.

a. Explain the parties involved and the process by which Henderson determines its annual capacity reservation needs and whether there was a set schedule with an annual escalation of required capacity. Highlight the roles that MISO and BREC plays in this process, if any.

b. Explain who determines and enforces the requirement that Henderson submit its capacity reservation.

c. The Commission's January 5, 2018 Order in Case 2016-00278² defines Excess Henderson Energy (EHE) as "the difference between Henderson's reserved capacity under the Power Sales Contract, or 115 MW as of 2016, and the amount of capacity needed by Henderson to serve its native load and for sale by Henderson to third-parties."³ In that Order, the Commission found "that Big Rivers is not required to pay for any variable costs associated with Excess Henderson Energy that Big Rivers elects not to take."⁴ To the extent known, provide BREC's understanding of the basis for Henderson's claim that it does not have to accept ownership of the EHE. Explain

² Case No. 2016-00278, *Application of Big Rivers Corporation for a Declaratory Order*, (Ky. PSC Jan. 05, 2018).

³ *Id.* at 13.

⁴ *Id.*

whether the basis for Henderson's claim is that since it only reserved 115 MW of capacity, then in Henderson's view, the EHE does not exist because there is no difference between what it reserved and what was needed to serve native load.

d. For each year that Henderson submitted a capacity reservation less than its required reserve level, provide the amount of capacity that Henderson consumed relative to its capacity reservation and its required capacity reservation.

e. Identify and explain the contract that governs what happens in instances in which Henderson actually consumes more capacity than it reserved in a given period.

8. Refer to the Berry Testimony, page 28 of 53, and the Direct Testimony of Mark J. Eacret (Eacret Testimony), page 9 of 10. Explain why Henderson's post-termination decision to join MISO effects the allocation of MISO fees prior to the termination of the Station Two Contracts.

9. Refer to the Berry Testimony, page 30 of 53.

a. Provide any study or analysis that BREC performed to determine that a severance package was the most reasonable alternative.

b. Explain the process by which BREC's management approved the severance payments and provide any Board of Directors minutes that discuss the approval.

c. State whether employees who received severance were required to waive any claims or rights in consideration for their receipt of the severance.

d. Explain how the severance amounts were calculated.

e. Explain whether the 11 involuntarily terminated employees were provided severance packages.

10. Refer to the Berry Testimony, pages 36 and 37 of 53, and the Direct Testimony of Direct Testimony of Jeffrey T. Kopp in which they describe their understanding of the meaning of “decommissioning.”

a. Describe each basis for Mr. Berry’s understanding of the meaning of the term “decommissioning” as he defined it in his testimony.

b. Describe each basis for Mr. Kopp’s understanding of the meaning of the term “decommissioning” as he defined it in his testimony.

11. Refer to the Berry Testimony, page 40 of 53. Provide the current status of the proceeding in the Webster County Circuit Court.

12. Refer to the Berry Testimony, page 47 of 53. Explain each basis for BREC’s contention that Henderson continues to hold the title to waste placed in BREC’s landfill.

13. Refer to the Berry Testimony, page 48 of 53. Provide the contractual provision that allowed Henderson to place ash pond dredgings in the BREC landfill.

14. Refer to the Berry Testimony, page 49 of 53.

a. Provide the calculation that produces 12 percent.

b. Confirm that Henderson’s share of the landfill contents will reduce as other wastes are added.

c. Provide the estimated percentage of the landfill contents allocable to Henderson at the landfill’s useful life.

15. Refer to the Berry Testimony, page 52 of 53, in which he states that BREC has already compensated Henderson for its continued use of joint-use facilities owned by

Henderson by fulfilling its obligations under relevant contracts, including previously allowing Henderson to use joint-use facilities owned by BREC. Explain why BREC's previous and continued use of joint-use facilities owned by Henderson would not justify Henderson's continued use of BREC's landfill, as alleged by BREC, through the storage of waste from Station Two, without additional change.

16. Refer to the Direct Testimony of Paul G. Smith (Smith Testimony), page 9 of 19. Even though separate inventories were maintained, explain whether Henderson was responsible for procuring and delivering its own share of the necessary coal and lime for Station Two or whether BREC or other entity performs those functions on its behalf.

17. Refer to the Smith Testimony, pages 18–19 of 19, and the Eacret Testimony, pages 9–10 of 10. Explain why BREC is not proposing to exercise its right to recover interest on past-due amounts owed by Henderson.

18. Refer to Smith Testimony, Exhibit-Smith 3. Explain why BREC contends that any claim to the 2016 Coal Survey Adjustment costs shown on that exhibit were not release by the December 15, 2017 Settlement Agreement and Release.

19. Refer to the Direct Testimony of Michael T. Pullen (Pullen Testimony), page 16. Explain whether Station Two ash pond closure activities must follow municipal bidding and contracting requirements.

20. Refer to the Pullen Testimony, Exhibit Pullen-13. Explain whether any facility listed (excluding item 14) can be decommissioned without requiring municipal bidding and contracting.

21. Refer to the Eacret Testimony, Exhibit Eacret-2. Provide an explanation of the "ZRC" acronym used in this Exhibit.

22. Refer to Eacret Testimony, page 5 of 10. Explain whether MISO allows a member to reserve capacity outside of its load zone.

23. Refer to Eacret Testimony, Exhibit Eacret-2. Explain whether the methodology used to calculate the resource adequacy requirement has changed for BREC and Henderson since Henderson joined MISO.

24. Refer to Eacret Testimony, page 5 of 10, and 1998 Amendments to the System Reserves Agreement Application, Exhibit 13, at 10 of 19. To the extent known, explain the reasoning for Henderson's rejection of BREC's capacity requirement calculation.

25. Refer to the direct testimony of Michael Chambliss, page 9 of 13, in which he states, "Station One has been retired and decommissioned, so Henderson's required standby capacity is equal to its reserved capacity from Station Two." State whether it is BREC's contention that Henderson was required to maintain standby capacity equal to its reserved capacity from Station Two through February 2019 or whether Mr. Chambliss is referring to some historical period to which that requirement applied, and explain each basis for the response.



Kent A. Chandler
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

DATED MAY 19, 2020

cc: Parties of Record

*Clay Larkin
Bingham Greenebaum Doll LLP
3500 National City Tower
101 South Fifth Street
Louisville, KENTUCKY 40202

*H. Randall Redding
King, Deep & Branaman
127 North Main Street
P.O. Box 43
Henderson, KENTUCKY 42419

*Dawn Kelsey
City Attorney
City of Henderson
222 First Street
Henderson, KENTUCKY 42420

*Sharon W Farmer
King, Deep & Branaman
127 North Main Street
P.O. Box 43
Henderson, KENTUCKY 42419

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Tyson Kamuf
Corporate Attorney
Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

*Honorable John N Hughes
Attorney at Law
124 West Todd Street
Frankfort, KENTUCKY 40601

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

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