

CONFIDENTIAL

Execution Version

**AMENDMENT NO. 2 TO MARKET BASED RATE
PARTIAL AND FULL REQUIREMENTS AGREEMENT**

DATED AS OF April 24, 2017

BY AND BETWEEN

BIG RIVERS ELECTRIC CORPORATION

AND

CITY OF WAYNE, NEBRASKA

OHSUSA:766604654.6

**KENTUCKY
PUBLIC SERVICE COMMISSION**

John Lyons
ACTING EXECUTIVE DIRECTOR



EFFECTIVE

7/14/2017

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

**AMENDMENT NO. 2 TO MARKET BASED RATE
PARTIAL AND FULL REQUIREMENTS AGREEMENT**

This AMENDMENT NO. 2 TO MARKET BASED RATE PARTIAL AND FULL REQUIREMENTS AGREEMENT (this "Amendment") is dated as of April 24, 2017 ("Effective Date") and is by and between BIG RIVERS ELECTRIC CORPORATION ("Company"), and the CITY OF WAYNE, NEBRASKA ("Customer") (each individually a "Party," or collectively, the "Parties").

RECITALS

WHEREAS, Company, a Kentucky electric generation and transmission cooperative, organized and existing under the laws of the Commonwealth of Kentucky, with a principal place of business at 201 Third Street, Henderson, KY; and

WHEREAS, Customer is a political subdivision of the State of Nebraska providing retail electric service to its residents, with a principal place of business at 306 Pearl Street, Wayne, NE 68787; and

WHEREAS, Company and Customer previously entered into the Market Based Rate Partial and Full Requirements Agreement, dated as of December 20, 2013, as amended by Amendment No. 1, by and between the Parties, dated as of June 11, 2014 (as amended, the "Original Agreement"), and desire to amend the Original Agreement as provided herein;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereby agree to amend the Original Agreement as follows:

ARTICLE 1 - DEFINITIONS

Capitalized terms used herein and not defined shall have the meanings provided for in the Original Agreement, except as otherwise set forth herein. The terms of construction and interpretation provided in the Original Agreement shall apply to this Amendment. References to Sections or Articles herein shall be references to Sections or Articles in the Original Agreement, unless the context otherwise requires.

ARTICLE 2 - AMENDMENTS

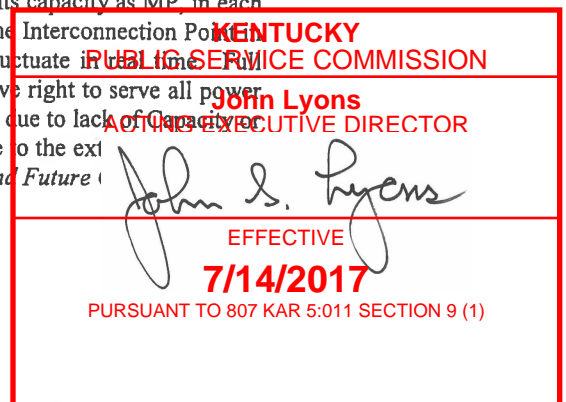
The Original Agreement is hereby amended as follows:

2.1 Section 1.5 is deleted and the following inserted in lieu thereof:

1.5 **Basis Differential** means the annual average difference in the day-ahead price of Energy at [REDACTED] commercial pricing node under the regional transmission organization or independent system operator of which Company is a member and the Day-Ahead price of Energy at the Interconnection Point.

2.2 Section 1.27 is deleted and the following inserted in lieu thereof:

1.27 **Full Requirements Service or Full Requirements** means the Energy and Capacity, including associated planning reserves, supplied by Company, and the Ancillary Services and Transmission Services, procured by Company in its capacity as MP, in each case, necessary to accomplish the delivery of Firm Energy to the Interconnection Point in an amount required to serve Retail Load, as the same may fluctuate in real time. Full Requirements also means that Company shall have the exclusive right to serve all power requirements of Customer, unless Company is unable to supply due to lack of Capacity or Force Majeure, as provided for in this Agreement, or otherwise to the extent that power be supplied by third parties pursuant to Section 2.3 (*Current and Future*)



(*Bilateral Arrangements; Renewable Energy*) with respect to Energy only, 3.9 (*WAPA Purchases; PURPA Purchases*) or 3.10 (*Retail Customer Choice*).

2.3 Section 1.47 is deleted and the following inserted in lieu thereof:

1.47 **NPPD Contract Reduction Period** refers to the period of time during which Customer will be reducing its purchases of Capacity and Energy and other services from NPPD pursuant to the NPPD Contract and purchasing the remainder of its Capacity and Energy requirements from Company or otherwise as permitted in this Agreement. Customer and Company agree that the exact reductions are unknown at the Effective Date.

2.4 Section 1.50 is deleted and the following inserted in lieu thereof:

1.50 **Partial Requirements Service or Partial Requirements** means the Energy and Capacity, including associated planning reserves, supplied by Company, and the Ancillary Services and Transmission Services if Company is acting as the MP, necessary to accomplish the delivery of Firm Energy to the Interconnection Points in an amount required to serve Retail Load, after taking into account Customer's load served by NPPD (or other third parties pursuant to Sections 2.3 (*Current and Future Generation*), 3.8 (*Bilateral Agreements; Renewable Energy*), 3.9 (*WAPA Purchases; PURPA Purchases*), or 3.10 (*Retail Customer Choice*) during those years in which Customer will be taking partial requirements from Company and NPPD during the NPPD Contract Reduction Period.

2.5 Section 1.58 is deleted and the following inserted in lieu thereof:

1.58 **Retail Load** means Customer's own power requirements and its end use customers' power requirements located within the franchised service territory that Customer has a statutory or contractual obligation to serve, unless applicable law requires otherwise.

2.6 The following definitions are added to Article I:

1.15A **Customer Capacity Requirement** has the meaning set forth in Section 3.2.


1.56A **Renewable Energy** means Energy produced by an electric generating facility whose primary source is renewable, including hydroelectric, wind, or solar, biomass, waste, or geothermal, but excluding Energy purchased by Customer from WAPA or under PURPA pursuant to Section 3.9.

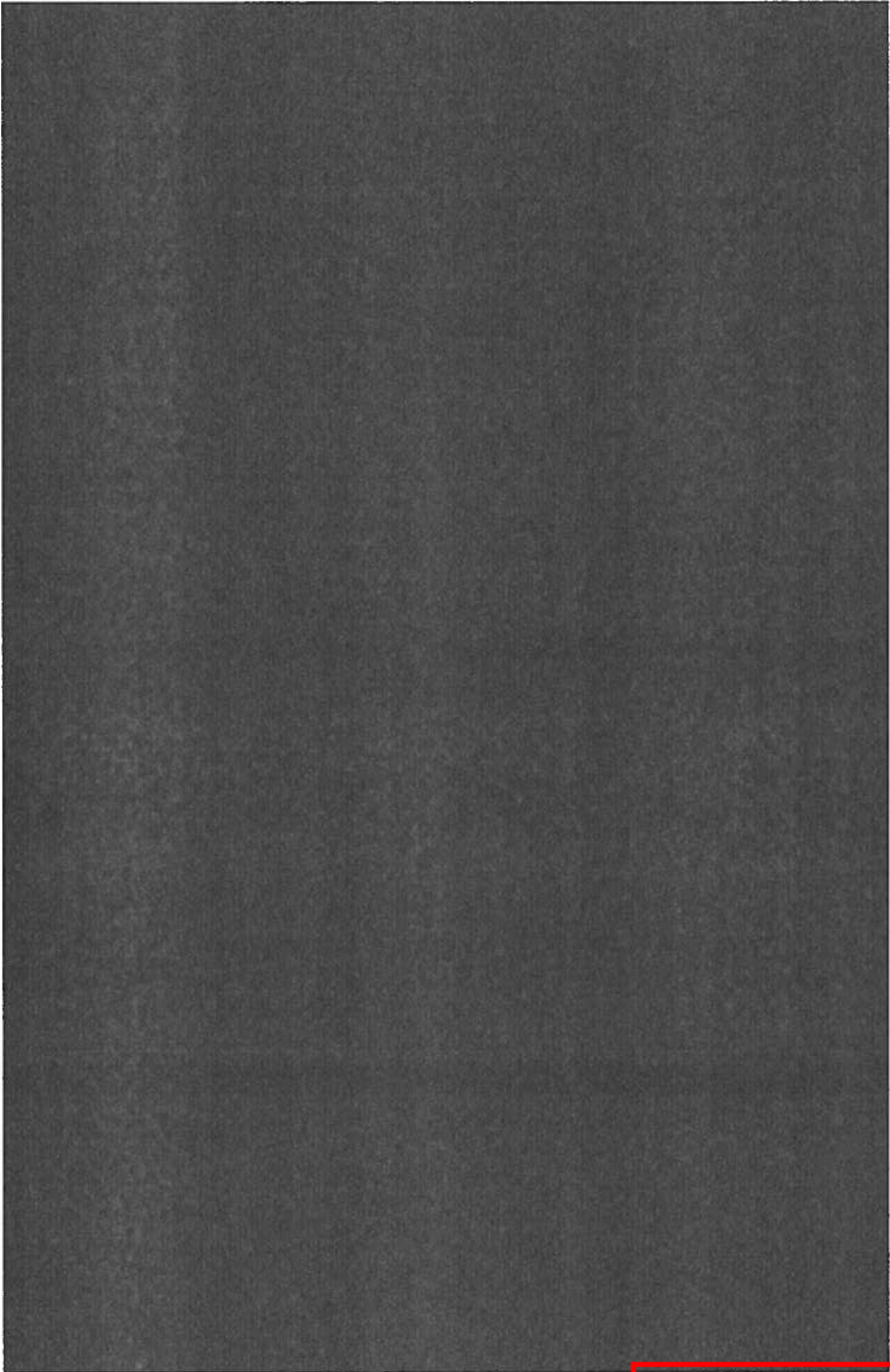
1.56B **Replacement Generations** means, to the extent of the Qualifying Capacity of Customer's existing generation as of the Effective Date and only with respect to the period through and including December 31, 2019, any electric generation facilities acquired by Customer after the commencement of the Delivery Period through and including December 31, 2019, in replacement of such existing generation facilities .

1.66A **Wind or Solar Capacity** has the meaning set forth in Section 3.8(b)(i).

2.7 Section 2.3 is deleted and the following inserted in lieu thereof:

2.3 **Current and Replacement Generation.** [REDACTED]

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2.8 The third sentence of Section 2.4 is deleted and the following inserted in lieu thereof:



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2.9 The final paragraph of Section 3.1 is deleted and the following inserted in lieu thereof:



2.10 Section 3.2 is deleted and the following inserted in lieu thereof:

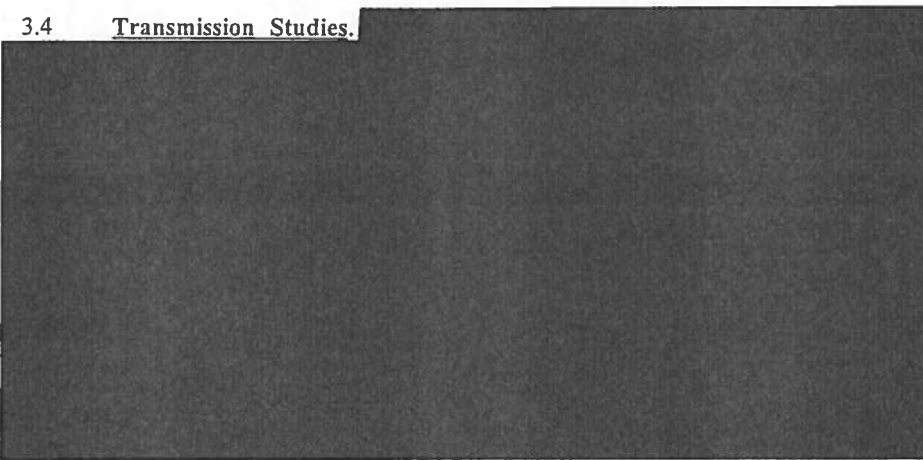
3.2 Capacity.

No later than ninety (90) days prior to any date by which Company is required to submit to SPP Customer's Capacity requirements in accordance with the Related Documents, Company and Customer will evaluate the amount of Qualifying Capacity required by the resource adequacy requirements of the SPP OATT to meet Customer's total anticipated SPP non-coincident peak, plus any required planning reserves or losses, for the next succeeding planning year (the "Customer Capacity Requirement"). During the Delivery Period, Company will provide Capacity and take all other actions necessary to satisfy the Capacity resource adequacy requirements of Customer under the SPP OATT comprising Partial Requirements or Full Requirements Service, except to the extent that Customer's Capacity requirements are provided by (i) Capacity allocated by WAPA to Customer; (ii) Capacity purchased by Customer from NPPD under the NPPD Contract for the years 2019 through 2021; or, (iii) Capacity required to be purchased by Customer pursuant to PURPA in accordance with Section 3.9.

Company may supply Capacity from any resource Company elects, in its sole discretion, including Qualifying Capacity pursuant to Section 2.3.

2.11 Section 3.4 is deleted and the following inserted in lieu thereof:


3.4 Transmission Studies.



2.12 Section 3.5 is deleted and the following inserted in lieu thereof:

3.5 Ancillary Services.



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[REDACTED]


2.13 The third paragraph of Section 3.7 is deleted and the following inserted in lieu thereof:

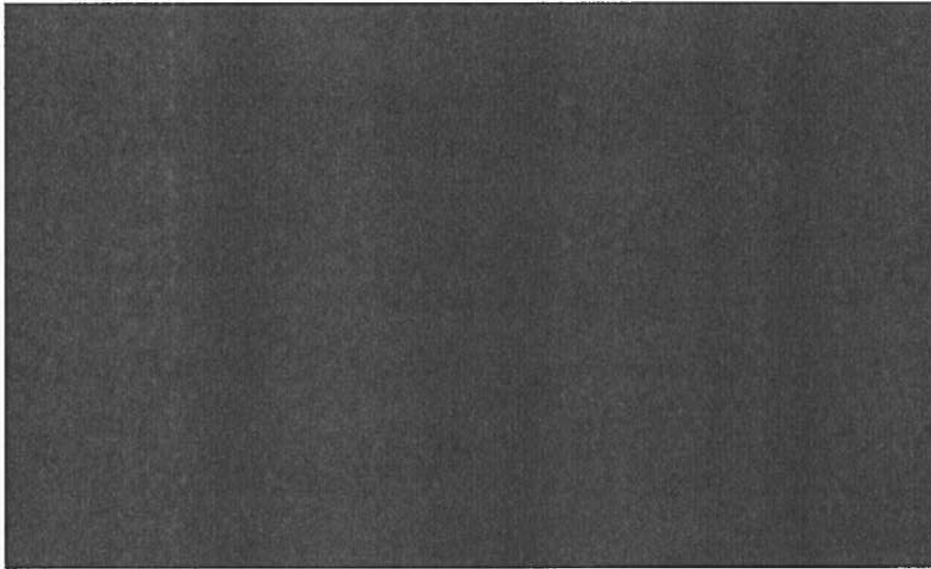
[REDACTED]

2.14 Section 3.8 is deleted and the following inserted in lieu thereof and each reference to "Section 3.8 (*Renewable Energy*)" in the Original Agreement shall be a reference to "Section 3.8 (*Bilateral Arrangements; Renewable Energy*)":

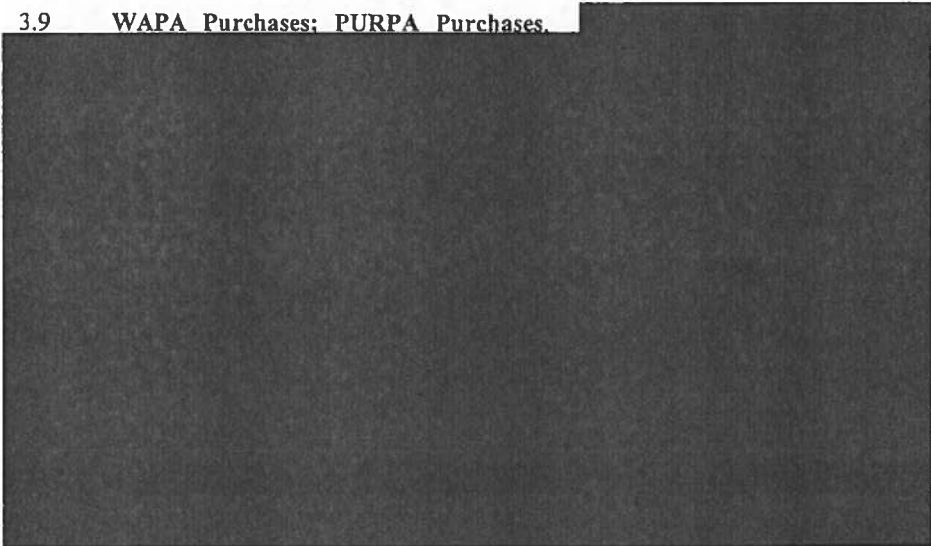
3.8 Bilateral Arrangements; Renewable Energy.

[REDACTED]

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2.15 Section 3.9 is deleted and the following inserted in lieu thereof:



2.16 Section 3.10 is deleted and the following inserted in lieu thereof:

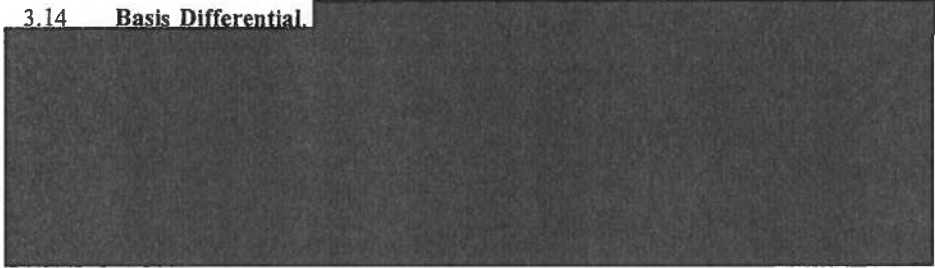
3.10 **Retail Customer Choice.** During the Term, Customer shall not voluntarily participate in nor authorize or permit any retail customer to participate in any form of retail customer choice unless otherwise mandated and required by applicable law, *provided, further,* that Customer will appeal any such requirement to any governmental authority, as being non-applicable during the remaining Term of this Agreement. Customer will use diligent efforts before any such governmental authority to secure such an exemption or waiver. Except as permitted under Section 2.3 (*Current and Future Generation*), 2.8 (*Bilateral Arrangements; Renewable Energy*), or 3.9 (*WAPA Purchases; PURPA Purchases*), no Retail Load may be served by another supplier, in whole or in part, other than NPPD during the NPPD Contract Reduction Period unless applicable otherwise.

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2.17 Section 3.13 is deleted in its entirety.

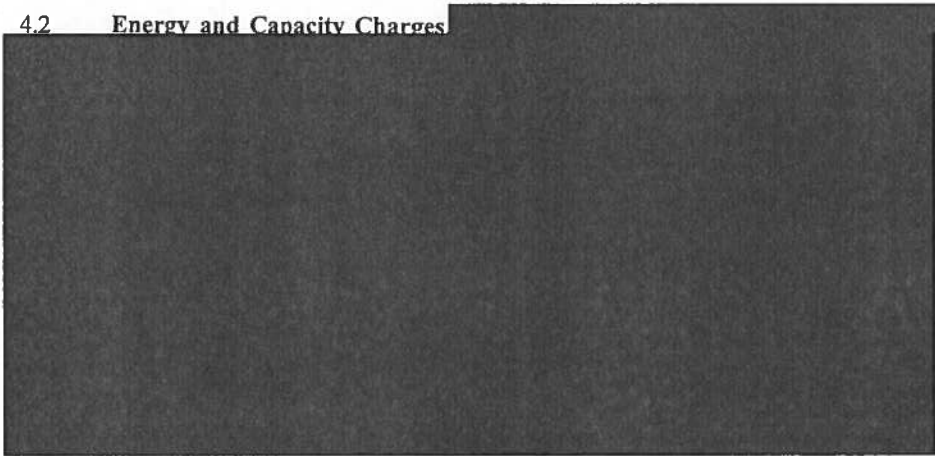
2.18 Section 3.14 is deleted and the following inserted in lieu thereof:

3.14 Basis Differential.



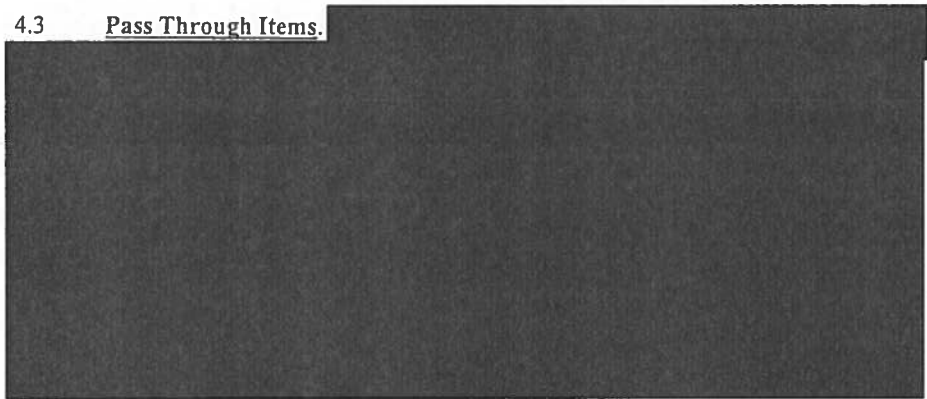
2.19 Section 4.2 is deleted and the following inserted in lieu thereof:

4.2 Energy and Capacity Charges



2.20 Section 4.3 is deleted and the following inserted in lieu thereof:

4.3 Pass Through Items.



2.21 Section 15.2(c) is deleted in its entirety.

ARTICLE 3 - GENERAL PROVISIONS

3.1 Effect of Amendment.

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- (a) The effectiveness of this Amendment and the Parties obligations hereunder are, unless waived by Company, subject to (i) the receipt of Approval of the Commission, and any other governmental authority required to approve, authorize or consent to the execution, delivery and performance of this Amendment by Company, and (ii) the compliance by Company with its obligations under its financing arrangements with the USDA Rural Utilities Service, and receipt of any necessary Approval in connection therewith.
- (b) Except as otherwise expressly provided or contemplated by this Amendment, all of the terms, conditions and provisions of the Original Agreement remain unaltered and in full force and effect. The Original Agreement and this Amendment shall be read and construed as one agreement. The making of the amendments in this Amendment does not imply any obligation or agreement by any Party to make any other amendment, waiver, modification or consent as to any matter on any subsequent occasion.

3.2 **Third Party Beneficiaries.** This Amendment is intended solely for the benefit of the Parties thereto, and nothing herein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party hereto.

3.3 **Waivers.** The failure of a Party to insist in any instance upon strict performance of any of the provisions of this Amendment or to take advantage of any of its rights under this Amendment shall not be construed as a general waiver of any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of such Party.

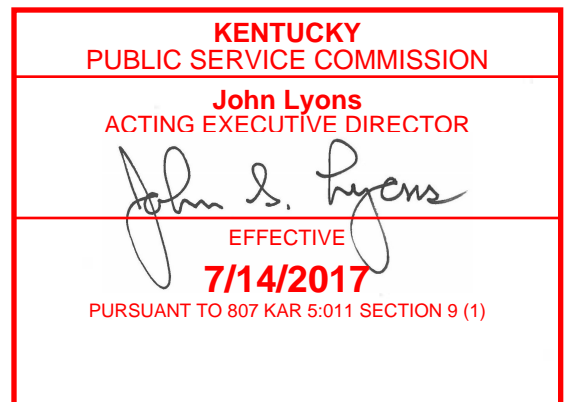
3.4 **Interpretation.** The interpretation and performance of this Amendment shall be in accordance with and controlled by the laws of the State of Kentucky, without giving effect to its conflicts of law provisions, except that issues pertaining to Customer's status as a political subdivision or the applicability of the Nebraska Public Information Act shall be governed by Nebraska law. Jurisdiction with respect to any dispute relating to this Amendment shall be governed by the provisions of the Original Agreement.

3.5 **Severability.** If any provision or provisions of this Amendment shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby; and the Parties hereby agree to effect such modifications to this Amendment as shall be reasonably necessary in order to give effect to the original intention of the Parties.

3.6 **Counterparts.** This Amendment may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

3.7 **Headings.** Article and section headings used throughout this Amendment are for the convenience of the Parties only and are not to be construed as part of this Amendment.

[Signatures Follow on Next Page]



IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Amendment on their behalf as of the date first above written.

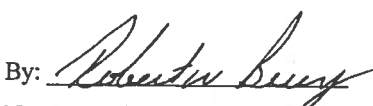
CITY OF WAYNE, NEBRASKA

By: 

Name: Ken Chamberlain

Title: Mayor

BIG RIVERS ELECTRIC CORPORATION

By: 

Name: Robert W. Berry

Title: President and CEO

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