

**AMENDMENT NO. 3 TO MARKET BASED RATE  
PARTIAL AND FULL REQUIREMENTS AGREEMENT**

**DATED AS OF AUGUST 31, 2021**

**BY AND BETWEEN**

**BIG RIVERS ELECTRIC CORPORATION**


**AND**

**NORTHEAST NEBRASKA PUBLIC POWER DISTRICT**

00CS/2669041.6

**KENTUCKY  
PUBLIC SERVICE COMMISSION**

**Linda C. Bridwell  
Executive Director**



**EFFECTIVE**

**1/15/2022**

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

**AMENDMENT NO. 3 TO MARKET BASED RATE PARTIAL AND FULL  
REQUIREMENTS AGREEMENT**

This Amendment No. 3 to Market Based Rate Partial and Full Requirements Agreement (the "*Amendment*") is made as of this 31st day of August, 2021 (the "*Amendment 3 Effective Date*"), by and between Big Rivers Electric Corporation, a Kentucky cooperative corporation ("*Company*"), and Northeast Nebraska Public Power District, a Public Power District chartered and existing under virtue of the laws of the State of Nebraska ("*Customer*"). Company and Customer may be referred to herein individually as a "*Party*" or collectively as the "*Parties*."

**I. RECITALS**

WHEREAS, Company and Customer are Parties to a certain Market Based Rate Partial and Full Requirements Agreement dated as of December 20, 2013, as previously amended (the "*PPA*" or "*Agreement*");

WHEREAS, under the terms of the PPA, Company submitted to Customer an invoice dated March 16, 2021, for services rendered in February 2021 (the "*February Invoice*");

WHEREAS, Customer disputed the February Invoice and the Parties engaged in confidential settlement communications regarding that dispute (the "*February Invoice Dispute*");

WHEREAS, the Parties intend this Amendment to memorialize all terms of their settlement of the February Invoice Dispute and to release and discharge all claims, rights or remedies regarding the February Invoice or the February Invoice



Dispute, other than as expressly set forth herein or in the Term Sheet (as defined below);

WHEREAS, Company agreed to defer the due date on \$13,296,034.82 of the amount included in the February Invoice and subsequent Southwest Power Pool ("SPP") resettlements (the "Deferred Amount") until June 1, 2021;

WHEREAS, on or about June 7, 2021, the Parties entered into a term sheet (the "Term Sheet"), which is attached hereto as Exhibit A and which sets forth a payment plan for the Deferred Amount as well as the Parties' intent to enter into a definitive agreement amending the PPA as provided in the Term Sheet; and

WHEREAS, the Parties negotiated this Amendment as that definitive agreement and now desire to enter into this Amendment to amend the PPA as provided herein,

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## II. THE DEFERRED AMOUNT

1. Payment of the Deferred Amount. On or about June 8, 2021, Customer paid Company [REDACTED] as a good faith payment toward the Deferred Amount, and [REDACTED] to cover Company's carrying costs on the Deferred Amount. The remaining balance of the Deferred Amount is [REDACTED] as of the Amendment 3 Effective Date, which amount is subject to ac

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based upon any SPP revisions or resettlements. This amount reflects the [REDACTED] payment and SPP adjustments to date.

2. Customer shall pay the remaining balance on the Deferred Amount plus interest by May 31, 2027, in accordance with the Term Sheet. As provided in the Term Sheet, the interest rate on the Deferred Amount each year will be Company's corresponding weighted average cost of long-term debt for that year, which shall be calculated by dividing Company's annual interest expense by its average long-term debt obligations. There is no penalty for pre-payment of the amount due.

3. Billing. Company shall include in its monthly invoices to Customer, and Customer shall pay by the due date applicable to each such invoice (in addition to any other amounts due for services rendered according to the invoice), an installment payment for the Deferred Amount, which shall be part of the Monthly Payment amount due on the invoice for all purposes of the PPA. In entering into this Amendment, except as to matters expressly resolved herein, Customer retains all its rights to dispute any invoice(s) under the PPA. Company shall determine the installment payment amount by calculating the equal installment payments that would be required for payment of the then-current Deferred Amount plus interest by May 31, 2027. Company shall recalculate the installment payment amount at least annually based on the then-existing balance of the Deferred Amount to incorporate, among other things, any prepayments, any SPP revisions or resettlement, changes in Company's weighted average cost

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██████████ reduction in the Deferred Amount balance required by the Term Sheet upon receiving the "Required Approvals" (as defined below), and Customer's payment of ██████████ required by the Term Sheet upon the completion of moving the Interconnection Point. The average cost of long-term debt used in this calculation will be an estimate for each year, which may be revised as required, and adjusted to actual at the end of each calendar year. Based on this calculation, Company shall adjust future invoices to credit or charge Customer for any overpayments or underpayments in the prior year. Company shall provide Customer all assumptions and details underlying this calculation when presenting the calculation to Customer.

4. Deferred Amount included in any Termination Payment. Upon termination or expiration of the PPA, including any Early Termination Date, the then-remaining balance of the Deferred Amount shall be immediately due and payable, in addition to any Termination Payment or other amounts owed under the PPA.

### III. AMENDMENTS TO THE PPA

1. Upon receipt of the Required Approvals, and upon Company executing hedges acceptable to Company on behalf of Customer at NPPD.BRPS.LOAD1 or ██████████ and Company's and Customer's approval of the hedge prices, the following Amendments to the PPA shall become effective:

A. Extension of the Term. Section 2.1(a) of the PPA is deleted and replaced in its entirety with the following:

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(a) The term of this Agreement shall begin as of the Effective Date and shall extend through and including May 31, 2027, unless either Party declares an Early Termination Date in accordance with the provisions hereof (the "Term"). The applicable provisions of this Agreement shall continue in effect following the termination or expiration hereof in accordance with Section 16.13, and to the extent necessary to provide for final accounting, billing, billing adjustments, resolution of any billing disputes, realization of any collateral or other security, set-off, final payments, payments pertaining to liability and indemnification obligations arising from acts or events that occurred during the Delivery Period, or other such provisions that, by their terms or operation, survive the termination of this Agreement.

B. Elimination of Basis Differential Provisions. Sections 1.5 and 3.14 of the PPA are deleted in their entirety.

*X* C. Elimination of Section 3.15. Section 3.15 of the PPA is deleted in its entirety.

D. Definition of Deliverable Capacity. A new Section 1.16A shall be added to the PPA, which new section provides:

1.16A **Deliverable Capacity** is defined in Attachment AA (Resource Adequacy) of the SPP OATT.

E. Market-Priced Qualifying Deliverable Capacity for Irrigation Load. Section 3.13(c) of the PPA is deleted and replaced in its entirety with the following:

(c) [REDACTED]

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[REDACTED]

F. Renewable Energy Purchases. Section 3.8(b)(i) of the PPA is amended to delete [REDACTED] and to replace it with [REDACTED]

G. Economic Development Incentive Rate. Subject to Big Rivers obtaining waivers from the Cities of Wayne and Wakefield, Nebraska, of Section 3.15 of their Market Based Rate Partial and Full Requirements Agreements with Big Rivers, Section 3.11 of the PPA is amended by adding the following paragraph to the end of that section:


Customer may offer existing or new large industrial retail customers, to be chosen at Customer's discretion, an Economic Development Incentive Rate ("EDR"). The EDR is limited to up to eight (8) MW in total for the incremental load of such customer above its average load over calendar years 2018 and 2019 (the "Incremental Load"). The EDR applicable to such Incremental Load shall be in lieu of the rates that would otherwise apply under this Agreement. The EDR shall be the rates described in this Agreement under Section 4.2, with the exception that [REDACTED]

[REDACTED]

H. Interconnection Point. The Interconnection Point denoted in Appendix A of the PPA is changed to [REDACTED] upon the receipt of all Required Approvals and for the remaining term of the PPA, as hereby amended.

Customer shall bear the reasonable costs associated with moving the Interconnection Point.

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I. Obligations of Market Participant. Section 3.7 of the PPA is amended  
by adding the following to the end of that Section:

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

All provisions of the PPA not expressly modified in the foregoing sections shall remain in full force and effect.

**IV. RELEASE OF CLAIMS**

1. Release of Claims. Except for the Parties' continuing obligations under the PPA, as amended, and the Term Sheet (including payment of the Deferred Amount), each Party releases (effective upon receipt of the Required Approvals) the other Party, its members, directors, employees, agents, successors, and assigns from any and all liability, claims, demands, controversies, damages, actions and causes of action whatsoever, either in law or equity, that it has or may have arising out of the PPA (including any dispute over the February Invoice) prior to the Amendment 3 Effective Date, or for any acts or omissions prior to the Amendment 3 Effective Date of which either Party is aware as of the Amendment 3 Effective Date.

**V. MISCELLANEOUS PROVISIONS**

1. Effect of Amendment.

(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 Kentucky Public Service 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 Company with its obligations under its financial

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with the USDA Rural Utilities Service, and receipt of any necessary Approval in connection therewith (all such approvals being the "Required Approvals").

- (b) The effectiveness of this Amendment and the Parties obligations hereunder are also subject to each Party furnishing the other Party an opinion of counsel providing the opinion that (i) the Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation; (ii) subject to the receipt of the Required Approvals, the Party has the power to execute and deliver this Amendment and to perform its obligations under this Amendment and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations; and (iii) this Amendment constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms.
- (c) Except as otherwise expressly provided or contemplated by this Amendment and the Term Sheet, all of the terms, conditions and provisions of the PPA (as previously amended) remain unaltered and in full force and effect. The PPA (as previously amended), this Amendment, and the Term Sheet 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.

2. Third Party Beneficiaries. This Amendment is intended solely for the benefit of the Parties hereto, 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. 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

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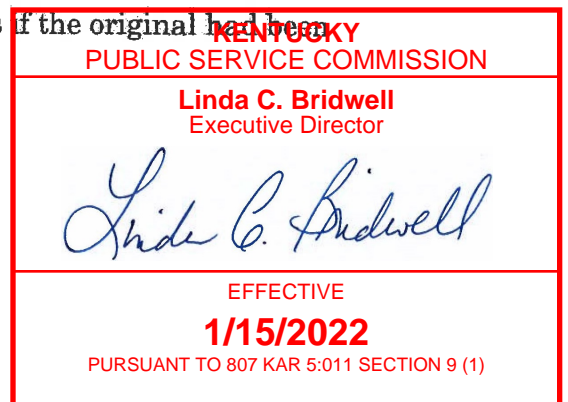
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any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of such Party.

4. Interpretation. The interpretation and performance of this Amendment shall be in accordance with and controlled by the laws of the Commonwealth 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 Records Act shall be governed by Nebraska law.

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.

6. Counterparts. This Amendment may be executed in any number of counterparts, which together will constitute but one and the same instrument, and each counterpart will have the same force and effect as if they were one original. The counterparts of this Amendment may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the Parties and the receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.



7. Headings. The headings used throughout this Amendment are for the convenience of the Parties only and are not to be construed as part of this Amendment.

8. Capitalized Terms. Any capitalized terms not defined herein shall have the meaning prescribed in the PPA (as previously amended).

9. Entire Agreement. This Amendment and the Term Sheet embody the entire understanding between the Parties with respect to the subject matter hereof and supersede all prior negotiations, representations, understandings, or other writings. If any of the terms of this Amendment are found to be in conflict with the Term Sheet, the terms of this Amendment shall be controlling.

*[Signatures follow on following page(s)]*



IN WITNESS WHEREOF, the Parties have executed this Amendment as of  
the Amendment 3 Effective Date:

**Northeast Nebraska Public Power District**

By: Don Larsen  
Don Larsen, President, Board of Directors

**Big Rivers Electric Corporation**

By: Robert W. Berry  
Robert W. Berry, President and CEO

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# EXHIBIT A

DOCS/2669041.6

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201 Third Street  
P.O. Box 24  
Henderson, KY 42419-0024  
270-827-2561  
www.bigrivers.com

June 2, 2021

Mr. Tracy Golden  
General Manager  
Northeast Nebraska Public Power District  
1410 W. 7th Street  
Wayne, NE 68787-0350

Dear Tracy,

Northeast Nebraska Public Power District's ("Northeast") payment of the Deferred Amount of [REDACTED] was due in full yesterday. Big Rivers Electric Corporation ("Big Rivers") hereby provides notice to Northeast of Northeast's failure to pay the amount due. Pursuant to Section 7.1(a) of the Market Based Rate Partial and Full Requirements Agreement (the "Agreement") between Big Rivers and Northeast, Northeast has three (3) Business Days to remedy this failure or the failure becomes an Event of Default.

In addition, Big Rivers is unable to agree to your May 28, 2021 proposal, and therefore, we must reject that proposal. While Big Rivers is not waiving Northeast's breach of the Agreement or agreeing to any further deferral of the Deferred Amount, Big Rivers does make the following counter-offer:

Upon execution of this letter agreement by Northeast, Northeast will pay Big Rivers [REDACTED] toward the Deferred Amount of [REDACTED], plus [REDACTED] to cover Big Rivers' carrying costs for the Deferred Amount for two months – April and May.

Big Rivers will finance the remaining balance of the Deferred Amount ([REDACTED]) over the remaining term of the wholesale power contract beginning with Northeast's May 2021 invoice, due in June. The interest rate for each year will be Big Rivers corresponding weighted average cost of Long Term Debt for that year. Northeast may prepay any remaining balance without penalty. The Deferred Amount is subject to adjustments upon Southwest Power Pool revisions or resettlements.

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Northeast and Big Rivers will work in good faith to amend the Agreement to:

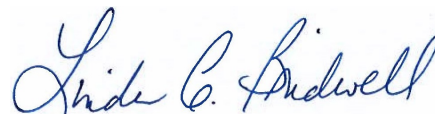
- extend the term by five months, to May 31, 2027;
- eliminate the Basis Differential provision;
- [REDACTED]
- [REDACTED]
- [REDACTED]
- develop an economic development rate per Section 3.11 of the existing Agreement for up to 8 MW in total for incremental load of one Northeast large industrial customer above such customer's average load over 2018 and 2019;
- [REDACTED]
- [REDACTED]
- move the Interconnection Point from [REDACTED] to NPPD.BRPS.LOAD1, subject to Big Rivers executing adequate hedges on behalf of Northeast at NPPD.BRPS.LOAD1 or [REDACTED]. Big Rivers would have the right to approve hedge prices.

Any amendment of the Agreement is subject to the approval of Big Rivers' Board of Directors, the Kentucky Public Service Commission, and the Rural Utilities Service. Upon receipt of these approvals:

- Big Rivers will adjust the remaining balance of the Deferred Amount downward by [REDACTED]. This adjustment represents the consideration Big Rivers is offering Northeast for the 5 month extension of the Agreement.
- Northeast will pay Big Rivers [REDACTED] toward the then-remaining balance of the Deferred Amount within 14 days of the completion of moving the Interconnection Point from [REDACTED] to NPPD.BRPS.LOAD1 and Big Rivers executing hedges on behalf of Northeast at NPPD.BRPS.LOAD1 or [REDACTED].
- Each party will release all claims against the other.

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The parties will endeavor to execute a definitive agreement memorializing the foregoing by June 30, 2021.

The parties will endeavor to complete the items in this letter, other than the monthly payments, by September 30, 2021.

If Northeast accepts the terms of this letter agreement, please indicate that acceptance by signing in the space provided and returning a signed counterpart to me. This offer expires at 12:00 noon (CDT) on June 4, 2021.

Sincerely,

*Mark J. Eacret*

Mark Eacret  
Vice President Energy Services  
Big Rivers Electric Corporation

ACCEPTED

Northeast Nebraska Public Power District

*T. Golden*

By: Tracy Golden  
General Manager

*June 7, 2021*

Date

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Executive Director

*Linda C. Bridwell*

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