

ORIGINAL



Your Touchstone Energy® Cooperative 

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**ELECTRONIC APPLICATION OF)
BIG RIVERS ELECTRIC CORPORATION)
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,)
CEASE DEFERRING DEPRECIATION EXPENSES,)
ESTABLISH REGULATORY ASSETS,)
AMORTIZE REGULATORY ASSETS, AND)
OTHER APPROPRIATE RELIEF)**

**Case No.
2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

FILED: April 3, 2020

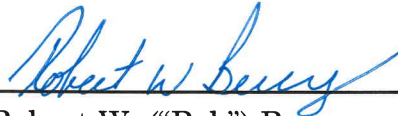
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BIG RIVERS ELECTRIC CORPORATION

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VERIFICATION

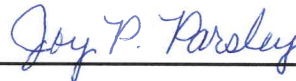
I, Robert W. ("Bob") Berry, verify, state, and affirm that the information request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Robert W. ("Bob") Berry

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Robert W. ("Bob") Berry on this
the 3rd day of April, 2020.



Notary Public, Kentucky State at Large

My Commission Expires _____

Notary Public, Kentucky State-At-Large
My Commission Expires: July 10, 2022
ID: 604480

BIG RIVERS ELECTRIC CORPORATION

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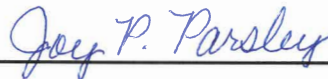
I, Michael W. ("Mike") Chambliss, verify, state, and affirm that the informationa request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Michael W. ("Mike") Chambliss

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Michael W. ("Mike") Chambliss
on this the 3rd day of April, 2020.



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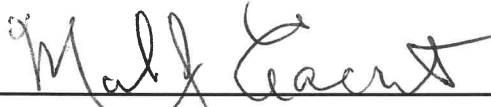
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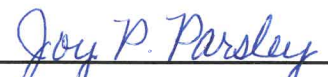
I, Mark J. Eacret, verify, state, and affirm that the information request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Mark J. Eacret

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

3rd SUBSCRIBED AND SWORN TO before me by Mark J. Eacret on this the
____ day of April, 2020.



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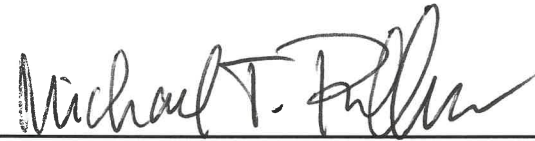
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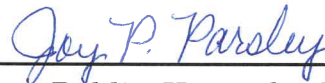
I, Michael T. ("Mike") Pullen, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Michael T. ("Mike") Pullen

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SUBSCRIBED AND SWORN TO before me by Michael T. ("Mike") Pullen on this the 3rd day of April, 2020.



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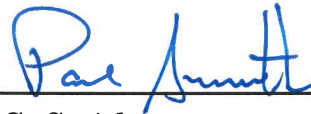
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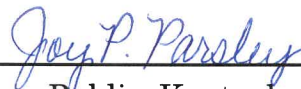
I, Paul G. Smith, verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Paul G. Smith

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

3rd SUBSCRIBED AND SWORN TO before me by Paul G. Smith on this the
____ day of April, 2020.



Notary Public, Kentucky State at Large

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April 3, 2020

1 **Item 1)** *Please provide complete and unredacted copies, including*
2 *electric files, of each response by the Company to data requests issued by:*
3 *Each Intervenor in this case.*

4 *a. Commission staff; and*

5 *b. Each Intervenor in this case.*

6

7 **Response)** Big Rivers will provide complete and unredacted copies, including
8 electric files, of all of its responses to information requests in this case to the
9 Commission Staff and all intervenors in the case. **CONFIDENTIAL** documents will
10 be provided to those intervenors who have executed a Non-Disclosure Agreement
11 with Big Rivers.

12

13 **Witness)** Robert W. Berry

BIG RIVERS ELECTRIC CORPORATION

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1 **Item 2)** *Explain whether Big Rivers' members will be allowed to seek*
2 *different power sources, in order to fulfill their requirements when the*
3 *current all-requirements contracts expire in 2043.*

4

5 **Response)** At the appropriate time, Big Rivers will be begin working with its
6 Members to extend the term of their "all-requirements" contracts. The outcome of
7 those discussions will determine if the Members can seek different power supplies
8 and if so at what volumes.

9

10 **Witness)** Robert W. Berry

BIG RIVERS ELECTRIC CORPORATION

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1 **Item 3)** *In the event the Commission approves the application as filed,*
2 *explain whether the Members would be required to file any type or sort of*
3 *follow-up or pass-through dockets.*

4

5 **Response)** Big Rivers does not believe the Members would be required to file a
6 follow-up or pass-through case in the event the Commission approves Big Rivers'
7 application as filed. The Members each have an existing tariff that passes through
8 to their retail member-customers any credits that Big Rivers provides to the Members
9 through Big Rivers' MRSM tariff. Changes to Big Rivers' MRSM tariff, as proposed
10 in this case, would automatically flow to the retail customers through the Members'
11 existing tariffs.

12

13 **Witness)** Robert W. Berry

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1 **Item 4)** *Regarding the proposed amortization periods over the remaining*
2 *term of member full-requirements contracts, provide a discussion regarding*
3 *whether any change of facts or circumstances could in any manner alter the*
4 *amounts to be collected, or the amortization time periods.*

5 *a. Please refer to Exhibit Smith-7. Please expand that table to include*
6 *pro forma revenue requirement for the proposed regulatory assets*
7 *and related amortization.*

8

9 **Response)** If the Commission approves recovery of the Smelter Loss Mitigation
10 Regulatory Assets through amortization without an increase in base rates, Big Rivers
11 will budget to amortize the Smelter Loss Mitigation Regulatory Assets over the term
12 of the Members' all-requirements contracts. However, through operation of the
13 proposed New TIER Credit, in addition to the budgeted amortization expense, Big
14 Rivers will increase the amount of amortization of the Smelter Loss Mitigation
15 Regulatory Assets in those years that Big Rivers' TIER would otherwise exceed 1.30.

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1 Through operation of the proposed New TIER Credit, Big Rivers currently believes
2 that the Smelter Loss Mitigation Regulatory Assets will be fully amortized prior to
3 the expiration of the Members' all-requirements contracts. Following the full
4 amortization of the Smelter Loss Mitigation Regulatory Assets, any amounts that
5 would otherwise result in Big Rivers achieving a TIER in excess of 1.30 will be
6 disbursed back to the Members through a Monthly Bill Credit over the following
7 twelve months.

8 a. The pro forma revenue requirement for the proposed recovery of the
9 Smelter Loss Mitigation Regulatory Assets is equal to the annual
10 amortization expense.

11

12 **Witness)** Paul G. Smith

BIG RIVERS ELECTRIC CORPORATION

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1 **Item 5)** *Describe whether COVID-19 outbreak has forced any changes of*
2 *any type or sort in Big Rivers' plans as set forth in the Application. Include*
3 *in your discussion whether the Federal Reserve Board's decrease of the*
4 *discount rate: (i) could lead to lower interest rates on any Big Rivers debt;*
5 *and (ii) has caused Big Rivers to reconsider whether to refinance any*
6 *outstanding debt.*

7

8 **Response)** The COVID-19 outbreak has not yet resulted in changes to Big Rivers'
9 plans as set forth in the Application, nor has the Federal Reserve Board's actions
10 caused a change in financing plans.

11 Big Rivers' current long-term debt agreements include fixed interest rates, so
12 the Federal Reserve Board's decrease of the discount rate will not lead to lower
13 interest rates applicable to Big Rivers outstanding long-term debt.

14 The interest rate applicable to advances under Big Rivers' 2015 \$100 million
15 Senior Secured Revolving Credit Facility, as amended September 19, 2017, are based

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1 on the US dollar LIBOR, plus an applicable margin. Accordingly, the Federal Reserve
2 Board's decrease of the discount rate would not directly impact the interest rates
3 applicable to advances under Big Rivers' revolving credit facility.

4

5 **Witness)** Paul G. Smith

BIG RIVERS ELECTRIC CORPORATION

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1 **Item 6)** *Explain whether the proposed retirements of Coleman Station*
2 *and the Reid Station Unit One will lead to any air pollution credits that*
3 *could be utilized with regard to any other Big Rivers generating unit(s).*

4

5 **Response)** Per 40 CFR 97.611(a)(2), Big Rivers will discontinue receiving SO₂ air
6 pollution credits for Coleman Station and Reid Station Unit One in the calendar years
7 of 2020 and 2021, respectively. Per 40 CFR 97.811(a)(2), Big Rivers will discontinue
8 receiving Seasonal NO_x air pollution credits for Coleman Station and Reid Station
9 Unit One in 2022. Thus, the proposed retirements of the Coleman Station and Reid
10 Station Unit 1 will not lead to any air pollution credits that can be utilized by Big
11 Rivers after 2022.

12

13 **Witness)** Michael T. Pullen

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- 1 **Item 7)** *Explain whether the retirement of the three Coleman units and*
2 *of Reid Station Unit One will or could lead to any additional MISO charges.*
- 3 *a. Explain also whether the loss of interconnection rights at Coleman*
4 *will or could lead to additional MISO charges.*
- 5 *b. Explain whether Big Rivers continues to incur any expense or*
6 *charges for the “mothballing” of the Coleman units, and if so, why.*

7

8 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
9 unduly burdensome. Big Rivers also objects to this request on the grounds that it
10 seeks information that is irrelevant and not likely to lead to the discovery of
11 admissible evidence. Notwithstanding these objections, and without waiving them,
12 Big Rivers responds as follows:

- 13 a. Please see Big Rivers' response to Item 6 of Commission Staff's first request
14 for information in this case.

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1 b. Big Rivers continues to incur expenses for mothballing of the Coleman
2 units. Expenses are incurred for ash pond maintenance and operation,
3 utilities, general maintenance of the boilers including asbestos abatement
4 and repair, lighting systems repair, structure repair, and wastewater
5 treatment maintenance and operation. These expenses are necessary to
6 maintain the plant in a safe and environmentally compliant status.

7

8 **Witness)** Michael T. Pullen

BIG RIVERS ELECTRIC CORPORATION

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1 Item 8) *With regard to attempts to reuse or salvage the physical assets of*
2 *Coleman station, explain whether BREC will retain the services of any third-*
3 *party brokers. If BREC has issued an RFP in this regard, provide a copy of*
4 *the RFP.*

5 a. *Please refer to the Smith testimony at page 10, where it states*
6 *intends to “mitigate the costs of decommissioning by attempting to*
7 *sell the remaining marketable assets at Coleman Station and Reid*
8 *Station Unit 1 at their highest value”. Please provide a complete*
9 *and unredacted copy of the most recent study conducted by or for*
10 *BREC regarding specific identification of marketable assets, the*
11 *market value of each such assets and the costs associated with*
12 *realizing that market value.*

13

BIG RIVERS ELECTRIC CORPORATION

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1 **Response)** Big Rivers anticipates using a third-party to decommission the Coleman
2 Station and assist in marketing the assets for reuse, salvage, and scrap value.
3 However, at this time Big Rivers has not issued an RFP in this regard.

4 a. Please see the decommissioning cost estimate study for the Coleman
5 Station and Reid Station Unit 1 provided in Big Rivers' response to Item 1
6 of Commission Staff's first request for information in this case.

7

8 **Witness)** Michael T. Pullen

BIG RIVERS ELECTRIC CORPORATION

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1 **Item 9)** ***In the event Big Rivers should decide to either construct new***
2 ***generation units at any time in the future, or obtain additional power from***
3 ***any other new source, explain whether doing so would cause Big Rivers to:***
4 ***(i) increase base rates; and/or (ii) incur any additional MISO charges.***

5 ***a. Provide Big Rivers' most recent studies or analyses regarding the***
6 ***remaining useful economic lives of the Wilson plant, and the two***
7 ***Green units.***

8
9 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
10 unduly burdensome. Big Rivers also objects to this request on the grounds that it
11 seeks information that is irrelevant and not likely to lead to the discovery of
12 admissible evidence. Notwithstanding these objections, and without waiving them,
13 for the factors Big Rivers considers when evaluating the need to increase base rates,
14 please see Big Rivers' response to Item 24(a) of Commission Staff's first request for

**Case No. 2020-00064
Response to AG 1-9**

**Witnesses: Paul G. Smith (*Base Rates Increase only*),
Michael W. Chambliss (*MISO Charges only*),
and Michael T. Pullen (*MISO Charges and a. only*)**

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1 information in this case. For a discussion of the possibility of additional MISO costs,
2 please see Big Rivers' responses to Items 6 and 7 of Commission Staff's first request
3 for information in this case.

4 a. Please see Exhibit C of the application in this case for *Big Rivers Electric*
5 *Corporation Book Depreciation Accrual Rate Study at December 31, 2018*,
6 performed by Alliance Consulting Group.

7

8 **Witnesses)** Paul G. Smith (*Base Rate increase only*),

9 Michael W. Chambliss (*MISO Charges only*), and

10 Michael T. Pullen (*MISO Charges and a. only*)

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1 **Item 10)** *Explain whether the addition of the new NuCor load will cause*
2 *Big Rivers to incur any additional MISO charges. If so, explain whether*
3 *those charges would be allocated solely to NuCor.*

4

5 **Response)** The Nucor load will not cause Big Rivers to incur any additional MISO
6 charges beyond those normally associated with load. 

7

8

9

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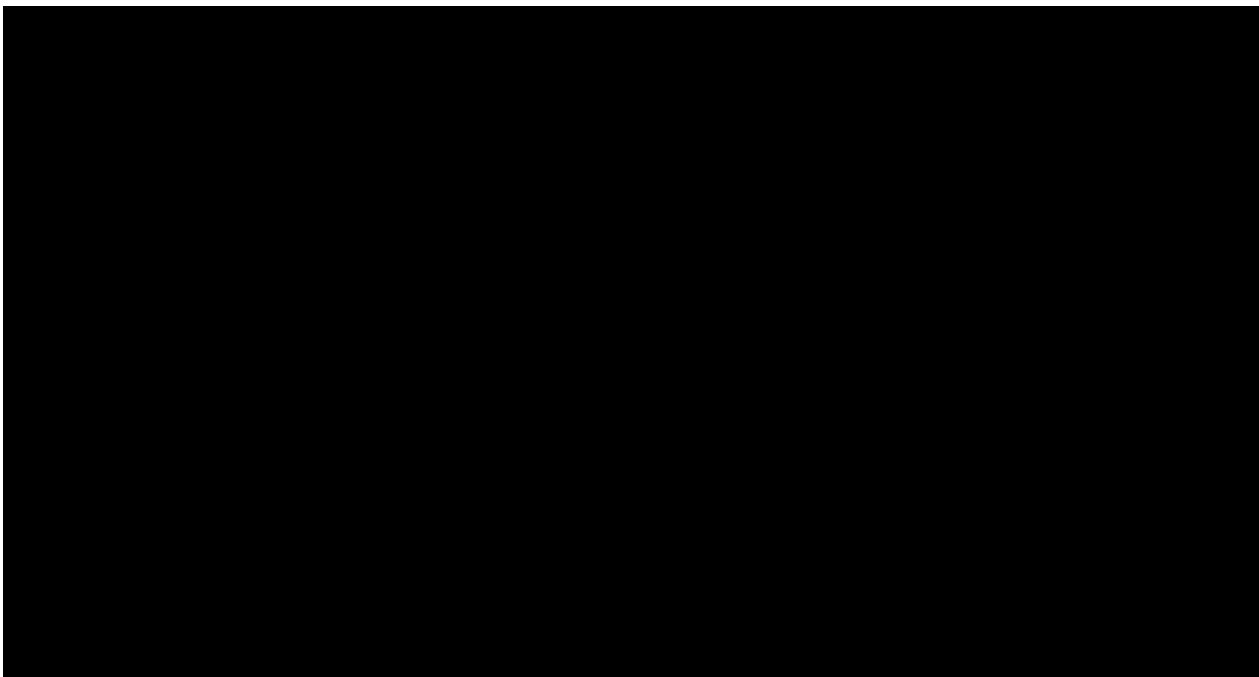
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1 Witness) Mark J. Eacret

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1 **Item 11)** *Provide a discussion on the potential of the Duff-Coleman joint*
2 *PJM-MISO transmission project to further expand the BREC's off-system*
3 *sales, whether bilaterally or into the PJM and/or MISO markets.*

4 *a. Provide an update on the project's status, and any estimated*
5 *project completion dates.*

6 *b. Explain whether the loss of interconnection rights at Coleman*
7 *will or could affect the ability of the Big Rivers transmission*
8 *system to interconnect with the Duff - Coleman project. If so,*
9 *explain whether the loss of interconnection rights could lead to*
10 *increased MISO costs.*

11

12 **Response)** The Duff-Coleman line was initially given consideration by MISO as a
13 joint PJM-MISO project, but ultimately MISO decided it would be a MISO-only
14 project. There was a project in the PJM RTEP that would have interconnected to the
15 Duff-Coleman line, but that project has since been withdrawn. As such, the project

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1 does not provide Big Rivers with access to the PJM market and does not provide Big
2 Rivers with additional opportunity for off-system sales into the PJM market.

3 a. Construction on the Duff to Coleman EHV 345 kV transmission line
4 continues. All 150 structures have been set and all anchors are installed.
5 Approximately 59% of conductor and OPGW static wire has been strung
6 and clipped-in. The estimated in-service date is June 1, 2020.

7 b. The ability of the Big Rivers transmission system to interconnect with
8 the Duff–Coleman project at the Coleman EHV Substation is in no way
9 impacted by the loss of interconnection rights at the nearby Coleman
10 Switchyard. The loss of interconnection rights only impacts the
11 procedures that must be followed in the unlikely event the existing
12 Coleman generating units that were previously connected to the
13 Coleman Switchyard were to be restarted.

14

15 **Witness)** Michael W. Chambliss

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1 **Item 12)** *Provide a discussion regarding the risk of any further loss of*
2 *load among BREC's large industrial customers. In particular, discuss the*
3 *potential for loss of load among the paper companies. Explain whether*
4 *BREC has a mitigation plan in place regarding the potential for any such*
5 *loss. If so, provide copies.*

6

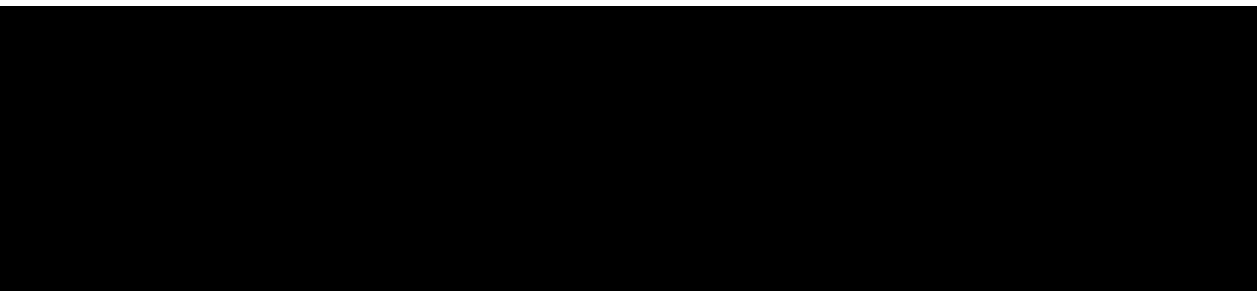
7 **Response)** Big Rivers objects to this request on the grounds that it seeks
8 information that is irrelevant and not likely to lead to the discovery admissible
9 evidence. Notwithstanding these objections, and without waiving them, Big Rivers
10 is not aware of further permanent loss of load among Big Rivers' large industrial
11 customers, except that 

12

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15



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1 If Big Rivers should have further loss of load among its large industrial
2 customers, Big Rivers would rely on its Load Mitigation Plan that was developed for
3 loss of load, to the extent it is applicable. The size of the load and the market
4 conditions could require Big Rivers to revise the Load Mitigation Plan to address the
5 current situation. Please also see Big Rivers' response to Item 32 of the Attorney
6 General's data requests.

7

8 **Witness)** Michael W. Chambliss

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1 **Item 13)** *Reference the Application, numerical paragraph 96. Explain*
2 *how the current MRSM treats BREC's margins, and why the proposed New*
3 *Tier Credit would be an improvement.*

4

5 **Response)** The current MRSM treats Big Rivers' margin components in a piecemeal
6 fashion due to the way the tariff has incrementally evolved over time. The MRSM
7 separately accounts for the Economic Reserve amounts originally established in Case
8 No. 2007-00455¹ (which have since become depleted), the transmission revenues
9 received from Century-Hawesville as specified in Case No. 2013-00199,² the margins
10 from wholesale sales to entities in Nebraska as specified in Case No. 2014-00134,³and

¹ *In the Matter of: Application of Big Rivers Electric Corporation, E.ON US., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing Inc. – Case No. 2007-00455 [Filed December 28, 2007].*

² *In the Matter of: Application Of Big Rivers Electric Corporation For A General Adjustment In Rates – Case No. 2013-00199 [Filed June 28, 2013].*

³ *In the Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to KRS 278.180 and KAR 5:011 §13 – Case No. 2014-00134 [Filed April 4, 2014].*

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1 the Station Two Depreciation Credit as specified in Case No. 2018-00146.⁴ These
2 different elements are allocated between the Rural rate class and the Large
3 Industrial rate class in different proportions. Thus, the existing MRSM is relatively
4 complex.

5 The New TIER Credit, on the other hand, treats all of these items together on
6 a comprehensive basis within a single, simplified mechanism. The New TIER Credit
7 will be used to return to the Members any net margins in excess of the net margins
8 that would result in a 1.30 TIER for Big Rivers in total, rather than considering the
9 margin contributions of any single component. This is more comprehensive and less
10 complicated than the existing MRSM, and is thus an improvement. Moreover, rather
11 than distributing the amounts among the Rural rate class and the Large Industrial
12 rate class based on a fixed percentage, the amounts allocated to each rate class in any
13 year in which the Monthly Bill Credit is disbursed will be based upon the percentage

⁴ *In the Matter of: Notice of Termination of Contracts and Application of Big Rivers Electric Corporation for a Declaratory Order and for Authority to Establish a Regulatory Asset – Case No. 2018-00146 [Filed September 26, 2018].*

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1 of revenues from each rate class received for that year, which typically varies from
2 year-to-year. Thus, the revised MRSM will allow the Monthly Bill Credits to be
3 allocated among the rate classes in the exact percentage that each rate class
4 contributed to the net margins that would have resulted in a TIER above 1.30 for that
5 particular year.

6 Additionally, through operation of the New TIER Credit, the proposed MRSM
7 tariff will allow Big Rivers to recover the Smelter Loss Mitigation Regulatory Assets,
8 which represent assets that have been useful to Big Rivers' Members, and which the
9 credit agencies have indicated is an important step for Big Rivers to achieve and
10 maintain an investment grade credit rating.

11

12 **Witness)** Paul G. Smith

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1 **Item 14)** *Reference the Application, numerical paragraphs 97 and 98,*
2 *regarding the DSM regulatory liability. Explain the source of the funds in*
3 *this regulatory liability. If it is derived solely from the Members' DSM*
4 *programs, confirm that the full \$700,000 liability should be credited to the*
5 *Rural class, unless Big Rivers can show that it had DSM programs in place*
6 *for large industrial customers.*

7 *a. Explain whether the Members will have DSM programs in place*
8 *once the proposed New Tier Credit is initiated.*

9
10 **Response)** The \$700,000 liability represents the 2019 DSM program funds that
11 remained when Big Rivers' existing DSM programs were terminated in mid-2019.
12 Big Rivers provided DSM programs only to the Rural class and did not provide DSM
13 programs to the Large Industrial members. Big Rivers has proposed in this case a
14 simplified MRSM mechanism in which one-half of all revenues that produce greater
15 than a 1.30 TIER will be returned to the Rural and Large Industrial classes based on

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1 the revenues generated from those classes. If Big Rivers' Rural revenues are higher
2 because Big Rivers' forecasted test period in Case No. 2013-00199 included DSM
3 programs, the Rural class's share of the New TIER Credit will also be higher.

4 a. No, Big Rivers' Members will not have DSM programs in place once the
5 proposed New Tier Credit is initiated. Big Rivers does not currently have
6 DSM programs in place with the exception of a Low-Income Weatherization
7 Support Program pilot which the Commission approved in the latter half of
8 2019. The program provides direct support to Community Action Agencies
9 for retail residential members of the three Member-Owners. No additional
10 programs are contemplated and any future programs would require the
11 approval of the Commission.

12

13 **Witness)** Mark J. Eacret

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1 **Item 15)** *Provide a discussion regarding how costs are allocated between*
2 *the Rural and Large Industrial classes under the current MRSM. Include in*
3 *your discussion the current methodologies used to allocate costs.*

4 *a. Explain whether the adoption of the proposed New Tier Credit*
5 *would change how costs are allocated between the two classes.*
6 *Include in your discussion any proposed changes to the*
7 *methodologies used to allocate costs.*

8
9 **Response)** The current MRSM specifies how certain items are allocated between
10 the Rural and Large Industrial rate classes. The allocation varies by item, and the
11 allocations were established through various, independent Commission proceedings.
12 The specific allocations are noted in the current tariff as follows:

13 "The transmission revenues are allocated 79.2% to the Rural class and
14 20.8% to the Large Industrial class. The Nebraska Margins are allocated
15 between the Rural class and the Large Industrial class based upon the
16 total revenues received from each class during the calendar year in
17 which Big Rivers earns the margins. The Station Two Depreciation

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1 Credits are allocated 72.62% to the Rural class and 27.38% to the Large
2 Industrial class.”

3

4 a. The adoption of the New TIER Credit will result in a more simplified and
5 unified approach to allocate costs between the Rural and Large Industrial
6 classes. This will result in the separate allocations described above no
7 longer being applied.

8 The separate, disparate allocations currently included in the MRSM
9 tariff are a fixed percentage based upon the proportion that each rate class
10 contributed to Member revenues at the time that the separate account was
11 added to the MRSM tariff and approved in disparate Commission
12 proceedings. However, as is illustrated by the fact that the fixed
13 percentages currently included in the MRSM tariff differ, the proportion of
14 Member revenues contributed by each rate class typically varies year over
15 year. Thus, the adoption of the New TIER Credit will result in the fixed,
16 separate allocations above no longer being applied, so that the revised

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1 MRSM tariff can fulfill the intent of the fixed percentages, which is to
2 allocate the amounts returned to each rate class based upon the proportion
3 by which each rate class contributes to Member revenues.

4 Specifically, the Monthly Bill Credit under the proposed MRSM tariff
5 will be allocated to the Rural Class and the Large Industrial Class in the
6 same proportion as each class contributed to Member revenues during the
7 prior calendar year [excluding revenue applicable to sales under an
8 economic development rate ("EDR") as well as sales to which Big Rivers'
9 Fuel Adjustment Clause is inapplicable]. Thus, rather than using a single
10 year's proportional contributions to Member revenue to estimate the
11 proportion by which each rate class contributed to Member revenues going
12 forward, the new MRSM tariff will allow benefits to be returned to each
13 rate class based upon the specific amounts that each rate class contributed
14 to the benefits for that year. This is consistent with the concept of improving

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1 the mechanism and applying it on a more comprehensive basis as described
2 in the response to AG 1-13.

3 Accordingly, while the allocation of costs among classes may
4 technically change, the intent of the MRSM tariff remains unchanged
5 because the benefits will continue to be returned to each rate class based
6 upon each rate class's proportional contribution to Member revenues, albeit
7 in a simpler manner that more fairly allocates the benefits among the rate
8 classes according to the *actual* proportion by which each rate class
9 contributed to those benefits.

10

11 **Witness)** Paul G. Smith

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1 **Item 16)** *Reference the Direct Testimony of Robert W. Berry at p. 30,*
2 *wherein he states: "If the Commission approves the relief requested in this*
3 *proceeding, Big Rivers will (in 2021) reduce the total balance of the Smelter*
4 *Loss Mitigation Regulatory Assets by applying that amount of its equity that*
5 *exceeds 80% of the equity headroom required by its syndicated bank facility*
6 *as of December 31, 2020." Explain how BREC derived the 80% figure, as*
7 *opposed a greater value, e.g., 90% or more.*

8

9 **Response)** Big Rivers held informal discussions with the parties to the Settlement
10 in Case No. 2018-00146 (including the Attorney General),¹ which is where this
11 commitment originated. The discussion initially focused on a much lower
12 commitment, but Big Rivers was confident it could commit up to 80% of its headroom
13 without jeopardizing violation of its debt covenant in the event of an unforeseen

¹ *In the Matter of: Application of Big Rivers Electric Corporation for Termination of Contracts and a Declaratory Order and for Authority to Establish a Regulatory Asset – Case No. 2018-00146 [Filed May 1, 2018].*

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1 unfavorable financial event. No party to the discussion indicated a commitment
2 above 80% was reasonable or appropriate. Big Rivers also discussed the 80%
3 commitment with the ratings agencies, who agreed that Big Rivers' remaining equity
4 after the headroom utilization would not jeopardize Big Rivers' financial health.
5 Please also see the Direct Testimony of Robert W. Berry, page 31, line 3 through page
6 32, line 2.

7

8 **Witness)** Paul G. Smith

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1 Item 17) *Explain whether Big Rivers is considering a self-build solar*
2 *power facility, or whether it is only considering a PPA. If the Company is*
3 *only considering a PPA, explain whether Big Rivers has chosen a developer*
4 */operator, and if so if a site has been selected.*

5 a. *Reference Exhibit Berry-3, the Fitch Ratings press release dated*
6 *December 4, 2019, p. 5 of 10, wherein it is stated: "The additional*
7 *[solar] capacity is not expected to be available for at least several*
8 *years. However, once available, capacity from coal resources will*
9 *decline to around 70%." Explain whether one or more coal units*
10 *will be retired once the new solar capacity comes on line.*

11 b. *Reference Exhibit Berry-3, the Fitch Ratings press release dated*
12 *December 4, 2019, p. 6 of 10, wherein it is stated that 100 MW of the*
13 *anticipated new solar capacity will be used to meet the new Nucor*
14 *load.*

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- 1 *i. Explain whether Nucor's is anticipated to take power under an*
2 *interruptible load tariff.*
- 3 *ii. Explain whether BREC will obtain some type or sort of back-up*
4 *power source for use when the solar generation output dwindles*
5 *due to intermittency.*

6

7 **Response)** Big Rivers is only considering a PPA. A developer/operator and site have
8 not yet been chosen.

9 a. At this time, Big Rivers has made no plans to retire one or more coal units
10 once the new solar capacity comes on line. However, Big Rivers plans to
11 review its generation supply portfolio as it develops its 2020 Integrated
12 Resource Plan which is to be completed in September 2020.

13 The 70% figure quoted by Fitch does not assume the retirement of
14 any coal resources other than Coleman and Reid Station Unit 1. Those
15 decisions were made independent of the solar RFP process. The solar RFP

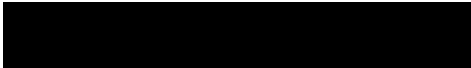
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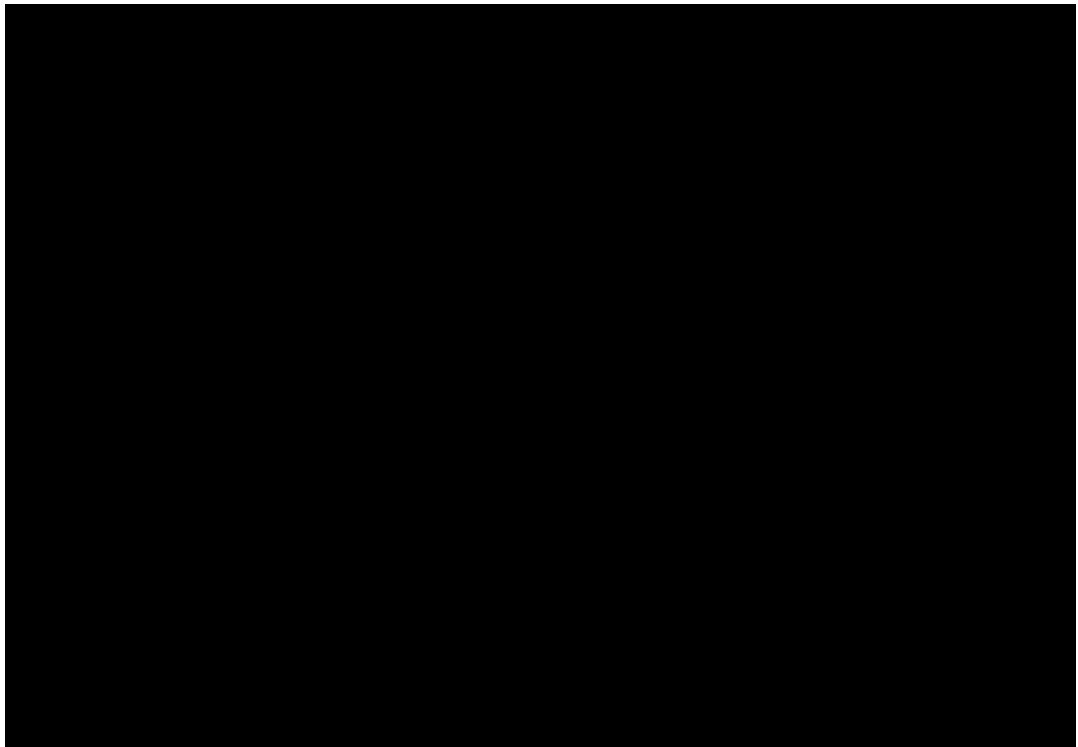
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1 process is intended to identify the solar PPA included in the Nucor pricing
2 structure.

3 b.

4 i. The Nucor supply is not interruptible. 

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ii.

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8 **Witnesses)** Michael T. Pullen (*a. only*) and

9 Mark J. Eacret (*a. and b.*)

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1 **Item 18)** *Provide documents which show Big Rivers' projected capital*
2 *spending on individual capital projects over the next five (5) years.*

3

4 **Response)** Big Rivers is providing its projected capital expenditures for the next
5 five years on the **CONFIDENTIAL** attachment to this response.

6

7 **Witness)** Paul G. Smith

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1 **Item 19)** *Explain whether the Hawesville smelter will be bringing its fifth*
2 *pot line online for production. If so, provide any available time frame*
3 *estimates, and any projections of whether doing so could increase BREC's*
4 *incremental revenues received from the Hawesville smelter.*

5

6 **Response)** Although Century provides Big Rivers with load forecast data as
7 required by NERC Standards, Century has said they have no definite plan to bring
8 its fifth pot online. As such, Big Rivers is currently unaware of Century's business
9 plans as it relates to if or when Century might bring the fifth pot online for production
10 at the Hawesville smelter.

11

12 **Witnesses)** Michael W. Chambliss

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1 **Item 20)** *Provide the termination dates for each of the contracts for*
2 *wholesale power to the five non-member public power utilities.*

3

4 **Response)** The agreements with Northeast Nebraska Public Power District, the
5 City of Wayne, Nebraska, the City of Wakefield, Nebraska, and Owensboro Municipal
6 Utilities terminate on December 31, 2026.

7 The agreement with Kentucky Municipal Energy Agency terminates on May
8 31, 2029.

9

10 **Witness)** Mark J. Eacret

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1 **Item 21)** *Regarding the amortization periods set forth in the instant*
2 *application, explain whether Big Rivers would be amenable to filing periodic*
3 *updates regarding the overall status of the paydowns of each regulatory*
4 *asset. If not, why not?*

5

6 **Response)** As is more fully described in Paragraph 103 of Big Rivers' Application,
7 Big Rivers will provide periodic updates regarding the overall status of the regulatory
8 assets.

9

10 **Witness)** Paul G. Smith

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1 **Item 22)** *Reference the Smith testimony at p. 24, wherein he describes the*
2 *rationale for continuing to set BREC's TIER at 1.30. Explain whether RUS*
3 *has approved this TIER level, and if so, whether RUS will have to re-approve*
4 *the TIER level, and how frequently.*

5

6 **Response)** In accordance with its debt covenants, Big Rivers notified the RUS when
7 the 1.30 TIER was established. Big Rivers' proposed changes to its MRSM tariff are
8 subject to RUS' approval, which include the establishment of the New TIER Credit
9 to return one-half of margins in excess of a 1.30 TIER to its Members.

10

11 **Witness)** Paul G. Smith

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

1 **Item 24)** *Page 8 of the Direct Testimony of Paul G. Smith, lines 6-10 discuss*
2 *the decommissioning costs of the Coleman Station. Regarding this subject,*
3 *please provide the following:*

4 *a. All decommissioning plans for the Coleman Station, including*
5 *timetable, schedule, and proposed final site remediation condition,*
6 *date and disposal of property.*

7 *b. All detailed cost estimates for decommissioning the Coleman*
8 *Station, including any referenced material and associated*
9 *spreadsheets as well as anticipated revenue from salvaged material*
10 *and disposition of property.*

11 *c. All assumed final net salvage costs of the Coleman Station assumed*
12 *in updated depreciation study, including a detailed spreadsheet*
13 *showing how these costs were calculated.*

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- 1 ***d. Plan and anticipated annual and long-term costs for remediation***
2 ***and disposition of all Coleman Station waste products on an annual***
3 ***basis.***
- 4 ***e. Does the estimated net book value of approximately \$117.1 million***
5 ***include net salvage for each FERC Account? If not, provide the net***
6 ***salvage amount for each account as used in the attached***
7 ***depreciation study.***
- 8 ***f. The detailed calculation used to arrive at an approximate net book***
9 ***value of \$117.1 million including the move of the horizontal FGD***
10 ***system to Wilson.***

11

12 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
13 unduly burdensome. Notwithstanding these objections, and without waiving them,
14 Big Rivers responds as follows:

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April 3, 2020

- 1 a. Please see the decommissioning cost estimate study for Coleman Station
2 and Reid Station Unit 1 provided with Big Rivers' response to Item 1 of the
3 Commission Staff's first request for information in this case ("PSC 1-1").
4 This study lays out two options for decommissioning Coleman Station: (1)
5 below grade demolition of the units and (2) retirement in place.
- 6 b. See the decommissioning cost estimate study for Coleman Station and Reid
7 Station Unit 1 provided with Big Rivers' response to PSC 1-1. The costs for
8 below grade demolition and retirement in place options are provided in this
9 study.
- 10 c. As noted on page 67 of the depreciation study, Exhibit C of Big Rivers'
11 application in this case, the study does not include dismantling estimates
12 for the various Big Rivers power plants. Interim net salvage history was
13 used as a proxy in the study for final dismantlement estimates. Appendix
14 A of the depreciation study shows the calculation of the net salvage values
15 by account used to calculate depreciation rates for Coleman Station.

**Case No. 2020-00064
Response to AG 1-24**

**Witnesses: Michael T. Pullen (a., b., and d. only) and
Paul G. Smith (c., e., and f. only)**

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**ELECTRONIC APPLICATION OF
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- 1 d. See the decommissioning cost estimate study for Coleman Station and Reid
2 Station Unit 1 provided with Big Rivers' response to PSC 1-1. The ongoing
3 costs for the retirement in place option are provided in this study.
- 4 e. Yes, the estimated net book value of approximately \$117.1 million includes
5 net salvage for each FERC account as approved from the 2012 Depreciation
6 Study. The \$117.1 million net book value was estimated as of December
7 31, 2019, based on the current approved depreciation rates. The
8 depreciation study, provided as Exhibit C with Big Rivers' application in
9 this case, was completed using December 31, 2018, values and the proposed
10 rates have not been adopted.
- 11 f. The approximate net book value of \$117.1 million for Coleman Station was
12 calculated by reducing the total gross book value for Coleman Station
13 (\$270.3 million) by the accumulated depreciation for Coleman Station
14 (\$129.9 million) and unrecovered net book value of the Wilson FGD system
15 (\$23.3 million).

**Case No. 2020-00064
Response to AG 1-24**

**Witnesses: Michael T. Pullen (*a., b., and d. only*) and
Paul G. Smith (*c., e., and f. only*)**

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3 **Witnesses)** Michael T. Pullen (*a., b., and d. only*),

4 Paul G. Smith (*c., e., and f. only*)

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**Response to the Office of the Attorney General's
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1 **Item 25)** *Page 8 of the Direct Testimony of Paul G. Smith, lines 13-18*
2 *discuss the decommissioning costs of the Reid Station Unit 1. Regarding this*
3 *subject, please provide the following:*

4 *a. All decommissioning plans for the Reid Station Unit 1, including*
5 *timetable, schedule, and proposed final site remediation condition,*
6 *date and disposal of property.*

7 *b. All detailed cost estimates for decommissioning the Reid Station*
8 *Unit 1, including any referenced material and associated*
9 *spreadsheets as well as anticipated revenue from salvaged material*
10 *and disposition of property.*

11 *c. All assumed final net salvage costs of the Reid Station Unit 1*
12 *assumed in updated depreciation study, including a detailed*
13 *spreadsheet showing how these costs were calculated.*

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April 3, 2020

- 1 *d. Plan and anticipated annual and long-term costs for remediation*
2 *and disposition of all Reid Station Unit 1 waste products on an*
3 *annual basis.*
- 4 *e. Does the estimated net book value of approximately \$6 million*
5 *include net salvage for each FERC Account? If not, provide the net*
6 *salvage amount for each account as used in the attached*
7 *depreciation study.*
- 8 *f. The detailed calculation used to arrive at an approximate net book*
9 *value of \$6 million.*

10

11 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
12 unduly burdensome. Notwithstanding these objections, and without waiving them,
13 Big Rivers responds as follows:

- 14 a. See the decommissioning cost estimate study for Coleman Station and Reid
15 Station Unit 1 provided with Big Rivers' response to Item 1 of Commission

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1 Staff’s first request for information (“PSC 1-1”). This study lays out one
2 option for decommissioning Reid Station Unit 1 which is retirement in
3 place. Due to the proximity of Reid Station Unit 1 to Henderson Municipal
4 Power & Lights’ Station Two (“Station Two”), this study did not consider
5 demolition of the Reid Station Unit 1 in 2016. However, Station Two is now
6 retired so Big Rivers anticipates the demolition of Reid Station Unit 1 in
7 conjunction with Station Two. As the Commission is aware, there are
8 outstanding issues between the Big Rivers and the City of Henderson
9 related to the decommissioning of Station Two. Those issues are in front of
10 the Commission in Case No. 2019-00269.¹

11 b. See the decommissioning cost estimate study for Coleman Station and Reid
12 Station Unit 1 provided with Big Rivers’ response to PSC 1-1. The costs for
13 the retirement in place option are provided in this study.

¹ In the Matter of: Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards – Case No. 2019-00269 [Filed July 31, 2019].

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- 1 c. As noted on page 67 of the depreciation study, Exhibit C of Big Rivers'
2 application in this case, the study does not include dismantling estimates
3 for the various Big Rivers power plants. Interim net salvage history was
4 used as a proxy in the study for final dismantlement estimates. Appendix
5 A of the depreciation study shows the calculation of the net salvage values
6 by account used to calculate depreciation rates for Reid Station Unit 1.
- 7 d. See the decommissioning cost estimate study for Coleman Station and Reid
8 Station Unit 1 provided with Big Rivers' response to PSC 1-1. The ongoing
9 costs for the retirement in place option are provided in this study.
- 10 e. Yes, the estimated net book value of approximately \$6 million includes net
11 salvage for each FERC account as approved from the 2012 Depreciation
12 Study. The \$6 million net book value was estimated as of December 31,
13 2019, based on the current approved depreciation rates. The attached
14 depreciation study, provided as Exhibit C with Big Rivers' application in

BIG RIVERS ELECTRIC CORPORATION

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1 this case, was completed using December 31, 2018, values and the proposed
2 rates have not been adopted.

3 f. The approximate net book value of \$6 million for Reid Station Unit 1 was
4 calculated by reducing the total gross book value for Reid Station Unit 1
5 (\$25 million) by the accumulated depreciation for Reid Station Unit 1 (\$19
6 million).

7

8 **Witnesses)** Michael T. Pullen (*a., b., and d. only*),

9 Paul G. Smith (*c., e., and f. only*)

10

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1 **Item 26)** *Regarding the depreciation study included in the application,*
2 *please provide the net salvage values in dollars as of December 31, 2018 used*
3 *for each generation station by plant and FERC account.*

4

5 **Response)** Please see Column E of Exhibit A in the depreciation study, Exhibit C
6 of Big Rivers Application, which provides the net salvage values in dollars as of
7 December 31, 2018, for each generation station by plant and FERC account.

8

9 **Witness)** Paul G. Smith

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1 **Item 27)** *Page 9 of the Direct Testimony of Paul G. Smith, lines 1-16*
2 *discusses Big Rivers seeking RUS approval to establish a regulatory asset*
3 *related to the retirement of Coleman Station and Reid Station Unit 1.*
4 *Regarding this subject, please provide the following:*

5 *a. All written communication, emails, letters, etc between Big Rivers*
6 *and RUS.*

7 *b. All internal board and management presentations.*

8

9 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
10 unduly burdensome. Notwithstanding these objections, and without waiving them,
11 Big Rivers responds as follows:

12 a. Please see Exhibit Smith-2 to the Direct Testimony of Paul G. Smith,
13 provided as Application Exhibit E, for a copy of the letter dated December
14 20, 2019, from Big Rivers to the RUS requesting RUS approval to establish
15 regulatory assets for the retirement of Coleman Station and Reid Unit 1.

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- 1 b. Please see the **CONFIDENTIAL** presentation to the Big Rivers Board of
2 Directors provided with these responses.
3
4 **Witness)** Paul G. Smith

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1 Item 28) *Page 21 of the Direct Testimony of Paul G. Smith, lines 12-20*
2 *discusses Kenergy and Big Rivers special contracts. Regarding this subject*
3 *please provide the following:*

4 a. *The unredacted Nucor contract that is pending Commission*
5 *approval.*

6 i. *Describe all forecasted capacity with reserves supplied to the*
7 *Buyer through the term of the contract, including the source of*
8 *the Capacity.*

9 ii. *Describe all forecasted energy provided to the Buyer through the*
10 *term of the contract, including the source of the Capacity.*

11 iii. *Provide the forecasted monthly margins and revenue anticipated*
12 *by the agreement as well as the forecasted monthly variable fuel,*
13 *energy, transmission and other variable costs for the anticipated*
14 *term of the contract.*

15 b. *The unredacted Domtar back-up power contract.*

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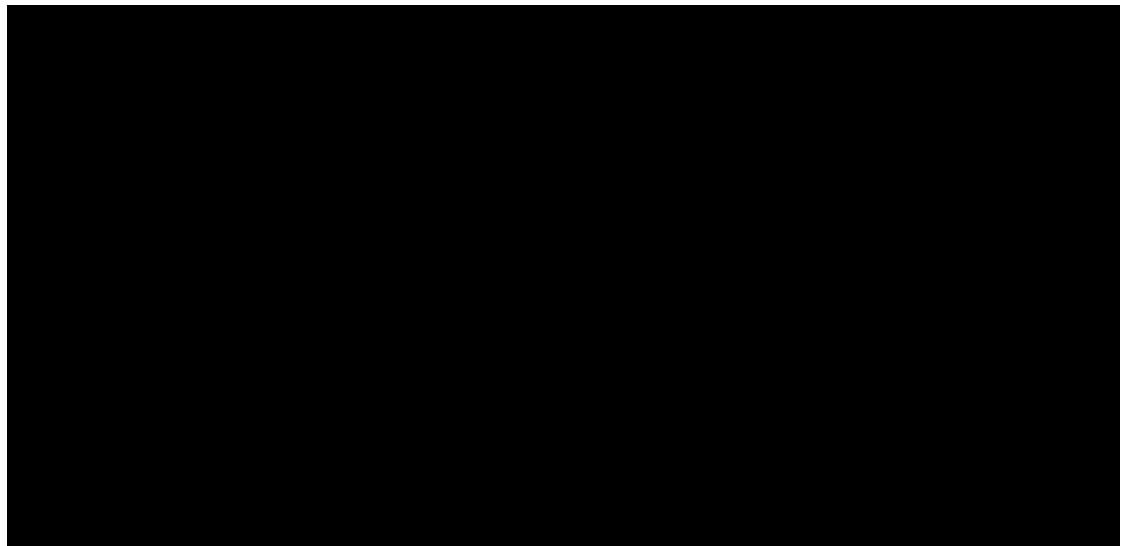
Response to the Office of the Attorney General's
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1 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
2 unduly burdensome. Big Rivers also objects to this request on the grounds that it
3 seeks information that is irrelevant and not likely to lead to the discovery of
4 admissible evidence. Notwithstanding these objections, but without waiving them,
5 Big Rivers responds as follows:

6 a. Please see the **CONFIDENTIAL** attachment to this response for an
7 unredacted copy of the wholesale and retail contracts relating to Nucor that
8 are pending Commission approval.

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BIG RIVERS ELECTRIC CORPORATION

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1 iii. Please see the **CONFIDENTIAL** attachment accompanying these
2 responses. Monthly data is not available.

3 b. The wholesale agreement between Big Rivers and Kenergy to allow
4 Kenergy to supply back-up power to Domtar,¹ and the corresponding retail
5 agreement between Domtar and Kenergy for back-up power² are publicly-
6 available on the Commission's website.

7

8 **Witness)** Mark J. Eacret

¹https://psc.ky.gov/tariffs/Electric/Big%20Rivers%20Electric%20Corporation/Contracts/Kenergy/2011-04-01_Second%20Amended%20and%20Restated%20Wholesale%20Power%20Agreement.pdf.

² https://psc.ky.gov/tariffs/Electric/Kenergy%20Corp/Contracts/Domtar%20Paper%20Company/2011-04-01_Second%20Amended%20And%20Restated%20Agreement%20for%20Retail%20Electric%20Service.pdf.

September 10, 2019

Mr. Martin Littrel
President and CEO
Meade County Rural Electric Cooperative Corporation
1351 Irvington Road
Brandenburg, Kentucky 40108

Re: Nucor Corporation Retail Electric Service Agreement

Dear Marty:

This letter agreement (“Letter Agreement”) will evidence Big Rivers Electric Corporation’s (“Big Rivers”) concurrence with the terms of Meade County Rural Electric Cooperative Corporation’s (“Meade County RECC”) electric service agreement with Nucor Corporation (the “Retail Customer”) dated September 9, 2019, a copy of which is attached hereto as Exhibit 1 (the “Retail Agreement”), and the agreement between Big Rivers and Meade County RECC with respect thereto.

(1) **Existing Agreement and Tariffs.** The terms and conditions of the June 11, 1962, wholesale power agreement between Big Rivers and Meade County RECC, as amended, and Big Rivers’ filed tariffs shall continue in full force and effect except as expressly modified by this Letter Agreement.

(2) **Additional Rights and Obligations of Big Rivers.** Big Rivers shall make available to Meade County RECC the electric power required during the term of the Retail Agreement to perform the power supply obligations assumed by Meade County RECC in the Retail Agreement, and Big Rivers shall have the benefit of Retail Customer’s obligations in such agreement. Big Rivers will supply the facilities required to deliver power to the delivery point, as defined in the Retail Agreement, and to meter electrical usage by Retail Customer.

(3) **Obligations of Meade County RECC.** Meade County RECC shall take and pay for electric power and energy delivered by Big Rivers in accordance with the Retail Agreement, with demand and energy being measured in accordance with the Retail Agreement.

(4) **Obligation of Meade County RECC for Minimum Billing Demand and Termination Charges.** Meade County RECC agrees to bill Retail Customer for any minimum billing demand charges in excess of measured demand, any termination charges, and any other amounts due under the Retail Agreement, and agrees to pay over to Big Rivers all funds actually collected under such billings.

(5) **Division of Any Partial Payments.** Meade County RECC will pay to Big Rivers a pro rata share of any partial payment made to Meade County RECC by or on behalf of Retail Customer.

Mr. Martin Littrel
September 10, 2019
Page 2

(6) **Hold Harmless.** Big Rivers acknowledges that Meade County RECC is not charging any retail adder with respect to the Retail Agreement; Big Rivers agrees that Meade County RECC shall not owe Big Rivers any amounts relating to the Retail Agreement except those collected from Retail Customer; and Big Rivers agrees to hold Meade County RECC harmless for any costs Meade County RECC incurs relating to the Retail Agreement.

(7) **Effective Date.** This Letter Agreement will become effective upon approval or acceptance by the Public Service Commission of Kentucky, and upon receipt of any consents or approvals required under Big Rivers' agreements with its creditors, including the Rural Utilities Service.

(8) **Entire Agreement and Amendment.** This Letter Agreement represents the entire agreement of the parties on the subject matter herein, and cannot be amended except in writing, duly authorized and signed by Big Rivers and Meade County RECC. The Retail Agreement cannot be amended without the written approval of Big Rivers. Big Rivers shall have the right to approve the terms and issuer(s) of the letter(s) of credit contemplated by the Retail Agreement to secure the obligations of the Retail Customer.

If this Letter Agreement is acceptable to Meade County RECC, please indicate that acceptance by signing in the space provided and returning four signed counterparts to us.

Sincerely yours,

BIG RIVERS ELECTRIC CORPORATION

A handwritten signature in blue ink, appearing to read "Robert W. Berry", is written over a horizontal line.

Robert W. Berry
President and CEO

Mr. Martin Littrel
September 10, 2019
Page 3

ACCEPTED:

MEADE COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION



Martin Littrel
President and CEO

Date: September 18, 2019

AGREEMENT FOR ELECTRIC SERVICE

THIS AGREEMENT FOR ELECTRIC SERVICE (“Agreement”) is made and entered into as of the 9th day of September, 2019, between **MEADE COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION**, a Kentucky rural electric cooperative corporation, with its principal office located at 1351 Irvington Road, Brandenburg, Kentucky 40108 (“Seller”), and **NUCOR CORPORATION**, a Delaware corporation, with its principal office located at 1915 Rexford Road, Charlotte, North Carolina 28211 (“Customer”), for service at the steel mill facility Customer intends to construct and operate at the Buttermilk Falls Site in Brandenburg, Kentucky (the “Facility”). Seller and Customer are individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, Seller will provide retail electric service to the Facility under the terms of this Agreement;

WHEREAS, Seller will purchase the electric power and energy for resale to Customer from Big Rivers Electric Corporation (“Big Rivers”) under a Wholesale Power Contract dated June 8, 1962, as has been and may be amended from time to time (the “Wholesale Power Agreement”); and

WHEREAS, Customer is agreeable to locating the Facility in the Commonwealth of Kentucky contingent upon Seller providing the electrical requirements for the Facility under the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I GENERAL OBLIGATIONS

1.01 Basic Obligations of the Parties. Seller shall supply, sell, and deliver to Customer, and Customer shall accept and pay for all of the electric power and energy Customer may need for the operation of the Facility, up to the Maximum Contract Demand, as defined in Section 2.03(b) of this Agreement, subject to the terms and conditions set forth herein. The electric service provided hereunder is subject to the applicable rules, regulations, and orders of the Public Service Commission of Kentucky (the “Commission”). Except as otherwise provided herein, this Agreement contains the exclusive terms on which Seller will provide electric service to Customer during the term of this Agreement and Customer will accept and pay for electric service from Seller during the term of this Agreement.

1.02 Membership. Customer shall be a member of Seller, and shall be bound by applicable rules and regulations as may from time to time be adopted by Seller.

1.03 Performance by Seller. Big Rivers shall be entitled to the benefit of each covenant undertaken by Customer in this Agreement, and Big Rivers may enforce any such covenant by action in its own name or may require Seller to enforce such covenant for and on behalf of Big Rivers.

1.04 Description of the Facility. The Facility shall consist of Customer's facilities located on or directly adjacent to the Buttermilk Falls Site utilized in the production of steel, including, but not limited to, electric arc furnaces, continuous casters, rolling mills, air separation facilities, scrap and raw materials processing facilities, slag processing facilities, and other facilities incidental and necessary to the production of steel, including customer facilities to service or process Nucor's steel.

ARTICLE II SERVICE CHARACTERISTICS

2.01 Delivery Point and Character of Service. The "Delivery Point" of the electric power and energy made available under this Agreement shall be the point of connection of Customer's bus with Big Rivers' step-down transformers at the Brandenburg Steel Mill Substation 34.5 kV bus. The electric power and energy delivered under this Agreement will be in the form of three-phase alternating current (60 hertz) at nominal 34.5 kV voltage level.

2.02 Service Restriction. Except as provided in subsection (a) below, Customer shall not use the electric power and energy furnished hereunder as an auxiliary or supplement to any other source of power and shall not sell electric power and energy purchased hereunder.

- (a) Customer-Owned Generation. Customer may self-generate power for any power requirements at the Facility beyond the Maximum Contract Demand. Any supplementary, back-up, or similar service to support any customer-owned generation, and/or the purchase of any capacity or energy from any customer-owned generation will be subject to good-faith negotiation.

2.03 Contract Demand.

- (a) "Billing Demand" shall be considered equal to the [REDACTED] during a billing month; provided, however, that the Billing Demand for any billing month shall not be less than [REDACTED] of the highest measured demand in the previous twelve-month period.
- (b) Customer's maximum Billing Demand in any billing month during the Term of this Agreement (the "Maximum Contract Demand") shall be [REDACTED]. Customer may request a price quote for an increase in the Maximum Contract Demand, subject to the capability of Big Rivers' then-existing transmission facilities. Billing Demand shall not exceed Customer's Maximum Contract Demand in any billing month.

2.04 System Disturbances; Obligation for Damages.

- (a) A "System Disturbance" shall be deemed to exist if the use of power by Customer directly or indirectly results in a risk of harm to human beings or material damage to or substantial interference with the functioning of Big Rivers' generating system or transmission system, Seller's distribution system, or the plant, facility, equipment or operations of any customer of one of Big Rivers' distribution cooperatives. A System Disturbance includes, but is not limited to: (i) a level of

current harmonic total demand distortion (“TDD”) measured at the Delivery Point that exceeds the limits on TDD described in IEEE Standard 519, Section 10; and (ii) a use of capacity and energy in such a manner that causes a current imbalance between phases greater than five percent at the Delivery Point.

- (b) In its role as Local Balancing Area Operator in the Midcontinent Independent System Operator, Inc. (“MISO”) and reader of the meters serving Seller, Big Rivers shall have primary responsibility for determining the existence and source of System Disturbances. If Big Rivers reasonably believes that Customer is responsible for a System Disturbance, it shall provide notice to Seller and Customer, and Customer may take, but shall not be obligated to take, appropriate action at its sole expense to cure, correct or suppress such System Disturbance. If the Customer declines for any reason to take action to correct the System Disturbance, then Seller shall undertake, or cause Big Rivers to undertake, appropriate action to cure, correct or suppress such System Disturbance. If Customer is determined to be the source of the System Disturbance, Customer shall be obligated to reimburse Seller for all reasonable costs incurred by Seller or Big Rivers to cure, correct or suppress such System Disturbance. Customer shall not be responsible to repair damage caused by, or take corrective action for, system disturbances it did not cause.
- (c) Seller shall have no responsibility for damage to any property, or to any equipment or devices connected to Customer’s electrical system on Customer’s side of the Delivery Point that results solely from acts or omissions of Customer, its employees, agents, contractors or invitees, or malfunction of any equipment or devices connected to Customer’s electrical system on Customer’s side of the Delivery Point. The electric power and energy supplied under this Agreement is supplied upon the express condition that after it passes the Delivery Point it becomes the responsibility of Customer, and neither Seller nor Big Rivers shall be liable for loss or damage to any person or property whatsoever, resulting directly or indirectly from the use, misuse or presence of said electric power and energy on Customer’s premises, or elsewhere, after it passes the Delivery Point except where such loss or damage shall be shown to have been occasioned by negligence of Seller or Big Rivers, their agents or employees.

2.05 Power Factor. Customer shall maintain a power factor at the Delivery Point as nearly as practicable to unity. Power factor during normal operation may range from unity to ninety percent (90%). If Customer’s power factor is less than 90% at time of maximum load, Seller reserves the right to require Customer to choose either (a) installation at Customer’s expense of equipment which will maintain a power factor of 90% or higher; or (b) adjustment of the maximum monthly metered demand for billing purposes in accordance with the following formula:

$$\frac{\text{Maximum Actual Measured Kilowatts} \times 90\%}{\text{Power Factor (\%)}}$$

2.06 Metering.

- (a) The metering equipment necessary to register the electric demand and energy for this service shall be furnished, installed, operated, and maintained by Seller or Big Rivers, and shall be and remain the property of Seller or Big Rivers.
- (b) Each meter shall be read on or about the first day of each month, or such other day as the Parties may mutually agree upon, by a representative of Seller and may be simultaneously read by a representative of Customer should Customer so elect.
- (c) All inspections and testing of metering equipment shall be performed in accordance with the Commission's applicable rules and regulations.
- (d) All meters utilized for the purpose of calculating Customer's billing determinants shall be totalized for billing purposes.

2.07 Easements and Facilities Provided by Customer.

- (a) Customer shall furnish, operate, and maintain (or cause to be furnished, operated, and maintained) such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased hereunder at and from the Delivery Point.
- (b) Customer shall provide or cause to be provided, without cost to Seller or Big Rivers, the following facilities which are or may be necessary for Seller or Big Rivers to supply the electric consuming facilities of Customer with retail electric service:
 - (i) Adequate sites for the construction and erection of such new substations and other facilities and future alterations to such new facilities as may from time to time be necessary to serve Customer, at such locations and of such dimensions as mutually agreed upon with the fee simple title thereto, rough graded to Seller's or Big Rivers' requirements, as may be from time to time required by Seller or Big Rivers;
 - (ii) Easements for rights-of-way upon Customer's property, at such locations and of such dimensions as determined by Seller and which are necessary for the construction of facilities which Seller or Big Rivers must furnish to provide electric service under this Agreement. If Customer wishes to move any such facilities in the future, Seller will cooperate in identifying alternate satisfactory locations so long as any relocation is at Customer's expense;
 - (iii) An easement for ingress and egress for the exercise by Seller or Big Rivers of Seller's rights under this Agreement; and
 - (iv) Facilities for Big Rivers' metering equipment.

2.08

(a)

(b)

2.09 Operation and Maintenance of Facilities.

- (a) Seller shall construct, operate, and maintain, or cause to be constructed, operated, and maintained, all facilities and equipment owned by it or by Big Rivers and required to supply retail electric service to Customer in accordance with the terms of this Agreement.
- (b) Customer shall construct, operate, and maintain, or cause to be constructed, operated, and maintained, all facilities and equipment owned by it in accordance with the applicable provisions of the National Electrical Safety Code and all other applicable laws, codes, and regulations; provided, however, that Seller shall have no duty to inspect such facilities for compliance therewith.
- (c) Nothing in this Agreement shall be construed to render either Party liable for any claim, demand, cost, loss, cause of action, damage, or liability of whatsoever kind or nature arising out of or resulting from the construction, operation, or maintenance of such Party's electric system or electric systems connected to such Party's electric system.

2.10 Right of Removal. Any and all equipment, apparatus, devices, or facilities placed or installed, or caused to be placed or installed, by either Party on or in the premises of the other Party shall be and remain the property of the Party owning and installing such equipment, apparatus, devices, or facilities regardless of the mode or manner of annexation or attachment to real property of the other. Upon the termination of this Agreement, the owner thereof shall have the right to enter upon the premises of the other and shall within a reasonable time remove such equipment, apparatus, devices, or facilities.

2.11 Termination Charge. If this Agreement expires or is terminated for any reason, Customer shall pay Seller, in addition to any other obligations Customer may have to Seller upon the expiration or termination of this Agreement, a "Termination Charge" in accordance with Exhibit B hereto.

2.12 Credit Support for Termination Charge. If Customer's Credit Rating falls below a rating of [REDACTED] from Standard & Poor's Rating Group ("S&P") or Fitch Ratings, Inc. ("Fitch"), or below [REDACTED] from Moody's Investor Services, Inc. ("Moody's"), then within fifteen (15) calendar days of such downgrade event, Customer shall provide an irrevocable bank standby letter of credit acceptable to Seller and Big Rivers, or other credit support acceptable to Seller and Big Rivers, as security for payment of the Termination Charge. "Credit Rating" means, on

any date of determination, the rating then assigned to Customer's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements) by S&P, Moody's, or Fitch, or their successors, or if Customer does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating then assigned to Seller as its issuer rating by S&P, Moody's, or Fitch, or their successors.

2.13 Ancillary Services; Transmission. Seller shall be responsible for procuring transmission and ancillary services needed to deliver capacity and energy to Customer under this Agreement, subject to the rates and other terms hereunder.

2.14 Curtailment; Interruption.

ARTICLE III PAYMENT

3.01 Rates. During the Term of this Agreement, Customer shall take service from Seller at the rates set forth in Exhibit C hereto and under Seller's Rate Schedule 13, as it may be amended from time to time, and any other applicable tariffs of Seller, or any successor tariff(s), all of which are incorporated herein by reference. A copy of Seller's current Rate Schedule 13 is attached hereto as Exhibit D. Seller shall take service from Big Rivers under Big Rivers' proposed Large Industrial Customer Expansion Rate tariff, in substantially the form attached hereto as Exhibit E, which tariff Big Rivers will seek all necessary approvals to implement, as such tariff may be amended from time to time, and any other applicable tariffs of Big Rivers, or any successor tariff(s), all of which are incorporated herein by reference. Notwithstanding the foregoing, to the extent any provision of this Agreement, including the exhibits hereto, are inconsistent with the tariffs referenced in this section, the provisions of the Agreement shall prevail.

3.02 Taxes. Customer shall pay all taxes, charges, or assessments now or hereafter applicable to electric service hereunder.

3.03 Billing. Bills for service hereunder shall be paid electronically or at the office of the Seller as follows:

Meade County RECC
1351 Irvington Road,
P.O. Box 489
Brandenburg, Kentucky 40108

Such payments shall be due on the 15th day of each month for service furnished during the preceding monthly billing period (the "Due Date"). If payment in full is not paid on or before the Due Date, or if Customer fails to maintain adequate credit support or payment security as required hereunder, Seller may discontinue service to the Customer

without further action on the part of Seller by giving the Customer written notice at least ten (10) calendar days in advance of its intention to do so; provided, however, that such discontinuance of service shall not relieve the Customer of any of its obligations under this Agreement or limit Seller's other remedies under this Agreement. Simple interest equal to the then-effective prime commercial lending rate as published in the "Money Rates" section of *The Wall Street Journal* plus one percent (1%) shall apply to any unpaid amounts from the Due Date until paid.

In the event any portion of the bill is in bona fide dispute, as a result of metering-related issues or otherwise, Customer shall notify Seller on or before the Due Date of the disputed amount and the reason therefor and shall pay the undisputed amount. The parties shall attempt in good faith to resolve the dispute. If the Parties are unable to agree upon a correct amount within ten (10) calendar days of Customer's written notice of the dispute, then the disputed amount shall become due on the later of the Due Date or the end of that ten (10) day period.

3.04 Credit Support for Monthly Billing Obligations

- (a) Customer shall provide, prior to the Service Commencement Date defined in Section 11.01, an irrevocable bank standby letter of credit representing [REDACTED] of estimated billing, being the amount of [REDACTED], as security for the payment of its monthly billing obligations. In the event customer fails to pay any monthly billing invoice by the Due Date, after notifying Customer of its intent to do so Seller may, in addition to and without limiting any other remedies available to it, call on the standby letter of credit provided in this subsection or any other security deposit, payment security, or credit support on any other agreement between Customer and Seller for payment provided by Customer to satisfy any unpaid invoices.
- (b) In addition to the rights and obligations in Section 3.04(a), in the event Customer fails to pay any monthly billing invoice by the Due Date, or Customer's credit rating falls below [REDACTED] from S&P or Fitch, or below [REDACTED] from Moody's, then Customer shall provide an irrevocable bank standby letter of credit representing [REDACTED] of estimated billing, being the amount of [REDACTED], as security for payment of its monthly billing obligation, within 15-calendar days of such event. If Customer fails to pay any invoice for service by the Due Date, after notifying Customer of its intent to do so Seller may, in addition to and without limiting any other remedies available to it, call on the standby letter of credit provided for in this subsection or any other security deposit, payment security, or credit support on any other agreement between Customer and Seller for payment provided by Customer to satisfy that unpaid invoice.

ARTICLE IV CONTINUITY OF SERVICE

4.01 Continuity of Service. Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy hereunder. However, Seller does not

guarantee uninterrupted service, and neither Seller nor Big Rivers shall be responsible for damages to Customer occasioned by any failure, shortage, or interruption of service for any reason, including but not limited to those resulting from maintenance work, inability to secure right-of-way, or from a Force Majeure Event, as defined in Section 4.02 of this Agreement.

4.02 Force Majeure. In the event a Party's performance of this Agreement is limited or prevented in whole or in part by Acts of God, strikes, labor trouble, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the government (whether federal, state, or local, or civil or military), civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, or inability to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (whether federal, state, or local, or civil or military), or any other cause beyond the reasonable control of the Parties hereto whether or not specifically provided herein (each a "Force Majeure Event"), the obligations (other than payment obligations) of both Parties shall be suspended to the extent made necessary by such Force Majeure Event; provided that the affected Party gives notice and reasonably full particulars of such Force Majeure Event, first by telephone and then confirmed in writing, to the other Party within a reasonable time after the occurrence of the Force Majeure Event. Each Party will, in the event it experiences a Force Majeure Event, use all commercially reasonable efforts to eliminate the effects of such Force Majeure Event on its performance as soon as reasonably possible; provided that nothing contained herein may be construed to require a Party to prevent or to settle a labor dispute against its will.

ARTICLE V RIGHT OF ACCESS

5.01 Duly authorized representatives of the Seller shall be permitted to enter the Customer's premises at all reasonable times in order to carry out the provisions hereof.

5.02 Customer shall furnish to Seller such reports and information concerning the matters addressed in or matters arising out of this Agreement or any exhibit hereto as the Seller may reasonably request from time to time.

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

6.01 Events of Default. Each of the following constitutes an "Event of Default" under this Agreement:

- (a) Failure by Customer to make any payment in accordance with this Agreement;
- (b) Failure of a Party to perform any material duty imposed on it by this Agreement, including but not limited to the failure to maintain adequate credit support as required in Sections 2.12 and 3.04;
- (c) Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Section 10.01;

- (d) Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise, or the commencement of involuntary proceedings under any such laws by a Party and such petition has not been withdrawn or dismissed within 60 days after filing;
- (e) Assignment by a Party for the benefit of its creditors; or
- (f) Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property and such receiver or trustee has not been discharged within 60 days after appointment.

6.02 Remedies. Following the occurrence and during the continuance of an Event of Default by either Party, the non-defaulting Party may, in its sole discretion, elect to terminate this Agreement upon written notice to the other Party, or to seek enforcement of its terms at law or in equity. Remedies provided in this Agreement are cumulative. Nothing contained in this Agreement may be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the breach or default of any of the provision herein, except as provided in Section 6.03 of this Agreement.

6.03 LIMITATION OF DAMAGES. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL CUSTOMER OR SELLER (OR ITS WHOLESALE POWER SUPPLIER), OR THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES OR AGENTS BE LIABLE HEREUNDER, WHETHER IN TORT, CONTRACT, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, PUNITIVE EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. CUSTOMER'S OR SELLER'S LIABILITY (AND THE LIABILITY OF ITS WHOLESALE POWER SUPPLIER) HEREUNDER SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. THE EXCLUSION OF ALL OTHER DAMAGES SPECIFIED IN THIS SECTION IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATING THERETO. THIS PROVISION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.04 Survival. Obligations of a Party accrued under this Agreement on or before the date this Agreement is terminated or otherwise expires shall survive that termination or expiration.

ARTICLE VII INDEMNIFICATION

7.01 Parties agree to indemnify and hold the other Party and Big Rivers harmless from and against any and all claims, demands, damages, judgments, losses or expenses asserted against the other Party and/or Big Rivers arising out of, related to or concerning damage to Big Rivers' generation or transmission facilities or the transmission facilities of any other entity resulting from Party's operations, activities, or usage of electric power and energy hereunder, unless said claim, demand, damage, judgments, losses or expenses arise out of the sole

negligence or intentional misconduct of the Party or Big Rivers. Additionally, Parties assume all responsibility for the electric service at and from the Party's side of the Delivery Point of electricity and for the wires and equipment used in connection therewith, and will indemnify and hold the other Party and Big Rivers harmless from any and all claims for injury or damage to persons or property occurring at and from the Party's side of the Delivery Point of electricity, occasioned by such electricity or said wires and equipment, except where said injury or damage is occasioned solely by the negligence or intentional misconduct of the Party or Big Rivers.

ARTICLE VIII
NOTICE

8.01 Except as herein otherwise expressly provided, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or by any qualified and recognized delivery service, or sent postage prepaid by United States certified mail, return receipt requested, to the persons specified below unless otherwise provided for in this Agreement.

TO CUSTOMER:

Controller
Nucor Steel Brandenburg
Brandenburg, Kentucky

TO SELLER:

President and CEO
Meade County Rural Electric Cooperative Corporation
1351 Irvington Road
Brandenburg, Kentucky 40108
Telephone: (270) 422-2162

Any notice from Customer to Seller shall be given concurrently to Big Rivers, using the same methods of delivery required by this Agreement for notice to Seller, at the following address:

President and CEO
Big Rivers Electric Corporation
201 Third Street
Henderson, Kentucky 42420
Telephone: (270) 827-2561

Each Party shall have the right to change the name of the person or location to whom or where notice shall be given or served by notifying the other Party of such change in accordance with this section.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES

9.01 Representations of Seller. Seller hereby represents and warrants to Customer as follows:

- (a) Seller is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the term hereof.
- (b) The execution, delivery, and performance of this Agreement by Seller have been duly and effectively authorized by all requisite corporate action.

9.02 Representations and Warranties of Customer. Customer hereby represents and warrants to Seller as follows:

- (a) Customer is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware, is authorized to do business in the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the term hereof.
- (b) The execution, delivery, and performance of this Agreement by Customer have been duly and effectively authorized by all requisite corporate action.
- (c) The rates offered to Customer and incorporated into this Agreement were a necessary factor in the decision of Customer to locate its operations in Kentucky. Customer estimates that its Facility will involve a capital investment of approximately \$1.35 Billion, and employment of approximately 400 full-time persons.

ARTICLE X
SUCCESSION AND APPROVAL

10.01 Neither Party shall assign its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may withhold approval of a proposed assignment until it has been provided with all information it may reasonably require regarding the proposed assignee, and it has determined that the proposed assignee has the ability to fulfill assignor's obligations hereunder to the reasonable satisfaction of the Party following the proposed assignment. No assignment by a Party shall relieve the assignor of its obligations hereunder without the written consent of the other Party to accept the assignee as a substitute obligor.

ARTICLE XI
TERM AND SERVICE COMMENCEMENT DATE

11.01 This Agreement shall become effective upon the satisfaction or waiver of the contingencies referred to in Section 12.01 of this Agreement, and shall remain in effect for [REDACTED] following the Service Commencement Date, as defined in this section (the "Term"). "Service Commencement Date" shall mean the date on which Customer commences production of steel in commercial quantities, and such date shall be specified by Customer, but shall be no later than [REDACTED]. Prior to the expiration of the Term, the Parties shall negotiate in good faith with the goal of concluding a replacement power supply agreement.

ARTICLE XII
SUCCESSION, APPROVAL, AND EFFECTIVE DATE

12.01 The "Effective Date" of this Agreement shall be the date hereof, except that said Effective Date shall be postponed and this Agreement shall not become effective unless and until:

- (a) all necessary approvals, including approvals of this Agreement, a corresponding amendment to the Wholesale Power Agreement, and Big Rivers' proposed Large Industrial Customer Expansion Rate tariff, are received from (i) the boards of directors of Seller, Customer, and Big Rivers; (ii) the Commission; and (iii) the Rural Utilities Service ("RUS"); or the Parties and Big Rivers waive such approvals;
- (b) Seller has completed or caused to be completed the transmission system improvements, and has secured or caused to be secured the transmission service required for service to Customer hereunder; and
- (c) Customer has obtained the necessary permits for operation of the Facility.

ARTICLE XIII
MISCELLANEOUS

13.01 Entire Agreement. The terms, covenants, and conditions contained in this Agreement, including the attached exhibits, constitute the entire agreement between the Parties and shall supersede all previous communications, representations, or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof; provided, however, that service to Customer is subject to the articles, bylaws, tariffs, rules, and regulations of Seller and to the laws, rules, regulations, and lawful orders of the Commission. In the event of a conflict between this Agreement and the articles, bylaws, tariffs, rules, and regulations of Seller, this Agreement shall take precedence.

13.02 Governing Law, Jurisdiction, and Venue. All respective rights and obligations of the Parties shall be governed by the laws of the Commonwealth of Kentucky without regard to its conflicts of law rules. The courts of the Commonwealth of Kentucky will have exclusive jurisdiction over each and every judicial action brought under or in relationship to this

Agreement; provided that the subject matter of such dispute is not a matter reserved by law to the Commission (in which event exclusive jurisdiction and venue will lie with the Commission), or to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties shall submit to the jurisdiction of Kentucky courts for such purpose. Venue of any state court action, legal or equitable, having as its basis the enforcement or interpretation of this contract, shall be Henderson County, Kentucky.

13.03 Waiver. The waiver by either Party of any breach of any term, covenant, or condition contained herein will not be deemed a waiver of any other term, covenant, or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein.

13.04 Amendments. This Agreement may be amended, revised, or modified by, and only by, a written instrument duly executed by both Parties and consented to by Big Rivers.

13.05 Counterparts. This Agreement 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.

13.06 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

13.07 Severability. Should any provision or provisions of this Agreement be declared void or illegal by any court of competent jurisdiction, then such void or illegal provision or provisions shall be severed from this Agreement, and all other provisions hereof shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement all as of the day and year first above written.

MEADE COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION

By: Martin Littrel
Martin Littrel
President and CEO

NUCOR CORPORATION

By: Johnny Jacobs
Johnny Jacobs
Vice President and General Manager

EXHIBIT A

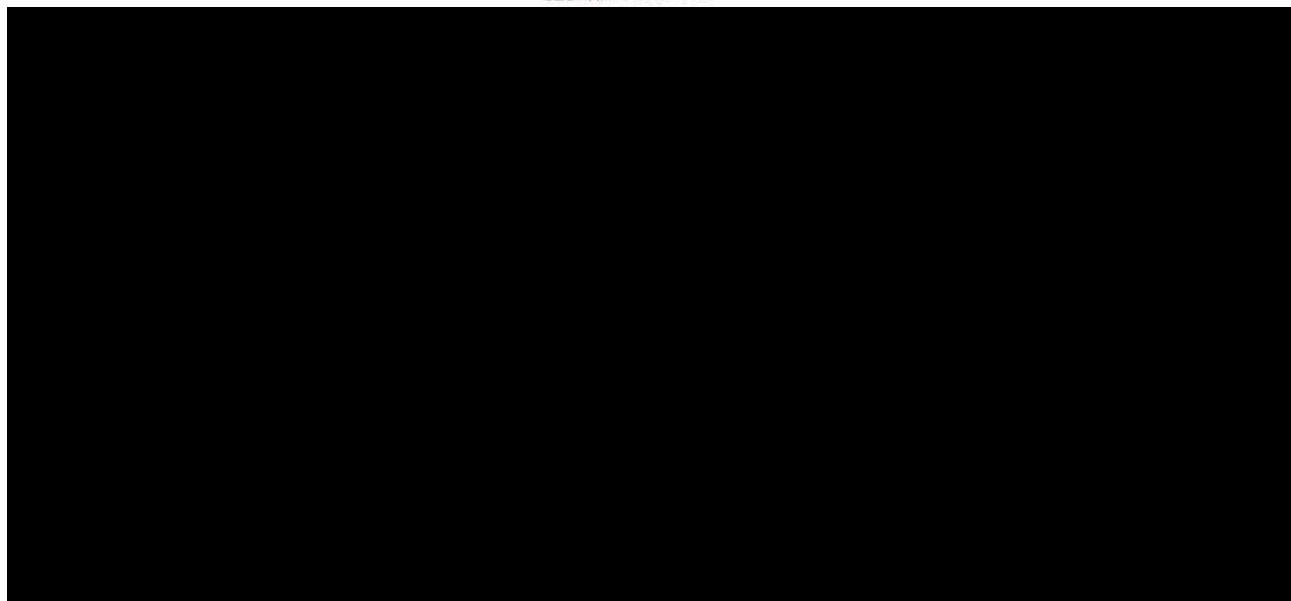
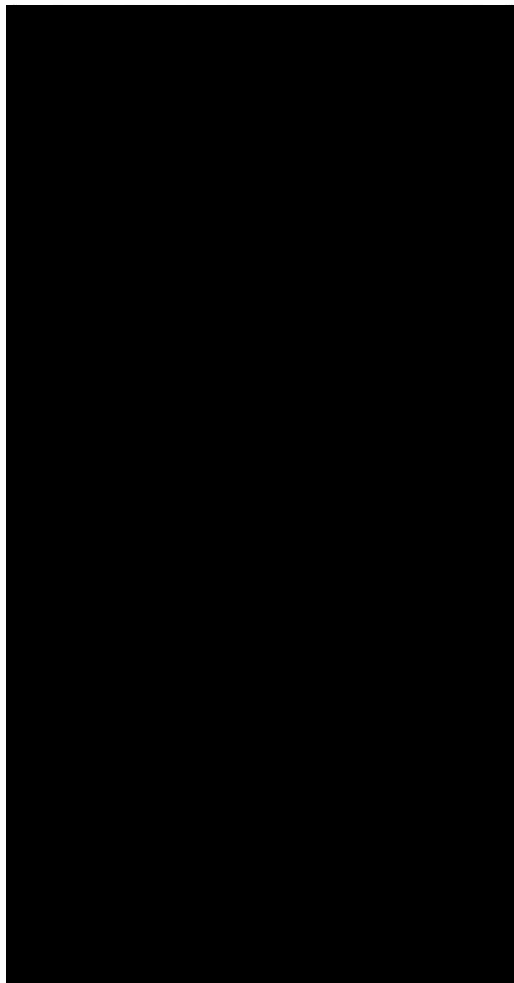


EXHIBIT B

TERMINATION CHARGE

The Termination Charge shall be equal to Big Rivers' actual cost of the transmission and other facilities ("Transmission Facilities Costs") constructed to provide service to Customer, which amount is estimated to be [REDACTED] as of July 3, 2019, reduced in accordance with the following schedule:



Transmission Facilities Costs shall include costs incurred by Big Rivers prior to the Effective Date of this Agreement for which Customer has accepted financial responsibility under the letter agreement between Customer and Big Rivers dated May 1, 2019.

EXHIBIT C

RATES

During the Term of the Agreement, Customer shall take service from Seller under Seller's Rate Schedule 13, and Seller shall take service from Big Rivers under Big Rivers' Large Industrial Customer Expansion Rate tariff for service to Customer, as such tariffs may be amended from time to time, and any other applicable or successor tariffs; provided, however, that the following Special Contract Rates shall apply to service to Customer in lieu of any other rates in such tariffs unless provided otherwise:

- A. Beginning on the Effective Date hereof (as defined in Section 12.01 of the Agreement) and continuing through the Service Commencement Date (as defined in Section 11.01 of the Agreement), Customer shall pay Seller for service hereunder upon the rates, terms, and conditions set forth in Big Rivers' Large Industrial Customer tariff, or any successor tariff, subject to such changes as may become effective from time to time by operation of law or by order of the Commission, including all applicable riders, but without any retail adder from Seller, plus applicable taxes. A copy of Big Rivers' current Large Industrial Customer tariff is attached to the Agreement as Exhibit F.
- B. From the Service Commencement Date, through [REDACTED], Customer shall pay Seller:
 1. a monthly Demand Charge of [REDACTED] of Billing Demand for all MW up to the Maximum Contract Demand, including any increase in the Maximum Contract Demand pursuant to Section 2.03(b) of the Agreement; plus
 2. a monthly Demand Charge equal to the greater of (i) the Demand Charge set forth in Big Rivers' Large Industrial Customer tariff, or any successor tariff, subject to such changes as may become effective from time to time by operation of law or by order of the Commission, or (ii) Big Rivers' out-of-pocket costs for all MW in excess of the Maximum Contract Demand; plus
 3. an On-Peak Energy Charge for all MWh consumed during On-Peak Hours during the billing month, plus an Off-Peak Energy Charge for all MWh consumed during Off-Peak Hours, in accordance with the following table:

On-Peak Energy Charge (\$ per MWh)	
Off-Peak Energy Charge (\$ per MWh)	

4. "On-Peak Hours" shall be from 8:00 a.m. to 8:00 p.m., Eastern prevailing time, Monday-Friday, excluding NERC holidays. All other hours are "Off-Peak Hours."

5. [REDACTED]

C. On and after [REDACTED] and through the end of the Term, Customer will take service from Seller under the following pricing structure:

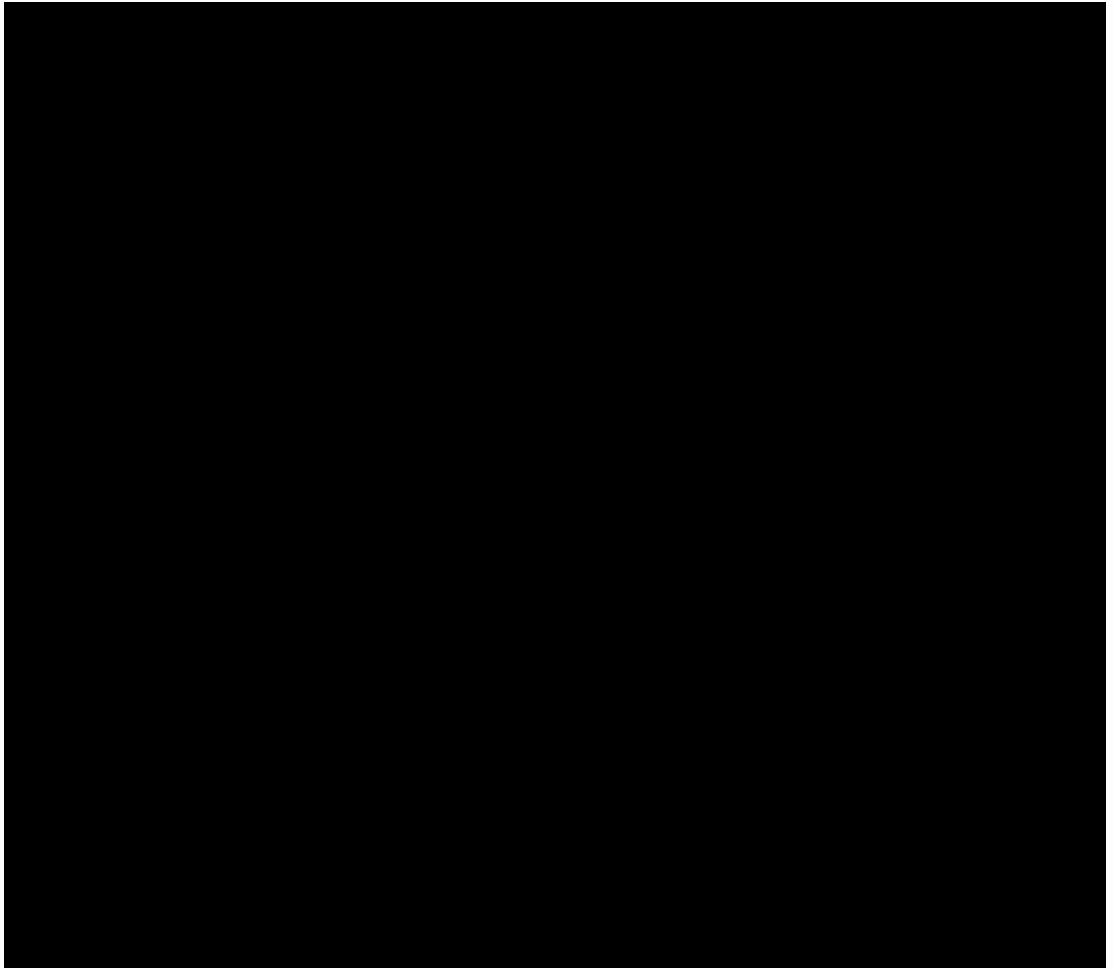


EXHIBIT D

SELLER'S CURRENT RATE SCHEDULE 13

Exhibit D

FOR Entire territory served
 Community, Town or City
 P.S.C. No. 41
 (Original) Sheet No. 60
 (Revised)
 Cancelling P.S.C. No.
 (Original) Sheet No. 42
 (Revised)

**MEADE COUNTY RURAL ELECTRIC
 COOPERATIVE CORPORATION**

Schedule 13	CLASSIFICATION OF SERVICE	RATE PER UNIT
Large Industrial Customers Served Under Special Contract For All Load Subject To The Big Rivers Large Industrial Customer Expansion Rate		
<p><u>Availability</u> This rate shall apply to those power requirements of any large consumer with load subject to service under terms and conditions set forth in the Large Industrial Customer Expansion Rate of Big Rivers Electric Corporation. This rate shall cease to be available should Big Rivers Large Industrial Expansion Rate be discontinued.</p> <p><u>Conditions of Service</u> Service hereunder shall be subject to the following conditions:</p> <ol style="list-style-type: none"> 1. The consumer must execute a written contract for electric service, or amend an existing contract; and 2. The consumer's service characteristics must qualify all or some portion of the consumer's load for service under the Big Rivers Large Industrial Customer Expansion Tariff; and 3. It shall be the responsibility of the consumer to coordinate through the Cooperative or its authorized agent all transactions that the Cooperative must make on behalf of the customer pursuant to the Big Rivers Large Industrial Customer Expansion Tariff. <p><u>Monthly Rate</u></p> <p>A. Wholesale Power Cost An amount equal to all the monthly charges levied by Big Rivers pursuant to the Big Rivers Large Industrial Customer Expansion Rate for wholesale electric service (including transmission service) hereunder.</p> <p>B. Retail Adders: Retail Adders shall be determined on a case by case basis for that portion of each consumer's load served under this tariff.</p>		

DATE OF ISSUE August 21, 2013
 Month/Date/Year
 DATE EFFECTIVE August 20, 2013
 Month/Date/Year
 ISSUED BY [Signature] Rates are subject to change and refund at the conclusion of Case No. 2013-00033
 (Signature of Officer)
 TITLE President / CEO
 BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION IN CASE NO. 2013-00033 DATED 8/20/13

KENTUCKY
 PUBLIC SERVICE COMMISSION
 JEFF R. DEROUEN
 EXECUTIVE DIRECTOR
 [Signature]
 EFFECTIVE
8/20/2013
 PURSUANT TO 807 KAR 5 011 SECTION 9 (1)

EXHIBIT E

**BIG RIVERS' PROPOSED LARGE INDUSTRIAL CUSTOMER EXPANSION RATE
TARIFF**



Your Touchstone Energy Cooperative

(Name of Utility)

For All Territory Served By
Cooperative's Transmission System
P.S.C. KY. No. 27

Original

SHEET NO. 30.01

CANCELLING P.S.C. KY. No.

SHEET NO.

RATES, TERMS AND CONDITIONS – SECTION I

STANDARD RATE – LICX – Large Industrial Customer Expansion

[N]

Applicable:

In all territory served by Big Rivers' transmission system.

Availability:

This schedule is available to any of the Member Cooperatives of Big Rivers for service to certain large industrial or commercial loads as follows:

- (1) To purchases made by a Member Cooperative for service to any New Customer initiating service after _____, 2019, including New Customers with a QF as defined in Rate Schedule QFP, that either initially contracts for fifty (50) MWs or more of capacity or whose aggregate peak load at any time amounts to fifty (50) MWs or greater (including any later increases to such load) in which case the entire load shall be thereafter subject to this rate schedule.
- (2) To purchases made by a Member Cooperative for expanded load requirements of Existing Customers, including Existing Customers with a QF as defined in Rate Schedule QFP, where:
 - (i) the customer was in existence and served under the then-effective Big Rivers Rate Schedule LIC any time during the Base Year and,
 - (ii) the expanded load requirements are increases in peak load which in the aggregate result in a peak demand which is at least fifty (50) MWs greater than the customer's Base Year peak demand.

DATE OF ISSUE month dd, 2019
DATE EFFECTIVE month dd, 2019

/s/ Robert W. Berry

ISSUED BY: Robert W. Berry,
President and Chief Executive Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420



Your Touchstone Energy Cooperative
(Name of Utility)

For All Territory Served By
Cooperative's Transmission System
P.S.C. KY. No. 27

Original SHEET NO. 30.02

CANCELLING P.S.C. KY. No.

SHEET NO.

RATES, TERMS AND CONDITIONS – SECTION 1

STANDARD RATE – LICX – Large Industrial Customer Expansion – (continued)

[N]

Availability (continued):

- (3) To purchases made by a Member Cooperative for the expanded load requirements of Existing Customers, including Existing Customers with a QF as defined in Rate Schedule QFP, where:
 - (i) the customer's load was in existence and served under the then-effective Big Rivers Rate Schedule RDS;
 - (ii) the expanded load requirements are increases in peak load which in aggregate result in a peak demand which is at least fifty (50) MWs greater than the customer's Base Year peak demand; *and*
 - (iii) the customer requires service through a dedicated delivery point.

For all loads meeting the availability criteria above, no other Big Rivers tariff rate will be available. As an alternative to this rate schedule, the Member Cooperative may negotiate a "Special Contract Rate" with Big Rivers for application on a case by case basis for loads meeting the availability criteria above.

To receive service hereunder, the Member Cooperative must:

- (1) Obtain from the customer an executed written contract or amend an existing contract, for electric service hereunder with terms acceptable to Big Rivers.
- (2) Enter into a contract with Big Rivers, or amend an existing contract with Big Rivers, to specify the terms and conditions of service between Big Rivers and the Member Cooperative regarding power supply for the customer.

DATE OF ISSUE month dd, 2019
DATE EFFECTIVE month dd, 2019

/s/ Robert W. Berry

ISSUED BY: Robert W. Berry,
President and Chief Executive Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420



Your Touchstone Energy® Cooperative

(Name of Utility)

For All Territory Served By
Cooperative's Transmission System
P.S.C. KY. No. _____ 27

Original SHEET NO. 30.03

CANCELLING P.S.C. KY. No. _____

SHEET NO. _____

RATES, TERMS AND CONDITIONS – SECTION 1

STANDARD RATE – LICX – Large Industrial Customer Expansion – (continued)

[N]

Rates and Charges:

Each month, each Member Cooperative shall be required to pay separately for each of its customers taking service under this tariff, in each case using that individual customer's contract demand (if any) or metered demand, as applicable.

For all delivery points served under this tariff, a Monthly Delivery Point Rate consisting of *the sum of the following*:

(1) Expansion Demand and Expansion Energy Rates:

The Expansion Demand rates, Expansion Energy rates, or both shall be established to correspond to the actual costs of power purchased by Big Rivers from Third-Party Suppliers selected by Big Rivers from which Big Rivers procures the supply and delivery of the type and quantity of service required by the Member Cooperative for resale to its customer. Such monthly costs shall include *the sum of all Third-Party Supplier charges*, including –

- (i) capacity and energy charges, charges to compensate for transmission losses on Third-Party transmission systems,
- (ii) all transmission and ancillary services charges on Third-Party transmission systems paid by Big Rivers to purchase such Expansion Demand and Expansion Energy and have it delivered to Big Rivers' transmission system, *and*
- (iii) all MISO expenses and costs.

(2) Expansion Demand Transmission Rate:

Big Rivers shall assess unbundled charges for network transmission service on the Big Rivers Transmission System according to the rates in the OATT applied to each kW taken as Expansion Demand.

DATE OF ISSUE _____ month dd, 2019
DATE EFFECTIVE _____ month dd, 2019

/s/ Robert W. Berry

ISSUED BY: Robert W. Berry,
President and Chief Executive Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420



Your Touchstone Energy Cooperative
(Name of Utility)

For All Territory Served By
Cooperative's Transmission System
P.S.C. KY. No. 27

Original SHEET NO. 30.04

CANCELLING P.S.C. KY. No. _____

_____ SHEET NO. _____

RATES, TERMS AND CONDITIONS – SECTION 1

STANDARD RATE – LICX – Large Industrial Customer Expansion – (continued)

[N]

Rates and Charges (continued):

(3) Ancillary Services Rates for Expansion Demand and Expansion Energy:

Big Rivers shall assess unbundled rates for all ancillary services required to serve load served under this schedule. Big Rivers shall supply the following six ancillary services as defined and set forth in the OATT –

- (i) Scheduling System Control and Dispatch;
- (ii) Reactive Supply and Voltage Control from Generation Sources Services;
- (iii) Regulation and Frequency Response Service;
- (iv) Energy Imbalance Service;
- (v) Operating Reserve - Spinning Reserve Service; *and*
- (vi) Operating Reserve - Supplemental Reserve Service.

(4) Big Rivers Adder:

In addition to the charges contained in Items (1), (2), and (3) of this Rates and Charges section, Big Rivers shall charge an adder determined on a case by case basis.

Metering:

Big Rivers shall provide an appropriate meter to all delivery points of Large Industrial Customer delivery point customers served under this rate schedule.

DATE OF ISSUE month dd, 2019
DATE EFFECTIVE month dd, 2019

/s/ Robert W. Berry

ISSUED BY: Robert W. Berry,
President and Chief Executive Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420



Your Touchstone Energy® Cooperative
(Name of Utility)

For All Territory Served By
Cooperative's Transmission System
P.S.C. KY. No. 27

Original SHEET NO. 30.05

CANCELLING P.S.C. KY. No. _____

_____ SHEET NO. _____

RATES, TERMS AND CONDITIONS – SECTION 1

STANDARD RATE – LICX – Large Industrial Customer Expansion – (continued)

[N]

Definitions:

Please see Section 4 for definitions common to all tariffs.

Definitions specific to this rate schedule are:

- (1) "Base Year" shall mean the twelve (12) calendar months from _____ 2018 through _____ 2019.
- (2) "Existing Customer" shall mean any customer of a Member Cooperative served as of _____, 2019.
- (3) "New Customer" shall mean any customer of a Member Cooperative commencing service on or after _____, 2019.
- (4) "Special Contract Rate" shall mean a rate negotiated with a Member Cooperative to serve the load requirements of a New Customer or an Existing Customer.
- (5) "Expansion Demand" and "Expansion Energy" *for the load requirements of a New Customer* shall be the Member Cooperative's total demand and energy requirements for the New Customer, including amounts sufficient to compensate for losses on the Big Rivers transmission system as set forth in the OATT.
- (6) "Expansion Demand" *for the expanded local requirements of an Existing Customer* shall be the amount in kW by which the customer's Billing Demand *exceeds* the customer's Base Year peak demand, *plus* an additional amount of demand sufficient to compensate for losses on the Big Rivers transmission system as set forth in Big Rivers' OATT. *In those months in which there is Expansion Demand*, "Expansion Energy" shall be the amount in kWh by which the customer's kWh usage for the current month *exceeds* the customer's actual kWh usage for the corresponding month of the Base Year, *plus* an additional amount of kWh sufficient to compensate for losses on the Big Rivers transmission system as set forth in the OATT.

DATE OF ISSUE month dd, 2019
DATE EFFECTIVE month dd, 2019

/s/ Robert W. Berry

ISSUED BY: Robert W. Berry,
President and Chief Executive Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420

**STANDARD RATE – LICX – Large Industrial Customer Expansion
Billing Form**

BIG RIVERS ELECTRIC CORP.

**INVOICE
P. O. BOX 24
MONTH ENDING mm/dd/yy**

HENDERSON, KY 42419-0024

**TO: LARGE INDUSTRIAL CUSTOMER EXPANSION
DELIVERY POINTS**

**ACCOUNT SERVICE FROM mm/dd/yy THRU mm/dd/yy
USAGE:**

USAGE	DEMAND	TIME	DAY	METER	MULT	KW DEMAND
		00:00 A. (or P)	mm/dd		1000	00,000
POWER FACTOR		BASE	PEAK	AVERAGE		KW DEMAND BILLED
EXPANSION DEMAND		00.00%	00.00%	00.00%		000,000
ENERGY		PREVIOUS	PRESENT	DIFFERENCE	MULT	KWH USED
EXPANSION ENERGY		00000.000	00000.000	0000.000	1000	00,000,000
EXPANSION DEMAND & EXPANSION ENERGY						
	EXPANSION DEMAND, INCLUDING LOSSES		kW	TIMES	\$	EQUALS \$
	P/F PENALTY		kW	TIMES	\$	EQUALS \$
	EXPANSION ENERGY, INCLUDING LOSSES		kWh	TIMES	\$	EQUALS \$
	OTHER EXPANSION SERVICE CHARGES					EQUALS \$
	SUBTOTAL					\$
EXPANSION DEMAND TRANSMISSION						
	LOAD RATIO SHARE OF NETWORK LOAD					\$
EXPANSION DEMAND & EXPANSION ENERGY ANCILLIARY SERVICES						
	SCHEDULING SYSTEM CONTROL & DISPATCH SERVICE					\$
	REACTIVE SUPPLY & VOLTAGE CONTROL FROM GENERATION SOURCES SERVICE					\$
	REGULATION & FREQUENCY RESPONSIVE SERVICE					\$
	ENERGY IMBALANCE SERVICE					\$
	OPERATING RESERVE – SPINNING RESERVE SERVICE					\$
	OPERATING RESERVE – SUPPLEMENTAL RESERVE SERVICE					\$
	SUBTOTAL					\$
BIG RIVERS AIDER	EXPANSION DEMAND		kW	TIMES	\$	EQUALS \$
						TOTAL AMOUNT DUE \$

----- LOAD FACTOR -----
ACTUAL BILLED
00.00% 00.00%

MILLS PER KWH
00.00

DUE IN IMMEDIATELY AVAILABLE FUNDS ON OR BEFORE THE FIRST WORKING DAY AFTER THE 24TH OF THE MONTH

DATE OF ISSUE month dd, 2019
DATE EFFECTIVE month dd, 2019

/s/ Robert W. Berry

ISSUED BY: **Robert W. Berry,**
President and Chief Executive Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420

EXHIBIT F

BIG RIVERS' CURRENT LARGE INDUSTRIAL CUSTOMER TARIFF



Your Transmission Energy Cooperative
(Name of Utility)

For All Territory Served By
Cooperative's Transmission System
P.S.C. KY. No. 27

Original SHEET NO. 26

CANCELLING P.S.C. KY. No. 26

Original SHEET NO. 25

RATES, TERMS AND CONDITIONS – SECTION I

STANDARD RATE – LIC – Large Industrial Customer

Applicable:

In all territory served by Big Rivers' transmission system.

Availability:

This schedule is available to any of Big Rivers' then existing Member Cooperatives for service to Large Industrial Customers served using dedicated delivery points. Retail service by a Member Cooperative to a Large Industrial Customer served using a dedicated delivery point shall be provided pursuant to the terms of a written retail service agreement which shall be subject to Big Rivers' approval.

Term:

This rate schedule shall take effect at 12:01 AM CPT on the effective date of this tariff.

Rates:

Rates Separate for Each Large Industrial Customer:

Each month each Member Cooperative shall be required to pay separately for each of its qualifying Large Industrial Customers taking service under this tariff, in each case using that individual Large Industrial Customer contract demand (if any) or metered demand, as applicable.

DATE OF ISSUE May 15, 2014
DATE EFFECTIVE February 1, 2014

/s/ Billie J. Richert

ISSUED BY: **Billie J. Richert,**
Vice President Accounting, Rates, and
Chief Financial Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420
*Issued by Authority of an Order of the Commission,
dated April 25, 2014, in Case No. 2013-00199*

**KENTUCKY
PUBLIC SERVICE COMMISSION**
**JEFF R. DEROUEN
EXECUTIVE DIRECTOR**
TARIFF BRANCH
Brent Kirkley
**EFFECTIVE
2/1/2014**
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)



Your Nearest Member Cooperative
(Name of Utility)

For All Territory Served By
Cooperative's Transmission System
P.S.C. KY. No. _____ 27

Original SHEET NO. _____ 27

CANCELLING P.S.C. KY. No. _____ 26

Original SHEET NO. _____ 26

RATES, TERMS AND CONDITIONS – SECTION 1

STANDARD RATE – LIC – Large Industrial Customer – (continued)

For all Large Industrial Customer delivery points, a Monthly Delivery Point Rate consisting of:

A Demand Charge of:

All kW of billing demand at \$10.7150 per kW.

[R]

Plus,

An Energy Charge of:

All kWh per month at \$0.038050 per kWh.

[I]

No separate transmission or ancillary services charges shall apply to these rates.

Charges:

Each month, each Member Cooperative shall pay on behalf of each of its large industrial customers taking service under this rate schedule a demand charge calculated by multiplying the demand charge by the higher of the maximum integrated metered thirty-minute non-coincident peak demand or the established contact demand, if any, plus an energy charge calculated by multiplying the energy charge by the metered consumption of kWh in that month.

The Following adjustment clauses and riders shall apply to service under this tariff.

- Voluntary Price Curtailable Service Rider
- Renewable Resource Energy Service
- Rebate Adjustment
- Environmental Surcharge
- Fuel Adjustment Clause
- Member Rate Stability Mechanism
- Unwind Surcredit
- Non-Smelter Non-FAC PPA
- Rural Economic Reserve Rider

[T]

DATE OF ISSUE May 15, 2014
DATE EFFECTIVE February 1, 2014

/s/ Billie J. Richert

ISSUED BY: **Billie J. Richert,**
Vice President Accounting, Rates, and
Chief Financial Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420
*Issued by Authority of an Order of the Commission,
dated April 25, 2014, in Case No. 2013-00199*

KENTUCKY PUBLIC SERVICE COMMISSION
JEFF R. DEROUEN EXECUTIVE DIRECTOR
TARIFF BRANCH
<i>Brent Kinley</i>
EFFECTIVE 2/1/2014
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)



Big Rivers Electric Corporation

(Name of Utility)

For All Territory Served By
Cooperative's Transmission System

P.S.C. KY. No. 27

Original SHEET NO. 28

CANCELLING P.S.C. KY. No. 26

Original SHEET NO. 27

RATES, TERMS AND CONDITIONS – SECTION 1

STANDARD RATE – LIC – Large Industrial Customer – (continued)

Billing:

Big Rivers shall bill Member no later than the first working day after the 13th of the month for the previous month's service hereunder for Large Industrial Customers. Member shall pay Big Rivers in immediately available funds on the first working day after the 24th of the month. If Member shall fail to pay any such bill within such prescribed period, Big Rivers may discontinue delivery of electric power and energy hereunder upon five (5) days written notice to Member of its intention to do so. Such discontinuance for non-payment shall not in any way affect the obligation of Member to pay the take-or-pay obligation of a particular Large Industrial Customer.

DATE OF ISSUE May 15, 2014
DATE EFFECTIVE February 1, 2014

/s/ Billie J. Richert

ISSUED BY: **Billie J. Richert,**
Vice President Accounting, Rates, and
Chief Financial Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420
*Issued by Authority of an Order of the Commission,
dated April 25, 2014, in Case No. 2013-00199*

KENTUCKY PUBLIC SERVICE COMMISSION
JEFF R. DEROUEN EXECUTIVE DIRECTOR
TARIFF BRANCH <i>Brent Kirtley</i>
EFFECTIVE 2/1/2014
PURSUANT TO 807 KAR 8:011 SECTION 9 (1)



Big Rivers Electric Corporation
(Name of Utility)

For All Territory Served By
Cooperative's Transmission System
P.S.C. KY. No. 27

Original SHEET NO. 29

CANCELLING P.S.C. KY. No. 26

Original SHEET NO. 28

RATES, TERMS AND CONDITIONS – SECTION I

STANDARD RATE – LIC – Large Industrial Customer – (continued) [T]

Bill Format [T]

Please see Section 4 – Definitions for certain terms used on this Bill Format. [T]

BIG RIVERS ELECTRIC CORPORATION		INVOICE		P. O. BOX 24		HENDERSON, KY 42419-0024	
TO: Member's Name		MONTH ENDING		mm/dd/yy			
SUBSTATION	THRU	mm/dd/yy	THRU	mm/dd/yy	mm/dd/yy	THRU	mm/dd/yy
SERVICE FROM:	THRU	mm/dd/yy	THRU	mm/dd/yy	BILLED PEAK	mm/dd	time
USAGE	DEMAND	TIME	DAY	METER	MULT.	KW DEMAND	
		00:00 A (or P)	mm/dd		1,000	00,000	
POWER FACTOR	BASE	PEAK	AVERAGE	BILLED			
	00.00%	00.00%	00.00%	PEAK			
ENERGY	PREVIOUS	PRESENT	DIFFERENCE	MULT.	KWH / USED		
	00000.000	00000.000	00000.000	1,000	00,000,000		
ACTUAL DEMAND	0,000	KW times	\$00 000000	EQUALS	\$ 00,000 00		
ADJUSTMENTS / REFUNDS	0,000	KW times	\$00 000000	EQUALS	00,000.00		
				SUBTOTAL	\$ 00,000 00		
ENERGY	0,000,000	KWh times	\$0.000000	EQUALS	\$ 00,000.00		
ADJUSTMENTS / REFUNDS	0,000,000	KWh times	\$0.000000	EQUALS	00,000.00		
				SUBTOTAL	\$ 00,000.00		
				DEMAND AND ENERGY	\$ 00,000 00		
FUEL ADJUSTMENT CLAUSE	0,000,000	KWh times	\$0.000000	EQUALS	\$ 00,000.00		
NON-SMELTER NON-FAC PPA	0,000,000	KWh times	\$0.000000	EQUALS	00,000.00		
				SUBTOTAL	\$ 00,000.00		
ENVIRONMENTAL SURCHARGE	\$00,000.00	Times	0 00%	EQUALS	\$ 00,000 00		
POWER FACTOR PENALTY	0,000	KW times	\$00 000000	EQUALS	00,000 00		
UNWIND SURCREDIT	0,000,000	KWh times	\$0.000000	EQUALS	00,000 00		

[T] ↓

DATE OF ISSUE May 15, 2014
DATE EFFECTIVE February 1, 2014

/s/ Billie J. Richert

ISSUED BY: **Billie J. Richert,**
Vice President Accounting, Rates, and
Chief Financial Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420
*Issued by Authority of an Order of the Commission,
dated April 25, 2014, in Case No. 2013-00199*

**KENTUCKY
PUBLIC SERVICE COMMISSION**

**JEFF R. DEROUEN
EXECUTIVE DIRECTOR**

TARIFF BRANCH

Brent Kirkley

EFFECTIVE
2/1/2014
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)



Your Transmission Partner

(Name of Utility)

For All Territory Served By
Cooperative's Transmission System

P.S.C. KY. No. 27

Original SHEET NO. 30

CANCELLING P.S.C. KY. No. 26

Original SHEET NO. 28

RATES, TERMS AND CONDITIONS – SECTION 1

STANDARD RATE – LIC – Large Industrial Customer – (continued)

[T]

Bill Format (continued)

Please see Section 4 – Definitions for certain terms used on this Bill Format.

MRSM ADJUSTMENT					00,000 00
MRSM – BASE RATE CREDIT					00,000 00
MRSM – TRANSMISSION LARGE INDUSTRIAL ADJUSTMENT					00,000.00
MRSM – TRANSMISSION LARGE INDUSTRIAL BASE RATE CREDIT					00,000 00
RER – BUSINESS ADJUSTMENT					00,000.00
RER – BUSINESS BASE RATE CREDIT					00,000 00
CURTAILABLE SERVICE RIDER					00,000 00
RENEWABLE RESOURCE ENERGY	0,000,000	KWh times	\$0.000000	EQUALS	00,000 00
REBATE ADJUSTMENT					00,000 00
ADJUSTMENT	0,000,000	KWh times	\$0.000000	EQUALS	00,000 00
				SUBTOTAL	\$ 00,000 00
				TOTAL AMOUNT DUE	\$ 00,000 00

----- LOAD FACTOR -----	----- POWER FACTOR -----	
ACTUAL	BILLED	BASE
00.00%	00 00%	00 00%
		AVERAGE
		00 00%
		@ PEAK
		00 00%
		MILLS PER KWH
		00 00

DUE IN IMMEDIATELY AVAILABLE FUNDS ON OR BEFORE THE FIRST WORKING DAY AFTER THE 24TH OF THE MONTH

DATE OF ISSUE May 15, 2014
DATE EFFECTIVE February 1, 2014

/s/ Billie J. Richert

ISSUED BY: Billie J. Richert,
Vice President Accounting, Rates, and
Chief Financial Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420
*Issued by Authority of an Order of the Commission,
dated April 25, 2014, in Case No. 2013-00199*

KENTUCKY PUBLIC SERVICE COMMISSION
JEFF R. DEROUEN EXECUTIVE DIRECTOR
TARIFF BRANCH
<i>Brent Kirkley</i>
EFFECTIVE 2/1/2014 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

**Big Rivers Electric Corporation
Case No. 2020-00064
Nucor Gross Margins**

2021 2022 2023 2024 2025 2026 2027

Nucor Contract Revenue

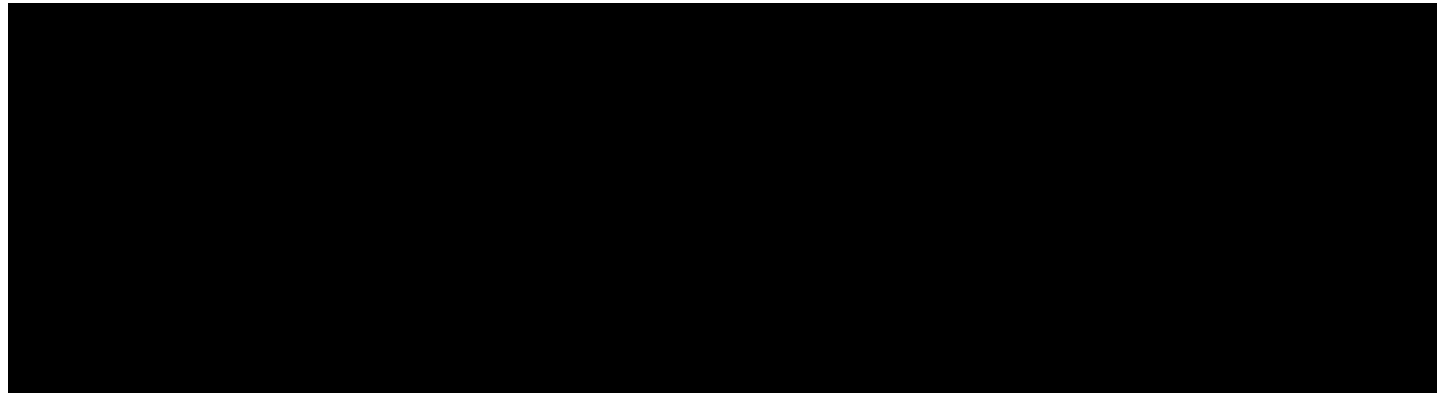
Cost:

Load Cost

Capacity

Total Cost

Nucor Gross Margin



**Big Rivers Electric Corporation
Case No. 2020-00064
Nucor Gross Margins**

2028 2029 2030 2031 2032 2033

Nucor Contract Revenue

Cost:

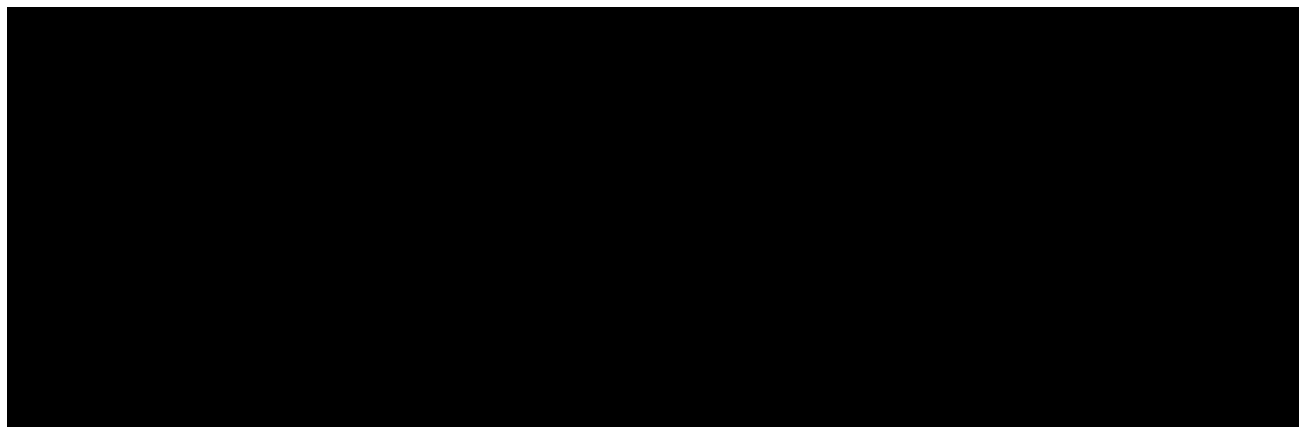
[Redacted]

Load Cost

Capacity

Total Cost

Nucor Gross Margin



BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

1 **Item 29)** *Line 12 of page 25 through line 2 of page 26 of the Direct*
2 *Testimony of Paul G. Smith, provides a financial forecast with estimated*
3 *TIER projections. Please provide all financial forecast calculations, models,*
4 *and associated spreadsheets used to develop these projects in electronic*
5 *spreadsheet format (e.g., .xls).*

6

7 **Response)** On the CONFIDENTIAL electronic media accompanying these
8 responses, please see two (2) Excel files, one with Big Rivers' 2020-2033 Long-Term
9 Forecast and the second with Long-Term Forecast assumptions.

10

11 **Witness)** Paul G. Smith

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064

Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020

April 3, 2020

1 **Item 30)** *Please provide an electronic spreadsheet copy of Exhibit Smith-*
2 *6, complete with all formulas intact including all referenced cells or data.*

3

4 **Response)** Please see the Excel version of Exhibit Smith-6 provided with these
5 responses in electronic format.

6

7

8 **Witness)** Paul G. Smith

9

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

1 **Item 31)** *Please provide an electronic spreadsheet copy of Exhibit Smith-*
2 *7, complete with all formulas intact including all referenced cells or data.*

3

4 **Response)** Please see the Excel version of Exhibit Smith-7 provided with these
5 responses in electronic format.

6

7

8 **Witness)** Paul G. Smith

9

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

1 **Item 32) *Line 5 of page 6 through line 5 of page 7 of the Direct Testimony***
2 ***of Robert W. Berry discusses Big Rivers' strategies since 2013 to mitigate the***
3 ***impacts of negative impacts of significant decreases in load. Regarding this***
4 ***subject please provide the following:***

5 ***a. All updates to the Load Mitigation Plan provided to the RUS, the***
6 ***Commission or the Big Rivers Board of Directors and management***
7 ***in the past 5 years. Include the latest completed Load Mitigation***
8 ***Plan with all updates incorporated.***

9 ***b. All updates to the Business Plan provided to the RUS, the***
10 ***Commission or the Big Rivers Board of Directors and management***
11 ***in the past 5 years. Include the latest completed Business Plan.***

12 ***c. Provide an electronic spreadsheet file copy (e.g., .xls) of the***
13 ***financial forecast, including all supporting and referenced***
14 ***databases and spreadsheets, with working formulas and referenced***

Case No. 2020-00064
Response to AG 1-32

Witnesses: Robert W. Berry (*a. and b. only*) and
Paul G. Smith (*c. and d. only*)

Page 1 of 4

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064

Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020

April 3, 2020

1 *data intact, used in the Load Mitigation Plan and Business Plan*
2 *developed for this filing.*

3 *d. Provide an electronic spreadsheet copy (e.g., .xls) of the financial*
4 *forecast, including all supporting and referenced databases and*
5 *spreadsheets, with working formulas and referenced data intact,*
6 *used in any current Load Mitigation Plan and Business Plan that*
7 *has developed subsequent to the preparation and submission of this*
8 *filing.*

9

10 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
11 unduly burdensome. Big Rivers also objects to this request on the grounds that it
12 seeks information that is irrelevant and not likely to lead to the discovery of
13 admissible evidence. The Attorney General has agreed to limit this request to include
14 documents only to the extent they were created or used on or after January 1, 2019.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064

Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020

April 3, 2020

1 In accordance with those limitations, and without waiving Big Rivers' objections to
2 this request, Big Rivers responds as follows:

3 a. Big Rivers has no documents responsive to this request that were created
4 or used on or after January 1, 2019.

5 b. For Big Rivers' 2020 'Business Plan,' please see Big Rivers' response to Item
6 50 of the Attorney General's data requests. As with the 2020 'Business
7 Plan,' the 2019 'Business Plan' is Big Rivers' Strategic Plans for that year.
8 Big Rivers' 2019 Strategic Plan is provided as a **CONFIDENTIAL**
9 attachment to this response.

10 c. Big Rivers has no documents responsive to this request in that there were
11 no Load Mitigation Plan or Business Plan developed specifically for this
12 filing. For Big Rivers' latest financial forecast, please see Big Rivers'
13 response to Item 29 of the Attorney General's first set of data requests.

14 d. Big Rivers has no documents responsive to this request.
15

BIG RIVERS ELECTRIC CORPORATION

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1 **Witnesses)** Robert W. Berry (*a. and b. only*),

2 Paul G. Smith (*c. and d. only*)

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
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1 **Item 34)** *Page 11 of the Direct Testimony of Robert W. Berry, lines 6-15*
2 *discusses Big Rivers' Board unanimous approval of Big Rivers' relief*
3 *requested in this application. Regarding this subject please provide all*
4 *presentations, written communications and minutes related to this board*
5 *discussion.*

6

7 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
8 unduly burdensome. Notwithstanding these objections, and without waiving them,
9 please see the **CONFIDENTIAL** presentation provided in response to Item 27b of
10 the Attorney General's initial request for information.

11

12 **Witness)** Robert W. Berry

13

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
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1 **Item 35)** *Page 28 of the Direct Testimony of Robert W. Berry, lines 4-15*
2 *discusses Big Rivers' intention to finance a portion of its Environmental*
3 *Compliance Plan projects with new debt. Regarding this subject please*
4 *provide Big Rivers' current ECP project financing plan along with*
5 *supporting data, forecasts, projections and assumptions in electronic format*
6 *with formulas intact where applicable.*

7

8 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
9 unduly burdensome. Big Rivers further objects to this request on the grounds that it
10 seeks information that is irrelevant and not likely to lead to the discovery of
11 admissible evidence because matters pertaining to Big Rivers' Environmental
12 Compliance Plan are subject to Commission review in Case No. 2019-000435.
13 Notwithstanding these objections, and without waiving them, please see page 18,
14 lines 1-13, of the Direct Testimony of Paul G. Smith which is Application Exhibit F

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1 in Case No. 2019-00435.¹ Also, please see Big Rivers' response to Item 29 of the

2 Attorney General's first set of data requests.

3

4 **Witness)** Paul G. Smith

¹ *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2020 Environmental Compliance Plan, Authority to Recover Costs through a Revised Environmental Surcharge and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief – Case No. 2019-00435 [Filed February 7, 2020]*

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Response to the Office of the Attorney General's
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1 **Item 36) *Regarding the January 16, 2019 S&P Credit Opinion summary***

2 ***included as Exhibit Berry-5, please provide the following:***

3 ***a. Big Rivers' projections used to make the statement that "...***
4 ***nonmember contracts will reduce its exposure to market revenues***
5 ***from 37% in 2017 to 9% in 2022. ..."*** and all updated related market
6 ***revenue projections since those provided to S&P to base the credit***
7 ***opinion.***

8 ***b. Big Rivers debt balance projections used to make the statement that***
9 ***"The utility projects debt balances will remain relatively stable***
10 ***through 2022. ..."*** and all updated related debt balance projections
11 ***since those provided to S&P to base the credit opinion.***

12 ***c. Regarding the statement that "BREC is a price-taker when it sells***
13 ***its power plants output in competitive markets. ..."*** provide the
14 ***following for each year from 2017-2019:***

BIG RIVERS ELECTRIC CORPORATION

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- 1 *i. All revenue from energy and capacity sold into the MISO market*
2 *by Big Rivers on a monthly and resource basis.*
- 3 *ii. All fuel and other variable costs for energy sold into the MISO*
4 *market by Big Rivers for each resource on a monthly total and*
5 *monthly average per megawatt hour basis.*
- 6 *iii. Monthly MISO average on peak and off-peak day ahead and real*
7 *time LMPs for each BREC settlement location.*
- 8 *iv. On a monthly basis, provide the percent of Big Rivers' energy*
9 *sales into the MISO market that were committed day ahead and*
10 *the percent that was from self-commitment sold at real time*
11 *LMPs on a resource basis.*

12

13 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
14 unduly burdensome. Big Rivers also objects to this request on the grounds that it

BIG RIVERS ELECTRIC CORPORATION
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1 seeks information that is irrelevant and not likely to lead to the discovery of
2 admissible evidence. The Attorney General has agreed to limit this request to include
3 documents only to the extent that they pertain to current information and
4 information related to the prior year. In accordance with these limitations, and
5 without waiving Big Rivers' objections to this request, Big Rivers responds as follows:

6 a. Please see page 19 of the **CONFIDENTIAL** December 2018 Rating Agency
7 Presentation provided with these responses.

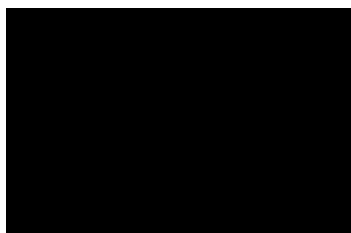
8 b. Per the 2019-2022 Budget and Financial Plan, the projected total long-term
9 debt balance:

10 2019 = \$751.7 million,

11

12

13



and

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
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1 For the most current projected total long-term debt balance, please see Big
2 Rivers' response to Item 29 of the Attorney General's first set of data
3 requests.

- 4 c.
- 5 i. Please see the attached schedule. Big Rivers does not have this
6 information by resource and, therefore, is providing monthly
7 information. MISO revenues represent all revenue from energy sales
8 offset by contra revenues associated with physical hedges at IndyHub.
- 9 ii. Big Rivers does not have this information by resource or month and,
10 therefore, is providing the information in the table below.

Big Rivers Electric Corporation Fuel and Variable O&M of Energy Sold into MISO			
		Amount	\$/ MWh
2017	Fuel	\$ 130.1 million	\$ 23.91
	Variable O&M	\$ 24.4 million	\$ 4.47
2018	Fuel	\$ 125.3 million	\$ 22.78
	Variable O&M	\$ 27.7 million	\$ 5.04
2019	Fuel	\$ 109.7 million	\$ 22.11
	Variable O&M	\$ 22.7 million	\$ 4.56

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1 iii. Please see the attached schedule.

2 iv. Please see the attached schedule.

3

4 **Witnesses)** Paul G. Smith (*a. and b. only*),

5 Mark Eacret (*c. only*)

Big Rivers Electric Corporation
Case No. 2020-00064
Energy and Capacity Revenues from MISO Sales

Date	Energy	Capacity
Jan-19	(\$568,120.35)	\$50,363.84
Feb-19	\$3,336,716.30	\$76,022.52
Mar-19	\$523,526.04	\$82,617.79
Apr-19	(\$787,031.76)	\$79,952.70
May-19	\$281,839.03	\$82,617.79
Jun-19	\$3,336,438.73	(\$1,121.40)
Jul-19	\$3,781,959.58	(\$1,158.78)
Aug-19	\$1,788,794.13	(\$1,158.78)
Sep-19	\$356,923.47	(\$1,121.40)
Oct-19	(\$942,055.53)	(\$1,158.78)
Nov-19	\$1,515,116.81	(\$1,121.40)
Dec-19	(\$594,168.57)	(\$1,158.78)

Big Rivers Electric Corporation
Case No. 2020-00064
Monthly MISO Average LMPs - DA On-Peak

Date	BREC.BREC (DALMP) Average	BREC. WILSON1	BREC. GREEN1	BREC. GREEN2	BREC. COLE1	BREC. COLE2	BREC. COLE3	BREC. HMP1	BREC. HMP2	BREC. REID1	BREC. REIDCT
Jan-19	\$36.30	\$35.98	\$34.34	\$34.34	\$38.99	\$38.99	\$38.99	\$34.34	\$34.34	\$34.19	\$34.19
Feb-19	\$29.13	\$28.59	\$28.42	\$28.42	\$29.29	\$29.29	\$29.29			\$28.35	\$28.35
Mar-19	\$31.08	\$29.97	\$29.36	\$29.36	\$30.99	\$30.99	\$30.99			\$29.38	\$29.38
Apr-19	\$31.46	\$30.53	\$31.56	\$31.56	\$31.06	\$31.06	\$31.06			\$31.67	\$31.67
May-19	\$31.52	\$29.17	\$38.14	\$30.87	\$30.64	\$30.64	\$30.64			\$36.34	\$36.34
Jun-19	\$28.02	\$27.17	\$27.69	\$27.40	\$27.71	\$27.71	\$27.71			\$27.65	\$27.65
Jul-19	\$32.70	\$31.37	\$31.81	\$31.81	\$32.82	\$32.82	\$32.82			\$31.73	\$31.73
Aug-19	\$29.37	\$28.42	\$29.14	\$29.14	\$29.27	\$29.27	\$29.27			\$29.06	\$29.06
Sep-19	\$33.88	\$31.33	\$36.18	\$36.18	\$32.64	\$32.64	\$32.64			\$36.13	\$36.13
Oct-19	\$29.43	\$26.12	\$30.72	\$30.72	\$29.20	\$29.20	\$29.20			\$30.51	\$30.51
Nov-19	\$34.50	\$31.69	\$36.65	\$36.65	\$33.45	\$33.45	\$33.45			\$36.98	\$36.98
Dec-19	\$27.10	\$27.14	\$27.34	\$27.34	\$26.87	\$26.87	\$26.87				\$27.34

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Attachment for Response to AG 1-36c.iii.

Witness: Mark J. Eacret

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Big Rivers Electric Corporation
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Monthly MISO Average LMPs - DA Off-Peak

Date	BREC.BREC (DALMP) Average	BREC. WILSON1	BREC. GREEN1	BREC. GREEN2	BREC. COLE1	BREC. COLE2	BREC. COLE3	BREC. HMP1	BREC. HMP2	BREC. REID1	BREC. REIDCT
Jan-19	\$27.15	\$26.78	\$25.86	\$25.86	\$27.83	\$27.83	\$27.83	\$25.86	\$25.86	\$25.81	\$25.81
Feb-19	\$24.10	\$23.74	\$23.65	\$23.65	\$24.45	\$24.45	\$24.45			\$23.59	\$23.59
Mar-19	\$25.70	\$25.18	\$25.02	\$25.02	\$25.70	\$25.70	\$25.70			\$25.02	\$25.02
Apr-19	\$24.00	\$23.54	\$23.68	\$23.68	\$24.00	\$24.00	\$24.00			\$23.67	\$23.67
May-19	\$22.70	\$22.06	\$23.10	\$22.16	\$22.62	\$22.62	\$22.62			\$22.92	\$22.92
Jun-19	\$21.45	\$20.89	\$21.25	\$21.05	\$21.38	\$21.38	\$21.38			\$21.25	\$21.25
Jul-19	\$23.66	\$22.85	\$23.30	\$23.30	\$23.77	\$23.77	\$23.77			\$23.27	\$23.27
Aug-19	\$21.19	\$20.59	\$21.14	\$21.14	\$21.10	\$21.10	\$21.10			\$21.11	\$21.11
Sep-19	\$22.84	\$21.48	\$24.11	\$24.11	\$22.07	\$22.07	\$22.07			\$24.08	\$24.08
Oct-19	\$21.48	\$19.71	\$21.85	\$21.85	\$21.76	\$21.76	\$21.76			\$21.76	\$21.76
Nov-19	\$26.25	\$24.99	\$27.65	\$27.65	\$25.21	\$25.21	\$25.21			\$27.85	\$27.85
Dec-19	\$21.03	\$20.70	\$21.00	\$21.00	\$20.99	\$20.99	\$20.99				\$20.98

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Attachment for Response to AG 1-36c.iii.

Witness: Mark J. Eacret

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**Big Rivers Electric Corporation
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Monthly MISO Average LMPs - RT On-Peak**

Date	BREC.BREC (DALMP) Average	BREC. WILSON1	BREC. GREEN1	BREC. GREEN2	BREC. COLE1	BREC. COLE2	BREC. COLE3	BREC. HMP1	BREC. HMP2	BREC. REID1	BREC. REIDCT
Jan-19	\$35.79	\$34.86	\$35.22	\$35.22	\$36.64	\$36.64	\$36.64	\$35.22	\$35.22	\$35.18	\$35.18
Feb-19	\$28.97	\$28.34	\$28.36	\$28.36	\$29.08	\$29.08	\$29.08			\$28.37	\$28.37
Mar-19	\$29.03	\$27.73	\$28.62	\$28.62	\$28.76	\$28.76	\$28.76			\$28.59	\$28.59
Apr-19	\$33.09	\$31.67	\$32.96	\$32.96	\$31.71	\$31.71	\$31.71			\$32.99	\$32.99
May-19	\$31.63	\$28.51	\$45.71	\$29.05	\$29.96	\$29.96	\$29.96			\$43.52	\$43.52
Jun-19	\$27.01	\$25.96	\$26.61	\$26.61	\$27.29	\$27.29	\$27.29			\$26.60	\$26.60
Jul-19	\$32.88	\$31.86	\$31.91	\$31.91	\$33.42	\$33.42	\$33.42			\$31.84	\$31.84
Aug-19	\$30.70	\$26.72	\$35.80	\$35.80	\$28.66	\$28.66	\$28.66			\$35.39	\$35.39
Sep-19	\$35.23	\$31.43	\$39.18	\$39.18	\$33.78	\$33.78	\$33.78			\$39.12	\$39.12
Oct-19	\$31.85	\$28.98	\$31.90	\$31.90	\$32.72	\$32.72	\$32.72			\$31.79	\$31.79
Nov-19	\$32.15	\$30.86	\$32.96	\$32.96	\$31.26	\$31.26	\$31.26			\$33.06	\$33.06
Dec-19	\$24.95	\$24.55	\$25.04	\$25.04	\$24.84	\$24.84	\$24.84				\$25.05

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Attachment for Response to AG 1-36c.iii.

Witness: Mark J. Eacret

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Monthly MISO Average LMPs - RT Off-Peak

Date	BREC.BREC (DALMP) Average	BREC. WILSON1	BREC. GREEN1	BREC. GREEN2	BREC. COLE1	BREC. COLE2	BREC. COLE3	BREC. HMP1	BREC. HMP2	BREC. REID1	BREC. REIDCT
Jan-19	\$25.19	\$24.73	\$24.57	\$24.57	\$25.38	\$25.38	\$25.38	\$24.57	\$24.57	\$24.54	\$24.54
Feb-19	\$23.32	\$22.79	\$22.89	\$22.89	\$23.39	\$23.39	\$23.39			\$22.90	\$22.90
Mar-19	\$25.26	\$24.73	\$24.67	\$24.67	\$25.14	\$25.14	\$25.14			\$24.66	\$24.66
Apr-19	\$24.37	\$23.94	\$23.94	\$23.94	\$24.41	\$24.41	\$24.41			\$23.92	\$23.92
May-19	\$21.25	\$20.78	\$20.90	\$20.90	\$21.23	\$21.23	\$21.23			\$20.90	\$20.90
Jun-19	\$21.37	\$20.89	\$21.20	\$21.20	\$21.27	\$21.27	\$21.27			\$21.21	\$21.21
Jul-19	\$23.94	\$23.29	\$23.56	\$23.56	\$24.01	\$24.01	\$24.01			\$23.52	\$23.52
Aug-19	\$21.31	\$19.12	\$23.29	\$23.29	\$20.00	\$20.00	\$20.00			\$23.21	\$23.21
Sep-19	\$22.77	\$20.49	\$24.76	\$24.76	\$21.39	\$21.39	\$21.39			\$24.67	\$24.67
Oct-19	\$23.14	\$20.20	\$25.57	\$25.57	\$22.62	\$22.62	\$22.62			\$25.47	\$25.47
Nov-19	\$24.91	\$23.84	\$25.44	\$25.44	\$23.69	\$23.69	\$23.69			\$25.54	\$25.54
Dec-19	\$20.94	\$20.68	\$21.00	\$21.00	\$20.95	\$20.95	\$20.95				\$21.00

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Attachment for Response to AG 1-36c.iii.

Witness: Mark J. Eacret

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Big Rivers Electric Corporation
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Big Rivers Energy Sales into MISO

YEAR	MONTH	NODE_NAME	DA_SALES	RT_SALES	TOTAL_SALES	DA_PCT_TOTAL	RT_PCT_TOTAL
2019	01	BREC.GREEN1	157,434.00	4,120.27	161,554.27	97.4%	2.6%
2019	02	BREC.GREEN1	143,891.50	3,902.30	147,793.80	97.4%	2.6%
2019	03	BREC.GREEN1	151,119.00	7,340.31	158,459.31	95.4%	4.6%
2019	04	BREC.GREEN1	132,535.80	2,463.48	134,999.28	98.2%	1.8%
2019	05	BREC.GREEN1	134,280.20	8,258.30	142,538.50	94.2%	5.8%
2019	06	BREC.GREEN1	116,919.60	4,869.96	121,789.56	96.0%	4.0%
2019	07	BREC.GREEN1	126,461.10	3,941.59	130,402.69	97.0%	3.0%
2019	08	BREC.GREEN1	116,578.80	994.53	117,573.33	99.2%	0.8%
2019	09	BREC.GREEN1	103,246.20	7,337.98	110,584.18	93.4%	6.6%
2019	10	BREC.GREEN1	71,751.60	11,151.38	82,902.98	86.5%	13.5%
2019	11	BREC.GREEN1	23,735.70	28,405.39	52,141.09	45.5%	54.5%
2019	12	BREC.GREEN1	41,108.90	16,600.95	57,709.85	71.2%	28.8%

Big Rivers Electric Corporation
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Big Rivers Energy Sales into MISO

YEAR	MONTH	NODE_NAME	DA_SALES	RT_SALES	TOTAL_SALES	DA_PCT_TOTAL	RT_PCT_TOTAL
2019	01	BREC.GREEN2	151,583.10	2,246.32	153,829.42	98.5%	1.5%
2019	02	BREC.GREEN2	126,078.00	4,511.98	130,589.98	96.5%	3.5%
2019	03	BREC.GREEN2	99,465.80	2,264.56	101,730.36	97.8%	2.2%
2019	04	BREC.GREEN2	142,383.50	3,316.57	145,700.07	97.7%	2.3%
2019	05	BREC.GREEN2	137,733.80	2,311.90	140,045.70	98.3%	1.7%
2019	06	BREC.GREEN2	120,164.20	2,108.21	122,272.41	98.3%	1.7%
2019	07	BREC.GREEN2	124,072.30	1,672.15	125,744.45	98.7%	1.3%
2019	08	BREC.GREEN2	86,762.40	1,048.75	87,811.15	98.8%	1.2%
2019	09	BREC.GREEN2	64,732.50	9,032.84	73,765.34	87.8%	12.2%
2019	10	BREC.GREEN2	48,581.40	3,039.46	51,620.86	94.1%	5.9%
2019	11	BREC.GREEN2	75,444.10	7,488.00	82,932.10	91.0%	9.0%
2019	12	BREC.GREEN2	-	-	-	0.0%	0.0%

Big Rivers Electric Corporation
Case No. 2020-00064
Big Rivers Energy Sales into MISO

YEAR	MONTH	NODE_NAME	DA_SALES	RT_SALES	TOTAL_SALES	DA_PCT_TOTAL	RT_PCT_TOTAL
2019	01	BREC.REID1	-	-	-	0.0%	0.0%
2019	02	BREC.REID1	-	-	-	0.0%	0.0%
2019	03	BREC.REID1	-	-	-	0.0%	0.0%
2019	04	BREC.REID1	-	-	-	0.0%	0.0%
2019	05	BREC.REID1	-	-	-	0.0%	0.0%
2019	06	BREC.REID1	-	-	-	0.0%	0.0%
2019	07	BREC.REID1	-	-	-	0.0%	0.0%
2019	08	BREC.REID1	-	-	-	0.0%	0.0%
2019	09	BREC.REID1	-	-	-	0.0%	0.0%
2019	10	BREC.REID1	-	-	-	0.0%	0.0%
2019	11	BREC.REID1	-	-	-	0.0%	0.0%

Big Rivers Electric Corporation
Case No. 2020-00064
Big Rivers Energy Sales into MISO

YEAR	MONTH	NODE_NAME	DA_SALES	RT_SALES	TOTAL_SALES	DA_PCT_TOTAL	RT_PCT_TOTAL
2019	01	BREC.REIDCT	260.00	650.92	910.92	28.5%	71.5%
2019	02	BREC.REIDCT	-	404.38	404.38	0.0%	100.0%
2019	03	BREC.REIDCT	-	-	-	0.0%	0.0%
2019	04	BREC.REIDCT	-	131.05	131.05	0.0%	100.0%
2019	05	BREC.REIDCT	944.00	235.25	1,179.25	80.1%	19.9%
2019	06	BREC.REIDCT	-	-	-	0.0%	0.0%
2019	07	BREC.REIDCT	-	147.00	147.00	0.0%	100.0%
2019	08	BREC.REIDCT	168.00	277.78	445.78	37.7%	62.3%
2019	09	BREC.REIDCT	-	572.92	572.92	0.0%	100.0%
2019	10	BREC.REIDCT	-	970.63	970.63	0.0%	100.0%
2019	11	BREC.REIDCT	-	930.89	930.89	0.0%	100.0%
2019	12	BREC.REIDCT	-	104.41	104.41	0.0%	100.0%

**Big Rivers Electric Corporation
Case No. 2020-00064
Big Rivers Energy Sales into MISO**

YEAR	MONTH	NODE_NAME	DA_SALES	RT_SALES	TOTAL_SALES	DA_PCT_TOTAL	RT_PCT_TOTAL
2019	01	BREC.WILSON1	177,667.00	19,101.59	196,768.59	90.3%	9.7%
2019	02	BREC.WILSON1	274,183.10	432.58	274,615.68	99.8%	0.2%
2019	03	BREC.WILSON1	228,552.40	26,822.90	255,375.30	89.5%	10.5%
2019	04	BREC.WILSON1	114,864.00	2,770.03	117,634.03	97.6%	2.4%
2019	05	BREC.WILSON1	239,119.00	4,914.51	244,033.51	98.0%	2.0%
2019	06	BREC.WILSON1	267,974.60	5,317.59	273,292.19	98.1%	1.9%
2019	07	BREC.WILSON1	281,887.10	1,929.02	283,816.12	99.3%	0.7%
2019	08	BREC.WILSON1	233,227.50	10,654.93	243,882.43	95.6%	4.4%
2019	09	BREC.WILSON1	269,315.90	3,589.65	272,905.55	98.7%	1.3%
2019	10	BREC.WILSON1	149,974.30	8,458.53	158,432.83	94.7%	5.3%
2019	11	BREC.WILSON1	226,689.80	63,764.20	290,454.00	78.0%	22.0%
2019	12	BREC.WILSON1	151,199.30	42,059.28	193,258.58	78.2%	21.8%

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

1 **Item 37)** *Regarding the December 4, 2019 Fitch Press Release included as*

2 *Exhibit Berry-3, please provide the following:*

3 *a. Details regarding Big Rivers' management anticipated capital*
4 *expenditures of \$355 million for 2019-2023 referenced on page 5 and*
5 *detailed updates to that capital expenditure forecast.*

6 *b. Provide all forecasted revenue, margins and variable costs for each*
7 *future month during the term of the contract.*

8

9 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
10 unduly burdensome. Big Rivers also objects to this request on the grounds that it
11 seeks information that is irrelevant and not reasonably likely to lead to the discovery
12 of admissible evidence. Notwithstanding these objections, and without waiving them,
13 Big Rivers responds as follows:

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

- 1 a. The actual 2019 capital expenditures were \$24.4 million. Forecasted
2 capital expenditures in years 2020-2023 are provided in Big Rivers'
3 response to Item 18 of the Attorney General's data requests.
- 4 b. Please refer to Big Rivers' response to Item 29 of the Attorney General's
5 data requests for forecast calculations, models, and associated spreadsheets
6 for forecasted revenue, margins and variable costs.

7

8 **Witness)** Paul G. Smith

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

1 **Item 38** *Regarding the KyMEA Agreement approved in Case No. 2016-*

2 *00306 please provide the following:*

3 *a. An unredacted copy of the Agreement and the summary provided in*
4 *the application.*

5 *b. Describe all contracted capacity supplied to the Buyer currently*
6 *and through the term contract, including the source of the Capacity.*

7 *c. Describe all scheduled firm energy provided to the Buyer to date and*
8 *the source of that energy.*

9 *d. Provide detailed monthly amounts of firm energy and capacity*
10 *provided under the Agreement to date.*

11 *e. Provide the monthly Big Rivers fuel and other variable costs to*
12 *provide the firm energy and capacity under the Agreement to date.*

13 *f. Provide the monthly Big Rivers transmission costs incurred to*
14 *provide the firm energy and capacity to the Buyer's Delivery Point*
15 *under the Agreement to date.*

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
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OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064

Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020

April 3, 2020

1 ***g. Provide all forecasted revenue, margins and variable costs for each***
2 ***future month during the term of the contract.***

3
4 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
5 unduly burdensome. Big Rivers also objects to this request on the grounds that it
6 seeks information that is irrelevant and not likely to lead to the discovery of
7 admissible evidence. Notwithstanding these objections, and without waiving them,
8 Big Rivers responds as follows:

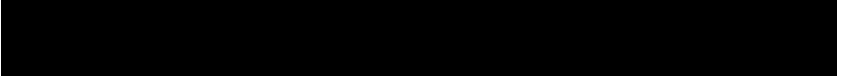
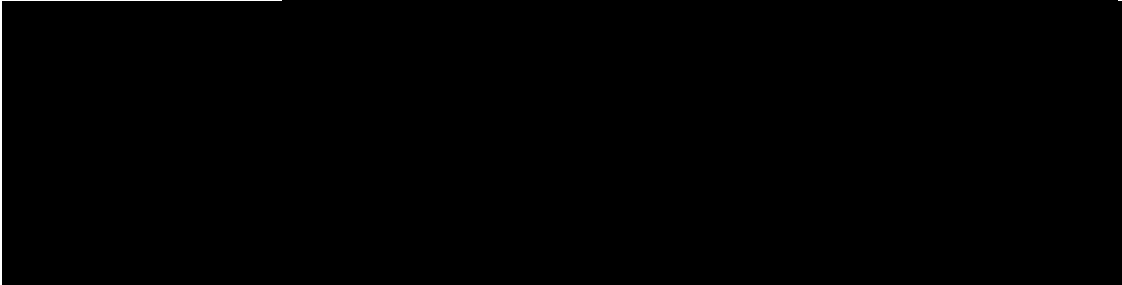

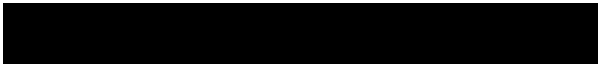
9 a. Please see the **CONFIDENTIAL** attachment to this response for an
10 unredacted copy of the agreement filed in Case No. 2016-00306.

11 b. KyMEA receives 100 MWs of capacity from [REDACTED]
12 [REDACTED] If Louisville Gas and Electric Company/Kentucky Utilities
13 Company institute a resource adequacy program that requires reserves, Big
14 Rivers could be required to provide such reserves, up to 16%.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
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ESTABLISH REGULATORY ASSETS,
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OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064

Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020

April 3, 2020

- 1 c. KyMEA has the right to submit hourly day-ahead schedules of up to 100
2 MWs in any hour. 
3 
4
5
6
7 d. See the **CONFIDENTIAL** attachment to this response.
8 e. See the **CONFIDENTIAL** attachment to the response to sub-part. d.
9 f. Big Rivers incurs no transmission costs under this agreement. 
10 
11 g. The **CONFIDENTIAL** attachment to this response shows annual
12 forecasted data. Monthly data is not available.
13
14 **Witness)** Mark J. Eacret

EXECUTION COPY

AGREEMENT FOR THE PURCHASE AND SALE

OF FIRM CAPACITY AND ENERGY

BETWEEN

BIG RIVERS ELECTRIC CORPORATION

AND THE

KENTUCKY MUNICIPAL ENERGY AGENCY

JULY 13, 2016


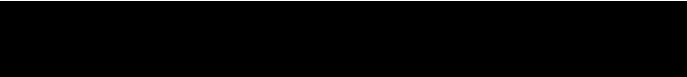
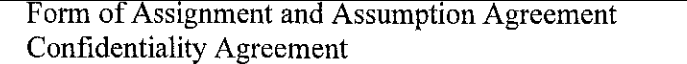
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**AGREEMENT FOR THE PURCHASE AND SALE
OF FIRM CAPACITY AND ENERGY
BETWEEN BIG RIVERS ELECTRIC CORPORATION AND
KENTUCKY MUNICIPAL ENERGY AGENCY**

This AGREEMENT FOR THE PURCHASE AND SALE OF FIRM CAPACITY AND ENERGY (this "Agreement") is made and entered into as of this 13th day of July, 2016 ("Effective Date"), between **Big Rivers Electric Corporation** (hereinafter referred to as "Seller"), a generation and transmission cooperative organized and existing under the laws of the Commonwealth of Kentucky, and **Kentucky Municipal Energy Agency**, an inter-local agency organized and existing under the laws of the Commonwealth of Kentucky (hereinafter referred to as "Buyer").

WHEREAS, Seller is a generation and transmission cooperative engaged in, among other things, the sale of electric power at wholesale;

WHEREAS, Seller owns, operates, or has rights to several electric generating resources with a total installed capacity of 1,889 megawatts, [REDACTED]

WHEREAS, Buyer wishes to purchase from Seller, and Seller wishes to sell to Buyer, firm electric energy and capacity, as set forth herein;

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

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. When used in this Agreement, including any exhibits hereto, the following terms, whether used in the singular or plural, shall have the following definitions. Capitalized terms that are not defined herein shall have the meanings assigned to them in the MISO Tariff.

"AAA" has the meaning set forth in Section 15.3(a).

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of a majority of the outstanding capital stock or other equity interests having ordinary voting power, or otherwise having the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person.

"Agreement" has the meaning set forth in the preamble.

“Bankruptcy Proceeding” means with respect to a Person, such Person (i) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due, (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors, (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and solely with respect to any such proceeding or petition that is instituted or presented by a party other than the Party with respect to which such petition or proceeding relates is not dismissed within sixty (60) days after the filing thereof, (iv) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger), (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets, (vi) causes or is subject to any event with respect to which, under applicable Law, has an analogous effect to any of the events specified in clauses (i) through (v), or (vii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts

“Business Day” means a day that is not a Saturday, a Sunday or a day on which banking institutions are not required to be open, or are authorized or required to close, in the Commonwealth of Kentucky.

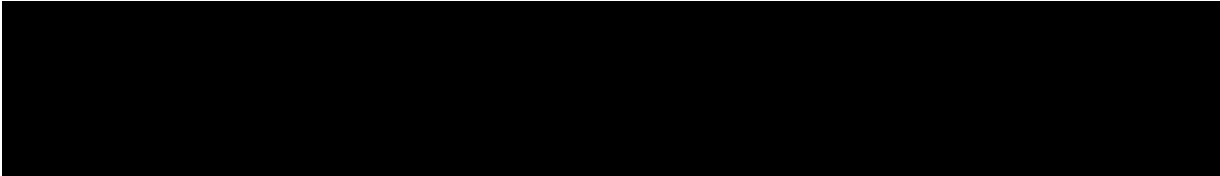
“Buyer” has the meaning set forth in the preamble.

“Buyer Event of Default” has the meaning set forth in Section 11.2.

“Buyer Investment Grade Rating” means any rating of Buyer’s general credit, or of Buyer’s long-term bonds, of at least BBB- from Fitch, BBB- from S&P, or Baa3 from Moody’s.

“Capacity” means the ability of generating equipment to produce Energy, measured in megawatts.

“Claim Notice” has the meaning set forth in Section 12.4.



“Contract Capacity” means the quantity of capacity set forth in Section 4.2, as such may have been modified by Buyer’s notice provided pursuant to Section 3.3(b), Section 3.4 or Section 3.6.

“Contract Term” has the meaning set forth in Article II.

“Credit Rating” means with respect to an entity providing a Qualifying Letter of Credit, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt, or deposit obligations (not supported by third party credit enhancement) by a Ratings Agency. If no rating is assigned to such entity’s unsecured, senior

long-term debt or deposit obligations by any Ratings Agency, then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned by a Ratings Agency, as the case may be.

"Day-Ahead Market Price" means the Day-Ahead Ex Ante LMP at the [REDACTED]

"Day-Ahead Schedule" has the meaning set forth in Section 5.2.

"Default Interest Rate" means, for any date, the lesser of (i) the highest rate permitted by Law or (ii) the Interest Rate plus an annual rate of 2% converted to a daily rate.

"Delivered Firm Energy" means the quantity of Firm Energy, Scheduled by Buyer and delivered by Seller to Buyer at the Delivery Point in the relevant time period, expressed in MWh.

"Delivery Point" means the [REDACTED]

"Demand" has the meaning set forth in Section 15.3(a).

"Effective Date" has the meaning set forth in the preamble.

"Energy" means electricity (measured in kilowatt-hours or megawatt-hours, as the case may be).

"Facility" has the meaning set forth in the recitals.

"Facility Energy Price" means the price determined in accordance with Exhibit A.

"Firm Capacity Price" means [REDACTED], subject to adjustment solely as provided for in Section 7.3 and Section 7.4.

"Firm Energy" means Energy associated with the Contract Capacity.

"Fitch" means Fitch Ratings, Inc. or its successor.

"Force Majeure" has the meaning set forth in Section 14.1.

"Indemnitee" has the meaning set forth in Section 12.3.

"Indemnitor" has the meaning set forth in Section 12.3(a).

"Interest Rate" means, for any date, the prime rate reported in *The Wall Street Journal's* "Money Rates" column (or any similar column published in *The Wall Street Journal* in replacement thereof) for the immediately preceding Business Day, converted to a daily rate. In the event *The Wall Street Journal* ceases to report the prime rate, the prime rate for purposes of this Agreement shall be the prevailing prime rate (or base rate) charged by major banks in the United States of America.

“KPSC” means the Public Service Commission of Kentucky.

“kW” means kilowatt (a unit of Capacity).

“kWh” means kilowatt-hour (a unit of Energy).

“KyMEA Member” means any municipal electric utility member of Buyer.

“KyMEA Member AR Agreement” has the meaning set forth in Section 3.4.

“Law” means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

“Letter of Credit Default” means the occurrence of any of the following events with respect to any Qualifying Letter of Credit:

- (a) The issuer of the Qualifying Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and “A3” by Moody’s and total assets of at least \$10,000,000,000 (Ten Billion Dollars);
- (b) The issuer of the Qualifying Letter of Credit fails to comply with or perform its obligations under the Qualifying Letter of Credit;
- (c) The issuer of the Qualifying Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Qualifying Letter of Credit;
- (d) The issuer of the Qualifying Letter of Credit fails to honor the beneficiary Party’s properly documented request to draw on such Qualifying Letter of Credit;
- (e) Such Qualifying Letter of Credit fails or ceases to be in full force and effect at any time; or
- (f) The issuer of the Qualifying Letter of Credit becomes subject to a Bankruptcy Proceeding;

provided that no Letter of Credit Default shall occur or be continuing in any event with respect to a Qualifying Letter of Credit after the time such Qualifying Letter of Credit is canceled or returned.

“Losses” means amounts incurred by an Indemnitee as a result of Third Party Claims, including reasonable attorneys’ fees and costs of investigation, litigation, damage, expenses, settlement and judgment.

“MISO” means the Midcontinent Independent System Operator, Inc., or its successor.

“MISO Tariff” means the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, including all schedules or attachments thereto, as amended from time to time, or any successor tariff.

“Modification” has the meaning set forth in Section 15.4.

“Monthly Energy Charge” has the meaning set forth in Section 7.2.

“Monthly Reservation Charge” has the meaning set forth in Section 7.1.

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“MW” means megawatt (one MW equals 1,000 kW).

“MWh” means megawatt-hour (one MWh equals 1,000 kWh).

“Operating Committee” has the meaning set forth in Section 5.7.

“Party” or “Parties” means one of Seller or Buyer, or both Seller and Buyer, or their permitted assigns and transferees, as the context requires.

“Planning Reserve Capacity” means capacity up to and including [REDACTED] of Contract Capacity if and as may be required of Buyer in accordance with any Resource Adequacy Program.

“Person” means any natural person, corporation, partnership, limited liability company, firm, association, trust, governmental authority or any other entity, whether acting in an individual, fiduciary or other capacity.

“Post-Day-Ahead Schedule” means an adjustment to the Day-Ahead Schedule that can be made by Buyer in accordance with Section 5.3 of this Agreement.

“Proposal” has the meaning set forth in Section 15.4.

“Prudent Utility Practices” shall mean the practices, methods and acts including but not limited to the generally accepted practices, methods and acts engaged in or approved by the operators of similar electric generating facilities which at the time such practice, method or act is employed, and in the exercise of reasonable judgment in light of the facts known at such time, would be expected to accomplish the desired result in a workmanlike manner, consistent with (a) applicable Laws and governmental requirements, and (b) commercially reasonable reliability, safety and environmental protection and (c) reasonably consistent with manufacturer’s technical advisory recommendations. Prudent Utility Practices shall not require the use of the optimum practice, method or act, but only require the use of acceptable practices, methods or acts generally accepted in the independent power industry in the United States.

“Qualifying Letter of Credit” means an irrevocable standby letter of credit with an initial term of at least one year for the benefit of a Party, issued by a U.S. commercial bank, a U.S. branch of a foreign bank, the National Rural Utilities Cooperative Finance Corporation or

CoBank ACB, with such bank having (a) a Credit Rating of at least "A-" from S&P and "A3" from Moody's, and (b) total assets (determined in accordance with GAAP) of at least \$10,000,000,000 (Ten Billion Dollars), and which letter of credit (i) is substantially in the form of Exhibit D or another form of letter of credit reasonably satisfactory to the beneficiary Party, (ii) permits automatic renewal of the relevant Qualifying Letter of Credit (which may be subject to an outside stated expiration date), and (iii) may be utilized by the beneficiary Party to satisfy all present and future payment obligations of the other Party under this Agreement when due.

"Ratings Agency" means S&P, Moody's, Fitch or any other rating agency agreed to by the Parties in writing.

"Real-Time Market Price" means the Real-Time Ex Post LMP at the [REDACTED]

"Resource Adequacy Program" means any resource adequacy requirement or other form of capacity demonstration obligation applicable in any balancing authority area where Buyer's load is located, pursuant to tariffs, regulatory requirements, or other binding criteria applicable to Buyer.

"RUS" means the Rural Utilities Service, an agency of the United States Department of Agriculture.

"Schedule" or "Scheduling" or "Scheduled" means Buyer communicating to Seller that a particular amount of Firm Energy is to be delivered at the Delivery Point, in accordance with Section 5.2 and/or Section 5.3.

"Scheduled Firm Energy" means the quantity of Firm Energy that is Scheduled by Buyer to be delivered for a given time period, expressed in MWh.

"Scheduling Day" means Monday through Friday, excluding holidays observed by MISO.

"Seller" has the meaning set forth in the preamble.

"Seller Event of Default" has the meaning set forth in Section 11.1.

"Seller Investment Grade Rating" means any rating of Seller's general credit, or of Seller's long-term debt, of at least BBB- from Fitch, BBB- from S&P, or Baa3 from Moody's.

"Service Commencement Date" means 00:00:00 Eastern Standard Time on June 1, 2019.

"Service Month" has the meaning set forth in Section 7.1.

"S&P" means S&P Global Ratings, a business division of Standard & Poor's Financial Services, LLC, or its successor.

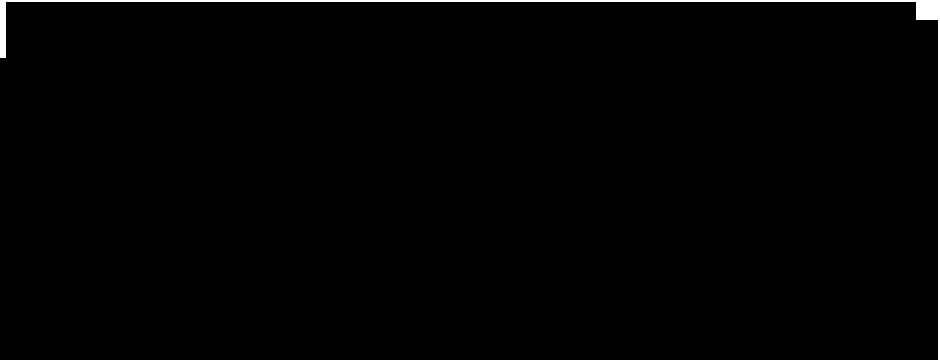
"Third Party Claims" has the meaning set forth in Section 12.3(a).

“Transmission Provider(s)” means the Person or Persons transmitting Scheduled Firm Energy on behalf of Buyer from the Delivery Point.

ARTICLE II

TERM

Section 2.1. Initial Term. The term of this Agreement shall commence on the Effective Date, and shall continue in effect through May 31, 2029 (the “Contract Term”), unless earlier terminated or extended in accordance with the terms of this Agreement. The Capacity and Energy transactions provided for by this Agreement shall begin on the Service Commencement Date and continue in effect through the end of the Contract Term, unless the Agreement is terminated early in accordance with the terms of this Agreement.

Section 2.2. 

ARTICLE III

CONTINGENCIES; CAPACITY ADJUSTMENTS

Section 3.1. RUS Approval.

(a) The obligations of the Parties pertaining to scheduling, delivery, sale, purchase, and payment for Capacity and Energy under this Agreement are conditioned on approval hereof by RUS. No later than thirty (30) days after the Effective Date, Seller shall make an appropriate submission to RUS seeking the authorization for Seller to enter into and perform all of its obligations under this Agreement. Seller shall use commercially reasonable efforts to secure RUS approval. Buyer shall (at Seller’s expense) cooperate with and assist Seller in securing the necessary approval from RUS; provided that to the extent any information to be provided by Buyer to RUS is deemed confidential information by Buyer, Seller will request that RUS maintain the confidentiality of any information designated by Buyer as confidential.

(b) In the event RUS should require as a condition of approval of this Agreement any material modifications of this Agreement that are unacceptable to either Seller or Buyer, each in its reasonable discretion, Seller and Buyer shall, within sixty (60) days from receipt of notice of the condition, negotiate in good faith to modify this Agreement so as to secure RUS approval. Notwithstanding the foregoing, nothing in this Section 3.1 shall be construed to require either Seller or Buyer to consent to any modification of this Agreement or

any other condition or requirement imposed by RUS. If the Parties cannot agree on amendments to this Agreement that will satisfy RUS, this Agreement shall be terminated, without penalty or any further obligation on the part of Seller or Buyer, by either Party providing written notice of such termination to the other Party on or before one hundred twenty (120) days from receipt of notice of the condition.


(c) If the RUS has not provided its approval by two hundred seventy (270) days from the Effective Date, this Agreement may be terminated by Buyer providing notice to Seller, without penalty or any further obligation on the part of Seller or Buyer. If the RUS has not provided its approval by three hundred sixty five (365) days from the Effective Date, this Agreement may be terminated by either Party providing notice to the other Party, without penalty or further obligation on the part of Seller or Buyer.

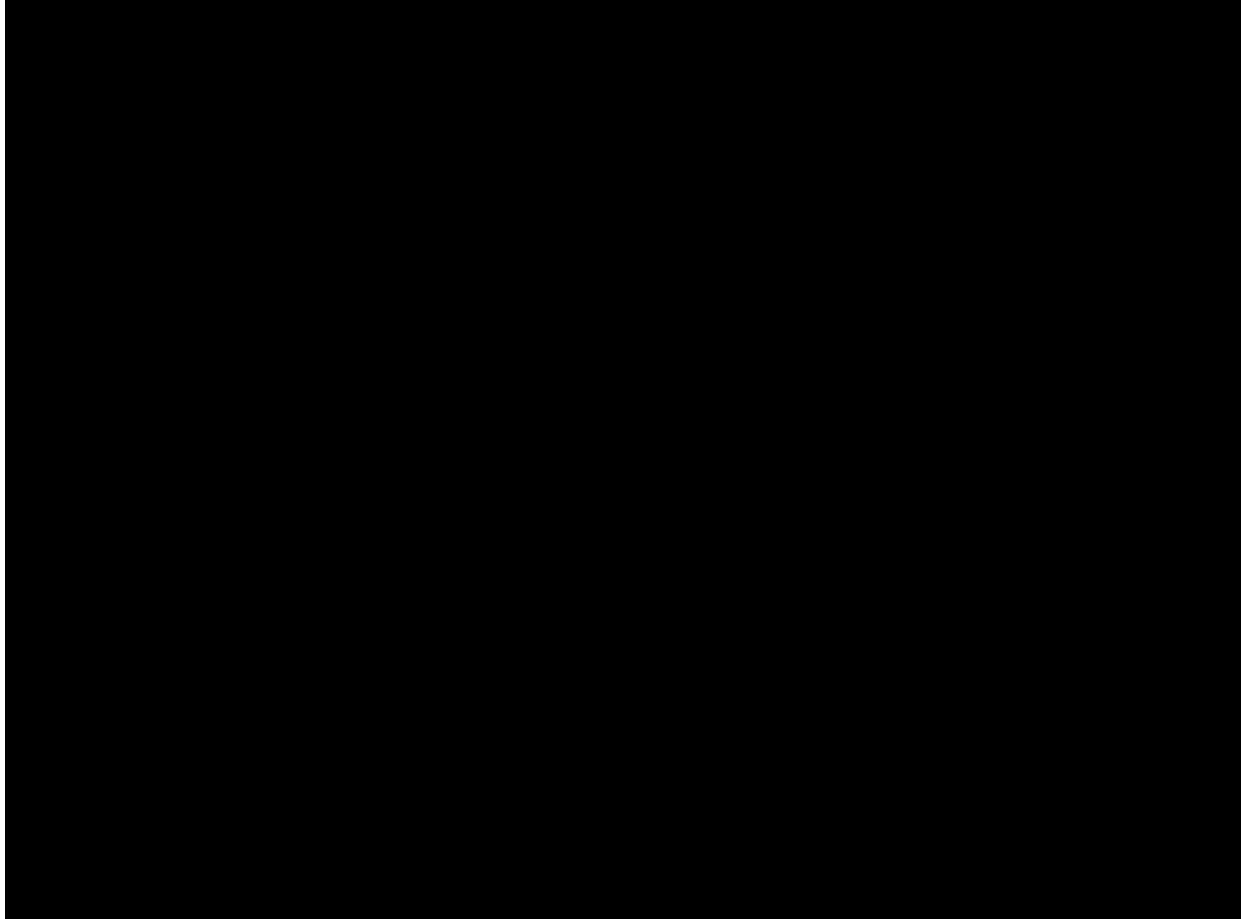
Section 3.2. KPSC Approval.

(a) The obligations of the Parties pertaining to scheduling, delivery, sale, purchase, and payment for Capacity and Energy under this Agreement are conditioned on approval hereof by the KPSC. No later than thirty (30) days after the Effective Date, Seller shall make an appropriate submission to KPSC seeking the authorization for Seller to enter into and perform all of its obligations under this Agreement, and requesting expedited processing of Seller's application. Seller shall use commercially reasonable efforts to secure KPSC approval. Buyer shall (at Seller's expense) cooperate with and assist Seller in securing the necessary approval from KPSC; provided that to the extent any information to be provided by Buyer to KPSC is deemed confidential information by Buyer, Seller will seek confidential treatment pursuant to the KPSC's regulations and Law of any information designated as confidential by Buyer. Buyer acknowledges that it will be required to intervene in the KPSC proceeding to protect the confidentiality of any information deemed confidential only by it.

(b) In the event KPSC should require as a condition of approval of this Agreement any material modifications of this Agreement that are unacceptable to either Seller or Buyer, each in its reasonable discretion, Seller and Buyer shall, within sixty (60) days from receipt of notice of the condition, negotiate in good faith to modify this Agreement so as to secure KPSC approval. Notwithstanding the foregoing, nothing in this Section 3.2 shall be construed to require either Seller or Buyer to consent to any modification of this Agreement or any other condition or requirement imposed by KPSC. If the Parties cannot agree on amendments to this Agreement that will satisfy KPSC, this Agreement shall be terminated, without penalty or any further obligation on the part of Seller or Buyer, by either Party providing written notice of such termination to the other Party on or before one hundred twenty (120) days from receipt of notice of the condition.

(c) If the KPSC has not provided its approval by two hundred seventy (270) days from the Effective Date, this Agreement may be terminated by Buyer providing notice to Seller, without penalty or any further obligation on the part of Seller or Buyer. If the KPSC has not provided its approval by three hundred sixty five (365) days from the Effective Date, this Agreement may be terminated by either Party providing notice to the other Party, without penalty or further obligation on the part of Seller or Buyer.

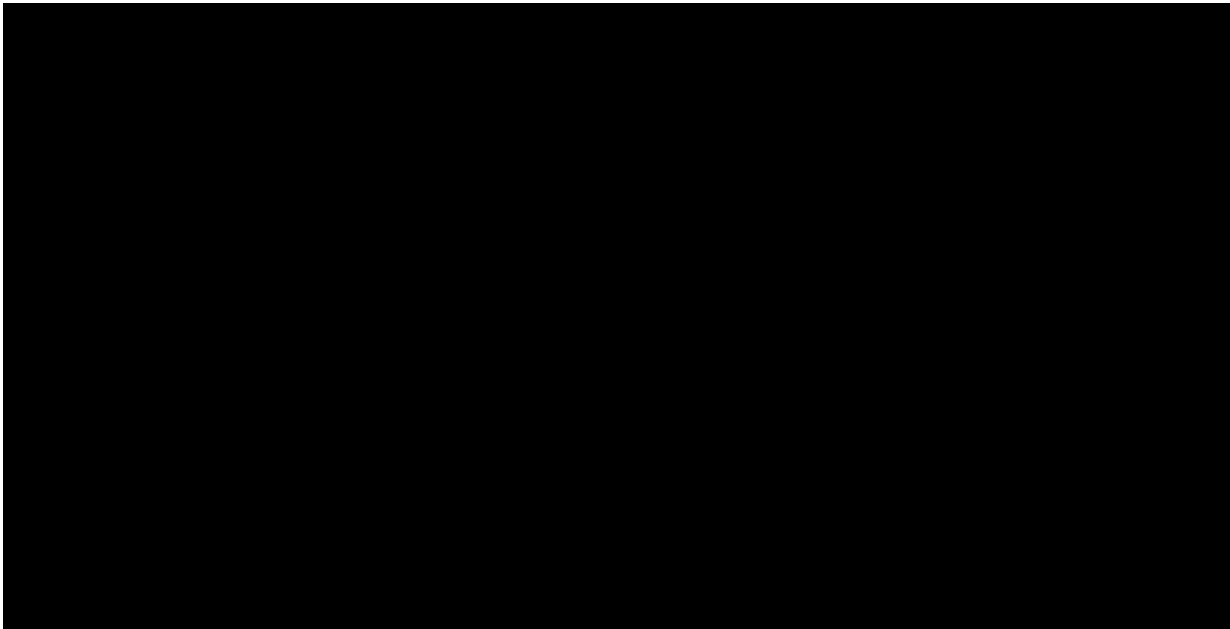
Section 3.3. 



Section 3.4. Buyer's Sales to Members. The obligations of the Parties pertaining to scheduling, delivery, sale, purchase, and payment for Capacity and Energy under this Agreement are conditioned on the execution by Buyer and KyMEA Members of agreements pursuant to which Buyer will sell, and the KyMEA Members will purchase, the full Capacity and Energy requirements of such KyMEA Members ("KyMEA Member AR Agreements"), where the reasonably projected collective annual peak demand for calendar year 2019 of the KyMEA Members under such executed agreements is at least 200 MW. If, within one hundred eighty (180) days after the Effective Date, agreements sufficient to satisfy the foregoing condition have not been entered into by Buyer and KyMEA Members, Buyer shall provide notice to Seller of the failure of this condition.

Section 3.5. Deadline for Satisfaction or Waiver of Contingencies. The responsible Party for each contingency in this Article III will deliver written notice to the other Party by October 1, 2017, listing each contingency for which it is responsible and the extent to which the contingency has been satisfied, not satisfied, or not satisfied but waived. If all contingencies set forth in this Article III have not been satisfied or waived by the responsible party by October 1, 2017, this Agreement may be terminated by either Party providing notice to the other Party on or before October 31, 2017, without penalty or further obligation on the part of Seller or Buyer.

Section 3.6. [REDACTED]



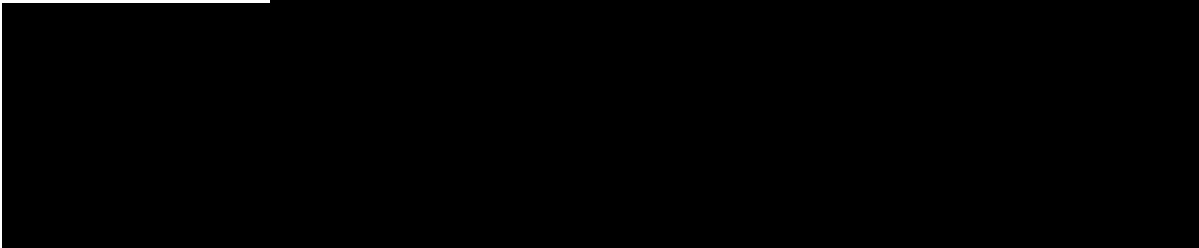
ARTICLE IV

PURCHASE AND SALE

Section 4.1. Product. Subject to and in accordance with the terms and conditions of this Agreement, during the period from the Service Commencement Date to the end of the Contract Term, Seller shall sell and make available to Buyer at the Delivery Point, and Buyer shall purchase and pay for, Contract Capacity and Firm Energy in amounts Scheduled by Buyer from time to time pursuant to Article V.

Section 4.2. Contract Capacity. The Contract Capacity shall be [REDACTED] subject to adjustment under Section 3.3(b), Section 3.4 or Section 3.6. The Contract Capacity shall at all times be stated in MW.

Section 4.3. [REDACTED]



Section 4.4. Sources of Firm Energy. It is the Parties' understanding that the source(s) of Firm Energy to be provided to Buyer in accordance with the Schedules submitted pursuant to

Article V will depend upon MISO's market operations based on the results of MISO's security-constrained economic dispatch.

Section 4.5. Designated Capacity for Resource Adequacy; Designated Network Resources.

(a) If at any time Buyer is subject to a Resource Adequacy Program that requires Buyer to identify specific generating resources underlying its firm power contracts, then

(i) Seller shall, upon the request of Buyer, identify Capacity from Seller's system resources (up to an amount equal to the sum of the Contract Capacity and the Planning Reserve Capacity) that Buyer may designate as Capacity necessary to satisfy the requirements of such Resource Adequacy Program. Seller shall identify such Capacity, together with such supporting information regarding the characteristics of the resources that Buyer needs in connection with its designation of such Capacity pursuant to the terms of the Resource Adequacy Program, at least sixty (60) days prior to the deadline for Buyer's submission of such information in accordance with the Resource Adequacy Program. If at any time an entity implementing or enforcing such Resource Adequacy Program determines that such Capacity designation is not sufficient to satisfy Buyer's obligations under the Resource Adequacy Program (for reasons other than that the level of Planning Reserve Capacity required under such Resource Adequacy Program associated with this Agreement is greater than 16% of Contract Capacity), then as soon as reasonably possible the Parties shall undertake good faith negotiations to identify revised or additional Capacity designations that are sufficient to establish Buyer's compliance with the Resource Adequacy Program, subject to the limits on Seller's obligation to provide Planning Reserve Capacity.

(ii) Alternatively, if permitted under the terms of the Resource Adequacy Program, Seller may elect to register as the party responsible for Buyer's compliance with such Resource Adequacy Program for the portion of Buyer's load that is equal to the Contract Capacity.

(b) If at any time additional information regarding the resources supporting Seller's obligations under this Agreement is required by any Transmission Provider(s) in order for this Agreement to qualify as a designated network resource or is otherwise required in connection with the obligations of Buyer under an applicable transmission tariff, Seller shall (at Buyer's expense) reasonably cooperate with and assist Buyer in providing the required information; provided that to the extent any information to be provided by Seller to any Transmission Provider(s) is deemed confidential information by Seller, Seller's obligation to provide such information may be conditioned upon such Transmission Provider(s) agreeing to maintain its confidentiality pursuant to a confidentiality agreement.

Section 4.6. Title and Risk of Loss. Title to and risk of loss related to Scheduled Firm Energy shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Firm Energy Scheduled by Buyer free and clear of all liens, security

interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to delivery at the Delivery Point.

ARTICLE V

SCHEDULING; OPERATING COMMITTEE

Section 5.1. Contract Entitlement. Buyer shall have the right to Schedule Firm Energy, up to the total Contract Capacity, for delivery by Seller at the Delivery Point on and after the Service Commencement Date. Buyer shall not have the right to schedule energy associated with Planning Reserve Capacity.

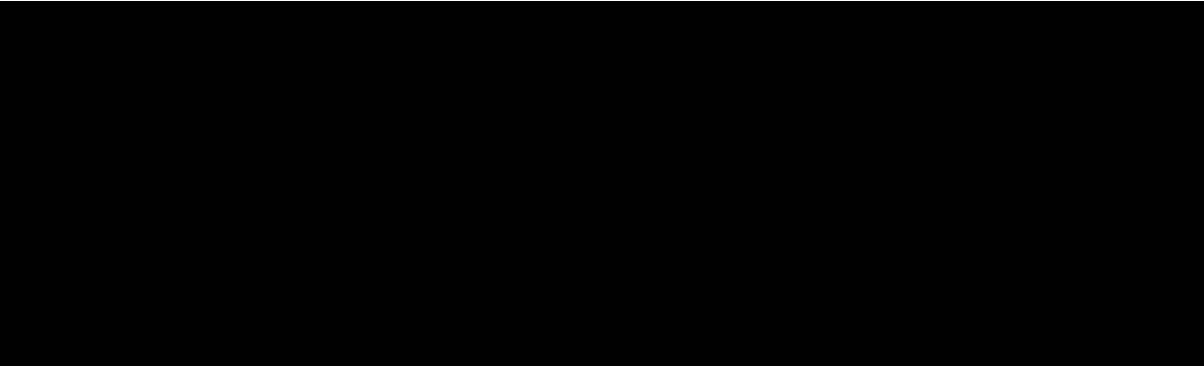
Section 5.2. Day-Ahead Dispatch.

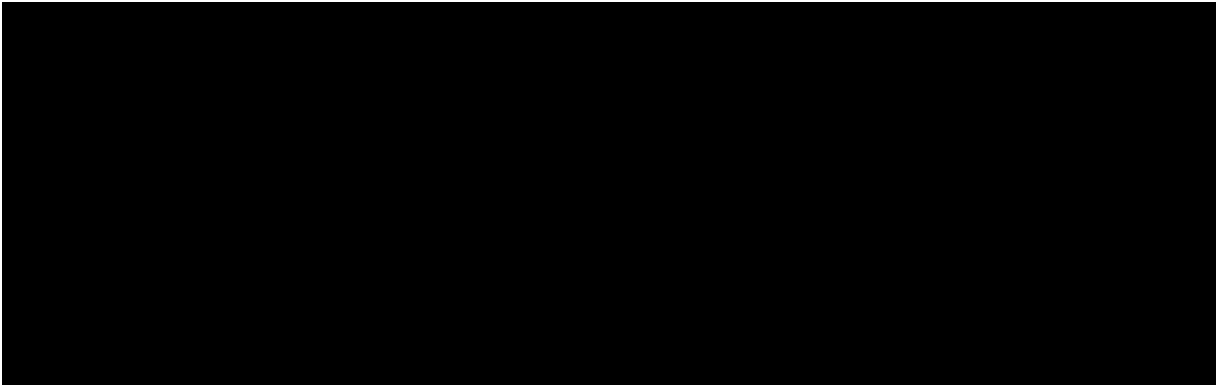
(a) Seller will cooperate and make commercially reasonable efforts to provide to Buyer information and projections of the Facility Energy Price applicable for each Service Month, to assist Buyer in determining its Day-Ahead Schedule(s) in such Service Month. Seller shall update its projection of the Facility Energy Price during the course of the Service Month.

(b) By no later than 0800 Eastern Standard Time each Scheduling Day, Buyer shall provide its Schedule to Seller by email or other reasonable means clearly identifying for each hour of the following operating day(s) the quantity of Firm Energy to be delivered by Seller at the Delivery Point for the account of Buyer (the "Day-Ahead Schedule"). The Day-Ahead Schedule shall be binding on Seller and Buyer, except as modified pursuant to Section 5.3. Seller and Buyer may agree in writing to a different day-ahead Scheduling procedure at any time, and the Parties agree that the deadline for submission of such Schedules shall be adjusted to match any changes in the bid submission deadlines for applicable MISO markets.


(c) 

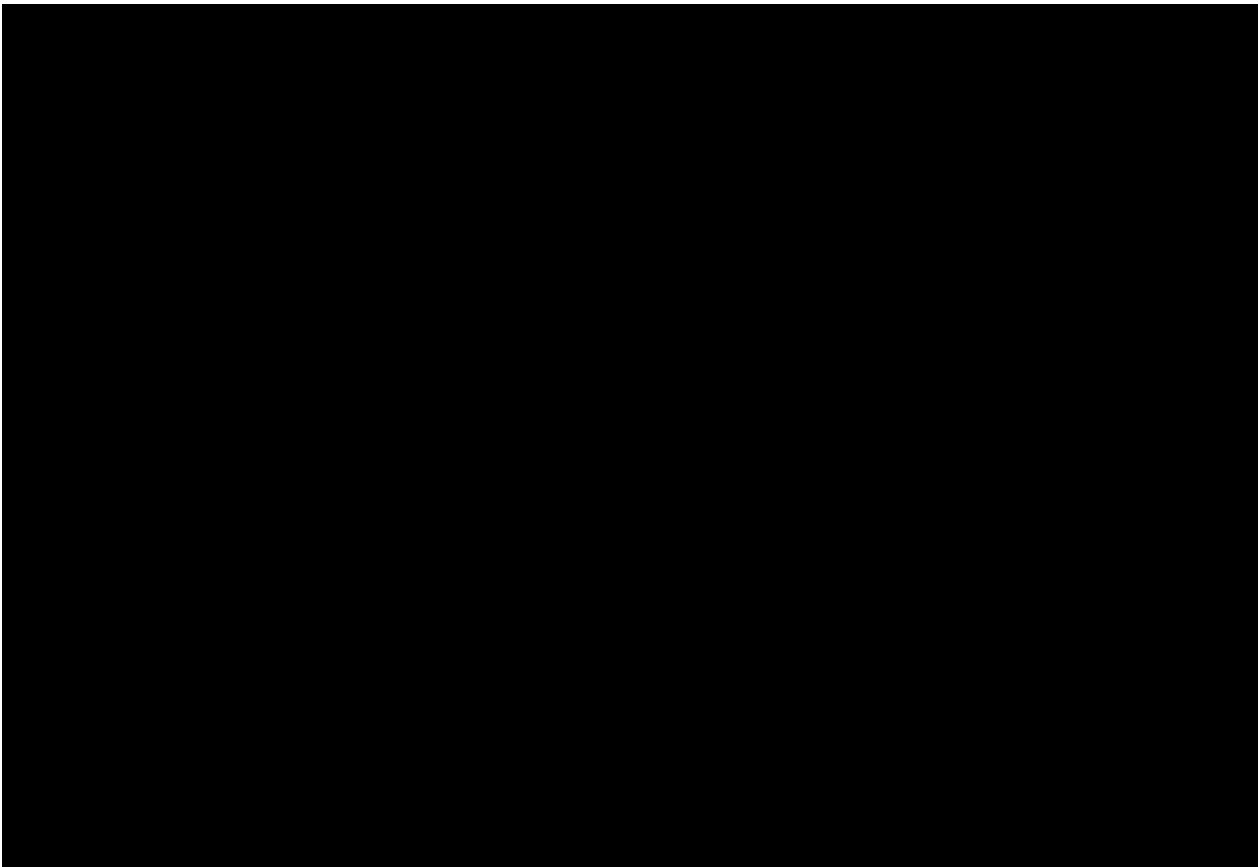
Section 5.3. Scheduling Changes.


(c) The revised megawatt quantity for any hour will serve as the basis for the calculation of the Energy Charge for that hour.



Section 5.4. Transmission Scheduling. The Parties acknowledge and agree that the provisions of this Article V do not govern transmission scheduling obligations and practices associated with the Firm Energy beyond the Delivery Point. Such activities, including the timing of providing any notifications to the applicable Transmission Providers, will be governed by the applicable transmission tariffs. For the avoidance of doubt, Seller shall take all commercially reasonable actions to support Buyer's scheduling of transmission service.

Section 5.5. 



Section 5.6. Recording. Buyer and Seller each consents to the creation of a tape or electronic recording of all Scheduling-related telephone conversations between Buyer and Seller

(with or without the use of a warning tone). Any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to a dispute regarding Scheduling under this Agreement. In addition, Buyer and Seller each waives any further notice of such monitoring or recording, and agrees to notify such of its officers, employees and agents of such monitoring or recording and to obtain any necessary consent of such officers, employees and agents as required by applicable Law, regulation or tariff.

Section 5.7. Operating Committee. The Parties shall form a committee to exchange information and coordinate with respect to matters relating to the performance of this Agreement ("Operating Committee"). Each Party shall appoint one representative to serve on the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement. Seller shall schedule meetings of the Operating Committee by mutual agreement of the representatives no less frequently than annually. Matters to be reviewed by the Operating Committee shall include, without limitation, (1) Seller's annual budgets for costs that are included in the Facility Energy Price, (2) Seller's schedules for planned maintenance of the Facility, forced or scheduled maintenance outages, deratings of any units on the Seller's system that could potentially affect the normal planning reserves of the Seller's system that support the reliability provisions of the Agreement, (3) fuel procurement strategy and implementation, and (4) beginning in 2025, projections of the components of the Firm Capacity Price for the extension of the Contract Term presented in Exhibit E. Meetings of the Operating Committee may be conducted in person or by telephone, and each Party may elect to have one or more individuals attend any such meeting on behalf of the Party in addition to the Party's appointed representative. Within a reasonable time after the conclusion of each meeting of the Operating Committee, Seller shall provide a written summary or summaries of such meeting, including a description of issues discussed and decisions agreed upon by the Parties. The Parties intend that confidential information provided by a Party in conjunction with the activities of the Operating Committee will be subject to the Mutual Confidentiality Agreement attached to this Agreement as Exhibit G.

ARTICLE VI

FAILURE TO DELIVER OR RECEIVE

Section 6.1. Seller's Failure. Seller's obligations to sell and deliver shall be excused only to the extent that, and for the period during which, such performance is prevented by Force Majeure or by the non-performance of Buyer. If Seller fails to deliver to Buyer all or part of the Firm Energy Scheduled by Buyer, through the timely submission of FinScheds as provided for in Section 5.5, and such failure is not excused, then Seller shall pay or credit Buyer an amount equal to the Day-Ahead Market Price or Real-Time Market Price, as appropriate, for each MWh of Scheduled Energy for which Seller failed to submit a FinSched. If Seller fails to deliver as a result of any other unexcused action or unexcused failure to act, Seller shall compensate Buyer for any incremental cost of Capacity and Energy incurred by Buyer as a result thereof.

Section 6.2. Buyer's Failure. Buyer's obligation to receive Firm Energy Scheduled by Buyer shall be excused only to the extent that, and for the period during which, such

performance is prevented by Force Majeure or by the non-performance of Seller. In the event of any such failure to receive Scheduled Firm Energy as a result of failing to confirm the FinSched, if such failure is not excused as provided in this Section 6.2, then, for the portion of Scheduled Firm Energy for which there was a non-excused failure to confirm the FinSched,

(a) Seller shall assess a charge to Buyer equal to the product of such Scheduled Firm Energy times the Facility Energy Price, and

(b) Seller shall provide a credit to Buyer equal to the product of such Scheduled Firm Energy times the lesser of (i) the Day-Ahead Market Price or Real-Time Market Price, as applicable, or (ii) the Facility Energy Price.

ARTICLE VII

CHARGES

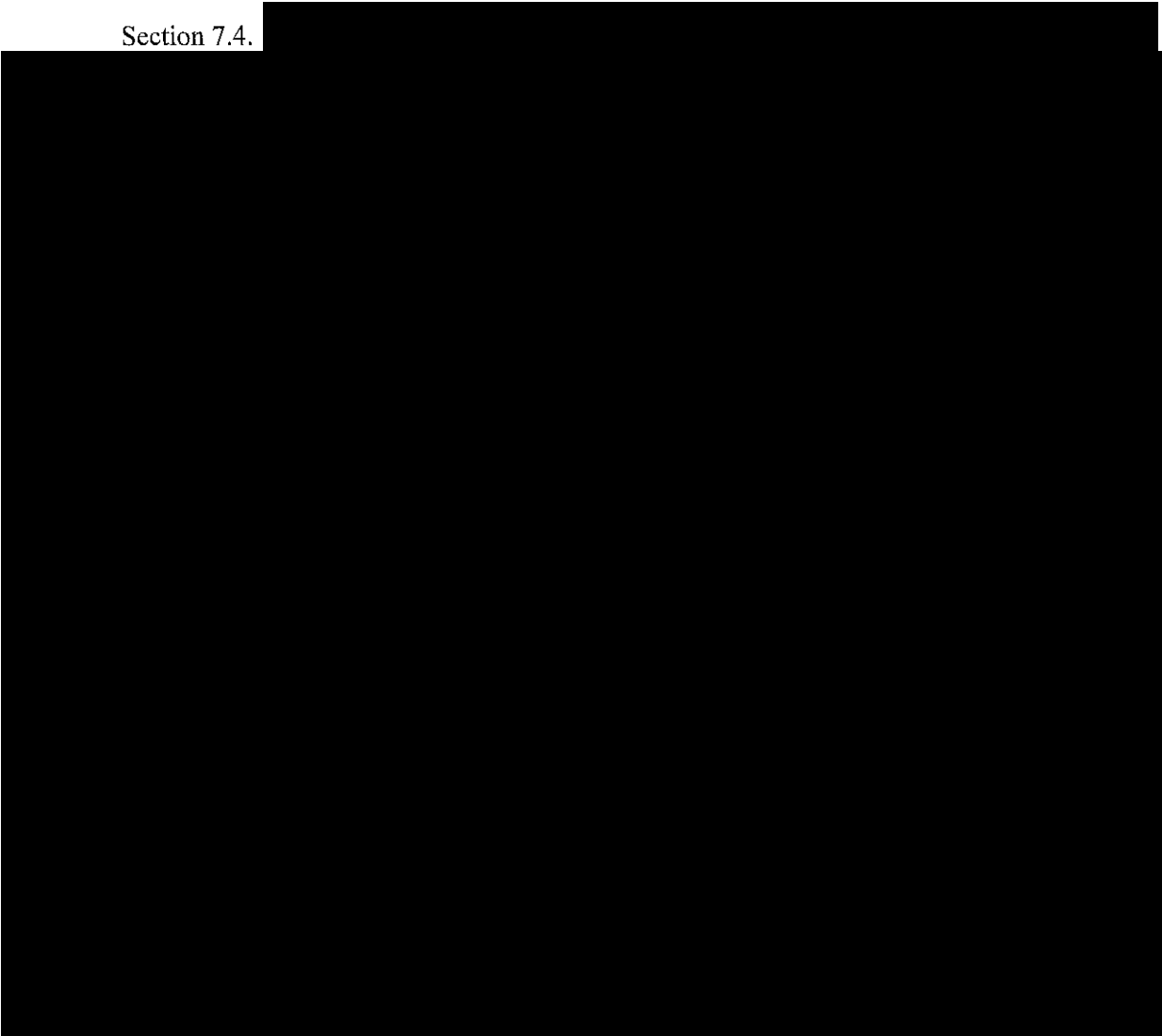
Section 7.1. Monthly Reservation Charge. For each calendar month of the Contract Term beginning with the Service Commencement Date (each, a "Service Month"), Buyer's "Monthly Reservation Charge" shall be the product of the Firm Capacity Price and the Contract Capacity. The Monthly Reservation Charge shall be deemed to compensate the Seller for any Planning Reserve Capacity that may be required pursuant to Section 4.5. Accordingly, there shall be no separate charge for Planning Reserve Capacity. In accordance with Article VIII, the Monthly Reservation Charge (and all other monthly charges described herein) shall be invoiced in the month immediately following the Service Month, with any corrections thereto made as soon as practicable. Notwithstanding the foregoing, if the Agreement is terminated at a time other than at the end of a calendar month, the Monthly Reservation Charge for the final Service Month shall be pro-rated accordingly.

Section 7.2. Monthly Energy Charge. The "Monthly Energy Charge" shall be equal to the product of the Delivered Firm Energy in that Service Month and the Facility Energy Price for that Service Month as determined pursuant to Exhibit A.

Section 7.3. Firm Capacity Price.



Section 7.4.



Section 7.5.



ARTICLE VIII

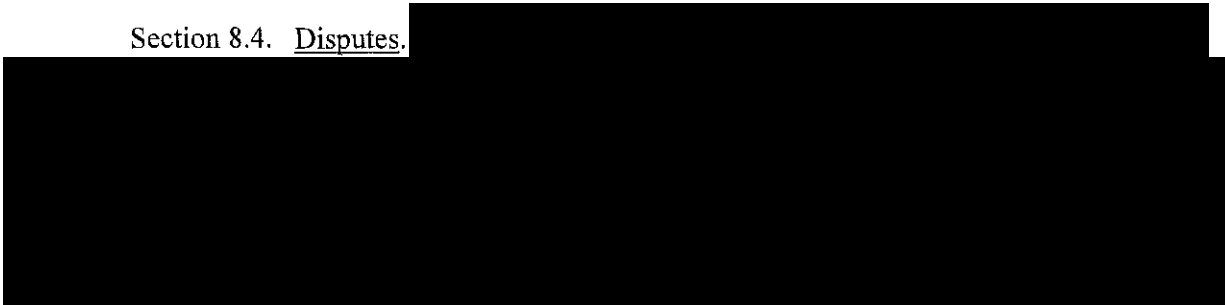
BILLING AND PAYMENT

Section 8.1. Billing. On or before the tenth (10th) day following the end of each Service Month, Seller shall deliver to Buyer an invoice detailing the total Delivered Firm Energy, measured in MWh, for each day of the Service Month, the Facility Energy Price for the Service Month, and the total charges and credits to be paid by Buyer for the Monthly Reservation Charge, the Monthly Energy Charge, and any other charges properly assessed and credits owed to Buyer pursuant to this Agreement, for such Service Month. For any month in which charges for unexcused failure to receive apply pursuant to Section 6.2, Seller shall also provide with the invoice documentation reasonably supporting the Day-Ahead Market Price or Real-Time Market Price, as appropriate for each applicable hour. In each invoice, any amounts owed by Seller to Buyer (including, without limitation, under Section 4.5(a)(i) or Section 6.1) shall be netted against the amounts owed by Buyer to Seller.

Section 8.2. Payment. Buyer shall make payment of the invoice to Seller within thirty (30) days after Buyer's receipt of the invoice by means of wire transfer of immediately available funds, or other acceptable method agreed to in writing by Seller and Buyer.

Section 8.3. Late Payments by Buyer. If for any reason other than as permitted by and in accordance with Section 8.4 below, Buyer pays less than the full amount of the invoice, interest on the unpaid amount shall accrue at the Default Interest Rate for each calendar day from the due date to the date paid.

Section 8.4. Disputes.



Section 8.5. Adjustments. Any adjustments to amounts invoiced and paid for a given Service Month (*e.g.*, to reflect resolution of any dispute and/or billing corrections) shall be made on the next monthly invoice following the event giving rise to such adjustment. Where the adjustment is to rectify an overpayment, and to the extent allowed by Law, Seller shall provide a credit that includes interest accrued from the original payment date to the date of the credit, at the Interest Rate. Where the adjustment is to rectify an underpayment, and to the extent allowed by Law, Seller shall provide a charge that includes interest accrued from the original payment due date to the date of the charge, at the Interest Rate. If any credit exceeds the amount that would otherwise be due for the current Service Month, or if any credit would be due following Buyer's payment of the final invoice, Seller shall pay the net refund to Buyer no later than when the invoice would otherwise be due for such Service Month (or, if Buyer has paid the final invoice, no later than fifteen (15) days of calculation of the adjustment).

Section 8.6. Audit. Buyer has the right with reasonable prior notice, at the sole expense of Buyer, to examine the records of Seller during regular business hours to the extent reasonably necessary to verify the accuracy of any invoice, or calculations provided with or supporting such invoice, rendered pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, or calculations provided with or supporting such invoice, the necessary adjustments in such invoice, or calculations provided with or supporting such invoice, and the payments made pursuant to such inaccurate invoice, or calculations provided with or supporting such invoice, shall be adjusted in the next invoice, provided that Buyer brought it to the attention of Seller within twenty four (24) months after issuance of the inaccurate invoice. This Section 8.6 shall survive any termination of this Agreement for a period of two (2) years from the date on which the last invoice is rendered to Buyer pursuant to this Agreement.

Section 8.7. Records. Seller shall develop, maintain and keep originals or copies of all accounting records, statistical information, and supporting documents relating to the performance of its obligations hereunder in accordance with the longest of the applicable record-retention requirements of the RUS, KPSC, MISO and all other regulatory bodies and taxing authorities having jurisdiction over Seller; provided that all such applicable accounting records shall be retained for at least two (2) years and so long as any dispute exists regarding such information or payments due under this Agreement. All such records shall be available for inspection by Buyer during regular business hours, and Buyer shall have the right (at Buyer's expense) to make copies thereof.

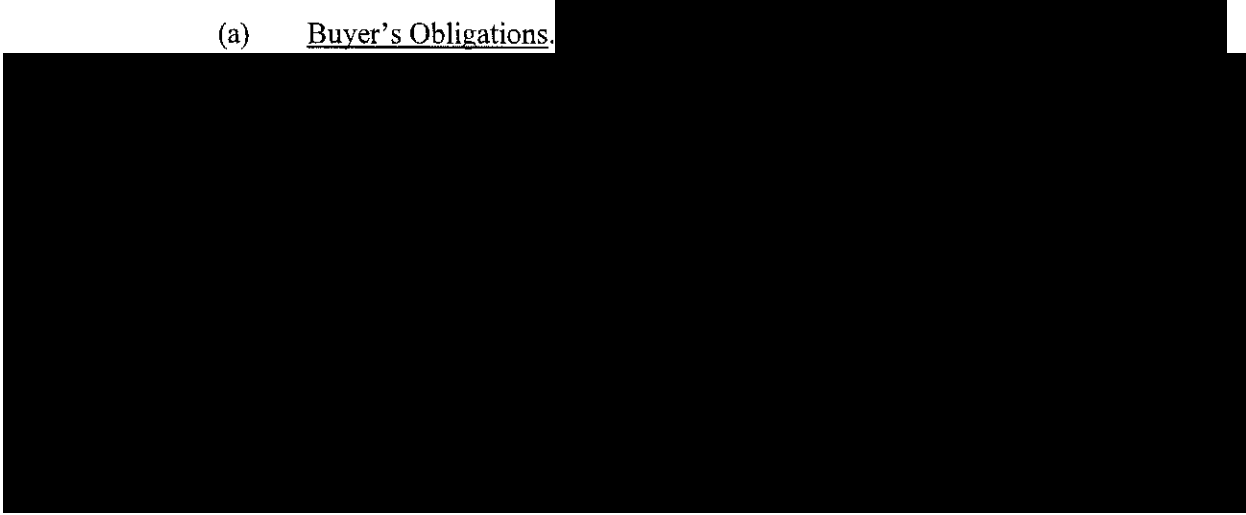
ARTICLE IX

CREDITWORTHINESS

Section 9.1. Financial Information. Seller may require Buyer to provide financial information reasonably needed to ascertain Buyer's ability to perform under this Agreement. Buyer may require Seller to provide financial information reasonably needed to ascertain Seller's ability to perform under this Agreement.

Section 9.2. Credit Support.

(a) Buyer's Obligations.



[REDACTED]

(b) Seller's Obligations. [REDACTED]

[REDACTED]

(c) [REDACTED]

[REDACTED]

ARTICLE X

TRANSMISSION ARRANGEMENTS; MISO MARKET

Section 10.1. Seller's Obligations. [REDACTED]

[REDACTED]

Section 10.2. Buyer's Obligations. [REDACTED]

[REDACTED]

Section 10.3 [REDACTED]

[REDACTED]

ARTICLE XI

DEFAULT AND REMEDIES

Section 11.1. Seller Event of Default. The following shall constitute events of default on the part of Seller ("Seller Event of Default"):

(a) Seller fails to pay or credit any amount due to Buyer under this Agreement and such failure continues for five (5) days following receipt of written notice thereof from Buyer.

(b) Seller becomes subject to a Bankruptcy Proceeding.

(c) Any representation or warranty made by the Seller herein is false or misleading in any material respect when made.

(d) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity (i) fails to assume all the obligations of the Seller hereunder pursuant to an agreement reasonably satisfactory to Buyer, absent Buyer's consent permitting Seller to retain the Agreement pursuant to Section 13.2(b), or (ii) is not at least as creditworthy as Seller.

(e) Seller commits a breach of its material covenants or obligations under this Agreement not otherwise excused by Force Majeure, other than a payment default as set forth in Section 11.1(a), unless:

(i) Seller commences and diligently proceeds to cure such breach upon delivery of written notice of such breach from Buyer; and

(ii) the breach is cured within ten (10) days of delivery of such written notice; provided, however, that if (A) such breach is not, by its nature, capable of being cured within such ten (10) day period, and (B) Seller is diligently and in good faith proceeding to attempt to cure such breach, Seller shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

(f)

Section 11.2. Buyer Event of Default. The following shall constitute an event of default on the part of Buyer ("Buyer Event of Default"):

(a) Buyer fails to pay any amount due to Seller under this Agreement and such failure continues for five (5) days following receipt of written notice thereof from Seller.

(b) Buyer becomes subject to a Bankruptcy Proceeding.

(c) Any representation or warranty made by Buyer is false or misleading in any material respect when made.

(d) Buyer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity (i) fails to assume all the obligations of Buyer under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to the Seller, or (ii) is not at least as creditworthy as Buyer.

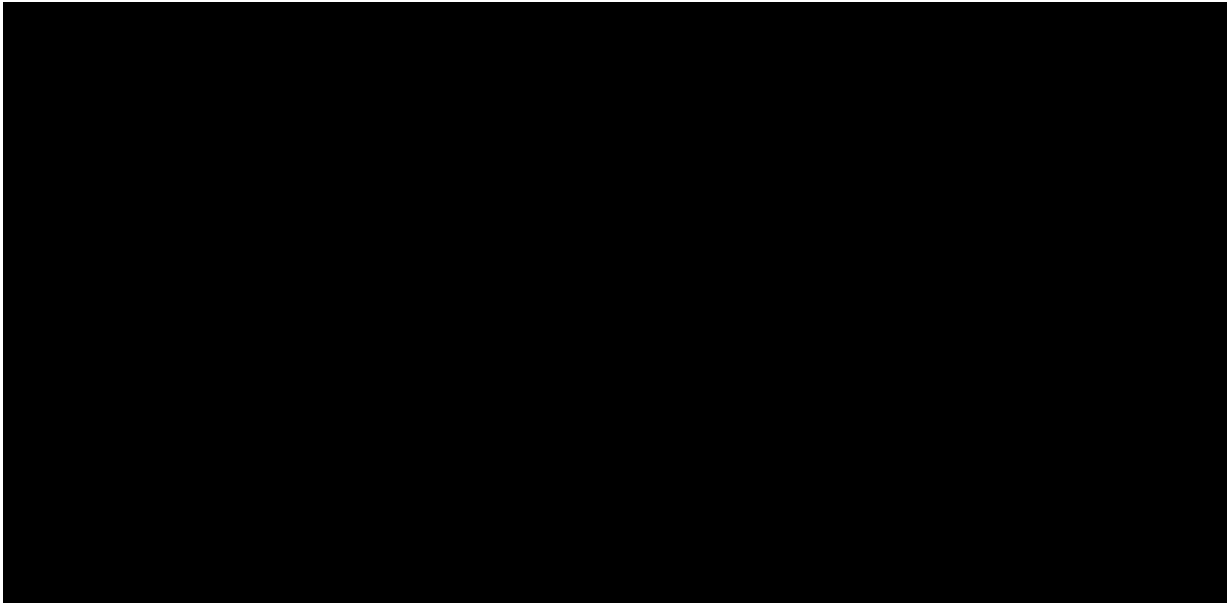
(e) Buyer commits a breach of its material covenants or obligations under this Agreement not otherwise excused by Force Majeure, other than a payment default as set forth in Section 11.2(a), unless:

(i) Buyer commences and diligently proceeds to cure such breach upon delivery of written notice of such breach from Seller; and

(ii) the breach is cured within ten (10) days of delivery of such written notice; provided, however, that if (A) such breach is not, by its nature, capable of being cured within such ten (10) day period, and (B) Buyer is diligently and in good faith proceeding to attempt to cure such breach, Buyer shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

(f) The occurrence of a Letter of Credit Default where such Letter of Credit Default is not cured within three (3) Business Days after its occurrence by Buyer providing to Seller a valid Qualifying Letter of Credit, provided that if the Letter of Credit Default is the result of the issuer of the Qualifying Letter of Credit failing to maintain the required Credit Rating and total assets, Buyer shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

Section 11.3. Procedure and Remedies.



Section 11.4. Rights of Specific Performance. In addition to the remedies specified hereunder, upon the occurrence of a Seller Event of Default or a Buyer Event of Default, which does not arise from the failure to make a payment of money hereunder, the non-defaulting Party shall have a right to obtain equitable relief, including specific performance of the defaulting Party's non-monetary obligations hereunder.

ARTICLE XII

INDEMNIFICATION

Section 12.1. Indemnity by Seller. Subject to the terms and conditions set forth in this Article XII and except to the extent caused by the fraud, negligence or the willful misconduct or willful breach of any obligation under this Agreement of any Indemnatee, Seller shall indemnify and hold Buyer and its Affiliates, members, directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all Losses that any of them may sustain or suffer as a consequence of the breach of any covenant or agreement made or undertaken by Seller in this Agreement.

Section 12.2. Indemnity by Buyer. Subject to the terms and conditions set forth in this Article XII and except to the extent caused by the fraud, negligence or the willful misconduct or willful breach of any obligation under this Agreement of any Indemnatee, Buyer shall indemnify and hold Seller and its Affiliates, members, directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all Losses, that any of them may sustain or suffer as a consequence of the breach of any covenant or agreement made or undertaken by Buyer in this Agreement.

Section 12.3. Further Qualifications Respecting Indemnification. The right of a Person listed as being entitled to indemnification in Section 12.1 or Section 12.2 (an "Indemnitee") to be indemnified hereunder shall be subject to the following further qualifications:

(a) Upon receipt of notice of any demand, assertion, claim, action or proceeding, judicial, governmental or otherwise, from any third party (such third party actions being collectively referred to herein as "Third Party Claims"), the Indemnitee shall give written notice thereof to the indemnifying Party (the "Indemnitor") as soon as reasonably practicable, but not later than thirty (30) days after the date the Indemnitee obtains actual knowledge of the basis or alleged basis for the right of indemnity;

(b) In computing Losses, such amounts shall be computed net of any related recoveries to which the Indemnitee is entitled under insurance policies, or other related payments received from third parties, and net of any tax benefits actually received by the Indemnitee or for which it is eligible, taking into account the income tax treatment of such indemnification; and

(c) The Indemnitee shall use commercially reasonable efforts to mitigate all Losses for which indemnification may be available hereunder, including availing itself of any defenses, limitations, rights of contribution, claims against third parties and other rights at Law or equity. The Indemnitee's commercially reasonable efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any Loss for which indemnification would otherwise be due, such expenditures being included in indemnified Losses hereunder.

Section 12.4. Procedures Respecting Third Party Claims. In notifying the Indemnitor of any Third Party Claim (the "Claim Notice"), the Indemnitee shall provide the Indemnitor with a copy of such Third Party Claim or other documents received and shall otherwise make available to the Indemnitor all relevant information material to the defense of such claim and within the Indemnitee's possession. The Indemnitor shall have the right, by written notice given to the Indemnitee within fifteen (15) days after the date of the Claim Notice, to assume and control the defense of the Third Party Claim that is the subject of such Claim Notice, including the employment of counsel selected by the Indemnitor after consultation with the Indemnitee, and the Indemnitor shall pay all expenses of, and the Indemnitee shall cooperate fully with the Indemnitor in connection with, the conduct of such defense. The Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such Third Party Claim, but the fees and expenses of such counsel shall be borne by the Indemnitee unless the Indemnitor shall otherwise agree in writing; provided, however, if the named parties to any such proceeding (including any impleaded parties) include both the Indemnitee and the Indemnitor, the Indemnitor requires that the same counsel represent both the Indemnitee and the Indemnitor, and representation of both Parties by the same counsel would be inappropriate due to actual or potential differing interests between them, then the Indemnitee shall have the right to retain its own counsel. If the Indemnitor shall have failed to assume the defense of any Third Party Claim in accordance with the provisions of this Section 12.4, then, as among the Parties, the Indemnitee shall have the absolute right to control the defense of such Third Party Claim, and, if and when it is finally determined that the Indemnitee is entitled to indemnification from the Indemnitor hereunder, the fees and expenses of the Indemnitee's counsel shall be borne by the Indemnitor; provided that the Indemnitor shall be entitled, at its

expense, to participate in (but not control) such defense. The Indemnitor shall have the right to settle or compromise any such Third Party Claim for which it is providing indemnity so long as such settlement does not impose any obligations on the Indemnitee (except with respect to (a) obligations to pay money (which amounts, if payable by the Indemnitee, shall constitute Losses) and (b) providing releases of the third party). The Indemnitor shall be liable for any settlement effected by the Indemnitee without the Indemnitor's consent only if the Indemnitee has assumed the defense because the Indemnitor has failed or refused to do so.

ARTICLE XIII

ASSIGNMENT

Section 13.1. Assignment by Buyer.

(a) Buyer may, with prompt prior notice to but without the need for consent of Seller, assign all of its rights and obligations hereunder to any entity that (i) acquires all or substantially all of Buyer's business and/or assumes Buyer's obligations to provide service under the KyMEA Member AR Agreements, (ii) is of at least equal creditworthiness, and (iii) assumes in writing all of Buyer's obligations hereunder, which assumption shall be materially in the form attached as Exhibit F hereto or otherwise in form and substance reasonably acceptable to Seller.

(b) Unless Seller consents in writing to Buyer retaining this Agreement, if Buyer transfers all or substantially all of its business to another party, Buyer shall assign all of its rights and obligations hereunder to the entity that acquires such business.

Section 13.2. Assignment by Seller.

(a) Notwithstanding any other provision of this Agreement to the contrary, and without any other action being required pursuant to this Agreement, Seller may, without the written consent of Buyer and without relieving itself from liability hereunder or committing a Seller Event of Default, assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America, acting through the RUS, or other secured party (directly or through an indenture trustee or other collateral agent; collectively, including such indenture trustee or other collateral agent, a "Secured Party"). Thereafter, a Secured Party, without the written consent of Buyer and without committing a Seller Event of Default, may (i) cause this Agreement (and all obligations hereunder) to be sold, assigned, transferred or otherwise disposed of to a third party pursuant to the terms governing such security interest, or (ii) if RUS first acquires this Agreement pursuant to 7 U.S.C. § 907 or if any other Secured Party otherwise first acquires this Agreement, sell, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) to a third party; provided, however, that in either case (A) Seller is in default of its obligations that are secured by such security interest and that the applicable Secured Party has given Buyer written notice of such default; and (B) the applicable Secured Party has given Buyer not less than thirty (30) days' prior written notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) indicating the identity of the intended third-party assignee or purchaser.

(b) If Seller transfers all or substantially all of its business (including the Facility) to another Person whose creditworthiness and capability of performing this Agreement are at least equal to Seller's, then unless Buyer consents in writing to the Seller retaining this Agreement (which consent may be denied by Buyer in its sole discretion), Seller shall, with prompt prior notice to but without the need for consent of Buyer, assign this Agreement and all of Seller's rights and interest hereunder to the Person to which Seller's business is being transferred, and shall require such assignee to assume in writing all obligations of Seller, which assumption shall be materially in the form attached as Exhibit F hereto or otherwise in form and substance reasonably acceptable to Buyer.

Section 13.3. Other Assignments. Except as provided in Section 13.1 and Section 13.2, any proposed assignment by Buyer shall require the prior written consent of Seller, and any proposed assignment by Seller shall require the prior written consent of Buyer. In each case, consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that it shall be reasonable for Buyer to require as condition(s) to its consent to an assignment of this Agreement to a Person by Seller that (i) the Facility will be assigned and transferred to the same Person, (ii) such Person has sufficient Capacity resources to provide equivalent or greater support for the performance of Seller's obligations hereunder, and/or (iii) such Person has creditworthiness at least equal to Seller.

Section 13.4. Notice. Irrespective of whether consent is required, notice of any proposed assignment shall be given to the other Party at least sixty (60) days prior to the date of the assignment. Any purported assignment made without complying with the requirements of this Article XIII shall be null and void.

Section 13.5. Effect of Assignment on Party Status. No assignment shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless the other Party agrees in writing in advance to waive the assignor's continuing obligations pursuant to this Agreement. To the extent an assignment occurs in accordance with the terms of this Article XIII other than Section 13.2(a), the assignee's creditworthiness and ability to perform this Agreement are at least equal to that of the assignor, and the assignee expressly agrees in writing to assume all of the assignor's rights and obligations so assigned, the other Party shall release the assignor from any further liability in respect of the rights and obligations so assigned.

ARTICLE XIV

FORCE MAJEURE

Section 14.1. Force Majeure. The term "Force Majeure" shall mean causes beyond the reasonable control of, and without the fault or negligence (including failure to comply with Prudent Utility Practices) of, the Party claiming Force Majeure, including, but not limited to, acts of God; earthquake; storm; fire; lightning; epidemic; war; riot or civil disturbance; or sabotage. Notwithstanding the foregoing, under no circumstances shall Force Majeure include any of the following: (i) changes in market conditions that affect the cost of or demand for power; (ii) [REDACTED] (ii) any lack of profitability to a Party or other financial consideration of a Party; (iii) unavailability of the Facility or other Capacity resources owned or controlled by Seller; (iv)

unavailability of transmission service to the Delivery Point from any specific source of supply; or (v) unavailability of transmission service from the Delivery Point to Buyer's load.

Section 14.2. Effect on Performance.

(a) If a Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance it is unable to perform due to the Force Majeure to the extent so affected, provided that:

(i) the Party affected by such Force Majeure, as soon as reasonably practical after the commencement of such effect, gives the other Party prompt oral notice, followed by a written notice within forty-eight (48) hours after such oral notice, fully describing the particulars of the occurrence;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

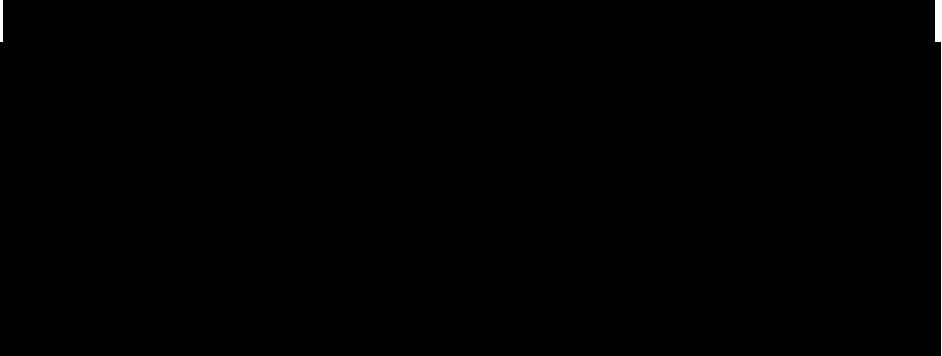
(iii) the Party whose performance is affected by such Force Majeure uses its commercially reasonable efforts to overcome and remedy its inability to perform as soon as possible; and

(iv) the event of Force Majeure must not have been caused by or contributed to by any negligent or intentional act, error or omission of the affected Party or any of its Affiliates, and must not be caused by or contributed to by any failure to comply with any Law by the affected Party or any of its Affiliates, or by any breach or default of this Agreement by the affected Party or any of its Affiliates.

(b) Notwithstanding anything in this Article XIV to the contrary, no payment obligation arising under this Agreement prior to the date of an event of Force Majeure shall be excused by such event of Force Majeure.

ARTICLE XV

DISPUTE RESOLUTION

Section 15.1. 

[REDACTED]

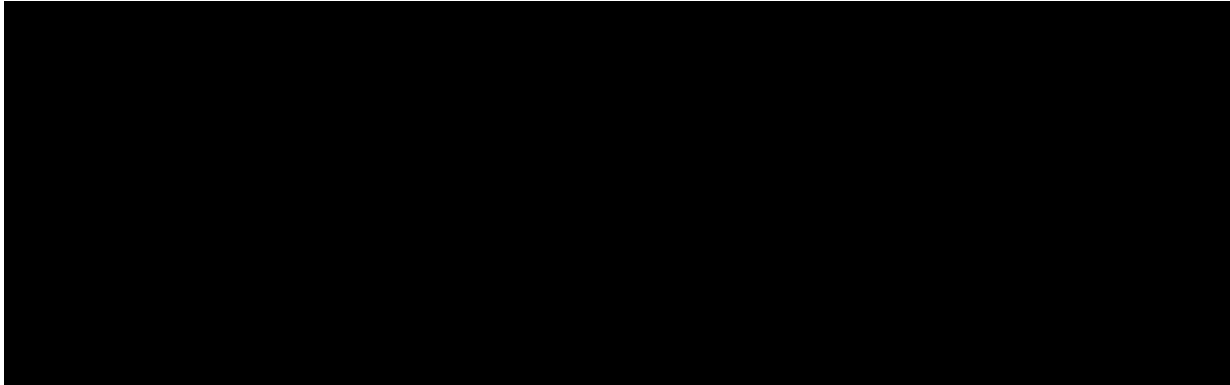
Section 15.2.

[REDACTED]

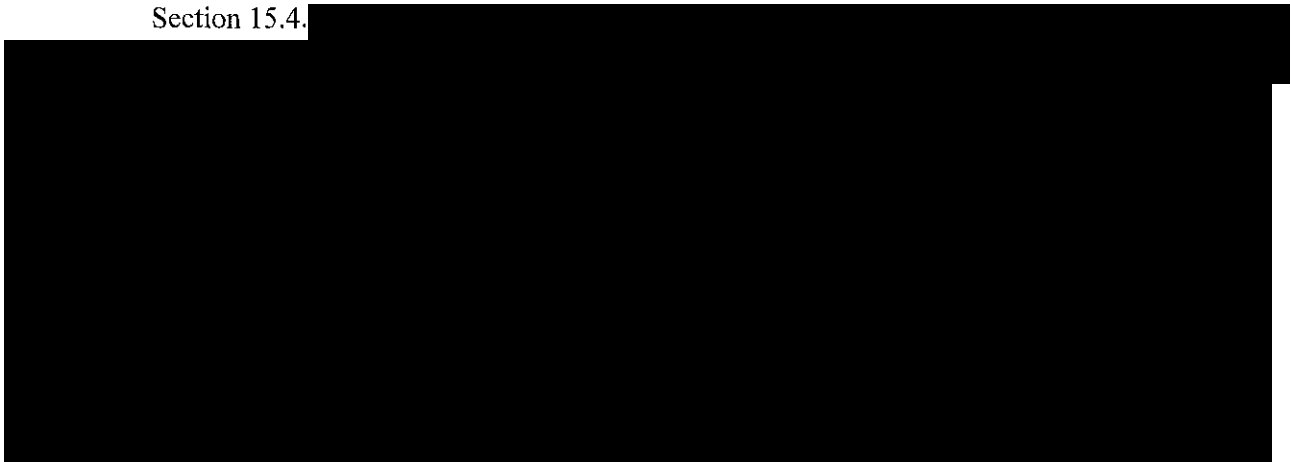
Section 15.3.

[REDACTED]

[REDACTED]



Section 15.4.



ARTICLE XVI

REPRESENTATIONS AND WARRANTIES

Section 16.1. Mutual Representations. Each Party represents and warrants to the other Party that, as of the Effective Date, but with respect to Big Rivers, subject to the approvals described in Sections 3.1 and 3.2:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation;

(b) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;

(c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

(d) except as otherwise permitted herein, it has neither initiated nor received written notice of any action, proceeding or investigation pending, nor to its knowledge is any such action, proceeding or investigation threatened (or any basis therefor known to it) that questions the validity of this Agreement, or that would materially or adversely affect its rights or obligations as a Party;

(e) all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any governmental authority that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with; and

(f) subject to the approval of RUS and/or KPSC to the extent applicable, this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at Law).

Section 16.2. Exclusivity of Seller Representations. The representations and warranties made by Seller in this Agreement are in lieu of and are exclusive of all other representations and warranties, including any implied warranties of merchantability, suitability or fitness for any particular purpose or any other implied warranty. Seller hereby disclaims any such other or implied representations or warranties, notwithstanding the delivery or disclosure to Buyer or its directors, officers, employees, agents or representatives of any documentation or other information.

Section 16.3. Buyer Additional Representations. Buyer represents, warrants and agrees to and with Seller that except as otherwise provided herein, with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of its status as a municipality or municipal entity under Law or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

Section 16.4. Opinions of Counsel. As a condition to the Effective Date, each Party shall provide to the other Party an opinion of counsel that the Party providing the opinion:

(a) is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation;

(b) has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;

(c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets; and

(d) this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at Law).

ARTICLE XVII

NOTICES

Except as otherwise specified in this Agreement, any notice, request, demand, statement or payment provided for in this Agreement shall be in writing and shall be sufficiently given if (a) delivered by overnight mail, overnight courier or hand delivered against written receipt, or (b) transmitted and received by electronic transmission and confirmed by hard copy delivered by one of the methods specified in part (a); and in all cases addressed as set forth in Exhibit C or to such other address as may be designated by a Party from time to time by notice to the other Party in accordance with this Article XVII. Any such notice shall be effective only upon delivery and receipt thereof.

ARTICLE XVIII

MISCELLANEOUS

Section 18.1. No Consequential Damages. Except to the extent (a) awarded on a Third Party Claim (except a Third Party Claim brought by a KyMEA Member or a distribution member of Seller that could have been asserted as claim for breach of this Agreement by Buyer or Seller, respectively) or (b) arising out of fraud or criminal conduct, in the event of any breach of the obligations of a Party hereto, the breaching Party shall be liable hereunder solely for direct and actual damages and under no circumstances shall a Party be liable hereunder for any consequential (including, but not limited to, lost profits and business interruption), incidental, special, punitive, exemplary, indirect or other similar damages.

Section 18.2. Entire Agreement. This Agreement, including the exhibits hereto and all amendments hereto, contain the complete agreement between the Parties with respect to the matters contained herein and supersedes all other negotiations or agreements, whether written or oral, with respect to the subject matter hereof.

Section 18.3. Governing Law; Venue and Jurisdiction.

(a) This Agreement shall be governed by, construed, interpreted and applied in accordance with the laws of the Commonwealth of Kentucky, without giving effect to any principle regarding conflict of laws that would result in the application of the laws of any other jurisdiction.

(b) The Parties hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Western District of Kentucky (or, if that court refuses jurisdiction, in the Franklin County, Kentucky Circuit Court) for the purposes of any cause of action arising out of or based upon this Agreement or relating to the subject matter hereof that is not subject to the exclusive jurisdiction of the KPSC or the FERC, or for the enforcement of any arbitration award hereunder.

Section 18.4. Non-Waiver. No delay or failure by a Party to exercise any of its rights, powers or remedies under this Agreement following any breach or default by the other Party shall be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind on the part of a Party of any breach or default, or any waiver on the part of a Party of any provision or condition of this Agreement, shall be effective only if in writing and then only to the extent specifically set forth in such writing.

Section 18.5. Severability. If an arbitration panel, court or regulatory agency having jurisdiction over the Parties or over this Agreement determines that any of the provisions of this Agreement, or any part thereof, is invalid, void, illegal or unenforceable, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated is not affected in any manner materially adverse to either Party. Upon any such determination of invalidity, the Parties shall, within ten (10) days of such determination, commence to negotiate in good faith new provisions to restore this Agreement as nearly as possible to its original intent and effect.

Section 18.6. Interpretation; Headings. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require. Unless otherwise expressly provided, the words "include," "includes" and "including" do not limit the preceding words or terms and shall be deemed to be followed by the words "without limitation." The headings herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

Section 18.7. No Partnership or Joint Venture. This Agreement does not establish and should not be construed as establishing any partnership or joint venture by and between the Parties, and neither of the Parties shall have any duties, obligations or liabilities arising under such a relationship.

Section 18.8. Confidentiality. Concurrently with the Effective Date hereof, the Parties have entered into the Confidentiality Agreement attached hereto as Exhibit G. The obligations of the Parties under that Confidentiality Agreement shall survive the expiration or termination of this Agreement.

Section 18.9. No Third-Party Benefits. This Agreement shall not impart any rights enforceable by any third party (other than permitted successors or assignees bound by this Agreement). Nothing in this Agreement, express or implied, shall be construed to create any interest, beneficial or otherwise, for any third party.

Section 18.10. Amendment. Except as provided in Section 3.3(b), Section 3.6(a), and Section 3.6(b), this Agreement may not be amended or modified except by a written instrument signed by Seller and Buyer that receives required review and approval by the KPSC and the RUS.

Section 18.11. Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary to effect the purpose and intent of this Agreement.

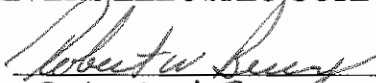
Section 18.12. Counterparts; Electronic Copies. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

Section 18.13. Expenses. Each Party shall pay its own costs and expenses, including the fees and expenses of its agents, representatives, advisors, counsel and accountants, necessary for the negotiation, preparation, execution and delivery of this Agreement.

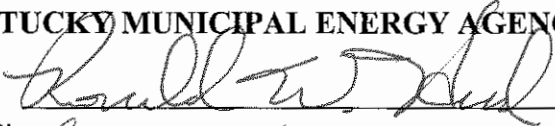
[Signatures begin on next page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

BIG RIVERS ELECTRIC CORPORATION

By: 
Name: Robert W. Berry
Title: President and CEO

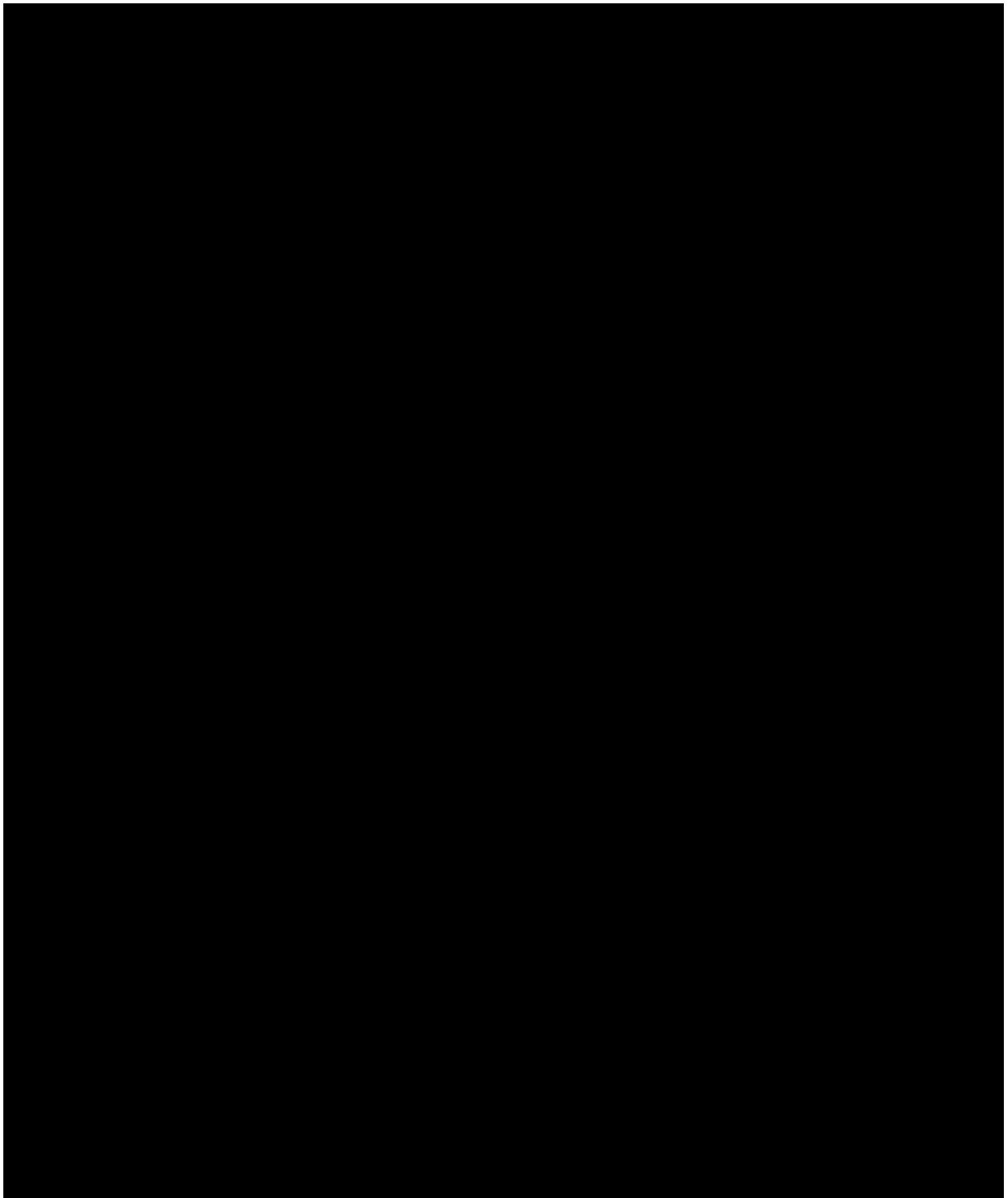
KENTUCKY MUNICIPAL ENERGY AGENCY

By: 
Name: Ronald W. Hines
Title: Chairman

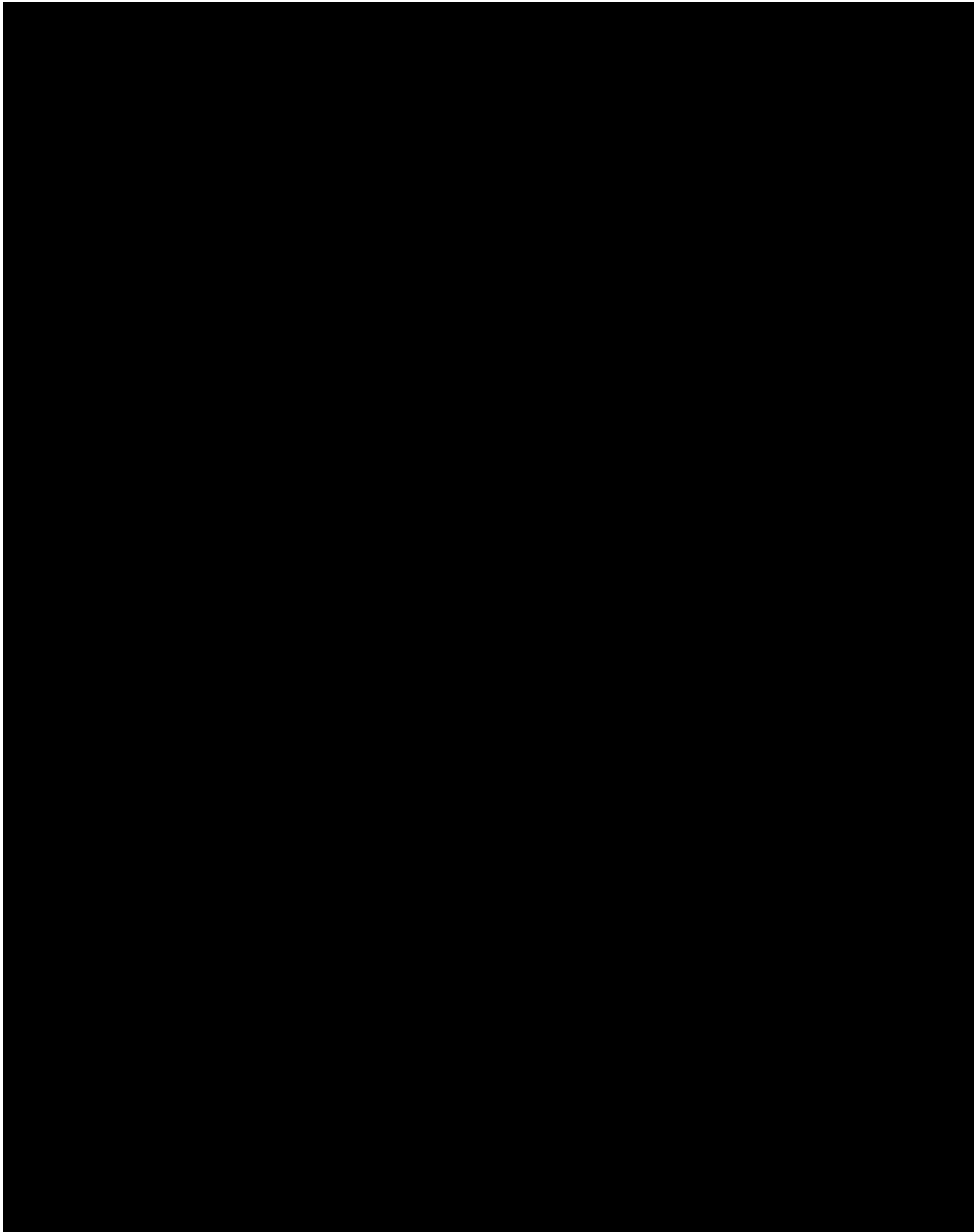
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Exhibit A

FACILITY ENERGY PRICE

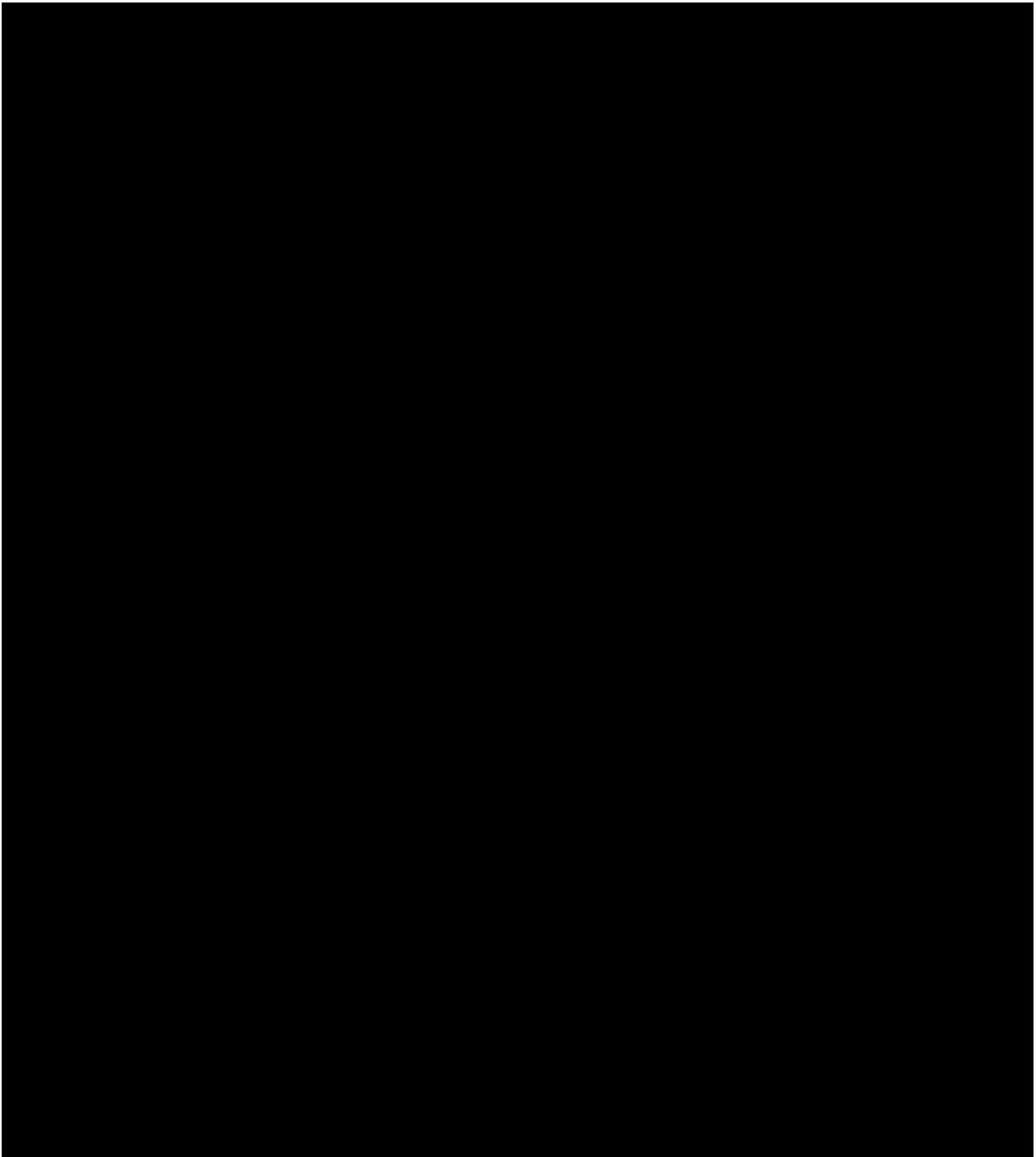


EXECUTION COPY



EXECUTION COPY

Exhibit B



ADDRESSES FOR NOTICE TO PARTIES

TO SELLER:

Robert Berry
President and CEO
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420
Email: Bob.Berry@bigrivers.com

With copies to:

Mark Eacret
Vice President Energy Services
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420
Email: Mark.Eacret@bigrivers.com

Sullivan, Mountjoy, Stainback & Miller,
P.S.C.
100 St. Ann Street
Owensboro, KY 42303
Attention: James M. Miller
Email: jmiller@smsmlaw.com

TO BUYER:

Kentucky Municipal Energy Agency
c/o Rubin & Hays
450 South Third Street
Louisville, KY 40202

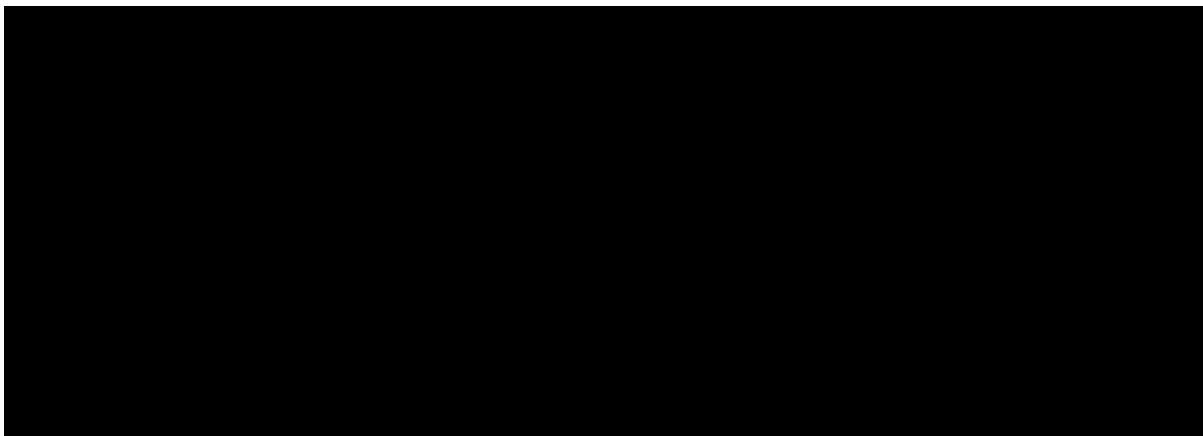
With copies to:

Rubin & Hays
450 South Third Street
Louisville, KY 40202
Email: csmusson@rubinhays.com

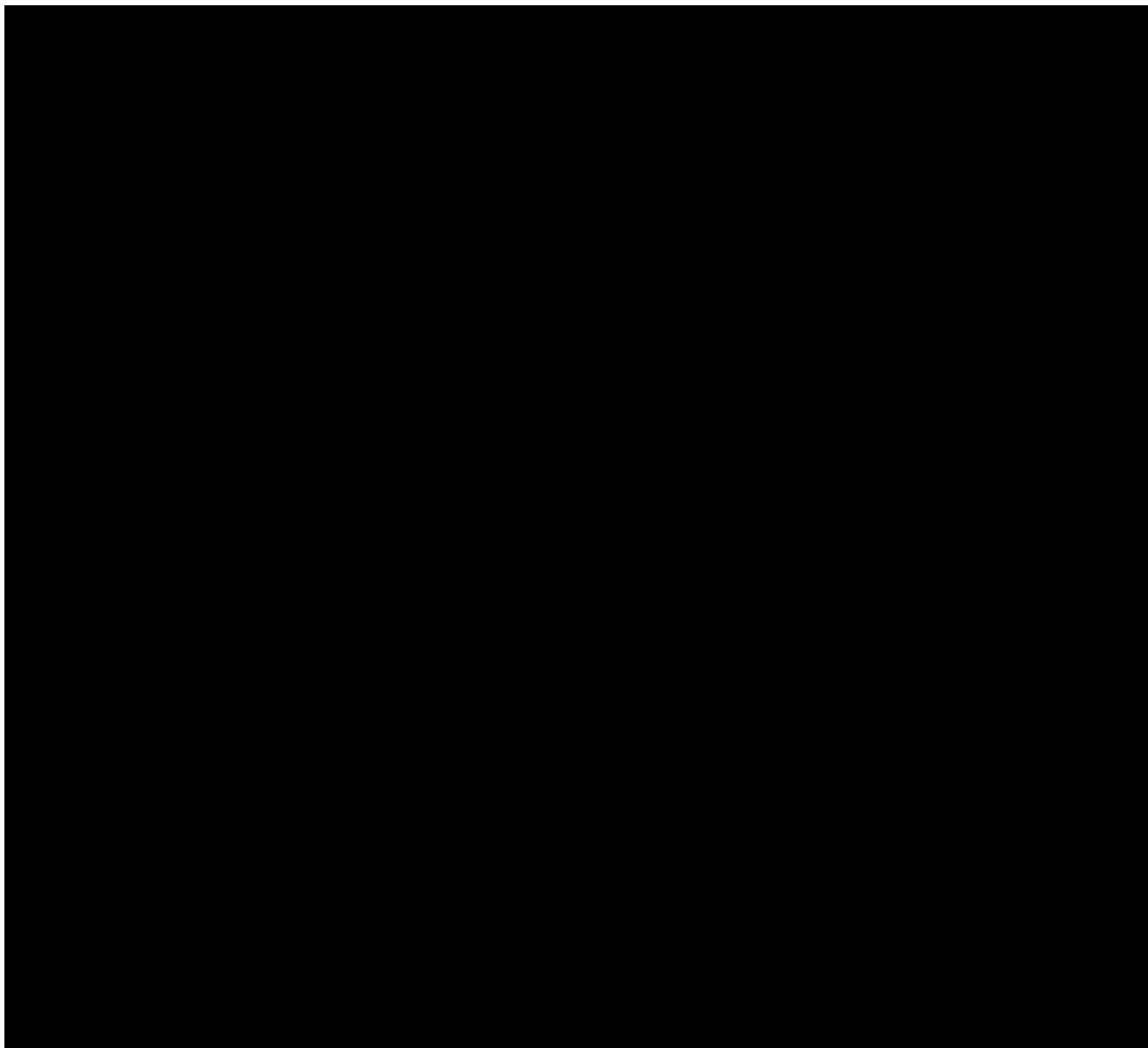
nFront Consulting LLC
2465 Southern Hills Ct
Oviedo, FL 32765
Email:
johnpainter@nFrontConsulting.com

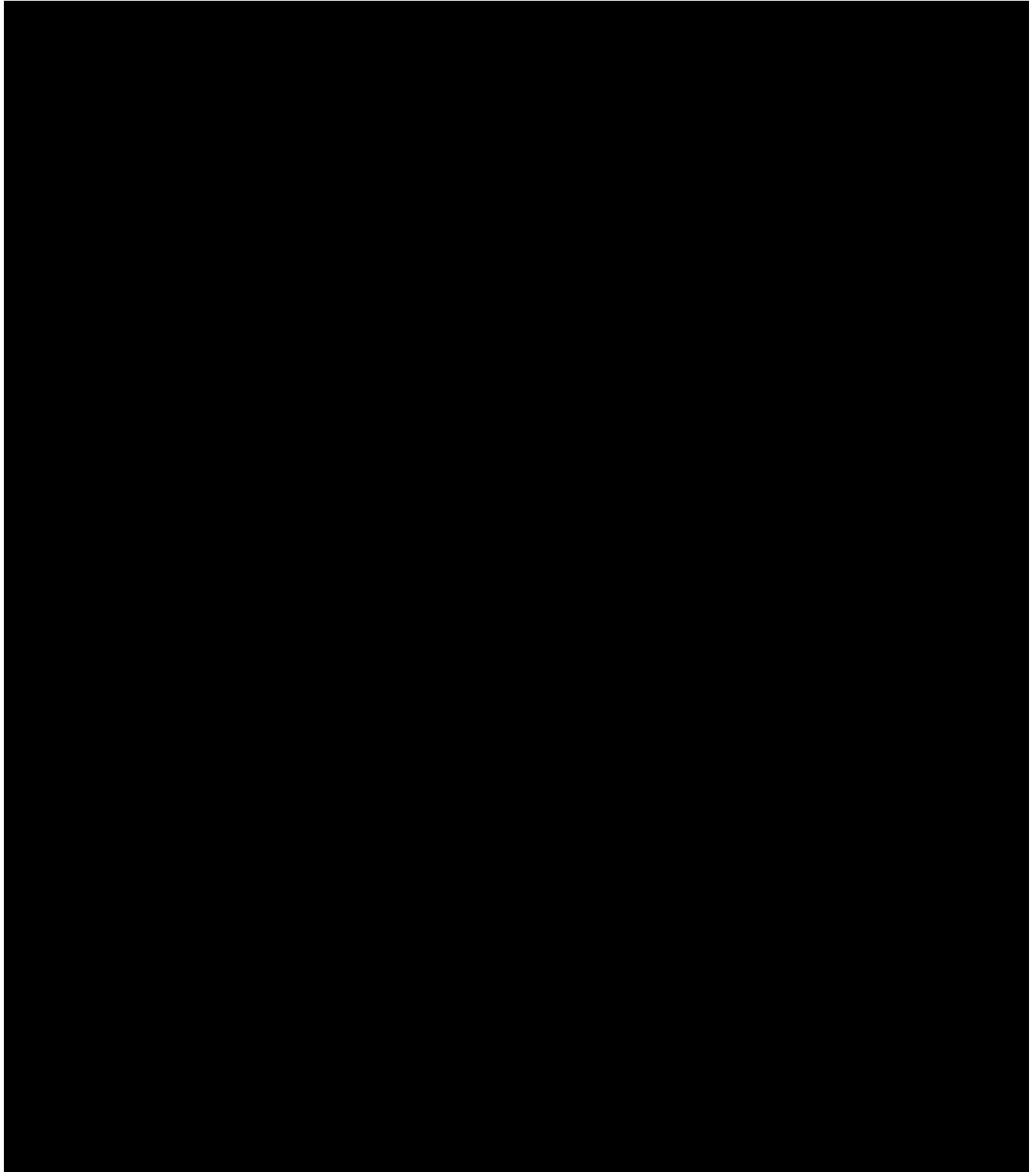
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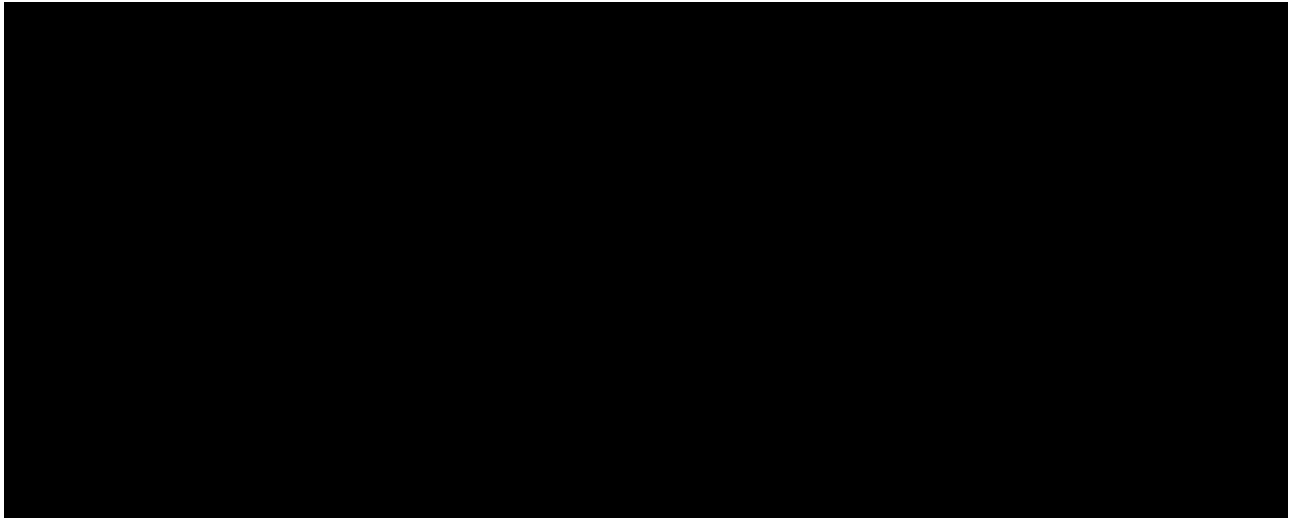
Exhibit D

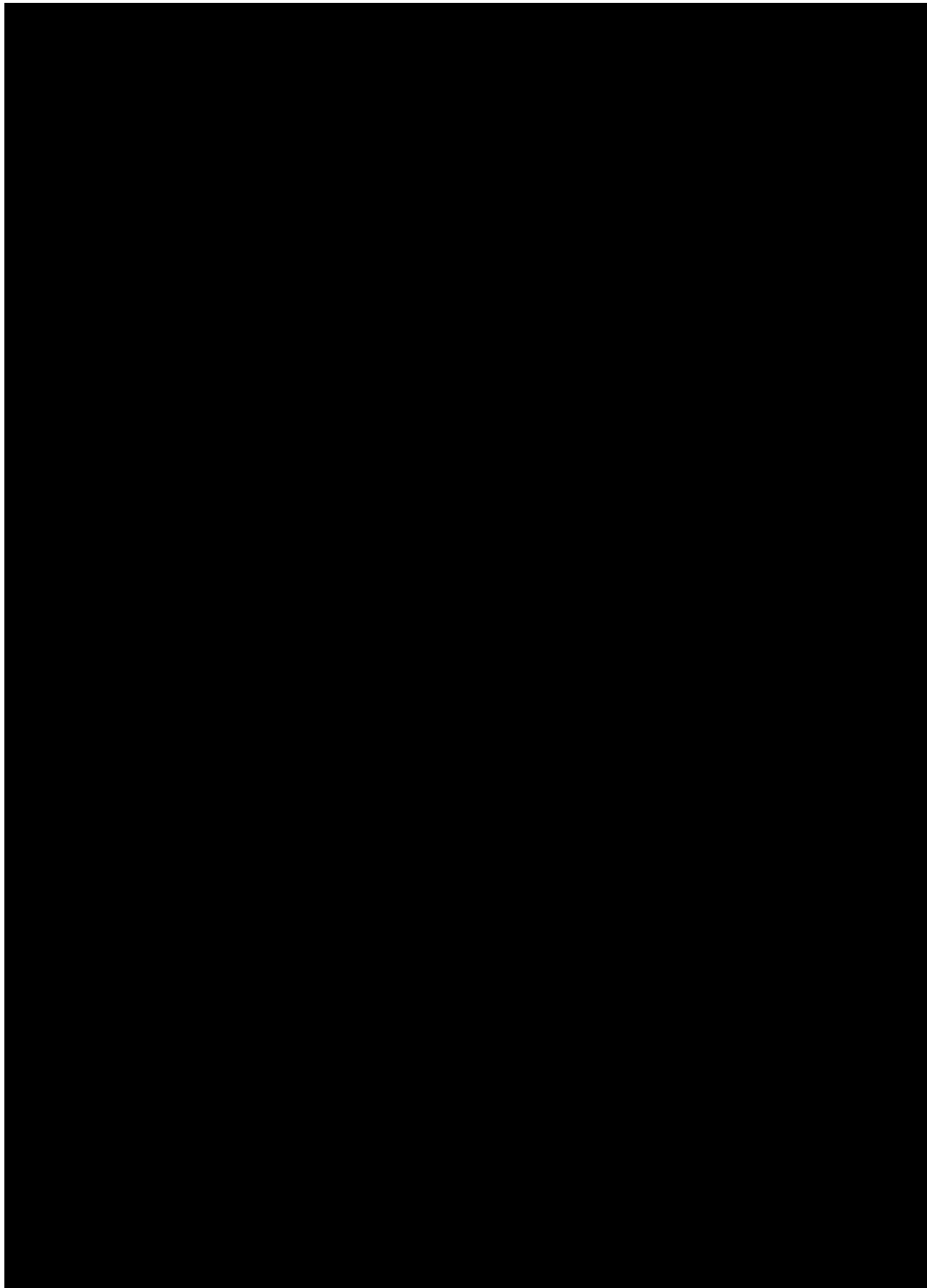


Ladies and Gentlemen:





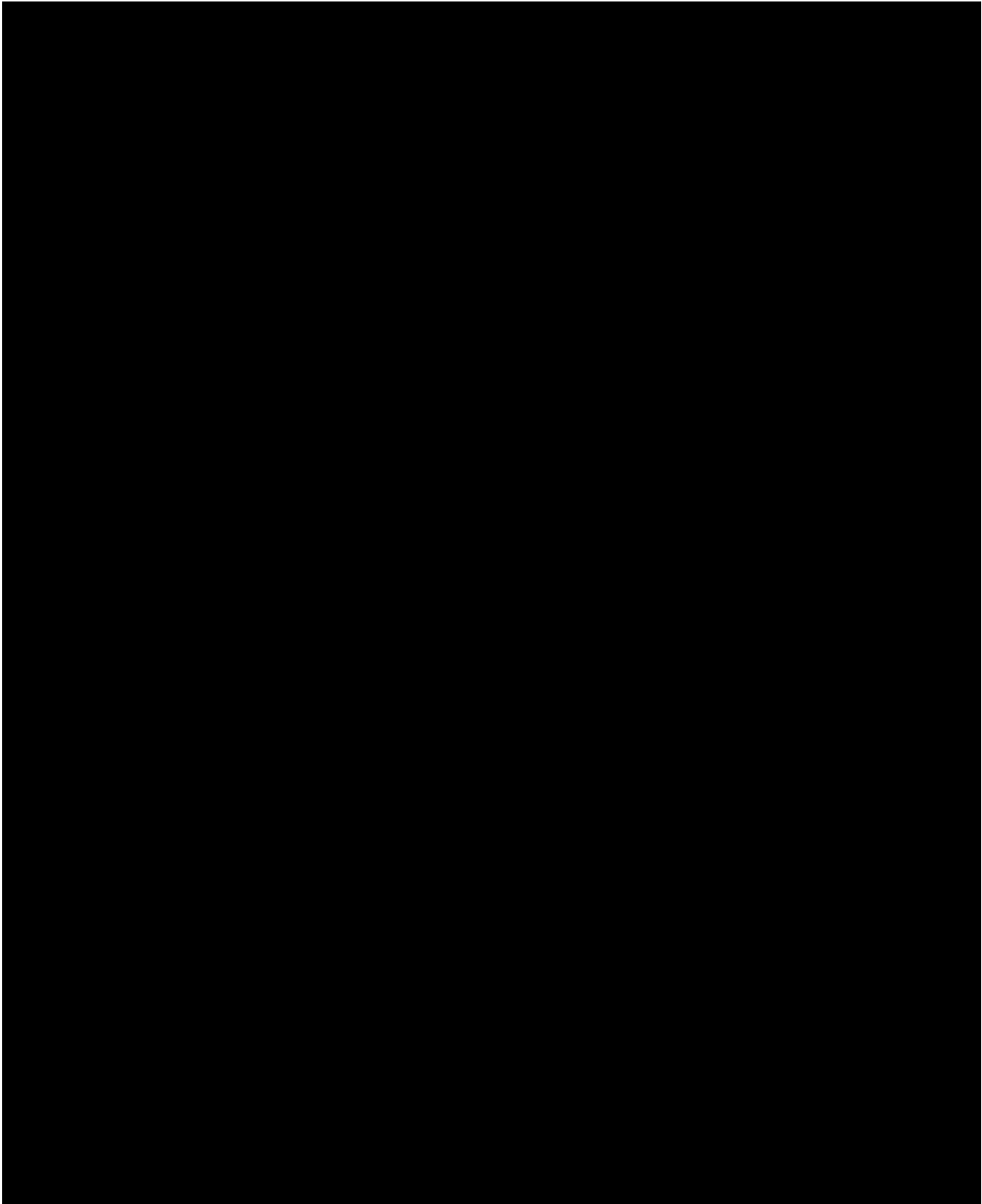


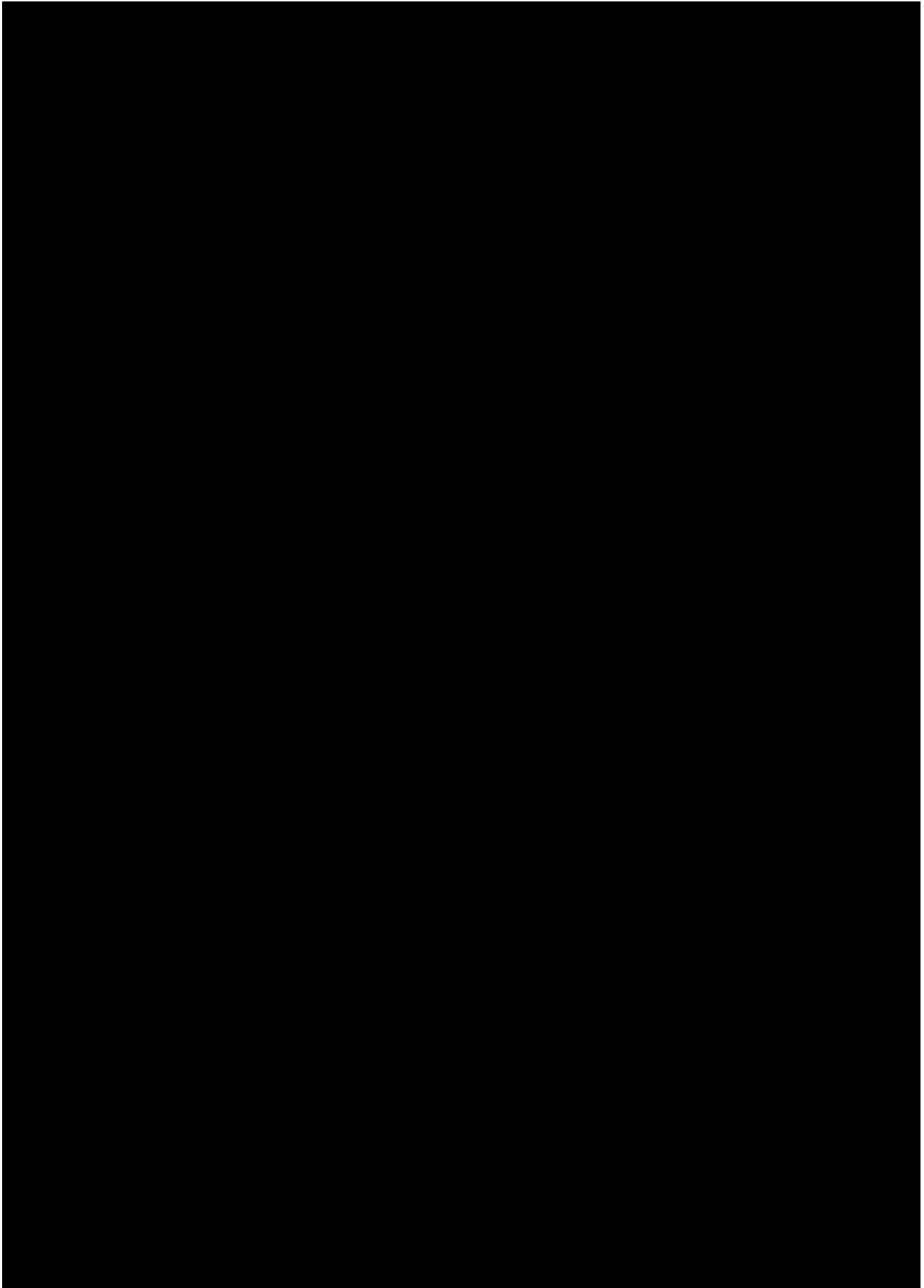




EXECUTION COPY

Exhibit E





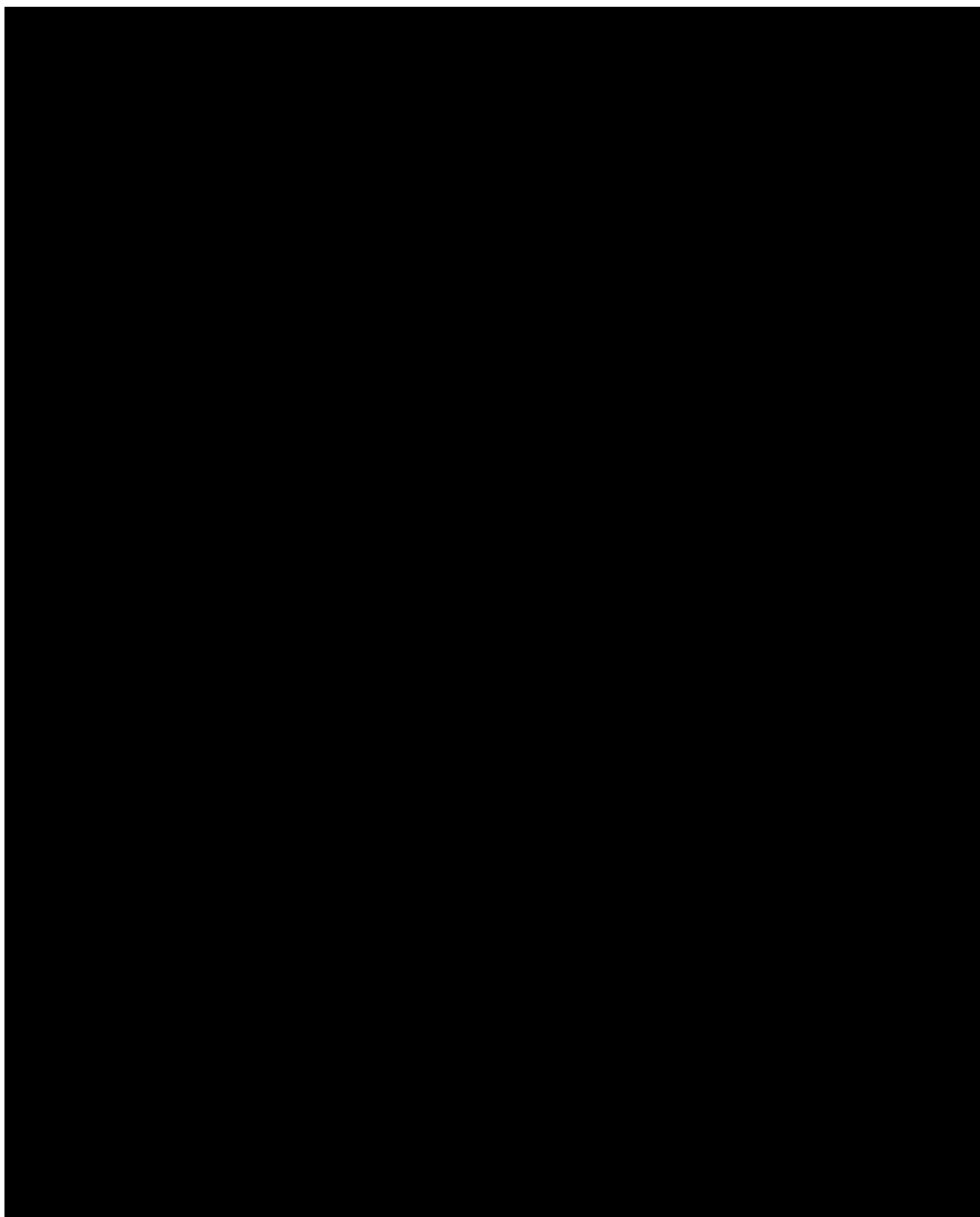


Exhibit F

FORM OF INSTRUMENT OF ASSIGNMENT AND ASSUMPTION

This Instrument of Assignment and Assumption (this "Assignment"), dated as of [____], 20[___] (the "Effective Date"), is entered into by and between [*Assignor*], a [____] ("Assignor"), and [*Assignee*], a [____] ("Assignee").

WHEREAS, Assignor and [Buyer/Seller] are parties to that certain Agreement for the Purchase and Sale of Firm Capacity and Energy, dated as of [____] (as amended through the date hereof, the "PPA").

WHEREAS, in accordance with Section [____] of the PPA, Assignor intends to assign to Assignee all of Assignor's rights and interests under the PPA, and Assignee intends to assume all of Assignor's obligations arising from and after the Effective Date, and the parties intend Assignor to be released from any further liability thereunder to the extent arising from and after the Effective Date.

WHEREAS, the parties hereto desire to execute and deliver this Assignment for the purpose of effecting the assignment and transfer by Assignor to Assignee, and the acceptance and assumption by Assignee, of the PPA and all rights, liabilities and obligations of "[Seller/Buyer]" (as defined in the PPA) thereunder.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee, intending to be legally bound, agree and covenant as follows:

1. Assignor hereby assigns and transfers to Assignee, and Assignee hereby accepts and assumes and agrees to perform the PPA, and all of Assignor's rights, liabilities and obligations thereunder, to the extent arising from and after the Effective Date. Assignee hereby assumes and agrees to pay, discharge, perform and be responsible for all liabilities and obligations arising or accruing under or in respect of the PPA to the extent arising from and after the Effective Date.

2. Nothing in this Assignment, express or implied, is intended or shall be construed to confer upon or give to any Person, other than Assignor and Assignee, and their respective successors and assigns, any remedy or claim under or by reason of this Assignment or any term, covenant, condition, promise or agreement hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Assignment shall be for the sole and exclusive benefit of Assignor and Assignee, and their respective successors and assigns.

3. This Assignment shall be governed by and construed and enforced in accordance with, and this Assignment and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this Assignment shall be governed by, the laws of the Commonwealth of Kentucky.

MUTUAL CONFIDENTIALITY AGREEMENT

This Mutual Confidentiality Agreement (“**Agreement**”) is made as of **July 13** __, 2016 (“**Effective Date**”) between **Kentucky Municipal Energy Agency**, an inter-local agency organized and existing under the laws of the Commonwealth of Kentucky (“**KyMEA**”), and **Big Rivers Electric Corporation**, a Kentucky corporation (“**Company**”). KyMEA and Company are each a “**Party**” in this Agreement and both are referred to as “**Parties**”.

WHEREAS, the Parties have entered into an “Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and Kentucky Municipal Energy Agency” dated July 13, 2016 (the “**PPA**”);

WHEREAS, during the term of the PPA, the Parties may disclose to each other, orally, in writing, by inspection or otherwise, Confidential Information (as defined herein) necessary for the Parties to perform and administer the PPA, including but not limited to participate in the “Operating Committee” created in Section 5.7 of the PPA; and

WHEREAS, both Parties desire to establish and set forth their individual rights and obligations with respect to Confidential Information (as defined herein) that may be exchanged between them in connection with the performance and administration of the PPA.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

1. **Disclosure of Confidential Information.** For purposes of this Agreement, an “**Affiliate**” is a person or entity directly or indirectly controlling, controlled by, or under common control with a Party, including a member. “**Representatives**” are a Party’s or its Affiliate’s directors, officers, employees, agents, advisors (including attorneys, accountants and financial advisors) and consultants. Either Party, when it or its Representatives disclose information to the other Party or its Representatives or when it or its Representatives otherwise give the other Party or its Representatives access to information, is sometimes referred to herein as a “**Disclosing Party**,” and either Party, when receiving information from a Disclosing Party or its Representatives, is sometimes referred to herein as a “**Receiving Party**.” Each Party shall be deemed to be a Receiving Party with respect to Confidential Information that is developed or created by the joint efforts of the Parties. Confidential Information requested by a Party for use solely by its consultant in advising that Party may be provided directly to that Party’s consultant by the Disclosing Party and made subject to the consultant agreeing to accept, in writing, the terms and conditions of this Agreement. “**Confidential Information**” as used in this Agreement shall mean the information of or relating to a Disclosing Party or the PPA that is (i) normally kept confidential by the Disclosing Party, (ii) disclosed (whether orally or in writing) or made available to or observable by the Receiving Party or its

Representatives in any form or media (whether tangible, digital, magnetic or otherwise) at any time after the Effective Date, and (iii) expressly designated by the Disclosing Party in writing as Confidential Information at the time of disclosure to the Receiving Party. Confidential Information does not include information that would otherwise constitute Confidential Information of a Disclosing Party to the extent that the Receiving Party can demonstrate (and bear the burden of proof) that:

- (a) the Confidential Information of the Disclosing Party is, at the time of disclosure, part of the public domain;
- (b) the Confidential Information of the Disclosing Party became part of the public domain, by publication or otherwise, except by breach of the provisions of this Agreement;
- (c) the Confidential Information of the Disclosing Party can be established by written evidence or digital or other electronic records to have been in the possession of the Receiving Party at the time of disclosure;
- (d) the Confidential Information of the Disclosing Party is received by the Receiving Party from a third party without similar restrictions and without breach of this Agreement; or
- (e) the Confidential Information of the Disclosing Party was developed by employees or agents of the Receiving Party independently of and without reliance upon any Confidential Information of the Disclosing Party and demonstrated by the written records thereof.

2. Treatment of Confidential Information.

- (a) The Receiving Party shall hold the Disclosing Party's Confidential Information in trust and confidence and shall use reasonable care to preserve the confidential nature of Confidential Information of the Disclosing Party and in any event use at least the same degree of care as the Receiving Party uses in the protection of its own confidential and proprietary information. The Receiving Party shall not disclose Confidential Information to any third party other than its Representatives, and will disclose Confidential Information only to its Representatives as may be permitted by applicable law who need to know the Confidential Information in connection with the performance and administration of the PPA, who are informed of its confidential nature and are directed to hold the Confidential Information in trust and confidence. The Receiving Party shall be fully responsible for any breach of this Agreement by any of its Representatives.
- (b) In the event that a Receiving Party is requested or required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, the Receiving Party shall (1) to the extent not prohibited by law, provide the Disclosing Party with

prompt written notice of such request or requirement prior to making such disclosure, (2) exercise its reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information, (3) at the request and expense of the Disclosing Party, cooperate with the Disclosing Party in any effort to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information or to resist or narrow the scope of such request or requirement, and (4) furnish only that portion of the Confidential Information which the Receiving Party is advised by legal counsel is legally required.

- (c) Notwithstanding the foregoing provisions of this Section 2, a Receiving Party may disclose Confidential Information to a governmental authority in connection with any application or other communication to such governmental authority that may be required in connection with the PPA.
 - (d) Notwithstanding the foregoing provisions of this Section 2, if KyMEA receives a request under the Kentucky Open Records Act (KRS 61.870 et seq.) to disclose any Confidential Information, KyMEA shall, in addition to any other duty under this Agreement, notify the Company of such request within 24 hours of receipt of the request and at that time provide to the Company a copy of the request. KyMEA shall permit the Company to participate in KyMEA's analysis of the request, the determination of the appropriate response to the request, and any subsequent review or appeal of KyMEA's response to the request. KyMEA shall immediately, and no less than 24 hours before providing any response to the request, notify the Company of its final decision on a response to the Open Records Act request. If, in the absence of an express waiver under this Agreement, KyMEA is, in the opinion of KyMEA's legal counsel, required to disclose the Confidential Information in response to the Open Records Act request, KyMEA may disclose only such of the Confidential Information to the party requiring disclosure as, in the opinion of the KyMEA's legal counsel, is required by applicable law, rule or regulation.
3. **Materials.** All materials containing Confidential Information furnished to the Receiving Party by the Disclosing Party in any form (whether tangible, digital, magnetic or otherwise) and any tangible, digital, magnetic or other machine readable embodiments of the Disclosing Party's Confidential Information created by the Receiving Party shall remain the property of the Disclosing Party. Upon the expiration or termination of this Agreement and at the written request of the Disclosing Party, the Receiving Party shall return to the Disclosing Party or destroy all materials containing Confidential Information that were provided to the Receiving Party by the Disclosing Party within two years prior to the expiration or termination of this Agreement, and all copies thereof. Notwithstanding the foregoing requirements for a Receiving Party's return or destruction of a Disclosing Party's Confidential Information: (a) a Receiving Party's accounting, legal, financial and other advisors may retain copies of a Disclosing Party's Confidential Information and work product that includes such Confidential Information in accordance with policies and procedures implemented by such advisors in order to comply with

applicable law, regulation or professional standards; and (b) a Receiving Party shall not be required to return, erase or destroy (1) information that is commingled with other electronic records that are collected and maintained by the Receiving Party as an archived computer system backup in a separate secure facility as part of information technology backup procedures in accordance with security and/or disaster recovery procedures maintained in the normal course of business, (2) information that is included in a Receiving Party's disclosures to its (or an Affiliate's) board of directors or similar governing body or the record of deliberations of its (or an Affiliate's) board of directors or similar body in connection with the consideration of matters related to the performance or administration of the PPA and maintained with the Receiving Party's official records of such proceedings, (3) information that is incorporated into an agreement between the Parties, or (4) information in the possession of the Receiving Party or its Representatives if, in the opinion of legal counsel to the Receiving Party or its Representatives, such destruction would be unlawful or would violate any order, judgment, writ or decree to which the Receiving Party or its Representatives are subject to or by which they are bound. Notwithstanding the return or destruction of Confidential Information or the foregoing right to retain Confidential Information, the Receiving Party and its Representatives will continue to be bound by the obligations of confidentiality hereunder.

4. **No Representations or Warranties.** The Disclosing Party does not make any representations or warranties as to the accuracy or completeness of Confidential Information that the Disclosing Party or its Representatives may disclose or make available to the Receiving Party or its Representatives or the fitness of any such information for any particular purpose of the Receiving Party or any other person, except for such representations and warranties that may be included in the PPA.
5. **Term and Termination.**
 - (a) This Agreement shall terminate two years after the expiration or other termination of the PPA. If this Agreement is terminated prior to the expiration or other termination of the PPA, the Receiving Party's obligations under Sections 2 and 3 shall survive until the latter of (i) two years after the expiration or other termination of the PPA and (ii) the final return or destruction of materials containing Confidential Information by the Receiving Party pursuant to Section 3 of this Agreement.
 - (b) Upon termination of this Agreement, the Receiving Party shall cease to use the Disclosing Party's Confidential Information and shall comply with Section 3 within sixty (60) days after receipt of a Disclosing Party's written request for return and/or destruction of materials and records that include the Disclosing Party's Confidential Information. Upon the request of the Disclosing Party, an officer of the Receiving Party shall certify that the Receiving Party has complied with its obligations in Section 3.
6. **Successors and Assigns.** Neither Party shall assign its rights or obligations arising under this Agreement without the other Party's prior written consent. This Agreement will be for

the benefit of the Disclosing Party's successors and assigns, and will be binding on Receiving Party's successors and assigns, and shall be assigned and assumed in connection with any assignment by a Party of its rights and obligations under the PPA.

8. General Provisions.

- (a) This Agreement shall be governed by and construed in accordance with the laws of the United States and of the Commonwealth of Kentucky, without reference to its conflicts of laws provisions.
- (b) Any notice provided for or permitted under this Agreement will be treated as having been given when given as notice is required to be given in the PPA.
- (c) The Receiving Party agrees that breach of the provisions of this Agreement by the Receiving Party or its Representatives may cause the Disclosing Party irreparable damage for which recovery of money damages would be inadequate. The Disclosing Party will, therefore, be entitled to seek timely injunctive relief, without proof of actual damages, in any court of competent jurisdiction to protect the Disclosing Party's rights under this Agreement, in addition to all remedies available at law.
- (d) In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final order, not subject to further appeal, that a Party or its Representatives has breached the provisions of this Agreement, the non-breaching Party shall be entitled to recover its costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such litigation.
- (e) This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of both Parties.
- (f) No term or provision hereof will be considered waived by either Party, and no breach excused by either Party, unless such waiver or consent is in writing signed on behalf of the Party against whom the waiver is asserted. No consent by either Party to, or waiver of, a breach by either Party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either Party.
- (g) If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.
- (h) This Agreement constitutes the entire agreement between the Parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Kentucky Municipal Energy Agency

By: 

Printed Name: Ronald W. Herd

Title: Chairman

Big Rivers Electric Corporation

By: 

Printed Name: Mark J. Kacet

Title: VP Energy Services

1 **Big Rivers Electric Corporation**
 2 **KYMEA PPA Contract Details**
 3 **May 2019-YTDFeb2020**

4			A	B	C	D	E	F	G	H	I	J	K
5			mW - Sold	mWh - Sold (GEN)	mWh - Sold (Market)	Capacity Revenue	Energy Revenue (GEN)	Energy Revenue (MARKET)	Total Revenue (D+E+F)			Total Expenses (H+I)	Monthly Margin (G-J)
6	Year	Month											

7	2019											
8												
9												
10												
11												
12												
13												
14												
15	2020											
16												
17												

18			AVG - MW Sold	Total mWh - Sold (GEN)	Total mWh - Sold (Market)	Total Capacity Revenue	Total Energy Revenue (GEN)	Total Energy Revenue (Market)	Total Revenue	Total Wilson Generation Cost	Total Purchase Power - BREC.WILSON1	Total Expenses	Total Margin
19	May - Dec 2019												
20	YTD Feb 2020												

Big Rivers Electric Corporation
Case No. 2020-00064
KyMEA Gross Margin Forecast

	2020-33 LTF 2020	2020-33 LTF 2021	2020-33 LTF 2022	2020-33 LTF 2023	2020-33 LTF 2024	2020-33 LTF 2025	2020-33 LTF 2026
KYMEA Margin:							
KYMEA Contract Revenue	31,188,377	30,402,461	30,051,602	29,755,324	29,518,609	28,904,686	29,095,582
Load Cost							
KYMEA Capacity							
Total KYMEA Expense							
Total KYMEA Margin							

Big Rivers Electric Corporation
Case No. 2020-00064
KyMEA Gross Margin Forecast

	2020-33 LTF 2027	2020-33 LTF 2028	2020-33 LTF 2029	2020-33 LTF 2030	2020-33 LTF 2031	2020-33 LTF 2032	2020-33 LTF 2033
KYMEA Margin:							
KYMEA Contract Revenue	28,796,809	28,428,226	13,142,909	-	-	-	-
Load Cost							
KYMEA Capacity							
Total KYMEA Expense							
Total KYMEA Margin							

Big Rivers Electric Corporation
Case No. 2020-00064
KyMEA Gross Margin Forecast

2019-32 LTF	2019-32 LTF	2019-32 LTF	2019-32 LTF	2019-32 LTF	2019-32 LTF	2019-32 LTF
2020	2021	2022	2023	2024	2025	2026

KYMEA Margin:

KYMEA Contract Revenue

32,601,352	31,765,290	31,392,984	29,245,610	29,181,440	29,224,886	28,993,961
------------	------------	------------	------------	------------	------------	------------

Load Cost

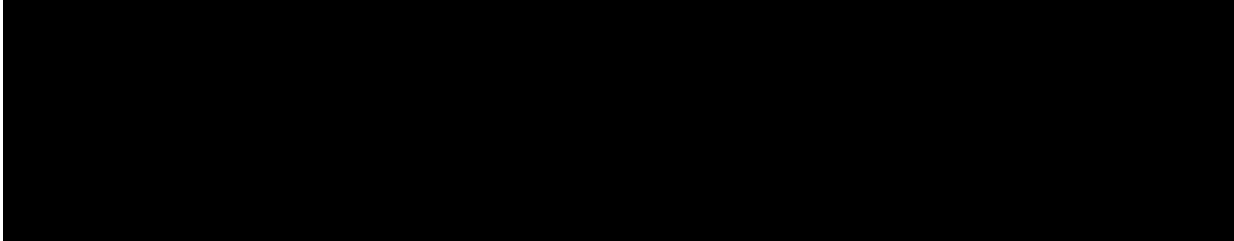
KYMEA Capacity

Total KYMEA Expense

Total KYMEA Margin



Big Rivers Electric Corporation
Case No. 2020-00064
KyMEA Gross Margin Forecast

	2019-32 LTF 2027	2019-32 LTF 2028	2019-32 LTF 2029	2019-32 LTF 2030	2019-32 LTF 2031	2019-32 LTF 2032
KYMEA Margin:						
KYMEA Contract Revenue	30,425,776	30,774,311	14,854,261	-	-	-
Load Cost						
KYMEA Capacity						
Total KYMEA Expense						
Total KYMEA Margin						

Big Rivers Electric Corporation
Case No. 2020-00064
KyMEA Gross Margin Forecast

	<u>2019-32 LTF</u>	<u>VARIANCE</u>	<u>VARIANCE</u>	<u>VARIANCE</u>	<u>VARIANCE</u>	<u>VARIANCE</u>	<u>VARIANCE</u>
	<u>2033</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
KYMEA Margin:							
KYMEA Contract Revenue		(1,412,975)	(1,362,829)	(1,341,382)	509,713	337,169	(320,201)
Load Cost							
KYMEA Capacity							
Total KYMEA Expense							
Total KYMEA Margin							

**Big Rivers Electric Corporation
Case No. 2020-00064
KyMEA Gross Margin Forecast**

	VARIANCE	VARIANCE	VARIANCE	VARIANCE	VARIANCE	VARIANCE	VARIANCE	VARIANCE
	2026	2027	2028	2029	2030	2031	2032	2033
KYMEA Margin:								
KYMEA Contract Revenue	101,620	(1,628,967)	(2,346,085)	(1,711,353)	-	-	-	
Load Cost								
KYMEA Capacity								
Total KYMEA Expense								
Total KYMEA Margin								

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

1 **Item 39) *Regarding the Northeast Nebraska Public Power District***
2 ***Agreements (“Nebraska PPAs”) approved in Case No. 2014-00134, please***
3 ***provide the following:***

4 ***a. An unredacted copy of the Agreement and the summary provided in***
5 ***the application.***

6 ***b. Describe all contracted capacity supplied to the Purchasers***
7 ***currently and through the term contract, including the source of the***
8 ***Capacity.***

9 ***c. Describe all scheduled energy provided to the Purchasers to date***
10 ***and the source of that energy.***

11 ***d. Provide detailed monthly amounts of energy and capacity provided***
12 ***under the Agreement to date.***

13 ***e. Provide the monthly Big Rivers’ fuel and other variable costs to***
14 ***provide the energy and capacity under the Agreement to date.***

15

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
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CASE NO. 2020-00064

Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020

April 3, 2020

- 1 ***f. Provide the monthly Big Rivers' transmission costs incurred to***
2 ***provide the energy and capacity to the Purchasers' Delivery Point***
3 ***under the Agreement to date.***
- 4 ***g. Provide all forecasted revenue, margins and variable costs for each***
5 ***future month during the term of the contract.***

6

7 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
8 unduly burdensome. Big Rivers also objects to this request on the grounds that it
9 seeks information that is irrelevant and is not likely to lead to the discovery of
10 admissible evidence. Notwithstanding these objections, and without waiving them,
11 Big Rivers responds as follows:

12

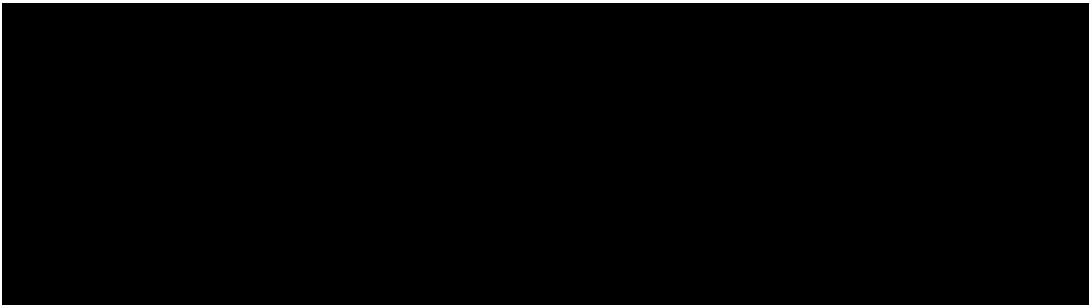
BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
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CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

- 1 a. Public versions of the requested documents can be found at:
- 2 <https://psc.ky.gov/PSCSCF/2014%20cases/2014->
- 3 [00134/20140404_Big%20Rivers%20Electric%20Corporation_Wholesale%20Power%20Agreements.pdf](https://psc.ky.gov/PSCSCF/2014%20cases/2014-00134/20140404_Big%20Rivers%20Electric%20Corporation_Wholesale%20Power%20Agreements.pdf). The Commission-approved, public version of
- 4 the contract are shown on the Commission's website at:
- 5
- 6 [https://psc.ky.gov/Home/Library?type=Tariffs&folder=Electric%5CBig%20](https://psc.ky.gov/Home/Library?type=Tariffs&folder=Electric%5CBig%20Rivers%20Electric%20Corporation%5CContracts)
- 7 [Rivers%20Electric%20Corporation%5CContracts](https://psc.ky.gov/Home/Library?type=Tariffs&folder=Electric%5CBig%20Rivers%20Electric%20Corporation%5CContracts).
- 8 b. Big Rivers' supply to the Nebraska customers is net of their previously
- 9 contracted capacity and energy. Big Rivers' supply of contracted capacity
- 10 to meet the needs of Nebraska customers so far includes:

- 11 • 
- 12
- 13
- 14

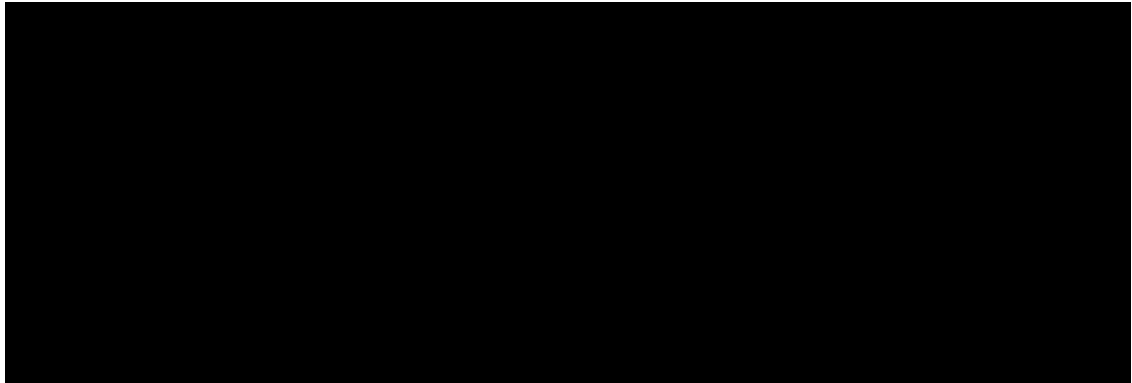
BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
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OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

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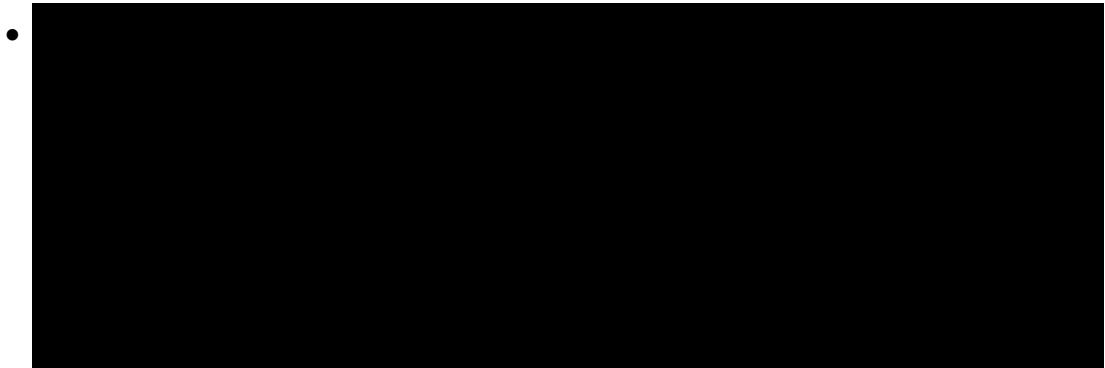
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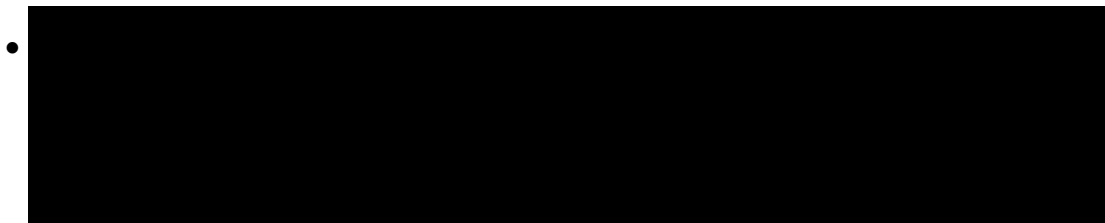
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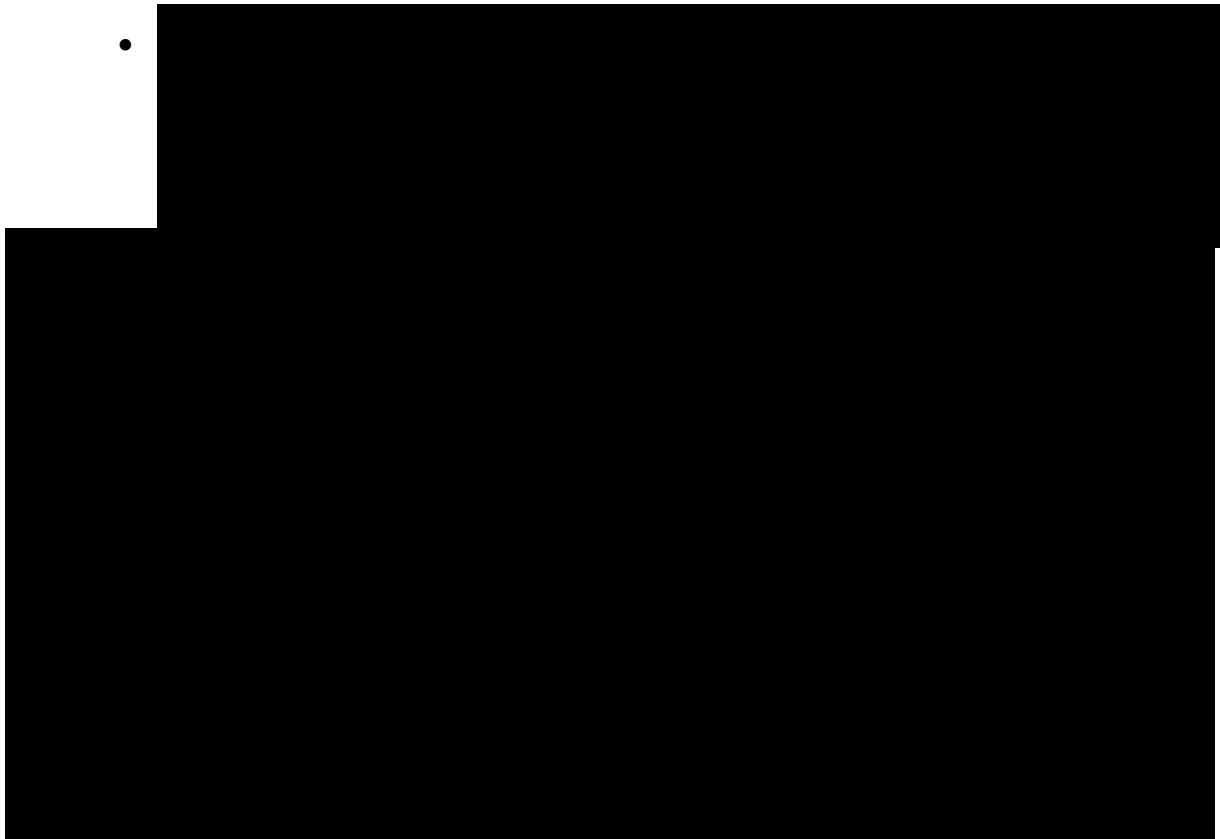
BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
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CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

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12 d. Detailed monthly amounts of energy and capacity supplied to Nebraska
13 customers by Big Rivers to date are included in Columns A and B of the
14 **CONFIDENTIAL** attachment to this response.

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
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CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

- 1 e. Monthly variable costs for Big Rivers to provide the energy and capacity to
2 Nebraska customers to date are included in Column D of the
3 **CONFIDENTIAL** attachment to this response. Additionally, monthly
4 revenues are included in Column C and margins for these transactions are
5 included in Column E of the **CONFIDENTIAL** attachment to this
6 response.
- 7 f. There have been no Big Rivers' transmission costs incurred to provide the
8 energy and capacity to Nebraska customers' delivery point to date.
- 9 g. Please see **CONFIDENTIAL** attachment to this response for forecasted
10 revenue, margins, and variable costs.
- 11
- 12 **Witness)** Mark J. Eacret

Big Rivers Electric Corporation
Case No. 2020-00064
AG First Data Request Item 39 d. and e.
Big Rivers' Nebraska PPAs Margins To Date

Column ---->	A	B	C	D	E
Month	mW - Sold	mWh - Sold	Total Revenue	Total Expenses	Monthly Margin
Jan-18					
Feb-18					
Mar-18					
Apr-18					
May-18					
Jun-18					
Jul-18					
Aug-18					
Sep-18					
Oct-18					
Nov-18					
Dec-18					
Jan-19					
Feb-19					
Mar-19					
Apr-19					
May-19					
Jun-19					
Jul-19					
Aug-19					
Sep-19					
Oct-19					
Nov-19					
Dec-19					
Jan-20					
Feb-20					

Values for current and most recent two months subject to true-up

Big Rivers Electric Corporation
Case No. 2020-00064
Nebraska PPAs Forecasted Monthly Margins

Column ---->	A Revenue	B Cost	C Sales Margins
Mar-20			
Apr-20			
May-20			
Jun-20			
Jul-20			
Aug-20			
Sep-20			
Oct-20			
Nov-20			
Dec-20			
Jan-21			
Feb-21			
Mar-21			
Apr-21			
May-21			
Jun-21			
Jul-21			
Aug-21			
Sep-21			
Oct-21			
Nov-21			
Dec-21			
Jan-22			
Feb-22			
Mar-22			
Apr-22			
May-22			
Jun-22			
Jul-22			
Aug-22			
Sep-22			
Oct-22			
Nov-22			
Dec-22			

Big Rivers Electric Corporation
Case No. 2020-00064
Nebraska PPAs Forecasted Monthly Margins

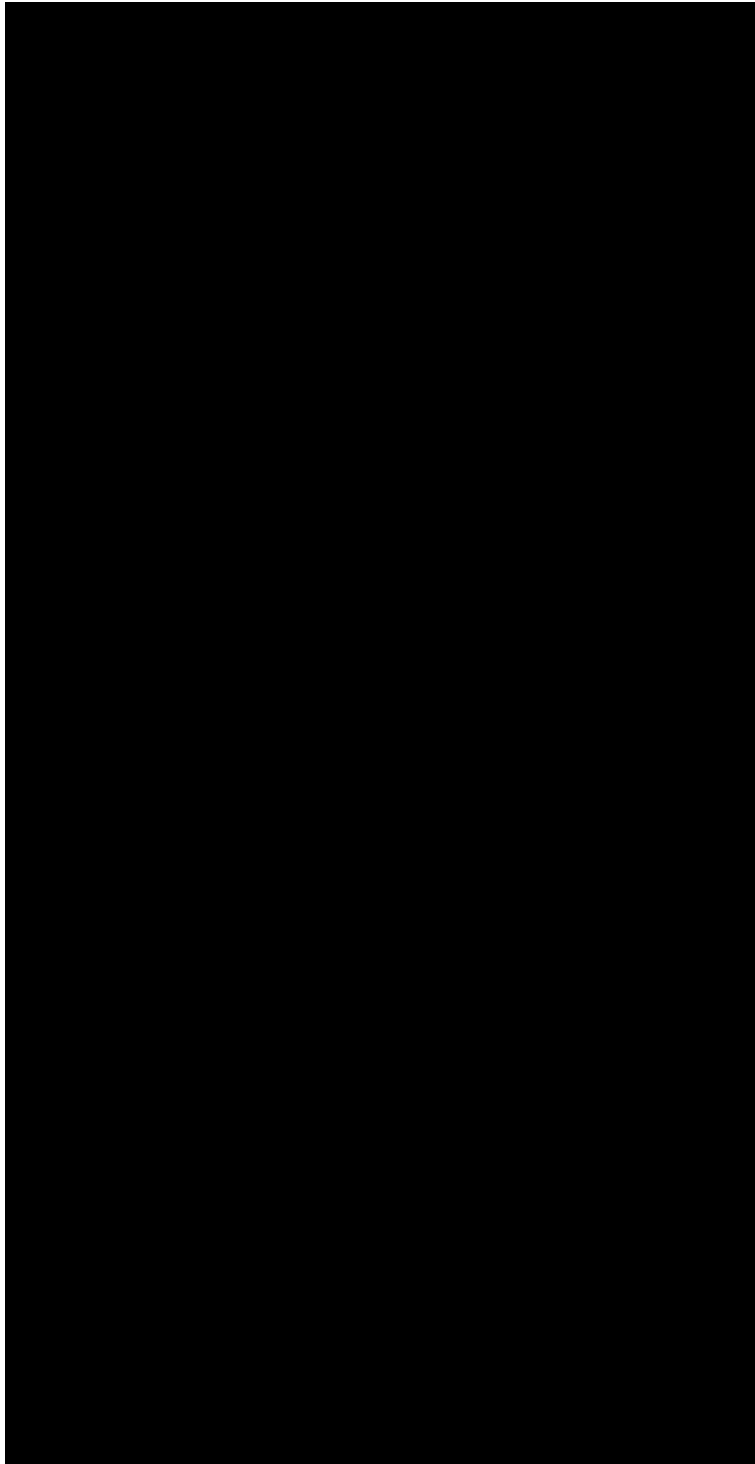
Column ---->

A
Revenue

B
Cost

C
Sales Margins

Jan-23
Feb-23
Mar-23
Apr-23
May-23
Jun-23
Jul-23
Aug-23
Sep-23
Oct-23
Nov-23
Dec-23
Jan-24
Feb-24
Mar-24
Apr-24
May-24
Jun-24
Jul-24
Aug-24
Sep-24
Oct-24
Nov-24
Dec-24
Jan-25
Feb-25
Mar-25
Apr-25
May-25
Jun-25
Jul-25
Aug-25
Sep-25
Oct-25
Nov-25
Dec-25



Big Rivers Electric Corporation
Case No. 2020-00064
Nebraska PPAs Forecasted Monthly Margins

Column ---->	A Revenue	B Cost	C Sales Margins
Jan-26			
Feb-26			
Mar-26			
Apr-26			
May-26			
Jun-26			
Jul-26			
Aug-26			
Sep-26			
Oct-26			
Nov-26			
Dec-26			

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
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CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

1 **Item 40)** *Please provide an unredacted (except where critical*
2 *infrastructure requirements prevent such provision) copy of all documents*
3 *included in the February 7, 2020, Big Rivers Environmental Compliance Plan*
4 *filing in Case No. 2019-00435.*

5

6 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
7 unduly burdensome. Big Rivers further objects to this request on the grounds that it
8 seeks information that is irrelevant and not likely to lead to the discovery of
9 admissible evidence because matters pertaining to Big Rivers' Environmental
10 Compliance Plan are subject to Commission review in Case No. 2019-000435.
11 Notwithstanding these objections, and without waiving them, the public documents
12 may be found on the Commission's website at:

13 [http://psc.ky.gov/pscscf/2019%20cases/2019-](http://psc.ky.gov/pscscf/2019%20cases/2019-00435//20200207_Big%20Rivers%20Electric%20Corporation%20Application.pdf)
14 [00435//20200207_Big%20Rivers%20Electric%20Corporation%20Application.pdf](http://psc.ky.gov/pscscf/2019%20cases/2019-00435//20200207_Big%20Rivers%20Electric%20Corporation%20Application.pdf).

15

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

1 Witness) Michael T. Pullen

BIG RIVERS ELECTRIC CORPORATION

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1 **Item 41)** *Please provide an unredacted copy of all documents included in*
2 *the Joint Application of Big Rivers and Meade in Case No. 2019-00365.*

3

4 **Response)** Big Rivers objections to this request on the grounds that it is overbroad
5 and unduly burdensome. Big Rivers also objects to this request on the grounds that
6 it seeks information that it seeks information that is irrelevant and not likely to lead
7 to the discovery of admissible evidence because the issues presented in the Joint
8 Application of Big Rivers and Meade are subject to Commission review in Case No.
9 2019-00365. Notwithstanding these objections, and without waiving them, public
10 documents included in the Joint Application of Big Rivers and Meade in Case No.
11 2019-00365 are available at the following link:

12 https://www.psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?case=2019-00365

13

14 **Witness)** Mark J. Eacret

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1 **Item 42)** *Regarding the Big Rivers Application for Enforcement of Rate*
2 *and Service Standards in Case No. 2019-00269, please provide the following:*

3 *a. An unredacted copy of all materials included in the July 31, 2019*
4 *Application.*

5 *b. An explanation of how the outcome of Case No. 2019-00269 would*
6 *affect this proceeding in each of the following instances:*

7 *i. Big Rivers is granted its relief as requested.*

8 *ii. The City of Henderson is granted its relief or position as stated.*

9 *iii. Under various compromise scenarios.*
10

11 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
12 unduly burdensome. Big Rivers also objects to this request on the grounds that it
13 seeks information that it is irrelevant and not likely to lead to the discovery of
14 admissible evidence because matters relevant to Case No. 2019-00269 are being

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1 addressed by the Commission in that proceeding. Notwithstanding these objections,
2 and without waiving them, Big Rivers responds as follows:

3 a. The public documents may be found on the Commission's website at:
4 https://psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?case=2019-00269.

5 b. For the outcomes described:

6 i. Big Rivers' financial forecast, and proposals in this proceeding, reflect
7 the assumption that the Commission grants the relief requested in
8 Case No. 2019-00269.

9 ii. The additional capital expenditures and operating cost of an
10 unfavorable outcome would diminish Big Rivers' future financial
11 results, thereby diminishing the near-term benefits to its Members
12 from the New TIER Credit.

13 iii. The impact cannot be determined without more specificity as to the
14 assumed outcome in Case No. 2019-00269.

15

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1 Witness) Paul G. Smith

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1 **Item 43)** *Regarding the focused BREC focused management audit ordered*
2 *by the Commission in Case No. 2013-00199, please provide an unredacted*
3 *copy of the final audit report.*

4

5 **Response)** Big Rivers objects to this request on the grounds that it seeks
6 information that is irrelevant and not likely to lead to the discovery of admissible
7 evidence. Notwithstanding these objections, and without waiving them, the public
8 version of the Focused Managed Audit is available on the Commission's website at:
9 https://psc.ky.gov/agencies/psc/hot_list/BREC-ConcentricRpt.pdf.

10

11 **Witness)** Robert W. Berry

BIG RIVERS ELECTRIC CORPORATION

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1 **Item 44) *Regarding the Big Rivers generation capacity that will remain***
2 ***assuming implementation of the proposed plan in this Application, please***
3 ***provide the following:***

4 ***a. Capability of each generation resource for each of the past five***
5 ***years (2015 through 2019) for each generation resource that is to***
6 ***remain operating.***

7 ***b. Projected capability for each of the next five years (2020 through***
8 ***2025) for each generation resource that is to remain operating***

9 ***c. Type and fuel of each generation resource that is to remain***
10 ***operating.***

11 ***d. Capacity factor for each of the next five years (2020 through 2025)***
12 ***for each generation resource that is to remain operating.***

13 ***e. Projected capacity factor for each of the past five years (2015***
14 ***through 2019) for each generation resource that is to remain***
15 ***operating.***

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- 1 ***f. Equivalent Availability, Equivalent Forced Outage Rate, and***
2 ***Equivalent Scheduled Outage Factor for each of the past five years***
3 ***(2015 through 2019) for each generation resource that is to remain***
4 ***operating.***
- 5 ***g. Projected Equivalent Availability, Equivalent Forced Outage Rate,***
6 ***and Equivalent Scheduled Outage Factor for each of the next five***
7 ***years (2020 through 2025) for each generation resource that is to***
8 ***remain operating.***
- 9 ***h. Fuel and variable costs per MWH for each of the past five years***
10 ***(2015 through 2019) for each generation resource that is to remain***
11 ***operating.***
- 12 ***i. Projected fuel and variable costs per MWH for each of the next five***
13 ***years (2020 through 2025) for each of the generation resources that***
14 ***is to remain operating.***

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1 *j. Average heat rate and heat rate at design conditions for each of*
2 *the past five years (2015-2019) for each generation resource that is*
3 *to remain operating.*

4 *k. Projected average heat rate and heat rate at design conditions for*
5 *each of the next five years (2020 through 2025) for each of the*
6 *generation resources that is to remain operating.*

7

8 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
9 unduly burdensome. Big Rivers also objects to this request on the grounds that it
10 seeks information that is irrelevant and is not likely to lead to the discovery of
11 admissible evidence. Notwithstanding these objections, and without waiving them,
12 Big Rivers responds as follows:

13

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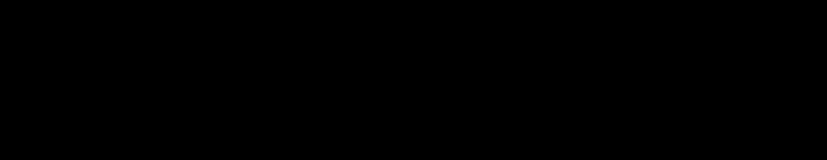
April 3, 2020

1 a.

Big Rivers Electric Corporation Actual Generation Resource Capability (MWs)					
Unit	2015	2016	2017	2018	2019
Green 1	231	231	231	231	231
Green 2	223	223	223	223	223
Wilson 1	417	417	417	417	417
Reid CT	65	65	65	65	65

2

3 b. Big Rivers is supplying 6 years of data to cover the time period requested
4 (2020 through 2025).

Big Rivers Electric Corporation Projected Generation Resource Capability (MW's)						
Unit	2020	2021	2022	2023	2024	2025
Green 1						
Green 2						
Wilson 1						
Reid CT						

5

* - Coleman FGD moved to Wilson Station mid-year

6

7

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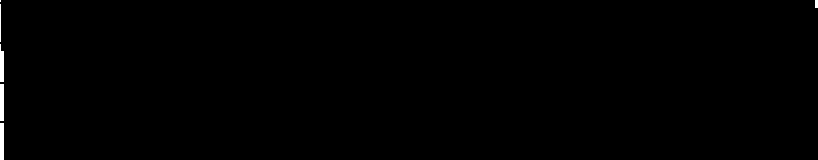
April 3, 2020

1 c.

Big Rivers Electric Corporation Generation Resource Type and Fuel		
Unit	Type	Fuel
Green 1	Steam	Coal
Green 2	Steam	Coal
Wilson 1	Steam	Coal
Reid CT	Combustion Turbine	Natural Gas

2

3 d. Big Rivers is supplying six years of data to cover the time period requested
4 (2020 through 2025).

Big Rivers Electric Corporation Projected Net Capacity Factor (NCF - %)						
Unit	2020	2021	2022	2023	2024	2025
Green 1						
Green 2						
Wilson 1						
Reid CT						

5

6

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1 e.

Big Rivers Electric Corporation Actual Net Capacity Factor (NCF - %)					
Unit	2015	2016	2017	2018	2019
Green 1	65.8	66.6	61.6	72.9	62.1
Green 2	64.1	70.7	59.5	81.0	55.5
Wilson 1	89.0	85.0	72.5	61.8	72.3
Reid CT	0.2	0.7	0.3	0.5	0.7

2

3 f.

Big Rivers Electric Corporation Actual Equivalent Availability factor (EAF) and Equivalent Forced Outage Rate (EFOR)						
Unit	Metric	2015	2016	2017	2018	2019
Green 1	EAF (%)	83.2	92.9	89.9	86.9	87.4
	EFOR (%)	2.9	5.5	7.1	9.8	8.8
Green 2	EAF (%)	91.7	98.1	90.8	96.1	94.5
	EFOR (%)	4.1	2.0	2.5	3.9	4.5
Wilson 1	EAF (%)	94.8	93.2	82.2	68.5	85.9
	EFOR (%)	3.0	3.9	14.5	5.6	13.7
Reid CT	EAF (%)	67.7	42.6	98.6	99.7	99.5
	EFOR (%)	97.6	96.4	51.8	6.3	6.9

4

5

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- 1 g. Big Rivers is supplying six years of data to cover the time period requested
2 (2020 through 2025).

Big Rivers Electric Corporation Forecast Equivalent Availability factor (EAF) and Equivalent Forced Outage Rate (EFOR)							
Unit	Metric	2020	2021	2022	2023	2024	2025
Green 1	EAF (%)						
	EFOR (%)						
Green 2	EAF (%)						
	EFOR (%)						
Wilson 1	EAF (%)						
	EFOR (%)						
Reid CT	EAF (%)						
	EFOR (%)						

3

- 4 h.

Big Rivers Electric Corporation Actual Fuel and Variable Costs (\$ / MWh)					
Unit	2015	2016	2017	2018	2019
Green 1	29.28	30.04	29.13	28.17	28.70
Green 2	29.39	30.17	29.31	28.31	29.42
Wilson 1	24.75	24.68	26.41	26.09	24.26
Reid CT	132.96	71.65	104.44	101.15	77.34

5

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- 1 i. Big Rivers is supplying six years of data to cover the time period requested
2 (2020 through 2025).

Big Rivers Electric Corporation Projected Fuel and Variable Costs (\$ / MWh)						
Unit	2020	2021	2022	2023	2024	2025
Green 1						
Green 2						
Wilson 1						
Reid CT						

3

- 4 j.

Big Rivers Electric Corporation Actual Net Heat Rate (mmBTU / kWh)					
Unit	2015	2016	2017	2018	2019
Green 1	10,973	11,052	11,043	10,942	11,052
Green 2	11,102	11,272	11,144	11,216	11,543
Wilson 1	10,515	10,593	10,667	10,721	10,805
Reid CT	21,760	16,773	18,602	18,065	18,387

5

6

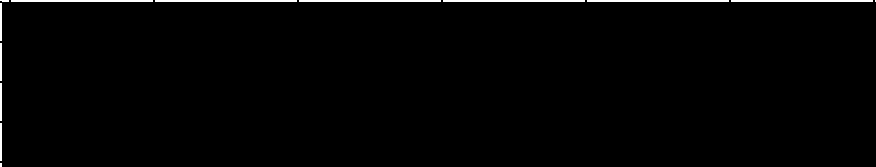
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- 1 k. Big Rivers is supplying six years of data to cover the time period requested
2 (2020 through 2025).

Big Rivers Electric Corporation Projected Net Heat Rate (mmBTU / kWh)						
Unit	2020	2021	2022	2023	2024	2025
Green 1						
Green 2						
Wilson 1						
Reid CT						

3

4 **Witness)** Michael T. Pullen

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1 **Item 45)** *Please provide Big Rivers Electric Corporation 2019 Annual*

2 *Report when available.*

3

4 **Response)** Big Rivers currently anticipates that its 2019 Annual Report will be

5 available sometime in May 2020. Big Rivers will provide a copy of that report when

6 it is available.

7

8 **Witness)** Paul G. Smith

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1 **Item 46)** *Please refer to the Application at Paragraph 17, and the Berry*
2 *testimony at page 10, line 15. Please provide documents which show and*
3 *describe BREC's plans for "issuing new debt" over the next 3-5 years. In*
4 *addition, please describe the facts and circumstances which cause BREC to*
5 *plan to issue new debt "as early as July 2020".*

6

7 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
8 unduly burdensome. Big Rivers also objects to this request on the grounds that it
9 seeks information that is irrelevant and not likely to lead to the discovery of
10 admissible evidence. Notwithstanding these objections, and without waiving them,
11 please refer to pages 26-27 of the Direct Testimony of Robert W. Berry, Application
12 Exhibit D. Also, see Big Rivers' response to Item 29 of the Attorney General's first
13 set of data requests. The debt referenced in this request refers to the Series 2010A
14 Pollution Control Bonds, currently issued at 6.0%, that have an option to be called
15 and re-issued at a significantly lower interest rate beginning in July 2020.

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1

2 **Witness)** Paul G. Smith

3

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1 **Item 47)** *Please provide complete and unredacted copies of each and every*
2 *presentation and any appendices or supporting materials provided to the*
3 *BREC board of directors (and any relevant committees) since January 1,*
4 *2017, including the subject of “issuing new debt” from:*

5 *a. Financial advisors retained by BREC; and,*

6 *b. BREC management*

7 *c. Please provide any and all documents, emails, correspondence,*
8 *reports, etc. from BREC’s financial advisors regarding the Covid-19*
9 *outbreak and any impacts, ramifications or implications of this*
10 *outbreak for debt refinancing as contemplated by BREC.*

11

12 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
13 unduly burdensome. Big Rivers also objects to this request on the grounds that it
14 seeks information that is irrelevant and not likely to lead to the discovery of

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1 admissible evidence. Notwithstanding these objections, and without waiving them,

2 Big Rivers responds as follows:

3 a. None.

4 b. None.

5 c. See the **CONFIDENTIAL** responses to the Big Rivers RFP issued March
6 13, 2020.

7

8 Witness) Paul G. Smith

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1 **Item 48)** *Please refer to the Application at Paragraph 17 and the Berry*
2 *testimony at page 26, line 21 where it states “regaining all three of its*
3 *investment grade credit ratings will therefore result in material savings on*
4 *future borrowings”. Please provide the financial projections and analyses*
5 *which support this statement and estimate interest savings from future*
6 *financings on an annual basis.*

7

8 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
9 unduly burdensome. Big Rivers also objects to this request on the grounds that it
10 seeks information is irrelevant and not likely to lead to the discovery of admissible
11 evidence. For savings related to Big Rivers' credit facility, please see Big Rivers'
12 response to Item 56 of the Attorney General's first set of data requests.

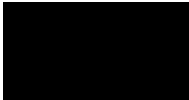
13 For any future debt to be issued, an investment grade rating is expected to
14 reduce the interest rate approximately 50 -100 bps versus a speculative grade rating.

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1 The total annual interest savings from gaining an investment grade credit
2 rating from all three ratings agencies is currently estimated to be 

3

4 **Witness)** Paul G. Smith

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1 **Item 49)** *Please refer to Berry Testimony at page 5, line 11, where it*
2 *references certain generating assets “are not presently operating due to*
3 *environmental regulation, decreased load, uneconomic power market*
4 *prices and other factors.” Please identify and describe these “other factors”.*

5

6 **Response)** The other factors include the loss of the MISO interconnection rights at
7 Coleman Station and Reid Station Unit 1.

8

9 **Witness)** Michael T. Pullen

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1 **Item 50)** *Please refer to Berry Testimony at pages 6-7, where it references*
2 *BREC's "Business Plan". Please provide a complete and unredacted copy of*
3 *this Plan.*

4

5 **Response)** The "Business Plan" referenced is Big Rivers 2020 Strategic Plan, a
6 **CONFIDENTIAL** copy of which is provided with these responses.

7

8 **Witness)** Robert W. Berry

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
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FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
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1 **Item 51)** *Please refer to Berry testimony at page 7, line 1 where it states*
2 *“Big Rivers continues to expand power marketing efforts...”. Provide*
3 *documents which show this “continued expansion” of power marketing*
4 *efforts.*

5

6 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
7 unduly burdensome. Big Rivers also objects to this request on the grounds that it
8 seeks information that is irrelevant and not likely to lead to the discovery of
9 admissible evidence. Notwithstanding these objections, and without waiving them,
10 in his testimony regarding Big River’s power marketing efforts, Mr. Berry mentions
11 short- and long-term contracts for excess energy. In the short-term, Big Rivers was
12 bridging the gap between the smelter exit and the identification and acquisition of
13 alternative high-margin loads. Competition for these sorts of customers can be
14 intense and time consuming and they often have long termination provisions with

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1 incumbent suppliers. Big Rivers needed a way to reduce the volatility of margins and
2 cash flows during this period.

3 Between 2014 and 2019, Big Rivers hedged nearly 14 million MWhs of energy
4 with financial institutions, other cooperatives, power marketers, municipalities, and
5 joint action agencies. These transactions are documented in Big Rivers' responses to
6 Commission Staff's requests for information in Staff's six-month and two-year
7 reviews of Big Rivers' Fuel Adjustment Clause.¹ Additionally during this period, Big
8 Rivers sold capacity for terms of between one and two years to investor-owned
9 utilities, other cooperatives, and municipalities in Wisconsin, Missouri, Michigan,
10 Illinois, and Indiana.

11 While Big Rivers was taking these actions in the short-term, Big Rivers was
12 focused on identifying and securing long-term load. Big Rivers had early success in
13 2013 in Nebraska, signing long-term full-requirements contracts with Northeast

¹ See, e.g., Big Rivers' responses to Commission Staff's request for information in Case Nos. 2020-00009, 2019-00231, 2019-00007, 2018-00221, 2018-00023, 2017-00284.

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1 Nebraska Public Power District, the City of Wayne, and the City of Wakefield.² In
2 2016, a ten-year agreement with the Kentucky Municipal Energy Agency³ was
3 signed. Also in 2016, a six-year capacity sale to NextEra Power Marketing⁴ was
4 closed. In 2019, a six and one-half year full-requirements agreement with Owensboro
5 Municipal Utilities⁵ was executed. All of these transactions required and received
6 approval by the Kentucky Public Service Commission. All of the public components
7 of these Commission-approved agreements are available on the Commission's website
8 at:

² *Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to KRS 278.180 and 807 KAR 5:011 §13* – Case No. 2014-00134 [Filed April 4, 2014].

³ *Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to KRS 278.180 and 807 KAR 5:011 §13* – Case No. 2016-00306 [Filed August 5, 2016].

⁴ TFS2019-00175 – Capacity Purchase Agreement with NextEra Energy Marketing, LLC and TFS2018-00272 – Capacity Purchase Agreement with NextEra Energy Marketing, LLC.

⁵ TFS2018-00318 – Agreement for the Purchase and Sale of Full-Requirements Capacity and Energy between Big Rivers Electric Corporation and City Utility Commission of the City of Owensboro, Kentucky.

BIG RIVERS ELECTRIC CORPORATION

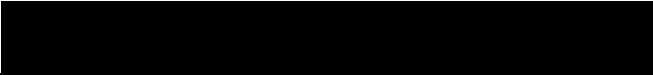
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1 [https://psc.ky.gov/Home/Library?type=Tariffs&folder=Electric%5CBig%20Rivers%20](https://psc.ky.gov/Home/Library?type=Tariffs&folder=Electric%5CBig%20Rivers%20Electric%20Corporation%5CContracts)
2 [0Electric%20Corporation%5CContracts](https://psc.ky.gov/Home/Library?type=Tariffs&folder=Electric%5CBig%20Rivers%20Electric%20Corporation%5CContracts).

3 Additionally, Big Rivers has been active in working with its Member-Owners
4 and state and local economic development officials to bring new load to Kentucky.
5 The Nucor Steel Mill locating in Meade County was the result of that cooperation.
6 Approval of those agreements is pending before the Commission.⁶

7 Going forward, Big Rivers continues to seek long-term high margin
8 opportunities, while also looking to optimize the value and/or extend the term of the
9 long-term agreements already in place. 

10 

⁶ *In the Matter of: Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for Approval of Contracts for Electric Service with Nucor Corporation and Application of Big Rivers Electric Corporation for Approval of Tariff – Case No. 2019-00365 [Filed October 18, 2019].*

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1

2

3

4 **Witness)** Mark J. Eacret

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1 **Item 52)** *Please refer to Berry testimony at page 9, line 5, where it states*
2 *Big Rivers “maintains certain obligations under the parties’ Joint Facilities*
3 *Agreement” with HMP&L. Please describe these “certain obligations” that*
4 *are retained, and what is the annual cost associated with these obligations.*

5

6 **Response)** The Joint Facilities Agreement sets forth the rights and obligations of
7 Big Rivers and the City of Henderson and the City of Henderson Utility Commission
8 with regard to joint use facilities. Among other obligations, the Joint Facilities
9 Agreement provides that the parties are “severally and jointly responsible for the
10 continued operation, maintenance, repair, renewal and replacement of” the joint use
11 facilities, and each party is responsible for its share of the costs to decommission a
12 joint use facility once that facility is no longer used by either party in connection with
13 its generating station or stations. The Joint Facilities Agreement is attached to Big

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1 Rivers' application in Case No. 2019-00269,¹ and the costs relating to the joint use
2 facilities are the subject of, and are discussed in, that case.

3

4 **Witness)** Robert W. Berry

¹ See Exhibit 10, *In the Matter of: In the Matter of Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* – Case No. 2019-00269 (Filed July 31, 2019).

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1 **Item 53)** *Please refer to the table on page 9 of the Berry testimony, which*
2 *references 2019 metrics as “unaudited.” Please state when it is expected*
3 *audited 2019 figures for Big Rivers will be available via its Annual Report.*

4

5 **Response)** At this time, Big Rivers expects its audited 2019 figures will be available
6 via its Annual Report sometime in May 2020.

7

8 **Witness)** Paul G. Smith

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1 **Item 54)** *Please refer to the Berry testimony at page 10, line 4 where it*
2 *states BREC “continues to aggressively seek that same [credit rating]*
3 *upgrade from the other two agencies”. Please provide the following*
4 *documents:*

5 *a. All correspondence, emails, communications, etc. between each of*
6 *the ratings agencies and persons employed by BREC or otherwise*
7 *acting on behalf of BREC from January 1, 2017 to the current date;*
8 *and,*

9 *b. All documents, emails, communications, etc. between and among*
10 *persons employed by BREC or otherwise acting on behalf of BREC*
11 *including the subject of credit ratings, from January 1, 2017, to the*
12 *extent not included in a. above.*

13 *c. Please provide documents that show the current annual cost to*
14 *BREC of maintaining credit ratings with each of the credit rating*
15 *agencies.*

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1 *d. Please provide documents containing any credit ratings reports,*
2 *actions, upgrades, downgrades from each of the credit rating*
3 *agencies for BREC since January 1, 2017.*

4

5 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
6 unduly burdensome. Big Rivers also objects to this request on the grounds that it
7 seeks information that is irrelevant and not likely to lead to the discovery of
8 admissible evidence. Notwithstanding these objections, and without waiving them,
9 Big Rivers responds as follows:

10 a. Please see **CONFIDENTIAL** rating agency presentations since January
11 2019, which are provided with these responses.

12 b. See response to subpart a. above

13 c. Big Rivers retains a single rating agency for purposes of the publicly traded
14 pollution control bonds. For this requirement, Big Rivers pays S&P a fee of

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1 approximately \$30,000 per year. Big Rivers incurs no additional fees to
2 maintain its credit ratings.

3 d. Please see the response to sub-part a. Please also see the most recent credit
4 report updates from each credit rating agency, which are Exhibit Berry-3,
5 Exhibit Berry-4, and Exhibit Berry-5 attached to the Direct Testimony of
6 Robert W. Berry.

7

8 Witness) Paul G. Smith

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1 **Item 55)** *Please refer to the Berry testimony at page 15, line 15, regarding*
2 *recognizing “the annual depreciation expense [of Wilson Station] as a*
3 *current operating cost”. Assuming Big Rivers’ request is granted, please*
4 *provide documents which show the anticipated annual depreciation expense*
5 *for Wilson Station over the next ten years (2020–2030).*

6

7 **Response)** Depreciation expense for the Wilson Station in 2020-2023 is projected
8 to be [REDACTED], and [REDACTED] respectively, in Big
9 Rivers’ 2020-2023 Budget and Financial Plan. Big Rivers does not have detailed
10 projections by station after 2023.

11

12 **Witness)** Paul G. Smith

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1 **Item 56)** *Please refer to the Berry testimony at page 27, line 6, where it*
2 *references “immediate cost savings in the form of reduced fees and interest*
3 *charges associated with its existing Senior Secured Credit Agreement*
4 *with...CFC.” Please provide documents which quantify and show these*
5 *reduced fees and interest charges.*

6

7 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
8 unduly burdensome. Notwithstanding these objections, and without waiving them,
9 achieving and maintaining an investment grade credit rating is estimated to result
10 in an immediate annual fee and interest expense savings of approximately \$100,000
11 associated with the Senior Secured Credit Agreement. Such savings include a 0.075%
12 savings on the annual facility fee and a 0.15% savings on the LIBO margin.

13

14 **Witness)** Paul G. Smith

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1 **Item 57)** *Please refer to the Berry testimony at page 27, line 10 where it*
2 *refers to reduction or elimination of “collateral requirements associated*
3 *with the power purchase and sales agreements”. Please provide documents*
4 *which show, estimate and quantify the benefits of such reduction or*
5 *elimination in financial terms.*

6

7 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
8 unduly burdensome. Notwithstanding these objections, and without waiving them,
9 investment grade credit ratings would allow Big Rivers to avoid the risk of purchase
10 and sale counterparties invoking collateral threshold provisions which require the
11 posting of cash or letters of credit as assurance Big Rivers can financially perform
12 under the contract. Contracts with Big Rivers’ long-term counterparties include the
13 risk of posting as much as [REDACTED] as credit assurance under existing contracts,
14 if Big Rivers does not have an investment-grade credit rating or “a Party has
15 reasonable grounds to believe that the other Party’s creditworthiness...has

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1 deteriorated in any material way.” In the case of letters of credit, the cost of a letter
2 of credit consists of the Letter of Credit Participation Fee (1.65%) and the Letter of
3 Credit Fronting Fee (0.125%), for a total rate of 1.775%. Both are annual rates
4 applied to the amount of the letter of credit. For example, the annual cost of a [REDACTED]

5 [REDACTED]

6

7 **Witness)** Mark J. Eacret

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1 **Item 58)** *Please refer to the Berry testimony a page 28, line 3, where it*
2 *states write-offs “would very likely cause Big Rivers to default on its credit*
3 *agreements”.*

4 *a. Please explain why the words “very likely” were included in this*
5 *sentence to modify it away from an absolute stance that any write-*
6 *offs would cause Big Rivers to default on its credit agreements”.*

7 *b. Please provide documents which show the provisions of the credit*
8 *agreements that state the specific events of default to which the*
9 *testimony refers.*

10 *c. Please provide documents to support this statement which show*
11 *financial analysis conducted by or for BREC of the impact of the*
12 *various levels of write-offs on items such as debt covenant*
13 *requirements, including the proposed \$91 million write-off of a*
14 *portion of the balance of the Smelter Loss Mitigation Regulatory*
15 *Assets against Member equity.*

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1 **Response)**

2 a. The words “very likely” are a reference to the magnitude of the write-off. A
3 full write-off of the remaining book value of Coleman Station and Reid
4 Station Unit 1 would certainly cause Big Rivers to default on its credit
5 agreements, whereas a partial write-off might not result in the same
6 default.

7 b. For the credit agreement, please see Case No. 2017-00243¹ in which Big
8 Rivers secured Commission approval to amend and extend its existing
9 Senior Secured Credit Agreement dated March 5, 2015, with the National
10 Rural Utilities Cooperative Finance Corporation and other lenders.

11 c. Please see Exhibit Berry-6 provided in the Direct Testimony of Robert W.
12 Berry filed with Big Rivers’ application in this case.

13

¹ *In the Matter of: Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness* – Case No. 2017-00243 [Filed June 23, 2017].

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1 **Item 59)** *Please refer to Exhibit Berry-2, the Rural Utilities Service*
2 *Corrective Plan, at page 1, where it references the “First Amended and*
3 *Restated Consolidated Loan Contract, dated as of January 2, 2018”. Please*
4 *provide documents which summarize the amendments and restatements in*
5 *this loan contract.*

6

7 **Response)** Big Rivers objects to this request on the grounds that it is overly broad
8 and unduly burdensome. Big Rivers also objects to this request on the grounds that
9 it seeks information that is irrelevant and not likely to lead to the discovery of
10 admissible evidence. The Attorney General has agreed that this request seeks
11 documents only to the extent that they exist, and that the Attorney General does not
12 request that any such summary be created. In according with these limitations, and
13 without waiving Big Rivers’ objections to this request, please find the First Amended
14 and Restated Consolidated Loan Contract, dated January 2, 2018, attached to this
15 response.

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1

2 **Witness)** Paul G. Smith

**FIRST AMENDED AND RESTATED CONSOLIDATED
LOAN CONTRACT**

Dated as of January 2, 2018

between

BIG RIVERS ELECTRIC CORPORATION

and

UNITED STATES OF AMERICA

RUS Project Designation:
Big Rivers
W8 Loan
X8 Loan

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FIRST AMENDED AND RESTATED CONSOLIDATED LOAN CONTRACT

THIS FIRST AMENDED AND RESTATED CONSOLIDATED LOAN CONTRACT, dated as of January 2, 2018, is between BIG RIVERS ELECTRIC CORPORATION (together with any successors and assigns, the "Borrower"), a cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky, and the UNITED STATES OF AMERICA (the "Government"), acting by and through the Administrator (together with any person succeeding to the powers and rights of the Administrator with respect to this Agreement, the "Administrator") of the Rural Utilities Service (together with any agency succeeding to the powers and rights of the Rural Utilities Service with respect to this Agreement, the "RUS"), and amends and restates that certain Amended and Consolidated Loan Contract, dated as of July 16, 2009, between the Borrower and the Government, acting by and through the Administrator of the RUS, as heretofore amended (the "Existing Loan Contract").

RECITALS

WHEREAS, the Borrower previously incurred, pursuant to the Act (as defined in Article I) and under the Existing Loan Contract, certain indebtedness and other obligations to, or guaranteed by, the Government, acting by and through the Administrator of the RUS, which indebtedness and other obligations are evidenced by the RUS Notes (as defined in Article I); and

WHEREAS, the Borrower has entered into that certain Indenture (as defined in Article I), pursuant to which Borrower has granted a security title to and a security interest in substantially all of its real and personal property to secure the RUS Notes and the certain other obligations secured under the Indenture, and to provide for the authentication and delivery of Additional Obligations, as defined in the Indenture; and

WHEREAS, the Borrower proposes to borrow from the FFB, Twenty-Five Million Six Hundred Thirty Thousand and 00/100 Dollars (\$25,630,000) (the "W8 Loan") and Twenty Million Five Hundred Eleven Thousand and 00/100 Dollars (\$20,511,000) (the "X8 Loan") to finance certain additions and improvements to the System; and

WHEREAS, RUS has committed upon specified terms and conditions to guarantee the repayment of the W8 Loan and the X8 Loan; and

WHEREAS, one of the conditions established by the RUS is the issuance to the RUS of two Credit Enhancement Obligations under the Indenture; and

WHEREAS, the Board of Directors of the Borrower has authorized four new Additional Obligations, as defined in the Indenture, two to be designated as the Future Advance Promissory Notes, (the "W8 FFB Note" and "X8 FFB Note"), and two to be designated as the Reimbursement Notes, (the "W8 Reimbursement Note" and the "X8 Reimbursement Note" and collectively with the W8 FFB Note and the X8 FFB Note, the "W8 and X8 Notes") to be dated their date of authentication and delivery and to be due at such time as shall be agreed to between the Borrower and the RUS and specified in the W8 and X8 Notes; and

WHEREAS, the W8 and X8 Notes will be issued, authenticated and delivered as Additional Obligations under the Indenture by and through a Eighth Supplemental and

Amendatory Indenture dated as of even date with this Agreement (the "Eighth Supplemental Indenture"); and

WHEREAS, the Borrower has complied with all provisions required to issue Additional Obligations provided for in the Indenture; and

WHEREAS, the Borrower desires to execute and deliver this Agreement for the purpose to specifically include the W8 and X8 Notes as Additional Obligations and specifying the form and provisions of the W8 and X8 Notes; and

WHEREAS, all the acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Borrower necessary to secure the payment of the principal of and interest on the W8 and X8 Notes, to make the W8 and X8 Notes to be issued under the Indenture, when executed by the Borrower, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligations of the Borrower, and to constitute the Indenture, as supplemented and amended, a valid and binding lien for the security of all the Obligations, in accordance with its terms, have been done and taken; and the execution and delivery of this Agreement has been in all respects duly authorized.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto amend and restate the Existing Loan Contract to read in its entirety, and agree and bind themselves, as follows:

ARTICLE I

DEFINITIONS

Capitalized terms that are not defined herein shall have the meanings set forth in the Indenture. The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made, in accordance with Accounting Requirements.

"Accounting Requirements" shall mean the requirements of the system of accounts prescribed by the RUS.

"Act" shall mean the Rural Electrification Act of 1936, as amended.

"Advance" or "Advances" shall mean an advance or advances made or approved by the RUS under the W8 FFB Notes or the X8 FFB Notes.

"Agreement" shall mean this First Amended and Restated Consolidated Loan Contract, together with all schedules and exhibits hereto, and also all subsequent supplements or amendments hereto.

"Business Day" shall mean any day that the RUS and FFB are both open for business.

“Capital Assets” shall mean all tangible and intangible utility plant, construction in progress, non-utility property, material supplies and equipment normally used in the Borrower’s system.

“Competitive Transition Charges” means amounts that the Company is authorized or permitted to collect, directly or indirectly, from the ultimate consumers of electric power and energy under state or federal statutes or regulations enacted or promulgated in connection with the opening of the electric markets to retail competition, whether or not such consumers are taking energy supplied directly or indirectly by the Company. It is intended that this definition be broadly construed in order to take into consideration the changing nature of the electric utility industry resulting from the implementation of retail competition.

“Credit Rating” shall mean a rating assigned by a Rating Agency (i) to any long-term indebtedness (that is not subject to Credit Enhancement) (including, without limitation, indebtedness issued by any governmental authority with respect to which the Borrower is an obligor) and secured directly or indirectly under the Indenture or (ii) if a Rating Agency has not assigned a rating to indebtedness of the type described in clause (i) hereof, a “shadow rating” of the Borrower’s senior, secured long-term indebtedness (that is not subject to Credit Enhancement).

“Distributions” shall mean for the Borrower, in any calendar year, to declare or pay any dividends, or pay or determine to pay any patronage refunds, or retire any patronage capital or make any other Cash Distributions, to its members, stockholders or consumers; provided, however, that for the purposes of this Agreement a “Cash Distribution” shall be deemed to include any general cancellation or abatement of charges for electric energy or services furnished by the Borrower, including the rebate of an abatement of wholesale power costs previously incurred pursuant to an order of a state regulatory authority or a wholesale power cost adjustment clause or similar power pricing agreement between the Borrower and a power supplier, but not including the repayment of a membership fee upon termination of a membership.

“Eighth Supplemental Indenture” shall have the meaning set forth in the seventh WHEREAS clause hereof.

“Equity” shall mean the Borrower’s total margins and equities computed in accordance with Accounting Requirements but excluding any Regulatory Created Assets.

“Event of Default” shall have the meaning as defined in Article VII of this Agreement.

“Existing Loan Contract” shall have the meaning set forth in the introductory paragraph of this Agreement.

“FFB” shall mean the Federal Financing Bank, an instrumentality and wholly-owned corporation of the Government, and any successor to the powers and rights thereof with respect to the Outstanding Notes.

“Fitch” shall mean Fitch Ratings and any successor thereto.

“General Manager” shall mean the President and Chief Executive Officer of the Borrower or the person performing the duties of a chief executive officer if no person holds such title and, in the event of any dispute between the Borrower and the Government as to who is the General Manager, the Administrator may designate a person or position that shall be the General Manager for purposes of this Agreement.

“Indenture” shall mean the Indenture, dated as of July 1, 2009, entered into by the Borrower and U.S. Bank National Association, as trustee, and all amendments and supplements thereto.

“Highest Oversight Period” shall mean (x) as to an event described in clause (i) or (iv) below, any period commencing on the date that such event has occurred and ending on the date that such event has ended, and (y) as to an event described in clause (ii) or (iii) below, any period commencing on the date that the Borrower receives written notice from the Administrator that such event has occurred (which notice shall set forth the basis for concluding that such event has occurred) and ending on the date that the Borrower receives written notice from the Administrator that such period has ended:

(i) the Borrower has been assigned a Credit Rating of less than “Ba3” (or its then current equivalent) in the case of Moody’s, “BB-” (or its then current equivalent) in the case of S&P, “BB-” (or its then current equivalent) in the case of Fitch, or the then current equivalent by any other Rating Agency then assigning a Credit Rating;

(ii) the Administrator determines that the System is incapable of providing reliable service to the members of the Borrower pursuant to the terms of the Wholesale Power Contracts;

(iii) the Administrator determines that, as a consequence of any change in the condition, financial or otherwise, operations, properties or business of the Borrower, the Borrower will be unable to perform its material obligations under (a) this Agreement, (b) the Wholesale Power Contracts, (c) the Outstanding Notes, or (d) the Indenture; or

(iv) the occurrence of an Event of Default under the Indenture, or any event which with the passage of time or giving of notice, or both, would constitute an Event of Default under the Indenture.

“Interest Expense” shall mean the interest expense of the Borrower computed pursuant to Accounting Requirements.

“Investment” shall mean any loan or advance to, or any investment in, or purchase or commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assumption or other obligation or liability with respect to the obligations of, any other person, firm or corporation, except investments in securities or deposits issued, guaranteed or fully insured as to payment by the Government or any agency thereof and except any other investments set forth in the RUS Regulations (7 C.F.R. § 1717.655) as excluded from computations of the amounts and types of investments for which RUS approval is required.

“Investment Grade” means a Credit Rating of BBB- (or its then current equivalent) or higher, if issued by S&P or Fitch; Baa3 (or its then current equivalent) or higher, if issued by Moody’s; and any comparable investment grade rating if issued by any other Rating Agency.

“Laws” shall have the meaning as defined in Paragraph (e) of Article II of this Agreement.

“Loans” shall mean the loans and other obligations described in Article III of this Agreement.

“Loan Documents” shall mean, collectively, this Agreement, the Indenture (including the Eighth Supplemental Indenture), the Lockbox Agreement, the RUS Notes and the W8 and the X8 Notes.

“Lockbox Agreement” shall mean the Lockbox Agreement, dated as of July 16, 2009 between the Borrower, U.S. Bank National Association, as trustee, RUS and Old National Bank.

“Material Adverse Effect” shall mean a material adverse effect on the condition, financial or otherwise, operations, properties or business of the Borrower or on the ability of the Borrower to perform its obligations under the Loan Documents.

“Moody’s” shall mean Moody’s Investors Service, Inc. and any successor thereto.

“Net Utility Plant” shall mean the amount constituting the Total Utility Plant of the Borrower, less depreciation, computed in accordance with Accounting Requirements.

“Outstanding Notes” shall mean those notes of the Borrower outstanding on the date hereof payable to the order of FFB, the payment of which is guaranteed by the Government, acting by and through the Administrator of the RUS, pursuant to the Act, if any, and the RUS Notes, and those notes of the Borrower outstanding on the date hereof payable to the order of the Government evidencing loans made by the Government, acting by and through the Administrator of the RUS, pursuant to the Act, or evidencing reimbursement obligations of the Borrower to the Government with respect to the Government’s guarantee of the payment of certain notes payable to the order of FFB, all as specifically identified on Schedule 1 hereto, and all amendments, supplements, extensions and replacements to, of or for such notes.

“Permitted Debt” shall have the meaning set forth in Section 6.26.

“Prior Loan Contracts” shall mean have the meaning as defined in Section 9.16.

“Prudent Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. “Prudent Utility Practice” is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to

include a spectrum of possible practices, methods or acts generally in acceptance in light of the circumstances.

“Rating Agency” shall mean S&P, Moody’s, Fitch or, provided that it is acceptable to the RUS, any other nationally recognized statistical rating organization (within the meaning of the rules of the United States Securities and Exchange Commission).

“Regulatory Created Assets” shall mean the sum of any amounts properly recordable as unrecovered plant and regulatory study costs or as other regulatory assets, computed pursuant to Accounting Requirements.

“Restricted Rentals” shall mean all rentals required to be paid under finance leases and charged to income, exclusive of any amounts paid under any such lease (whether or not designated therein as rental or additional rental) for maintenance or repairs, insurance, taxes, assessments, water rates or similar charges. For the purpose of this definition the term “finance lease” shall mean any lease having a rental term (including the term for which such lease may be renewed or extended at the option of the lessee) in excess of three years and covering property having an initial cost of \$250,000 other than aircraft, ships, barges, automobiles, trucks, trailers, rolling stock and vehicles; office, garage and warehouse space; office equipment and computers. Restricted Rentals shall not include any amounts paid under any of the Facility Leases (as defined in the Indenture).

“RUS Notes” shall mean the RUS Series A Note and the RUS Series B Note.

“RUS Regulations” shall mean the rules, regulations and bulletins of general applicability published by the RUS from time to time as such rules, regulations and bulletins exist at the date of applicability thereof, including but not limited to the rules and regulations set forth at 7 C.F.R. 1700, and, unless the context clearly demonstrates a contrary intent, shall also include any rules and regulations of other Federal entities which the RUS is required by law to implement.

“RUS Series A Note” shall mean that RUS 2009 Promissory Note Series A, dated July 16, 2009 in the stated principal amount of \$602,573,536 executed by the Borrower and delivered to the Government.

“RUS Series B Note” shall mean that RUS 2009 Promissory Note Series B, dated July 16, 2009 in the stated principal amount of \$245,530,257.30 executed by the Borrower and delivered to the Government.

“Special Construction Account” shall have the meaning as defined in Section 6.23.

“Subordinated Indebtedness” shall mean secured indebtedness of the Borrower subordinated to the prior payment of the RUS Notes.

“Subsidiary” shall mean a corporation that is a subsidiary of the Borrower and subject to the Borrower’s control, as defined by Accounting Requirements.

“S&P” shall mean S&P Global Ratings, a division of Standard & Poor’s Financial Services, LLC and any successor thereto.

“System” shall have the meaning as defined in the Indenture.

“Total Assets” shall mean an amount constituting the total assets of the Borrower as computed pursuant Accounting Requirements, but excluding any Regulatory Created Assets.

“Total Utility Plant” shall mean the amount constituting the total utility plant (gross) of the Borrower computed in accordance with Accounting Requirements.

“Wholesale Power Contracts” shall mean, collectively and individually, the wholesale power contracts in effect between the Borrower and each of its member distribution cooperatives, which are described in the attached Schedule 2, and all amendments, supplements or replacements thereto or thereof.

“W8 and X8 Notes” shall have the meaning set forth in the sixth WHEREAS clause hereof.

“W8 FFB Note” shall have the meaning set forth in the sixth WHEREAS clause hereof.

“W8 Loan” shall have the meaning set forth in the third WHEREAS clause hereof.

“W8 Reimbursement Note” shall have the meaning set forth in the sixth WHEREAS clause hereof.

“X8 FFB Note” shall have the meaning set forth in the sixth WHEREAS clause hereof.

“X8 Loan” shall have the meaning set forth in the third WHEREAS clause hereof.

“X8 Reimbursement Note” shall have the meaning set forth in the sixth WHEREAS clause hereof.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Recognizing that the RUS is relying hereon, the Borrower represents and warrants, as of the date of this Agreement, as follows:

(a) *Organization; Power, Etc.* The Borrower: (i) is duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary; (iii) has all requisite corporate and legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under the Loan Documents; (iv) has duly and lawfully obtained and maintained all licenses, certificates, permits, authorizations and approvals which are necessary to the conduct of its

business or required by applicable Laws and (v) is eligible to obtain the financial assistance from the RUS guaranteed by this Agreement.

(b) *Authority.* The execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action and do not violate any provision of law or of the Articles of Incorporation or Bylaws of the Borrower or result in a breach of, or constitute a default under, any agreement, indenture or other instrument to which the Borrower is a party or by which it may be bound.

(c) *Consents.* No consent, permission, authorization, order or license of any governmental authority is necessary in connection with the execution, delivery or performance of the Loan Documents, except such as have been obtained and are in full force and effect.

(d) *Binding Agreement.* Each of the Loan Documents and the Wholesale Power Contracts is, or when executed and delivered will be, the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

(e) *Compliance With Laws.* The Borrower is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws"), the failure to comply with which could reasonably be expected to have a Material Adverse Effect.

(f) *Litigation.* Attached as Schedule 3 hereto is a list of all pending or, to the Borrower's knowledge, threatened legal, arbitration or governmental actions or proceedings to which, as of the date of this Agreement, the Borrower is a party or to which any of its property is subject which, if adversely determined, could have a Material Adverse Effect, and to the best of the Borrower's knowledge, no such actions or proceedings are threatened or contemplated, except as the Borrower has disclosed to the RUS in writing.

(g) *Financial Statements, No Material Adverse Change; Etc.* The financial statements, including RUS Form 12, submitted to RUS fairly and fully present the financial condition of the Borrower and the results of its operations as of December 31, 2016 and were prepared in accordance with Accounting Requirements consistently applied. Since December 31, 2016, there has been no material adverse change in the financial condition or operations of the Borrower.

(h) *Budgets; Projections; Etc.* All budgets, projections, feasibility studies, appraisals, and other documentation submitted by the Borrower to the RUS and any Rating Agency then assigning a Credit Rating are based on assumptions that are reasonable and realistic, and as of the date hereof, no fact has come to light, and no event or transaction has occurred, which would cause any assumption made therein not to be reasonable or realistic.

(i) *Location of Properties.* All property and interests therein of the Borrower are located in the states and counties identified in the Indenture.

(j) *Principal Place of Business; Records.* The principal place of business and chief executive office of the Borrower is at the address of the Borrower specified in Section 9.2.

(k) *Subsidiaries.* The Borrower has no Subsidiaries.

(l) *Defaults Under Other Agreements.* The Borrower is not in default under any agreement or instrument under which the Borrower is a party or to which any of its property is subject that could reasonably be expected to have a Material Adverse Effect.

(m) *Title to Property.* As to the property which is included in the description of the Trust Estate, the Borrower holds good and marketable title to all of its real property and owns all of its personal property free and clear of any lien or encumbrance other than Permitted Exceptions and liens permitted by Section 13.6 of the Indenture.

(n) *Survival.* All representations and warranties made by the Borrower herein or made in any certificate delivered pursuant hereto shall survive the making of the Advances.

ARTICLE III

THE LOANS

Section 3.1. The Loans

The Borrower has borrowed funds from the Government, acting by and through the Administrator of the RUS, evidenced by the RUS Notes, has agreed to reimburse the Government, acting by and through the Administrator of the RUS, for the amounts borrowed pursuant to the terms of the RUS Notes.

Section 3.2. No Further Advances

The Borrower acknowledges and agrees that all amounts to be advanced to the Borrower under the RUS Notes have been advanced and the Government, acting by or through the Administrator of the RUS, is under no obligation to make any further advances to the Borrower under the RUS Notes.

Section 3.3. Interest Rates and Payment

(a) *Interest Rates.* The RUS Notes and the W8 and X8 Notes shall be payable and bear interest, as therein provided.

(b) *Electronic Funds Transfer.* Except as otherwise prescribed by the RUS, the Borrower shall make all payments on the RUS Notes and the W8 and X8 Notes utilizing electronic funds transfer procedures as specified by the RUS.

Section 3.4. Prepayment

(a) The Borrower may prepay the RUS Notes in whole or in part in the sole discretion of the Borrower without penalty or prepayment premium, provided, however, in no event shall such a voluntary prepayment of the RUS Series B Note be deemed an acceleration or cause an adjustment to the principal thereof.

(b) The Borrower has no right to prepay the W8 and X8 Notes in whole or in part except such rights, if any, as are expressly provided for in such Notes or as may be provided by Law.

Section 3.5. Additional Obligations

(a) The Borrower hereby agrees to cause to be established under its Indenture an Additional Obligation known as and entitled the Future Advance Promissory Note – W8 (sometimes referred to herein as the W8 FFB Note) and an Additional Obligation known as and entitled the Reimbursement Note – W8 (sometimes referred to herein as the W8 Reimbursement Note), the form, terms and conditions of which shall be substantially as set forth in this Article III and Sections 1.02 and 1.03 of the Eighth Supplemental Indenture.

The aggregate principal amount of the W8 FFB Note which may be authenticated and delivered and Outstanding at any one time is limited to Twenty-Five Million, Six Hundred Thirty Thousand and 00/100 Dollars (\$25,630,000). The W8 FFB Note may be advanced in multiple advances.

(b) The Borrower hereby agrees to cause to be established under its Indenture an Additional Obligation known as and entitled the Future Advance Promissory Note – X8 (defined herein as the X8 FFB Note) and an Additional Obligation known as and entitled the Reimbursement Note – X8 (sometimes referred to herein as the X8 Reimbursement Note), the form, terms and conditions of which shall be substantially as set forth in this Article III and Sections 1.02 and 1.03 of the Eighth Supplemental Indenture.

The aggregate principal amount of the X8 FFB Note which may be authenticated and delivered and Outstanding at any one time is limited to Twenty Million Five Hundred Eleven Thousand and 00/100 Dollars (\$20,511,000). The X8 FFB Note may be advanced in multiple advances.

Section 3.6. Form of W8 and X8 Notes

The W8 and X8 FFB Notes and W8 and X8 Reimbursement Notes shall be promissory notes substantially in the forms specified by FFB and the RUS, respectively, and the Trustee's authentication certificate to be executed on the W8 and X8 Notes shall be in the form set forth in Section 2.3 of the Indenture, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Indenture. The terms and conditions of the W8 and X8 Notes are by this reference incorporated herein.

Section 3.7. Use of Proceeds of the W8 and X8 Notes

(a) The Borrower shall use the proceeds of the loan evidenced by the W8 FFB Note to finance the costs of construction of system extensions and additions described on the RUS Form 740c attached to the Administrator's letter to the Borrower dated September 25, 2016 referencing the W8 Loan (the "September 25 Letter").

(b) The Borrower shall use the proceeds of the loan evidenced by the X8 FFB Note to finance the costs of construction of system extensions and additions described on the RUS Form 740c attached to the Administrator's letter to the Borrower dated September 30, 2016 referencing the X8 Loan (the "September 30 Letter").

Section 3.8. Last Day for an Advance

Funds will only be advanced under the X8 FFB Note or the W8 FFB Note pursuant to this Agreement and the X8 FFB Note or W8 FFB Note, as applicable, on or before the "Last Day for an Advance", as specified in the X8 FFB Note or the W8 FFB Note, as applicable. No funds will be advanced under the X8 FFB Note or W8 FFB Note subsequent to the applicable Last Day for an Advance unless prior to such date the Administrator has extended this date by written agreement. However, under no circumstances shall the RUS ever make or approve an Advance under the X8 FFB Note or the W8 FFB Note, as applicable, regardless of the applicable Last Day for an Advance or any extension by the Administrator, later than September 30 of the fifth year after the "Fiscal Year of Obligation" identified in Schedule 4 hereto for the X8 FFB Note or the W8 FFB Note, as applicable, if such date would result in the RUS obligating or permitting Advances of funds contrary to the Antideficiency Act, 31 U.S.C. § 1341.

ARTICLE IV

CONDITIONS OF LENDING

Section 4.1. General Conditions

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to the RUS in its discretion; such satisfaction (or waiver thereof) to be evidenced by the execution by the RUS of this Agreement):

(a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for the RUS;

(b) *Loan Documents.* The RUS shall receive duly executed originals of this Agreement;

(c) *Authorization.* The RUS shall receive evidence satisfactory to it that all corporate documents and proceedings of the Borrower necessary for duly authorizing the execution, delivery and performance of this Agreement have been obtained and are in full force and effect; and

(d) *Opinion of Counsel.* The RUS shall receive an opinion of counsel for the Borrower (who shall be acceptable to the RUS) with respect to this Agreement, in form and content acceptable to the RUS.

Section 4.2. Conditions to Advances Under the W8 FFB Note and the X8 FFB Note

(a) *Conditions to Initial Advance.* The obligation of RUS to approve the initial Advance under the W8 FFB Note and the X8 FFB Note is subject to the fulfillment of the following conditions and the submission to the RUS of proper advance request, together with the fulfillment of each of the conditions set forth in clause (b) below:

(1) With respect to the W8 Loan, the RUS has entered into a contract of guarantee with Borrower, and the FFB has agreed, with RUS approval, to make Borrower a guaranteed loan of \$25,630,000 to finance the costs of construction of system extensions and additions described on the RUS Form 740c attached to the September 25 Letter;

(2) With respect to the X8 Loan, the RUS has entered into a contract of guarantee with Borrower, and the FFB has agreed, with RUS approval, to make Borrower a guaranteed loan of \$20,511,000 to finance the cost of construction of system extensions and additions described on the RUS Form 740c attached to the September 30 Letter;

(3) Borrower has submitted evidence, in form and substance satisfactory to the Administrator, that the conditions in the contract of guarantee have been satisfied to the extent and in the manner prescribed by the Administrator;

(4) The RUS shall receive evidence satisfactory to it that all proceedings of the Kentucky Public Service Commission authorizing the execution and the delivery of the Eighth Supplemental Indenture have been obtained and are in full force in effect;

(5) Borrower has submitted evidence, in form and substance satisfactory to the Administrator, that Borrower has duly authorized, executed, and has delivered to the Administrator the W8 FFB Note or the X8 FFB Note, as applicable, and the W8 Reimbursement Note or the X8 Reimbursement Note, as applicable, in the manner prescribed by the Administrator;

(6) Borrower has submitted evidence, in form and substance satisfactory to the Administrator, that the W8 Notes or the X8 Notes, as applicable, have been secured under the Indenture, or a supplement thereof, which is in form and substance satisfactory to the Administrator; and

(7) Borrower has provided any and all certifications and any related documentation required under the Indenture to U.S. Bank National Association, as Trustee. In addition, the Borrower has provided any and all certifications and any related documentation required under this Agreement to RUS.

(b) *Conditions to any Advance.* The obligation of the RUS to approve any Advance under the W8 FFB Note or the X8 FFB Note is subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to the RUS in its reasonable discretion; such satisfaction (or waiver thereof) to be evidenced by the approval or making of the requested Advance):

(1) *Continuing Representations and Warranties.* That the representations and warranties of the Borrower contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date (except for any representation or warranty limited by its terms to a specific date; provided that the representations contained in Paragraph (g) of Article II shall be deemed made as of and since the date of the last audited financials of the Borrower);

(2) *Wholesale Power Contract.* That the Borrower shall not be in default under the terms of, or contesting the validity of, any Wholesale Power Contract;

(3) *Material Adverse Effect.* That no event shall have occurred since the date hereof that has had or is likely to have a Material Adverse Effect;

(4) *Event of Default.* That no Event of Default, and no event which with the passage of time or giving of notice or both would constitute an Event of Default, shall have occurred and be continuing, or shall have occurred after giving effect to such Advance on the books of the Borrower;

(5) *Requisitions.* That the Borrower shall have requisitioned such Advance by submitting a requisition to the RUS in form and substance satisfactory to the RUS;

(6) *Flood Insurance.* That for any such Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act as any area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by the Borrower and located in such a flood hazard area, the Borrower shall have submitted evidence, in form and substance satisfactory to the RUS or the RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any related regulations, and (ii) the Borrower has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any related regulation;

(7) *Compliance With this Agreement and Indenture.* That the Borrower is in material compliance with this Agreement and the Indenture;

(8) *Oversight Period.* That a Highest Oversight Period shall not exist;

(9) *Application of Advances.* That the Borrower agrees to apply the proceeds of the Advances under the W8 FFB Note and the X8 FFB Note to pay the costs, or reimburse the costs paid, by or on behalf of the Borrower to make the system extensions and additions described on the applicable RUS Form 740c attached to the September 25 Letter or the September 30 Letter, respectively;

(10) *Additional Documents.* That the Borrower agrees to provide or cause to be provided to RUS such additional documents as RUS may reasonably request from the Trustee;

(11) *Conditions Precedent to Advance.* That all conditions precedent under the Indenture and this Agreement to such Advance have been satisfied or waived, that the Trustee has delivered its certification required in connection with each Advance pursuant to Section 4.6 of the Indenture and that RUS has received a copy of such certification; and

(12) *Indenture Filing.* That the Indenture or any supplements thereto have been duly recorded and filed in all required jurisdictions to evidence the Indenture lien on the Trust Estate.

ARTICLE V

AFFIRMATIVE COVENANTS

Section 5.1. Generally

Unless otherwise agreed to in writing by the RUS, while this Agreement is in effect, the Borrower shall duly observe each of the affirmative covenants contained in this Article V.

Section 5.2. Performance Under Loan Documents

The Borrower shall duly observe and perform all of its obligations under each of the Loan Documents.

Section 5.3. Annual Certification

Within ninety (90) days after the close of each fiscal year (or, if the Borrower has delivered written notice to the RUS prior to the expiration of such ninety (90) day period that the Borrower has determined in good faith that an additional thirty (30) days for such delivery is necessary or advisable, then within one hundred twenty (120) days after the close of the fiscal year with respect to which such notice has been delivered), the Borrower shall deliver to the RUS a written statement signed by its General Manager, stating that during such year the Borrower has fulfilled its obligations under the Loan Documents throughout such year in all material respects or, if there has been a material default in the fulfillment of such obligations, specifying each such default known to the General Manager and the nature and status thereof.

Section 5.4. Rates and Margins for Interest Ratios

(a) *Prospective Requirement.* The Borrower shall design and implement rates for utility service furnished by it to maintain, on an annual basis, the Margins for Interest Ratio specified in Section 13.14 of the Indenture.

(b) *Prospective Notice of Change in Rates.* The Borrower shall give the RUS sixty (60) days' written notice prior to the effective date of any proposed change in the Borrower's general rate structure.

(c) *Routine Reporting of Margins for Interest Ratio.* The Borrower shall report to the RUS, no later than 45 days after December 31 of each year, in such written format as the RUS may require, the Margins for Interest Ratio that was achieved during the preceding 12-month period ending on December 31 of such year.

(d) *Reporting Non-Achievement of Retrospective Requirement.* If the Borrower fails to achieve the Margins for Interest Ratio specified in Section 13.14 of the Indenture for any fiscal year, it must promptly notify RUS in writing to that effect.

(e) *Corrective Plans.* Within thirty (30) days of (i) sending a notice to the RUS under paragraph (d) above that shows the Margins for Interest Ratio specified by Section 13.14 of the Indenture was not achieved for any fiscal year, or (ii) being notified by the RUS that the Margins for Interest Ratio specified by Section 13.14 of the Indenture was not achieved for any fiscal year, whichever is earlier, the Borrower in consultation with the RUS shall provide a written plan satisfactory to the RUS setting forth the actions that shall be taken to achieve the specified Margins for Interest Ratio on a timely basis.

(f) *Noncompliance.* Failure to design and implement rates pursuant to paragraph (a) of this section and failure to develop and implement the plan in accordance with the terms of paragraph (e) of this section shall constitute an Event of Default under this Agreement in the event that RUS so notifies the Borrower to that effect under Section 7.1(c) of this Agreement.

Section 5.5. Financial Books

The Borrower shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all of the dealings, business and affairs of the Borrower and its Subsidiaries, if any, in accordance with any applicable Accounting Requirements.

Section 5.6. Rights of Inspection

The Borrower shall afford the RUS, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect the System, any other property encumbered by the Indenture, and any or all books, records, accounts, invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Borrower or in any way pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

Section 5.7. Real Property Acquisition

In acquiring real property, the Borrower shall comply in all material respects with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, and 49 C.F.R. part 24, referenced by 7 C.F.R. part 21, to the extent applicable to such acquisition.

Section 5.8. Financial Reports

Within 120 days of the end of each fiscal year, the Borrower shall cause to be prepared and furnished to the RUS a full and complete annual report of its financial condition and of its operations in form and substance satisfactory to the RUS, audited and certified by an Independent certified public accountant satisfactory to the RUS and accompanied by a report of such audit in form and substance reasonably satisfactory to the RUS. The Borrower shall also furnish to the RUS from time to time such other reports concerning the financial condition or operations of the Borrower, including its Subsidiaries, as the RUS may request or RUS Regulations require.

Section 5.9. Miscellaneous Reports and Notices

The Borrower shall furnish to the RUS:

(a) *Notice of Default.* Promptly after becoming aware thereof, notice of: (i) the occurrence of any Event of Default under this Agreement or event which with the giving of notice or the passage of time, or both, would become an Event of Default; and (ii) the receipt of any notice given pursuant to the Indenture with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an "Event of Default" under the Indenture and (iii) the occurrence of any event under any agreement which with the giving of notice or the passage of time, or both, could become an "Event of Default" under such agreement and result in a Material Adverse Effect.

(b) *Notice of Non-Environmental Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency or instrumentality affecting the Borrower which, could reasonably be expected to have a Material Adverse Effect.

(c) *Notice of Environmental Litigation.* Without limiting the provisions of Section 5.9(b) above, promptly after receipt thereof, notice of the receipt of all pleadings, orders, complaints, indictments, or other communications alleging a condition that may require the Borrower to undertake or to contribute to a cleanup or other response under laws relating to environmental protection, or which seek penalties, damages, injunctive relief, or criminal sanctions related to alleged violations or such laws, or which claim personal injury or property damage to any person as a result of environmental factors or conditions for which the Borrower is not fully covered by insurance, or which could reasonably be expected to have a Material Adverse Effect.

(d) *Notice of Application for Competitive Transition Charges.* Promptly, but no later than 60 days prior to submission to any approval authority, including without limitation, any regulatory or legislative authority, written notice of an application for authority to collect Competitive Transition Charges. Without limiting the right of RUS to request other information, RUS has the right to request the Borrower to provide to RUS a written appraisal or other financial assessment of the Competitive Transition Charges.

(e) *Notice of Change of Place of Business.* Promptly in writing, notice of any change in location of its principal place of business or the office where its records concerning accounts and contract rights are kept.

(f) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could reasonably be expected to have a Material Adverse Effect.

(g) *Ratings.* Promptly after receipt thereof, copies of Credit Ratings and copies of any reports with respect to the Borrower or its Credit Rating issued by any Rating Agency.

(h) *Material Adverse Effect.* Promptly after becoming aware thereof, notice of any matter that has had or could reasonably be expected to have a Material Adverse Effect.

(i) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations, properties or business of the Borrower as the RUS may, from time to time, reasonably request.

Section 5.10. Variable Rate Indebtedness

In connection with the furnishing of its annual report to the RUS pursuant to Section 5.8, the Borrower shall report to the RUS, in such written format as may be acceptable to the RUS, the specific maturities of all of the Borrower's outstanding indebtedness and, the interest rates applicable thereto, including, without limitation, with respect to any indebtedness not bearing a fixed rate through the maturity of such indebtedness, the method and timing for adjustment and readjustment of the applicable interest rate.

Section 5.11. Special Construction Account

The Borrower shall establish an account designated by the corporate name of the Borrower followed by the words "Special Construction Account." The Special Construction Account shall be insured to the extent insurable by the Federal Deposit Insurance Corporation or other federal agency acceptable to the RUS. The Borrower shall promptly deposit proceeds from all Advances, including previously advanced funds whose original expenditure has been disallowed by a RUS loan fund audit, into the Special Construction Account. Moneys in the Special Construction Account shall be used solely for the purposes for which the Advance was made or for such other purposes as may be approved by the RUS.

Section 5.12. Compliance With Laws

The Borrower shall operate and maintain the System and its properties in compliance in all material respects with all applicable Laws.

Section 5.13. Lockbox Agreement

The Borrower shall not, without first complying with the requirements of Section 9.1, amend, supplement or otherwise modify the Lockbox Agreement. In the event: (a) the Borrower no longer has two Investment Grade credit ratings from at least two Rating Agencies; (b) the Borrower's total current and accrued liabilities exceed the Borrower's total current and accrued assets; (c) the Administrator determines the System is incapable of providing reliable service to the members of the Borrower pursuant to the terms of the Wholesale Power Contracts; (d) the Administrator determines that as a consequence of any change in the condition, financial or otherwise, operations, properties or business of the Borrower, the Borrower will be unable to perform its material obligations under (i) this Agreement, (ii) the Wholesale Power Contracts, (iii) the RUS Notes, or (iv) the Indenture; or (e) there is an Event of Default under the Indenture, or any event that with the passage of time or giving of notice, or both, would constitute an Event of Default under the Indenture, the Borrower shall, if so directed in writing by the Administrator of the RUS, (a) deposit, pursuant to the Lockbox Agreement, all cash proceeds of the Trust Estate, including, without limitation, checks, money and the like (other than cash proceeds deposited or required to be deposited with the Trustee pursuant to the Indenture), which cash proceeds shall include, without limitation, all payments by members of the Borrower on account of the Wholesale Power Contracts, in separate deposit or other accounts, segregated from all other monies, revenues and investments of the Borrower, and (b) take all such other actions as the RUS shall request to continue perfection of the lien of the Indenture in such proceeds for the benefit of all Holders of the Outstanding Secured Obligations.

Section 5.14. Property Maintenance

The Borrower shall maintain and preserve its System in compliance in all material respects with the provisions of the Indenture, RUS Regulations, all applicable Laws, and Prudent Utility Practice.

Section 5.15. Load Forecast

The Borrower shall prepare and use load forecasts with respect to its electric loads and future energy and capacity requirements in conformance with RUS Regulations.

Section 5.16. Long Range Engineering Plans and Construction Work Plans

The Borrower shall develop, maintain and use up-to-date long-range engineering plans and construction work plans in conformance with RUS Regulations.

Section 5.17. Design Standards, Construction Standards and List of Materials

The Borrower shall use design standards, construction standards, and lists of acceptable materials in conformance with RUS Regulations.

Section 5.18. Plans and Specifications

The Borrower shall submit plans and specifications for construction to RUS for review and approval, in conformance with RUS Regulations, if the construction will be financed in whole or in part by a loan made or guaranteed by RUS.

Section 5.19. Standard Forms of Construction Contracts, and Engineering and Architectural Services Contracts

The Borrower shall use the standard forms of contracts promulgated by the RUS for construction, procurement, engineering services and architectural services, in conformance with RUS Regulations, if the construction, procurement, or services will be financed in whole or in part by a loan made or guaranteed by the RUS.

Section 5.20. Contract Bidding Requirements

The Borrower shall follow the RUS contract bidding procedures in conformance with RUS Regulations when contracting for construction or procurement, if the construction or procurement will be financed in whole or in part by a loan made or guaranteed by the RUS.

Section 5.21. Nondiscrimination

(a) *Equal Opportunity Provisions in Construction Contracts.* The Borrower shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from the RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Exhibit A attached hereto entitled Equal Opportunity Contract Provisions.

(b) *Equal Opportunity Contract Provisions Also Bind the Borrower.* The Borrower further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.

(c) *Sanctions and Penalties.* The Borrower agrees that it shall cooperate actively with the RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish the RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the RUS's primary responsibility for securing compliance. The Borrower further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the RUS or the Secretary of Labor pursuant to Part II,

Subpart D of Executive Order 11246. In addition, the Borrower agrees that if it fails or refuses to comply with these undertakings the RUS may cancel, terminate or suspend in whole or in part this contract, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Borrower, or may refer the case to the Department of Justice for appropriate legal proceedings.

Section 5.22. "Buy American" Requirements

The Borrower shall use or cause to be used in connection with the expenditures of funds if such funds were obtained in whole or in part by a loan being made or guaranteed by the RUS only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or any eligible country substantially all from articles, materials, and supplies mined, produced or manufactured, as the case may be, in the United States or any eligible country, except to the extent the RUS shall determine that such use shall be impracticable or that the cost thereof shall be unreasonable. For purposes of this section, an "eligible country" is any country that has with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative.

Section 5.23. Depreciation Plan

The Borrower shall adopt as its depreciation rates only those that have been previously approved for the Borrower by RUS (through RUS Regulation or by specific approval by RUS). The Borrower shall not file with or submit for approval of any regulatory bodies depreciation rates which are inconsistent with those approved for the Borrower by RUS.

Section 5.24. Maintenance of Credit Ratings

(a) *Maintenance of Credit Ratings.* As long as there remains any RUS Note, the Borrower shall (i) maintain a Credit Rating from at least two Rating Agencies and (ii) continuously subscribe with a Rating Agency for the services described in Exhibit B attached hereto.

(b) *Reporting Non-achievement of Investment Grade Credit Rating.* If the Borrower fails to maintain two Credit Ratings of Investment Grade, it must notify RUS in writing to that effect within five (5) days after becoming aware of such failure.

(c) *Corrective Plans.* Within thirty (30) days of the date on which the Borrower fails to maintain two Credit Ratings of Investment Grade, the Borrower in consultation with the RUS shall provide a written plan satisfactory to the RUS setting forth the actions that shall be taken that are reasonably expected to achieve two Credit Ratings of Investment Grade.

(d) *Noncompliance.* Failure to implement a corrective plan developed in accordance with paragraph (c) of this section shall constitute an Event of Default under this Agreement.

Section 5.25. Additional Affirmative Covenants.

The Borrower also shall comply with the additional affirmative covenants identified in Schedule 5 hereto.

ARTICLE VI

NEGATIVE COVENANTS

Section 6.1. General

Unless otherwise agreed to in writing by the RUS, while this Agreement is in effect, the Borrower shall duly observe each of the negative covenants set forth in this Article VI.

Section 6.2. Acquisition of Capital Assets

The Borrower shall not, without first complying with the requirements of Section 9.1, extend or add to its System by purchasing, constructing, leasing or otherwise acquiring Capital Assets, including Capital Assets that constitute utility or non-utility plant, with funds from sources other than loans made or guaranteed by RUS in the case of:

(a) Generating facilities if the total expenditures for the facilities to be built, procured, or leased, including any future facilities included in the planned project, will exceed the lesser of \$10 million or thirty percent (30%) of the Borrower's Equity;

(b) Existing electric facilities or systems in service whose purchase price, or capitalized value in the case of a lease, exceeds ten percent (10%) of the Borrower's Net Utility Plant; or

(c) Any new project to serve an end user whose annual kWh purchases or maximum annual kW demand is projected to exceed 25 percent of the Borrower's total kWh sales or maximum kW demand in the year immediately preceding the start of construction of facilities.

Section 6.3. Disposition or Releases of Capital Assets

The Borrower shall not, without first complying with the requirements of Section 9.1, voluntarily or involuntarily sell, convey, transfer, lease, as lessor, or otherwise dispose of any portion of its business or Capital Assets, or request the release of or release any Capital Assets from the lien of the Indenture or enter into contracts therefor in any calendar year except in compliance with all applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any successor regulation. For purposes of measuring the Borrower's compliance with the preceding sentence of this Section 6.3, Section 4(a)(1)(a) of RUS Bulletin 1717M-2 shall be deemed to be modified to read as follows: "The Borrower is not in default." Notwithstanding the foregoing, the use by Borrower of the proceeds of any such sale, conveyance, transfer, lease or other disposition shall be in compliance with the Indenture.

Section 6.4. Highest Oversight Period.

During a Highest Oversight Period, the Borrower shall not, without the prior written approval of RUS, purchase, construct, lease or otherwise acquire, or sell, transfer, lease or otherwise dispose of, any capital asset, or enter into any agreement therefor.

Section 6.5. Limitations on Mergers and Sale, Lease or Transfer of Capital Assets

The Borrower shall not consolidate or merge with, or sell all or substantially all of its business or assets, except to the extent it is expressly permitted under the Indenture.

Section 6.6. Limitations on Employment and Retention of General Manager

At any time an Event of Default, or an event which with the passage of time or the giving of notice, or both, would become an Event of Default, occurs and is continuing, the Borrower shall not, without the prior written approval of the RUS, enter into an employment relationship with any person to serve as General Manager of the System. If an Event of Default, or an event which with the passage of time or the giving of notice, or both, would become an Event of Default, occurs and is continuing and the RUS requests the Borrower to terminate the employment of its General Manager, the Borrower shall do so within thirty (30) days after the date of such request. All contracts in respect of the employment of the General Manager or for the operation of the Utility System or the Electric System, hereafter entered into shall contain provisions to permit compliance with this Section 6.6.

Section 6.7. Limitations on Certain Types of Contracts

(a) *Approval of Certain Contracts.* The Borrower shall not, without first complying with the requirements of Section 9.1, enter into any of the following:

(i) Any contract for the management and operation of all or a material portion of its System;

(ii) Any contract for the purchase, exchange or sale of electric power or energy that has a term exceeding two (2) years;

(iii) Any contract for the purchase or sale of interconnection, interchange wheeling, transmission, pooling, ancillary services pooling or similar power supply arrangements that has a term exceeding two (2) years;

(iv) Any contract for construction or procurement or for architectural and engineering services in connection with the Borrower's System if the project is financed or will be financed, in whole or in part, by a loan made or guaranteed by the RUS;

(v) Any amendment or modification to any of the Wholesale Power Contracts, including the Schedules thereto, including the Wholesale Power Contracts listed in the attached Schedule 2, except that the Borrower may amend or modify provisions specifying delivery points.

(b) *Terminations.* The Borrower shall not, without first complying with the requirements of Section 9.1, exercise any option to terminate any contract, including, without limitation, any Wholesale Power Contract, if such contract, based upon its nature, remaining term (not taking into account any option of the Borrower to terminate) and size, would be required to be approved by the RUS pursuant to paragraph (a) of this Section 6.7 if the Borrower were to have entered into such contract on the proposed termination date. The Borrower further agrees at the written direction of the RUS to exercise any option to terminate a contract if the exercise by the Borrower of that option would require compliance with the requirements of Section 9.1 pursuant to the immediately preceding sentence unless the exercise of such termination right could reasonably be expected to have a Material Adverse Effect.

(c) *Determination of Term.* For purposes of this Section 6.7, the term of any contract shall be determined in accordance with this Section 6.7(c). The term of any contract shall be the period during which performance (other than payment) is to occur and not the period commencing when such contract is executed. The term of any contract shall be based upon the period prior to the first date upon which the Borrower could, at its option, terminate the contract (taking into account any notice period required for termination).

(d) *Amendments; Extensions.* Any amendment or modification to an existing contract (including an extension thereof) shall be governed by this Section 6.7 only to the extent such specific amendment or modification (and not the contract as a whole), judged as if it were a separate contract, would be required to be approved by the RUS pursuant to paragraph (a) of this Section 6.7.

Section 6.8. Limitations on Loans, Investments and Other Obligations

The Borrower shall not, without first complying with the requirements of Section 9.1, make any loan or advance to, or make any Investment in, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assume or otherwise become obligated or liable with respect to the obligations of, any other person, firm or corporation, except as permitted by the Act and RUS Regulations. In computing any permissible level of Investments in any person, firm or corporation in accordance with this Section 6.8 and the RUS Regulations, the Borrower's existing capital contribution to Big Rivers Leasing shall not be included as contributing to the level of aggregate permissible Investments.

Section 6.9. Rate Changes

The Borrower shall not, without first complying with the requirements of Section 9.1, increase or reduce its rates.

Section 6.10. Indenture Restrictions

Notwithstanding the provisions of the Indenture, the Borrower shall not, without first complying with the requirements of Section 9.1:

(a) consolidate or merge with any other corporation or convey or transfer the Trust Estate under the Indenture substantially as an entirety, or otherwise reorganize its corporate structure to transfer functions or any substantial part of the Trust Estate to any other Person;

(b) elect pursuant to Section 1.1D of the Indenture to apply Accounting Requirements in effect as of the date of execution and delivery of the Indenture;

(c) include as Property Additions, under any provision of the Indenture, any property that would not qualify as Property Additions but for paragraph C of the definition of Property Additions, or sell, lease or sublease any portion of the Trust Estate pursuant to paragraph H of Section 5.1 of the Indenture;

(d) submit an Available Margins Certificate under Article IV of the Indenture for the purpose of issuing Additional Obligations unless such Certificate is accompanied by an Independent Accountant's Certificate stating in substance that nothing came to the attention of such Accountant in connection with its unaudited review of the applicable period that would lead such Accountant to believe that there was any incorrect or inaccurate statement in such Certificate;

(e) enter into a Supplemental Indenture pursuant to Section 12.1H of the Indenture;

(f) enter into a Supplemental Indenture pursuant to Section 12.1B or 12.1C of the Indenture if (i) the Holders of the Obligations issued under such Supplemental Indenture are granted greater security rights in and to the Trust Estate than those security rights enjoyed by the Government in its capacity as a Holder of Obligations under the Indenture, provided, however, that neither (I) the existence of Credit Enhancement nor (II) the creation and maintenance of debt service or similar funds for the payment of the principal and interest on Obligations issued under such Supplemental Indenture (to the extent such debt service or other similar funds are funded from the proceeds of the issuance of such Obligations or funded in connection with the refinancing of other debt by such Obligations), shall constitute greater security rights in and to the Trust Estate requiring the Borrower to comply with the requirements of Section 9.1; (ii) the Supplemental Indenture provides for covenants, restrictions, limitations, conditions, events of defaults or remedies not applicable to all Obligations then Outstanding or not equally available to all Holders of Obligations then Outstanding, provided, however, that provisions for covenants and events of default that relate solely to assuring that the interest on such Obligations (or other indebtedness secured by such Obligations) is excludable from the gross income of the holder thereof pursuant to the Internal Revenue Code, as amended, shall not constitute the providing of covenants or events of default requiring the Borrower to comply with the requirements of Section 9.1; or (iii) the Obligations issued under such Supplemental Indenture, or the indebtedness secured by such Obligations, can be (a) accelerated or (b) effectively accelerated through a mandatory purchase or similar mechanism, in either case, as a consequence of a breach or default by the Borrower under the related loan agreement or similar agreement entered into in connection with such Obligation or indebtedness, provided, however, that acceleration and similar rights may be granted to development authorities and trustees without first complying with the requirements of Section 9.1 in connection with the issuance of Obligations (or other indebtedness secured by such Obligations) the interest on which is excludable from the gross

income of the holder thereof pursuant to the Internal Revenue Code, as amended, if such acceleration and similar rights are substantially similar to those currently granted to development authorities and trustees in connection with the Existing Obligations;

(g) create or incur or suffer or permit to be created or incurred or to exist any pledge of current assets secured under the Indenture to secure current liabilities;

(h) take any of the following actions:

(i) provide under the Indenture a Certificate of an Appraiser who is not Independent if the value of the property or securities to which such certificate applies is greater than \$500,000;

(ii) provide under the Indenture a Certificate of an Engineer who is not a licensed professional with respect to any project if the cost of such project is greater than \$50,000; or

(iii) provide under the Indenture a Certificate of an Engineer who is not Independent and a licensed professional with respect to the fair value or repair cost of any project if either (A) the fair value or repair cost of such project is greater than \$5,000,000 or (B) RUS has requested in writing such certificate to be provided by an Engineer who is Independent and a licensed professional;

(i) modify or alter Section 8.7 of the Indenture or the obligation of the Trustee under the Indenture to hold the Trust Estate for the equal and proportionate benefit and security of the Holders, without any priority of any Obligation over any other Obligation;

(j) certify pursuant to Section 4.3D(1) or 4.3D(2) of the Indenture any retired Obligation or any principal payment on an Obligation as the basis for taking any action under the Indenture, if such retirement or payment is pursuant to a regularly scheduled sinking fund or principal installment or made at the Stated Maturity of such Obligation; provided, however, that the Borrower shall not have to comply with the requirements of Section 9.1 before certifying pursuant to Section 4.3D(1) or 4.3D(2) of the Indenture in connection with the issuance of Additional Obligations under the Indenture if such Additional Obligations are:

(i) issued to refund Obligations the interest on which is exempt from taxation under Section 103 of the Internal Revenue Code, or obligations which were issued to refund such tax-exempt Obligations;

(ii) issued to refund Obligations owed to, or guaranteed by, the United States of America acting through the RUS, or obligations which were issued to refund such Obligations owed to, or guaranteed by, the United States of America acting through the RUS; or

(iii) Obligations issued to refund Obligations, if the combined term of the refunded Obligations and the refunding Additional Obligations does not exceed the term

for which the refunded Obligations could have been originally issued under the provisions of this paragraph (j) or paragraph (k) of this Section 6.9.

(k) issue any Additional Obligations under the Indenture to finance Property Additions unless the following additional requirements are satisfied in addition to the requirements set forth in the Indenture for issuing such Additional Obligations:

(i) If the proceeds of such Additional Obligations are being used to finance the initial cost of the construction or acquisition of identified tangible assets, the weighted average life of the loan evidenced by such Additional Obligations does not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(ii) The principal of the loan evidenced by such Additional Obligations is amortized at a rate that shall yield a weighted average life that is not greater than the weighted average life that would result from level payments of principal and interest; and

(iii) The principal of the loan being evidenced by such Additional Obligations has a maturity of not less than five years.

In determining its compliance with the requirements of clause (ii) of this paragraph (k), the Borrower shall be permitted to make reasonable assumptions as to the interest rate which such Additional Obligations will bear as the Borrower deems appropriate in light of the prevailing interest rate environment in which such Additional Obligations are to be issued;

(l) permit any liens in respect of judgments or awards which would be Permitted Exceptions pursuant to Paragraph F of the definition of "Permitted Exceptions" in the Indenture, by virtue of the fact that such liens are fully covered by insurance;

(m) enter into any leases to and permits for occupancy, which materially impair the Company's use of the property in the conduct of its business, by, other Persons which would be Permitted Exceptions pursuant to Paragraph K of the definition of "Permitted Exceptions" by virtue of the fact that any such leases and/or permits are for a period of less than ten (10) years;

(n) treat any Bondable Property, which Bondable Property would otherwise be considered as Retired pursuant to the definition thereof in the Indenture, as not being considered Retired pursuant to the proviso relating to rate recovery in the definition of Retired in the Indenture; or

(o) enter into a Supplemental Indenture pursuant to 12.1 L of the Indenture providing for the amendment or change of the Indenture or supplements thereto based on the reasonable judgment of the Trustee that such change will not materially and adversely affect the rights of the Holders.

Section 6.11. Negative Pledge

The Borrower shall not, without first complying with the requirements of Section 9.1, directly or indirectly create, incur, assume or permit to exist any lien, mortgage, pledge, security

interest, charge or encumbrance of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any other agreement to give any security interest) on or with respect to any of the Excepted Property except for:

(a) Permitted Exceptions (other than the Permitted Exception described in paragraph Y of the definition of Permitted Exceptions);

(b) as to the Excepted Property described in paragraphs B through E of the Indenture, inclusive, and paragraph K of the definition of Excepted Property, liens, mortgages, pledges, security interests, charges and encumbrances in connection with purchase money, construction or acquisition indebtedness (or renewals or extensions thereof) that encumber only the asset or assets so purchased, constructed or acquired or property improved through such purchase, construction or acquisition, and the proceeds upon a sale, transfer or exchange thereof;

(c) liens, mortgages, pledges, security interests, charges and encumbrances (i) for the benefit of all Holders of the Obligations issued under the Indenture, (ii) in connection with any bond service or similar fund established by the Borrower with respect to any debt securities, the interest on which is excludable from gross income of the holder thereof pursuant to the Internal Revenue Code, as amended, to the extent of amounts deposited in such funds in the ordinary course to make regularly scheduled payments on such debt securities, or (iii) in connection with any debt service or similar fund established by the Borrower for the payment of principal or interest on debt securities, the interest on which is excludable from gross income of the holder thereof pursuant to the Internal Revenue Code, as amended, if such fund is funded solely from the proceeds of the issuance of such debt securities (or funded in connection with the refinancing of other debt by such debt securities);

(d) liens, pledges, security interests, charges and encumbrances with respect to deposit, brokerage, commodity and other similar accounts to the extent such liens, pledges, security interests, charges and encumbrances do not secure indebtedness for borrowed money other than indebtedness incurred in connection with acquiring securities or other investments deposited in any such account; or

(e) liens, pledges, security interests, charges and encumbrances with respect to any interest, debt or equity, of the Borrower in National Rural Utilities Cooperative Finance Corporation or CoBank, ACB, purchased or otherwise acquired by the Borrower in connection with membership in such entity or any borrowing from such an entity.

Section 6.12. Emissions Allowances

Except for sales initiated by the Government without the prior consent and knowledge of the Borrower, the Borrower shall not, without first complying with the requirements of Section 9.1, sell, assign or otherwise dispose of (or enter into any agreement therefor) any allowances for emissions or similar rights granted by any governmental authority except in compliance with all applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any successor regulation. For purposes of measuring the Borrower's compliance

with the preceding sentence of this Section 6.12, Section 4(a)(1)(a) of RUS Bulletin 1717M-2 shall be deemed to be modified to read as follows: "The Borrower is not in default." The proceeds of any such sale, assignment or other disposition, shall be deposited in the Construction Fund Trustee Account. For such sales initiated by the Government without the prior consent and knowledge of the Borrower, the Borrower shall give RUS, promptly upon receipt thereof, written notice of such sales.

Section 6.13. Renewable Energy Credits

The Borrower shall not, without first complying with the requirements of Section 9.1, sell, assign or otherwise dispose of (or enter into any agreement therefor) (a) any credits received from allowances for emissions or (b) similar rights granted by any governmental authority, in either case which relate to renewable energy, except in compliance with all applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any successor regulation. For purposes of measuring the Borrower's compliance with the preceding sentence of this Section 6.13, Section 4(a)(1)(a) of RUS Bulletin 1717M-2 shall be deemed to be modified to read as follows: "The Borrower is not in default." The proceeds of any such sale, assignment or other disposition, shall be deposited in the Construction Fund Trustee Account.

Section 6.14. Fiscal Year

The Borrower shall not, without first complying with the requirements of Section 9.1, change its fiscal year.

Section 6.15. Limits on Variable Rate Indebtedness

During any period in which (a) an Event of Default has occurred and is continuing or (b) the Borrower has not maintained a Credit Rating of Investment Grade, the Borrower shall not, if so directed in writing by RUS, without first complying with the requirements of Section 9.1, increase the outstanding principal amount of indebtedness of the Borrower, the interest rate with respect to which is adjusted or readjusted at intervals of less than two (2) years, to an amount exceeding the amount thereof outstanding on the date of such notice from the RUS.

Section 6.16. Limits on Short-Term Indebtedness

The Borrower shall not, without first complying with the requirements of Section 9.1, on any date permit Short-Term Indebtedness to exceed fifteen percent (15%) of the Borrower's long-term debt and equities (determined in accordance with Accounting Requirements, except that such determination and calculations shall not be made on a consolidated basis and shall not, therefore, take into account the Short-Term Indebtedness, long-term debt and equities of the Borrower's Affiliates and Subsidiaries) as of the end of the fiscal quarter immediately preceding such date. As used in this Section 6.16, "Short-Term Indebtedness" means all indebtedness of, or guaranteed or in effect guaranteed (whether directly or indirectly, contingent or otherwise) against loss in respect thereof to the holder thereof by, the Borrower (other than trade payables) which on the date of original issuance thereof is classified as short-term debt under Accounting

Requirements; provided, however, that any indebtedness issued in accordance with a credit agreement or other arrangement with a maturity or expiration date of greater than one year from the date of effectiveness of such credit agreement or arrangement shall not be considered Short-Term Indebtedness at such time as the maturity of expiration of such credit agreements or arrangements is less than one year.

Section 6.17. Limitations on Changing Principal Place of Business

Without prior written notification to the RUS, the Borrower shall not change its principal place of business.

Section 6.18. Limitations on RUS Financed Extensions and Additions

The Borrower shall not extend or add to its System either by construction or acquisition without the prior written approval of RUS if the construction or acquisition is financed or will be financed, in whole or in part, by a RUS loan or loan guarantee.

Section 6.19. Historic Preservation

Notwithstanding the provisions of Section 3.2, the Borrower shall not, without approval in writing by the RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

Section 6.20. Change of Ratings Agency

At any time that only one Rating Agency has assigned a Credit Rating, the Borrower shall not, without first complying with the requirements of Section 9.1, change the Rating Agency then providing the Credit Rating.

Section 6.21. Competitive Transition Charges

The Borrower shall not, without first complying with the requirements of Section 9.1, (i) sell, exchange or otherwise dispose of Competitive Transition Charges, (ii) request the release of Competitive Transition Charges from the lien of the Indenture, or (iii) utilize Competitive Transition Charges as a basis for issuing Obligations under the Indenture, or as basis for a securitized financing outside the Indenture, or withdraw Trust Moneys related to Competitive Transition Charges.

Section 6.22. Limitation on Release of Agreements

The Borrower shall not, without first complying with the requirements of Section 9.1, sell, assign or otherwise dispose of, request the release of or release any contract described in Section 6.7 or any Wholesale Power Contract from the lien of the Indenture.

Section 6.23. Construction Fund Trustee Account

The Borrower shall deposit the proceeds of loans made or guaranteed by RUS promptly after the receipt thereof in a bank or banks that are insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS. Any account (hereinafter called "Construction Fund Trustee Account") in which any such moneys shall be deposited shall be insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be designated by the corporate name of the Borrower followed by the words "Construction Fund Trustee Account." Moneys in any Construction Fund Trustee Account shall be used solely for the construction and operation of the System and may be withdrawn only upon checks, drafts, or orders signed on behalf of the Borrower and countersigned by an executive officer thereof.

Section 6.24. Impairment of Contracts

The Borrower shall not (a) materially breach any obligation to be paid or performed by the Borrower under, or (b) take any action which is likely to materially impair the value of, any contract which is subject to the security interest created by the Indenture.

Section 6.25. Limitations on Distributions

Without the prior written approval of RUS, the Borrower shall not in any calendar year make any Distributions to its members or stockholders except as follows:

(a) *Equity above 30%.* If, after giving effect to any such Distribution, the Equity of the Borrower shall be greater than or equal to 30% of its Total Assets; or

(b) *Equity above 25%.* If, after giving effect to any such Distribution, the aggregate of all Distributions made during the calendar year when added to such Distribution shall be less than or equal to 25% of the margins for the year to which the Distribution relates.

Provided however, that in no event shall the Borrower make any Distributions if there is unpaid when due any installment of principal of (premium, if any) or interest on its Notes, if an Event of Default has otherwise occurred and is continuing, or, if, after giving effect to any such Distribution, the Borrower's current and accrued assets would be less than its current and accrued liabilities and provided, further, that the limitation on Distributions created by this Section 6.25 shall not apply to any payments, rebates, refunds or abatement of power costs made in accordance with any tariff on file with the Kentucky Public Service Commission.

Section 6.26. Limitations on Additional Indebtedness

The Borrower shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Indebtedness) other than the following ("Permitted Debt"):

(a) Additional Obligations issued in compliance with Article IV of the Indenture;

(b) Purchase money indebtedness in non-System property, in an amount not exceeding 10% of Net Utility Plant;

(c) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;

(d) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;

(e) Unsecured indebtedness for borrowed money, up to an aggregate amount of 15% of Net Utility Plant, so long as after giving effect to such unsecured indebtedness, the Borrower's Equity is more than 20% of its Total Assets;

(f) Debt represented by dividends declared but not paid; and

(g) Subordinated Indebtedness approved by RUS.

The Borrower may incur Permitted Debt without the consent of RUS only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder. By executing this Agreement any consent of RUS that the Borrower would otherwise be required to obtain under this Section is hereby deemed to be given or waived by RUS by operation of law to the extent, but only to the extent, that to impose such a requirement of RUS consent would clearly violate federal laws or RUS Regulations.

Section 6.27. Additional Negative Covenants.

The Borrower shall also comply with the additional negative covenants identified in Schedule 6 hereto.

ARTICLE VII

EVENTS OF DEFAULT

Section 7.1. Events of Default.

The following shall be "Events of Default" under this Agreement:

(a) *Representations and Warranties.* Any representation or warranty made by the Borrower in Article II hereof or, in any certificate furnished to the RUS hereunder or in the Loan Documents or in any filing pursuant to RUS Regulations shall be incorrect in any material respect at the time made and shall at the time in question be untrue or incorrect in any material respect and remain uncured;

(b) *Payment.* Default shall be made in the payment of or on account of interest on or principal of any RUS Note when and as the same shall be due and payable, whether by acceleration or otherwise, which shall remain unsatisfied for five (5) Business Days;

(c) *Other Covenants.* Default by the Borrower in the observance or performance of any other covenant or agreement contained in any of the Loan Documents, which shall remain

unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Borrower by the RUS;

(d) *Corporate Existence.* The Borrower shall forfeit or otherwise be deprived of its corporate charter or any franchise, permit, easement, consent or license required to carry on any material portion of its business;

(e) *Other Obligations.* Default by the Borrower in the payment of any obligation, whether direct or contingent, for borrowed money in excess of \$1 million or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation which default shall have resulted in such obligation becoming or being declared due and payable prior to the date on which it would otherwise be due and payable;

(f) *Bankruptcy.* A court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days or the Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; and

(g) *Dissolution or Liquidation.* Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Borrower, or failure by the Borrower promptly to forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days. The term "dissolution or liquidation of the Borrower," as used in this paragraph (g), shall not be construed to include the cessation of the corporate existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another corporation following a transfer of all or substantially all its assets as an entirety, under the conditions permitting such actions.

(h) *Indenture.* Any Event of Default as set forth in Section 8.1 of the Indenture and any event (as set forth in such Section 8.1) that with the giving of notice or the passage of time, or both, could become an Event of Default.

ARTICLE VIII

REMEDIES

Section 8.1. Remedies

Upon the occurrence of an Event of Default, then RUS may pursue all rights and remedies available to RUS that are contemplated by this Agreement in the manner, upon the

conditions, and with the effect provided in this Agreement, including, but not limited to, a suit for specific performance, injunctive relief or compensatory damages. The RUS is hereby authorized, to the maximum extent permitted by applicable law, to demand specific performance of this Agreement at any time when the Borrower shall have failed to comply with any provision of this Agreement applicable to it. The Borrower hereby irrevocably waives, to the maximum extent permitted by applicable law, any defense based on the adequacy of a remedy at law that might be asserted as a bar to such remedy of specific performance. Nothing herein shall limit the right of the RUS to pursue all rights and remedies available to a creditor at law or in equity following the occurrence of an Event of Default listed in Article VII hereof, or any right or remedy available to the RUS as a Holder of an Obligation under the Indenture. Each right, power and remedy of the RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

Section 8.2. Suspension of Advances

In addition to the rights, powers and remedies referred to in Section 8.1, the RUS may, in its absolute discretion, suspend or terminate the obligation to make or approve Advances hereunder if (i) any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing; or (ii) an event shall have occurred that has had or is likely to have a Material Adverse Effect.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Notice to RUS; Objection of RUS

Before undertaking any transaction described in Article V or Article VI or the schedules attached hereto that requires compliance with the requirements of Section 9.1, the Borrower shall give to the RUS (i) notice in writing describing in reasonable detail the proposed transaction and clearly stating that the transaction is covered by this Section 9.1 and (ii) drafts of any documents to effect such transaction. If the RUS delivers to the Borrower written notice that it objects to the proposed transaction within (i) sixty (60) days (or such shorter period as the parties shall agree to in writing) in the case of any transaction of the nature described in paragraph (a) below, or (ii) 30 days (or such shorter period as the parties shall agree to in writing) in the case of any transaction of the nature described in paragraph (b) below, the Borrower shall not complete the transaction without RUS approval.

(a) Transactions requiring compliance with the requirements of this Section 9.1 pursuant to Sections 6.2, 6.3, 6.7, 6.10(a), 6.10(c), 6.10(e), 6.10(f), 6.10(n), 6.10(o), 6.11 and 6.14 shall be subject to a 60-day review and objection period (or such shorter period as the parties shall agree to in writing); and

(b) Transactions requiring compliance with the requirements of this Section 9.1 pursuant to Sections 5.13, 6.8, 6.9, 6.10(b), 6.10(d), 6.10(g), 6.10(h), 6.10(i), 6.10(j), 6.10(k),

6.10(l), 6.10(m), 6.12, 6.13, 6.15, 6.16, 6.20, 6.21 and 6.22 shall be subject to a 30-day review and objection period (or such shorter period as the parties shall agree to in writing).

Section 9.2. Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Address for Notices of the respective parties are as follows:

The Government:

Rural Utilities Service
United States Department of Agriculture
Room No. 5135-S
1400 Independence Avenue, S.W.
Stop 1510
Washington, DC 20250
Fax: (202) 720-9542
Attention: RUS Administrator

With a copy to:

Rural Utilities Service
United States Department of Agriculture
Room No. 0270-S
1400 Independence Avenue, S.W.
Stop: 1568
Washington, DC 20250
Fax: (202) 720-1401
Attention: Power Supply Division

The Borrower:

Big Rivers Electric Corporation
201 Third Street
Henderson, Kentucky 42420
Fax: (270) 827-2558
Attention: President and Chief Executive Officer

With a copy to:

Sullivan, Mountjoy, Stainback & Miller
100 St. Ann Building
PO Box 727
Owensboro KY 42302-0727
Fax: (270) 683-6694
Attention: James Miller

Section 9.3. Expenses

To the extent permitted by Law, the Borrower shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Loan Documents or with the preparation for such enforcement if the RUS has reasonable grounds to believe that such enforcement may be necessary.

Section 9.4. Late Payments

If payment of any amount due hereunder is not received at the United States Treasury in Washington, D.C., or such other location as RUS may designate to the Borrower, within five (5) Business Days after the due date thereof or such other time period as RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the "delinquent amount," and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period), the Borrower shall pay to RUS, in addition to all other amounts due under the terms of the RUS Notes and this Agreement, any late-payment charge as may be fixed by RUS Regulations from time to time on the delinquent amount for the late-payment period.

Section 9.5. Filing Fees

To the extent permitted by Law, the Borrower agrees to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. The Borrower agrees to save harmless and indemnify the RUS from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by the RUS in connection with this Agreement. The provisions of this Section 9.5 shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder or due on the RUS Notes.

Section 9.6. No Waiver

No failure on the part of the RUS to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 9.7. Governing Law

EXCEPT TO THE EXTENT GOVERNED BY APPLICABLE FEDERAL LAW, THE LOAN DOCUMENTS SHALL BE DEEMED TO BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF KENTUCKY.

Section 9.8. Holiday Payments

If any payment to be made by the Borrower hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

Section 9.9. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Borrower and the RUS and their respective successors and assigns, provided, however, that the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the RUS.

Section 9.10. Complete Agreement; Amendments

This Agreement and the other Loan Documents are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement and the other Loan Documents. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Borrower herefrom or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9.11. Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

Section 9.12. Severability

If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement and the RUS Notes shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained herein.

Section 9.13. Right of Set Off

Upon the occurrence and during the continuance of any Event of Default, the RUS is hereby authorized at any time and from time to time, without prior notice to the Borrower, to

exercise rights of set off or recoupment and apply any and all amounts held or hereafter held, by the RUS or owed to the Borrower or for the credit or account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing hereunder or under the RUS Notes. The RUS agrees to notify the Borrower promptly after any such set off or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such set off, recoupment or application. The rights of the RUS under this Section 9.13 are in addition to any other rights and remedies (including other rights of set off or recoupment) which the RUS may have. The Borrower waives all rights of set off, deduction, recoupment or counterclaim.

Section 9.14. Schedules and Exhibits

Each Schedule and Exhibit attached hereto and referred to herein is each an integral part of this Agreement.

Section 9.15. Sole Benefit

The rights and benefits set forth in this Agreement are for the sole benefit of the parties thereto and may be relied upon only by them.

Section 9.16. Prior Loan Contracts

It is understood and agreed that with respect to all loan agreements previously entered into by and between RUS and the Borrower, including, without limitation, the Existing Loan Contract, (hereinafter being referred to as "Prior Loan Contracts") the Borrower shall be required, as of the date hereof, to meet affirmative and negative covenants as set forth in this Agreement rather than those set forth in any Prior Loan Contract. As of the date hereof, this Agreement replaces and supersedes any Prior Loan Contract. In the event of any conflict between any provision set forth in the Prior Loan Contract and any provision in this Agreement, the requirements as set forth in this Agreement shall apply.

Section 9.17. Authority of RUS Representatives

In the case of any consent, approval or waiver from the RUS that is required under this Agreement or any other Loan Document, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this Section 9.17, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

Section 9.18. Relation to RUS Regulations

(a) In case of any conflict between the terms of this Agreement and the provisions of the RUS Regulations, the terms of this Agreement shall control.

(b) The RUS Regulations shall apply to the Borrower to the extent and under the conditions expressly set forth in this Agreement (other than in Section 5.13). To the extent this

the terms of this Agreement, the Indenture, and the RUS Regulations are silent on an issue relating to System operation, control, maintenance, and accounting, the Borrower will comply with Prudent Utility Practice.

(c) The Borrower recognizes that some RUS Regulations implement Federal statutes or regulatory policies that are not limited to rural electrification but apply to many types of Federal assistance. Nothing herein is intended to, or shall be deemed to, waive the requirements of any Federal statute or regulation that is applicable to the Borrower independently of any requirement made applicable solely by the RUS Regulations.

(d) Subject to paragraphs (b) and (c) above, if on the date of this Agreement, any RUS Regulation conflicts with the terms of this Agreement or the Indenture pursuant to 7 C.F.R. 1710.113(c)(2) (62 F.R. 7721 & 18037 (1997)), the RUS hereby waives compliance by the Borrower with such RUS Regulations.

Section 9.19. Term

This Agreement shall remain in effect until one of the following two events has occurred:

(a) The Borrower and the RUS replace this Agreement with another written agreement; or

(b) All of the Borrower's obligations under this Agreement and the RUS Notes have been discharged and paid.

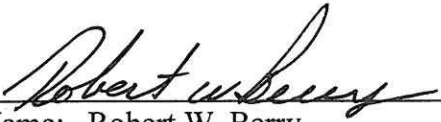
Section 9.20. Relation to Indenture

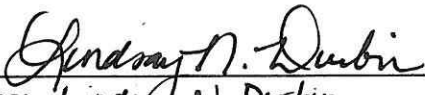
The RUS is a party to this Agreement and a Holder of Outstanding Secured Obligations under the Indenture. Both this Agreement and the Indenture govern the relationship between the Borrower and the RUS, and the parties intend that the Indenture and this Agreement independently govern such relationship. Each provision of this Agreement is intended to and shall be fully operative and enforceable as written whether or not the subject matter of any such provision is or is not addressed by the Indenture, or, if so addressed, is addressed in a different way from that set forth in this Agreement.

(Signatures begin on next page.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, and the Borrower's execution to be attested under seal, as of the day and year first above written.

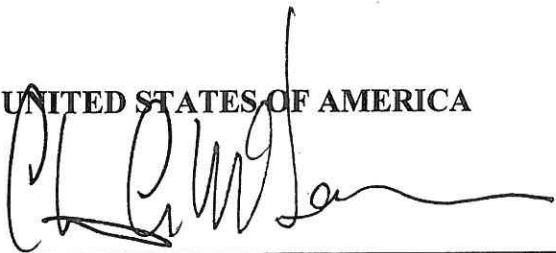
BIG RIVERS ELECTRIC CORPORATION

By: 
Name: Robert W. Berry
Title: President and Chief Executive Officer

Attest: 
Name: Lindsay N. Durbin
Title: CFO

[CORPORATE SEAL]

THE UNITED STATES OF AMERICA

By: 
Name: CHRISTOPHER A. McLEAN
Title: CHRISTOPHER A. McLEAN
Acting Administrator

SCHEDULE 1

Outstanding Notes

RUS Series A Note – RUS 2009 Promissory Note, Series A, dated July 16, 2009 in the stated principal amount of \$602,573,536.

RUS Series B Note – RUS 2009 Promissory Note, Series B, dated July 16, 2009 in the stated principal amount of \$245,530,257.30.

SCHEDULE 2

**To the First Amended and Restated Consolidated Loan Contract
dated as of January 2, 2018
between Big Rivers Electric Corporation and United States of America**

Wholesale Power Contracts

1. Wholesale Power Contract made as of October 14, 1977, between the Borrower and Jackson Purchase Rural Electric Cooperative Corporation, as amended.
2. Wholesale Power Contract made as of June 11, 1962 between the Borrower and Meade County Rural Electric Cooperative Corporation, as amended.
3. Wholesale Power Contract made as of June 11, 1962 between the Borrower and Kenergy Corp. (successor by consolidation to Henderson Union Rural Electric Cooperative Corporation), as amended.
4. Wholesale Power Contract made as of June 11, 1962 between the Borrower and Kenergy Corp. (successor by consolidation to Green River Electric Corporation), as amended.
5. Agreement dated October 12, 1974 by and between the Borrower and Kenergy Corp. (successor by consolidation to Henderson-Union Electric Corporation), as amended.
6. Agreement dated October 12, 1974 by and between the Borrower and Kenergy Corp. (successor by consolidation to Green River Electric Corporation) as amended and restated by an Agreement dated February 16, 1988, as amended.
7. Agreement dated as of July 15, 1998 between the Borrower and Kenergy Corp. (successor by consolidation to Green River Electric Corporation and Henderson-Union Electric Cooperative Corp.). as amended.

SCHEDULE 3

**To the First Amended and Restated Consolidated Loan Contract
dated as of January 2, 2018
between Big Rivers Electric Corporation and United States of America**

Litigation

Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light, Henderson Circuit Court Civil Action No. 09-CI-00693 (the “Henderson Circuit Court Action”); *City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light v. Big Rivers Electric Corporation*, Kentucky Court of Appeals No. 2010-CA-000120-MR; *Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light*, Kentucky Supreme Court No. 2014-SC-000595; *Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light*, American Arbitration Association Case No. 52 198 000173 10.

Big Rivers filed suit in Henderson, Kentucky, Circuit Court on July 31, 2009, requesting an order referring to arbitration a dispute with the City of Henderson, Kentucky and City of Henderson Utility Commission (collectively, “HMP&L”) regarding the rights of the parties respecting “Excess Henderson Energy as defined in the contracts by which Big Rivers operates HMP&L’s Station Two and receives a portion of the generation output of Station Two. By agreement dated as of July 16, 2009, Western Kentucky Energy Corp. (“WKEC”) indemnified Big Rivers against certain adverse consequences of failing to prevail in the arbitration with HMP&L. The obligations of WKEC are guaranteed by its parent company, E.ON U.S. LLC, and its successor in interest. The order of the Henderson Circuit Court directing arbitration was appealed to the Kentucky Court of Appeals, which found that the circuit court order was non-final and non-appealable, and dismissed the appeal for want of appellate jurisdiction. The contractual dispute was submitted to the American Arbitration Association.

The arbitration panel issued an award on May 31, 2012, essentially adopting the HMP&L position in the arbitration. Big Rivers filed a motion on July 16, 2012, in the Henderson Circuit Court asking the court to vacate the arbitrators’ award. The judge ruled against Big Rivers on December 5, 2012. Big Rivers filed a notice of appeal to the Kentucky Court of Appeals on January 2, 2013. The Court of Appeals upheld the lower court. On August 12, 2015, the Kentucky Supreme Court denied Big Rivers’ request for discretionary review of the case.

Counsel for HMP&L wrote counsel for Big Rivers on June 26, 2012, asserting that Big Rivers owes HMP&L for “fixed costs” associated with energy Big Rivers had taken from HMP&L’s “reserve capacity for the period beginning in August 2009 to the date of the award May 30, 2012.” The amount claimed by HMP&L in that letter is \$3,753,013.09.

By letter dated September 14, 2015, from counsel for HMP&L to the lead counsel from the two law firms representing Big Rivers in this matter, HMP&L demanded damages of \$23,801,477.50, and an immediate cession of ongoing sales of Excess Henderson Energy by Big Rivers.

On February 12, 2016, HMP&L filed a petition in the Henderson Circuit Court case initiated by Big Rivers in 2009 that resulted in the arbitration award. The petition seeks damages in an unspecified amount for Big Rivers' alleged wrongful use of this Excess Henderson Energy from July 2009 until Big Rivers stops using the Excess Henderson Energy. Big Rivers has notified WKEC of this petition as required under the July 16, 2009 Indemnification Agreement between the parties. The attorneys retained by WKEC to represent Big Rivers in the original arbitration filed a motion to dismiss the petition on technical grounds. The Henderson Circuit Court ruled that the damages claim can proceed in the current docket. Discovery has commenced in the case. In a discovery response dated September 29, 2016, HMP&L said it is seeking damages from Big Rivers of approximately \$32,216,403 for the period from August 1, 2009 through July 31, 2016. Big Rivers is vigorously contesting the claims asserted in the petition based on substantial procedural and substantive defects in the petition and the claims it purports to assert including, without limitation, the liability of Big Rivers, and the measure and calculation of damages.

In the Matter of Application of Big Rivers Electric Corporation for a Declaratory Order, Kentucky Public Service Commission, Case No. 2016-00278.

Big Rivers filed an Application with the Kentucky Public Service Commission ("Commission") on July 29, 2016, seeking a declaratory order that, under the Power Sales Contract between Big Rivers and the City of Henderson and the Utility Commission of the City of Henderson (the City of Henderson and the Utility Commission of the City of Henderson, collectively, "Henderson") regarding operation of Henderson's Station Two, Big Rivers is not responsible for the variable costs of any energy defined as Excess Henderson Energy produced by Station Two that Big Rivers does not take, and that Henderson is responsible for those costs, or in the alternative, if Big Rivers is responsible for these costs under the Power Sales Contract, that the PSC modify that contract to make Henderson responsible for those costs. Big Rivers has been charging those costs to Henderson since June 1, 2016, but Henderson has refused payment. If the Commission rules against Big Rivers, the costs charged to Henderson may have to be expensed by Big Rivers, and the future costs of generating the unwanted Excess Henderson Energy could be the responsibility of Big Rivers.

A hearing in this case was held February 7, 2017. The briefing schedule ends March 21, 2017, after which the case will be submitted to the Commission for decision. The Commission will determine whether it has jurisdiction over the pending dispute, and if so, how the contracts involved should be applied. But the Commission will not award damages.

SCHEDULE 4

**To the First Amended and Restated Consolidated Loan Contract
dated as of January 2, 2018
between Big Rivers Electric Corporation and United States of America**

The Last Day for an Advance referred to in Section 3.08 of the Agreement is as follows:

Funds will only be advanced pursuant to this Agreement and subject to the Anti-Deficiency Act. The fund advance period for the RUS commitment begins on the date of each of the W8 FFB Note and X8 FFB Note and terminates on the earlier of five (5) years from the date thereof or the last day for an advance as identified below.

No funds will be advanced subsequent to the Last Day for an Advance unless prior to the termination of the advance period the Administrator has extended the Last Day for an Advance by written agreement.

Under no circumstances will RUS ever be obligated to make or permit advances of funds contrary to 31 U.S. C. §1551.

Last Day for an Advance under W8 FFB Note: September 30, 2021

Fiscal Year of Obligation: 2016

Last Day for an Advance under X8 FFB Note: September 30, 2021

Fiscal Year of Obligation: 2016

SCHEDULE 5

Additional Affirmative Covenants

[None]

SCHEDULE 6

Additional Negative Covenants

[None]

EXHIBIT A

To the First Amended and Restated Consolidated Loan Contract dated as of January 2, 2018 between Big Rivers Electric Corporation and United States of America

Equal Opportunity Contract Provisions

During the performance of this contract, the Borrower agrees as follows:

(a) The Borrower shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Borrower shall 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 Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

(c) The Borrower shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Borrower's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Borrower shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Borrower shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records and accounts by the administering 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 Borrower's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Borrower shall 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 12246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Borrower shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT B

**To the First Amended and Restated Consolidated Loan Contract
dated as of January 2, 2018
between Big Rivers Electric Corporation and United States of America**

Description of Rating Agency Services

- (a) Ongoing surveillance of Big Rivers Electric Corporation's ("BR's") rating, including an annual meeting with senior ratings agency analysts, and a full credit report published annually;
- (b) Annual presentation by senior ratings agency analysts on BR's credit rating to BR's Board of Directors, if so requested;
- (c) Annual presentation by senior ratings agency analysts on BR's credit rating to the RUS, if so requested by the RUS; and
- (d) Furnish to the RUS copies of any written reports given to BR.

BIG RIVERS ELECTRIC CORPORATION

**ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL TO MODIFY ITS MRSM TARIFF,
CEASE DEFERRING DEPRECIATION EXPENSES,
ESTABLISH REGULATORY ASSETS,
AMORTIZE REGULATORY ASSETS, AND
OTHER APPROPRIATE RELIEF
CASE NO. 2020-00064**

**Response to the Office of the Attorney General's
First Set of Data Requests
dated March 24, 2020**

April 3, 2020

1 **Item 60)** *Please refer to Exhibit Berry-2, the Rural Utilities Service*
2 *Corrective Plan, at page 3, where it references the Syndicated Revolving*
3 *Credit Facility with a maturity date of September 18, 2020. Please provide*
4 *documents which show and describe Big Rivers' plans, assuming the*
5 *Commission grants Big Rivers' application in this case, regarding*
6 *termination, extension or replacement of this facility before or upon*
7 *maturity.*

8

9 **Response)** Big Rivers objects to this request on the grounds that it is overbroad and
10 unduly burdensome. Big Rivers also objects to this request on the grounds that it
11 seeks information that is irrelevant and not likely to lead to the discovery of
12 admissible evidence. Notwithstanding these objections, and without waiving them,
13 Big Rivers is in the process of amending and extending the current Syndicating
14 Revolving Credit Facility which has a maturity date of September 18, 2020.

15

BIG RIVERS ELECTRIC CORPORATION

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April 3, 2020

1 Witness) Paul G. Smith

BIG RIVERS ELECTRIC CORPORATION

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CASE NO. 2020-00064**

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April 3, 2020

1 **Item 61)** *Please refer to Exhibit Berry-2, the Rural Utilities Service*
2 *Corrective Plan, at page 5, where it states “Big Rivers’ current rates are*
3 *competitive in the Commonwealth of Kentucky, as well as the nation.” Please*
4 *provide the comparative data upon which this statement is based.*

5

6 **Response)** Big Rivers objects to this request on the grounds that it seeks
7 information that it is irrelevant and not likely to lead to the discovery of admissible
8 evidence. Notwithstanding these objections, and without waiving them, the
9 referenced statement in Exhibit Berry-2 is not based on a particular quantification of
10 comparative data. Comparing Generation & Transmission Cooperative wholesale
11 rates to the rates of vertically-integrated utilities is not straightforward due to the
12 split between wholesale and retail rates. Rather, the statement is based on general
13 feedback from other entities, and is also generally supported by the Moody's
14 November 13, 2019 Credit Opinion, which states that “although Big Rivers' rates
15 have increased following the loss of the smelter loads, the economics of power

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1 produced from Big Rivers' generation sources have enabled it to still maintain a
2 reasonable competitive position in the region.” See Direct Testimony of Robert W.
3 Berry, Exhibit Berry-4, page 5.

4

5 **Witness)** Robert W. Berry

BIG RIVERS ELECTRIC CORPORATION

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1 **Item 62)** *Please refer to the Berry testimony at page 8, lines 1 through line*
2 *4, refers to Big Rivers' plan to reduce the Coleman Station net book value by*
3 *approximately \$23.3 million by moving the horizontal flue gas*
4 *desulfurization ("FGD") from Coleman to Wilson. Regarding this issue,*
5 *please provide the following:*

6 *a. A detailed cost estimate for removal, moving and installation costs*
7 *of this project.*

8 *b. Wilson demolition, net salvage and other preparation costs*
9 *associated with this move.*

10 *c. A detailed accounting of the effect of moving this equipment and*
11 *reinstalling it on the Wilson net plant accounts, showing before and*
12 *after for each account.*

13 *d. All anticipated effect on Wilson ongoing plant operating costs from*
14 *this move.*

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1 **Response)**

2 a. The cost estimate for removal, moving, and installation of this project is
3 approximately [REDACTED] as detailed in the **CONFIDENTIAL**
4 attachment to this response. However, that estimate is based on the
5 relocation and reinstallation of not only the Coleman FGD, but also its
6 dewatering systems; the installation of a new dewatering system in an
7 existing building at the Wilson Station will significantly reduce project
8 costs. Based on this latter approach, the total estimated capital cost for the
9 FGD project is [REDACTED] (excluding capitalized interest of [REDACTED]

10

11 b.

12

13

14

[REDACTED]

Case No. 2020-00064

Response to AG 1-62

Witnesses: Michael T. Pullen (*a. b. and d. only*)
and Paul G. Smith (*c. only*)

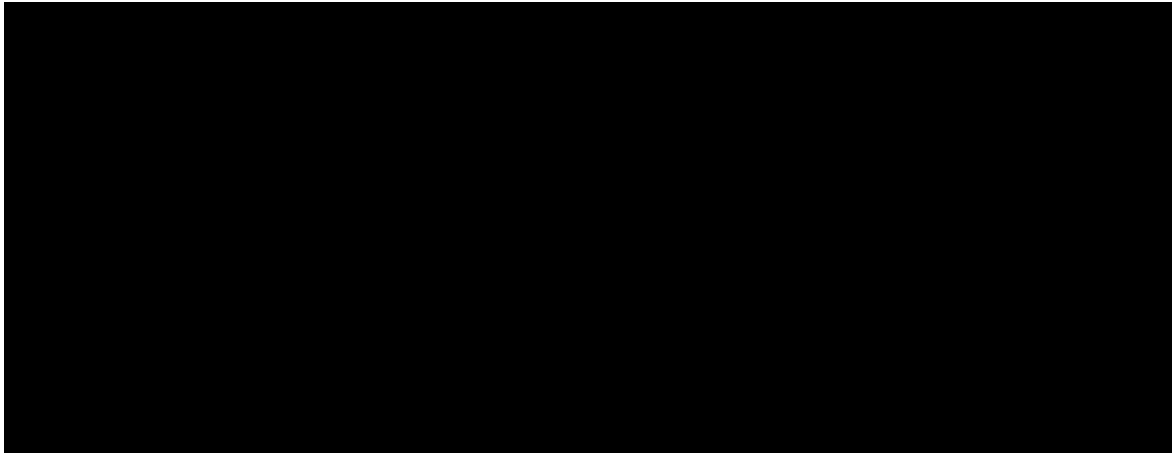
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c. The Coleman Station scrubber has a current net book value of \$74.7 million as of December 31, 2019, of which \$23.3 million represents the net book value of the components and equipment to be relocated to Wilson Station. When transferred and placed in-service at Wilson Station, the net book value of that portion being relocated will be reclassified as an incremental increase in the used and useful plant investment at Wilson Station. The reclassification of the net book value reduces Coleman Station's

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1 unrecovered net investment to be proposed as a regulatory asset when that
2 station is retired.

3 Portions of the existing Wilson FGD system that cannot be reused
4 following completion of the project will be retired. As of December 31, 2019,
5 the net book value of the plant to be retired totaled \$26 million. At the time
6 of retirement, the net book value will be charged to accumulated
7 depreciation in accordance with the RUS Uniform System of Accounts
8 (USoA).

9 d. Following completion of the Wilson FGD project, Big Rivers expects the
10 station's fixed O&M cost will decrease by an average of approximately [REDACTED]
11 [REDACTED] annually, and Wilson's non-fuel variable O&M cost will decrease by
12 an average of [REDACTED] through 2035. These figures do not reflect
13 additional financial benefits that are expected to be realized as a result of
14 the project's associated gypsum dewatering facilities, which will reduce

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1 landfilled waste by producing a commercial-grade gypsum for beneficial
2 reuse in commercial products like wallboard and cement.

3

4 **Witnesses)** Michael T. Pullen (*a. b. and d. only*) and

5 Paul G. Smith (*c. only*)