

CAPACITY PURCHASE AND SALE AGREEMENT BETWEEN BIG RIVERS ELECTRIC CORPORATION AND CITY OF CENTRALIA, MISSOURI

THIS CAPACITY PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the 21st day of October, 2016 (the "Effective Date"), by and between BIG RIVERS ELECTRIC CORPORATION ("Seller") and the CITY OF CENTRALIA, MISSOURI ("Buyer") (Seller and Buyer hereinafter referred to collectively as "Parties" or individually as "Party").

RECITALS:

WHEREAS, Seller owns and operates certain Capacity Resources located within the transmission system of the Midcontinent Independent System Operator, Inc. ("MISO");

WHEREAS, Buyer operates a municipal electric system within MISO and is subject to the resource adequacy requirements of MISO as set forth in Module E-1 of MISO's Open Access Transmission and Energy Markets Tariff ("MISO Tariff");

WHEREAS, the Parties wish to enter into this Agreement by which Seller will sell and Buyer will purchase Zonal Resource Credits ("ZRC") sourced from one or more of Seller's Capacity Resources.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1 DEFINITIONS

Capitalized terms used in this Agreement but not defined herein shall have the meanings assigned to them in the MISO Tariff.

1.1 Affiliate: with respect to any person, any other person (other than an individual) 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 fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 Agreement: Defined in the first paragraph of this Agreement.

1.3 Bankrupt: A Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of its creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its assets.

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property or assets, or (v) is generally unable to pay its debts as they fall due.

- 1.4 **Buyer:** Defined in the first paragraph of this Agreement.
- 1.5 **Capacity Quantity:** Defined in Section 3.1.
- 1.6 **Defaulting Party:** Defined in Section 4.1.
- 1.7 **Effective Date:** Defined in the first paragraph of this Agreement.
- 1.8 **Event of Default:** Defined in 4.1.
- 1.9 **Fitch:** Fitch Ratings, Inc. or its successor.
- 1.10 **Interest Rate:** 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, plus an annual rate of 1%, converted to a daily rate (or, if lower, the highest rate permitted by law). 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.
- 1.11 **Investment Grade:** Any rating of a Party's general credit, or of the Party's long-term bonds, of at least BBB- from Fitch, BBB- from S&P, or Baa3 from Moody's. If credit ratings shall not be equivalent, the lower credit rating shall govern.
- 1.12 **KPSC:** Public Service Commission of Kentucky.
- 1.13 **Letter of Credit:** 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 of at least \$10,000,000,000, and which letter of credit (i) is in a form reasonably satisfactory to the beneficiary Party, (ii) permits automatic renewal of the 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.
- 1.14 **MECT:** Module E Capacity Tracking Tool, as defined in Section 3.2.
- 1.15 **Merger Event:** A Party consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to Section 5 fail to extend to the performance by such resulting surviving or transferee entity of its obligations hereunder or (iii) *Jalina R. Mathews*'s creditworthiness is materially weaker than that of such party or other entity immediately prior to such action.

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- 1.16 **MISO:** Defined in the recitals.
- 1.17 **MISO Tariff:** Defined in the recitals.
- 1.18 **Moody's:** Moody's Investors Service, Inc. or its successor.
- 1.19 **Missouri Sunshine Laws:** Defined in Section 7.14.
- 1.20 **MW:** Megawatt, also defined in Section 3.1.
- 1.21 **Non-Defaulting Party:** Defined in Section 4.2.
- 1.22 **Product:** Defined in Section 3.1.
- 1.23 **Receipt Deadline:** Defined in Section 3.2.
- 1.24 **RUS:** Rural Utilities Service, an agency of the United States Department of Agriculture.
- 1.25 **S&P:** S&P Global Ratings, a business division of Standard & Poor's Financial Services, LLC, or its successor.
- 1.26 **Secured Party:** Defined in Section 7.2.
- 1.27 **Seller:** Defined in the first paragraph of this Agreement.
- 1.28 **Transfer Deadline:** Defined in Section 3.2.
- 1.29 **ZRC:** Zonal Resource Credit, as defined in the recitals and the MISO Tariff.

2 TERM OF AGREEMENT AND TERMINATION.

- 2.1 This Agreement shall be binding on the Parties as of the Effective Date, subject to the limitations imposed in Section 2.3 of this Agreement.
- 2.2 The capacity purchase and sale transaction to be effected hereunder shall be for the period of June 1, 2017 through May 31, 2020.
- 2.3 Notwithstanding anything to the contrary in this Section 2, the obligations of the Parties pertaining to sale, purchase, delivery, and receipt of, and payment for, the Product under this Agreement are conditioned on approval of this Agreement by RUS and the KPSC, as provided in this Section 2.3.

2.3.1 No later than 20 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. Seller shall immediately inform Buyer upon receipt of approval from RUS. If the RUS has not provide approval within ninety (90) days from the Effective Date, this Agreement may be terminated by Buyer providing notice to Seller, without penalty or

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any further obligation on the part of Seller or Buyer, except as provided in Section 2.4.3.

- 2.3.2 No later than 20 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. Seller shall immediately inform Buyer upon receipt of approval from KPSC.
- 2.3.3 If either the RUS or the KPSC has not provided its approval by one-hundred fifty (150) days from the Effective Date, this Agreement may be terminated by either Party providing notice to the other, without penalty or any further obligation on the part of Seller or Buyer, except as provided in Section 2.4.3.
- 2.3.4 In the event that either the RUS or the KPSC should require as a condition of its approval of this Agreement any material modification of this Agreement that is unacceptable to either Seller or Buyer, each in its reasonable discretion, either Party may terminate this Agreement by providing notice to the other Party within thirty (30) days of receiving notice of the condition, without penalty or any further obligation on the part of Seller or Buyer, except as provided in Section 2.4.3. If the RUS or the KPSC should require as a condition of its approval of this Agreement any modifications of this Agreement that are acceptable to the Seller and Buyer, each in its reasonable discretion, the Parties shall promptly negotiate and execute an appropriate amendment that will satisfy the condition.

2.4 Termination.

- 2.4.1 This Agreement may be terminated by the Non-Defaulting Party pursuant to Section 4.2.
- 2.4.2 In the event that changes to the MISO Tariff eliminate or materially alter the use of ZRCs, the MECT, and/or other aspects of the MISO resource adequacy compliance regimen in effect as of the Effective Date such that performance of the Parties' obligations under this Agreement becomes impractical, the Parties will use commercially reasonable efforts to amend this Agreement in order to give effect to the original intention of the Parties. The Parties shall commence such negotiations at least sixty (60) days prior to the proposed effective date of the MISO Tariff change. In the event the Parties cannot agree on an amendment within thirty (30) days of the commencement of such negotiations, either Party may provide notice of termination of this Agreement to be effective as

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of the beginning of the next Planning Year. Upon such termination, neither Party shall have any further obligations hereunder, except with respect to the Planning Year(s) prior to the termination and as provided in Section 2.4.3.

2.4.3 Unless terminated earlier pursuant to Section 2.3, 2.4.1 or 2.4.2, this Agreement shall terminate on June 1, 2020, provided, however, that any provisions of this Agreement necessary to effectuate obligations arising under this Agreement prior to termination shall survive that termination.

3 CAPACITY SALE AND PURCHASE

3.1 For each of the three Planning Years starting with Planning Year 2017/2018, Seller shall sell and deliver and Buyer shall purchase and receive 9.7 ZRCs (the "Capacity Quantity") at \$2,500.00 per MW-month per ZRC (the "Contract Price") sourced from one or more of Seller's Capacity Resources located within Local Resource Zone 6 or any successor zone that incorporates the area that constituted Local Resource Zone 6 as of the Effective Date (the "Product"). In accordance with the MISO Tariff, one ZRC represents one megawatt ("MW") of Unforced Capacity that qualifies to satisfy the resource adequacy requirements of Module E-1 of the MISO Tariff. If Buyer requests that Seller source ZRCs from a particular Capacity Resource on Seller's system, Seller will use commercially reasonable efforts to comply with that request if doing so will not have an adverse impact on Seller's economic benefits under this Agreement.

3.2 No later than twenty (20) Business Days prior to the Fixed Resource Adequacy Plan deadline ("Transfer Deadline") for each of the three Planning Years starting with Planning Year 2017/2018, Seller shall deliver the Product by submitting the appropriate transaction(s) in MISO's Module E Capacity Tracking Tool or any successor system ("MECT") to electronically assign the Product to Buyer for the entirety of the applicable Planning Year. No later than ten (10) Business Days prior to the Fixed Resource Adequacy Plan deadline ("Receipt Deadline") for each of the three Planning Years starting with Planning Year 2017/2018, Buyer shall accomplish receipt of the Product by confirming the appropriate transaction(s) submitted by Seller in the MECT prior to the Fixed Resource Adequacy Plan deadline for the applicable Planning Year.

3.3 In each Planning Year for which Seller has delivered and Buyer has received the Product, Buyer shall pay Seller a monthly charge of \$24,250.00. Seller shall invoice Buyer as soon as reasonably possible after the start of each month beginning with June, 2017, and Buyer's payment of such invoice shall be due the later of the twelfth (12th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.

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- 3.4 Each Party will make payments due hereunder by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. If non-payment becomes an Event of Default, the outstanding balance of the Contract Price for all months and quantities for which delivery and receipt of ZRCs has been completed pursuant to Section 3.2 shall become immediately due and payable.
- 3.5 A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 3.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made.

4 **DEFAULT**

- 4.1 An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:
- 4.1.1 the failure by Seller to deliver the Product, in the full Capacity Quantity, for any Planning Year by the Transfer Deadline (unless such failure is due to Buyer's failure to perform);
 - 4.1.2 the failure by Buyer to receive the Product delivered by Seller, in the full Capacity Quantity, for any Planning Year by the Receipt Deadline (unless such failure is due to Seller's failure to deliver);
 - 4.1.3 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after notice;

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- 4.1.4 any representation or warranty made by such Party herein is false or misleading in any material respect when made;
- 4.1.5 the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after notice;
- 4.1.6 such Party becomes Bankrupt;
- 4.1.7 the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 5; or
- 4.1.8 a Merger Event occurs with respect to such Party.

4.2 If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as the early termination date of this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement, (iii) suspend performance, and (iv) pursue any and all other remedies available at law or in equity, provided, however, that if Seller is the Defaulting Party, Buyer may not withhold payments due to Seller for any ZRCs that were actually delivered by Seller and received by Buyer prior to the early termination.

4.2.1 Seller's Failure to Deliver.

In addition to all other remedies set forth in Section 4.2, in the event that Seller fails to deliver all or a portion of the Capacity Quantity by the Transfer Deadline, and such failure is not excused by Buyer's failure to perform, Seller shall pay Buyer, within five (5) Business Days of delivery of an invoice to Seller from Buyer an amount equal to the positive difference, if any, obtained by subtracting the Contract Price from the MISO (applicable Planning Year) Planning Resource Auction Zone 6 Auction Clearing Price and multiplying such positive difference, if any, by the portion of the Capacity Quantity which the Seller failed to deliver.

The invoice from Buyer to Seller for any amount owed by Seller to Buyer pursuant to this provision shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2.2 Buyer's Failure to Receive.

In addition to all other remedies set forth in Section 4.2, in the event that Buyer fails to receive all or a portion of the Capacity Quantity by the Transfer Deadline, and such failure is not excused by Seller's failure to perform, Buyer shall pay Seller, within five (5) Business Days of delivery of an invoice to Buyer from Seller, an amount equal to the positive difference, if any, obtained by

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subtracting the MISO (applicable Planning Year) Planning Resource Auction Zone 6 Auction Clearing Price from the Contract Price and multiplying such positive difference, if any, by the portion of the Capacity Quantity which Buyer failed to receive.

The invoice from Seller to Buyer for any amount owed by Buyer to Seller pursuant to this provision shall include a written statement explaining in reasonable detail the calculation of such amount.

5 CREDIT SUPPORT

5.1 Each Party shall supply, at the request of the other Party, within one hundred and twenty (120) days following the end of its fiscal year or at such other times as reasonably requested by the other Party, a hard copy of the Party's annual report containing audited consolidated financial statements, unless the financial statements are available publicly or on the Party's website, for such fiscal year and/or such other documents that may be reasonably necessary to adequately determine the Party's creditworthiness. Seller shall not be required, however, to produce confidential business information that cannot be protected from public disclosure under the Missouri Sunshine Laws.

5.2 Buyer agrees that Seller's creditworthiness and financial responsibility is currently satisfactory. Should the creditworthiness or financial responsibility of Seller become unsatisfactory to Buyer, as determined by Buyer in a commercially reasonable manner, on or after January 1, 2017 Buyer may require Seller to provide a Letter of Credit equal to the product of (i) the Capacity Quantity, (ii) the amount by which the then-current Auction Clearing Price exceeds \$72/MW-day, and (iii) the number of days in any Planning Year(s) for which Seller has not yet delivered ZRCs equal to the Capacity Quantity pursuant to Section 3.2. Buyer will provide Seller with notice requesting such security. Upon receipt of such notice Seller shall have ten (10) Business Days to provide the Letter of Credit to Buyer. Notwithstanding the foregoing, Buyer shall have no right to require Seller to provide and/or maintain a Letter of Credit under this Agreement during any period in which Seller achieves and/or maintains credit rating(s) of BB- (or above) from S&P, Ba2 (or above) from Moody's, and BB (or above) from Fitch. If Seller is no longer rated by one or more of these ratings agencies, creditworthiness and financial responsibility will be based upon the credit rating(s) from the remaining ratings agencies.

5.3 Seller agrees that Buyer's creditworthiness and financial responsibility is currently satisfactory. Should the creditworthiness or financial responsibility of Buyer become unsatisfactory to Seller as determined by Seller in a commercially reasonable manner, on or after January 1, 2017 Seller may require Buyer to provide a Letter of Credit of \$24,250.00 and the number of months remaining in the Planning Year

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for which ZRCs have been delivered and received. Seller will provide Buyer with notice requesting such security. Upon receipt of such notice Buyer shall have ten (10) Business Days to provide the Letter of Credit to Seller. Notwithstanding the foregoing, Seller shall have no right to require Buyer to provide and/or maintain a Letter of Credit under this Agreement during any period in which Buyer achieves and/or maintains credit rating(s) (i) of Investment Grade or (ii) equivalent to any credit rating(s) that Buyer had in place as of the Effective Date.

6 REPRESENTATIONS AND WARRANTIES

6.1 As of the Effective Date, but with respect to Seller subject to the approvals described in Section 2.3, each Party represents and warrants to the other Party that:

6.1.1 it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

6.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

6.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

6.1.4 subject to the approval of the RUS and/or the KPSC to the extent applicable, this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and any equitable defenses or remedies;

6.1.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

6.1.6 there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

6.1.7 no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

6.1.8 it is acting for its own account, has made its own independent decision to enter into this Agreement and as *Talina R. Mathews* Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of

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the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

6.1.9 it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product.

7 GENERAL PROVISIONS

7.1 This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors. Except as provided in Section 7.2, neither this Agreement, nor any right or obligation hereunder, shall be assigned to a third person by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the prior written consent of the other Party (and without relieving itself from liability hereunder) assign this Agreement to any person succeeding to all or substantially all of the assets of such Party, whether by merger or otherwise, where such person shall, as part of such succession, have assumed in writing all of the obligations of the transferor under this Agreement. Any other assignment shall be void and of no effect against the other Party. Notwithstanding the foregoing, no assignment or transfer under this Agreement may be made that may jeopardize the tax status of the other Party or its financing without the explicit consent of the jeopardized Party.

7.2 Notwithstanding any other provision of this Agreement to the contrary, Seller may, without the written consent of Buyer and without relieving itself from liability hereunder, assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America, acting through 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, 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. For the avoidance of doubt, the limitations on assignment set forth in

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Section 7.1 shall not apply to assignments to sales, assignments, transfers or other dispositions pursuant to this Section 7.2.

- 7.3 This Agreement may be modified only by written amendment executed by the authorized representatives of both Parties.
- 7.4 Notices under this Agreement shall, unless otherwise expressly specified herein, be in writing and may be delivered by hand delivery, overnight United States mail, overnight courier service or electronic transmission to the address set forth below (or to such changed address as the notifying Party has been advised of). Notice by electronic transmission or hand delivery shall be effective at the close of business on the day actually received, if received prior to 5:00 PM Central time on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent.

Notices sent to Buyer:

City of Centralia
114 S. Rollins
Centralia, MO 65240
Attention: Matt Harline, City Administrator
cityadmin@centraliamo.org

Notices sent 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

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Notice of change in any of the above addresses shall be given in the manner specified above.

7.5 Either Party may waive its rights with respect to a default or any other matter arising in connection with this Agreement, but such waiver shall not be deemed to be a waiver with respect to any subsequent default or matter. Any delay, less than the statutory period of limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights.

7.6 This contract shall be governed, interpreted, and enforced in accordance with the laws of the State of New York and/or the laws of the United States, as applicable. Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each Party irrevocably (i) submits, to the fullest extent permitted by applicable law, to the non-exclusive jurisdiction of the courts of the state in which either Party's principal executive offices are located and the United States District Court with jurisdiction over the location of either Party's principal executive offices and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such Party.

7.7 Descriptive headings used in this Agreement have been inserted for convenience of reference only and shall not define, modify, restrict, construe, or otherwise affect the construction or interpretation of any of the provisions of this Agreement.

7.8 Each Party agrees that it shall hereafter execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required and useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the provisions of this Agreement.

7.9 [Intentionally omitted.]

7.10 Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.

7.11 This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other in the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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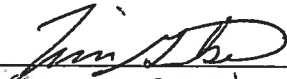
- 7.12 The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code. The Parties understand and intend that each of them is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- 7.13 The obligations of Buyer under this Agreement, to the extent they require the expenditure of funds, shall be conditional obligations, subject to the availability of funds appropriated for those purposes and payable out of revenues received from the sale of electricity to Buyer’s retail customers only when earned or due Seller in accordance with the provisions of this Agreement and shall not be construed to be general obligations of the City of Centralia or a debt of the City of Centralia within the meaning of the Constitution and the laws of the State of Missouri.
- 7.14 Nothing in this agreement shall be construed to supersede, conflict with or otherwise defeat (i) any provision of the Missouri Revised Statutes Chapter 610 Governmental Bodies and Records (Missouri Sunshine Laws), or (ii) the jurisdiction of the KPSC.
- 7.15 Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby; and the Parties hereby agree to effect such modifications to this Agreement as shall be reasonably necessary in order to give effect to the original intention of the Parties.
- 7.16 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.
- 7.17 No Consequential Damages. 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.

KENTUCKY PUBLIC SERVICE COMMISSION
Talina R. Mathews EXECUTIVE DIRECTOR <i>Talina R. Mathews</i>
EFFECTIVE 11/24/2016 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

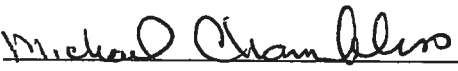
13

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative, pursuant to authority vested by the lawful action of the Party's respective council, commission or board, as of the day and year above written.

CITY OF CENTRALIA, MISSOURI

By: 
Name: Tim Grenke
Title: Mayor
Date: 14 Sep 2016

BIG RIVERS ELECTRIC CORPORATION

By: 
Name: MICHAEL CHAMBLISS
Title: V. P. SYSTEM OPERATIONS
Date: 9-27-16

KENTUCKY
PUBLIC SERVICE COMMISSION
Talina R. Mathews
EXECUTIVE DIRECTOR

EFFECTIVE
11/24/2016
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)