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**STIPULATION AND RECOMMENDATION** PUBLIC SERVICE  
COMMISSION

This Stipulation and Recommendation (“Stipulation”) is entered into this 22<sup>nd</sup> day of August 2012, by and between Big Rivers Electric Corporation (“Big Rivers”), the Office of the Attorney General (“AG”), Kentucky Industrial Utility Customers, Inc. and Alcan Primary Products Corporation (collectively, “KIUC”), the Sierra Club and Ben Taylor (collectively, “Sierra Club”), and Kenergy Corp. (“Kenergy”) in the proceedings involving Big Rivers which are the subject of this Stipulation as set forth below:

**WITNESSETH:**

**WHEREAS**, Big Rivers filed on April 2, 2012, with the Kentucky Public Service Commission (“Commission”) its application and testimony in *The Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account* and the Commission has established Case No. 2012-00063 to review Big Rivers’ application;

**WHEREAS**, the Commission has granted AG, KIUC, Sierra Club and Kenergy full intervention in this proceeding;

**WHEREAS**, AG, KIUC and Sierra Club, through their testimony and data requests have raised certain concerns relating to Big Rivers’ 2012 Environmental Compliance Plan (“2012 Plan”) for meeting new and pending environmental regulatory requirements under the Federal Clean Air Act as amended, which apply to coal combustion wastes and by-products from facilities utilized for production of energy from coal (including the proposed Cross-State Air Pollution Rule (“CSAPR”) and the national emission standards for hazardous air pollutants, also known as the Mercury and Air Toxics Standards (“MATS”) rule);

**WHEREAS**, on August 21, 2012, the United States Court of Appeals for the District of Columbia in *EME Homer City Generation, L.P. v. Environmental Protection Agency*, Case No. 11-1302, vacated the CSAPR rule, which was the basis for a significant portion of Big Rivers' 2012 Plan and the basis of several concerns raised by AG, KIUC and Sierra Club;

**WHEREAS**, AG, KIUC, Sierra Club, Kenergy and Big Rivers hereto desire to settle issues pending before the Commission in the above-referenced proceedings;

**WHEREAS**, the adoption of this Stipulation will eliminate the need for the Commission and the parties to expend significant resources litigating these proceedings, and eliminate the possibility of, and any need for, rehearing or appeals of the Commission's final order herein;

**WHEREAS**, AG, KIUC, Kenergy and Big Rivers agree that this Stipulation, viewed in its entirety, is a fair, just and reasonable resolution of all the issues in the above-referenced proceedings, and Sierra Club has agreed not to oppose this Stipulation; and

**WHEREAS**, it is the position of the parties hereto that this Stipulation is supported by sufficient and adequate data and information, and should be approved by the Commission.

**NOW THEREFORE**, for and in consideration of the premises and conditions set forth herein, the parties hereto, excluding Sierra Club, stipulate and recommend and Sierra Club agrees not to oppose as follows:

## **SECTION 1**

**Section 1.01** Big Rivers, KIUC and Kenergy recommend the Commission enter an Order on or before October 2, 2012,

- (A) granting Big Rivers Certificates of Public Convenience and Necessity ("CPCNs") to permit the construction of Project 6, the conversion of Reid

Unit 1 to burn natural gas; and Projects 8, 9 and 10, activated carbon injection, dry sorbent injection & monitors at Coleman, Wilson and Green stations;

- (B) finding that Project 11, Monitors at HMP&L Station Two Units 1 and 2, do not require a CPCN or alternatively, granting a CPCN for Project 11;
- (C) approving the addition of Projects 8, 9, 10 and 11 to Big Rivers' Environmental Compliance Plan and approving the recovery of the costs of those projects, as revised by this Stipulation, through the environmental surcharge as proposed by Big Rivers;
- (D) approving the establishment of a regulatory account for Big Rivers' actual costs (and accruals for estimated amounts until actual costs can be determined) associated with this case, for expenses up through and including August 31, 2012, which are estimated not to exceed \$900,000;
- (E) approving the amortization of the aforementioned regulatory account amount over three years, and approving the recovery of those costs through the environmental surcharge tariff; and
- (F) approving the revised Environmental Surcharge ("ES") Tariff, to become effective upon issuance of a Final Order in this proceeding approving this Stipulation, and approving the proposed ES monthly filing forms supporting the revised ES Tariff, as provided in Big Rivers' response to the Commission Staff's Second Request for Information Item 12, including the proposal to allocate environmental surcharge costs based on Total Adjusted Revenues, as

described in the Direct Testimony of John Wolfram. (The AG will not oppose the recommendation in this subsection F.)

**SECTION 1.02** Big Rivers withdraws its application for CPCNs for Projects 4, 5 and 7 and for inclusion of those projects in the environmental surcharge. Big Rivers also withdraws its application to include the costs of Project 6 in the environmental surcharge. Big Rivers retains its right to seek authority to pursue Projects 4, 5 and 7 in a future filing with the Commission and to seek cost recovery of Projects 4, 5, 6 and 7 in a future filing with the Commission.

**Section 1.03** Before incurring any costs associated with Projects 8, 9 and 10 (“MATS Projects”) except those relating to testing, Big Rivers will perform testing, while injecting activated carbon and dry sorbent, to ensure that the MATS Projects will achieve compliance with all applicable MATS particulate limits at Coleman Units 1, 2, and 3, Wilson Unit 1, and Green Units 1 and 2 and will not necessitate Electro-Static Precipitators (“ESP”) upgrades or the addition of other particulate matter controls at Coleman Units 1, 2 and 3, Wilson Unit 1, and Green Units 1 and 2. At this time, Big Rivers estimates this testing will cost approximately \$1,000,000. If this testing demonstrates that the MATS Projects will not achieve compliance with any applicable MATS particulate limit at any unit or will necessitate ESP upgrades or the addition of other particulate matter controls, Big Rivers will not proceed with the respective MATS Project for that unit, but will seek an amendment to its Environmental Compliance Plan that will ensure compliance with all applicable MATS particulate limits. Big Rivers will file the results of the above described testing with the Commission and serve it on all parties after testing on each unit. All parties will have thirty (30) days from the date each testing is provided to file comments with the Commission relating to the testing provided, and Big Rivers will not incur any costs associated with the MATS Projects except those relating to testing until 15 days after

the close of the comment period for the unit for which testing data was provided. Big Rivers will include the costs associated with this testing in the MATS Projects costs, and will recover those costs through the environmental surcharge.

**Section 1.04** The Commission retains jurisdiction to review the 2012 Plan if MATS is modified in a manner that materially affects Big Rivers' compliance plan prior to Big Rivers' completion of Projects 6, 8, 9, 10 or 11. Further, the parties agree that Big Rivers or any other party may bring a material change to the MATS regulation to the attention of the Commission for action.

**Section 1.05** The AG and Sierra Club agree to not oppose the requests for relief in Section 1.

## **SECTION 2. Miscellaneous Provisions**

**Section 2.01** The signatories hereto, except Sierra Club, agree that the foregoing stipulations and agreements represent a fair, just and reasonable resolution of the issues addressed herein and request the Commission to approve the Stipulation. Sierra Club signs to evidence its agreement not to oppose this Stipulation.

**Section 2.02** The signatories hereto agree that, following the execution of this Stipulation, the signatories shall cause the Stipulation to be filed with the Commission by August 22, 2012, together with a request to the Commission for consideration and approval of this Stipulation.

**Section 2.03** The signatories hereto agree that this Stipulation is subject to the acceptance of and approval by the Kentucky Public Service Commission. The signatories hereto further agree to act in good faith and except for Sierra Club, to use their best efforts to recommend to the Commission that this Stipulation be accepted and approved. Sierra Club agrees not to oppose

this Stipulation, and all parties waive any right to appeal, file an action seeking review of, or seek reconsideration of any Order of the Commission issued in accordance with this Stipulation.

**Section 2.04** The signatories hereto agree that, if the Commission does not accept and approve this Stipulation in its entirety, then: (a) this Stipulation shall be void and withdrawn by the parties hereto from further consideration by the Commission and none of the parties shall be bound by any of the provisions herein, provided that no party is precluded from advocating any position contained in this Stipulation; and (b) neither the terms of this Stipulation nor any matters raised during the negotiations of this Stipulation shall be binding on any of the signatories to this Stipulation or be construed against any of the signatories.

**Section 2.05** The signatories hereto agree that this Stipulation shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

**Section 2.06** The signatories hereto agree that this Stipulation constitutes the complete agreement and understanding among the parties hereto, and any and all oral statements, representations or agreements made prior hereto or contained contemporaneously herewith shall be null and void and shall be deemed to have been merged into this Stipulation.

**Section 2.07** The signatories hereto, except Sierra Club, agree that, for the purpose of this Stipulation only, the terms are based upon the independent analysis of the parties to reflect a fair, just and reasonable resolution of the issues herein and are the product of compromise and negotiation. Sierra Club signs to evidence its agreement not to oppose this Stipulation.

**Section 2.08** This Stipulation shall not have any precedential value in this or any other jurisdiction.

**Section 2.09** The signatories hereto warrant that they have informed, advised and consulted with the respective parties hereto in regard to the contents and significance of this

Stipulation and based upon the foregoing are authorized to execute this Stipulation on behalf of the parties hereto.

**Section 2.10** The signatories hereto agree that this Stipulation is a product of negotiation among all parties hereto, and no provision of this Stipulation shall be strictly construed in favor of or against any party. Notwithstanding anything contained in this Stipulation, the parties recognize and agree that the effects, if any, of any future events upon the operating income of Big Rivers is unknown and this Stipulation shall be implemented as written.

**Section 2.11** The signatories hereto agree that this Stipulation may be executed in multiple counterparts.

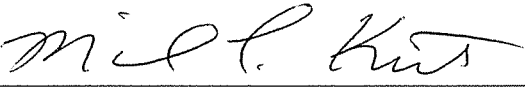
**Section 2.12** Big Rivers believes that with the MATS projects, Big Rivers will need to additionally install an HCl monitor at Wilson to demonstrate compliance with MATS. This HCl monitor is not part of the 2012 Plan, and Big Rivers is not seeking in this proceeding to recover the costs associated with this monitor through its environmental surcharge.

**Section 2.13** The motions to dismiss filed on August 21 and 22, 2012 by KIUC, Sierra Club, and the AG are hereby withdrawn.

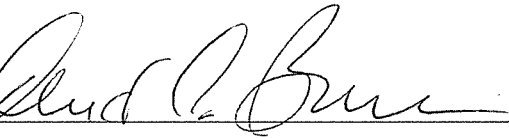
The Attorney General of Kentucky, by and through  
his Office of Rate Intervention Division

By: 

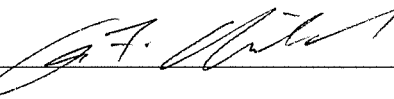
Kentucky Industrial Utility Customers, Inc.

By: 

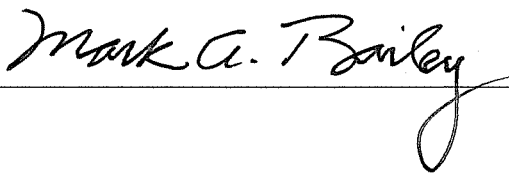
Alcan Primary Products Corporation

By: 

Sierra Club and Ben Taylor

By: 

Big Rivers Electric Corporation

By: 

Kenergy Corp.

By: 