

January 23, 2013

Ronald M. Sullivan  
Jesse T. Mountjoy  
Frank Stainback  
James M. Miller  
Michael A. Fiorella  
Allen W. Holbrook  
R. Michael Sullivan  
Bryan R. Reynolds\*  
Tyson A. Kamuf  
Mark W. Starnes  
C. Ellsworth Mountjoy

**Via Federal Express**

Mr. Jeff DeRouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

RECEIVED  
JAN 24 2013  
PUBLIC SERVICE  
COMMISSION

Re: *In the Matter of: The Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness, PSC Case No. 2012-00492*

\*Also Licensed in Indiana

Dear Mr. DeRouen:

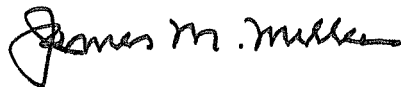
Enclosed are an original and ten copies of a motion to Amend and Supplement Application of Big Rivers Electric Corporation ("Big Rivers") in this matter. Please call if you have any questions about this filing.

Big Rivers further requests an informal conference to be attended by the Commission Staff engaged in this matter and the parties of record. Big Rivers requests that the conference be scheduled for 1:00 p.m. (EST) on any of the following dates: January 28, 29 and 30. To accommodate a party, Big Rivers requests that any notice setting the informal conference be issued no less than two days before the date on which the conference will be held.

The purpose of the informal conference requested by Big Rivers will be to discuss all issues pending in the case, including the motion to Amend and Supplement Application filed and served with this letter. Big Rivers would also request that at the informal conference the parties discuss the date for any hearing that may be required.

I certify that copies of this letter and attachments have been served on each party of record this day by placing the same in the U.S. mail, postage prepaid, addressed to each party of record.

Sincerely yours,



James M. Miller

Telephone (270) 926-4000  
Telecopier (270) 683-6694

JMM/ej  
Enclosures

100 St. Ann Building  
PO Box 727  
Owensboro, Kentucky  
42302-0727

cc: Albert Yockey  
Billie J. Richert  
Service List

Service List  
PSC Case No. 2012-00492

Michael L. Kurtz, Esq.  
BOEHM, KURTZ & LOWRY  
36 E. Seventh Street  
Suite 1510  
Cincinnati, Ohio 45202

David C. Brown, Esq.  
Stites & Harbison  
1800 Providian Center  
400 West Market Street  
Louisville, Kentucky 40202

Donald P. Seberger  
Rio Tinto Alcan  
8770 West Bryn Mawr Avenue  
Chicago, Illinois 60631

Jennifer Hans Black  
Dennis G. Howard, II  
Lawrence W. Cook  
Assistant Attorneys General  
1024 Capital Center Dr.  
Suite 200  
Frankfort, KY 40601

RECEIVED

JAN 24 2013

PUBLIC SERVICE  
COMMISSION

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

THE APPLICATION OF BIG RIVERS )  
ELECTRIC CORPORATION FOR APPROVAL ) CASE NO. 2012-00492  
TO ISSUE EVIDENCES OF INDEBTEDNESS )

MOTION TO AMEND AND  
SUPPLEMENT APPLICATION

Big Rivers Electric Corporation ("*Big Rivers*"), by counsel, moves pursuant to 807 KAR 5:001, Section 4(5) for an order allowing the filing of the attached "Amendment to Application" to supplement the items of relief requested by Big Rivers in this matter. In support of this motion, Big Rivers states that the supplemental relief sought in the Amendment to Application is both necessary and appropriate for Big Rivers to manage its business and perform its service to the public for all the reasons stated in the Amendment to Application.

Wherefore, Big Rivers respectfully requests:

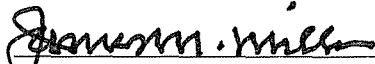
1. That the Commission makes its order granting this motion; and
2. For all other relief to which Big Rivers may appear entitled.

This 23<sup>rd</sup> day of January, 2013.

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Respectfully submitted,

Sullivan, Mountjoy, Stainback & Miller,  
PSC

By: 

James M. Miller  
Tyson Kamuf  
100 St. Ann Street  
P.O. Box 727  
Owensboro, Kentucky 42302-0727  
Telephone No. (270) 926-4000  
Facsimile No. (270) 683-6694  
[jmiller@smsmlaw.com](mailto:jmiller@smsmlaw.com)  
[tkamuf@smsmlaw.com](mailto:tkamuf@smsmlaw.com)

Counsel for Big Rivers Electric Corporation

1 COMMONWEALTH OF KENTUCKY

2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

3 In the Matter of:

4 THE APPLICATION OF BIG RIVERS )  
5 ELECTRIC CORPORATION FOR APPROVAL ) CASE NO. 2012-00492  
6 TO ISSUE EVIDENCES OF INDEBTEDNESS )  
7

8 AMENDMENT TO APPLICATION

9 Big Rivers Electric Corporation (“*Big Rivers*”) submits this verified  
10 amendment (“*Amended Application*”) to supplement the original application (the  
11 “*Application*”) to the Public Service Commission (“*Commission*”) filed November 14,  
12 2012. The purpose of this Amended Application is to seek supplemental authority  
13 Big Rivers believes it requires to postpone issuance of the evidences of indebtedness  
14 for which approval is also sought in the Application. In support of its supplemental  
15 requests in this Amended Application, Big Rivers states as follows:

- 16 1. The Application sought approval to supplement or terminate  
17 certain existing evidences of indebtedness and to issue certain new evidences of  
18 indebtedness, all in connection with the refunding by purchase of \$58,800,000 in  
19 aggregate principal amount of the County of Ohio, Kentucky, Pollution Control  
20 Floating Rate Demand Bonds, Series 1983 (Big Rivers Electric Corporation Project)  
21 (the “1983 *Bonds*”) and the issuance by the County of a like principal amount of the  
22 County’s Pollution Control Refunding Revenue Bonds, Series 2013A (Big Rivers  
23 Electric Corporation Project) (the “2013A *Bonds*”). The obligations of Big Rivers  
24 with respect to the 1983 Bonds mature on June 1, 2013. So Big Rivers must

1 purchase, refund or pay the 1983 Bonds on or prior to June 1, 2013, or default on its  
2 obligations with respect to the 1983 Bonds, which would result in default on Big  
3 Rivers' obligations with respect to all its indenture debt.

4           2. As Big Rivers stated in response to Item 6 of the Alcan Request for  
5 Information, Big Rivers' staff has been reviewing other available options for paying  
6 the 1983 Bonds upon maturity, including sources of funds, in case the tax-exempt  
7 capital market's receptivity to the New Bonds is unfavorable. Big Rivers has  
8 decided that the potential cumulative impact on prospective bond purchasers of the  
9 Century Aluminum notice to terminate its retail service agreement, the uncertainty  
10 about the outcome of Big Rivers' pending rate case<sup>1</sup>, and the impact of that rate case  
11 on Alcan Primary Products Corporation's Sebree facility weigh in favor of  
12 postponing the offering of debt until some or all of that uncertainty has been  
13 eliminated. With the goal of achieving the maximum flexibility to retire the 1983  
14 Bonds on a timely basis and in a manner that is most advantageous to Big Rivers  
15 and its member cooperatives, Big Rivers seeks authority in this Amended  
16 Application to use for that purpose all or a portion of the following funds: (i) the  
17 \$60,000,000 in remaining proceeds from the 2012 financing with CoBank, ACB  
18 authorized by order of the Commission on May 25, 2012<sup>2</sup> (the "2012 Financing  
19 Order"), most of which financing was used to refinance a portion of Big Rivers'  
20 obligations to the RUS, and (ii) the "Transition Reserve," approved by the

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<sup>1</sup> *In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, P.S.C. Case No. 2012-00535.

<sup>2</sup> *In the Matter of: Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*, P.S.C. Case No. 2012-00119, order dated May 25, 2012.

1 Commission in its order dated March 6, 2009, in the “unwind transaction”  
2 proceeding<sup>3</sup>.

3 *Big Rivers’ Strategy*

4 3. Big Rivers’ current strategy for satisfying its obligations on the  
5 maturing 1983 Bonds is three-part. First, Big Rivers will continue to pursue  
6 negotiations and options for paying the 1983 Bonds with funds from its two  
7 revolving credit agreements that will allow Big Rivers to later refinance the  
8 amounts paid as tax-exempt debt. Whether or not that is successful will depend  
9 upon the results of negotiations between Big Rivers and the creditors under those  
10 agreements. If those negotiations are successful, to execute those plans Big Rivers  
11 will require additional Commission authority in the form of approval of the  
12 amended revolving credit agreements.

13 4. Second, and Big Rivers’ current preferred option, is to purchase the  
14 1983 Bonds with a the funds from the 2012 CoBank term loan, and use the  
15 Transition Reserve funds to replace, to the extent of \$35,000,000, the CoBank term  
16 loan amounts that would otherwise have been used for capital expenditures in the  
17 ordinary course of business. Big Rivers’ ability to pursue that option depends upon  
18 obtaining permission from the Commission to use those funds as proposed.

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<sup>3</sup> *In the Matter of: The Applications of Big Rivers Electric Corporation for: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (2) Approval of Transactions, (3) Approval to Issue Evidences of Indebtedness, and (4) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc. for Approval of Transactions, P.S.C. Case No. 2007-00455, order dated March 6, 2009.*

1                   5. Finally, if it were the only option available to avoid default, Big  
2 Rivers would still attempt to sell the 2013 Bonds to raise funds to pay the 1983  
3 Bond obligations. For this reason, Big Rivers still seeks Commission approval to  
4 issue the evidences of indebtedness described in the original Application.

5   \$60 Million from CoBank Loan

6                   6. The 2012 Financing Order approved, among other things, issuance  
7 by Big Rivers of evidences of indebtedness to refinance \$235,000,000 in RUS debt  
8 with Cobank, ACB through a term loan. On page 3 of that order, the Commission  
9 correctly notes that Big Rivers stated that \$60,000,000 of the CoBank secured loan  
10 proceeds would be for “capital expenditures used in the ordinary course of business.”  
11 Ordering paragraph number 6, on page 9, states that “the proposed loans shall be  
12 used only for the lawful purposes set out in Big Rivers’ Application.” Because this  
13 language arguably restricts Big Rivers’ ability to use the CoBank borrowed funds to  
14 pay Big Rivers’ obligations under the 1983 Bonds, Big Rivers seeks that authority  
15 in this Amended Application.

16                   7. The proposed repurposing of these funds is reasonable and  
17 appropriate under the circumstances outlined by Big Rivers in this Amended  
18 Application. The 1983 Bonds are tax-exempt bonds. If Big Rivers pays off those  
19 bonds with funds that are not borrowed funds, Big Rivers is advised that it cannot  
20 later refinance that debt with tax-exempt bonds. While Big Rivers understands  
21 that in the current market there is little difference between the rates on tax-exempt  
22 and taxable debt (see attached Exhibit 1), that circumstance could change in the



1 future. While use of the CoBank borrowed funds does not assure that Big Rivers  
2 will have access to tax-exempt borrowing in the future, it does hold open the  
3 opportunity to achieve that goal.

4 8. Big Rivers has considered borrowing funds under its revolving  
5 credit agreements with CoBank and CFC to pay its obligations under the 1983  
6 Bonds. But as explained above and in Big Rivers' response to Item 12 of the Alcan  
7 Request for Information, Big Rivers' two revolving credit agreements are not  
8 available as a source to pay the 1983 Bonds unless Big Rivers can renegotiate those  
9 documents to eliminate the terms that make them unavailable upon the  
10 termination of the Century service agreement, or upon notice and termination of the  
11 Alcan service agreement. Those negotiations are in progress.

12 *The Transition Reserve*

13 9. The Transition Reserve is a fund of \$35,000,000 that was approved  
14 by the Commission, and established by Big Rivers in 2009 in connection with the  
15 Big Rivers "unwind transaction". Big Rivers stated in response to Item 15 of the  
16 Alcan Request for Information that the Transition Reserve was one of the sources of  
17 liquidity Big Rivers might pursue if it elected to pay the 1983 Bonds other than  
18 with borrowed funds. The Commission directed in ordering paragraph 8, on page 10  
19 of the 2012 Financing Order that Big Rivers should "invest [the \$35 million in the  
20 Transition Reserve] in an interest-bearing account to be used exclusively as an  
21 emergency fund to offset the loss of revenue should one or both Smelters close,  
22 unless authorized by the Commission to use the funds for another purpose." Big

1 Rivers seeks authority in this Amended Application to use the Transition Reserve  
2 funds for capital expenditures in the ordinary course of business to replace a portion  
3 of the CoBank borrowed funds used to pay the 1983 Bond obligations.

4           10. Big Rivers' liquidity for operation of its business will obviously be  
5 reduced by \$58,800,000 when Big Rivers pays the 1983 Bond obligations. The  
6 impact on Big Rivers' liquidity of using \$58,800,000 to pay the 1983 Bond  
7 obligations is shown on Exhibit 2 to this Amended Application. Big Rivers needs  
8 access to the Transition Reserve funds to meet its ongoing working capital  
9 requirements prior to the time that the funds used to pay the 1983 Bond obligations  
10 can be replaced with capital raised in the financial markets. As the Commission  
11 notes on page 8 of the 2012 Financing Order, the Transition Reserve is intended to  
12 be an "emergency fund to offset the loss of revenue" should one or both Smelters  
13 close. Use of the Transition Reserve to replace a portion of the CoBank borrowed  
14 funds under circumstances where the financing uncertainties created for Big Rivers  
15 are directly attributable to the Century notice of termination of its retail service  
16 agreement is an appropriate purpose for use of the Transition Reserve. It will  
17 contribute to Big Rivers' ability to meet its obligations pending Commission action  
18 in Big Rivers' rate case, and otherwise enable Big Rivers to manage appropriately  
19 the uncertainties it currently faces.

20           11. The funds in the Transition Reserve cannot practically be used as  
21 a source of replacement revenue for Big Rivers, in any event, because the funds  
22 were booked as income after the unwind transaction. From an accounting

1 standpoint, the funds in the Transition Reserve would not contribute to margins  
2 and support Big Rivers' financial covenant obligations if used to replace an  
3 increment of revenue Big Rivers would otherwise collect from its Members.

4 12. Big Rivers will replenish the Transition Reserve when it borrows  
5 funds to replace the liquidity used to pay the 1983 Bond obligations, assuming Big  
6 Rivers is still providing wholesale power from its generating assets for resale to a  
7 smelter.

8 *Issues Raised by Paying 1983 Bond Obligations from Big Rivers' Internal Funds*

9 13. If Big Rivers reduces its liquidity to pay its obligations under the  
10 1983 Bonds, that change in Big Rivers' liquidity could trigger further downgrades in  
11 Big Rivers' credit ratings. Representatives of the ratings agencies and Big Rivers'  
12 creditors frequently cite Big Rivers' liquidity as one of Big Rivers' principal  
13 strengths. Failure by Big Rivers to maintain two investment grade credit ratings  
14 can result in RUS implementing a lockbox arrangement under which most of Big  
15 Rivers' revenues will go into a lockbox, and its debts must be paid from the lockbox  
16 in accordance with the terms of the lockbox arrangements. Big Rivers' interest  
17 rates under the CoBank revolving credit agreement are also tied to Big Rivers'  
18 credit ratings.

19 *Conclusion*

20 14. The strategy outlined in this Amended Application is reasonable  
21 and prudent, and represents the best set of options currently available for Big Rivers  
22 to manage its debt obligations, given the circumstances resulting from Century's

1 termination of its service agreement, and other smelter-related uncertainties. Big  
2 Rivers requests that the Commission act promptly to approve the Big Rivers  
3 application in this matter, as amended by this Amended Application.

4           15. This Amended Application is signed and verified on behalf of Big  
5 Rivers by Billie J. Richert, Vice President Accounting and Interim Chief Financial  
6 Officer. It has been prepared by or under her supervision, and she has knowledge of  
7 the matters stated herein.

8           WHEREFORE, Big Rivers respectfully requests that the Commission make  
9 orders granting Big Rivers the following relief in addition to the relief requested in  
10 the original Application:

11           a. Authority to use \$60,000,000 of the funds previously borrowed  
12 from CoBank for purposes of capital expenditures in the ordinary course of business  
13 to pay Big Rivers' obligations under the 1983 Bonds funds, and the \$35,000,000 held  
14 in the Transition Reserve for purposes of capital expenditures in the ordinary course  
15 of business; and


16           b. All other relief to which Big Rivers may appear to be entitled.

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Respectfully submitted,

Sullivan, Mountjoy, Stainback & Miller,  
PSC

By:   
James M. Miller  
Tyson Kamuf  
100 St. Ann Street  
P.O. Box 727  
Owensboro, Kentucky 42302-0727  
Telephone No. (270) 926-4000  
Facsimile No. (270) 683-6694  
[jmiller@smsmlaw.com](mailto:jmiller@smsmlaw.com)  
[tkamuf@smsmlaw.com](mailto:tkamuf@smsmlaw.com)  
Counsel for Big Rivers Electric Corporation

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3 VERIFICATION  
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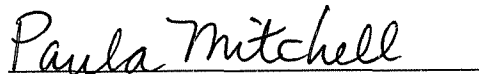
5 I, Billie J. Richert, Vice President Accounting and Interim Chief Financial  
6 Officer for Big Rivers Electric Corporation, hereby state that I have read the  
7 foregoing Amended Application, and that the statements contained therein are true  
8 and correct to the best of my knowledge and belief, on this the 23 day of January,  
9 2013.

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13 Billie J. Richert  
14 Vice President Accounting and  
15 Interim Chief Financial Officer  
16 Big Rivers Electric Corporation  
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20 COMMONWEALTH OF KENTUCKY )  
21 COUNTY OF HENDERSON )  
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23 The foregoing verification statement was SUBSCRIBED AND SWORN to before  
24 me by Billie J. Richert, Vice President Accounting and Interim Chief Financial  
25 Officer of Big Rivers Electric Corporation, on this the 23<sup>rd</sup> day of January, 2013.  
26

27   
28

29 Notary Public, Ky., State at Large  
30 My commission expires: 6-12-17

Big Rivers Electric Corporation  
Exhibit 1 - Case No. 2012-00492 Amendment to Application

**Comparison of Tax-Exempt / Taxable Rates**  
As of January 18, 2013

Maturity	"AAA" MMD	UST	MMD / UST
1	0.20 %	0.14 %	148 %
2	0.33	0.25	130
3	0.46	0.37	123
5	0.72	0.76	95
7	1.11	1.25	89
10	1.67	1.85	91
20	2.35	2.55	92
30	2.72	3.03	90

*Note: Does not include Big Rivers' credit spread*

Key
"AAA" MMD: Municipal Market Data ("AAA" Rated)
UST: U.S. Treasuries
MMD / UST : Ratio of "AAA" MMD to UST Rates

**Big Rivers Electric Corporation**  
**Summary of Long-Term Debt, Cash, Investments and Reserves as of December 31, 2012**  
**Exhibit 2 - Case No. 2012-00492 Amendment to Application**

Lender	Description	Outstanding Principal Balance as of December 31, 2012	Purchase of 1983 Bonds	Principal Balance after Purchase of 1983 Bonds
<b><u>Long-Term Debt:</u></b>				
CoBank	First Mortgage Notes Series 2012A	\$ 231,426,868		\$ 231,426,868
				\$ -
RUS	RUS Series A Promissory Note	\$ 80,018,678		\$ 80,018,678
RUS	RUS Series B Promissory Note	\$ 130,340,373		\$ 130,340,373
				\$ -
Bonds	County of Ohio, Kentucky - promissory note, fixed interest rate	\$ 83,300,000		\$ 83,300,000
Bonds	County of Ohio, Kentucky - promissory note, variable interest rate	\$ 58,800,000	\$ (58,800,000)	\$ -
				\$ -
CFC	Refinancing Term Loan	\$ 298,513,117		\$ 298,513,117
CFC	Equity Loan - CTCs (See Equity Investment below)	\$ 42,844,899		\$ 42,844,899
	<b>Total Long-Term Debt</b>	<b>\$ 925,243,935</b>	<b>\$ (58,800,000)</b>	<b>\$ 866,443,935</b>
<b><u>Cash Balances/Investments/Reserves:</u></b>				
CFC	CFC Equity Investment in CTCs	\$ 43,617,567		\$ 43,617,567
	Fidelity Prime Money Market Portfolio	\$ 110,165,436	\$ (58,800,000)	\$ 51,365,436
	Economic Reserve	\$ 80,643,351		\$ 80,643,351
	Rural Economic Reserve	\$ 64,663,034		\$ 64,663,034
Transition Reserve	Federal National Mortgage Note	\$ 17,500,000		\$ 17,500,000
Transition Reserve	Federal Farm Credit Bank Bond	\$ 17,527,099		\$ 17,527,099
	<b>Total Cash Balances/Investments/Reserves</b>	<b>\$ 334,116,487</b>	<b>\$ (58,800,000)</b>	<b>\$ 275,316,487</b>