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February 22, 2013

Via Federal Express

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

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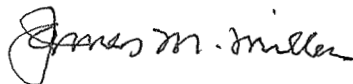
*Also Licensed in Indiana

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

Dear Mr. DeRouen:

Enclosed are an original and ten copies of the supplemental response of Big Rivers Electric Corporation to Kentucky Industrial Utility Customers, Inc.'s Supplemental Data Requests, Item 4. Also enclosed are an original and ten copies of a petition for confidential treatment of certain information furnished in connection with this supplemental response. I certify that copies of this letter and enclosures have been served this day on each person shown on the attached service list by delivering the same to an overnight courier service, prepaid, for delivery on February 25, 2013.

Sincerely yours,



James M. Miller

JMM/ej
Enclosures

Telephone (270) 926-4000

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cc: Billie J. Richert

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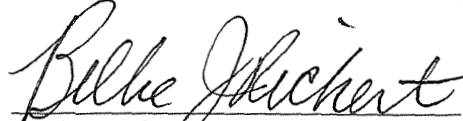
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BIG RIVERS ELECTRIC CORPORATION

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

VERIFICATION


I, Billie J. Richert, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Billie J. Richert

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Billie J. Richert on this the 22nd day of February, 2013.



Notary Public, Ky. State at Large
My Commission Expires 8-9-14

BIG RIVERS ELECTRIC CORPORATION

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

Supplemental Response to
the Kentucky Industrial Utility Customers'
Supplemental Request for Information
dated February 5, 2013

February 25, 2013

1 Item 4) *Provide any correspondence and documents regarding a*
2 *“Going Concern Qualification” between and among BREC and the*
3 *Auditing Firm identified in the previous request within the last 12*
4 *months. This data request remains active throughout the proceeding.*
5 *If BREC obtains any further or supplemental documents or*
6 *information subsequent to the preparation and service of BREC’s*
7 *responses hereto, please provide such documents or information as*
8 *part of a supplemental response.*

9

10 Response) Please refer to the attached documents which are being filed
11 with a Petition for Confidential Treatment.

12

13

14 Witness) Billie J. Richert

15

Client	Period-end	
Big Rivers Electric Corporation	12/31/12	
Prepared by	Date	W/P reference
Kevin Lyons with comments/revisions by Big Rivers (noted in red)	1/24/2013	

Purpose:

The purpose of this memorandum is to document our considerations on Big River Electric Corporations ability to continue as a going concern as discussed in AICPA Auditing Standard AU Section 341.

Background:

Big Rivers Electric Corporation ("Big Rivers" or the "Company") is an electric generation and transmission cooperative based out of Henderson, Kentucky that owns generating capacity of approximately 1,444 megawatts (MW) in four substantially coal-fired plants and has rights to an additional 197 MW of coal-fired and 178 MW of contracted hydro capacity. The power generated by Big Rivers is distributed to its three member distributive cooperatives (Kenergy Corp., Jackson Purchase Energy Corporation, and Meade County Rural Electric Corporation) under all requirements contracts. Additionally, the power needs (approximately 60% of Big Rivers' generation) of two large industrial customers in the aluminum smelter industry are supplied under separate arrangements with one of the cooperative members. The members provide electric power and energy to industrial, residential, and commercial customers located in portions of 22 western Kentucky counties. The wholesale rates (inclusive of the aluminum smelters) to Big Rivers' members are regulated by the Kentucky Public Service Commission (KPSC) and are subject to approval by the Rural Utilities Service (RUS), respectfully the Company's state and federal regulators.

Procedures:

Per KAM 27.0580 KPMG must perform the following procedures concerning the entity's ability to continue operations:

- identify events and conditions that may cast substantial doubt on the entity's ability to continue as a going concern for a reasonable period of time by performing risk assessment procedures and by remaining alert throughout the audit
- perform additional audit procedures when events or conditions that may cast substantial doubt on the entity's ability to continue as a going concern are identified and we believe there is substantial doubt
- conclude and consider the implications for the auditors' report regarding the entity's ability to continue as a going concern
- Communicate with those charged with governance

Results:

In consideration of the procedures noted above, KPMG noted the following:

- **Century's Notice to Terminate:** On August 20, 2012 Century Aluminum (substantial customer) served Big Rivers with a 12 month notice of intent to terminate its power contract. Century Aluminum Co. is a smelter plant in Hawesville, KY that is seeking rate concessions from Big Rivers due to the declining prices for aluminum and concerns over their ability to operate the facility under the current contractual electrical rates set between Century and Big Rivers. The impact of this notice and potential consequences if Century were to terminate its power contract from a liquidity perspective are as follows:

- **\$50 million CoBank, ACB (CoBank) line of credit:** Under the terms of this line of credit agreement, upon a smelter's notification to terminate its power contract, the Company no longer has the ability to make draws on this line of credit. As such, as result of Century's notice, the Company no longer has access to this \$50 million line of credit. The company is currently in discussions with CoBank to modify this term, but as of this point in time the terms have not been modified.
- **\$50 million National Rural Utilities Cooperative Finance Corporation (CFC) line of credit:** Under the terms of this line of credit agreement, upon the termination of a smelter's power contract, the Company no longer has the ability to make draws on this line of credit. As such, assuming Century will terminate its power contract, beginning August 20, 2013 the Company will no longer have access to this \$50 million line of credit. In consideration of the Company's liquidity position and ability to continue as a going concern, the assumption should be made that the Company will not have access to this line of credit in 2013. The company is currently in discussions with CoBank to modify this term, but as of this point in time the terms have not been modified.
- **We take exception to the above 'assumption should be made that the Company will not have access to this line of credit in 2013', as Big Rivers currently has access to this line of credit until August 20, 2013; and CFC is presenting a negotiated Term Sheet with revised terms to their Credit Committee for approval on Thursday, February 21, as described below. Also, CFC has indicated their commitment to pursue the three-year interim secured facility for our Environmental Compliance Plan CAPEX for \$60 million and is providing Big Rivers with a Term Sheet on Friday, February 22.**
- **On February 15, 2013, Big Rivers received a Term Sheet from CFC to extend the maturity date to July 16, 2017 and to remove any reference to the termination of smelter retail agreements. Additionally, the following proposed terms are included in the term sheet:**
- **The Revolving Credit Facility (Line of Credit) will become secured under the Indenture.**

[REDACTED]

[REDACTED]

[REDACTED]



- We are seeking Board approval during the February 27th board meeting to complete negotiations of the necessary documents and obtain the necessary approvals to pursue these modifications.
- This will require PSC approval. Big Rivers anticipates filing the financing application by the end of February. Typically it takes ninety (90) days for the Commission to issue an order in a Financing Case.
- **Series 1983 Bonds Maturity:** On June 1, 2013, the \$58.8 million of Series 1983 Pollution Control Bonds mature. The Company has considered its ability to issue new pollution control bonds and utilize those proceeds to pay the maturing bonds, but based on discussions with their advisors, current economic conditions and company circumstances indicate that the Company may not be able to issue new bonds and therefore the \$58.8 million in its entirety will be due on June 1, 2013.
- **Big Rivers has a Financing Case before the Commission (Case No. 2012-00492)** which requests the ability to utilize the remaining proceeds from the CoBank July 2012 refinancing, a total of \$60 million which was designated for capital expenditures by the Commission in Case No. 2012-00119 to pay off the Series 1983 Bonds prior to or on the maturity date of June 1, 2013. Big Rivers is also asking in Case No. 2012-00492, to use the \$35 million Transition Reserve for capital expenditures in the ordinary course of business. The \$35 million Transition Reserve was established as an emergency fund for Big Rivers to access should one or both smelters close, unless authorized by the Commission to use the funds for another purpose.
- For the period August 2012 through January 2013, Big Rivers has spent approximately \$20 million for capital expenditures. This was noted in our response to Item 3) to the supplemental data request filed by Alcan Primary Products Corporation in Case No. 2012-00492. So, for practical purposes, there remains approximately \$40 million from the initial \$60 million proceeds from the July 2012 refinancing with CoBank.
- **2013 Projections:** KPMG obtained the Company's fiscal 2013 projection and based on those projections, the Company is projecting other cash from operations and significant cash outflows as follows:

Cash from operations:	\$25.1 million ok
Net proceeds from restricted investments (Economic Reserve)	\$26.7 million
Capital Expenditures:	\$79.1 million
Net Principal Payment on Debt Obligations:	\$10.2 million this is a net inflow not a net outflow and therefore is added to Cash

Note: The net principal payments on debt obligations does not take into consideration the \$58.8M Series 1983 Bonds Maturity.

As such, taking into consideration the information above, cash activity for 2013 would be as follows:

Projected: Cash from Operations	25.1
Plus: Net Proceeds from Economic Reserve	26.7
Maturity of Pollution Control Bonds	(58.8)
Projected: Capital Expenditures	(79.1)
Projected: Net inflow proceeds less payments on debt obligations	10.2
Final Order on Case No 2011-00036 – retro amount – see attached	1.4
Final Order on Case No 2011-00036 – Jan-Aug 2013 – see attached	.7
Interest Expense Savings from paying off bonds rather than refinancing	2.4
Issuance Cost Savings from paying off bonds rather than refinancing	1.4
	<hr/>
Projected: 2013 Cash Outflows	(70.0)

In consideration of the above, the Company would need approximately \$70.0 million of available cash as of December 31, 2012 to cover the projected 2013 cash outflows.

- **2012 Available Cash and Liquidity Position:** As of December 31, 2012, the Company had approximately \$110.1 million in cash and cash equivalents. KPMG notes that of this \$110.1million, \$40.0 million is restricted for capital expenditures and the Company requires approval from (note: approval is not required from CoBank) the Kentucky Public Service Commission (the commission) prior to utilizing this \$40.0 million to pay the maturing pollution control bonds. Assuming they are able to either obtain this approval (or reduce the \$79.1million in CAPEX by \$40.0 million accordingly) and considering project capital expenditures for 2013 are projected to be \$79.1 million, it can be assumed that this \$110.1 million in its entirety would be available to the Company for 2013 projected cash outflows. In consideration of this, an updated analysis of 2013 cash outflows would be as follows:

Cash and cash equivalents as of 12/31/2012	110.1
Projected: Cash from Operations (include Economic Reserve proceeds of \$26.7)	51.8
Maturity of Pollution Control Bonds	(58.8)
Projected: Capital Expenditures	(79.1)
Projected: Net inflow proceeds less payments on debt obligations	10.2
Final Order on Case No 2011-00036 – retro amount – see attached	1.4
Final Order on Case No 2011-00036 – Jan-Aug 2013 – see attached	.7
Interest Expense Savings from paying off bonds rather than refinancing	2.4
Issuance Cost Savings from paying off bonds rather than refinancing	1.4
	<hr/>
Projected: Cash and cash equivalents as of 12/31/2013 – as revised	40.1

Under these assumptions, the Company would have Cash and Cash Equivalents balance as of 12/31/2013 of approximately \$40.1 million.

However, in addition to the \$110.1 million of cash and cash equivalents on hand as of 12/31/2012, there is also approximately \$35.0 million in the transition reserve. The transition reserve was established as a way for the Company to have money set aside in case either one of the smelters extinguished their contracts with Big Rivers. The Company has the ability to liquidate this reserve pending commission approval. However, since commission approval is pending, there is no guarantee

that they will receive this approval and therefore we cannot assume the Company will have access to these funds in considering the Company's going concern and liquidity position.

It is Big Rivers expectations that the Commission will rule in this financing case in March 2013. Therefore, if we add the \$35 million to the above cash balance at 12/31/2013, we will have an projected ending cash balance of (\$35m + \$40.1m) or \$75.1 million. Regardless, the \$40.1m projected 12/31/2013 cash balance is sufficient to meet Big Rivers' operating cash needs.

Conclusion:

TBD

A lack of resolution would mean there could be a "going concern" issue.

Discussion points:

- **Confirm understanding of facts – See above revisions**
- **What steps can be taken?**
 - **Additional capex reductions? Discussion.**
 - **Accelerate approvals on lines of credit or \$60 million? Presently working on this.**
 - **Permission to use transition reserve? Commission order anticipated in March 2013.**
 - **Get permission to delay issuance of financial statements? Audited financial statements are due to our creditors no later than 120 days after yearend.**

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

RECEIVED

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4 FEB 25 2013

5 In the Matter of:

PUBLIC SERVICE
COMMISSION

6 Application of Big Rivers Electric)
7 Corporation for Approval to Issue) Case No. 2012-00492
8 Evidences of Indebtedness)
9

10
11
12 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR**
13 **CONFIDENTIAL PROTECTION**
14

15 1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the
16 Kentucky Public Service Commission ("Commission"), pursuant to 807 KAR 5:001
17 Section 13 and KRS 61.878, to grant confidential protection to certain information
18 Big Rivers is filing with its supplemental response to Item 4 of Kentucky Industrial
19 Utility Customers, Inc.'s second request for information ("KIUC 2-4"). The
20 information Big Rivers seeks to protect as confidential is hereinafter referred to as
21 the "Confidential Information."

22 2. The Confidential Information consists of an email attachment. One (1)
23 copy of the email attachment, with the Confidential Information highlighted with
24 transparent ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL,"
25 is being filed with this petition. An original and ten (10) copies of Big Rivers'
26 response to KIUC 2-4 with the email attachment redacted are also being filed with
27 this petition. 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

28 3. A copy of this petition with the Confidential Information redacted has
29 been served on all parties to this proceeding. 807 KAR 5:001 Section 13(2)(c). A

1 copy of the Confidential Information has been served on all parties that have signed
2 a confidentiality agreement.

3 4. The Confidential Information is not publicly available, is not
4 disseminated within Big Rivers except to those employees and professionals with a
5 legitimate business need to know and act upon the information, and is not
6 disseminated to others without a legitimate need to know and act upon the
7 information.

8 5. If and to the extent the Confidential Information becomes generally
9 available to the public, whether through filings required by other agencies or
10 otherwise, Big Rivers will notify the Commission and have its confidential status
11 removed. 807 KAR 5:001 Section 13(10)(a).

12 6. As discussed below, the Confidential Information is entitled to
13 confidential protection based upon KRS 61.878(1)(c)(1), which protects “records
14 confidentially disclosed to an agency or required by an agency to be disclosed to it,
15 generally recognized as confidential or proprietary, which if openly disclosed would
16 permit an unfair commercial advantage to competitors of the entity that disclosed
17 the records.” KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1).

18 **I. Big Rivers Faces Actual Competition**

19 7. Big Rivers competes in the wholesale power market to sell energy
20 excess to its members’ needs. Big Rivers’ ability to successfully compete in the
21 wholesale power market is dependent upon a combination of its ability to get the
22 maximum price for the power sold, and keeping the cost of producing that power as

1 low as possible. Fundamentally, if Big Rivers' cost of producing a kilowatt hour
2 increases, its ability to sell that kilowatt hour in competition with other utilities is
3 adversely affected. As is well documented in multiple proceedings before this
4 Commission, Big Rivers' margins are derived almost exclusively from its off-system
5 sales.

6 8. Big Rivers also competes for reasonably priced credit in the credit
7 markets, and its ability to compete is directly impacted by its financial results. Any
8 event that adversely affects Big Rivers' margins will adversely affect its financial
9 results and potentially impact the price it pays for credit. As was described in the
10 proceeding before this Commission in the Big Rivers unwind transaction case, Big
11 Rivers expects to be in the credit markets on a regular basis in the future.¹

12 **II. The Confidential Information is Generally Recognized as**
13 **Confidential or Proprietary**

14
15 9. The Confidential Information for which Big Rivers seeks confidential
16 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or
17 proprietary under Kentucky law.

18 10. The Confidential Information consists of the terms of a loan Big Rivers
19 is actively negotiating with National Rural Utilities Cooperative Finance
20 Corporation ("CFC").

21 11. Big Rivers is also currently in negotiations with respect to its revolving
22 credit agreement with CoBank ACB ("CoBank"). Public disclosure of terms under

¹ See Order dated March 6, 2009, in *In the Matter of: Joint Application of Big Rivers, E.ON, LG&E Energy Marketing, Inc., and Western Kentucky Energy Corporation for Approval to Unwind Lease and Power Purchase Transactions*, PSC Case No. 2007-00455, pages 27-30 and 37-39.

1 negotiation with CFC could impair Big Rivers' negotiating position with CoBank
2 and would give CoBank a competitive advantage. It will also give a competitive
3 advantage to other potential lenders to Big Rivers.

4 **III. Disclosure of the Confidential Information Would Permit an**
5 **Unfair Commercial Advantage to Big Rivers' Competitors**

6
7 12. Disclosure of the Confidential Information would permit an unfair
8 commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers
9 faces actual competition in the wholesale power market and in the credit market. It
10 is likely that Big Rivers would suffer competitive injury if that Confidential
11 Information was publicly disclosed. Public disclosure of the Confidential
12 Information during the pending negotiations with CFC will impair Big Rivers'
13 ability to negotiate with CoBank and other potential lenders, leading to less
14 favorable terms and higher prices to Big Rivers.

15 13. In PSC Case No. 2003-00054, the Commission granted confidential
16 protection to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P
17 argued, and the Commission implicitly accepted, that if the bids it received were
18 publicly disclosed, contractors on future work could use the bids as a benchmark,
19 which would likely lead to the submission of higher bids. Order dated August 4,
20 2003, in *In the Matter of: Application of the Union Light, Heat and Power Company*
21 *for Confidential Treatment*, PSC Case No. 2003-00054. The Commission also
22 implicitly accepted ULH&P's further argument that the higher bids would lessen
23 ULH&P's ability to compete with other gas suppliers. *Id.* Similarly, CoBank and
24 other potential lenders could use the Confidential Information as a benchmark,

1 leading to higher costs for Big Rivers and placing it at an unfair competitive
2 disadvantage in the wholesale power market and credit markets.

3 **IV. Time Period**

4 14. Big Rivers requests that the Confidential Information remain
5 confidential for a period of two (2) years from the date of this petition, which should
6 allow sufficient time for the negotiations with CFC and CoBank to conclude. 807
7 KAR 5:001 Section 13(2)(a)(2).

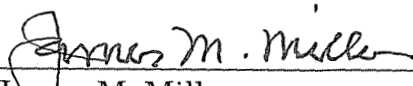
8 **V. Conclusion**

9 15. Based on the foregoing, the Confidential Information is entitled to
10 confidential protection. If the Commission disagrees that Big Rivers is entitled to
11 confidential protection, due process requires the Commission to hold an evidentiary
12 hearing. *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d
13 591 (Ky. App. 1982).

14 WHEREFORE, Big Rivers respectfully requests that the Commission classify
15 and protect as confidential the Confidential Information.

16 On this the 22nd day of February, 2013.

17 Respectfully submitted,

18
19
20 
21 _____
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23 Tyson Kamuf
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25 STAINBACK & MILLER, P.S.C.
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