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August 14, 2013

Via Federal Express

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

RECEIVED

AUG 15 2013

PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment of Rates*
PSC Case No. 2013-00199

Dear Mr. Derouen:

Enclosed for filing are an original and ten copies of Big Rivers Electric Corporation's reply to Kentucky Industrial Customers, Inc.'s response in opposition to Big Rivers' petitions for confidential protection in the above referenced matter. I certify that on this date, a copy of this letter and a copy of the reply were served on the persons listed on the attached service list by overnight courier service or first class mail, postage prepaid.

Sincerely,



Tyson Kamuf

TAK/ej
Enclosures

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

3 **RECEIVED**

4
5 In the Matter of:

AUG 15 2013

6 Application of Big Rivers Electric)
7 Corporation for a General)
8 Adjustment in Rates)

Case No. 2013-00199

PUBLIC SERVICE
COMMISSION

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12 **BIG RIVERS ELECTRIC CORPORATION'S REPLY TO KENTUCKY INDUSTRIAL**
13 **UTILITY CUSTOMERS, INC.'S RESPONSE IN OPPOSITION TO THE PETITIONS**
14 **FOR CONFIDENTIAL PROTECTION OF BIG RIVERS ELECTRIC CORPORATION**
15

16 Comes Big Rivers Electric Corporation ("Big Rivers"), by counsel, and for its reply to
17 the response filed by Kentucky Industrial Utility Customers, Inc. ("KIUC") on August 13, 2013
18 (the "Response"), states as follows.

19 KIUC's Response was in opposition to petitions for confidential treatment that Big
20 Rivers filed on June 28, 2013 (the "June 28 Confidentiality Petition") and July 12, 2013 (the
21 "July 12 Confidentiality Petition"). The June 28 Confidentiality Petition sought confidential
22 protection of certain information Big Rivers filed with its application, and the July 12
23 Confidentiality Petition sought confidential protection for certain information Big Rivers filed
24 with its responses to the Kentucky Public Service Commission ("Commission") Staff's First
25 Request for Information. In its Response, KIUC requests that the Commission deny both the
26 June 28 Confidentiality Petition and July 12 Confidentiality Petition.

27 KIUC's Response should be rejected because it was not timely filed. The Commission's
28 regulations provide, "A party may respond to a motion for confidential treatment within seven
29 (7) days after it is filed with the commission."¹ KIUC filed its Response on August 13, 2013,
30 which was 46 days after Big Rivers filed the June 28 Confidentiality Petition and 32 days after

¹ 807 KAR 5:001 Section 13(e).

1 Big Rivers filed the July 12 Confidentiality Petition. KIUC’s Response was not filed within the
2 time allowed by the Commission’s regulations, and therefore, the Response should be rejected
3 and stricken from the record.

4 Even if KIUC’s Response is not rejected outright, it should be given no weight. KIUC’s
5 Response is based entirely on its unsupported belief that public disclosure of the Confidential
6 Information would not cause competitive harm to Big Rivers.² Additionally, KIUC fails to
7 understand or address the true markets in which Big Rivers competes and the competitive harm
8 Big Rivers will suffer by public disclosure of the Confidential Information; it ignores many of
9 the arguments Big Rivers made in the confidentiality petitions; and it invents other red herring
10 arguments that Big Rivers did not make.

11 In support of its disbelief that Big Rivers would suffer competitive harm by public
12 disclosure of the Confidential Information, KIUC alleges, “There are millions of megawatt hours
13 traded every day on the MISO market. It is hard to fathom how any individual could gain an
14 advantage by reviewing the projected O&M or capital expenses of a utility that makes up an
15 extremely small portion of the total MISO market.”³ This allegation reveals that KIUC
16 completely misunderstands the market in which Big Rivers competes for off-system sales. The
17 wholesale power market is not limited to over-the-counter day-ahead or over-the-counter hourly
18 trades. Instead, Big Rivers is also actively engaged in negotiations directly with counterparties
19 for long-term power sales agreements in competition with other wholesale power suppliers.
20 While a company’s projections of over-the-counter, short-term prices may influence the price it
21 is willing to sell or purchase power for in a long-term agreement, there is no set market price for

² See KIUC Response at p. 4 (“KIUC does not believe that the disclosure of any of this information will result in a competitive disadvantage to Big Rivers”).

³ KIUC Response at p. 2.

1 those types of long-term agreements, and the price is instead determined by the negotiations
2 between the parties.

3 Public disclosure of Big Rivers' projected cost of producing power or projections of
4 market prices would give an unfair advantage to other wholesale power suppliers with which Big
5 Rivers is competing for those long-term agreements. Knowledge of a competitor's cost of
6 producing power reveals the price at which it can sell power and knowledge of a competitor's
7 view of future power prices reveals the price at which it may be willing to sell long-term power.
8 Big Rivers would very much like to have that information about its competitors because it would
9 give Big Rivers an advantage in competing for wholesale power sales. Likewise, other
10 wholesale power suppliers with whom Big Rivers competes in the wholesale power market
11 would have an advantage on Big Rivers if Big Rivers' projected production costs and projections
12 of market prices were publicly disclosed.

13 If purchasers of power in the wholesale power market had information about Big Rivers'
14 projected costs of producing power or its view of future power prices, they could use that
15 information in the negotiations as a benchmark for the price at which Big Rivers can or is willing
16 to sell power. That competitive advantage could lower the revenue Big Rivers is able to obtain
17 from its wholesale power sales, which could in turn, lessen Big Rivers' ability to compete with
18 other wholesale power suppliers and would thereby affect Big Rivers' ability to obtain credit in
19 the credit market. This type of competitive harm was recognized by the Commission in *In the*
20 *Matter of: Application of the Union Light, Heat and Power Company for Confidential*
21 *Treatment*, PSC Case No. 2003-00054 (order dated August 4, 2003).

22 The same is true with regard to sellers of power to Big Rivers. They could use the
23 Confidential Information, including Big Rivers' projections of market prices and projections that

1 reveal its availability of and need for power to their competitive advantage by increasing the
2 price at which they are willing to sell power to Big Rivers when Big Rivers is a purchaser of
3 power in the wholesale power market. The increased cost to Big Rivers would harm its ability to
4 compete with other suppliers in the wholesale power market when Big Rivers is a seller of power
5 and would likewise harm its ability to compete in the credit market. KIUC's Response ignores
6 these arguments that Big Rivers made in the confidentiality petitions.

7 The same competitive harm would also arise through public disclosure of Big Rivers'
8 projections of fuel prices, projected transmission revenues, and projections about planned
9 construction projects. Suppliers of fuel and equipment and purchasers of transmission rights
10 could use Big Rivers' projections about the cost of those items as benchmarks in the negotiating
11 process, increasing the cost or decreasing the revenues to Big Rivers, and impairing its ability to
12 compete against other wholesale power suppliers and its ability to compete in the credit market.
13 KIUC's Response also ignores these arguments that Big Rivers made in the confidentiality
14 petitions.

15 In its Response, KIUC alleges, "The MISO market price is the MISO market price. The
16 market is not influenced by Big Rivers' projections of its costs and revenues."⁴ However, Big
17 Rivers does not claim that public disclosure of its market projections or projections of its
18 production costs will change the over-the-counter prices in MISO. This red herring argument
19 again reveals KIUC's misunderstanding of the wholesale power market.

20 KIUC then argues, "Big Rivers' market projections are not generated by Big Rivers, but
21 are purchased from third party consultants such as ACES, Wood-Mackenzie, IHS Global, etc."⁵
22 Big Rivers does obtain forward market price information from commercial vendors; however,

⁴ KIUC Response at p. 2.

⁵ KIUC Response at p. 3.

1 those price projections are not publicly available. In fact, vendors rely on the fact that their price
2 projections are not publicly available to sell those products. If Big Rivers were forced to
3 publicly disclose a vendor's proprietary price projections, then others would not need to purchase
4 that product from the vendor, and the product would lose value. In such case, it is unlikely that
5 vendors would continue to supply Big Rivers with their price projections, and Big Rivers would
6 lose access to an essential planning tool, further damaging its ability to compete in the wholesale
7 power and credit markets.

8 Moreover, even if Big Rivers' competitors also obtained price projections from the same
9 vendors, without public disclosure of the Confidential Information, they would not know the
10 extent to which the price projections in Big Rivers' budget are directly tied to any specific price
11 projection from a vendor or vendors. In other words, while others may also purchase price
12 projections from the same vendors Big Rivers uses, that does not mean they can use those
13 projections to know the prices in Big Rivers' forecast.

14 KIUC's next argument in its Response is that:

15 Any prospective lender will certainly be given access to any information that Big
16 Rivers considers confidential prior to lending money to Big Rivers, so Big Rivers'
17 claim that disclosure of this information will harm Big Rivers in competing for
18 reasonably priced credit is not plausible.⁶

19
20 This is another red herring argument. KIUC implies that Big Rivers argued that lenders
21 having access to the Confidential Information would be the competitive harm. However, Big
22 Rivers does not make that argument at all. In the confidentiality petitions, Big Rivers states that
23 public disclosure of the Confidential Information could increase Big Rivers' costs or decrease its
24 revenues (for the reasons stated above). Lenders view Big Rivers' costs and revenues in
25 determining whether to lend to Big Rivers and the interest rates and other charges at which they

⁶ KIUC Response at pp. 3-4.

1 will lend to Big Rivers. It is the increase in cost and decrease in revenues that impairs Big
2 Rivers' ability to compete in the credit market for available credit. Even KIUC acknowledges
3 that increased costs and decreased revenues "impact [Big Rivers'] ability to borrow" and "will
4 potentially impact the price [Big Rivers] pays for credit."⁷ Further, if increased costs or
5 decreased revenues caused by public disclosure of the Confidential Information cause Big
6 Rivers' lending costs to go up, that will further impair Big Rivers' ability to compete in the
7 wholesale power and credit markets.

8 KIUC's final argument in its Response is that "The process of going in and out of closed
9 sessions has proven to be disruptive to the hearing process."⁸ The Commission's regulation
10 governing confidential protection is not conditioned on the number of times the Commission
11 goes into closed session and cannot be a basis for denying confidential treatment to the
12 Confidential Information. In any event, the number of times the Commission goes into closed
13 session during the hearing is largely up to the intervenors, and if KIUC were truly concerned
14 about the number of times the Commission goes into closed session, it should arrange its
15 questions so as to minimize the number of times it requests a closed session and should avoid
16 unnecessary repetition. KIUC and the other intervenors did just this during the hearing in Case
17 No. 2012-00535, and it did not result in any prejudice or undue disruption.

18 Based on the foregoing, Big Rivers respectfully requests that the Commission classify
19 and protect as confidential the Confidential Information and reject and strike from the record
20 KIUC's Response.

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⁷ KIUC Response at p.3.

⁸ KIUC Response at p. 4.

1 On this the 14th day of August, 2013.

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3 Respectfully submitted,
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29
30 Counsel for Big Rivers Electric Corporation
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32
33 **Certificate of Service**

34 I certify that a true and accurate copy of the foregoing will be served upon the persons
35 listed on the service list accompanying this reply by Federal Express or by first class mail, on or
36 before the date this reply is filed with the Kentucky Public Service Commission.
37

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39 On this the 14th day of August, 2013,
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41 

42 _____
43 Counsel for Big Rivers Electric Corporation