

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC  
ATTORNEYS AT LAW

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

April 15, 2014

**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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APR 16 2014


PUBLIC SERVICE  
COMMISSION

**RE: *BIG RIVERS ELECTRIC CORPORATION'S FILING OF  
WHOLESALE CONTRACTS PURSUANT TO KRS 278.180  
AND 807 KAR 5:011 §13, CASE NO. 2014-00134***

Dear Mr. Derouen:

Enclosed for filing on behalf of Big Rivers Electric Corporation ("*Big Rivers*") are an original and ten copies of the public version of Big Rivers' reply to Kentucky Industrial Utility Customers, Inc.'s response to Big Rivers' April 4, 2014, Petition for Confidential Treatment. The reply contains confidential information for which Big Rivers sought confidential protection in the April 4, 2014, Petition for Confidential Treatment, which is still pending before the Public Service Commission. Pursuant to 807 KAR 5:001 §13(9), also enclosed is one sealed copy of the reply with the confidential information highlighted. I certify that on this date, a copy of this letter, a copy of the public version of the reply, and a copy of the confidential version of the reply were served on each of the persons listed on the attached service list by first-class mail. Please feel free to contact me with any questions.

Sincerely,



Tyson Kamuf  
Counsel for Big Rivers Electric Corporation  
Enclosures

cc: Billie Richert, Big Rivers Electric Corporation  
DeAnna Speed, Big Rivers Electric Corporation  
Service List

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

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

www.westkylaw.com

Service List  
PSC Case No. 2014-00134

Michael L. Kurtz  
Kurt J. Boehm  
Jody Kyler Cohn  
BOEHM, KURTZ & LOWRY  
36 E. Seventh Street, Suite 1510  
Cincinnati, OH 45202

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

APR 16 2014

PUBLIC SERVICE  
COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S FILING )  
OF WHOLESALE CONTRACTS PURSUANT ) Case No. 2014-00134  
TO KRS 278.180 AND 807 KAR 5:011 § 13 )

**BIG RIVERS ELECTRIC CORPORATION'S REPLY TO KENTUCKY INDUSTRIAL  
UTILITY CUSTOMERS, INC.'S RESPONSE IN OPPOSITION TO PETITION FOR  
CONFIDENTIAL TREATMENT**

Big Rivers Electric Corporation ("Big Rivers"), through counsel, submits this reply to the response ("Response") that Kentucky Industrial Utility Customers, Inc. ("KIUC") filed to the petition for confidential treatment ("Petition for Confidential Treatment") that Big Rivers filed on April 10, 2014, seeking confidential treatment of (i) portions of three purchase power agreements ("PPAs") that Big Rivers has entered into with municipal electric systems located in Nebraska, and (ii) portions of a summary of those PPAs (the information for which Big Rivers sought confidential treatment is hereinafter referred to as the "Confidential Information"). In its Response, KIUC alleges (i) that the "major terms" of the PPAs have been publicly disclosed and should therefore be denied confidential treatment, (ii) that other terms of the PPAs are non-major and should therefore be denied confidential treatment, and (iii) that these non-major terms are not competitively sensitive and should therefore be denied confidential treatment. However, for the reasons stated in the Petition for Confidential Treatment and in this reply, all of the Confidential Information is entitled to confidential protection, and there has been no public disclosure of the Confidential Information that should cause the Kentucky Public Service Commission (the "Commission") to deny the Petition for Confidential Treatment.

1           **1. The confidential terms of the PPAs that KIUC claims are “major terms” are**  
2           **entitled to confidential treatment.**

3           KIUC alleges that Big Rivers or the City of Wayne, Nebraska, have publicly disclosed  
4 certain “major terms” of the PPAs and that for that reason, confidential treatment for all major  
5 terms of the PPAs should be denied. KIUC discusses five paragraphs of the PPA between Big  
6 Rivers and the City of Wayne that KIUC claims contain major terms that have been publicly  
7 disclosed.

8           [REDACTED]

9           [REDACTED]

10          [REDACTED]

11          [REDACTED]

12          [REDACTED]

13          [REDACTED]

14          [REDACTED]

15          [REDACTED]

16          [REDACTED]

17          [REDACTED]

18          [REDACTED]

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10 [REDACTED]  
11 [REDACTED]

12 KIUC does not discuss nor claim that any other major terms have been publicly  
13 disclosed. Even if KIUC were correct that certain confidential terms were publicly disclosed, all  
14 other major terms are entitled to confidential protection for the reasons stated in Big Rivers’  
15 Petition for Confidential Treatment.

16 **2. The confidential terms of the PPAs that KIUC claims are “non-major**  
17 **terms” are entitled to confidential treatment.**

18 KIUC states, “If the major terms of the Contracts are not being treated as confidential,  
19 then the minor terms of the contract should not be protected either.” KIUC Response at 4.  
20 KIUC specifies only three terms that it considers to be minor terms: [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 KIUC Response at 3-4. KIUC does not claim that these terms have been publicly disclosed;



1 rather, KIUC simply does not think they are important enough to warrant confidential protection.  
2 KIUC claims, “It is unreasonable for Big Rivers and the other parties to the Contracts to openly  
3 discuss the most important terms of the Contracts, but then insist that the Commission and  
4 intervenors protect the less significant provisions of the Contracts as confidential.” KIUC  
5 Response at 4. Nothing in the Kentucky Revised Statutes or the Kentucky Administrative  
6 Regulations conditions confidential treatment on the weight assigned by KIUC. These “minor”  
7 terms are important and sensitive to Big Rivers and/or the municipals, which is why they are in  
8 the contracts to begin with, and which is why Big Rivers and the municipals consider the terms  
9 confidential.

10 The confidential terms KIUC claims are minor are nevertheless entitled to confidential  
11 protection for the reasons stated in Big Rivers’ Petition for Confidential Treatment. More  
12 specifically, disclosure of these confidential terms will cause competitive harm to Big Rivers.  
13 For one, if potential purchasers of Big Rivers’ power cannot keep contractual terms that they  
14 consider sensitive confidential, there will be potential purchasers that will not be willing to do  
15 business with Big Rivers. Fewer potential purchasers will impair Big Rivers’ ability to compete  
16 to sell its power in the wholesale power market and to sell its power for the best price. That will  
17 hurt Big Rivers’ margins, which will also impair Big Rivers’ ability to compete for credit in the  
18 credit markets.

19 Additionally, denial of confidential treatment to contractual terms that Big Rivers  
20 considers confidential will cause competitive harm to Big Rivers because potential  
21 counterparties will be able to use contractual terms that Big Rivers has been willing to agree to in  
22 the past as a benchmark or starting point in their negotiations. For example, [REDACTED]

23 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 [REDACTED] In essence, the counterparty would have a leg up in the negotiations with Big Rivers.

7 [REDACTED]

8 [REDACTED] Similarly, if the confidential terms of the Nebraska  
9 PPAs were publicly disclosed, other wholesale power suppliers could use those terms to try to  
10 craft better offers to potential purchasers. Thus, public disclosure of the confidential terms that  
11 KIUC considers to be minor terms will cause Big Rivers competitive harm, and thus, those terms  
12 are entitled to confidential protection.

13 **3. The confidential terms of the PPAs that KIUC claims are “not competitively**  
14 **sensitive” are entitled to confidential treatment.**

15 KIUC claims incorrectly that “[m]any of these minor provisions are also clearly not  
16 competitively sensitive.” KIUC Response at 4. KIUC uses Paragraph 4.5(a) as an example,  
17 which provides [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] For the reasons explained in the previous section, public disclosure of what Big  
22 Rivers accepted in the Nebraska PPA would give potential counterparties in the future PPA a leg

1 up in negotiations because they may expect Big Rivers to make concessions in order for them to  
2 agree to a term that is more favorable to Big Rivers.

3 KIUC also uses Paragraph 2.6 as an example of a term it considers “not competitively  
4 sensitive.” [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED], potentially requiring additional concessions, which would cause

9 competitive harm to Big Rivers for the reasons stated in the previous section.

10 Each of the paragraphs that KIUC lists on page 5 of its Response should be granted  
11 confidential treatment, even though KIUC does not think they are important, for the same  
12 reasons as discussed in the previous section. For example, Paragraphs 1.52, 4.6, and 7.5 relate to

13 [REDACTED]

14 [REDACTED]

15 [REDACTED], causing competitive

16 harm to Big Rivers. Another example is Paragraph 3.4, [REDACTED]

17 [REDACTED] Big Rivers may not be willing to agree to such a term in the

18 context of a future PPA, and Big Rivers certainly would not want such a term to be the starting

19 point of negotiations. In Paragraph 3.7, [REDACTED]

20 [REDACTED] Again, Big Rivers may not be willing to agree to

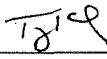
21 such a term in the context of a future PPA, and Big Rivers would not want such a term to be the

22 starting point of negotiations.

1           KIUC regularly opposes and routinely disregards Big Rivers' petitions for confidential  
2 treatment.<sup>1</sup> KIUC also opposes Big Rivers' plan to mitigate the rate impacts of Case Nos. 2012-  
3 00535 and 2013-00199.<sup>2</sup> That plan includes, among other things, selling power to entities  
4 outside of Big Rivers' service territory. KIUC's Response in this case, while consistent with  
5 KIUC's positions in other cases, will impair Big Rivers' competitiveness if KIUC is successful  
6 and will ultimately damage Big Rivers' Members and their retail customers. For the foregoing  
7 reasons and for the reasons stated in Big Rivers' Petition for Confidential Treatment, the Petition  
8 for Confidential Treatment should be granted.

9           On this the 15<sup>th</sup> day of April, 2014.

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James M. Miller  
Tyson Kamuf  
SULLIVAN, MOUNTJOY, STAINBACK  
& MILLER, P.S.C.  
100 St. Ann Street  
P. O. Box 727  
Owensboro, Kentucky 42302-0727  
Phone: (270) 926-4000  
Facsimile: (270) 683-6694  
jmillersmsmlaw.com  
tkamuf@smsmlaw.com

Counsel for Big Rivers Electric Corporation

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<sup>1</sup> See, e.g., KIUC's July 1, 2013, Motion for Leave to Use in the Public Hearing Information Filed under Seal by Big Rivers Electric Corporation, in Case No. 2012-00535; KIUC's August 13, 2013, Response in Opposition to the Petitions for Confidential Protection of Big Rivers Electric Corporation, in Case No. 2013-00199. On numerous occasions, KIUC has publicly disclosed information Big Rivers filed under a petition for confidential treatment, including in written pleadings (such as its Response in this proceeding) and orally at hearings, although it has corrected the erroneous written pleadings at Big Rivers' request.

<sup>2</sup> See, e.g., KIUC's post-hearing brief in Case No. 2013-00199.

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**Certificate of Service**

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

On this the 15<sup>th</sup> day of April, 2014.



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Counsel for Big Rivers Electric Corporation