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June 19, 2014

**Via Personal Delivery**

Mr. Jeff Derouen, Executive Director  
Case No. 2014-00166  
Kentucky Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40601

Re: Case No. 2014-00166 Motion to Intervene of Ben Taylor and Sierra Club

Dear Mr. Derouen,

Enclosed, please find one original and ten (10) copies of Ben Taylor and Sierra Club's Petition for Full Intervention, filed today in the above-referenced matter via personal delivery. By copy of this letter, all parties listed on the Certificate of Service have been served via USPS and e-mail. Please place this document of file.

Sincerely,

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**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**THE 2014 INTEGRATED RESOURCE PLAN OF                    )     Case No. 2014-00166  
BIG RIVERS ELECTRIC CORPORATION                    )**

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**MOTION TO INTERVENE  
OF BEN TAYLOR AND SIERRA CLUB**

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Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11)(a), Ben Taylor and Sierra Club (collectively “Movants”) respectfully move the Commission for full intervention in the above-captioned case. Having intervened in other integrated resource plan (“IRP”), certificate of public convenience and necessity (“CPCN”), and demand-side management (“DSM”) proceedings in Kentucky and in other jurisdictions, the Movants have a wealth of knowledge and experience in the complex and rapidly changing issues that impact Big Rivers Electric Corporation’s (“Big Rivers”) IRP.<sup>1</sup> Movants will use that experience to present issues and develop facts that will assist the Commission in fully considering this matter. In the alternative, Movants seek intervention because their special interests in this proceeding are not adequately represented by any other party to the proceeding.

This proceeding comes at a critical juncture for Big Rivers. As a result of the recent termination of two smelter contracts, Big Rivers has lost approximately two-thirds of its customer load. The recent significant decrease in natural gas prices, along with the increasing availability of demand-side management and renewable resources, have lowered the market price of power, thereby hampering Big Rivers’ efforts to increase off-system sales. The

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<sup>1</sup> Big Rivers Electric Corporation 2014 Integrated Resource Plan (May 15, 2014) (“Big Rivers IRP”).

company's long-term plan to mitigate the loss of load through new customers and increased market sales faces a number of hurdles, including a significant glut of capacity in the region and the prospect of continued low market energy prices.

Moreover, as with its recent applications for rate adjustments<sup>2</sup> and for a CPCN<sup>3</sup> for pollution controls, all of which Movants were granted intervention in, Big Rivers submitted its IRP in a time of significant change for the electric utility industry. Most notably on the regulatory front, existing or expected federal environmental regulations may lead Big Rivers to install additional pollution controls on its coal units or to retire such units. For instance, the U.S. Environmental Protection Agency ("EPA") recently proposed the first federal rule that would restrict greenhouse gas emissions from existing power plants and the U.S. Supreme Court just upheld the Cross-State Air Pollution Rule.<sup>4</sup> Technological advances and changes in market conditions have made a larger suite of supply- and demand-side options available for utilities to provide service to their customers. Moreover, growing awareness of the public health, environmental, and economic impacts of energy production have increased the importance of pursuing energy efficiency and renewable energy resources. This is reflected in recent Commission statements that energy efficiency and conservation are paramount considerations in determining the rates and services of utilities and their importance will continue to grow "as more constraints are . . . placed on utilities that rely significantly on coal-fired generation."<sup>5</sup>

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<sup>2</sup> See *Application of Big Rivers Electric Corporation, Inc. for a General Adjustment of Rates* (Case No. 2012-00535); *Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period* (Case No. 2013-00199).

<sup>3</sup> See *Application of Big Rivers Electric Cooperative for Certificate of Public Convenience and Necessity and Approval of its Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2012-00063).

<sup>4</sup> *Env'tl. Protection Agency v. EME Homer City Generation*, 134 U.S. 1584 (April 29, 2014).

<sup>5</sup> *In the Matter of: Joint Application of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition of Ownership and Control of Utilities* (Case No. 2010-00204) Order, Sept. 30, 2010 at 20 (noting that the Commission stated its support for energy-efficiency programs in a report "to the Kentucky General Assembly in July 2008 pursuant to Section 50 of the 2007 Energy Act").

In this proceeding, the Commission will review whether Big Rivers has identified the least-cost, lowest-risk plan for meeting customers' energy and peak demand requirements. A prudent integrated resource plan should take into account the sweeping changes in the market and in the regulatory and policy landscapes mentioned above. The Sierra Club has gained significant expertise on these issues and how they apply to the Big Rivers' fleet by participating in previous CPCN and rate dockets concerning this utility before this Commission, and will bring its expertise to bear in this proceeding.

#### **I. THE MOVANTS**

Movants seek full intervention in order to ensure that their interests in low-cost, clean energy options are fully represented. Additionally, movants seek full intervention in order to bring to this proceeding their expertise evaluating integrated resource plans, particularly their expertise reviewing whether Big Rivers has fully considered all reasonable options, including retirement of some generating units, and appropriately accounted for all reasonably foreseeable costs and risks. Movant Ben Taylor is a customer of Kenergy Corporation, which is a Big Rivers distribution cooperative, and a long-time Sierra Club member. He has a long-standing interest in Big Rivers diversifying its supply portfolio to include low-cost, clean energy options such as energy efficiency and renewables. His address is:

Ben Taylor  
419 Yelvington Grandview Road  
Maceo, KY 42355-9749

Sierra Club is one of the oldest conservation groups in the country, with more than 600,000 members nationally in sixty-four chapters in all fifty states, the District of Columbia, and Puerto Rico, who are dedicated to practicing and promoting the responsible use of natural resources. Sierra Club has over 4,800 members in Kentucky who are part of the Cumberland Chapter. The Cumberland Chapter's address is:

Sierra Club  
Cumberland Chapter,  
P.O. Box 1368,  
Lexington, KY 40588-1368

## **II. REQUIREMENTS FOR INTERVENTION**

The Commission's regulations regarding intervention provide that the Commission shall grant a person, as defined by K.R.S. § 278.010(2), leave to intervene in a Commission proceeding upon a timely motion if the Commission finds that the person "has a special interest in the case that is not otherwise adequately represented **or** that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings."<sup>6</sup> Thus, the Commission must grant full intervention if Movants have filed a timely intervention motion and either have interests in this proceeding that are not adequately represented or if they would assist in evaluation of the IRP without unduly complicating or disrupting the proceedings. As explained below, Movants satisfy both standards for intervention.

## **III. THE COMMISSION SHOULD GRANT MOVANTS FULL INTERVENTION**

### **A. This Motion is Timely Filed.**

This motion to intervene is timely. Big Rivers filed its 2014 Integrated Resource Plan on May 15, 2014. On June 13, 2014, the Commission issued an order setting a deadline of June 20, 2014 for the filing of intervention motions. Accordingly, this motion is timely.

### **B. Movants Will Present Issues or Develop Facts that Will Assist the Commission in Fully Considering the Matter Without Unduly Complicating or Disrupting the Proceedings.**

The Commission should grant Movants full intervention because they are "likely to present issues or to develop facts that assist the commission in fully considering the matter

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<sup>6</sup> 807 KAR 5:001 § 4(11)(b) (emphasis added).

without unduly complicating or disrupting the proceedings.”<sup>7</sup> As the Commission’s prior orders indicate, an IRP should consider the full range of demand- and supply-side resources, and comprehensively account for the costs facing such resources. Sierra Club, on behalf of its members, including the individual Movant, seek to present testimony regarding whether Big Rivers has identified the lowest-cost, lowest-risk plan in light of the substantial loss of demand the utility needs to serve; the full range of regulatory, capital, operating, and fuel costs that its generating plants face; and the increasing availability of low-cost energy efficiency and renewable energy alternatives.

The IRP was developed against a backdrop of major changes in the electric sector as natural gas prices remain low and federal environmental regulations become increasingly stringent. The Commission expects utilities such as Big Rivers to plan for both existing and expected environmental regulations, including carbon regulations. Proposed and expected environmental regulations will likely require significant additional investments in Big Rivers’ generating units in the coming years. For instance, in 2012, Big Rivers filed a CPCN application requesting \$139 million in capital costs and \$760,000 in operational & maintenance costs to upgrade the scrubber on the Wilson Unit to comply with CSAPR. That application was withdrawn when CSAPR was vacated but these compliance costs will again come into play now that the U.S. Supreme Court has upheld this rule. Big Rivers 2014 IRP is inconsistent with its 2012 CPCN application as it states: “If EPA implements CSAPR in its original form . . . , it appears that CSAPR will not have a significant impact on Big Rivers’ operations (based upon original allowance allocations) as the Coleman Station has been idled. When Coleman is returned to service, further system wide NO<sub>x</sub> reductions could be required.”<sup>8</sup> Sierra Club will assist the Commission in being able to fully consider how CSAPR and other existing and

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<sup>7</sup> 807 KAR 5:001 § 4(11)(b).

pending environmental regulations, such as the recently proposed Section 111(d) carbon regulations, will affect Big Rivers' fleet.

Sierra Club will also develop facts about how energy efficiency and demand-side management continue to be the lowest cost resources available. The Commission has encouraged utilities to pursue demand-side resources in order to mitigate the increased cost of utilities' existing generation. At the same time, the cost of renewable generation, particularly wind and solar, has declined significantly.

Organizational Movant Sierra Club has extensive experience analyzing and commenting on these issues, which are central to the development of a prudent integrated resource plan. In particular, Sierra Club's staff and consultants have extensive experience in resource planning, analyzing the potential for cost effective energy efficiency, and in the laws and regulations governing energy production. Sierra Club has gained a considerable amount of knowledge regarding Big Rivers Electric Corporation, in particular, by intervening in three proceedings relating to the utility.<sup>9</sup> In Kentucky, Sierra Club has also intervened in the proceedings relating to the Kentucky Power Company's 2013 IRP, East Kentucky Power Company's 2012 IRP, and Louisville Gas and Electric Company and Kentucky Utilities Company's ("LG&E/KU") 2011 IRP, and has recently moved to intervene in LG&E/KU's 2014 IRP.<sup>10</sup> In addition to having participated as intervenors in these IRP dockets, Sierra Club has intervened and provided testimony on complex energy issues before this Commission in several CPCN and DSM

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<sup>8</sup> Big Rivers 2014 IRP at 84-85.

<sup>9</sup> Case No. 2012-00063, *Application of Big Rivers Electric Corporation for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge*; Case No. 2012-00535, *Application of Big Rivers Electric Corporation For an Adjustment of Rates*; Case No. 2012-00578, and Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates*.

<sup>10</sup> *In re Kentucky Power Company's Integrated Resource Planning Report*, Case No. 2013-00475; *In re The 2012 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Case No. 2012-00149; *In re The 2011 Joint Integrated Resources Plan of Louisville Gas & Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, *In re The 2014 Joint Integrated Resources Plan of Louisville Gas & Electric Company and Kentucky Utilities Company*, Case No. 2014-131.

dockets.<sup>11</sup> Outside Kentucky, Sierra Club has jointly or individually intervened and/or provided testimony in resource planning dockets in a number of states, including Arkansas, California, Colorado, Florida, Louisiana, Michigan, Minnesota, Missouri, North Carolina, Oregon, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, Washington, and West Virginia.

Movants' participation as full intervenors will not unduly complicate the matter, but instead will assist the Commission's review, as has occurred in other proceedings. For example, the Staff Report on LG&E/KU's 2011 IRP cited approvingly to several recommendations made by the Sierra Club.<sup>12</sup> Movants expect to file comments that would be similarly helpful to the Commission's review of Big Rivers' 2014 IRP. Movants are represented by experienced counsel and will comply with all deadlines in the proceeding established by the Commission. As such, Movants' participation will not disrupt this proceeding.

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<sup>11</sup> See Case No. 2011-00162, *Application of Louisville Gas & Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*; Case No. 2011-00161, *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*; Case No. 2011-00375, *Joint Application of Louisville Gas & Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity to Construct Combined Cycle Natural Gas Plant*; Case No. 2011-00401, *Application of Kentucky Power Company for Certificates of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge*; Case No. 2012-00578, *Application of Kentucky Power Company For: (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of An Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval Of The Assumption by Kentucky Power Company of Certain Liabilities In Connection With the Transfer Of The Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred In Connection With The Company's Efforts to Meet Federal Clean Air Act And Related Requirements; and (5) For All Other Required Approvals and Relief*; Case No. 2013-00259, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Alteration of Certain Equipment at the Cooper Station and Approval of a Compliance Plan Amendment for Environmental Surcharge Cost Recovery*; Case No. 2013-00487, *Application of Kentucky Power Company to Amend its Demand-Side Management Program and for Authority to Implement a Tariff to Recover Costs and Net Lost Revenues, and to Receive Incentives Associated with the Implementation of the Programs*; Case No. 2014-0002, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station and a Solar Photovoltaic Facility at the E.W. Brown Generating Station*; Case No. 2014-0003, *Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Existing, and Addition of New, Demand-Side Management and Energy Efficiency Programs*.

<sup>12</sup> See, e.g., *In re The 2011 Joint Integrated Resources Plan of Louisville Gas & Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Staff Report at pp. 23-24 (noting that the Commission had already accepted the Environmental Intervenor's suggestion that LG&E and KU should commission a market potential study for DSM), 41 (agreeing with the Environmental Intervenor that LG&E and KU should have considered the impact of potential CO2 rule), and 41 (stating the next IRP should respond to Environmental Intervenor's comments



**C. Movants Have a Special Interest in this Proceeding That Is Not Otherwise Adequately Represented.**

807 K.A.R. 5:001 § 4(11) provides two alternative bases for granting full intervention. Parties need to have either a special interest not adequately represented or present issues and facts that will help the Commission fully consider the matter. As explained in Section III.B., above, Movants will present issues and facts that will help the Commission fully consider the matter. The Commission can grant full intervention on that basis alone and need not consider Movants' special interest. Nevertheless, as explained below, Movants also have special interests that are not adequately represented.

Ben Taylor, the individual Movant, is a customer of Kenergy Corporation, which is Big Rivers' distribution cooperative. Mr. Taylor helps to fund Big Rivers' operations and the outcome of this proceeding will directly impact his bill. In addition, the individual Movant lives within the Big Rivers service territory and is impacted by the economic, public health, and environmental effects of the resource decisions that Big Rivers makes. Organizational Movant Sierra Club has members who are customers and ratepayers of Big Rivers, and, therefore, Sierra Club has the same interests as the individual Movant. In addition, Movants' desire to promote energy efficiency, peak demand reduction, renewable energy, and cost-effective low carbon energy resources in Kentucky is directly related to the issues involved in reviewing Big Rivers' IRP.

Movants' interests are not adequately represented by the current or potential intervenors in this proceeding. At present, the Commission has granted full intervention to Kentucky Industrial Utility Customers, Inc. ("KIUC").<sup>13</sup> As an association with a singular focus on the interests of large industrial customers, KIUC cannot adequately represent the organizational

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regarding selection of the target reserve margin).

<sup>13</sup> Case No. 2014-00166, *In the Matter of: 2014 Integrated Resource Plan of Big Rivers Electric Corporation*,

Movant's interests in the promotion of low-cost, clean energy resources such as energy efficiency and renewables. Furthermore, KIUC cannot adequately represent the individual Movant's interests in the local public health and environmental impacts of Big Rivers' resource decisions.

The Commission also has granted full intervention to the Attorney General of the Commonwealth of Kentucky.<sup>14</sup> The Attorney General cannot adequately represent Movants' interests. The Attorney General has the unenviable task of representing all consumers and all of their diverse interests, even if some of the interests are diametrically opposed to each other. The Attorney General may not be able to represent the Movants' interest, or at least not as forcefully, because of this obligation to represent all consumers. Courts have "repeatedly held that private companies can intervene on the side of the government, even if some of their interests converge." *See, e.g., Hardin v. Jackson*, 600 F. Supp. 2d 13, 16 (D.D.C. 2009).

Movants' full intervention is warranted so that their interests, as detailed above, are represented.

#### **IV. CONCLUSION**

For the foregoing reasons, Movants respectfully request full intervention in this matter.

Dated: June 19, 2014

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Order, May 28, 2014.

<sup>14</sup> Case No. 2014-00166, *In the Matter of: 2014 Integrated Resource Plan of Big Rivers Electric Corporation*, Order, June 9, 2014.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that I mailed a copy of this MOTION TO INTERVENE OF BEN TAYLOR AND SIERRA CLUB by first class mail on June 19, 2014 to the following:

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