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MAR 12 2015

PUBLIC SERVICE  
COMMISSION

**Via Overnight Mail**

March 11, 2015

Mr. Jeff Derouen, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

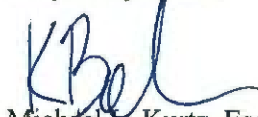
**Re: Case No. 2014-00230 and 2014-00455**

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of the KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.'s REPLY TO MOTION TO STRIKE OF BIG RIVERS ELECTRIC CORPORATION for filing in the above-referenced matters.

By copy of this letter, all parties listed on the Certificate of Service have been served. Please place this document of file.

Very Truly Yours,



Michael E. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

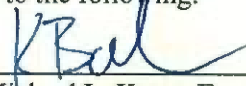
**BOEHM, KURTZ & LOWRY**

MLKkew  
Attachment

cc: Certificate of Service  
Quang Nyugen, Esq.  
Richard Raff, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail (when available) and by regular, U.S. mail, unless other noted, this 11<sup>th</sup> day of March, 2015 to the following:



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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

|                                   |   |                     |
|-----------------------------------|---|---------------------|
| AN EXAMINATION OF THE APPLICATION | ) |                     |
| OF THE FUEL ADJUSTMENT CLAUSE OF  | ) | CASE NO. 2014-00230 |
| BIG RIVERS ELECTRIC CORPORATION   | ) |                     |
| FROM NOVEMBER 1, 2013 THROUGH     | ) |                     |
| APRIL 30, 2014.                   | ) |                     |
|                                   | ) |                     |
| AN EXAMINATION OF THE APPLICATION | ) |                     |
| OF THE FUEL ADJUSTMENT CLAUSE OF  | ) | CASE NO. 2014-00455 |
| BIG RIVERS ELECTRIC CORPORATION   | ) |                     |
| FROM NOVEMBER 1, 2012 THROUGH     | ) |                     |
| OCTOBER 31, 2014.                 | ) |                     |

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KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.'S  
REPLY TO MOTION TO STRIKE OF  
BIG RIVERS ELECTRIC CORPORATION

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Kentucky Industrial Utility Customers, Inc. ("KIUC") submits this Reply to Big Rivers Electric Corporation's ("Big Rivers") March 6, 2015 Motion to Strike KIUC's Notice of Additional Authority.

On February 25, 2015, KIUC filed a Notice of Additional Authority requesting that the Commission take administrative notice of a March 5, 1996 Order of the KPSC in Case No. 94-458. The "1996 Order" approved the allocation of incremental fuel cost to non-firm off-system sales, which is the same issue that is under consideration in this docket.<sup>1</sup> KIUC was unaware of the 1996 Order when it filed its Brief, but Big Rivers referenced the 1996 Order in its Post-Hearing Brief for the principle that the Commission previously approved the allocation of system average fuel costs to native load customers.<sup>2</sup> Given the significance of the 1996 Order to the current docket, KIUC's Notice of Additional Authority sought to incorporate the entire 1996 Order into the record.

<sup>1</sup> See KIUC's February 25, 2015, KIUC Notice of Additional Authority, p. 1.

<sup>2</sup> See Post-Hearing Brief of Big Rivers, p. 3.

On March 6, 2015, Big Rivers filed a Motion to Strike KIUC's Notice of Additional Authority arguing that KIUC's Notice should be stricken because it "*seeks to belatedly supplement its brief by editorializing on the meaning of the [1996] order.*"<sup>3</sup> Big Rivers also argued that KIUC's interpretation of the 1996 Order is incorrect. Big Rivers states:

*"KIUC's interpretation of the order is incorrect. KIUC argues that in the order, the Commission 'rejected the allocation of system-average fuel costs to non-firm off-system sales [and instead] found that allocating incremental fuel costs to non-firm off-system sales was reasonable.' As explained in that order, Big Rivers used 'its system average fuel cost to allocate fuel costs among its native load customers and firm off-system customers.' The Commission found that this was reasonable".*<sup>4</sup>

Big Rivers has mischaracterized the 1996 Order in both its Brief and its Motion to Strike. The 1996 Order does not support the fuel allocation methodology used by Big Rivers today. Instead, the 1996 Order requires Big Rivers to allocate incremental costs to non-firm off-system customers. The 1996 Order states:

*"Big Rivers uses its system average fuel cost to allocate fuel costs among its native load customers and firm off-system customers. It uses incremental costs, however, to allocate fuel costs to non-firm off-system sales. During the review period, Big Rivers' incremental costs for the period under review were less than its system average fuel cost. Big Rivers' native load customers thus paid a higher share of fuel costs than non-firm off-system customers."*

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*"The use of incremental fuel costs for non-firm off-system sales is reasonable. Such sales are "opportunity sales" in which the "market price" established by the bulk power market is based upon a utility's marginal or incremental cost."*<sup>5</sup>

The 1996 Order supports KIUC's position in the current docket that incremental fuel costs should be allocated to off-system sales and expressly rejects the argument, then made by KIUC but now made by Big Rivers, that average fuel cost should be assigned to all sales. The 1996 Order states:

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<sup>3</sup> Motion to Strike of Big Rivers, pp. 1-2.

<sup>4</sup> Motion to Strike of Big Rivers, p. 2. Citations omitted.

<sup>5</sup> KPSC Case No. 94-458, March 5, 1996 Order, p. 1. Citations omitted and emphasis added.

*"[KIUC]... proposes that Big Rivers assign its system average fuel costs to all sales. In this manner non-firm off-system customers would be treated in the same manner as native load and firm off-system customers... Nonetheless, the Commission finds no merit to KIUC's contention."*<sup>6</sup>

Big Rivers assertion that in 1996 native load paid system average fuel costs is incorrect. That incorrect assertion is what KIUC is trying to clear up. Big Rivers has two jurisdictions: native load/firm off-system sales and non-firm off-system sales (as a practical matter all or at least the vast majority of Big Rivers' off-system sales are non-firm). If one jurisdiction pays more than average, then the other must pay less than average. This is a mathematical truism. The only other alternative is that both jurisdictions pay the same fuel cost: system average. The 1996 Order rejected the allocation of system average fuel costs to all sales, as Big Rivers currently does, and specifically required Big Rivers to allocate incremental fuel costs to off-system sales, as KIUC proposes in the current case.

In 1996 incremental fuel costs were below average.<sup>7</sup> Since below average incremental fuel costs were allocated to off-system sales in 1996, native load necessarily paid above average.

Now the tables are turned. Now incremental fuel costs are above system average. Allocating above average incremental fuel costs to off-system sales would necessarily mean that native load customers would pay below average. Therefore, applying the holding of the 1996 Order to current circumstances would mean that native load consumers would get a rate reduction and Big Rivers' profits from off-system sales would be correspondingly reduced.

The fact that there is disagreement between Big Rivers and KIUC regarding the meaning of the 1996 Order is a compelling reason for the Commission to take administrative notice of the 1996 Order and draw its own conclusions regarding its meaning and significance. The Commission has broad

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<sup>6</sup> Id. p. 1.

<sup>7</sup> KPSC Case No. 94-458, March 5, 1996 Order, p. 1.

discretion, under KRS 278.310, to consider any evidence that it determines to be relevant,<sup>8</sup> and the Commission can always take administrative notice of its own prior orders and of any other publicly available documents.<sup>9</sup>

WHEREFORE, for the foregoing reasons, KIUC respectfully recommends that the Commission deny Big Rivers' Motion to Strike and grant KIUC's Notice of Additional Authority.

Respectfully submitted,



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**COUNSEL FOR KENTUCKY INDUSTRIAL  
UTILITY CUSTOMERS, INC.**

March 11, 2015

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<sup>8</sup> The Rules of Civil Procedure and the Rules of Evidence are advisory in nature to the proceedings of the Commission. The Commission retains discretion for determining the level of their application, if at all. Inter-County Rural Elec. Co-Op Corp. v. Public Service Commission, 407 S.W.2d 127, 130 (Ky. 1966)

<sup>9</sup> See, KPSC Case No. 2012-00149, In the Matter of: 2012 Integrated Resource Plan of East Kentucky Power Cooperative, Inc. (Order of January 29, 2013); KPSC Case No. 377, In the Matter of: Area Code Exhaustion Relief For 606 Area Code Region (Order of September 8, 1999); KPSC Case No. 2009-00106, In the Matter of: 2009 Integrated Resource Plan Of East Kentucky Power Cooperative, Inc. (Order of November 16, 2009)