

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

RECEIVED

JUN 12 2014

PUBLIC SERVICE
COMMISSION

Via Overnight Mail

June 11, 2014

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

Re: Case No. 2014-00166

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.'s MOTION FOR LEAVE TO RESPOND AND RESPONSE IN OPPOSITION TO THE PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL TREATMENT for filing in the above-referenced matter.

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 L. 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 11th day of June, 2014 to the following:



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

Jennifer Black Hans
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive, Suite 200
Frankfort, KENTUCKY 40601-8204

Honorable Tyson A Kamuf
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street, P.O. Box 727
Owensboro, KENTUCKY 42302-0727

needed sufficient time to examine Big Rivers' 114-page 2014 Integrated Resource Plan ("IRP") and assorted attachments in detail and to compare the redacted information in the 2014 IRP with previous filings made by Big Rivers. KIUC's review was undertaken with the intention of assisting the Commission in its consideration of Big Rivers' filing. Further, no party will be prejudiced by granting KIUC's Motion for Leave to Respond. A procedural schedule has not yet been set in this proceeding and no intervenor testimony or discovery has yet been issued. Hence, good cause exists for the Commission to accept and consider KIUC's Response below.

RESPONSE TO PETITION FOR CONFIDENTIAL TREATMENT

KIUC requests that the Commission deny Big Rivers' Petition in part and make public certain information currently redacted in Big Rivers' 2014 IRP. KIUC does not challenge the confidentiality of the transmission system information that Big Rivers seeks to protect until KRS §61.878(1)(m)(1). But KIUC does dispute the appropriateness of confidential treatment for other information which Big Rivers seeks to protect. This includes historic customer information that is over ten years old, projections that are now stale, and documents that Big Rivers did not seek to protect as confidential in its past IRP or environmental compliance filings.

Big Rivers' Petition does not adequately describe the broad scope of information that Big Rivers has redacted from public view in its 2014 IRP. Additionally, the Petition fails to explain how disclosure of much of that information would permit an unfair commercial advantage to competitors of Big Rivers consistent with the requirements of KRS §61.878(1)(c)(1).

Big Rivers not only redacted *projected* information in its 2014 IRP, as discussed in its Petition.¹ It also redacted *historic* information, including its customer counts, energy requirements, and capacity requirements dating as far back as 2002.² Big Rivers' Petition contains no explanation of how such historic information could permit an unfair commercial advantage to its competitors. The Commission should therefore deny the requested confidential treatment for all redactions of historic information contained on pages 24-26 of Big Rivers' 2014 IRP filing.

Another example of Big Rivers' overly broad redactions can be found on page 50 of its 2014 IRP. There, Big Rivers chose to redact a chart listing the average price of electricity for residential and commercial customers from 2014 through 2028.³ Big Rivers notes that the rates listed in that chart were based upon the Company's proposals in Case No. 2013-00199.⁴ However, the Commission's April 25, 2014 Order issued in Case No. 2013-00199 adopted rates that differ from those proposed by Big Rivers in that case. Consequently, the information that Big Rivers redacted in its IRP is now stale and therefore could not permit an unfair commercial advantage to the Company's competitors. Accordingly, the Commission should deny confidential treatment for all of the redacted information on page 50 of Big Rivers' 2014 IRP.

Moreover, Big Rivers' current strategy of redacting vast amounts of information contained in its 2014 IRP is contrary to its past IRP practice and should not simply be accepted as the "new normal" by the Commission. Many of the same categories of information that Big Rivers seeks to redact in this case were filed publicly by the Company in its last IRP case (Case No. 2010-00443). And Big Rivers did not subsequently assert that filing such information publicly in its last IRP proceeding resulted in any unfair

¹ Petition at 4.

² IRP at 24-26 (Figures 3.1, 3.2, and 3.3).

³ IRP at 50.

⁴ IRP at 50, fn. 46.

commercial advantage to its competitors. Big Rivers failed to provide an explanation for its new policy with respect to the confidentiality of such information.

For comparison, below is a chart listing the information redacted by Big Rivers in its 2014 IRP and where the Commission can find similar information publicly available in Big Rivers' 2010 IRP:

Information Redacted By Big Rivers in 2014 BREC IRP	Page #(s) in 2014 IRP	Page #(s) Where Publicly Available in 2010 IRP
2013 Load Forecast - Total System Requirements (2014-28)	10	5-8, Appendix A
Projected Capacity and Peak Demand Requirements (2014-28)	13-14, 29	5-9, 5-10, 7-2
Historic & Projected Number of Customers (2002-28)	24	7-5
Historic & Projected Native Energy Requirements (2002-28)	25, 29	5-8, 7-4, 7-20
Historic & Projected Native Peak Demand (2002-28)	26	5-8, 5-10, 7-2, 7-7, 7-14, 7-21, 7-22
Monthly Energy Sales by Sector & Total Generation (2014-15)	32	7-13
Monthly Peak Demand by Sector & Total System (2014-15)	33	7-14
Projected Number of Customers & Sales by Sector (2014-28)	34-36, 39	7-5, 7-13
Whether Big Rivers' System Is Projected to be Summer or Winter Peaking	43	7-16
Average Monthly Residential kWh Consumption (1997-2027)	45	7-11
Projected Average Electricity Price to Rural Customers (2014-28)	50	7-23
Energy/Peak Demand Requirements Under Alternative Load Forecast Scenarios	54-57	7-20

Given Big Rivers' lack of justification for why the public nature of such information has drastically changed with its new IRP filing, the Commission should deny the requested confidential treatment for all of the redacted information in Big Rivers' 2014 IRP described in the chart above.

Finally, the environmental compliance cost information that Big Rivers seeks to redact in its 2014 IRP was filed publicly by the Company in its previous environmental compliance case (Case No. 2012-00063). On page 91 of its 2014 IRP, Big Rivers redacts projected capital expenditures and incremental O&M costs associated with projects taken to comply with various environmental rules. Similar information was made publicly available in the Direct Testimony of Robert Berry filed in Case No. 2012-00063.⁵ The Commission should therefore maintain consistency and allow the types of information that have previously been made publicly available to remain publicly available in this case. Consequently, the Commission should deny the requested confidential treatment for the redacted information contained on page 91 of Big Rivers' 2014 IRP filing.

The Commission should not simply endorse Big Rivers' new clandestine approach without first carefully scrutinizing the information that Big Rivers seeks to maintain as confidential. Big Rivers may prefer to keep its information secret from the public, but the Commission is charged with allowing information to be publicly available unless that information meets a specific exception set forth in law.

KRS §61.871 specifically provides:

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.

Big Rivers' Petition failed to sufficiently explain how much of the information that the Company wishes to maintain as confidential falls within a specific exception set forth under KRS §61.878. Accordingly, the Commission should order that the information listed in the chart above as well as the environmental compliance cost information on page 91 of the Company's 2014 IRP be made public for purposes of this proceeding.

⁵ See Direct Testimony of Robert W. Berry (April 2, 2012), Case No. 2012-00063 at 18:1-24:16.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

jkylercohn@BKLawfirm.com

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



JC

JACK CONWAY

ATTORNEY GENERAL

Jennifer Black Hans

Dennis G. Howard, II

Lawrence W. Cook

ASSISTANT ATTORNEYS GENERAL

1024 Capital Center Drive, Suite 200

Frankfort, KY 40601-8204

Ph: (502) 696-5453 Fax: (502) 573-8315

E-Mail: Jennifer.Hans@ag.ky.gov

Dennis.Howard@ag.ky.gov

Larry.Cook@ag.ky.gov

**COUNSEL FOR ATTORNEY GENERAL OF
THE COMMONWEALTH OF KENTUCKY**

June 11, 2014