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COMMISSION

**Via Overnight Mail**

March 19, 2009

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

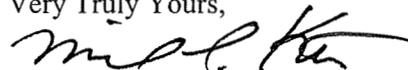
**Re: Case No. 2009-00040**

Dear Mr. Derouen:

Please find enclosed the original and twelve (12) copies of the REPLY OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. TO BIG RIVERS' RESPONSE TO MOTION TO AMEND PROCEDURAL SCHEDULE filed 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.

**BOEHM, KURTZ & LOWRY**

MLKkew

Attachment

cc: Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by electronic mail (when available) and first-class postage prepaid mail to all parties on the 19<sup>th</sup> day of March, 2009

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Michael L. Kurtz, Esq.

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

In The Matter Of: The Application Of Big Rivers :  
Corporation to Adjust Electric Rates : Case No. 2009-00040  
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**REPLY OF  
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.  
TO BIG RIVERS' RESPONSE TO  
MOTION TO AMEND PROCEDURAL SCHEDULE**

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This pleading is filed as a reply to Big Rivers' March 18, 2009 response to KIUC's motion to amend the procedural schedule.

The March 10, 2009 Informal Conference in this case was held just eight days after Big Rivers' request for permanent and emergency rate relief was filed. Big Rivers proposed to set interim and permanent rates based upon a dramatically new ratemaking methodology. The so-called "cash basis" method. Under this new methodology consumers are required to pay for long-lived capital assets over their construction period, rather than over their 30-40 year useful lives (through a return of and return on the capital investment) as has been standard practice at this Commission for at least the last three decades. In other words, in this case Big Rivers seeks to establish a precedent where consumers are required to fully pay for transmission lines, scrubbers, or even new power plants while they are being built, rather than over their useful lives. At the Informal Conference counsel for KIUC was willing to accept at face value Big Rivers' claim of a cash-flow emergency. But a subsequent review of the record calls into question the need for emergency rate relief on April 1.

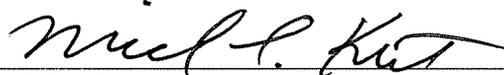
Big Rivers claims that it needs emergency rate relief to generate \$16.6 million of cash over the last nine months of 2009, or \$1.84 million per month. But Big Rivers has three lines of credit totaling \$20.5 million with CFC that can be used to meet cash needs. (Exhibit 47, page 40 of 60). KIUC has asked data requests regarding these lines of credit, inquiring into whether they can be drawn upon in lieu of raising rates 21.6%. Exhibit Spainhoward-1 is Big Rivers' 2009 Transmission and A&G

Construction & Capital Budget. At page 12 of this Exhibit, line 73 Big Rivers has budgeted \$6,167,8921 for a new two-way radio system. While this new system may be appropriate post-Unwind when Big Rivers is flush with cash from E.ON, it is questionable when consumers are being asked to pay 21.6% more for power because of an alleged financial emergency. A deferral of the \$6.2 million radio system would mitigate the need to raise rates by \$1.84 million per month on an emergency basis. Whether this expensive new radio system or any other budget item can be deferred is also the subject of KIUC's discovery. Before rushing to a hearing it would be more prudent for the Commission to thoroughly review the answers to the data requests of Staff and KIUC, as well as any intervenor testimony.

In its response Big Rivers states that "*KIUC is now not interested in settling the interim rate issue ...*" This is not correct. KIUC is willing to consider a reasonable compromise, but only after we have had an adequate opportunity to review the discovery responses. Moreover, we would prefer not to engage in settlement negotiations in publicly filed pleadings.

Finally, as the Commission knows E.ON and Big Rivers have both accepted the Commission-imposed conditions in the Unwind. E.ON is pushing hard for closing of the Unwind by as early as April 9, 2009. If Big Rivers' interim rate request is granted and the Unwind does close in April, then the Commission would have unnecessarily raised rates by 21.6%, only to then completely reverse course a month later. Such confusion would not be a good outcome. The request for interim rate relief can be put off at least a month, if not longer.

Respectfully submitted,



Michael L. Kurtz, Esq.

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March 19, 2009