

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)
CORPORATION FOR A GENERAL) CASE NO. 2011-00036
ADJUSTMENT IN RATES)

NOTICE OF FILING

Notice is given to all parties that the following materials have been filed into the record of this proceeding:

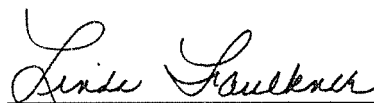
- The digital video recording of the evidentiary hearing conducted on September 12, 2012 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- All exhibits introduced at the evidentiary hearing conducted on September 12, 2012 in this proceeding;
- The written log listing, *inter alia*, the date and time of where each witness' testimony begins and ends on the digital video recording of the hearing conducted on September 12, 2012.

A copy of this Notice, the certification of the digital video record, exhibit list, and hearing log have been served by first class mail upon all persons listed at the end of this Notice. Parties desiring an electronic copy of the digital video recording of the hearing in Windows Media format may download a copy at http://psc.ky.gov/av_broadcast/2011-00036/2011-00036_12Sep12_Inter.aspx. Parties wishing an annotated digital video

recording may submit a written request by electronic mail to pscfilings@ky.gov. A minimal fee will be assessed for a copy of this recording.

The exhibits introduced at the evidentiary hearing may be downloaded at <http://psc.ky.gov/pscscf/2011%20cases/2011-00036/>.

Done at Frankfort, Kentucky, this 27th day of September 2012.



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CERTIFICATE

I, Kathy Gillum, hereby certify that:

1. The attached DVD contains a digital recording of the hearing conducted in the above-styled proceeding on **September 12, 2012**. Hearing Log, Exhibits, Exhibit List and Witness List are included with the recording on September 12, 2012.

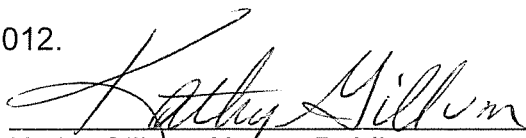
2. I am responsible for the preparation of the digital recording;

3. The digital recording accurately and correctly depicts the hearing;

4. The "Exhibit List" attached to this Certificate lists all exhibits introduced at the hearing of **September 12, 2012**.

5. The "Hearing Log" attached to this Certificate accurately and correctly states the events that occurred at the hearing of **September 12, 2012** and the time at which each occurred.

Given this 26th day of September, 2012.



Kathy Gillum, Notary Public
State at Large

My commission expires: Sept 3, 2013



Case History Log Report

Case Number: 2011-00036_12Sept12

Case Title: Big Rivers Electric Corporation

Case Type: Re-Hearing on Rate Request

Department:

Plaintiff:

Prosecution:

Defendant:

Defense:

Date: 9/12/2012

Location: Default Location

Judge: David Armstrong, Jim Gardner, Linda Breathitt

Clerk: Kathy Gillum

Bailiff:

Event Time	Log Event	
10:10:47 AM	Case Started	
10:10:59 AM	Preliminary Remarks	
10:11:53 AM	Introductions Note: Kathy Gillum	James Miller and Tyson Kamuf, counsel for Big Rivers; Larry Cook and Jennifer Hans, for the OAG; David Brown counsel for Alcan and Mr. Seeburger, present for Alcan, but not participating in hearing. Mike Kurtz and Kurt Boehl, counsel for KIUC; and Richard Raff for PSC.
10:13:15 AM	Public Comments Note: Kathy Gillum	Call for public comment. No persons present to speak.
10:13:42 AM	Outstanding Motions Note: Kathy Gillum	James Miller states that there is an outstanding Motion for Deviation in response to Data Requests. Mr. Raff states he will check into it. OAG states that KIUC and Big Rivers have waived cross examination. Miller states that they will agree to pass cross on depreciation issues. Mike Kurtz states they will agree. Affidavits of publication have been received by PSC.
10:16:19 AM	Witness, Ralph Ashworth (Big Rivers) Note: Kathy Gillum	Witness called to testify by James Miller.
10:16:58 AM	Examination by James Miller (Big Rivers) Note: Kathy Gillum	Qualification of witness by James Miller. Witness adopts testimony and data responses of Mark Hite. Adopts statement of professional experience.
10:18:00 AM	Examination by Larry Cook (OAG) Note: Kathy Gillum	Questions regarding Hogen and Lovells Law Firm concerning the fees owed.
10:19:01 AM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller asked that the question be clarified.
10:19:23 AM	Larry Cook (OAG) Note: Kathy Gillum	Mr. Cook clarifies question. Questions regarding total amount of fees to the lawfirm. Witness states the amount of \$897,000.00. Witness states that a redacted copy was provided.

10:21:57 AM	Data Request by Larry Cook (OAG) Note: Kathy Gillum	Mr. Cook asked if an unredacted copy could be provided to the Commission for them to conduct a "camera review". Mr. Miller responding that it was a privilege issue and he would have to take it up with management.
10:22:18 AM	Examination by Larry Cook (OAG) continues Note: Kathy Gillum	Questions regarding lobbying efforts. Questions regarding evidence justifying the legal fees. Questions regarding redacted invoices. Questions regarding MRSM and the Economic Reserve.
10:24:59 AM	Objection by James Miller (Big Rivers) Note: Kathy Gillum	Objection: Mr. Miller objects to balances being entered as evidence due to them not being in existence prior to the hearing. Mr. Miller states that this is a re-hearing,
10:25:46 AM	Larry Cook (OAG) Note: Kathy Gillum	Mr. Cook states that the information is highly relevant.
10:26:25 AM	Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz states that he agrees with the OAG. Status of the funds is relevant.
10:27:16 AM	Richard Raff (PSC) Note: Kathy Gillum	Mr. Raff states that the Court said that the Commission could not consider evidence when it is remanded back to the Commission that didn't exist at the time the case was before the Commission.
10:28:14 AM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller states that KRS 278.400 states that the decisions of this Commission and the Courts, that a re-hearing is to be on the evidence that existed at the time of the original hearing. States that the cases have to come to an end, and if evidence after the hearing is brought in the re-hearing the case would never stop. States that the information did not exist at the time the decision was made. Mr. Miller states that it would be reversible error.
10:30:19 AM	Vice Chair Gardner Note: Kathy Gillum	Vice Chair Gardner reads a portion of a statute.
10:30:35 AM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller states he is basing his argument on the statutes and prior PSC Orders.
10:30:42 AM	Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz states that the sentence that Vice Chair read is what gives the Commission discretion. States that the Commission does have broad discretion.
10:32:09 AM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller provides citations to PSC Orders. 2003-00266, dated 7-6-06; 2005-00068, dated 10-17-05; and 2000-00120, dated 2-26-01
10:33:27 AM	Mike Kurtz (KIUC) Note: Kathy Gillum	States that Mr. Miller wants the Commission to turn a blind eye. States that this type of evidence is relevant.
10:34:31 AM	Vice Chair Gardner Note: Kathy Gillum	Vice Chair Gardner asked if the notice of termination is in the record.
10:34:48 AM	Larry Cook (OAG) Note: Kathy Gillum	
10:34:55 AM	Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz states that Big Rivers Motion referenced the Notice.

10:35:35 AM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller states that the Commission's response was that it was not a proper matter to be taken up in this hearing.
10:37:04 AM	Jennifer Hans (OAG) Note: Kathy Gillum	Ms. Hans states that the OAG supports transparency. States they are fine with the matter being briefed.
10:37:51 AM	Chairman Armstrong Note: Kathy Gillum	Chairman Armstrong asked if OAG had any witnesses.
10:37:58 AM	Jennifer Hans (OAG) Note: Kathy Gillum	Ms. Hans states that OAG has no witnesses, but will cross.
10:38:06 AM	Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz states that Big Rivers wants to narrow the scope of this case. KIUC thinks that it is in the public interest to have all of the facts. Mr. Kurtz reads from a PSC Order regarding jurisdiction.
10:40:22 AM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller states that it was not said that it would re-try the rate case. States that the Commission can open the smelter issue and investigate. States that this rate case from 2010 needs to come to an end.
10:41:41 AM	Richard Raff (PSC) Note: Kathy Gillum	States that all of the arguments are somewhat accurate. States that we are here on 7 issues. States that the Commission can hear evidence and allow evidence into the record that may or may not form the basis of a decision. States there is no need to act at this point on what evidence it will utilize in making its decision.
10:43:39 AM	Case Recessed	
11:11:42 AM	Case Started	
11:11:59 AM	Chairman Armstrong Note: Kathy Gillum	Chairman Armstrong states the Commission will hear only evidence prior to November 17, 2011 and not after.
11:12:31 AM	Christopher Hopgood (JPEC) Note: Kathy Gillum	Mr. Hopgood states he is counsel for Jackson Purchase.
11:12:53 AM	Examination by Larry Cook (OAG) continues Note: Kathy Gillum	Questions regarding the hourly rates charged by the lawfirm.
11:13:33 AM	Data Request by Larry Cook (OAG) Note: Kathy Gillum	Data Request: Hourly rates of the lawfirm.
11:13:59 AM	Examination by Richard Raff (PSC) Note: Kathy Gillum	Questions regarding KIUC Re-Hearing D.R. Item 7(a). Questions regarding Line 4. Questions regarding Washington lawfirm increase in fees charged. Witness states that it was due to the volume of work in answering the data requests. Questions regarding if effort was made to obtain counsel at a lower rate. Questions regarding who at B.R. was managing the legal teams. Witness states that it was upper management that approved the fees.
11:18:51 AM	Commissioner Breathitt Note: Kathy Gillum	Commission Breathitt states, "as opposed to reviewing the bills"?
11:19:12 AM	Examination by Richard Raff (PSC) continues Note: Kathy Gillum	Witness states that only Mark Hite was doing the monitoring. Witness states that when the case originally started it was Bill Blackburn and he assigned to Mark Hite. Questions regarding who and how the original rate case estimates were derived.

11:23:51 AM	Vice Chair Gardner Note: Kathy Gillum	Questions regarding why Hogen and Lovells lawfirm was used. Witness states that they helped all through the rate case. Witness states that this firm had been involved with Big Rivers for several decades and provided for the need for them. Vice Chair states that work product and attorney client privilege should not limit the Commission's ability to review. Vice Chair states that they can brief the issue if need be.
11:27:57 AM	Commissioner Breathitt Note: Kathy Gillum	Commissioner Breathitt states she takes a similiar stance to Vice Chair on the redacted portions. States that the Commission could review under confidentiality or "in camera".
11:28:40 AM	KIUC (Objection) Note: Kathy Gillum	Mr. Kurtz state that KIUC asked for the unredacted portions and they were not provided. States that they would need another hearing if they were put in after the fact, and he would object.
11:29:37 AM	James Miller (Big Rivers) Note: Kathy Gillum	Questions regarding the time period of the last rate case. Witness states that it was probably back in the late 80's and mid 90's. Questions regarding Item 7(a) as to the scope of Hogan being limited. Witness states that the Smelter issues were complex and not expected by the witness. Witness states that someone from the Smelters was present at most meetings regarding depreciation. Questions regarding the redacted invoices. Refers to PSC D.R. 1-52
11:35:16 AM	Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz states that Page 6 of Mr. Collins testimony shows the hourly rate of the lawfirms.
11:36:01 AM	Witness Excused (Ashworth) Note: Kathy Gillum	Witness, Ralph Ashworth excused.
11:36:14 AM	Witness, John Wolfram (Big Rivers) Note: Kathy Gillum	Witness called to testify by James Miller.
11:36:45 AM	Examination by James Miller (Big Rivers) Note: Kathy Gillum	Qualification of witness by James Miller. Witness adopts pre-filed testimony and data request responses.
11:37:43 AM	Examination by Larry Cook (OAG) Note: Kathy Gillum	Questions regarding aluminum prices.
11:38:32 AM	Examination by Mike Kurtz (KIUC) Note: Kathy Gillum	Questions regarding rural delivery service. Questions regarding subsidy. Mr. Kurtz passes out a document for the witness to look at.
11:41:46 AM	Exhibit 1 (KIUC) Note: Kathy Gillum	Exhibit: Document titled, "Big Rivers Electric Corporation, KIUC Recomendded Revenue Allocation to Remove Rural Subsidies". Document introduced by Mike Kurtz and marked as KIUC Exhibit 1.
11:41:58 AM	Examination by Mike Kurtz (KIUC) continues Note: Kathy Gillum	Questions regarding load sales during the test years. Questions regarding Century's share of total revenues. Questions regarding excess generation. Questions regarding off-system hour rates during the test year. Questions regarding the impact to tax revenue, tax base, employment, etc. Witness states that the Commission did consider local economy in their decision.

11:49:11 AM	Exhibit 2 (KIUC) Note: Kathy Gillum	Exhibit: Document titled, "Direct Testimony of Paul A. Coomes, in PSC Case No. 2011-00036". Document introduced by Mike Kurtz and marked as KIUC Exhibit 2
11:49:34 AM	Examination by Mike Kurtz (KIUC) continues	
11:52:15 AM	Exhibit 3 (KIUC) Note: Kathy Gillum	Exhibit: Document titled, "Direct Testimony of C. William Blackburn in PSC Case No. 2011-00036". Document introduced by Mike Kurtz and marked as KIUC Exhibit 3.
11:52:43 AM	Examination by Mike Kurtz (KIUC) continues Note: Kathy Gillum	Questions regarding subsidy. Witness states that PSC said it was a factor in their Order on page 30. Questions regarding reference to Dr. Morey by witness on page 6 of pre-filed testimony. Questions regarding market price for electricity. Witness states Dr. Morey erred in his assumptions.
11:59:57 AM	Objection by James Miller Note: Kathy Gillum	Objection was to Mike Kurtz's asking if Big Rivers sold off-peak into MISO.
12:00:08 PM	Examination by Mike Kurtz (KIUC) continues Note: Kathy Gillum	Questions regarding re-selling power into the MISO market. Questions regarding the large industrial load and residential load amounts. Witness states that he does not accept that Dr. Moory is correct in his assumptions. Questions regarding if the price goes up, will people use less energy. Witness states that people respond to price.
12:06:01 PM	Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz moves to admit KIUC Exhibits 1, 2 and 3 entered into the record.
12:07:43 PM	Objection by James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller objects to question by Mike Kurtz regarding recent environmental case.
12:07:50 PM	Chairman Armstrong Note: Kathy Gillum	Chairman Armstrong Sustained Objection.
12:08:18 PM	Examination by Mike Kurtz (KIUC) continues Note: Kathy Gillum	Questions regarding Smelter contracts. Witness refers to counsel. Mr. Kurtz reads definition of "rate" under KRS 278.010
12:10:36 PM	Objection by James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller states that the witness has already answered.
12:10:53 PM	Examination by Mike Kurtz (KIUC) continues	
12:12:22 PM	Objection by James Miller Note: Kathy Gillum	Objection: Mr. Miller states that If he is quoting from a contract, he should quote correctly.
12:12:53 PM	Exhibit 4 (KIUC) Note: Kathy Gillum	Exhibit: Document titled, "Retail Electric Service Agreement dated July 1, 2009 between Kenergy Corp and Alcan Primary Products Corporation". Document introduced by Mike Kurtz and Marked as KIUC Exhibit 4.
12:13:32 PM	Exhibit 5 (KIUC) Note: Kathy Gillum	Exhibit: Document titled, "Coordination Agreement dated July 1, 2009 between Big Rivers Electric Corporation and Alcan Primary Products Corporation". Document introduced by Mike Kurtz and marked as KIUC Exhibit 5.

12:13:56 PM	Examination by Mike Kurtz (KIUC) continues Note: Kathy Gillum	Questions regarding the unwind transaction advantages to Big Rivers. Questions regarding a Motion for Expedited Ruling that was filed in this case.
12:20:39 PM	Objection by James Miller (Big Rivers) Note: Kathy Gillum	Objection: Mr. Miller objects to Mike Kurtz's question regarding Big Rivers intent to file a rate case ...
12:20:45 PM	Chairman Armstrong Note: Kathy Gillum	Chairman Armstrong Sustained Objection.
12:21:13 PM	Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz moves to admit KIUC Exhibits 1 thru 5. No objections.
12:22:04 PM	Lunch Break Note: Kathy Gillum	Lunch Break until 1:30 p.m.
12:22:11 PM	Case Recessed	
1:33:37 PM	Case Started	
1:33:45 PM	Examination by Richard Raff (PSC) Note: Kathy Gillum	Questions regarding selling power into the MISO market, and on-peak and off-peak basis. Witness states that the time period has an influence on the prices. Questions regarding the market price of aluminum as to the Smelter contracts and price elasticity. Questions regarding KIUC Exhibit 1. Questions regarding page 14 of Mr. Baron's testimony. Witness states that he does not share Mr. Baron's interpretation. Questions regarding the rates of the rurals and the smelters. Witness states to get rid of the subsidy they would need to equalize the rural class and the large industrial class. Witness states he disagrees with Mr. Baron's testimony on DSM. Questions regarding the Option of a surcharge. Questions regarding KIUC's cost of service study included in its response to data requests. Questions regarding construction work in progress, (see page 13, line 19). Witness states that the matching principle should be allowed. Questions regarding if there were any other revenues or expenses that Big Rivers has not proposed adjustments for.
1:58:27 PM	Vice Chair Gardner Note: Kathy Gillum	Questions regarding depreciation adjustments. Witness states that there were projects listed as construction projects in progress, that were placed in the revenue requirement upon placing in service. Questions regarding KIUC Exhibit 1, line 3, Return on Rate Base. Questions regarding percentage increases of the types of classes. Vice Chair Gardner asked, "Does the record contain what the percentage would be for all of the classes?"
2:07:20 PM	Re-Direct by James Miller (Big Rivers) Note: Kathy Gillum	Follow-up to questions regarding expenditures for the projects as to before or after the test year. Questions regarding KIUC Exhibit 1, line 5, titled, Total Increase Approved.
2:10:09 PM	Re-Cross by Mike Kurtz (KIUC) Note: Kathy Gillum	Questions regarding retroactive rate-making. Questions regarding subsidy. Questions regarding pot lines.
2:12:47 PM	Witness Excused (Wolfram) Note: Kathy Gillum	Witness, John Wolfram excused.
2:12:59 PM	Witness, Ted Kelly (Big Rivers) Note: Kathy Gillum	Witness called to testify by James Miller.

2:13:32 PM	Examination by James Miller (Big Rivers) Note: Kathy Gillum	Qualification of the witness by James Miller. Witness adopts pre-filed testimony and data request responses.
2:14:09 PM	Examination by Larry Cook (OAG) Note: Kathy Gillum	Questions regarding plant retirements. Witness states equipment has to be retired before it is totally depreciated. Questions regarding the cross state rule.
2:15:40 PM	Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz states that in accordance with PSC prior ruling, things past Nov. 17th can't be discussed. Mr. Kurtz also states they do not agree with the ruling.
2:15:51 PM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller states that Mr. Kurtz is correct and I agree with him.
2:16:13 PM	Examination by Larry Cook (OAG) Note: Kathy Gillum	Commission should note that there is a possibility that some of the wquipment that was retired early may not be in the environ. plan in this rule. Some of this plant may not have had to be retired. Questions regarding the early retirements.
2:18:10 PM	Mike Kurtz (KIUC) Note: Kathy Gillum	Consistent with the agreement with Mr. Miller, no questions now, but may have follow-up questions.
2:18:53 PM	Examination by Richard Raff (PSC) Note: Kathy Gillum	Questions regarding retirement dates or service lives. Questions regarding depreciation dates. Questions regarding page 14 of original rebuttal testimony. Questions regarding methods of updating depreciation.
2:26:42 PM	Re-Direct by James Miller (Big Rivers) Note: Kathy Gillum	Questions regarding retirements in depreciation study.
2:26:53 PM	Examination by Mike Kurtz (KIUC) Note: Kathy Gillum	Questions regarding depreciation study. Questions referring to Re-Hearing Testimony, page 13, line 24 of witness.
2:31:56 PM	Moves to Strike (Mike Kurtz)(KIUC) Note: Kathy Gillum	Mr. Kurtz moves to strike due to PSC ruling that no evidence would be heard after Nov 17th, 2011.
2:32:13 PM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller states that the calculations were done prior to the original hearing.
2:32:38 PM	Chairman Armstrong Note: Kathy Gillum	Chairman Armstrong asked if it started in 2010?
2:32:49 PM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller stated that it was discussed during the hearing in 2011.
2:32:55 PM	Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz states that it still violates the ruling you laid down.
2:33:16 PM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller states that it was perfectly within the ruling.
2:33:35 PM	Chairman Armstrong Note: Kathy Gillum	Chairman Armstrong states that this was in the original case, we can accept on that basis.
2:34:07 PM	Witness, Lane Kollen (KIUC) Note: Kathy Gillum	Witness called to testify by Mike Kurtz (KIUC)

2:34:42 PM	Examination by Mike Kurtz (KIUC) Note: Kathy Gillum	Qualification of witness by Mike Kurtz. Witness corrects pre-filed testimony as follows: page 4 (correct) line 12 to \$898,930; line 19 to \$1,077,100; line 21 and 24 359034; page 5, 1,077,100 and 75%; Witness adopts pre-filed testimony and supplemental pre-filed testimony.
2:36:52 PM	James Miller (Big Rivers) Note: Kathy Gillum	No questions per agreement with KIUC.
2:37:07 PM	Examination by Larry Cook (OAG) Note: Kathy Gillum	Questions regarding longer lives pertaining to depreciation expenses.
2:39:45 PM	Examination by Richard Raff (PSC) Note: Kathy Gillum	Questions regarding Big Rivers view on changing the depreciation rates. Questions regarding depreciation expense as to cash-flow.
2:44:09 PM	Witness Excused (Kollen) Note: Kathy Gillum	Witness, Lane Kollen excused.
2:44:39 PM	Witness, Stephen Baron (KIUC) Note: Kathy Gillum	Witness called to testify by Mike Kurtz (KIUC).
2:44:51 PM	Mike Kurtz (KIUC) Note: Kathy Gillum	Qualification of witness by Mike Kurtz. Witness adopts pre-filed testimony.
2:45:27 PM	Examination by James Miller (Big Rivers) Note: Kathy Gillum	Questions regarding page 7 of pre-filed testimony, line 11, then lines 14 through 20, Exhibit SJB-1. Questions regarding page 10, lines 10 through 18, Exhibit SJB-2.
2:48:46 PM	Move to Strike (James Miller) Note: Kathy Gillum	Mr. Miller moves to strike the testimony and exhibits of Mr. Baron because they came into existence after the Nov. 17, 2011 date.
2:48:59 PM	Christopher Hopgood Joins to Strike Note: Kathy Gillum	Mr. Hopgood (JPEC) joins Mr. Miller in Motion to Strike.
2:49:13 PM	Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz makes rebuttal argument on striking the record.
2:49:28 PM	Chairman Armstrong Note: Kathy Gillum	I'm going to strike.
2:49:38 PM	Examination by Larry Cook (OAG) Note: Kathy Gillum	Questions regarding eliminating the subsidy. Witness states that reducing 10 million dollars has to affect the economics. Questions regarding the increase to the rural class. Witness refers to Table 1.
2:34:07 PM	Witness Excused (Ted Kelly) Note: Kathy Gillum	Witness, Ted Kelly excused.
2:59:02 PM	Examination by Richard Raff (PSC) Note: Kathy Gillum	Names of the BR customers witness was testifying to in the pre-filed testimony. Witness reads the names. Questions regarding Re-Hearing Testimony page 3, page 17 to 19. Questions regarding Page 5, lines 6 to 7. Questions regarding page 12, line 6. Questions regarding page 12, Line 12. Questions regarding one class subsidizing other classes. Questions regarding witnesses' rebuttal testimony in response to Kenergy testimony in the initial phase of this case.
3:05:52 PM	Commissioner Breathitt Note: Kathy Gillum	Commissioner Breathitt excuses herself from the remainder of the hearing due to scheduling conflict.

3:06:36 PM	Examination by Richard Raff (PSC) continues Note: Kathy Gillum	Questions regarding rebuttal testimony regarding KRS 278.170 on the law of discrimination. Questions regarding KIUC Exhibit 1 Witness states that he recommends to eliminate the subsidy.
3:14:49 PM	Vice Chair Gardner Note: Kathy Gillum	Vice Chair Gardner asked if witness was involved in the un-wind. Witness stated no.
3:15:23 PM	Examination by Richard Raff, (PSC) continues Note: Kathy Gillum	Questions regarding a target subsidy reduction without the DSM expense.
3:17:38 PM	Vice Chair Gardner Note: Kathy Gillum	Questions regarding if witness is proposing to eliminate the subsidy from the Smelters to the rural class. Vice Chair Gardner asked witness why he was not recommending to eliminate the subsidy to the industrials. Vice Chair Gardner states that the subsidies are embedded in the rates that came out of the unwind. Questions regarding concentration risks and what had changed since the unwind.
3:24:56 PM	Re-Direct by Mike Kurtz (KIUC) Note: Kathy Gillum	Mr. Kurtz asked the witness, if the cost of service was the only factor that the Commission should consider.
3:27:49 PM	Examination by Richard Raff (PSC) Note: Kathy Gillum	Questions regarding cost of service.
3:29:07 PM	Vice Chair Gardner Note: Kathy Gillum	Questions regarding witness's company.
3:30:34 PM	Examination by Richard Raff (PSC) continues Note: Kathy Gillum	Questions regarding if the witness had any contact with any employee of Alcan or Century.
3:31:52 PM	Witness Excused (Baron) Note: Kathy Gillum	Witness, Stephen Baron excused.
3:32:06 PM	Witness, Lane Kollen (re-called) Note: Kathy Gillum	Witness, Lane Kollen was re-called by the Commission.
3:32:29 PM	Vice Chair Gardner Note: Kathy Gillum	Witness states he has been employed since 1986, principal since 1990. Witness did not testify during the unwind.
3:34:15 PM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller asks about Schedule for Data Responses and Briefs. Week for DR and Week thereafter for Brief.
3:34:48 PM	Mike Kurtz Objects (KIUC) Note: Kathy Gillum	Mr. Kurtz renews objection to providing unredacted materials requested.
3:35:23 PM	Chairman Armstrong Note: Kathy Gillum	Chairman Armstrong asks Mr. Kurtz if he was making a Motion.
3:35:47 PM	Mike Kurtz Motion (KIUC) Note: Kathy Gillum	Mr. Kurtz makes the Motion and asks if supplemental testimony can be filed.
3:35:57 PM	Chairman Armstrong Note: Kathy Gillum	Granted.
3:36:27 PM	Richard Raff (PSC) Note: Kathy Gillum	Mr. Raff states that if we have supplemental testimony we might need another hearing
3:36:44 PM	Vice Chair Gardner Note: Kathy Gillum	Vice Chair Gardner asked if there was a reason why you didn't move to compel.

3:36:57 PM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller stated that it wasn't an issue in the principal case. Mr. Miller stated that he didn't think that unredacted legal bills would reflect a breach of ethics.
3:38:05 PM	Richard Raff (PSC) Note: Kathy Gillum	Mr. Raff asked if Big Rivers will file the unredacted bills?
3:38:30 PM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller stated that the legal bills were not prepared with the expectation that they would be presented at the hearing and they need to look at them and see what can be disclosed.
3:39:20 PM	Larry Cook (OAG) Note: Kathy Gillum	Mr. Cook asked if an "in camera" review would resolve the problem.
3:39:29 PM	Richard Raff (PSC) Note: Kathy Gillum	Mr. Raff states that this could present a host of questions. Mr. Raff states that the Commission would be reviewing evidence not in the record. Mr. Raff suggested they wait the 10 days and see what BR decides to do. Briefs would be due a time after the 10 days, and if BR provides unredacted bills, we could agree to not cross or have a hearing if KIUC files supplemental testimony.
3:41:11 PM	James Miller (Big Rivers) Note: Kathy Gillum	Mr. Miller stated that it was increments of a week, not 10 days.
3:42:55 PM	Case Recessed	
3:51:40 PM	Case Started	
3:41:17 PM	Chairman Armstrong Note: Kathy Gillum	Chairman Armstrong states for clarification: 1 week for DR within another week decision made to determine if issues to be resolved by hearing. Decision within another week. Discussion among the parties off record.
3:51:53 PM	Richard Raff (PSC) Note: Kathy Gillum	Mr. Raff states: 7 days Sept 19 unredacted legal bills parties 10-1-12 for briefs?
3:53:25 PM	Mike Kurtz (KIUC)	
3:53:56 PM	Vice Chair Gardner	
3:54:59 PM	Chairman Armstrong Adjourns Note: Kathy Gillum	Adjourns hearing.
3:55:53 PM	Case Recessed	
3:56:30 PM	Case Stopped	



Case Title: Big Rivers Electric Corporation

Department:

Plaintiff:

Prosecution:

Defendant:

Defense:

Name	Description
KIUC Exhibit 1	Document titled, "Big Rivers Electric Corporation, KIUC Recommended Revenue Allocation to Remove Rural Subsidies".
KIUC Exhibit 2	Document titled, "Direct Testimony of Paul A. Coomes, in PSC Case No. 2011-00036".
KIUC Exhibit 3	Document titled, "Direct Testimony of C. William Blackburn in PSC Case No. 2011-00036".
KIUC Exhibit 4	Document titled, "Retail Electric Service Agreement dated July 1, 2009 between Kenergy Corp and Alcan Primary Products Corporation"
KIUC Exhibit 5	Document titled, "Coordination Agreement dated July 1, 2009 between Big Rivers Electric Corporation and Alcan Primary Products Corporation".

Big Rivers Electric Corporation
KIUC Recommended Revenue Allocation to Remove Rural Subsidies

	<u>Total System</u>	<u>Rurals</u>	<u>Large Industrials</u>	<u>Smelters</u>
Rate Base - Commission Adjusted 12 CP	1,175,239,849	360,953,693	99,688,642	714,597,513
Net Utility Operating Margin	31,612,553	(3,825,556)	2,453,136	32,984,973
Return on Rate Base	2.69%	-1.06%	2.46%	4.62%
Subsidy at Present Rates	-	(13,534,781)	(228,370)	13,763,150
Total Increase Approved	26,744,776	10,597,930	1,969,615	14,177,231
Income at Proposed Rates	58,357,329	6,772,374	4,422,751	47,162,204
Return on Rate Base - Proposed Rates	4.97%	1.88%	4.44%	6.60%
Subsidy at Proposed Rates	-	(11,151,026)	(527,355)	11,678,381
Revenue Increase to Eliminate Rural Subsidies	-	11,151,026	(1,360,218)	(9,790,808)
KIUC Recommended Revenue Allocation	26,744,776	21,748,955	609,397	4,386,423
Income at KIUC Recommended Rates	58,357,329	17,923,400	3,062,533	37,371,396
Return on Rate Base - KIUC Recommended Rates	4.97%	4.97%	3.07%	5.23%
Subsidy at KIUC Recommended Rates	-	-	(1,887,573)	1,887,573

Source: Direct Rehearing Testimony of Stephen J. Baron (Case No. 2011-00036), p. 13.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR A)	CASE NO. 2011-00036
GENERAL ADJUSTMENT IN RATES)	

DIRECT TESTIMONY OF PAUL A. COOMES

1 **Q. Please state your name, address, and profession.**

2 A. My name is Paul A. Coomes. My address is 3604 Trail Ridge Road, Louisville KY
3 40241. I am a consulting economist. I have a Ph.D. in economics from the University of
4 Texas. I am also a professor of economics at the University of Louisville.

5 **Q. Have you testified before the Kentucky Public Utility Commission?**

6 A. Yes, I have testified and submitted testimony several times before the Kentucky Public
7 *Service Commission* to present studies I have performed for utilities, the Kentucky
8 Industrial Utility Customers, Inc. ("KIUC") and Century Aluminum of Kentucky General
9 Partnership and Rio Tinto Alcan ("Smelters").

10 **Q. What is the purpose of your testimony?**

11 A. I am providing testimony in support of a study that I conducted entitled, *The Estimated*
12 *Economic and Fiscal Impacts of Kentucky's Two Aluminum Smelters (May 23, 2011)*.

1 This study attempts to quantify the economic impact of Kentucky's two aluminum
 2 Smelters and the estimated impact on the Kentucky economy if the two Smelters were to
 3 curtail operations. This study is attached to my Direct Testimony as Attachment 1.

4 **Q. What are the likely impacts on the Kentucky economy if the two Smelters curtailed**
 5 **operations?**

6 There would be direct and indirect consequences to the Kentucky economy. The direct
 7 consequences would be the loss of the actual jobs at the two Smelters and the loss of the
 8 tax revenue provided by the Smelters and their employees. These direct losses are
 9 summarized in the table below:

Two Aluminum Smelter Plants in Western Kentucky, 2010

Direct Impacts		
1	Total jobs	1,207
2	Average annual pay per job	\$60,448
3	Total annual wages and salaries	\$72,960,643
4	Occupational taxes to Hancock and Henderson counties	\$501,100
5	Kentucky state income taxes paid by employees	\$3,575,865
6	Property and other taxes to Hancock and Henderson county governments	\$374,633
7	Property and other taxes to Hancock and Henderson county public schools	\$619,450
8	Property taxes to State of Kentucky	\$871,168
9	Corporate income and license taxes, State of Kentucky	\$350,000
10	Other taxes (fuel, sales, energy), State of Kentucky	\$2,504,769
11	Subtotal: local governments in Kentucky	\$1,495,183
12	Subtotal: Kentucky state government	\$7,301,802
13	Total Kentucky state and local governments	\$8,796,985

10 Source: RioTinto/Alan and Century, except for Kentucky income tax, which is estimated by author.

1 As shown above, Kentucky would lose the approximately 1,200 jobs of the individuals
2 that are directly employed by the Smelters. These individuals collectively earn
3 approximately \$73,000,000 in wages annually and over \$116 million annually in wages,
4 salaries, and benefits. These 1,200 jobs are highly prized manufacturing jobs. Average
5 annual pay at the Rio Tinto and Century facilities is \$60,000 per job. Company-provided
6 benefits for health insurance, unemployment insurance, worker's compensation
7 insurance, vacations, retirement, payroll taxes and the like boost this to over \$96,000 per
8 job. The companies and their employees pay about \$7.3 million in taxes to Kentucky
9 state government, and \$1.5 million to county governments and local public school
10 districts. State and local governments in Kentucky would lose nearly \$9 million in annual
11 tax revenue.

12 **Q. Have you estimated the indirect impact on the Kentucky economy that would result**
13 **if the two Smelters curtailed operations?**

14 **A.** Yes, when we add the indirect impacts to the region and the Commonwealth to the
15 analysis the impact is far more severe due to the inevitable loss of related jobs and
16 commercial and retail jobs that are in place partly to serve smelter employees. Because
17 the aluminum and related manufacturing operations serve primarily national and
18 international markets, they bring new dollars into the regional economy. In this sense, a
19 curtailment of the two Smelters would have large and predictable negative economic and
20 fiscal impacts in western Kentucky. Curtailing the smelting operations would jeopardize
21 the viability of related business activities, both upstream and downstream. Among the
22 supporting industries that would be affected are river barges (that bring in alumina),
23 engineering firms, maintenance contractors, trucking firms, and the other vendors to the

1 smelting plants. Downstream, the Smelters supply raw aluminum to rolling and
 2 extruding mills in the region, which are clustered to support wire plants, auto parts plants,
 3 can factories, and other heavy aluminum users in the region. The Southwire Rod and
 4 Cable Mill, adjacent to the Hawesville smelter, could be in immediate jeopardy if the
 5 Smelters were to curtail, since its current business model depends upon the low costs
 6 associated with direct access to molten aluminum that meets its stringent purity
 7 specifications. These are just some of the businesses that would suffer if the Smelters
 8 were to curtail operations in Western Kentucky.

9 In the below table I provide estimates of the total effects – direct plus spinoff.

**Estimated Total Annual Economic and Fiscal Impacts of Shut-down
 Two Aluminum Smelter Plants in Western Kentucky**

Total: Direct, Indirect, and Induced Impacts		
1	Lost jobs in region	4,733
2	Lost annual payroll in region	\$176,267,634
3	Lost property taxes - county governments	\$374,633
4	Lost property taxes - schools	\$619,450
5	Lost property taxes - Kentucky state government	\$871,168
6	Lost occupational taxes - local governments	\$501,100
7	Lost Kentucky state income tax receipts	\$5,136,252
8	Lost Kentucky state sales tax receipts	\$1,836,490
9	Lost other Kentucky state taxes	\$2,854,769
10	Subtotal: local governments in Kentucky	\$1,495,183
11	Subtotal: Kentucky state government	\$10,698,679
12	Total Kentucky state and local governments	\$12,193,862

10

1 The total net annual loss in the region would be 4,700 jobs and \$176 million in wages and
2 salaries. State and local governments in Kentucky would lose over \$12 million annually.

3 The Southwire rod mill employs around 300 persons, with a payroll of about \$12 million
4 annually. Should it close, the additional negative economic impact in the region would
5 be 850 jobs and \$23 million in payroll. Kentucky state and local governments would lose
6 at least an additional \$1.4 million tax revenues annually.

7 Of course there would be many other negative impacts that cannot be reasonably
8 estimated. Local real estate and retail markets would likely be depressed, unemployment
9 and crime rates would rise, retraining and social services costs would increase, and many
10 ancillary tax revenues would fall as economic activity in the region diminished.

11 **Q. What would be the long-term impact on the region if the two Smelters were to**
12 **curtail operations?**

13 **A.** My study shows that the direct impact of curtailment of Smelter operations would result
14 in the loss of about three quarters of a billion dollars in wages to the region (in 2010
15 dollars) over the next decade. The impact to local and state tax receipts would also be
16 large. The Smelters represent over \$88 million in taxes to Kentucky state and local
17 governments over the next ten years.

18 When we add the indirect impacts to the region and the Commonwealth to the analysis
19 the impact is far more severe. Over a ten year period the residents of Western Kentucky
20 would lose approximately \$1.75 billion in payroll and state and local governments would
21 lose over \$120 million in tax revenues.

22

1 Q. Does this conclude your testimony?

2 A. Yes.

3

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR A) Case No. 2011-00036
GENERAL ADJUSTMENT IN RATES)

DIRECT TESTIMONY

OF

C. WILLIAM BLACKBURN
SENIOR VICE PRESIDENT FINANCIAL & ENERGY SERVICES
& CHIEF FINANCIAL OFFICER

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

FILED: March 1, 2011

Case No. 2011-00036
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KIUC EXHIBIT 3

Big Rivers Electric Corporation
Case No. 2011-00036

Actual Historical Rural Wholesale Rate

<u>Year</u>	<u>\$/MWh including the effect of the MRSM</u>	<u>MRSM (\$/MWh)</u>	<u>\$/MWh excluding the effect of the MRSM</u>
1994	45.58		
1995	44.76		
1996	42.72		
1997 ¹	40.17		
1998	36.72		
1999	36.44		
2000 ²	36.25		
2001	35.27		
2002	35.38		
2003	34.99		
2004	35.06		
2005	35.19		
2006	35.58		
2007	35.22		
2008 ³	35.90		
2009 ⁴	37.00	4.13	41.13
2010 ⁵	37.26	7.89	45.15

Note(s):

1. Current base rate effective September 1997.
2. Revenue Discount Adjustment effective September 2001.
3. Revenue Discount Adjustment terminated September 2008.
4. In 2009, the Member Rate Stability Mechanism lowered the effective rate by \$4.13/MWh.
5. In 2010, the Member Rate Stability Mechanism lowered the effective rate by \$7.89/MWh.

RETAIL ELECTRIC SERVICE AGREEMENT

Dated as of July 1, 2009,

by and between

KENERGY CORP.

and

ALCAN PRIMARY PRODUCTS CORPORATION

12.1.2 The execution, delivery and performance of this Agreement by Kenergy have been duly and effectively authorized by all requisite corporate action.

12.2 Representations and Warranties of Alcan. Alcan hereby represents and warrants to Kenergy as follows:

12.2.1 Alcan is a corporation duly organized and validly existing and in good standing under the laws of the State of Texas, is authorized to do business in the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as it is now being conducted and as it is contemplated hereunder to be conducted during the Term hereof.

12.2.2 The execution, delivery and performance of this Agreement by Alcan have been duly and effectively authorized by all requisite corporate action.

ARTICLE 13

ADDITIONAL AGREEMENTS

13.1 Regulatory Proceedings.

13.1.1 Proceedings That Affect Rates.

(a) The Parties acknowledge and agree that

(i) Big Rivers shall have the right to seek KPSC approval for changes to the Non-Smelter Member Rates from time to time, but Big Rivers shall not seek an increase in its base rates to take effect before January 1, 2010, excluding any roll-in to Big Rivers' base rates of costs that would otherwise be recovered by the Environmental Surcharge or the FAC; and

(ii) Big Rivers will not seek to implement a wholesale rate reduction other than the Rebate to its Members under the procedures available in KRS 278.455 without the consent of Alcan;

provided that this commitment by Big Rivers will have no effect on the availability to Kenergy of the procedures in KRS 278.455 to flow-through any wholesale rate decrease to the Non-Smelter Ratepayers.

(b) Alcan shall have the right to intervene and participate in any proceeding that may affect rates at the KPSC or FERC or before any other Governmental Authority. Neither Kenergy nor Alcan will support or seek, directly or indirectly, from any Governmental Authority, including the KPSC, any challenge to or change in the rate formula set forth in this Agreement or other terms and conditions set forth herein, including the relationship of the Large Industrial Rate to amounts payable by Alcan pursuant hereto, except that any Party may initiate or intervene in a proceeding to (i) clarify, interpret or enforce this Agreement, or (ii) challenge the applicable rate for Transmission Services should those services be unbundled for purposes of calculating the Large Industrial Rate. For the avoidance of doubt, Alcan's

intervention and participation in a regulatory proceeding involving cost of service issues relating to the rates of the Non-Smelter Ratepayers shall not be considered a challenge to the rate formula.

(c) If *Commonwealth of Kentucky ex rel. Gregory D. Stumbo, Attorney General v. Public Service Comm'n and Union Light, Heat and Power Co.*, Franklin Circuit Court, C.A. No. 06-CI-269, or any Applicable Law relating thereto restricts the amounts recovered under the FAC, Appendix A, or the Environmental Surcharge Rider, then Kenergy, Alcan, Big Rivers and, if the Century Retail Agreement is then in effect, Century, shall negotiate in good faith to amend this Agreement (and other agreements entered into in connection herewith) to restore the relative rights and economic benefits thereunder. If such parties are unable to reach an agreement on such amendments, then this Section 13.1.1 shall not restrict Big Rivers from seeking KPSC approval for an increase to its base rates or an amendment to the FAC, Appendix A, or the Environmental Surcharge Rider.

13.1.2 Kenergy Retail Fee. Kenergy or Alcan may seek approval of any changes to the Retail Fee not earlier than ten years after the Effective Date of this Agreement.

13.1.3 KPSC Jurisdiction. Nothing in this Agreement shall limit or expand the jurisdiction of the KPSC over Kenergy, Big Rivers or the rates, terms and conditions of Electric Service to Alcan.

13.1.4 Notice of Material Filings. Kenergy shall provide or cause to be provided to Alcan a copy of any filing with the KPSC or FERC that seeks a change in Big Rivers' tariff, or relief authorized by KRS 278.020, KRS 278.030, KRS 278.212, KRS 278.218, KRS 278.300, KRS 278.183 or 807 KAR 5:056.

13.2 Audit Rights. Kenergy will permit Alcan to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Kenergy relating to its service to Alcan under this Agreement, including scheduled usage, meter records and billing records. Kenergy shall retain all documentation applicable to service to Alcan under this Agreement for a period of three years beyond the date of the service. Nothing in this Section 13.2 shall obligate Kenergy to disclose attorney-client privileged information.

13.3 Alcan Credit Support. Alcan shall (i) if the rating of the unenhanced, unsecured debt obligations of Alcan Parent with Standard & Poor's is not "A+" or higher (and in addition, if Alcan Parent has such a rating from Moody's, that rating with Moody's is not "A1" or higher), provide and maintain credit support in the form of a letter of credit from a bank rated "A+" or higher, or other credit support acceptable to Big Rivers and Kenergy, in an amount equal to the amounts estimated by Big Rivers to be due to Big Rivers and Kenergy with respect to Alcan's obligations under this Agreement for a period of two months and any amount which Big Rivers estimates reasonably could be due with respect to taxes relating to any sale of Energy pursuant to Section 4.13.3 as Economic Sales, Section 10.1 as Surplus Sales, Section 10.2 as Undeliverable Energy Sales or Section 10.3 as Potline Reduction Sales ("Potential Tax Liability"); and (ii) cause Alcan Parent to guarantee to Big Rivers and Kenergy the payment and performance of all obligations of Alcan under this Agreement, including Potential Tax Liability, and the other documents entered into by Alcan and its affiliates in connection with the New Transaction

COORDINATION AGREEMENT

Dated as of July 1, 2009,

by and between

BIG RIVERS ELECTRIC CORPORATION

and

ALCAN PRIMARY PRODUCTS CORPORATION

case, of the Alcan Retail Agreement ("Potential Tax Liability"); and (ii) cause Alcan Parent to guarantee to Big Rivers and Kenergy payment and performance of all obligations of Alcan under the Alcan Retail Agreement, including Potential Tax Liability, and all obligations of Alcan under the other documents entered into by Alcan and its Affiliates in connection with the New Transaction pursuant to a Guarantee Agreement executed by Alcan Parent in favor of Big Rivers and Kenergy which shall be satisfactory in form and substance to Big Rivers (the "Alcan Guarantee"). At the request of Big Rivers, Alcan will maintain the Alcan Guarantee until closure of all applicable tax years of Big Rivers. At the request of Alcan, Big Rivers will provide Alcan with information as to the amount and calculation of the estimated Potential Tax Liability and reasonably detailed documentation in support thereof.

3.7 Transmission Upgrade. As soon as reasonably practicable, Big Rivers will develop, finance and construct improvements to its transmission facilities to permit Big Rivers to transmit to its border all Base Fixed Energy.

3.8 Proceedings Affecting Rates.

(a) The Parties acknowledge and agree that

(i) Big Rivers shall have the right to seek KPSC approval for changes to the Non-Smelter Member Rates, and FERC approval of changes to the OATT, from time to time, but Big Rivers shall not seek an increase in its base rates to take effect before January 1, 2010, excluding any roll-in to Big Rivers' base rates of costs that would otherwise be recovered by the Environmental Surcharge or the FAC, and

(ii) Big Rivers will not seek to implement a wholesale rate reduction other than the Rebate to its Members under the procedures available in KRS 278.455 without the consent of Alcan;

provided that this commitment by Big Rivers will have no effect on the availability to Big Rivers' Members of the procedures in KRS 278.455 to flow-through any wholesale rate decrease to the Non-Smelter Ratepayers.

(b) Alcan shall have the right to intervene and participate in any proceeding that may affect rates at the KPSC or FERC or before any other Governmental Authority. Neither Big Rivers nor Alcan will support or seek, directly or indirectly, from any Governmental Authority, including the KPSC, any challenge to or change in the rate formula set forth in the Alcan Wholesale Agreement or the Alcan Retail Agreement or other terms and conditions set forth therein, including the relationship of the Large Industrial Rate to amounts payable by Alcan pursuant to the Alcan Retail Agreement, except that any Party may initiate or intervene in a proceeding to (i) clarify, interpret or enforce the Alcan Wholesale Agreement or the Alcan Retail Agreement, or (ii) challenge the applicable rate for Transmission Services should those services be unbundled for purposes of calculating the Large Industrial Rate. For the avoidance of doubt, Alcan's intervention and participation in a regulatory proceeding involving cost of service issues relating to the rates of the Non-Smelter Ratepayers shall not be considered a challenge to the rate formula.