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June 8, 2012

Via Federal Express

Jeff DeRouen
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

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JUN 11 2012

PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, P.S.C. Case No. 2012-00063*

Dear Mr. DeRouen:

Enclosed for filing are an original and ten copies of Big Rivers Electric Corporation's response to the intervenors' joint motion to compel. A copy of this letter and a copy of this response have been served on each of the persons listed on the enclosed service list.

Sincerely,



Tyson Kamuf

TAK/ej
Enclosures

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1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
3
4

5 In the Matter of:
6

7 Application of Big Rivers Electric Corporation)
8 for Approval of its 2012 Environmental)
9 Compliance Plan, for Approval of its Amended)
10 Environmental Cost Recovery Surcharge Tariff,) Case No. 2012-00063
11 for Certificates of Public Convenience and)
12 Necessity, and for Authority to Establish a)
13 Regulatory Account)
14

15
16 **RESPONSE OF BIG RIVERS ELECTRIC CORPORATION TO JOINT MOTION TO**
17 **COMPEL OR TO ISSUE A SUBPOENA DUCES TECUM**
18

19 Kentucky Industrial Utility Customers, Inc. (“KIUC”), Ben Taylor, Sierra Club, and the
20 Kentucky Attorney General (collectively, the “Intervenors”) have filed a joint motion (“Motion
21 to Compel”) asking the Kentucky Public Service Commission (“Commission”) to either (i)
22 require Big Rivers Electric Corporation (“Big Rivers”) to request and require the production of a
23 database from ACES Power Marketing (“ACES”) that ACES used in its planning models for this
24 case, or (ii) issue a subpoena duces tecum requiring ACES to produce the database. For its
25 response to the Motion to Compel, Big Rivers states as follows:

26 Before addressing the substance of the Motion to Compel and the numerous disingenuous
27 allegations made by the Intervenors in their Motion to Compel, Big Rivers would like to reiterate
28 that it recognizes the time constraints placed on the Commission and the Intervenors. In that
29 regard, Big Rivers has cooperated with the Intervenors’ requests to discuss their asserted needs,
30 and has made a concerted effort to provide information the Intervenors have sought in this
31 proceeding on an expedited basis. In fact, Big Rivers provided a substantial amount of model-

1 related data, including data related to the ACES model, even before it was required to file its
2 responses to the Commission Staff's and the Intervenor's requests for information:

- 3 1. On April 26, 2012, Big Rivers filed a CD containing input and output data from financial
4 models used in its cost effectiveness evaluation and PACE Global price curve data for
5 energy prices, fuel prices, and allowance prices;
- 6 2. On May 24, 2012, Big Rivers filed a CD containing input and output data and input
7 assumptions from the approximately 20 runs of the planning model that ACES performed
8 for this case;
- 9 3. On May 29, 2012, Big Rivers filed one CD containing input and output data from
10 additional financial model runs and another CD containing input and output data from the
11 PACE Global model; and
- 12 4. On May 30, 2012, Big Rivers filed a CD containing input and output data from the
13 Sargent & Lundy model.

14 Big Rivers then responded to hundreds of requests for information (over 500 if subparts are
15 counted) on June 1, 2012, and the same day, it provided the price and load shape data that ACES
16 used. Also, when KIUC raised concerns about its ability to run the ACES model, Big Rivers and
17 ACES participated in a conference call with the Intervenor in an attempt to address those
18 concerns. And Big Rivers has held numerous discussions with ACES over the past few weeks
19 seeking resolution of disclosure issues that have prevented ACES from providing information at
20 the level requested by Intervenor.

21 The Intervenor's Motion to Compel is presumably based on an alleged failure of Big
22 Rivers to properly respond to a request for information. However, none of the requests for
23 information actually asks for the database, or even uses the term "database." The requests for

1 information cited in the Motion to Compel ask for “all models and spreadsheets developed
2 containing input assumptions and output results,”¹ “all written reports, memos, emails or
3 documentation of any type that” ACES produced,² “all of the production cost modeling
4 (including input and output files) and workpapers...generated by ACES Power Marketing,”³
5 “any and all inputs that were chosen,”⁴ and documents transferred between Big Rivers and
6 ACES.⁵ Big Rivers’ responses to those requests for information are fully responsive. The CDs
7 referenced above contain all of the relevant models and spreadsheets with input assumptions and
8 output results, and all of the relevant input and output data and files, and Big Rivers’ responses
9 to the requests for information contain all other documents transferred between Big Rivers and
10 ACES.

11 The database is not an input file and was not transferred between Big Rivers and ACES.
12 Moreover, the terminology used in the requests for information makes it clear that none of the
13 requests for information asks for a fully-populated, functioning database. For example, Item 53
14 of Ben Taylor and the Sierra Club’s Initial Requests for Information requests “input and output
15 files” and “any changes to the input files that may be required to reproduce the modeling,” which
16 implies that the Intervenors are not asking for a populated database but rather expect to populate
17 their own database by processing the input data files, along with any changes to them that are
18 needed. None of that information would be required if the intent of the Intervenors was to
19 simply acquire a fully-populated, functioning database. Big Rivers provided all of the
20 information requested in the items cited by the Intervenors in their Motion. Thus, the

¹ See Item 21 of KIUC’s First Set of Data Requests.

² See Item 22 of KIUC’s First Set of Data Requests.

³ See Item 53 of Ben Taylor and the Sierra Club’s Initial Requests for Information.

⁴ See Item 15 of the Attorney General’s Initial Data Requests.

⁵ See Items 4 and 20 of KIUC’s First Set of Data Requests.

1 Intervenor have not shown that Big Rivers has failed to properly and reasonably respond to any
2 request for information.

3 Not only have the Intervenor failed to show that Big Rivers did not properly respond to a
4 request for information, they also have not shown a legitimate need for the database they seek.
5 The CDs referenced above contain all of the input data and input assumptions ACES used in its
6 models and all of the output data. In fact, the CDs contain all of the input data that was available
7 to ACES in the format provided to ACES. With that information and the software ACES used
8 (the Ventyx/ABB Planning and Risk model), a modeler competent with the Ventyx/ABB model
9 would have everything needed to run the models and to validate ACES' results. The
10 Intervenor's statements in their Motion to Compel that without the database, "there is no way for
11 the parties or the Commission to recreated the modeling performed by ACES;"⁶ that without the
12 database it would be "impossible for the Commission to determine with certainly whether Big
13 Rivers' Application meets the standards set forth in KRS 278.020 and KRS 278.183;"⁷ that
14 without the database, the Ventyx/ABB model is "useless;"⁸ and that without the database,
15 "Intervenor cannot run the Ventyx model"⁹ are simply untrue. It is Big Rivers' understanding
16 that the information it has provided is similar to the information provided by Louisville Gas and
17 Electric Company and Kentucky Utilities Company in their recent environmental compliance
18 plan cases in that they provided input data files and control parameters, but the intervenors were
19 on their own to process those files and populate a database using their own licensed versions of
20 the STRATEGIST software.

⁶ See Motion to Compel at 4.

⁷ See Motion to Compel at 2.

⁸ See Motion to Compel at 5.

⁹ See Motion to Compel at 5.

1 The Intervenors’ real complaint is that the information Big Rivers has provided is
2 “formatted differently” than the database format.¹⁰ The Intervenors have the inputs that ACES
3 had, and they can have a competent modeler put the inputs into the proper format. Thus, the
4 ACES database is superfluous because the necessary input data required to populate such a
5 database has been provided. The fact that the Intervenors do not want to have to do work¹¹ or to
6 pay a modeler to do the work to populate the database with inputs the Intervenors already have is
7 insufficient to justify ordering Big Rivers to somehow require ACES to produce the database.

8 Nevertheless, while Big Rivers and ACES certainly do not agree that the Intervenors
9 have any entitlement to the database, due to the time constraints of this proceeding, Big Rivers
10 has been working constantly with ACES since Monday to overcome obstacles to ACES
11 providing the Big Rivers database to the qualifying Intervenors. Contrary to the assertions of
12 Intervenors, this process is quite complex. ACES is willing to provide the database (subject to
13 the conditions listed below); however, ACES has no right under its license with Ventyx/ABB to
14 produce the database. Also, the ACES database contains highly sensitive information from a
15 number of utilities that ACES cannot give to the Intervenors, and at this time, ACES believes
16 that only Ventyx/ABB can strip out the non-Big Rivers information. Given those two
17 impediments, ACES is willing to provide the Big Rivers information contained in the database,
18 subject to certain conditions, including but not limited to conditions such as:

- 19 1. The Intervenors will have to agree to withdraw their Motion to Compel and to pay for
20 any services that ACES provides to or on behalf of the Intervenors and all other costs
21 associated with the Intervenors’ request for the database, including Ventyx/ABB’s costs
22 of stripping out of the database the non-Big Rivers information.

¹⁰ See Motion to Compel at 4.

¹¹ See Motion to Compel at 6.

- 1 2. ACES will then provide its database to Ventyx/ABB for Ventyx/ABB to strip out the
2 non-Big Rivers information.
- 3 3. Ventyx/ABB must agree to strip out the non-Big Rivers information and to supply the
4 stripped-down database to ACES for ACES to confirm that only the Big Rivers
5 information remains in the database.
- 6 4. An Intervenor that wants the database must obtain all approvals and licenses from
7 Ventyx/ABB necessary for ACES to provide the stripped-down database to a modeler for
8 the Intervenor on terms that are consistent with the licenses of ACES and the modeler;
9 and the Intervenor and the Intervenor's modeler must sign appropriate agreements with
10 ACES, including a confidentiality agreement and an agreement limiting the use of the
11 database to this proceeding, requiring the Intervenor to destroy the database and all
12 derivatives of the database upon the conclusion of this proceeding, and allowing ACES to
13 claw back any information it inadvertently produces that is outside the scope of this
14 proceeding.
- 15 5. ACES will then supply (or have Ventyx/ABB supply) the stripped-down database to a
16 modeler for the Intervenor.

17 Given ACES' willingness to provide the database under these reasonable conditions, the
18 Commission should deny the Intervenor's Motion to Compel as moot.

19 In their Motion to Compel, the Intervenor's alternatively ask the Commission to issue a
20 subpoena duces tecum pursuant to KRS 278.320 to require ACES to produce the database. KRS
21 278.320 provides, in pertinent part, that the "[C]ommission and each of the commissioners may
22 issue subpoenas, tecum, and all necessary process in proceedings brought before commission,

1 and such process shall extend to all parts of the state.¹² ACES has no office or agent in the
2 Commonwealth of Kentucky. As such, the Intervenor’s request for the Commission to issue a
3 subpoena duces tecum to ACES should be denied.

4 Finally, the Motion to Compel is replete with false or baseless allegations that Big Rivers
5 is compelled to address. The Intervenor’s imply or state a number of times in the Motion to
6 Compel that Big Rivers has not been transparent because Big Rivers has not produced the
7 database.¹³ However, as explained above, in the CDs referenced above, Big Rivers provided a
8 substantial amount of information and data to the Intervenor *even before Big Rivers’ responses*
9 *to the requests for information were due*, including inputs and outputs from Big Rivers’ financial
10 model, inputs and outputs from Sargent & Lundy’s model, inputs and outputs from PACE
11 Global’s model, and inputs and outputs from ACES’ model. Moreover, Big Rivers provided all
12 the information that a modeler competent with the Ventyx/ABB model would need to run the
13 model and verify ACES’ results.

14 Similarly, the Intervenor’s allege that Big Rivers somehow failed to properly respond to
15 Item 4 of KIUC’s First Set of Data Requests.¹⁴ The Intervenor’s have not justified this statement
16 and have pointed to no information that Big Rivers failed to provide and that is responsive to the
17 request (noting that the ACES database is not responsive to this request). The Intervenor’s also
18 imply that Big Rivers’ alleged failure to produce information shows Big Rivers is trying to
19 obstruct the Intervenor’s from running the Ventyx/ABB model. This is patently incorrect. As
20 noted previously, Big Rivers has been making a concerted and on-going effort since April to
21 provide information to the Intervenor’s, including information aimed at helping the Intervenor’s to
22 acquire and run the Ventyx/ABB model. Most recently, on the June 4 conference call, Big

¹² KRS 278.320 (emphasis added).
¹³ See Motion to Compel at 2, 3, 4, 5, 6, 7.
¹⁴ See Motion to Compel at 6, n. 3.

1 Rivers offered to assist the Intervenors with any technical questions they had about the
2 Ventyx/ABB model. Additionally, Big Rivers and ACES have been working continuously since
3 the call to resolve obstacles to providing additional material to assist the Intervenors. This effort
4 has resulted in ACES formulating the conditions, listed above, under which it can provide the
5 Big Rivers database without violating its legal obligations to others.

6 The Intervenors also allege that Big Rivers' responses to the Intervenors' requests for
7 information were "obstructive and evasive."¹⁵ The only basis for this statement is that Big
8 Rivers "has failed to require or request ACES to produce the" ACES database.¹⁶ However, Big
9 Rivers did in fact ask ACES if ACES would produce the database. Also, contrary to the
10 Intervenors' allegation that Big Rivers should be able to require ACES to produce the model
11 because Big Rivers and ACES are affiliates,¹⁷ Big Rivers and ACES are not affiliates, and Big
12 Rivers has neither the ability nor the authority to require ACES to turn over its database.
13 Although Big Rivers did not previously provide the database, Big Rivers did provide (in the CDs
14 referred to above) all of the data that a modeler competent with the Ventyx/ABB model would
15 need to run the model and to verify ACES' results. Big Rivers and ACES even participated on a
16 conference call with the Intervenors earlier this week in an attempt to address their concerns.
17 Clearly, Big Rivers' actions are not "obstructive and evasive."

18 There are additional areas of the Motion to Compel where the Intervenors wrongly imply
19 that Big Rivers has not provided sufficient information. For example, on page 2 of the Motion to
20 Compel, the Intervenors suggest that they need (and thus imply that they do not have):

21 (1) the company's estimate (or bid) for their environmental upgrade and the
22 estimate (or bid) for replacement capacity; (2) a logically structured modeling
23 analysis in which the Commission or intervenors may examine both input

¹⁵ See Motion to Compel at 2.

¹⁶ See Motion to Compel at 2.

¹⁷ See Motion to Compel at 4 ("ACES is not an unaffiliated entity...").

1 assumptions and output results; (3) sensitivity analyses that demonstrate robust
2 conclusions, including explicit sensitivity inputs and outputs; (4) a clearly defined
3 analytical framework for comparing the results of model runs; and (5) a
4 justification of the project based on model results.¹⁸
5

6 However, Big Rivers has provided all of that information in Big Rivers' application filed in this
7 proceeding and in the CDs referenced above. Later on page 2 of the Motion to Compel, the
8 Intervenor state that they need "information regarding input and output results, the modeling
9 and analytical structure utilized, which sensitivities were used, including inputs and outputs, and
10 how those sensitivities were selected."¹⁹ Big Rivers has also provided this information, in its
11 application filed in this matter, in the CDs referenced above, and in a number of its responses to
12 the Commission Staff's and the Intervenor's initial requests for information, including but not
13 limited to Items 2, 9, 11, 13, 15, 16, 17, 19, 20, 24, 25, 26, 29, 39, and 40 of the Commission
14 Staff's First Request for Information; Items 6, 7 14, 17, 24, 25, 26, 29, 32, 33, 34, 36, 37, 43, 47,
15 and 54 of KIUC's First Set of Data Requests; Items 1, 4, 5, 7, 13, 17, 18, 22, 23, 35, 39, 47, 50,
16 51, 55, 56, 58, 59, 65, 66, 67, 68, 76, 84, 92, 94, and 96 of the Attorney General's Initial Data
17 Requests; and Items 2, 9, 10, 16, 19, 20, 21, 23, 26, 27, 28, 29, 30, 31, 35, 36, 38, 41, 46, 47, 50,
18 51, 52, and 55 of Ben Taylor and the Sierra Club's Initial Requests for Information.

19 Lastly, on page 7 of the Motion to Compel, the Intervenor state, "The continued lack of
20 critical data necessary to this case is a result of Big Rivers' failure to provide [a witness to
21 provide information regarding assumptions used by ACES]."²⁰ There is no lack of data because
22 Big Rivers has provided it all on the CDs referenced above, just not in the format the Intervenor
23 complain about. Also, Big Rivers has provided a witness to discuss ACES' work (Brian
24 Azman), and he did so in Big Rivers' responses to the initial requests for information.

¹⁸ See Motion to Compel at 2.

¹⁹ See Motion to Compel at 2.

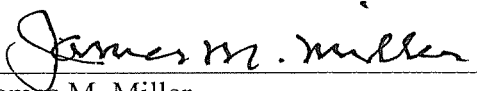
²⁰ See Motion to Compel at 7.

1 The Intervenors have not shown that Big Rivers has failed to properly and reasonably
2 respond to any request for information or that there is any information they need to run the
3 Ventyx/ABB model that they do not have. They just do not have it in the format they want, and
4 instead of paying a modeler to put the information in the proper format, they want to force ACES
5 to give them ACES' product for free. Those are more than sufficient grounds for the
6 Commission to deny the Motion to Compel; however, since ACES has agreed to provide the
7 database subject to the conditions noted herein, the Motion to Compel should be denied as moot.

8 WHEREFORE, Big Rivers respectfully requests that the Commission deny the Motion to
9 Compel as moot.

10 On this the 8th day of June, 2012.

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