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Via Overnight Mail

May 18, 2012

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

RECEIVED

MAY 21 2012

**PUBLIC SERVICE
COMMISSION**

Re: Case No. 2012-00119

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of the COMMENTS OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. 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 these documents of file.

Very Truly Yours,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

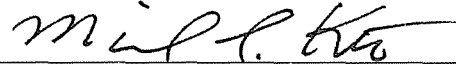
BOEHM, KURTZ & LOWRY

MLKkew
Attachment

cc: Certificate of Service
Quang Nyugen, Esq.
David C. Brown, 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 18th day of May, 2012 to the following



Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.

Honorable James M Miller
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KY 42302-0727

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF: THE APPLICATION OF BIG :
RIVERS ELECTRIC CORPORATION FOR APPROVAL : Case No. 2012-00119
TO ISSUE EVIDENCES OF INDEBTEDNESS :

COMMENTS OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. TO
BIG RIVERS PROPOSED FINANCING

On May 10, 2012, Kentucky Industrial Utility Customers, Inc. (“KIUC”) moved to amend the Procedural Schedule to permit the filing of KIUC comments on the Application in this case no later than May 18, 2012. By Response dated May 11, 2012, Big Rivers Electric Corporation (“Big Rivers”) stated it did not oppose the Motion to Amend with respect to the filing of comments rather than testimony, but reserved the right to file a prompt response if it felt such response was necessary. The Commission has sustained the Motion to Amend by Order dated May 17, 2012, and KIUC offers these comments for the Commission’s consideration.

KIUC takes no position on whether the proposed refinancing of a portion of the RUS A Note through CoBank and CFC should be approved. However, we do make the following comments intended to aid the Commission in its review of this important matter. These comments are based upon what we believe to be the best interests of all ratepayers, as well as the specific interests of the two Smelters, Alcan and Century, including the ability of the Commission to exercise its statutory obligation to ensure

that the Smelter rates remain just, reasonable and non-discriminatory, and the impact of the refinancing on the continuing viability of the Smelters. Special attention should be paid to Sections 2.08 (b) and 9.06 of the CoBank Secured Credit Agreement. The CoBank provisions appear to impose an automatic 2% interest rate increase on the \$235 million CoBank loan (\$4.7 million annually, or \$5.8 million revenue requirement including a 0.24 TIER) if either Smelter terminates its power contract after the one year notice provided for in those contracts. It also appears that these provisions would increase the interest rate on the CoBank loan by 2% if the Commission, sua sponte, modifies the Smelter contracts in a way that materially adversely affects Big Rivers.

1. Assuming that the actual interest rates realized on these loans are closely aligned with the indicative interest rates that Big Rivers presents in its Application, there will be a reduction in annual interest costs of about \$1.4 million. There will also be a lengthening of the debt term from nine years to twenty years. Because the aggregate amount of new CFC and CoBank debt is greater than the amount of RUS debt being retired and because Big Rivers will again pay 5.75% interest on the \$35 million being clawed back from RUS to replenish the Transition Reserve, KIUC estimates the interest rate savings will be approximately 0.24%, which will not result in a material reduction in rates.

While the claw-back of the \$35 million Transition Reserve is the prerogative of Big Rivers' management, this action will increase interest expense and correspondingly decrease Net Margins by approximately \$2.0 million per year. If not for the claw-back of the Transition Reserve, which is a component of the proposed financing, the decrease in Big Rivers' interest expense would be approximately \$3.4 million per year instead of \$1.4 million per year. The claw-back will increase the Company's revenue requirement by \$2.5 million per year, consisting of the \$2.0 million in additional interest expense plus another \$0.5 million for the related TIER requirements.

2. The Application does not clearly address how the 20 year term loans that Big Rivers seeks to implement, primarily for refinancing purposes, will affect its ability to finance the \$283 million in capital expenditures (based on preliminary estimates) that it proposes to make over the next few years

for environmental compliance. Big Rivers believes it will be able to obtain financing of these expenditures at an interest rate of 5.50%¹, and further that it will be able to refinance its \$58.8 million PCB issue at an interest rate of 4.50%.² Big Rivers' interest rate calculations appear to be predicated on the assumptions that neither Smelter will provide a notice of termination and that Big Rivers will continue to carry an investment grade credit rating. Big Rivers' reliance on these assumptions may prove correct, but if they are not, the cost of all future financing may increase significantly.

3. The interest rates provided in the Application are indicative only. Big Rivers has stated that if the rates are higher than expected, it can simply decline to proceed with the transactions and find an alternative means to meet the \$60 million RUS repayment obligation on October 1, 2012.³ The Application is not clear that Big Rivers would in fact decline to proceed if the indicative rates do in fact turn out to be higher.

4. Under Section 2.08 (b) of the CoBank Secured Credit Agreement, the interest rate on the term loan would increase by 2% if there is an Event of Default.⁴ Under Section 9.06, an Event of Default would occur if a Material Direct Serve Contract representing over 20% of Big Rivers prior year revenues (this would include a Smelter contract) is terminated even when the termination occurs pursuant to the terms of the agreement. Under the current Smelter contracts, termination can occur after one year notice. A 2% increase on the \$235 million CoBank loan is \$4.7 million, or \$5.8 million including a 0.24 TIER. Such a \$5.8 million increase in revenue requirements is substantially larger than the projected interest savings from this refinancing and would come exactly at the wrong time—immediately after a Smelter contract is terminated and significant additional rate pressure is likely placed on the remaining ratepayers. In view of Big Rivers' forecast of significant increases in its power rates to the Smelters in 2012-16, there is risk that the resultant interest rate under the proposed CoBank loan will exceed the interest rate under the current RUS loan in the next several years.

¹ Big Rivers Response to KIUC Second request, Item 16


² Big Rivers Response to KIUC Second Request, Item 14

³ Big Rivers Response to KIUC Second Request, Item 1.

⁴ CoBank Secured Credit agreement, Section 2.08(b).

Furthermore, under Sections 2.08 (b) and 9.06 of the CoBank loan agreement, the 2% interest rate increase (\$5.8 million) would occur if the Commission, sua sponte, amended or modified either Smelter contract in a way which had a material adverse impact on Big Rivers. This loan provision should not act as impediment to any independent Commission action seeking to modify or amend either Smelter contract, if such modification or amendment was in the public interest or required by law. Under Kentucky law, utility contracts are "rates" and are subject to the continuing and exclusive jurisdiction of the Commission to ensure that they are just, reasonable and non-discriminatory under KRS 278.030 and 278.170.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

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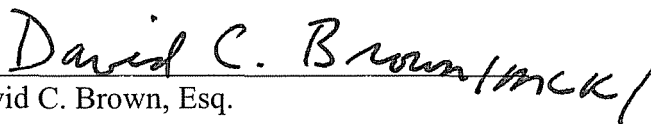
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CORPORATION**

May 17, 2012