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May 22, 2012

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

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MAY 23 2012

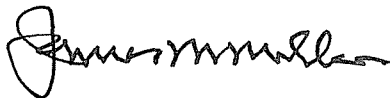
PUBLIC SERVICE
COMMISSION

RE: *In the Matter of: Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness, PSC Case No. 2012-00119*

Dear Mr. DeRouen:

Enclosed for filing on behalf of Big Rivers Electric Corporation ("Big Rivers") are an original and ten copies of Big Rivers' response to the May 18, 2012 Comments of Kentucky Industrial Utility Customers, Inc. ("KIUC"). I certify that copies of this letter and Big Rivers' response to the May 18, 2012 Comments of KIUC have been served on each of the persons shown on the attached service list.

Sincerely yours,



James M. Miller

Enclosures

cc: Mark A. Hite
Albert Yockey

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BIG RIVERS ELECTRIC CORPORATION
PSC CASE NO. 2012-00119

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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MAY 23 2012

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)
CORPORATION FOR APPROVAL TO) Case No. 2012-00119
ISSUE EVIDENCES OF INDEBTEDNESS)

RESPONSE OF BIG RIVERS ELECTRIC CORPORATION
TO MAY 18, 2012 COMMENTS OF KENTUCKY INDUSTRIAL
UTILITY CUSTOMERS, INC.

Big Rivers Electric Corporation ("*Big Rivers*"), through counsel, makes the following response to the May 18, 2012 Comments of Kentucky Industrial Utility Customers ("*KIUC*") filed in this matter on May 18, 2012 (the "*KIUC Comments*").

Big Rivers has been in discussions with CoBank ACB ("*CoBank*") since May 8, 2012, regarding the language in Section 9.06 of the Secured Credit Agreement, which was the principal focus of the *KIUC Comments*. Big Rivers and CoBank agreed that the language in those sections making release or termination of a Big Rivers Wholesale Power Contract or Material Direct Serve Contract an Event of Default under the described circumstances (which would automatically increase the interest rate on the CoBank Term Loan by 2%) was grammatically awkward, did not reflect the intent of the parties, and needed to be revised.

Yesterday, Big Rivers and CoBank finalized redrafting of that section. Attached to this Response is the page showing Section 9.06 from the CoBank Secured Credit Agreement as presented to the Public Service Commission ("*Commission*"), with the agreed changes identified. The revised language clarifies

that it is not an Event of Default if a smelter contract expires by its own terms, or is terminated pursuant to the smelter plant closure notice referred to in the KIUC Comments. This language will appear in the execution version of the CoBank Secured Credit Agreement.

Big Rivers plans to reestablish the \$35 million Transition Reserve with funds from the CoBank Term Loan at the closing of the proposed borrowings.¹ The Transition Reserve was created by Big Rivers in connection with a number of transactions that were approved by the Commission in 2009, including the power purchase arrangements by which the smelters returned to the Big Rivers wholesale system.² As the Commission noted in its March 6, 2009 order in that case (pages 11-12), the purpose of the Transition Reserve is to provide Big Rivers a source of cash in the event of a smelter closure. Since April 1, 2011, those funds have essentially been “invested” at 5.75% because Big Rivers prepaid the funds on the RUS Series A Note, but retained the ability to “claw back” that amount in less than a year upon receipt of a smelter closure notice.

KIUC correctly notes that there is a cost associated with maintaining that “emergency fund”, as opposed to paying \$35 million on Big Rivers’ debt, but gives no reason to question Big Rivers’ decision to maintain the Transition Reserve. In fact, KIUC acknowledges that reestablishment of the Transition Reserve is within Big

¹ Testimony of Mark A Hite, Exhibit 15, page 14.

² *In the Matter of: The Applications of Big Rivers Electric Corporation for: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (2) Approval of Transactions, (3) Approval to Issue Evidences of Indebtedness, and (4) Approval of Amendments to Contracts, and of E.ON US LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc. for Approval of Transactions*, PSC Case No. 2007-00455, order dated March 6, 2009.

Rivers' management prerogative. As explained by Mark Hite in the Application in this matter, if the \$35 million is paid on RUS debt in connection with the proposed financing transaction rather than used to reestablish the Transition Reserve, it cannot be accessed as contemplated for use as an emergency fund.³

KIUC implies that Big Rivers, in connection with its decision to issue the evidences of indebtedness proposed in this matter, did not properly consider the impact on the cost and availability of financing in the future if a smelter gives notice of closure. As Big Rivers stated in its responses to several KIUC information requests, it currently has multiple options at reasonable rates for its anticipated near-term borrowing requirements.⁴ A smelter closure could affect the availability of and the cost of borrowing for Big Rivers, but could also affect Big Rivers' future borrowing needs. The financing transactions proposed by Big Rivers in this proceeding immediately improve Big Rivers' financial condition by lowering the cost of a substantial portion of its long-term debt, replacing the important \$50 million CoBank revolving credit facility that expires July 16, 2012, providing for the scheduled \$60 million (due by October 1, 2012) and \$200 million RUS Series A Note principal payments (due by January 1, 2016), and providing \$60 million for capital expenditures.

Utilities in Kentucky routinely seek approval to issue evidences of indebtedness where the interest rate on proposed debt is indicative until closing. Big Rivers did exactly that when it sought and obtained Commission approval to

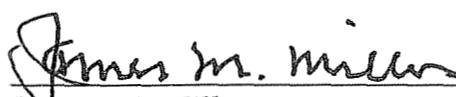
³ Testimony of Mark A Hite, Exhibit 15, page 14-15.

⁴ Responses of Big Rivers to KIUC First Information Requests, Items 21, 22 and 23, and Second Information Requests, Items 8 and 16.

refund a series of pollution control debt in 2010.⁵ KIUC's concern that Big Rivers may act contrary to its financial best interests when the time comes for Big Rivers to accept or reject the final rates for the new debt is unexplained and unfounded. Big Rivers is anxious to make the scheduled June 29, 2012, closing because the final CoBank and CFC rates will be based on Treasury rates that are currently at historic lows.

KIUC expressly takes no position in the KIUC Comments about whether or not the relief requested by Big Rivers should be granted. The appropriateness of the relief sought by Big Rivers, including the revisions to the CoBank Secured Credit Agreement, is strongly supported by the unchallenged evidence in the record, and should be granted in an order issued no later than May 25, 2012, so Big Rivers can achieve the scheduled June 29, 2012, closing and the financial benefits associated with the proposed financing transactions.

Respectfully submitted, this 22d day of May, 2012.



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⁵ Application of Big Rivers Electric Corporation to Issue Evidences of Indebtedness, P.S.C. Case No. 2009-00441.

SECURED CREDIT AGREEMENT

BETWEEN

BIG RIVERS ELECTRIC CORPORATION
AS BORROWER,

THE SEVERAL LENDERS FROM TIME TO TIME PARTIES
HERETO,

AND

COBANK, ACB,
AS ADMINISTRATIVE AGENT, LEAD ARRANGER AND BOOK RUNNER,

DATED AS OF _____, 2012

(b) CoBank's commitment to lend to the Borrower under any other agreement existing between CoBank and the Borrower as of the Closing Date shall be terminated due to a default thereunder.

SECTION 9.06 Member Wholesale Power Contracts and Material Direct Serve Contracts. In the course of one fiscal year of the Borrower (i) any one or more Members shall default in the performance of any payment obligations under its or their Member Wholesale Power Contracts or any one Person party to a Material Direct Serve Contract shall default in its performance of any payment obligations under such Material Direct Serve Contract, where the aggregate principal amount of such default or defaults exceeds 20% of the Borrower's prior fiscal year's revenues and such default or defaults have continued for thirty-five (35) days beyond any applicable cure period, (ii) any one or more Members or any one Person party to a Material Direct Serve Contract shall contest the validity or enforceability of its or their Member Wholesale Power Contracts or Material Direct Serve Contracts, as the case may be, representing, individually or in the aggregate, 20% or more of the Borrower's prior fiscal year's revenues by filing any judicial or regulatory action, suit or proceeding seeking as a remedy the declaration of the unenforceability or the material modification of its or their Member Wholesale Power Contracts or Material Direct Serve Contracts, as the case may be, and such judicial or regulatory body shall have issued a final and non-appealable order either (A) declaring unenforceable all or a material portion of such Member Wholesale Power Contracts or such Material Direct Serve Contracts, as the case may be, representing, individually or in the aggregate, 20% or more of the Borrower's prior fiscal year's revenues or (B) adversely modifying any material portion of such Wholesale Power Contracts or Material Direct Serve Contracts representing, as the case may be, individually or in the aggregate, 20% or more of the Borrower's prior fiscal year's revenues, or (iii) ~~release or termination of the~~ Borrower's Member Wholesale Power Contracts or Material Direct Serve Contracts together representing 20% or more of the Borrower's prior fiscal year's revenues shall be released or terminated, provided, however, that no such Event of Default shall be deemed to exist under this Section 9.06(iii) if (A) a smelter retail service contract (and the corresponding Material Direct Serve Contract) expires in accordance with its terms or (B) a smelter retail service contract (and, consequently, the corresponding Material Direct Serve Contract) is terminated as a result of the election of the counterparty to such smelter retail service contract in accordance with the terms and conditions of Section 7.3.1 (in effect as of the Closing Date) of the applicable smelter retail service contract (and not as the result of any action or consent of the Borrower or any of its members, except that, for the avoidance of doubt, the Borrower or the applicable member shall be entitled to terminate the corresponding Material Direct Serve Contract following the termination of the underlying smelter retail service contract pursuant to Section 7.3.1 thereof).

SECTION 9.07 Invalidity of Loan Documents. Any Loan Document shall be deemed invalid by order, judgment or decree of any Governmental Authority or arbitrator, or the Borrower shall assert that any such Loan Document is invalid.

SECTION 9.08 Indenture. An Event of Default (as defined in the Indenture) shall exist or the Notes shall cease to be secured under the terms of the Indenture.

ARTICLE 103 REMEDIES UPON DEFAULT

SECTION 10.01 Remedies.