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July 1st, 2013

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

Re: Docket CASE NO. 2013-00199

Dear Mr. Derouen:

Enclosed for the filing are an original and ten copies of the *PETITION OF BEN TAYLOR AND SIERRA CLUB FOR FULL INTERVENTION* and a certificate of service in docket 2013-00199 before the Kentucky Public Service Commission. This filing contains no confidential information.

Sincerely,

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

In the Matter of:

**APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION, INC.)
FOR AN ADJUSTMENT OF RATES)**

CASE NO. 2013-00199

**PETITION OF BEN TAYLOR AND
SIERRA CLUB FOR FULL INTERVENTION**

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11)(b), Ben Taylor and Sierra Club (collectively “Movants”), petition the Commission for full intervention in this case. The Movants have expertise in the complex issues likely to be raised in this application for a general adjustment in rates filed by Big Rivers Electric Corporation (“Big Rivers”). The Movants also have knowledge concerning the operations and rates of Big Rivers based on the Movants’ participation in two recent cases involving Big Rivers.¹ Accordingly, Movants will present issues and develop facts that will assist the Commission’s review of this application. Moreover, the Movants have specialized interests in this proceeding that are not adequately represented by the existing parties.

¹ *In re Application of Big Rivers Electric Cooperative for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2012-00063); *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates* (Docket No. 2012-00535).

On May 17, 2013, Big Rivers filed a notice of intent to file an application for a general adjustment in rates.² This notice follows on the heels of Big Rivers' pending request for a rate increase in case number 2012-00535.³

Big Rivers seeks the first rate increase primarily because of the termination of its contract with its largest customer, the Century aluminum smelter in Hawesville. According to Big Rivers, losing the contract with the Century smelter will result in a \$63 million revenue shortfall that the Company will experience in addition to a \$11.5 million shortfall that it is already facing, due principally to declining off-system sales from its coal-fired generating units.⁴ Based on Big Rivers' application, losing the Century smelter as a customer would reduce Big Rivers' peak load by 482 MW.

Soon after Big Rivers filed its first rate increase request, the smelter in Sebree announced that it too will be terminating its contract with Big Rivers.⁵ Century Aluminum recently acquired the Sebree smelter from Rio Tinto Alcan.⁶ The Sebree smelter is Big Rivers' second-largest customer, representing 368 MW of peak load,⁷ which is approximately 24% of the monthly peak

² *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates*, Notice of Intent, received May 20, 2013 (Docket No. 2013-00199).

³ *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates* (Docket No. 2012-00535).

⁴ Direct Testimony of Mark Bailey, p.8, in Docket No. 2012-00535.

⁵ See, e.g., *Rio Tinto Alcan May Shutter Sebree Aluminum Plant*, CHICAGO TRIBUNE, Feb. 7, 2013, available at http://articles.chicagotribune.com/2013-02-07/news/sns-rt-metals-aluminumriotinto11n0b7hkq-20130207_1_rio-tinto-alcan-sebree-aluminum; *Rio Tinto Alcan Aluminum Smelter Gives 12-Month Notice to Power Supplier*, EVANSVILLE COURIER & PRESS, Feb. 1, 2013, available at <http://www.courierpress.com/news/2013/feb/01/rio-tinto-alcan-aluminum-smelter-gives-12-month-no/>.

⁶ Press Release, Century Aluminum Completes Acquisition of Sebree, KY Smelter, Century Aluminum (June 3, 2013), available at <http://investor.shareholder.com/cenx/releasedetail.cfm?ReleaseID=768660>; *Century Aluminum to Buy Alcan's Sebree Smelter*, EVANSVILLE COURIER & PRESS, May 23, 2013, available at <http://www.courierpress.com/news/2013/apr/29/century-aluminum-buy-alcans-sebree-smelter/>.

⁷ Direct Testimony of John Wolfram, at p.6, in Docket No. 2012-00535.

load in 2013, and will rise to approximately 35% of monthly peak load if the Hawesville smelter is no longer part of Big Rivers' system.⁸ Big Rivers recently projected that the Sebree smelter would represent 48% of total MWh load in 2014, the first full calendar year after termination of the contract with the Hawesville smelter.⁹ According to these load projections, losing the Sebree smelter as a customer would mean the loss of a significant percentage of Big Rivers' total load.

Since no application has yet been filed in this case, the revenue shortfall that would result from termination of the contract with the second smelter is unknown. Nonetheless, based on press reports and the response to termination of the contract with the Hawesville smelter,¹⁰ the Movants anticipate that Big Rivers will seek another substantial increase in its rates to reflect the loss of revenues from the Sebree smelter.

In addition to the potential loss of its two smelter customers, Big Rivers faces significant challenges in the electricity marketplace from competing low-cost resources such as demand-side management and natural gas and renewable generation. Existing and expected federal regulations under the Clean Air Act and Clean Water Act will add to the cost of Big Rivers' generation. Sargent & Lundy, the consultants hired by Big Rivers, estimated that it would cost \$505.8 million for Big Rivers to implement the recommended environmental compliance plan; and since Sargent & Lundy omitted costs to comply with the forthcoming effluent guidelines and any carbon pollution standards, the total costs would likely exceed \$505.8 million¹¹ Big Rivers faces a new reality involving a significantly lower load, a growing set of costs to its existing

⁸ Direct Testimony of Dr. Frank Ackerman, at p. 6, in Docket No. 2012-00535.

⁹ Application of Big Rivers Electric Company, Tab 31, Attachment 4, in Docket No. 2012-00535. The company projected that the remaining smelter would represent 3,159,206 MWh load out of 6,551,701 MWh total load in 2014.

¹⁰ See *supra* note 5.

¹¹ Direct Testimony of Dr. Frank Ackerman, at p. 13, in Docket No. 2012-00535.

generation fleet, an expanding set of alternative resources available on the market to service its customers, and an increasingly complex set of factors relevant to identifying the lowest cost mix of supply- and demand-side resources for meeting its customers' needs. The organizational Movant, on behalf of its members, has gained significant expertise on these issues in proceedings in Kentucky and throughout the country, and seeks to bring such expertise to this proceeding.

The Commission has granted the Movants permission to intervene in two prior, related cases involving Big Rivers: the 2012 Certificate for Public Convenience and Necessity ("CPCN") proceeding, case number 2012-00063;¹² and the first application for a rate increase, case number 2012-00535.¹³ Movants seek intervention here in order to address similar issues and offer similar expertise that will assist the Commission in reviewing this rate application. Given that the Commission has previously permitted the Movants to intervene in cases filed by Big Rivers that involve similar issues, the Commission should also allow the Movants to intervene in this related case.

I. THE MOVANTS

Movants seek full intervention in order to bring to this proceeding their expertise in developing plans for providing a lower cost and cleaner energy future and to ensure that their interests in lower cost and cleaner energy options are adequately represented. Movant Ben Taylor is a customer of Kenergy Corporation, which is a Big Rivers distribution cooperative. Mr. Taylor is a long-time Sierra Club member and has a deep interest in seeing Big Rivers

¹² *In re Application of Big Rivers Electric Cooperative for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2012-00063).

¹³ *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates*, Order dated April 17, 2013, (Docket No. 2012-00535).

transform to meet the new reality in a way that is both low cost and cleaner. His address is as follows:

Ben Taylor
419 Yelvington Grandview Road
Maceo, KY 42355-9749

Sierra Club is one of the oldest conservation groups in the country with over 625,000 members nationally in sixty-four chapters in all fifty states, the District of Columbia, and Puerto Rico. Sierra Club has almost 5,000 members in Kentucky, which are part of the Cumberland Chapter. The Cumberland Chapter's address is:

Sierra Club
Cumberland Chapter
P.O. Box 1368
Lexington, KY40588-1368

II. LEGAL BACKGROUND

In recent Orders, the Commission has noted that permissive intervention is appropriate if both the statutory and regulatory limitations on intervention are met. First, KRS 278.040(2) requires that the person seeking intervention have an interest in the rates or service of the utility in question. A person who is a customer of the utility filing the case satisfies the first statutory condition.¹⁴ Second, a person must have a special interest not adequately represented by the existing parties or be likely to present issues or develop facts that will assist the Commission in reviewing the case; and intervention cannot unduly complicate or disrupt the proceedings.¹⁵ The Commission's regulations provide that:

The commission shall grant a person leave to intervene if the commission finds that a person has a special interest in the case that is not otherwise adequately

¹⁴ *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates*, Order dated April 17, 2013 at 5-6 (Docket No. 2012-00535).

¹⁵ *Id.* at 5.

represented **or** that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings

807 K.A.R. 5:001 § 4(11)(b) (emphasis added).

In short, the Commission should grant intervention if the Movants (1) have an interest in the proceeding, such as an interest as customers, and (2) either possess knowledge and expertise that will assist the Commission or have an interest not adequately represented by the existing parties. As explained below, Movants satisfy the requirements for intervention.

III. THE COMMISSION SHOULD GRANT MOVANTS FULL INTERVENTION.

A. This Petition to Intervene is Timely Filed.

As an initial matter, this request to intervene is timely. On May 17, 2013, Big Rivers filed its notice of intent to file an application for adjustment of general rates. Big Rivers has not yet filed its application and a scheduling order has not yet been issued. Movants submit this petition for intervention on July 1, 2013. Given that this motion is being submitted prior to the filing of Big Rivers' application, and well before discovery has closed or testimony has been submitted, the motion is timely.

B. Movants Will Present Issues and Develop Facts That Will Assist the Commission in Fully Considering the Matter Without Unduly Complicating or Disrupting the Proceedings.

The Commission should grant Movants full intervention as they are “likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.” 807 K.A.R. 5:001 § 4(11)(b). This proceeding will likely raise complex questions regarding whether any rate adjustment is just and reasonable. For example, any rate increase should be evaluated in light of demand- and supply-side alternatives, including market purchases, retirement or sale of generating units, and

increased implementation of demand side management, that could mitigate the need for a rate increase. As parties to this proceeding, the Movants will ensure that the options beyond simply raising rates are examined.¹⁶ Through full intervention, Sierra Club, on behalf of its members including the individual Movant, will use its expertise and consultants to provide current data and analysis to investigate Big Rivers' proposed rate adjustment, explore additional alternatives for replacing capacity, investigate the adequacy of Big Rivers' analyses, and present evidence and argument in support of energy efficiency, renewable energy resources, and other lower carbon generation technologies such as purchasing an existing gas plant if they represent reasonable and prudent alternatives for Big Rivers to pursue.

Movants bring to this docket their unique perspective and experience in advancing technical and regulatory solutions to increasing renewable and demand side energy sources. Movant Sierra Club has developed expertise that encompasses a broad range of environmental and energy concerns that fully complement the myriad of technical and policy issues parties will face in this proceeding. In particular, Sierra Club's staff and consultants have extensive experience in resource planning, analyzing the potential for cost-effective energy efficiency, and in the laws and regulations governing energy production. Sierra Club recently intervened and provided testimony on these issues in seven other dockets before this Commission, including Big Rivers' previous application for a CPCN to retrofit a number of its existing generating units (Case No. 2012-00063) and the currently pending Big Rivers rate case (Case No. 2012-00535).¹⁷

¹⁶ “[A]s more constraints are . . . placed on utilities that rely significantly on coal-fired generation,” this is an important issue for the Commission to consider. *See, e.g., In the Matter of: Joint Application of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition of Ownership and Control of Utilities* (Case No. 2010-00204) Order, Sept. 30, 2010 at 20 (noting that the Commission stated its support for energy-efficiency programs in a report “to the Kentucky General Assembly in July 2008 pursuant to Section 50 of the 2007 Energy Act”).

¹⁷ *See Application of Louisville Gas & Electric for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2011-00162), *Application of*

Sierra Club has also regularly presented testimony before the U.S. Congress and various state legislatures on issues related to the electric utility industry, including energy efficiency, renewable energy, and coal generation.

Movants are not seeking intervention to opine about the environmental impacts of Big Rivers' coal plants and its environmental compliance plans. Instead, Movants are seeking to present testimony regarding whether any rate adjustment proposed by Big Rivers, which will further Big Rivers' dependence on its existing coal assets, is just and reasonable in light of the substantial loss of demand the utility needs to serve, the full range of regulatory, capital, operating, and fuel costs that the Big Rivers plants face, and the increasing availability of low cost energy efficiency and renewable energy alternatives. The Commission cannot reach a logical determination on the reasonableness of Big Rivers' rate case without evaluating each of those issues. As such, Movants are seeking intervention to address topics that are directly at issue in this proceeding.

Finally, the Movants are represented by experienced counsel and will comply with all deadlines in the proceeding established by the Commission. As such, Movants' participation will not disrupt this proceeding – especially given that this intervention motion is being filed at such an early stage of the proceeding.

Kentucky Utilities for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge (Docket No. 2011-00161); Joint Application of Louisville Gas & Electric and Kentucky Utilities for Certificates of Public Convenience and Necessity to Construct Combined Cycle Natural Gas Plant (Docket No. 2011-00375); Application of Kentucky Power Company for Approval of its 2011 Environmental Compliance Plan and Certificates of Public Convenience and Necessity (Docket No. 2011-00401); Application of Big Rivers Electric Cooperative for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge (Docket No. 2012-00063); Application of Kentucky Power for Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets (Docket No. 2012-00578); Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates (Docket No. 2012-00535).

C. Movants Have Special Interests in This Proceeding That Are Not Adequately Represented.

As explained above, the Movants will present issues and facts that will help the Commission review this application. Therefore, the Commission can grant full intervention on that basis alone and need not consider the Movants' special interests. Nevertheless, the Movants also have special interests in this proceeding that are not adequately represented.

Ben Taylor, the individual Movant, is a customer and rate payer of Kenergy Corporation, which is one of Big Rivers' distribution cooperative members. Mr. Taylor helps fund Big Rivers' operations, and the Commission's decision about whether to grant any rate adjustment will directly impact his bills. In addition, the individual Movant lives within the Big Rivers distribution cooperatives' service territory and, therefore, is impacted by the economic, public health, and environmental effects of the resource decisions that Big Rivers makes.

Organizational Movant Sierra Club has member(s) who are customers and ratepayers of a distribution cooperative of Big Rivers and, therefore, have the same interests as the individual Movant. In addition, Movants' desire to promote energy efficiency, peak demand reduction, renewable energy, and cost-effective low carbon energy sources in Kentucky is directly related to the issues of this proceeding.

Movants' interests are not adequately represented by any of the parties in the proceeding, as none of the other parties can adequately represent the organizational Movants' interests as a national organization that seeks to promote energy efficiency, renewable energy, and other low carbon generation sources as the most reasonable and cost effective way for Big Rivers to maintain essential electric services and meet new and emerging federal regulatory requirements.

IV. CONCLUSION

For the foregoing reasons, the Movants respectfully request full intervention in this matter.

Respectfully submitted,



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Dated: July 1, 2013

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this Petition for Full Intervention by US mail on July 1, 2013 to the following:

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