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AUG 13 2013

**PUBLIC SERVICE
COMMISSION**

Via Overnight Mail

August 12, 2013

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

Re: Case No. 2013-00199

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. RESPONSE IN OPPOSITION TO THE PETITIONS FOR CONFIDENTIAL PROTECTION OF BIG RIVERS ELECTRIC CORPORATION 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.
Richard Raff, 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 12TH day of August, 2013 to the following:



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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

IN THE MATTER OF: THE APPLICATION OF BIG :
RIVERS ELECTRIC CORPORATION FOR AN : Case No. 2013-00199
ADJUSTMENT OF RATES :

**KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.'S
RESPONSE IN OPPOSITION TO THE PETITIONS FOR CONFIDENTIAL PROTECTION
OF BIG RIVERS ELECTRIC CORPORATION**

Comes Kentucky Industrial Utility Customers, Inc. ("KIUC") and submits this response to the Petitions for Confidential Protection filed by Big Rivers Electric Corporation ("Big Rivers") on June 28, 2013 and July 13, 2013. The information at issue was filed under seal by Big Rivers per separate, but substantively identical Petitions for Confidential Protection.

KIUC requests that the Commission deny Big Rivers' Petitions for Confidential Protection and open these documents to the public. Big Rivers seeks confidential treatment for the following items through its June 28, 2013 Petition:

- a. the attachments or portions of the attachments to Tabs 16, 22, 24, 26, 27, 28, 46, 52, and 54 of the Application ;
- b. portions of the Direct Testimony of Robert W. Berry, which is Tab 63 to the Application, portions of Exhibit Berry-1, and Exhibit Berry-2;
- c. portions of Exhibits Warren-2 and Warren-3 to the Direct Testimony of Christopher A. Warren, which is Tab 69 to the Application; and
- d. portions of Exhibits Wolfram-3 and Wolfram-4 to the Direct Testimony of John Wolfram, which is Tab 70 to the Application.

Big Rivers seeks confidential treatment for the following items through its July 13, 2013 Petition:

- a. portions of the hardcopy attachments to Big Rivers' responses to Items 17 and 29b of the Commission Staffs First Request for Information ("PSC 1-17" and "PSC 1-29b," respectively); and
- b. the electronic attachments to Big Rivers' responses to Items 13a and 57 of the Commission Staffs First Request for Information ("PSC 1-13a" and "PSC 1-57," respectively).

The information listed above falls into four categories; 1) Big Rivers' current and future O&M and capital costs; 2) projected electric market prices; 3) Big Rivers' projected transmission revenues and 4) information concerning planned outage maintenance. Big Rivers contends that this information about its "*inner workings is generally recognized as confidential*"¹ and the disclosure of which could provide an unfair commercial advantage to a third party.

Big Rivers states the reason that the information listed above should be protected is that it faces competition in both the wholesale power market and the credit markets.² With respect to the wholesale power market, KIUC believes that it is extremely unlikely that the public disclosure of any of this information could ever be used to gain an unfair advantage.

There are millions of megawatt hours traded every day on the MISO market. It is hard to fathom how any individual could gain an advantage by reviewing the projected O&M or capital expenses of a utility that makes up an extremely small portion of the total MISO market. The MISO market price is the MISO market price. The market is not influenced by Big Rivers' projections of its costs and revenues. Big Rivers' request for this information to be treated as confidential appears to be made out of an overabundance of caution rather than some realistic concern that this information could be used by market competitors. The interest in providing the public with a full understanding of Big Rivers' rate

¹ June 28th Petition p. 4.

² June 28th Petition p.3

requests surely outweighs any remote and speculative chance that an unfair advantage could be derived from the public disclosure of this information.

The public disclosure of Big Rivers' market projections likewise will not impact the MISO market. Big Rivers' market projections are not generated by Big Rivers, but are purchased from third party consultants such as ACES, Wood-Mackenzie, IHS Global, etc. This information is not specific to Big Rivers, but rather contains projections of the overall MISO market in future years. It does not relate to Big Rivers, but to the market as a whole. Any individual that wishes to view this information would only need to contract with these third parties in order to obtain identical information. Any individual or entity with the actual ability to impact the MISO market certainly has access to this information already. Big Rivers does not treat this information as confidential out of concern that it could be used to manipulate the market, but rather to protect the financial interests of the third parties that Big Rivers has purchased this information from. However, since Big Rivers does not contend in its Petition that it is obligated by its third party consultants to keep their market projections confidential in the context of a KPSC proceeding, there is no reason for the Commission to treat this information as confidential.

With respect to the credit markets, Big Rivers states that “[a]ny event that adversely affects Big Rivers’ margins will adversely affect its financial results and potentially impact the price it pays for credit.”³ While KIUC does not disagree with this statement, there is no nexus between the fact that Big Rivers’ margins impact its ability to borrow with the disclosure or non-disclosure of the information Big Rivers’ seeks to protect. Big Rivers does not explain how the disclosure of its expenses and planned outage information inhibits its ability to compete in credit markets. Any prospective lender will certainly be given access to any information that Big Rivers considers confidential prior to lending

³ June 28th Petition p. 3.

money to Big Rivers, so Big Rivers' claim that disclosure of this information will harm Big Rivers in competing for reasonably priced credit it not plausible.

Finally, it is in the public interest to allow parties to reference the information that Big Rivers claims confidential treatment during the hearing without the Commission going into a closed session. The process of going in and out of closed sessions has proven to be disruptive to the hearing process. Members of the public that have not signed confidentiality agreements that wish to follow the hearing, either in person or online, would undoubtedly find it difficult to fully understand the issues discussed at the hearing if they are continuously shut out of sessions. KIUC believes that it is important that the Commission and the parties make every effort to make the hearings accessible to the public. KIUC does not believe that the disclosure of any of this information will result in a competitive disadvantage to Big Rivers. Any small chance that this information could be used to gain an unfair advantage is outweighed by the public's right to information related to Big River's approximately \$70 million rate request.

Respectfully submitted,



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Jody Kyler Cohn, Esq.

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August 12, 2013