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RECEIVED  
SEP 11 2013  
PUBLIC UTILITY  
COMMISSION

**Via Overnight Mail**

September 10, 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.'s RESPONSE IN OPPOSITION TO THE PETITION 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.

Jody Kyler Cohn, Esq.

**BOEHM, KURTZ & LOWRY**

MLKkew  
Attachment

cc: Certificate of Service  
Quang Nyugen, Esq.  
Richard Raff, Esq.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

SEP 11 2013

IN THE MATTER OF: THE APPLICATION OF BIG RIVERS :  
ELECTRIC CORPORATION FOR AN ADJUSTMENT OF :  
RATES :

Case No. 2013-00199  
PUBLIC SERVICE  
COMMISSION

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

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Comes now Kentucky Industrial Utility Customers, Inc. ("KIUC") and submits this response to the Petition for Confidential Protection filed by Big Rivers Electric Corporation ("Big Rivers") on September 3, 2013. The information at issue was filed under seal by Big Rivers.

KIUC requests that the Commission deny Big Rivers' Petition for Confidential Protection and open many of the documents described in that Petition to the public. Big Rivers seeks confidential treatment for the following items through its September 3, 2013 Petition:

- a. Portions of the responses and/or attachments for the responses to Items 5, 41, 45, 52, 53, 57, 73, 76, 86, 95, 98, 101, 102, 105, 106, 108, 121, 125, 126, 127, 129, 139, 141, 146, 154, 158, 163, 164, 196, 202, 226, 227, 237, 245, 265, 279, 285, 287, and 292 of the AG's Initial Request for Information;
- b. Portions of the responses and/or attachments for the responses to Items 8, 12, 13, 14, 21, 22, 29, 39, 40, 42, 43, 61, and 67 of KIUC's First Request for Information;
- c. Portions of the responses and/or attachments for the responses to Items 20, 25, and 26 of Ben Taylor and the Sierra Club's Initial Requests for Information;
- d. Portions of the responses and/or attachments for the responses to Items 14, 15, 16, 19, 22, 30, 33, and 34 of the Commission's Second Request for Information.

KIUC does not contest the confidentiality of the information that Big Rivers seeks to protect pursuant to KRS 61.878(1)(m), which relates to records that could threaten the public safety if disclosed.<sup>1</sup> However, KIUC submits that the information that Big Rivers seeks to protect pursuant to KRS 61.878(1)(c)(1) does not actually merit confidential treatment.

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<sup>1</sup> Big Rivers' Responses to AG 1-108, 1-121, and 1-129.

The Commission is a public agency and the documents at issue are public records subject to the Open Records Act.<sup>2</sup> The Commission has stated that “[t]he basic policy of [the Open Records Act] is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed...”<sup>3</sup> An entity requesting that the Commission grant confidential treatment has the burden to show that the material falls within an exclusion from disclosure requirements enumerated in the Open Records Act.<sup>4</sup>

Big Rivers has not met its burden to prove that disclosure of the wide array of information it seeks to protect will result in some unfair commercial advantage to its competitors. The information that Big Rivers seeks to protect pursuant to KRS 61.878(1)(c)(1) generally falls into one of the following categories: 1) Big Rivers’ current and projected costs/revenues; 2) load forecasting data; 3) information concerning planned outages; 4) information related to the sale of its generation assets; and 5) various internal documents. The scope of that information ranges from market projections to Big Rivers’ meeting minutes. Big Rivers claims that all of this information should be protected because it faces competition in both the wholesale power markets and the credit markets.<sup>5</sup>

With respect to competition in the short-term wholesale power markets, KIUC believes that it is extremely unlikely that the public disclosure of much of the information Big Rivers seeks to protect could ever be used to gain an unfair advantage. As KIUC stated in response to Big Rivers’ previous Petitions for Confidentiality, given that there are millions of megawatt hours traded every day on the MISO market, it is hard to fathom how any individual competitor could gain an unfair commercial advantage by reviewing information related to a utility that makes up an extremely small portion of the total market.

Regarding competition in the long-term market for power, Big Rivers’ projections could change on a regular basis contingent upon a number of factors, rendering the actual value of any of Big Rivers’ projections to its competitors uncertain. Moreover, public disclosure of Big Rivers’ market projections from ACES, etc. are not

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<sup>2</sup> Case No. 2004-00044, Order (June 2, 2006) at 4.

<sup>3</sup> Id. at 4.

<sup>4</sup> Id. at 5.

<sup>5</sup> September 3<sup>rd</sup> Petition at 5-6.

likely to give any unfair commercial advantage to its competitors since any individual that wishes to view this information would only need to contract with these third parties in order to obtain identical information.

With respect to competition in the credit markets, Big Rivers again argues 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.”<sup>6</sup> And again, 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’ sweeping request for such a wide array of 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. But the interest in providing the public with a full understanding of Big Rivers’ approximately \$70 million rate request surely outweighs any remote and speculative chance that an unfair advantage could be derived from the public disclosure of this information. Further, it is important that the Commission and parties take every effort to allow the hearing in this case to be accessible to the public without the unnecessary disruptions that result from repeatedly going into closed session. Accordingly, the Commission should find that the information that Big Rivers seeks to protect pursuant to KRS 61.878(1)(c)(1) does not actually merit confidential treatment and should be made public in this case.

Respectfully submitted,



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Jody Kyler Cohn, Esq.

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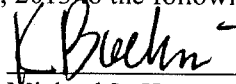
September 10, 2013

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<sup>6</sup> September 3<sup>rd</sup> Petition at 5.

## 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 10<sup>th</sup> day of September, 2013 to the following:



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