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September 13, 2013

**Via Federal Express**

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

\*Also Licensed in Indiana

Re: ***In the Matter of: Application of Big Rivers Electric  
Corporation for a General Adjustment of Rates***  
PSC Case No. 2013-00199

Dear Mr. Derouen:

Enclosed for filing are an original and ten copies of Big Rivers Electric Corporation's ("Big Rivers") reply to Kentucky Industrial Utility Customers, Inc.'s response in opposition to the petition for confidential protection Big Rivers filed on September 3, 2013, in the above referenced matter. I certify that on this date, a copy of this letter and a copy of the reply were served on the persons listed on the attached service list by overnight courier service or first class mail, postage prepaid.

Sincerely,



Tyson Kamuf

TAK/ej  
Enclosures

cc: Billie Richert  
DeAnna Speed  
Edward T. Depp, Esq.  
Service List

Telephone (270) 926-4000  
Telecopier (270) 683-6694

100 St. Ann Building  
PO Box 727  
Owensboro, Kentucky  
42302-0727

Service List  
PSC Case No. 2013-00199

Jennifer B. Hans  
Lawrence W. Cook  
Assistant Attorneys General  
1024 Capital Center Dr.  
Suite 200  
Frankfort, KY 40601

Mr. David Brevitz  
3623 SW Woodvalley Terrace  
Topeka, KS 66614

Mr. Bion C. Ostrander  
1121 S.W. Chetopa Trail  
Topeka, KS 66615

Mr. Larry Holloway  
830 Romine Ridge  
Osage City, KS 66523

Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202

G. Kelly Nuckols  
President and CEO  
Jackson Purchase Energy Corporation  
2900 Irvin Cobb Drive  
P.O. Box 4030  
Paducah, KY 42002-4030

Melissa D. Yates  
Denton & Keuler, LLP  
555 Jefferson Street  
Suite 301  
Paducah, KY 42001

Burns Mercer  
Meade County RECC  
1351 Hwy. 79  
P.O. Box 489  
Brandenburg, Kentucky 40108

Thomas C. Brite, Esq.  
Brite & Hopkins, PLLC  
83 Ballpark Road  
Hardinsburg, KY 40143

Gregory Starheim  
President & CEO  
Kenergy Corp.  
3111 Fairview Drive  
P.O. Box 1389  
Owensboro, KY 42302-1389

J. Christopher Hopgood, Esq.  
318 Second Street  
Henderson, Kentucky 42420

Joe Childers  
Joe F. Childers & Associates  
300 Lexington Building  
201 West Short Street  
Lexington, Kentucky 40507

Shannon Fisk  
Senior Attorney  
Earthjustice  
1617 John F. Kennedy Blvd., Suite 1675  
Philadelphia, PA 19103

Thomas Cmar  
Earthjustice  
5042 N. Leavitt Street, Suite 1  
Chicago, IL 60625

Kristin Henry  
Staff Attorney  
Sierra Club  
85 Second Street  
San Francisco, CA 94105

David O'Brien Suetholz  
Neal B. Hayes  
Kircher Suetholz & Grayson PSC  
515 Park Avenue  
Louisville, KY 40208

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY  
3  
4

5 In the Matter of:

6  
7 Application of Big Rivers Electric )  
8 Corporation for a General ) Case No. 2013-00199  
9 Adjustment in Rates )  
10

11  
12 **BIG RIVERS ELECTRIC CORPORATION'S REPLY TO KENTUCKY INDUSTRIAL**  
13 **UTILITY CUSTOMERS, INC.'S RESPONSE IN OPPOSITION TO THE PETITION**  
14 **FOR CONFIDENTIAL PROTECTION OF BIG RIVERS ELECTRIC CORPORATION**  
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16 Comes Big Rivers Electric Corporation ("Big Rivers"), by counsel, and for its reply to  
17 the response filed by Kentucky Industrial Utility Customers, Inc. ("KIUC") on September 11,  
18 2013 (the "Response"), states as follows.

19 KIUC's Response is in opposition to the petition for confidential treatment that Big  
20 Rivers filed on September 3, 2013 (the "Confidentiality Petition"). The Confidentiality Petition  
21 sought confidential protection of certain information Big Rivers filed with (i) its responses to the  
22 Kentucky Public Service Commission ("Commission") Staff's Second Request for Information  
23 and (ii) its responses to the initial requests for information from KIUC, the Attorney General,  
24 and Ben Taylor and Sierra Club. In its Response, KIUC requests that the Commission deny  
25 confidential protection to the information Big Rivers sought to protect as confidential under KRS  
26 61.878(1)(c)(1).

27 KIUC's Response should be rejected because it was not timely filed. The Commission's  
28 regulations provide, "A party may respond to a motion for confidential treatment within seven  
29 (7) days after it is filed with the commission."<sup>1</sup> KIUC filed its Response on September 11, 2013,  
30 which was 8 days after Big Rivers filed the Confidentiality Petition. KIUC's Response was not

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<sup>1</sup> 807 KAR 5:001 Section 13(e).

1 filed within the time allowed by the Commission’s regulations, and therefore, the Response  
2 should be rejected and stricken from the record.

3 Even if KIUC’s Response is not rejected outright, it should be given no weight. KIUC’s  
4 Response is based entirely on conclusory allegations and its unsupported speculation that public  
5 disclosure of the Confidential Information would not cause competitive harm to Big Rivers.<sup>2</sup>  
6 Additionally, KIUC fails to understand or address the true markets in which Big Rivers competes  
7 and the competitive harm Big Rivers will suffer by public disclosure of the Confidential  
8 Information. And KIUC simply ignores rather than responds to many of the arguments Big  
9 Rivers made in the Confidentiality Petition.

10 In support of its disbelief that Big Rivers would suffer competitive harm by public  
11 disclosure of the Confidential Information, KIUC alleges, “As KIUC stated in response to Big  
12 Rivers’ previous Petitions for Confidentiality, given that there are millions of megawatt hours  
13 traded every day on the MISO market, it is hard to fathom how any individual competitor could  
14 gain an unfair commercial advantage by reviewing information related to a utility that makes up  
15 an extremely small portion of the total market.”<sup>3</sup> This allegation reveals that KIUC completely  
16 misunderstands the market in which Big Rivers competes for off-system sales. The wholesale  
17 power market is not limited to over-the-counter day-ahead or over-the-counter hourly trades.  
18 Instead, Big Rivers is also actively engaged in negotiations directly with counterparties for long-  
19 term power sales agreements in competition with other wholesale power suppliers. While a  
20 company’s projections of over-the-counter, short-term prices may influence the price it is willing  
21 to sell or purchase power for in a long-term agreement, there is no set market price for those

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<sup>2</sup> See, e.g., KIUC Response at p. 2 (“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”).

<sup>3</sup> KIUC Response at p. 2.

1 types of long-term agreements, and the price is instead determined by the negotiations between  
2 the parties.

3 Public disclosure of Big Rivers' projected cost of producing power or projections of  
4 short-term and long-term future market prices would give an unfair advantage to other wholesale  
5 power suppliers with which Big Rivers is competing for those long-term agreements.

6 Knowledge of a competitor's cost of producing power reveals the price at which it can sell power  
7 and knowledge of a competitor's view of short-term and long-term future power prices reveals  
8 the price at which it may be willing to sell long-term power. Big Rivers would very much like to  
9 have that information about its competitors because it would give Big Rivers an advantage in  
10 competing for wholesale power sales. Likewise, other wholesale power suppliers with whom  
11 Big Rivers competes in the wholesale power market would have an advantage over Big Rivers if  
12 Big Rivers' projected production costs and projections of market prices were publicly disclosed.

13 The same flaw applies to KIUC's allegation that "[r]egarding competition in the long-  
14 term market for power, Big Rivers' projections could change on a regular basis contingent upon  
15 a number of factors, rendering the actual value of any of Big Rivers' projections to its  
16 competitors uncertain."<sup>4</sup> Big Rivers' view of long-term future market prices is relevant to the  
17 price at which Big Rivers would currently be willing to enter into a long-term power contract,  
18 and, as noted above, public disclosure of that information would give competitors an unfair  
19 advantage.

20 Additionally, if purchasers of power in the wholesale power market had information  
21 about Big Rivers' projected costs of producing power or its view of short-term and long-term  
22 future power prices, they could use that information in the negotiations as a benchmark for the  
23 price at which Big Rivers can or is willing to sell power. That competitive advantage could

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<sup>4</sup> KIUC Response at p. 2.

1 lower the revenue Big Rivers is able to obtain from its wholesale power sales, which could in  
2 turn, lessen Big Rivers' ability to compete with other wholesale power suppliers and would  
3 thereby affect Big Rivers' ability to obtain credit in the credit market. This type of competitive  
4 harm was recognized by the Commission in *In the Matter of: Application of the Union Light,  
5 Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054 (order dated  
6 August 4, 2003).

7 The same is true with regard to sellers of power to Big Rivers. They could use the  
8 Confidential Information, including Big Rivers' projections of short-term and long-term market  
9 prices and projections that reveal its availability of and need for power, to their competitive  
10 advantage by increasing the price at which they are willing to sell power to Big Rivers when Big  
11 Rivers is a purchaser of power in the wholesale power market. The increased cost to Big Rivers  
12 would harm its ability to compete with other suppliers in the wholesale power market when Big  
13 Rivers is a seller of power and would likewise harm its ability to compete in the credit market.  
14 KIUC's Response ignores these arguments that Big Rivers made in the Confidentiality Petition.

15 The same competitive harm would also arise through public disclosure of Big Rivers'  
16 projections of fuel prices and projections about planned construction projects. Suppliers of fuel  
17 and equipment could use Big Rivers' projections about the cost of those items as benchmarks in  
18 the negotiating process, increasing the cost or decreasing the revenues to Big Rivers, and  
19 impairing its ability to compete against other wholesale power suppliers and its ability to  
20 compete in the credit market. KIUC's Response also ignores these arguments that Big Rivers  
21 made in the Confidentiality Petition as well as the arguments Big Rivers made in support of the  
22 remainder of the Confidential Information, which is confidential for the reasons stated in the  
23 Confidentiality Petition.

1           KIUC next argues that “public disclosure of Big Rivers’ market projections from ACES,  
2 etc. are not likely to give any unfair commercial advantage to its competitors since any  
3 individual that wishes to view this information would only need to contract with these third  
4 parties in order to obtain identical information.”<sup>5</sup> Big Rivers does obtain forward market price  
5 information from commercial vendors; however, those price projections are not publicly  
6 available. In fact, vendors rely on the fact that their price projections are not publicly available  
7 to sell those products. If Big Rivers were forced to publicly disclose a vendor’s proprietary price  
8 projections, then others would not need to purchase that product from the vendor, and the  
9 product would lose value. In such case, it is unlikely that vendors would continue to supply Big  
10 Rivers with their price projections, and Big Rivers would lose access to an essential planning  
11 tool, further damaging its ability to compete in the wholesale power and credit markets.

12           Moreover, even if Big Rivers’ competitors also obtained price projections from the same  
13 vendors, without public disclosure of the Confidential Information, they would not know the  
14 extent to which the price projections in Big Rivers’ budget are directly tied to any specific price  
15 projection from a vendor or vendors. In other words, while others may also purchase price  
16 projections from the same vendors Big Rivers uses, that does not mean they can use those  
17 projections to know the prices in Big Rivers’ forecast.

18           KIUC asserts in its Response that “there is no nexus between the fact that Big Rivers’  
19 margins impact its ability to borrow with the disclosure or non-disclosure of the information Big  
20 Rivers’ seeks to protect.”<sup>6</sup> As noted in the Confidentiality Petition, public disclosure of the  
21 Confidential Information could increase Big Rivers’ costs or decrease its revenues (for the  
22 reasons stated above and in the Confidentiality Petition). Lenders view Big Rivers’ costs and

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<sup>5</sup> KIUC Response at pp. 2-3.

<sup>6</sup> KIUC Response at p. 3.



1 revenues in determining whether to lend to Big Rivers and the interest rates and other charges at  
2 which they will lend to Big Rivers. It is the increase in cost and decrease in revenues that  
3 impairs Big Rivers' ability to compete in the credit market for available credit. Even KIUC  
4 acknowledges that increased costs and decreased revenues "impact [Big Rivers'] ability to  
5 borrow" and will "potentially impact the price [Big Rivers] pays for credit."<sup>7</sup> Further, if  
6 increased costs or decreased revenues caused by public disclosure of the Confidential  
7 Information cause Big Rivers' lending costs to go up, that will further impair Big Rivers' ability  
8 to compete in the wholesale power and credit markets.

9 KIUC's final argument in its Response is that "it is important that the Commission and  
10 parties take every effort to allow the hearing in this case to be accessible to the public without the  
11 unnecessary disruptions that result from repeatedly going into closed session."<sup>8</sup> The right to  
12 confidential treatment of information, created by statute and the Commission's regulation  
13 governing confidential protection, is not conditioned on the number of times the Commission  
14 goes into closed session and that cannot be a basis for denying confidential treatment to the  
15 Confidential Information. In any event, the number of times the Commission goes into closed  
16 session during the hearing is largely up to the intervenors, and if KIUC is truly concerned about  
17 the number of times the Commission goes into closed session, it should arrange its questions so  
18 as to minimize the number of times it requests a closed session and should avoid unnecessary  
19 repetition. KIUC and the other intervenors did just this during the hearing in Case No. 2012-  
20 00535, and it did not result in any prejudice or undue disruption.

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<sup>7</sup> KIUC Response at p.3.

<sup>8</sup> KIUC Response at p. 3.

1 Based on the Confidentiality Petition and the foregoing, Big Rivers respectfully requests  
2 that the Commission classify and protect as confidential the Confidential Information and reject  
3 and strike from the record KIUC's Response.

4 On this the 13<sup>th</sup> day of September, 2013.

5  
6 Respectfully submitted,

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10 \_\_\_\_\_  
11 James M. Miller  
12 Tyson Kamuf  
13 SULLIVAN, MOUNTJOY, STAINBACK  
14 & MILLER, P.S.C.  
15 100 St. Ann Street  
16 P. O. Box 727  
17 Owensboro, Kentucky 42302-0727  
18 Phone: (270) 926-4000  
19 Facsimile: (270) 683-6694  
20 jmiller@smsmlaw.com  
21 tkamuf@smsmlaw.com

22  
23 Edward T. Depp  
24 Dinsmore & Shohl LLP  
25 101 South Fifth Street  
26 Suite 2500  
27 Louisville, KY 40202  
28 Phone: (502) 540-2347  
29 Facsimile: (502) 585-2207  
30 tip.depp@dinsmore.com

31  
32  
33 Counsel for Big Rivers Electric Corporation  
34  
35  
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**Certificate of Service**

I certify that a true and accurate copy of the foregoing will be served upon the persons listed on the service list accompanying this reply by Federal Express or by first class mail, on or before the date this reply is filed with the Kentucky Public Service Commission.

On this the 13<sup>th</sup> day of September, 2013,

T8/19

Counsel for Big Rivers Electric Corporation