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Via Hand Delivery Mail

February 14, 2014

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 the PUBLIC VERSION of the BRIEF OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC., BEN TAYLOR, AND SIERRA CLUB for filing in the above-referenced matter. I also enclose the CONFIDENTIAL pages to be filed under seal.

The information filed under seal is information that Big Rivers sought confidential treatment through multiple Petitions for Confidential Treatment. KIUC redacted this information in order to protect Big River's interests in keeping this information confidential.

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.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail (when available) and by Overnight Mail, unless other noted, this 14th day of February, 2014 to the following:

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter of: The Application of Big Rivers Electric Corporation for an Adjustment of Rates.	:	**Case No. 2013-00199**

PUBLIC VERSION

BRIEF OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC., BEN TAYLOR, AND SIERRA CLUB

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February 14, 2014

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PUBLIC VERSION

BRIEF OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.,
BEN TAYLOR, AND SIERRA CLUB

Kentucky Industrial Utility Customers, Inc. ("KIUC"), representing the interests of Domtar Paper Co., LLC, Kimberly Clark Corporation and Aleris International, Inc., as well as Ben Taylor and Sierra Club ("Sierra Club," collectively, "Joint Intervenors") submit this Brief to the Kentucky Public Service Commission ("Commission") as follows:

I. INTRODUCTION

A. The Statutory Scheme Enacted By The Legislature Gives The Commission Appropriate Tools To Protect Consumers From Paying For Excess Capacity.

Kentucky is one of only a few jurisdictions that regulate the rates between a generation and transmission ("G&T") cooperative and the distribution cooperatives that own it.[1] This reflects a policy decision on the part of the Legislature that electric rates are too important to the people and businesses of this Commonwealth to be left exclusively to the G&T Board of Directors, which many times are not equipped to be anything more than a mere rubber stamp for management. Big Rivers Electric Corporation's ("Big Rivers" or "Company") most recent crisis

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[1] Exhibit Walker Rebuttal-2 at 1 (*"BREC is among the few generation and transmission cooperatives subject to rate regulation...;"* Accounting For Public Utilities, Hahne-Aliff Deloitte & Touche (2013), Section 14.02 *"Approximately, one-half of the states regulate distribution cooperatives, and one-fourth regulate G&T rates."*).

demonstrates the wisdom of that Legislative policy. In an attempt to save itself and a handful of high-paying management jobs, Big Rivers would sacrifice the common good and economic well-being of Western Kentucky by imposing massive and unsustainable rate increases to pay for approximately 1,000 MW of excess capacity while the utility attempts to transform itself into a merchant generator.

The Legislature has given the Commission appropriate statutory tools to protect consumers in this circumstance. KRS 279.210 provides that rural electric cooperatives are *"subject to the general supervision of the Public Service Commission and shall be subject to all the provisions of KRS 278.010 to 278.450 inclusive, and KRS 278.990."* KRS 278.030(1) dictates that consumers are only required to pay rates that are *"fair, just and reasonable"* and that *"[e]very utility shall furnish adequate, efficient and reasonable service...."* Under KRS 278.190(3), *"[a]t any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate is just and reasonable shall be upon the utility...."* KRS 278.170(1) provides that *"no utility shall... subject any person to unreasonable prejudice or disadvantage..."* Finally, pursuant to KRS 278.250 and 278.255, the Commission is authorized to *"investigate and examine the condition of any utility subject to its jurisdiction"* and the *"commission shall provide for periodic management and operation audits...to investigate management effectiveness and operating efficiency."* We respectfully request that the Commission use these statutory tools to protect customers when resolving this case.

B. The Adverse Consequences Of Approving Big Rivers' Recommendations.

Throughout a number of recent cases at the Commission, Big Rivers continuously employed the same litigation tactic: provide *"no leeway"* for the Commission by alleging that every dollar that Big Rivers requests is needed in order to keep it from bankruptcy.[2] Big Rivers once again employs this tactic, claiming that the Commission faces one of two rigid choices: grant it every dollar of its proposed $71.227 million rate increase or force it into bankruptcy.[3] This *"stark choice"* approach is a scare tactic and a false construct.

Big Rivers' proposed approach to resolving the excess capacity problem resulting from the loss of the

[2] KIUC Ex. 1.

[3] Rebuttal Testimony of Billie J. Richert, Case No. 2013-00199 (December 17, 2013) ("Richert Rebuttal") at 3:21-23 *("...the Kentucky Public Service Commission... has a choice in this case between granting the relief requested by Big Rivers and forcing Big Rivers into bankruptcy.").*

Hawesville and Sebree smelters is fundamentally inequitable and will not achieve stability on the system. It will only perpetuate instability, damage the economy, and introduce unnecessary risks as a result of Big Rivers' transformation into a merchant generator.

Under Big Rivers' preferred approach, the Commission would place 100% of the cost burden associated with Big Rivers' approximately 1000 MW of excess capacity on the Company's remaining non-smelter customers. This would require the Commission to approve massive, and historically unprecedented, rate increases for those remaining customers – *approximately $838 per year for the average residential customer and 107% for the average Large Industrial customer on an "all in" basis.*[4] No other entities would be adversely affected nor would they play a role in resolving the Company's excess capacity issues.

Big Rivers wishes to delay the inevitable public chorus of disapproval that would result from its approach by temporarily masking the impact of its massive rate increases. The Company asks to do so by accelerating the use of its Economic and Rural Economic Reserve credits beginning February 1, 2014. This approach merely creates a ticking time bomb. As soon as those credits run out (in July 2014 for Large Industrial customers and in April 2015 for Rural customers, under Big Rivers' approach), Big Rivers' remaining customers will feel the full brunt of the 107% Large Industrial and $838 per year residential rate increases, which would automatically take place at that point in time.

Adopting an approach that forces Big Rivers' remaining customers to absorb such massive rate increases will likely lead to more rate cases by Big Rivers and/or Kenergy, Meade County, and Jackson Purchase as customers reduce load or leave the system altogether in the wake of those increases. Rate increase on top of rate increase on top of rate increase is not a viable plan for any utility. Moreover, by allowing Big Rivers to retain a tremendous amount of excess capacity without a plan to "*right-size*" the utility, the Commission would implicitly endorse the continuous pumping of additional money into its unneeded and uneconomic coal-fired power plants in the hopes that those plants will someday have value in the competitive wholesale market. Adopting a risky merchant generation business model, whose primary beneficiaries are out-of-state consumers, is not appropriate for a cooperative utility like Big Rivers.

[4] KIUC Ex. 14.

C. The Beneficial Consequences Of Approving Joint Intervenors' Recommendation.

Rather than simply adopting Big Rivers' inequitable *"time bomb"* approach, the Commission should develop a balanced approach, as it has in the past – one that spreads the cost burden associated with the pending smelter departures among all stakeholders.[5] Joint Intervenors recommend an approach in which the Commission would approve a reasonable base rate increase of $10.534 million effective February 1, 2014 for Big Rivers' remaining customers and direct Big Rivers to use the $131.5 million in the ratepayer Reserve Funds to provide the additional compensation the Company needs to precisely meet its 1.24 TIER target on a monthly basis based upon actual (not forecasted) revenues and expenses.[6] This approach provides multiple benefits, including:

a. preventing Big Rivers from over-earning or under-earning by automatically addressing current uncertainties in the fully forecasted test year such as: the timing of the idling of Wilson and Coleman, the level of off-systems sales margins, the transmission revenue it will receive from the smelters, the SSR revenue it will receive, weather-related native load sales, unexpected plant outages, etc.;

b. maintaining Big Rivers' credit metrics while providing additional time to:

   i. bring in third-party professionals through the KRS 278.250 and 278.255 management audit process to "*right-size*" the Big Rivers system, possibly through retirement or sale of the Coleman and/or Wilson plants if that is the least-cost option for customers;

   ii. work out an equitable sharing of the excess capacity costs resulting from the smelters' departure rather than forcing Big Rivers' remaining customers to take on 100% of the cost burden and fund Big Rivers' attempt to develop a merchant generation business;

   iii. comprehensively study the economics of investing additional capital in the Wilson and Coleman plants;

c. giving creditors a reasonable incentive to work with Big Rivers in a cooperative manner prior to the depletion of the ratepayer Reserve Funds; and

d. maintaining Commission control over the process, including the possibility of another rate case prior to the depletion of the Reserve Funds.

In contrast to Big Rivers' proposed *"time bomb"* approach, Joint Intervenors' *"hourglass"* approach provides an opportunity to find a balanced resolution to Big Rivers' excess capacity issues. Since the Reserve Funds were created by the Commission expressly for the benefit of customers, it makes sense to use them as a tool to protect those customers from massive rate increases while still ensuring that Big Rivers can satisfy its debt obligations. Joint Intervenors' solution also avoids bankruptcy since Big Rivers retains the option to seek a rate increase prior to the depletion of the Reserve Funds if a comprehensive solution is not reached by that time.

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[5] *In the Matter of Big Rivers Electric Corporation's Notice of Changes in Rates and Tariffs for Wholesale Electric Service and of a Financial Workout Plan*, Case No. 9613, Order (March 17, 1987) ("1987 Order") at 37; *See also* KIUC Ex. 4.

[6] The balance of the Economic Reserve at August 31, 2013 was $66.130 million, according to Big Rivers Response to Staff 3-3. The balance of the Rural Economic Reserve at August 31, 2013 was $65.350 million, according to the same response.

II. BACKGROUND

No utility under this Commission's jurisdiction has careened from crisis to crisis to crisis over the last thirty years like Big Rivers. When the Wilson plant came online in the early 1980s, its capacity was excess and rate recovery was denied.[7] Big Rivers defaulted on its debt, the RUS brought foreclosure actions in federal court, and an RUS loan embargo was placed on all Kentucky electric cooperatives. After a financial workout plan with the creditors was reached, the Century and Alcan smelters were placed on variable electric rates that were tied to the world-wide price of aluminum.[8]

In the early 1990s, the Commission disallowed tens of millions of dollars in fuel costs as unreasonable after a Commission-ordered focused management audit found that several coal contracts were imprudent. The FBI later proved that those coal contracts were the unlawful product of a long-running kickback conspiracy centered around Big Rivers' General Manager, William Thorpe. To discharge those contracts and to restructure debt, Big Rivers filed a pre-packaged bankruptcy in 1996. The bankruptcy process led to the 1998 Transaction, whereby Big Rivers entered into a 25-year lease of its generating units to E.ON and its subsidiaries.[9]

For the first eleven years of having an E.ON subsidiary operate its power plants, Big Rivers' rates were stable. That period of relative tranquility ended in another emergency immediately before the Unwind closed. In 2000, Big Rivers entered into two sets of leveraged leases of its Wilson and Green units. As part of that sale/leaseback transaction, Big Rivers purchased credit support from Ambac. But in mid-2008, Ambac had its credit rating downgraded, which caused the sale/leaseback to unravel. To avoid another bankruptcy, Big Rivers bought out of its leveraged lease with Phillip Morris Credit Corp. for $121.7 million on September 30, 2008. The use of essentially all of its cash reserves coupled with an inability to borrow caused Big Rivers to seek a 21.6% emergency rate increase on March 2, 2009.[10] In that case, Mr. Bailey warned the Commission (just as he does

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[7] *Big Rivers Electric Corporation's Notice of Chonges in its Rates for Electricity Sold to Member Cooperatives*, Case No. 9163, Order May 6, 1985) at 23 ("*...the costs and problems attendant to the Wilson plant will not be reflected in Big Rivers' current rates.*").

[8] *An Investigation of Big Rivers Electric Corporation's Rates for Wholesale Electric Service*, Case No. 9885, Order (Aug. 10, 1987).

[9] *In Re Big River Electric Corp.*, Case No. 97-204 (April 30, 1998); Case No. 98-267 (July 14, 1998).

[10] *In the Matter of the Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Case No. 2009-00040.

here) that Big Rivers needed *"every dollar"* of its emergency rate increase and the failure to do so could result in *"insolvency."*[11] By Order issued May 27, 2009, the request for emergency rate relief was denied.

The turbulent circumstances surrounding Big Rivers led it to ask for Commission approval to *"unwind"* the 1998 lease transactions and agreements early, which the Commission approved on March 6, 2009.[12] As part of the Unwind Transaction, the smelters were able to avoid increasing market prices by entering into special contracts with Big Rivers for the price of power.[13] One of the fundamental concepts underlying the Commission's approval of Big Rivers' request was that the Unwind Transaction would also provide benefits to Big Rivers' non-smelter customers.[14]

Only a few years after the Unwind Transaction was approved, with electricity market prices declining, the smelters began discussions regarding the possibility of taking service at market-based rates.[15] While those discussions were proceeding, Big Rivers asked the Commission for permission to issue new debt in the sum of $537 million from CoBank and National Rural Utilities Cooperative Finance Corporation ("CFC") on March 28, 2012.[16] Big Rivers then filed a Disclosure Statement that informed its lenders of the very real risk that the smelters could leave Big Rivers system.[17] Yet in spite of this information, Big Rivers closed new financing with CFC and CoBank in excess of half a billion dollars only two weeks later, on July 27, 2012.

Within a month, Big Rivers' financial circumstances began to unravel. On August 20, 2012, the Century Hawesville smelter submitted its notice of contract termination to Big Rivers. A day later, rating agencies began downgrading Big Rivers' credit ratings.[18] On January 15, 2013, Big Rivers filed a requested rate increase to recover the costs associated with the loss of the Century Hawesville load from its remaining customers.[19] Highly concerned about the impact of Big Rivers' proposed rate increase on its sustainability,[20] the Alcan Sebree smelter

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[11] Direct Testimony of Mark A. Bailey, Case No. 2009-00040 (March 2, 2009) at 4.
[12] *In the Matter of the Applications of Big Rivers for Approval of Wholesale Tariff Additions...*, Case No. 2007-00455.
[13] Case No. 2007-00455, Order (March 6, 2009)("Unwind Order") at 14-18.
[14] Unwind Order 22-23.
[15] Tr. (January 7, 2014) at 12:16:00.
[16] *In the Matter of the Application of Big Rivers for Approval to Issue Evidences of Indebtedness*, 2012-00119.
[17] AG Ex. 6 at 39-40.
[18] *See In the Matter of the Application of Big Rivers for Approval to Issue Evidences of Indebtedness*, Case No. 2012-00492, Application (November 13, 2012) at 7.
[19] Case No. 2012-00535.
[20] *See* Attachment A.

attempted to negotiate a cost-based rate that would have allowed it to remain on Big Rivers' system. But Big Rivers refused its offer. As a result, Alcan gave its notice of contract termination on January 31, 2013.[21] In less than three days, the ratings agencies downgraded Big Rivers' credit ratings to well below investment-grade.

In the present case, Big Rivers once again puts this Commission in a very difficult position. The Company may have received approval to recover most of the costs associated with the loss of the Century Hawesville load from its remaining non-smelter customers, with the exception of depreciation expense associated with the Coleman plant.[22] And the smelters may have both received approval to leave Big Rivers' system and take service at market-based rates.[23] Yet Big Rivers' financial issues remain and it now asks the Commission to place the entire burden of resolving its current crisis upon its remaining customers.

Big Rivers' approach will not guarantee stability for the Company. In all likelihood, the future litigation will get worse as the Western Kentucky economy shrinks and usage declines in the wake of Big Rivers' proposed massive rate increases. The Commission therefore must decide whether to allow the Company's instability to persist or to move toward a comprehensive and balanced resolution of Big Rivers' financial issues.

[21] *See* Attachment B.
[22] Order, Case No. 2012-00535 (October 29, 2013)("535 Order").
[23] *See* Case Nos. 2013-00221 and 2013-00413.

III. LEGAL STANDARD

The Commission's goal, as mandated by statute, is to establish fair, just, and reasonable rates. Kentucky courts have held that "[t]*here is no litmus test for this and there is no single prescribed method to accomplish the goal.*"[24] The Kentucky Supreme Court has found that *"because [KRS 278.030] generally recognize[s] a duty to establish 'fair, just, and reasonable' rates without necessarily requiring a particular procedure to deal with isolated ratemaking issues, the* Hope *doctrine that "[it is] the result reached rather than the method employed which is controlling' is applicable."*[25] Establishing rates that are fair, just, and reasonable requires a balancing of interests among the utility and its customers and creditors and is dependent upon the particular facts and circumstances of each case.[26]

As discussed above, the Legislature granted the Commission wide authority to establish fair, just, and reasonable rates for G&T cooperative utilities like Big Rivers and to balance the interests of all stakeholders in setting those rates. KRS 279.210 provides that the same legal standards that apply to investor-owned utilities apply to G&T cooperative utilities as well, including the mandate of KRS 278.030(1) that a utility's rates must be fair, just and reasonable. Consistent with KRS 278.190(3), the burden of proof to demonstrate that proposed rates are fair, just and reasonable is on the utility. Moreover, the Commission has authority under KRS 278.170(1) to prevent utilities from subjecting any person to unreasonable prejudice or disadvantage through discriminatory rates. At the Commission's discretion, it can also order a management audit of a utility pursuant to KRS 278.250 and 278.255 in order *"to investigate management effectiveness and operating efficiency."* The Commission therefore has far-reaching authority to regulate the rates of a G&T cooperative utility like Big Rivers and to resolve complex issues such as Big Rivers' current excess capacity problems.

Kentucky case law outlines the principle that customers should not be forced to pay for excess utility property that is not *"used and useful"* to those customers. And this Commission has expressly upheld that principle, finding that *"... [a] utility's rate base should include only those items of plant that are used and useful,*

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[24] *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 113 P.U.R.4th 89 (1990) at 513.

[25] *Kentucky Public Service Com'n v. Com. Ex. rel. Conway,* 324 S.W. 3d 373, 383 (2010) (citing *National–Southwire,* 785 S.W.2d at 510, *citing Federal Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944)).

[26] KIUC Ex. 4 (1987 Order at 37).

i.e., reasonably necessary to provide adequate and efficient service."[27] Consistent with this finding, the Commission has excluded the costs of excess utility property in a number of cases.[28] Additionally, the U.S. Supreme Court has held that nothing in the Constitution precludes a state from applying the *"used and useful"* principle to prevent a utility from recovering its investment in unneeded plant.[29] This principle was applied even when its application ultimately resulted in the utility's bankruptcy.[30]

The Commission has held that both customers *and* creditors have a role in addressing, resolving, and sharing the effects of Big Rivers' generating capacity that is both physically and economically excess compared to the needs of the utility's customers. In Big Rivers' financial workout plan case, Case No. 9613, the Commission determined that customers should not be held responsible for 100% of Big Rivers' debts. Specifically, the Commission "*emphatically*" declared:

> *We emphatically reject the claims of REA, the banks, and Big Rivers that the members of the cooperative ultimately bear the total risk and responsibility for the utility's debts. The distribution cooperatives and their members do not stand in the same position as shareholders of an investor-owned company. The REA, with its oversight and monitoring responsibility, bears a substantial amount of the risk associated with Big Rivers' actions. The creditor banks are compensated for the risks they take. Cooperative members must shoulder a portion of the risk, too, since they have a say in the affairs of the utility. Nor are the aluminum companies exempt from responsibility. Until the downturn of recent years, these companies or their predecessors were in frequent contact with Big Rivers' management. Rather than allocate the risk among all parties now, we have chosen to give the participants an opportunity to discuss the allocation among themselves as a revised workout plan is negotiated.*[31]

The Commission added that "*Big Rivers' ratepayers should not have unlimited responsibility for the payment of Big Rivers' debt. Furthermore, they should not be required to provide all the revenues required to*

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[17] *In Re Kentucky-American Water Co.*, Case No. 8571, Order (February 17, 1983), at 7 *(citing San Diego Land and Town Company v. Jasper, et. al.*, 189 U.S. 439 (1902)). In Case No. 8571, the Commission found that Kentucky-American had an excess capacity of 6 MGD, that shareholders should share $903,037 of the cost of this excess capacity with the ratepayers, and thus removed that sum from rate base. *Id.* at 8.

[28] *In Re Kentucky Utilities Co.*, 52 PUR 4th 406, 436 (1983), (excluding costs associated with a proposed electric generating plant because it *"seems doubtful that the investment in Hancock will ever be used and useful for providing service");* Case No. 8904, Order (August 3, 1984) (excluding the cost of transmission greatly in excess of the needs of Kentucky Power's customers); Case No. 8734, 56 PUR 4th 151, 156, Order (September 20, 1983) (excluding the costs of property not needed for nine years, in which the system had a 43% reserve capacity); Case No. 9934, Order (July I, 1988) at 33 (*citing Fern Lake Co. v. Public Service Comm'n*, 357 S.W.2d 701, 704-705 (Ky. 1962) and disallowing rate recovery of Louisville Gas and Electric Co.'s 25% interest in the Trimble County generating station).

[29] *Duquesne Light Co. v. Barasch*, 109 S.Ct. 609, 615–620 (1989).

[30] *In Re Public Service Co.*, 539 A.2d 263 (N.H. 1988) (*appeal dismissed* 488 U.S. 1035 (1989)).

[31] KIUC Ex. 4 (1987 Order at 19).

offset shortfalls arising from insufficient off-system sales."[32]

In the same case, the Commission found that the application of the *"used and useful"* standard involves a balancing of interests, stating:

> *The establishment of fair, just and reasonable rates involves a balancing of utility and ratepayer interests. After balancing these interests, the Commission may conclude in a given case that rates should be based upon prudent investments even where facilities are cancelled prior to completion of construction. On the other hand, in considering the need for facilities on an economic basis, the Commission may decide that it is not in the customers' interest to pay rates that include the cost of unneeded facilities.*[33]

The Commission ordered the parties to develop a workout plan that "*must offer an equitable balance among all interests*," i.e. the utility, customers, and creditors, which the parties ultimately did.[34]

In Big Rivers' most recent rate case, Case No. 2012-00535, the Commission upheld its "*balancing of interests*" standard. In its Order, the Commission found that:

> *Under the circumstances presented in this case, the Commission finds that in setting rates, we must balance the interests of both the utility and its ratepayers...Having considered all of these factors, the Commission finds it both reasonable and necessary to exclude some costs of the Coleman Station from Big Rivers' rates. It would simply not be fair to require ratepayers to pay all of costs of the excess capacity. Therefore, we will exclude the depreciation expense associated with the Coleman Station from rates at this time....*[35]

Hence, Kentucky law, as interpreted by the Commission over the previous decades, requires that the Commission balance the interests of all stakeholders when setting fair, just, and reasonable rates.

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[32] KIUC Ex. 4 (1987 Order at 44).

[33] KIUC Ex. 4 (1987 Order at 37).

[34] KIUC Ex. 4 (1987 Order at 43).

[35] 535 Order at 19; *See also* KIUC Ex. 4.

IV. ARGUMENT

A. Big Rivers' Proposal To Recover 100% Of The Costs Associated With The Excess Capacity Caused By The Smelters' Departure From Its Remaining Customers Is Unreasonable And Contrary To Law.

1. The Cumulative Rate Impact Of Case No. 2012-00535 And The Present Case Would Raise Rates By 107% To Large Industrial Customers And By 69% To Rural Customers By Forcing Them To Pay For Excess Capacity That Is Not *"Used And Useful."*

Rather than reducing the total amount of its generating capacity to match Big Rivers' loss of approximately 68% of its total load once the smelter contracts terminated, Big Rivers seeks Commission approval to recover 100% of the costs of its excess capacity from its remaining non-smelter customers, even though the Company has not comprehensively studied whether that capacity will provide any benefit to those remaining customers now or in the future.

The cumulative impact of the two Big Rivers rate cases addressing the smelter contract terminations (Case No. 2012-00535 and the present case) would raise rates to Large Industrials by 106.9% on an *"all in"* basis as of July 2014 (when the Economic Reserve is projected to be exhausted), as shown below.[36]

RATE INCREASES TO LARGE INDUSTRIAL CLASS FROM CENTURY AND ALCAN TERMINATIONS AFTER RESERVES ARE DEPLETED

LARGE INDUSTRIAL	CENTURY BASE PERIOD (2)		ALCAN TEST YEAR (1)		CENTURY AND ALCAN INCREASE	
	Large Ind Rate	Large Industrial Revenues	Large Ind Rate	Large Industrial Revenues	Large Ind Rate Increases	Percent Increases
Base Rate		$ 41,207,958		$ 64,100,065	$ 22,892,107	55 6%
Non-Smelter Non-FAC PPA		$ (1,190,863)		$ (356,508)	$ 834,355	-70 1%
FAC		$ 3,326,542		$ 5,843,877	$ 2,517,335	75 7%
Environmental Surcharge		$ 2,252,893		$ 4,601,463	$ 2,350,570	104 3%
Smelter Surcredit		$ (3,961,493)		$ (134,005)	$ 3,827,488	-96 6%
Power Factor Penalty/Adjustments		$ 111,014		$ -	$ (111,014)	-100 0%
MRSM (Economic Reserve)		$ (5,948 917)		$ -	$ 5,948,917	-100 0%
Totals	$0 0376	$ 35,797,133	$0 0753	$ 74,056,892	$ 38,259,759	106 9%

(1) Base Rates and Revenues from Tab 59, Adjusted to Reflect Amounts Reflected in Response to KIUC 1-30 c, In Case No. 2012-00535

(2) Test Year Rates and Revenues From Tab 56 in Case No 2013-00199, Including Adjustments to Rates on Rebuttal Exhibit Wolfram-5.2.

[36] KIUC Ex. 14.

The cumulative impact of the two cases would raise Rural rates to the average residential household by 108.9% at wholesale and 69% at retail on an *"all in"* basis as of April 2015 (when Big Rivers projects that the Rural Reserve will be exhausted), which amounts to an annual increase to the average residential customer of $837.60.[37]

RATE INCREASES TO RURAL CLASS FROM CENTURY AND ALCAN TERMINATIONS AFTER RESERVES ARE DEPLETED

RURAL	CENTURY BASE PERIOD [2]		ALCAN TEST YEAR [2]		CENTURY AND ALCAN INCREASE	
	Rural Rate	Rural Revenues	Rural Rate	Rural Revenues	Rural Rate Increases	Percent Increases
Base Rate - Demand		$ 51,194,845		$120,585,568	$ 69,390,724	135.5%
Base Rate - Energy		$ 71,988,650		$ 80,799,320	$ 8,810,670	12.2%
Non-Smelter Non-FAC PPA		$ (3,006,790)		$ (826,876)	$ 2,179,914	-72.5%
FAC		$ 8,424,822		$ 13,737,782	$ 5,312,960	63.1%
Environmental Surcharge		$ 6,134,626		$ 14,086,285	$ 7,951,659	129.6%
Smelter Surcredit		$ (9,950,005)		$ (308,324)	$ 9,641,681	-96.9%
MRSM (Economic Reserve)		$(15,595,604)		$ -	$ 15,595,604	-100.0%
Totals	$0.0451	$109,190,543	$0.0988	$228,073,755	$ 118,883,212	108.9%
Avg Monthly Residential Bill @ 1300 kWh [1]		$ 101.53		$ 171.33	$69.80	
Avg Annual Residential Increase					$837.60	

[1] Includes $0.033/kWh for Member Cooperative Charges As Shown On Ex Wolfram-7.
[2] Base Rates and Revenues From Tab 59 in Case No. 2012-00535
[2] Test Year Rates and Revenues From Tab 56 in Case No. 2013-00199, Including Adjustments to Rates on Rebuttal Exhibit Wolfram-5.2

If the proposed rate increase is viewed over a longer time period, the rate increase is even larger. For example, examining the difference between the rates in Big Rivers' long-term forecast as of 2012 and those rates as of 2016, the increase to Rural customers is approximately $[redacted] per year on average.[38]

It is critical that the Commission consider the cumulative impact of all components from these increases, not just the base rate impact, since the *"all in"* increase is what customers will actually see on their bills. Examining that cumulative impact, these two cases would represent the largest rate increase over such a short period in the history of the Kentucky. As John Warren, one of the public commenters in this case, succinctly

[37] KIUC Ex. 14.
[38] Confidential Tr. (January 8, 2014) at 12:00:17.

summarized, Big Rivers' proposal would mean *"a heck of an increase for all of us."*[39] Joint Intervenors are not aware of any case or cases in which any Commission in the nation has allowed a utility to double its rates within a year, as Big Rivers proposes to do through its *"pancaked"* rate cases. According to SNL financial data, which begins in 1980, the largest rate increase ever approved for a regulated utility in the United States was 57% (in 1986), the next largest was 45% (in 1989).[40] It is not hyperbole to state that Big Rivers is requesting that the Commission approve *historically unprecedented* rate increases.

As KIUC noted in its Brief in Case No. 2013-00535, rate increases approaching the magnitude of Big Rivers' current requests have only been experienced in recent years in states that were in the process of deregulating. And they have been met with extreme responses. In June of 2007, as that state moved from frozen legacy rates to market-based rates, the Maryland Commission approved residential increases of 72% for Baltimore Gas and Electric Co. That decision was so unpopular that the General Assembly fired the Maryland Commissioners, only to have the Maryland Court of Appeals overturn its action.[41] The same year, the Illinois Commission decided to allow deregulated electricity to be procured via a *"reverse auction"* process that resulted in rate increases ranging from 26% to 55%. In response, the Illinois General Assembly enacted the Illinois Power Agency Act which, *inter alia*, banned reverse auctions and required ComEd and Ameren to provide $1 billion in refunds to Illinois electric customers.[42]

Big Rivers has continually undersold the magnitude of the rate increases that it is proposing to the public by focusing on the base rate increases in isolation, rather than the *"all in"* rate impact that customers will actually see on their bills. For example, Big Rivers officials were cited in a Owensboro Messenger-Inquirer article in November 2013, stating that "[i]*n the first rate adjustment approved last month, the average Kenergy rural customer will pay about 16.3 percent more. In the second rate case that has not yet been approved, the average customer would see a 21-percent hike if the PSC grants the full request, officials said.*"[43] However, if Big Rivers'

[39] Tr. (January 8, 2014) at 10:34:00.

[40] Attachment C (SNL list of all state commission decision since 1980 approving a rate increase of 10% or higher).

[41] "Governor O'Malley's Chance to Reshape PSC," Baltimore Sun (January 18, 2007), *available at* http://articles.baltimoresun.com/2007-01-18/news/0701180028_1_monopoly-commission-electricity.

[42] "Electric Rate Relief and Reform Act (SB 1592)," Citizens Utility Board, *available at* http://www.citizensutilityboard.org/ciLiveWire_IEP_ERRR.html.

[43] "Deal Allows Smelter Power Options," Owensboro Messenger-Inquirer (November 21, 2013).

proposed approach is approved, once the Reserve Funds run out, its customers will be hit with the full impact of a rate increase that will be much larger than disclosed to the public.

Even under the best case scenario reflected in Big Rivers' long-term financial forecast, the Company's proposed increases would result in Rural customers paying an over $[redacted]/MWh wholesale *"all in"* rate per year from the time the Reserve funds are depleted through 2020 *in addition to* the retail charge of $33/MWh from their distribution cooperatives, resulting in a total Rural rate of *over $133/MWH.*[44] Large Industrial customers would pay over $[redacted]/MWh from the time the Economic Reserve is depleted until 2020.[45] Yet those rates would only allow Big Rivers to meet its desired 1.40 TIER in one year from now until 2027.[46] In other words, even by its own terms and using Big Rivers' overly-rosy assumptions, the Company's long-term plan is a failed combination of excessive rates for customers and inadequate TIER for Big Rivers. This suggests that more rate increases are likely, as Company witness Walker acknowledged that even the Company's current plan is of concern.[47]

If approved, Big Rivers' proposed 13.48¢/kWh rate for Rural customers would represent the highest average residential rate in the Commonwealth of Kentucky, according to 2011 and 2012 EIA numbers.[48] And its proposed 7.91¢/kWh Large Industrial rate would represent the highest industrial rate compared to the 2012 average industrial rates of any major utility in Kentucky: 28.20% higher than LG&E, 44.08% higher than Kentucky Power, and 45.67% higher than Kentucky Utilities.[49] When compared to the average industrial rates in other states, Big Rivers proposed rate would rank 39th in the nation, making its rate higher than the average industrial rate in New York.[50]

The homepage of the Kentucky Cabinet for Economic Development ("Cabinet") uses low electric rates as a major recruiting tool for new industry, advertising that "*Kentucky's industrial power costs rank 6th lowest in the U.S., and are over 22 percent less than the national average.*"[51] Of the top ten reasons listed by the Cabinet for

[44] Sierra Club Ex. 4; Tr. (January 8, 2014) at 18:07:57; Ex. Wolfram-7.
[45] Sierra Club Ex. 4.
[46] Sierra Club Ex. 4.
[47] Tr. (January 8, 2014) at 16:42:12.
[48] Sierra Club Ex. 20; KIUC Ex. 12.
[49] KIUC Ex. 13.
[50] Sierra Club Ex. 20; Tr. (January 9, 2014) at 10:39:30.
[51] Cabinet for Economic Development website, *available at* http://www.thinkkentucky.com/.

"Locating or Expanding Your Business in Kentucky," low-cost electricity is listed as number five.[52] Approval of the Big Rivers proposal would require the Cabinet to revise its recruiting tool of low-cost power in order to exclude Western Kentucky.

A recent report by the Kentucky Energy and Environment Cabinet entitled *"The Vulnerability of Kentucky's Manufacturing Economy to Increasing Electricity Prices"* discussed the adverse economic impacts of even a 25% increase in industrial rates on manufacturers in Kentucky. The report stated:

> *Given a 25% forecasted increase in the real price of electricity in Kentucky between 2011 and 2025, this study estimates the Commonwealth will likely lose, or fail to create, approximately 30,000 fulltime jobs in the long-term. Manufacturing establishments were found to be most responsive to changes in electricity prices and can be expected to permanently shed 17,500 full-time jobs.*[53]
>
> ***
>
> *A 2011 report prepared for the Kentucky state government found that increases in the price of electricity are associated with decreases in overall levels of employment. Specifically, the authors posit that a onetime increase of 25% in the price of electricity would reduce the long-run growth rate in total employment from an average of 3.0% to 2.49% per annum.*[54]
>
> ***
>
> *Of the sectors analyzed, manufacturing, Kentucky's largest economic sector, was the most-responsive sector to changes in electricity prices. Specifically, an increase of 10% in real electricity prices was associated with a reduction of 3.37% in absolute manufacturing employment, and with 95% confidence, between -2.77% and -3.97%.*[55]
>
> ***
>
> *This study demonstrated that electricity price increases alone may force businesses to seek ways to reduce costs or close, causing substantial job losses in Kentucky's electricity-intensive manufacturing sector, and slowing overall long-term job creation in other sectors.*[56]

Individual industrial customers of Big Rivers also testified regarding the adverse impacts of the proposed massive rate increases on their specific businesses. Steve Henry from Domtar noted that Big Rivers' proposed rate increase would cause the regulated electric rate of his company's Hawesville mill to skyrocket from the

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[52] "Top Ten Reasons for Locating or Expanding Your Business in Kentucky," *available at* http://www.thinkkentucky.com/KYEDC/TopTen.aspx.

[53] KIUC Ex. 8 at i.

[54] KIUC Ex. 8 at 6 (citing Garen, Jepsen, & Saunoris. "The Relationship between Electricity Prices and Electricity Demand, Economic Growth, and Employment" Report Prepared for the Kentucky Department for Energy Development and Independence, Gatton College of Economics, University of Kentucky, September 30, 2011).

[55] KIUC Ex. 8 at 9.

[56] KIUC Ex. 8 at 12.

lowest regulated electric rate among Domtar's five major U.S. mills to the highest.[57] That rate jump could jeopardize the Hawesville mill's access to corporate capital funding for projects needed to keep its manufacturing processes both modern and competitive.[58] It also could have environmental implications, as Mr. Henry explained:

> *For every two tons of production, our pulping process yields enough residual biomass fuel to offset one megawatt-hour of 'brown power' produced from a coal or natural gas-fired facility. For example, in 2012, the Hawesville facility produced renewable energy to offset more than 255,000 MWh of the region's brown power. This was enough renewable energy to power 22,600 average US homes for a year. Increased idling request would reduce the amount of renewable energy produced by the Hawesville mill.*[59]

Similarly, Bill Cummings from Kimberly-Clark testified that Big Rivers' proposed rates would cause his company's Owensboro mill to have the highest per unit electricity cost of any Kimberly-Clark tissue mill in the U.S, jeopardizing its access to corporate capital.[60] Mr. Cummings stated that Kimberly-Clark would evaluate installing an expensive gas-fired combined heat and power cogeneration at its Owensboro mill to reduce costs in response to the proposed rate increase.[61] That option would further deteriorate the size of Big Rivers' native load, potentially resulting in yet another Big Rivers rate case in the future.[62]

Michael Carter from Aleris International, Inc. also explained how the proposed rate increase could discourage additional investment by Aleris in its Lewisport facility, harming the Western Kentucky economy.[63] Because Aleris has already undertaken significant energy efficiency efforts to protect its bottom line, in the short-term and given the magnitude of the increases proposed by Big Rivers, it *"will not be able to reduce its load requirements anywhere near the amount needed to offset a significant portion of the rate increase."*[64]

Further, a number of public comments expressed deep concern over the economic impacts of Big Rivers' proposed rate increases, particularly the impacts on industrial customers. For example, Mike Baker, Director of the Hancock County Industrial Foundation stated:

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[57] Direct Testimony of Steve Henry (October 29, 2013)("Henry Testimony") at 7:11-19.

[58] Henry Testimony at 8:12-14.

[59] Henry Testimony at 9:7-13.

[60] Direct Testimony of Bill Cummings (October 29, 2013)("Cummings Testimony") at 4:8-10 and 6:5-9.

[61] Cummings Testimony at 7:12-19.

[62] Cummings Testimony at 7:20-8:2.

[63] Direct Testimony of Kelly Thomas, *adopted by* Michael Carter (October 29, 2013)("Carter Testimony") at 4:1-3.

[64] Carter Testimony at 7:18-22.

> *...I come before this body again to plead on behalf of our county, our industry, our economy and our future. With over 60% of all jobs in manufacturing, Hancock County's economy, and yes, future is firmly anchored in the success and sustainability of our industry. As I reminded the commission in July, the Department of Commerce found Hancock County (at 73%) to be the nation's number one county in percentage of wages paid by manufacturers. While aluminum smelting, rolling, drawn wire, paper manufacturing, steel coating, forming and tile manufacturing are diverse industries, they share a critical element, reliable, sustainable and competitive electrical supply.*[65]

Kyle Estes, Superintendent of the Hancock County Schools System, testified:

> *With the proposed rate increase, coupled with the recently approved rate increase, I feel our community strengths may be in jeopardy. Families in our area, just like those across the nation are living on tight budgets. These families have and will continue to be hit hard by the increase approved in the fall of this past year, let alone any additional increases.*[66]

Mr. Estes explained how the impact of losing a large industrial customers like Domtar could adversely impact his school system:

> *...if Domtar closed their Hawesville plant the direct impact would be a net loss of income of $258,913 of utility tax income, $79,807 property tax income, and tangibly assessed income exceeding $100,000. Total, this comes to $438,720 of lost income to the local school system. To put this in context, this is approximately 4% of our entire estimated expenditures. Or to put it another way, it is approximately 8 teachers that would be laid off work.*[67]

Big Rivers' proposed rate increases could be devastating to its remaining customers, given that the Company serves a residential base that earns 20% below the Kentucky average household income[68] and has traditionally attracted energy-intensive industries with the promise of low-electric rates. And if Big Rivers' non-smelter customers are ultimately unable to absorb these massive increases and the Company loses additional load as a result, Big Rivers would likely file another rate increase, which would only amplify the cost burden imposed on any remaining customers. In other words, a death spiral would occur. Worse, these rate increases may be even larger in the long run since Big Rivers' current request does not account for additional costs that the Company will incur if it retains its excess capacity, including environmental compliance costs.

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[65] Public Comment Ex. 1.

[66] Public Comment Ex. 2.

[67] Public Comment Ex. 2.

[68] U.S. Census Bureau, State & County QuickFacts, *available at* http://quickfacts.census.gov/qfd/states/21000.html.

2. Big Rivers Imprudently Exacerbated The Level Of The Proposed Rate Increases.

The level of Big Rivers' proposed rate increases was exacerbated by its own actions. Big Rivers failed to pursue a number of strategies that could have at least partially mitigated the $71.227 million rate increase it now proposes to impose upon its remaining customers in this case.

a. Big Rivers Imprudently Turned Down The Sebree Smelter's Offer To Stay On The Company's System At A Cost-Based Rate.

Big Rivers' proposed $71.227 million rate increase is entirely attributable to the loss of the Sebree smelter on Big Rivers' system.[69] Yet Big Rivers could have mitigated at least a portion of that increase by accepting a November 2012 proposal by the Sebree smelter to remain on Big Rivers' system and take power at a cost-based rate of $43/MWh.

The events leading up to the Sebree smelter's proposal to remain on the system at a cost-based rate are well-known to the Commission. On August 20, 2012, Century Aluminum gave its one-year Notice that it was terminating its power contract with Big Rivers. Just three days after the Century Notice, on August 23, 2012, the Plant Management of Alcan's Sebree smelter wrote to Governor Beshear, with copies to each of the Commissioners and to Big Rivers, warning that:

> *...there is simply no way that the Sebree Works will be able to absorb any portion of the rate increase that will most certainly be sought by BREC in the event of the closure of Century's Hawesville smelter. The outcome of any increase in the rates to the Sebree Works could be its closure.*[70]

In an effort to avoid also giving its contract termination notice, Alcan began negotiating with Big Rivers, which culminated in the November 2012 offer by Alcan to stay on the system at a cost-based rate of $43/MWh.[71] Big Rivers turned down this offer. Instead, on January 15, 2013, Big Rivers filed Case No. 2012-00535 to recover the lost margins from the impending Hawesville closure. The rate case included a proposal to increase the Sebree smelter's rates by 16%, or approximately $25 million.

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[69] Tr. (January 7, 2014) at 15:57:39 (*"This case only deals with the idling of Sebree. There's no other revenue items in it?" A: "To the best of my knowledge... "*).

[70] Attachment A.

[71] Tr. (January 7, 2014) at 16:06:03.

Just two weeks later, on January 31, 2013, Alcan gave its contract termination Notice. This was the Notice that it had warned Governor Beshear that it would be forced to give if Big Rivers were to propose that Alcan pay for any of the Century-related rate increase. Alcan's January 31, 2013 Notice placed the blame squarely on actions taken by Big Rivers:

> *On January 15, 2013, Big Rivers Electric Corporation ("Big Rivers") filed an Application with the Kentucky Public Service Commission (the "KPSC") for an increase in base rates (the "Application"). According to Big Rivers, the Application, if approved, would result in a rate increase of nearly 16%. There is already substantial doubt that the Sebree Smelter is sustainable at the current rate being charged to APPC. The increase contemplated by Application would remove all doubt whatsoever and ensure that the Sebree Smelter is unprofitable and therefore unsustainable. Under the circumstances, APPC has no choice but to furnish this Notice of Termination.*[72]

Within two days of Alcan's January 31, 2013 Notice, Big Rivers was downgraded to junk bond status by all three rating agencies. The deep financial hole that Big Rivers now finds itself in was self-inflicted. It was the result of management imprudence. And the solution should not be a bailout by consumers.

As Mr. Bailey conceded at the hearing, while accepting Sebree's proposal to stay on the system at cost-based pricing would have led to a rate increase to Big Rivers' remaining customers, it would not have been at as high a level as is proposed in this case:

> *Commission Gardner: "And you believed that...if [Alcan] took [service] at $49, that that would be roughly protecting them from the Century rate increase and they wanted $43 instead of that?*
>
> *A: "Came back and said they had to have $43. But we did some calculations on holding them harmless....we calculated that that would result in the members seeing an increase, I'm talking about the Rurals, of an additional 8%, but less than we'd have if both of them left the system."*[73]

Hence, the choice by Big Rivers' management to reject the Sebree smelter's offer resulted in the current crisis that Big Rivers has placed before the Commission. Now, rather than receiving $43/MWh from the Sebree smelter, the smelter is taking service under market-based rates, which are typically lower than $43/MWh.[74] Since Big Rivers is not receiving this additional revenue from the Sebree smelter, the Company is now asking the Commission to approve massive rate increases higher than they otherwise would have been if Big Rivers' had

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[72] Attachment B.

[73] Tr. (January 7, 2014) at 16:06:03.

[74] *See* Case No. 2013-00413, Order (January 30, 2014).

accepted the Sebree smelter's offer. The Company's Wilson plant has been rendered excess capacity since it is no longer needed to serve the Sebree smelter's load. And Big Rivers is attempting to transform itself into a merchant generator, which is not a reasonable business model for a cooperative utility, by agreeing to future sales of discounted power to consumers in Nebraska, Oklahoma, and elsewhere while the Kentucky native load pays higher rates to make up any shortfall. But Big Rivers could have changed the entire dynamics of this case by taking the Sebree smelter's $43/MWh offer, which would have kept Wilson operating long term and saved its non-smelter customers from part of its proposed massive rate increases.

b. Big Rivers Refused To Sell Its Excess Generation Assets At Fair Market Value.

Having rendered Wilson neither *"used"* nor *"useful"* by refusing Alcan's $43/MWh offer, Big Rivers refuses to sell its excess capacity at fair market value, which would reduce the fixed costs it seeks to recover from its remaining customers. Instead, Big Rivers insists upon selling the Wilson and Coleman plants at a premium above their net book value:

> *Q: "And to date, has Big Rivers attempted to sell the Coleman and/or Wilson generating stations at prices above their book values or at their book values?...*
>
> *A: "...we have priced them at a modest increase above the book value levels."*[75]

And the Company has not even approached its creditors with respect to any plant sale proposal:

> *Q: "Does Big Rivers believe that its creditors would agree to allow Big Rivers to sell the plants if they were sold at net book value?*
>
> *A: "We've never approached our creditors with that information so I don't know..."*
>
> *Q: "...Have you approached your creditors with respect to any proposal to sell?"*
>
> *A: "No."*[76]

Moreover, the Company has not commissioned any study or analysis to determine the fair market value of the Wilson and Coleman plants.[77]

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[75] Tr. (January 7, 2014) at 15:40:28; *See also* Confidential Sierra Club Ex. 12 for specific pricing information.

[76] Tr. (January 8, 2014) at 12:41:26.

[77] *See* Big Rivers Response to KIUC Data Request 1-8(c).

Given the unlikelihood that an arm's-length buyer would pay more than fair market value for the Wilson and Coleman plants, Big Rivers' imprudent strategy exacerbates the level of costs that it now seeks to recover from its remaining customers.

c. Big Rivers Failed To Initiate Negotiations With Its Creditors To Restructure And/Or Ease Its Debt Obligations Prior To Filing Its Recent Rate Requests, Even Though It Plans To Begin Such Negotiations Once A Final Order Is Issued In This Case.

Big Rivers also failed to begin negotiating a restructuring and/or easing of its debt obligations with its creditors prior to its filing of the proposed rate increases in Case No. 2012-00535 and the present case. This is true even though, as Ms. Richert explained, Big Rivers intends on initiating such negotiations with RUS *after* the Commission has issued its final order in this case:

> *Q: "I think you mentioned yesterday about discussions with creditors to lengthen some of the debt terms. Those discussions would be put off until after the rate case?"*
>
> *A: "Right."*
>
> *Q: "Can you explain why Big Rivers would delay those discussions with the creditors until after this rate case is final?"*
>
> *A: "Because we really want to be on the strongest footing that we can be before you would begin such negotiations. So we want to make sure that we get past this rate case, that we receive a favorable order, and then we would start negotiating with the lenders, especially with, for instance, the RUS loan...."*
>
> *Q: "And when you say lengthening, is this for the terms of the debt or interest payments as well?"*
>
> *A: "Yes. In other words, rather than having 20 years left on the loan, we'd want to extend that. Or if there's a bullet payment due, perhaps that could be changed to something other than a bullet payment."*[78]

If Big Rivers' debt obligations are restructured and/or eased subsequent to the issuance of the Commission's order in this case, the revenue requirement that it ultimately collects from customers may be excessive compared to its then-existing financial needs.

Big Rivers' creditors should not have been surprised if the Company had approached them for negotiations prior to the filing of the present rate case since they were fully informed of the risks associated with the smelters' potential departure when they loaned money to the Company. When CoBank and CFC negotiated

[78] Tr. (January 8, 2014) at 12:10:45.

the terms of their loans to Big Rivers, and before they actually loaned $537 million to Big Rivers in mid-2012, the Company provided a July 12, 2012 Disclosure Statement to those creditors, which warned them of the risks of potential smelter contract terminations.[79] Mr. Bailey also acknowledged at the hearing the likelihood that the creditors were aware of the smelter risk when they lent money to Big Rivers:

> *Q: "Do you believe that lenders... that Big Rivers' lenders had to have had significant understanding of that risk pertaining to the smelter risk of Big Rivers?"*
>
> *A: "Certainly, the rating agencies are very well aware of it. They cite the load concentration in many of their reports. I know the lenders pay attention to the rating agencies as well as their own intelligence."*[80]

Big Rivers' creditors are kept well-informed by Big Rivers regarding the events at the Commission:

> *Chairman Armstrong: "How often do you brief RUS on your financial status?"*
>
> *A: "Well, they get a copy of the RUS form of our monthly results compared to budget...we keep them apprised of any activity we have before the Commission as well and if there are any changes in the ratings that we have with the rating agencies."*[81]

Big Rivers' decision to delay debt negotiations with its creditors until after the Commission's order in this case is issued is unreasonable and may only unnecessarily exacerbate the level of the proposed rate increases to its remaining customers.

3. Big Rivers Has Repeatedly Employed The Same Litigation Scare Tactic In Numerous Cases In An Attempt To Pressure The Commission Into Accepting Its Proposals.

In a series of recent cases, Big Rivers repeatedly alleged that the Commission must grant the full amount of its rate requests or else it will become insolvent or bankrupt. Yet in each of these cases, after the Commission either completely denied or partially denied Big Rivers' requested rate relief, Big Rivers did not become insolvent or file for bankruptcy.[82]

For example, in Case No. 2009-00040, Big Rivers claimed that *"There is no room for movement in the amount of rate relief we are requesting; we are requesting the minimum amount necessary to avoid insolvency in*

[79] AG Ex. 6. at 39-40.
[80] Tr. (January 7, 2014) at 13:41:58.
[81] Tr. (January 8, 2014) at 12:49:20.
[82] KIUC Ex. 1.

January 2010."[83] Although the Commission's May 27, 2009 Order in that case denied Big Rivers' requested interim rate increase, Big Rivers did not become insolvent.

Subsequently, in Case No. 2011-00036, Big Rivers claimed that *"Big Rivers is only requesting the minimum increase necessary so that it can meet its financial obligations and maintain its investment grade credit ratings, as required by its debt covenants...there is no leeway in Big Rivers' request for rate relief in this proceeding."*[84] Again, even though the Commission ultimately reduced Big Rivers' requested $39.34 million rate increase to $27.79 million, Big Rivers did not go bankrupt.

Most recently, in Case No. 2012-00535, Big Rivers claimed that *"...the entire amount of Big Rivers' proposed rate relief is absolutely necessary."*[85] Even though the Commission's October 29, 2013 Order reduced Big Rivers increase from its requested $68.6 million to $53.23 million, Big Rivers did not challenge the Commission's ruling on rehearing nor did it file for bankruptcy. Indeed, Big Rivers later emphasized that Moody's viewed the Order favorably, citing Moody's view that the reduced rate increase ultimately granted by the Commission *"is credit positive."* Big Rivers even called the Order a *"'breath of fresh air' to the rating agencies and banks."*[86]

Big Rivers' familiar refrain is echoed again in this case. Here, the Company claims that it must have the full amount of its $71.227 million requested rate increase or it will go bankrupt. Not only should the Commission be wary of Big Rivers' claims given the precedent discussed above, but it should also consider the evidence in the record suggesting that Big Rivers does not need the entire rate increase it requests. For instance, at the hearing, Company witness Bailey conceded that Big Rivers' recent earnings are currently very good:

> *Q: "Big Rivers is actually doing quite well financially right now, is it not?*
>
> *A: "At the current time we are, under the circumstances in which we're operating. I'm not worried about default at the present time."*[87]

[83] Direct Testimony of Mark A. Bailey, Case No. 2009-00040 (March 2, 2009) at 24:23-25:2.

[84] Rebuttal Testimony of Mark A. Bailey, Case No. 2011-00036 (July 6, 2011) at 8:9-13.

[85] Direct Testimony of Mark A. Bailey, Case No. 2012-00535 (January 15, 2013) at 16:8-9.

[86] Rebuttal Testimony of Daniel M. Walker, Case No. 2013-00199 (December 17, 2013) at 5:19-6:12.

[87] Tr. (January 7, 2014) at 14:18:11.

In fact, the Company's $24.254 million profit margin as of November 2013 was not only double its profits from last year, but also double the amount that Big Rivers needs to meet its TIER requirements.[88]

Q: "That's double your margins from the prior year, correct?"

A: "Yes..."

Q: "Now this is double the amount of profit margin you need to meet the 1.24 TIER that you've requested, correct?"

A: "Yes."[89]

Big Rivers also currently has approximately $90 million in cash reserves as well as $15 million in reserves dedicated to capital expenditures.[90] Big Rivers' financial picture therefore does not appear quite as dire as the Company would have the Commission believe.

The Commission should also note that Big Rivers' past projections of its financial outlook have substantially underestimated the amount of revenue that it ultimately received. For example, Big Rivers' budget forecasted that its profits would be $982,000.[91] In reality, Big Rivers made $24.254 million in profit through November 2013, or *24 times* the amount of profit it had projected. While this significant profit is largely the result of higher than expected off-system sales and deferred maintenance outages, Big Rivers' current financial status demonstrates that its forecasts may not accurately reflect its actual financial needs. It also demonstrates why Joint Intervenors' proposal of a reasonable rate increase supplemented as needed by the reserve funds, rather than the open-ended and excessive rate increase requested by Big Rivers, is the reasonable and prudent way for the Commission to proceed.

[88] KIUC Ex. 3.

[89] Tr. (January 7, 2014) at 14:20:10.

[90] Tr. (January 7, 2014) at 18:13:04.

[91] Tr. (January 7, 2014) at 14:20:51.

4. Big Rivers' Proposed $71.227 Million Rate Increase, If Granted, Would Force Its Remaining Customers To Pay For The Costs Of Excess Capacity Approximately 2.5 Times The Company's Native Load Requirements.

Like customers served by an investor-owned utility, customers located in the exclusive service territory of a cooperative utility can only be required to pay rates that are fair, just, and reasonable.[92] Such rates do not include the costs of any utility facilities that are not *"used and useful"* in providing service to those customers. The Commission has repeatedly upheld this fundamental principle in the past, specifically disallowing costs that were not just and reasonable and/or that did not result from *"used and useful"* facilities.[93] Most recently, in Case No. 2012-00535, the Commission disallowed immediate recovery of Big Rivers' depreciation expense associated with the Coleman plant because that plant represented *"excess capacity"* that was not used and useful in providing service to Big Rivers' native load customers.[94]

In this case, Big Rivers again asks the Commission to force its remaining customers to pay unjust and unreasonable costs associated with facilities that are not *"used and useful"* in providing service to those customers – its Wilson and Coleman plants. But now that the smelters have left Big Rivers' system, these units represent excess capacity that the Commission should not require the remaining customers to pay for. Specifically, the amount of Big Rivers' 1,819 MW of generation that is now excess capacity is shown in the following chart:[95]

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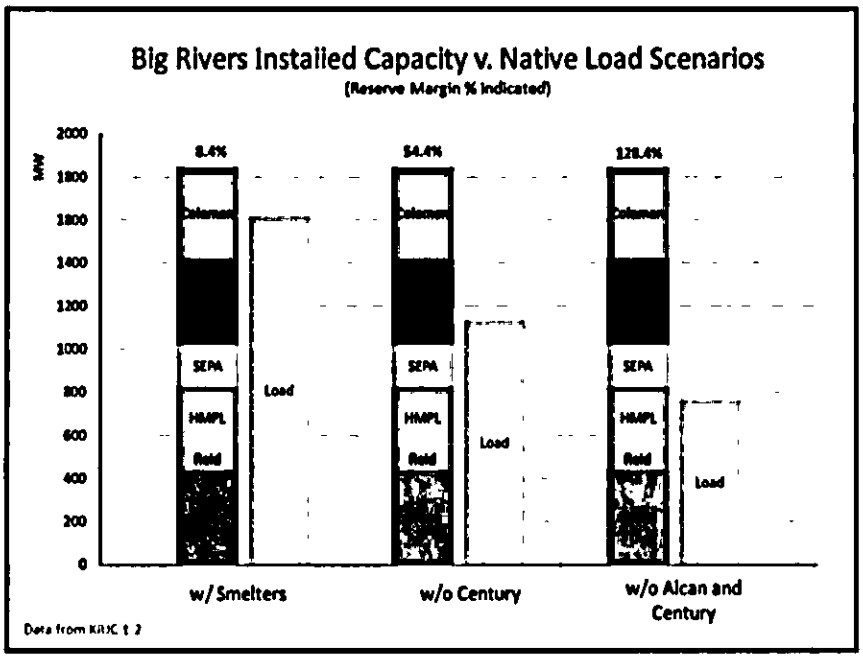
[92] KRS 279.010(12); 1987 Order at 39. In that Order, the Commission held that cooperatives organized under KRS 279 are subject to all of the provisions of KRS 278 and that rate base and debt service coverage for a cooperative utility must be determined by applying the same standards applicable to investor-owned utilities. Id at 39. The Commission also stated that "[a] *cooperative's system is defined as consisting of "any plant, works, facilities and properties ...used or useful in the generation, production, transmission or distribution of electric energy" and that "[i]n balancing the equities to determine just and reasonable rates, the used and useful standard must be applied to cooperatives in the same manner as it is applied to investor-owned utilities.*" Id.

[93] *In the Matter of Big Rivers Electric Corporation's Notice of Changes in Rates and Tariffs for Wholesale Electric Service and of a Financial Workout Plan*, Case No. 9613, Order (May 6, 1985) at 23 ("*Big Rivers' current lack of a line of credit is due solely to the financial problems related to the Wilson plant. As stated many times in this record, the costs and problems attendant to the Wilson plant will not be reflected in Big Rivers' current rates*"); Case No. 9885, Order (Aug. 10, 1987); *A Formal Review of the Current Status of Trimble County Unit No. 1*, Case No. 9934, Order (July 1, 1988) at 33.

[94] 535 Order at 19.

[95] Direct Testimony of Lane Kollen, Case No. 2013-00199 (October 29, 2013) ("Kollen Testimony") at 24:3-4.



Without the smelters, Big Rivers now has *two and a half times* the generating capacity and reserve margin that it needs to meet the load of its remaining customers. And the Company's reserve margin has skyrocketed to 190%, far in excess of the reserve margins of other Kentucky utilities.[96] Big Rivers itself concedes that it has much more capacity than necessary to meet its native load obligations:

> *Q: "Does Big Rivers foresee retaining far more capacity than its members are projected to need into foreseeable future?"*
> *A: Into the near future, yes."*[97]

Despite the fact that the excess capacity from Big Rivers' Wilson and Coleman plants is not physically or economically *"used and useful"* to its non-smelter customers, the Company nevertheless included approximately $[redacted] million in unavoidable fixed costs related to that excess capacity in its initial proposed revenue requirement in this proceeding.[98] The Commission should reject as unreasonable Big Rivers' proposal to force customers to pay these fixed costs.

Because Big Rivers' excess capacity has been rendered no longer *"used and useful"* due to the smelters leaving the system for lower cost market power, it is reasonable to equitably share the resulting cost burden

[96] Direct Testimony of Lane Kollen, Case No. 2012-00535 (May 24, 2013) at 29:4-9.
[97] Tr. (July 7, 2014) at 11:48:56.
[98] Kollen Testimony at 26:1-9, *amended by* KIUC Ex. 14.

associated with that excess capacity between the Company's customers and its creditors. Forcing customers to pay all of the costs associated with that excess capacity would be against the weight of this Commission's precedent.

5. Big Rivers' Creditors Should Have Some Responsibility In Resolving The Company's Excess Capacity Issues.

It is reasonable for Big Rivers' creditors to play a role in resolving the Company's excess capacity issues. Those creditors all have some degree of control over the Company and indicia of ownership. For example, the RUS exercises supervisory control over Big Rivers and must approve nearly every major management decision.[99] The creditors therefore are responsible, in part, for Big Rivers' current financial issues.

Big Rivers' creditors are sophisticated lenders who understood the risk of the smelter contract terminations and were actively involved in the Unwind Transaction, yet they elected not to require long-term contracts with the smelters to ensure repayment. The creditors also refinanced Big Rivers' debt last year and loaned additional amounts with the full knowledge of the likely and impending smelter terminations. Specifically, as discussed above, before CFC and CoBank actually loaned $537 million to Big Rivers in mid-2012, the Company provided a July 12, 2012 Disclosure Statement to those creditors, which warned them of the risks of potential smelter contract terminations:

> *The Smelters have made public statements that the unanticipated magnitude of the current and future rate increases projected by Big Rivers as well as Big Rivers' recent evaluation of the impact of environmental legislation is what drives the current need for a statewide solution to the Smelters' increasing utility costs. Local representatives of Alcan informed economic development officials in state government in February of this year that projected power rates in 2013-2015 make it difficult for Alcan to envision a long-term future for the Sebree plant.*[100]
>
> * * *
>
> *Local representatives of Century have told Big Rivers and others in state government that rates at the status quo level are not sustainable for Century's Hawesville smelter even in the short term, and that $50/MWh power puts their smelter's viability at great risk. Century wrote Big Rivers on April 18, 2012, stating that at the current LME prices the Hawesville aluminum smelter cannot sustain operations at Big Rivers' current and projected power rates, and requesting to renegotiate the power rate provisions of its contract. Big Rivers has commenced discussions with Century relating to the sustainability of the Hawesville smelter. Century reported on April 24, 2012, that with the current power price forecast and assuming that the LME remains at its*

[99] Direct Testimony of Lane Kollen, Case No. 2013-00413 (December 23, 2013) at 39:2-5.

[100] AG Ex. 6 at 39 (emphasis added).

current level, the Hawesville plant is not viable from an economic standpoint.[101]

* * *

Since the meeting on June 14th, the Smelters have advanced other proposals to Big Rivers requesting significant rate reductions for the Smelters. Big Rivers offered a counterproposal and it has been rejected by the Smelters. On June 25, 2012, Big Rivers advised the Smelters that the gap between their demand and the Big Rivers' proposal is far larger than Big Rivers has the ability to close. There can be no assurances as to the outcome of this situation and as to whether one or both of the Smelters will give one year's notice, terminate its Smelter Agreement and close its smelting operations.[102]

The Seventh Circuit Court of Appeals has also spoken to the risks that creditors, including RUS, assume when they lend money:

As with any other lender, the REA assumes the business risk of advancing money to a specific organization, the risk that the organization will not be able to repay. Given the history and function of the RE Act, the scope of this risk incorporates the possibility that state regulation may occasionally impede the ability of power supply cooperatives to repay their loans. One could reasonably argue that the structure and operation of the subsidies provided through the REA reflect a congressional preference for the government's bearing this risk, rather than cooperative members. In any event, it is clear that the REA may not dictate who shall bear the risk because that would amount to the agency conferring power on itself.[103]

Because the creditors assumed the smelter risk in exchange for added profits from increased lending, those creditors should play a role in helping resolve Big Rivers' excess capacity issues.

6. Big Rivers' Decision To Run The Wilson Plant Through March 2014 To Make Off-System Sales Does Not Alter The Fact That The Plant Is Excess Capacity That Is Not "*Used And Useful*" To The Company's Remaining Customers.

Big Rivers may argue that its recent decision to run the Wilson plant in February and March 2014 to make off-system sales means that it should be allowed to temporarily recover the costs of that plant from its remaining non-smelter customers.[104] This argument fails. Even if Big Rivers runs the Wilson plant for two months in order to make off-system sales as part of the Company's developing merchant generation business, that does not mean that those assets are "*used and useful*" to its remaining non-smelter customers during the fully forecasted test year. The simple fact remains that the Wilson unit is not necessary to provide service to Big

[101] AG Ex. 6 at 40 (emphasis added).

[102] AG Ex. 6 at 40 (emphasis added).

[103] *Wabash Valley Power Ass'n v. Rural Elec. Admin.*, 988 F.2d 1480, 1491 (7th Cir. 1993).

[104] *See* Big Rivers Letter to the Commission (January 29, 2014).

Rivers' native load customers. Given that the Wilson plant is not "*used and useful*" to Big Rivers' native load customers, the Commission should not force those customers to pay the costs associated with a plant that is merely used to further Big Rivers' merchant generation business.

Nor does Big Rivers' recent decision mean that the economics of running the Wilson plant have fundamentally changed. While the recent unprecedented cold weather may have resulted in Big Rivers being able to make short-term off-system sales that cover the variable costs and some fixed costs associated with the Wilson plant, there is no evidence that the impact of this historically cold winter on markets will be anything but temporary. In addition, there are other costs that must be factored in before the Wilson plant would be operated on a more permanent basis (i.e. depreciation, interest expense plus TIER, etc). When these additional costs are factored in, it would require market prices to cover an additional $[redacted] million in costs beyond the amount claimed by Big Rivers in order for it to be economic to run the Wilson plant.[105]

Even if the Wilson plant is profitable to run for a longer period of time, factoring in all of these additional costs, this does not mean that Big Rivers' remaining customers should pay for that plant. If the economics of the plant are positive, Big Rivers should either create a merchant generation affiliate and spin off the plant to that affiliate or sell the plant on the market. Either way, Big Rivers' remaining customers should not be forced to pay for plant that is not "*used and useful.*"

7. Big Rivers Failed To Provide Comprehensive And Objective Analysis In Support Of Its Proposal To Continue To Incur Capital Costs Associated With The Wilson And Coleman Units.

Before approving the substantial rate increases proposed in this case, the Commission should comprehensively assess the future value of the Wilson and Coleman plants to Big Rivers' remaining customers on an objective basis. Unfortunately, the Company has provided little reliable information by which it could do so.

As an initial matter, Big Rivers failed to conduct and provide a Net Present Value ("NPV") analysis demonstrating that it was more cost-effective to idle the Wilson and Coleman plants for at least the next four to five years than to pursue other options with respect to those plants.[106] As AG witness Brevitz testified *"[p]ublic*

[105] Big Rivers Response to Attorney General Data Request 1-105.

[106] *See* AG Ex. 4; Direct Testimony of David Brevitz (October 29, 2013) ("Brevitz Testimony") at 36:14-17.

utility status does not absolve Big Rivers of the need to perform NPV analysis for a decision as fundamental as it faces with the departure of the smelters and substantial excess capacity."[107]

One option that Big Rivers should have studied and provided to the Commission is whether the Company should sell the Wilson and Coleman plants in order to reduce the continued costs associated with those units. However, the Company failed to do so. Big Rivers did not even conduct an analysis to determine the fair market value of its Wilson and Coleman plants. Big Rivers only assessed the net book value of the plants, which is likely not indicative of current market conditions for these plants.[108] Given Big Rivers' lack of analysis, the Company failed to prove that the sale of its Wilson and Coleman plants is an inferior option to idling those units.

Another option that Big Rivers should have comprehensively studied and provided to the Commission in this case is whether retirement of the Wilson and/or Coleman plants is a more prudent option than its massive rate increase approach. Sierra Club witness Ackerman listed a wide variety of costs that Big Rivers could avoid if the plants were retired:

> *Q: "Could you describe specifically the categories of costs that would be avoided by the retirement of the Wilson and Coleman plants?*
>
> *A: "First of all, the depreciation costs are avoided. The additional costs which have been documented in some of the discovery responses – the property tax, property insurance, some of the other fixed costs associated with the plants. The prospects of someday bringing these plants back online will involve additional costs, not only the startup costs of a few million dollars, but the environmental upgrades that will be needed to make these plants compliant with the regulations in four, five, six years, whatever this time period is that we're envisioning because as I understand it, almost nothing has been included in the cost projections for environmental regulations because they're not certain. But it strikes me that one of the least likely futures is a future in which there are no new environmental regulations in the next five years. I cannot see betting on the fact that there will be no new regulations. To the extent that there are new regulations, there will be additional costs to upgrading these plants to meet those regulations, possibly a carbon fee – the carbon regulations now being very actively discussed by the EPA. So that there will be...not only are there the fixed costs, which I discussed, of carrying the plants in idled status, but there are these perhaps quite substantial costs of bringing them back online, including bringing them up to standards to bring them back online."*[109]
>
> *Q: "Would the costs of deferred outages also be avoided?"*
>
> *A: "Yes, that's right. The maintenance outages that have been deferred for the last few years imply that there would be a need for considerable routine maintenance to bring them back up to*

[107] Brevitz Testimony at 37:4-6.

[108] Tr. (January 7, 2014) at 15:40:28; *See also* Confidential Sierra Club Ex. 12 for specific pricing information; Direct Testimony of Frank Ackerman, Case No. 2013-00199 (October 29, 2013) ("Ackerman Testimony") at 23-24 (discussing recent coal plant sales occurring at $160 per kW or less).

[109] Tr. (January 9, 2014) at 17:28:16.

routine standards Independent of the environmental upgrades."

Dr. Ackerman also noted that even if Big Rivers could not sell the Wilson units and had to demolish them, the demolition costs would be cheaper than idling those units for four to five years. He noted that this may be true for the Coleman units as well:

> Q: *"Based on your evaluation, how do those demolition costs compare to the avoided costs of retiring those plants?"*
>
> A: *"So based on the sources which I cited - the Navigant consultant study of coal plants all over the country, the EPRI case studies - the demolition costs for a plant the size of Wilson are similar to one year's depreciation on Wilson so that...if the worst came to worst and you couldn't sell it for any positive price and you had to demolish it, you would essentially pay the equivalent of the depreciation for keeping the plant on the books for one more year."*
>
> Q: *"And even if you accept the numbers that Mr. Bailey put forward, how would that compare?*
>
> *A: "Well, the numbers he put forward would be more in the range of three or four years of depreciation..."*
>
> *Q: "And under a number of the permutations of a future forecast that Big Rivers has put forward, Wilson and Coleman would be idled for longer than three to four years, isn't that correct?"*
>
> *A: "That's right, the 2019, you know, five, six years, and that seemed to be a very uncertain number. I believe also that the forecasts that show them coming back online at that point are based on exaggerated forecasts of both energy prices and capacity prices. My testimony contains descriptions of why I believe they have exaggerated the future increases in both energy and capacity prices."*
>
> *Q: "And I believe Mr. Bailey testified that the demolition costs of Coleman were significantly lower than the demolition costs of Wilson?"*
>
> *A: "That's right."*[110]

Retiring those plants does not have to be substantially adverse to Big Rivers' finances. Big Rivers has $400 million of patronage capital (equity) that can be used to help reduce any amount of the units that the Company would be required to write-off.[111]

Selling or retiring the Wilson and/or Coleman plants could very well be the most reasonable least-cost option for Big Rivers. Big Rivers' plan to merely idle the Wilson and Coleman plants for four to five years rather than selling or retiring those units will mean that it will have to continue to make capital expenditures on the units, which could include significant additional spending in order to comply with both new and existing environmental regulations. For example, Mr. Berry testified that the capital expenditure required because of Mercury Air Toxic

[110] Tr. (January 9, 2014) at 17:30:22.

[111] Case No. 2012-00535, Tr. (July 2, 2013) at 10:19:31.

Standards ("MATS") for the Wilson plant would be close to $11 million.[112] Additional capital expenditures could also be required because of other environmental regulations, as Mr. Berry conceded at the hearing:

> *Q: "And isn't it also true that before restarting Wilson or Coleman, you would have to bring the plants up to compliance with whatever new environmental regulations exist at that time, including the EPA Mercury Air Toxic Standards once they go into effect?*
>
> *A: If by 'that time,' you mean those that would be in place when they began to operate, yes."*
>
> *Q: "And that would also possibly include regulations that are not currently reflected in your forecasting, correct, such as possible regulation of greenhouse gas standards by the EPA?"*
>
> *A: "Yes..."*[113]

Other environmental regulations that could require increased capital and O&M spending on the Wilson and/or Coleman plants include the Cross-State Air Pollution Rule ("CSAPR"), if reinstated by the U.S. Supreme Court, the proposed Coal Combustion Residuals ("CCR") rule, the proposed Effluent Limitation Guidelines ("ELGs"), tightened National Ambient Air Quality Standards ("NAAQS"), and the EPA's forthcoming regulations on CO_2 emissions of existing coal plants that are currently due in draft form by June 1, 2014 and final form in 2015. Such additional capital and O&M spending is likely to not be cost-effective for the plants, particularly the Coleman plant with a useful life that could be as little as 11 years, and maybe less.[114] Yet Big Rivers' long-term financial forecast assumes that it will incur zero costs for any of those regulatory standards.[115]

In light of Big Rivers' failure to provide a comprehensive, objective analysis of the value of its excess capacity to non-smelter customers, it is not reasonable for the Commission to make a permanent decision forcing customers to pay for all the costs associated with that excess capacity in this proceeding. Instead, the Commission should adopt Joint Intervenors' approach outlined below, which provides valuable time to comprehensively analyze these issues prior to making such a permanent decision.

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[112] Tr. (January 8, 2014) at 15:39:33.

[113] Tr. (January 7, 2014) at 14:37:01.

[114] Rebuttal Testimony of Ted Kelly at 21:15-19; Tr. (January 8, 2014) at 14:40:46.

[115] Big Rivers' assumption in its Long-Term Financial Forecast that it will face zero future environmental compliance costs is inconsistent with comments that the Company presented to US EPA contending that the proposed ELG rules *"present operational impracticalities that many not be met by many utilities and thus cause a significant increase in the expenditures incurred by an utility – and thus resulting in additional and unnecessary costs being passed on to the end users."* Sierra Club Ex. 13; *See also* Tr. (January 8, 2014) at 20:23:25.

8. Big Rivers' Load Mitigation Plan Is Premised On Unrealistic Or Clearly Erroneous Assumptions.

As it did in Case No. 2012-00535, Big Rivers claims that the massive rate increases it now proposes will only be temporary since it has a "*Load Mitigation Plan*" in place that could eventually result in rate reductions for customers. Big Rivers' Load Mitigation Plan in this case is comprised of four steps: 1) petition for massive rate increases; 2) increase off-system sales; 3) idle or reduce generation when market prices do not support the cost of generation; and 4) either find replacement load for the 850 MW (7,300,000 MWh) lost smelter load or sell some of its generating units.[116] In other words, Big Rivers plans to immediately raise the rate of its remaining customers in order to pay for 100% of its excess capacity in the hopes that it will successfully become a merchant generator sometime in the future.

Notably, the assumptions in Big Rivers' Load Mitigation Plan have changed since it was first presented in Case No. 2012-00535. In that case, Big Rivers' rosy assessment of the future value of the Wilson and Coleman units was based upon its projections of the future wholesale power market that showed a sudden and unexplained *"hockey stick"* spike in market prices in 2019, which were not supported by objective analysis. Big Rivers was never able to explain whether its projections accounted for federal environmental regulations or why its own costs projections did not show a similar spike in 2019.[117] Nevertheless, Big Rivers relied upon its *"hockey stick"* projection in claiming that it would be economic to bring Wilson and Coleman back online in a few years and that off-system sales would help to eventually reduce the staggeringly high rate increases they proposed.

When Big Rivers filed the current rate case, the Company altered its theory. The *"hockey stick"* spike in market prices is reduced (though not completely gone).[118] Instead, Big Rivers' claim regarding the value of the Wilson and Coleman units in the present case is heavily based upon unrealistic and unsupported projections that Big Rivers will acquire substantial amount of *"replacement load"* at some point in the future.

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[116] *See* Direct Testimony of Mark Bailey, Case No. 2013-00199 (June 28, 2013).

[117] See KIUC Brief, Case No. 2012-00535 at 16-21.

[118] As Dr. Ackerman explained, Big Rivers' energy price forecast consists of broker values for the first seven years and a higher price forecast from Wood MacKenzie for year 10 and thereafter, with the two inconsistent forecasts simply *"blended"* for the years in-between. Ackerman Testimony at 10-11. The *"hockey stick"* spike seen in 2012-00535 was reduced in the forecast used by Big Rivers in the present proceeding because the broker values are slightly higher and the Wood MacKenzie price forecast was lower here than in 2012-00535. Big Rivers, however, has still failed to provide any basis to conclude that it is reasonable to simply *"blend"* a long-term price forecast with short-term broker values when the two are plainly inconsistent with each other.

Regardless of its changed theory regarding the value of the Wilson and Coleman units, Big Rivers Load Mitigation Plan remains unrealistic and erroneous because:

- Big Rivers unrealistically assumed that it would add 800 MW and 5,256,000 MWH of replacement load over a six-year period (priced at a 25% premium above the MISO market price) in addition to its native load and MISO market sales;[119]
- Big Rivers failed to consider CO_2 impacts stemming from regulatory requirements, which will increase coal generation costs;
- Big Rivers' still-flawed price sensitivity analyses now include implausible capacity prices; and
- Big Rivers failed to consider other costs, including environmental capital and operating costs, in its modeling decision of whether it is economic to restart either Wilson or Coleman.

These criticisms of Big Rivers' Mitigation Plan are described in detail below.

a. Big Rivers' Replacement Load Assumptions Are Unsubstantiated And Erroneous.

In an attempt to justify maintaining its excess capacity and forcing customers to pay for that capacity, Big Rivers' production cost analysis erroneously assumed that it would add a whopping *800 MW, or 5,256,000 MWh*, of replacement load, priced at a 25% premium to the MISO market price of energy to its system by 2021, with the first block of capacity added in 2016, as shown on the following schedule.[120]

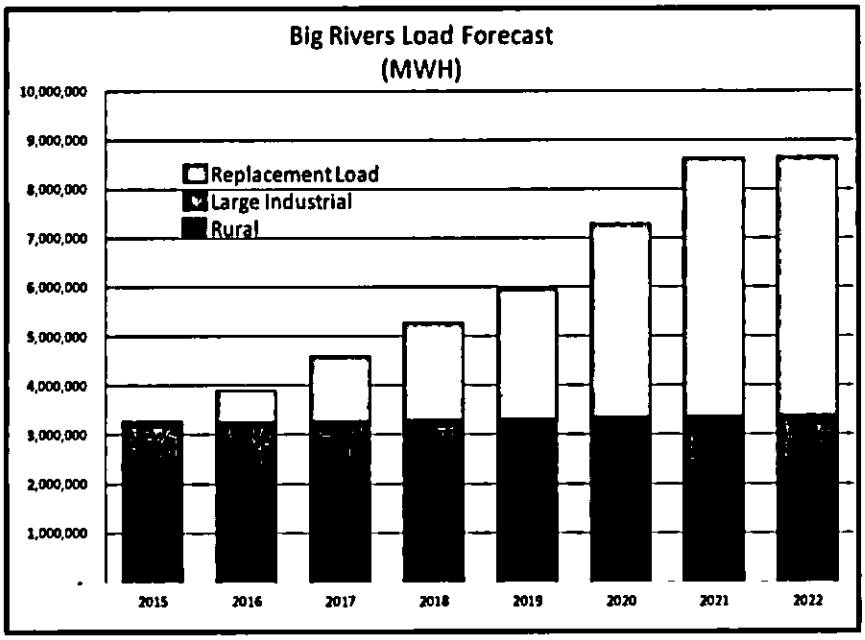
Year	Incremental Amount Added Each Year (MW)	Cumulative Amount Added (MW)	Cumulative Amount Added (MWH)
2016	100	100	658,800
2017	100	200	1,314,000
2018	100	300	1,971,000
2019	100	400	2,628,000
2020	200	600	3,952,800
2021	200	800	5,256,000
2022		800	5,256,000

To demonstrate the magnitude of the Replacement Load that Big Rivers claims it will achieve, the following graph contains Big Rivers' native load energy requirements associated with its Rural, Large Industrial and Replacement Load, and depicts how the currently non-existent Replacement Load ultimately dwarfs the Rural and Large Industrial load in a short period of time.[121]

[119] Direct Testimony of Phil Hayet, Case No. 2013-00199 (October 29, 2013)("Hayet Testimony") at 11; Ackerman Testimony at 7.

[120] Hayet Testimony at 12.

[121] Hayet Testimony at 14:1.



In 2015, Big Rivers' native load energy requirement for both Rural and Large Industrial customers is 3.27 million MWh. In 2016, the Company assumes that Big Rivers will begin to acquire replacement load. By 2019, Big Rivers projects that its total native and replacement load will almost double to about 5.95 million MWh. And by 2021, the total native and replacement load are projected to nearly triple to 8.63 million MWh.[122]

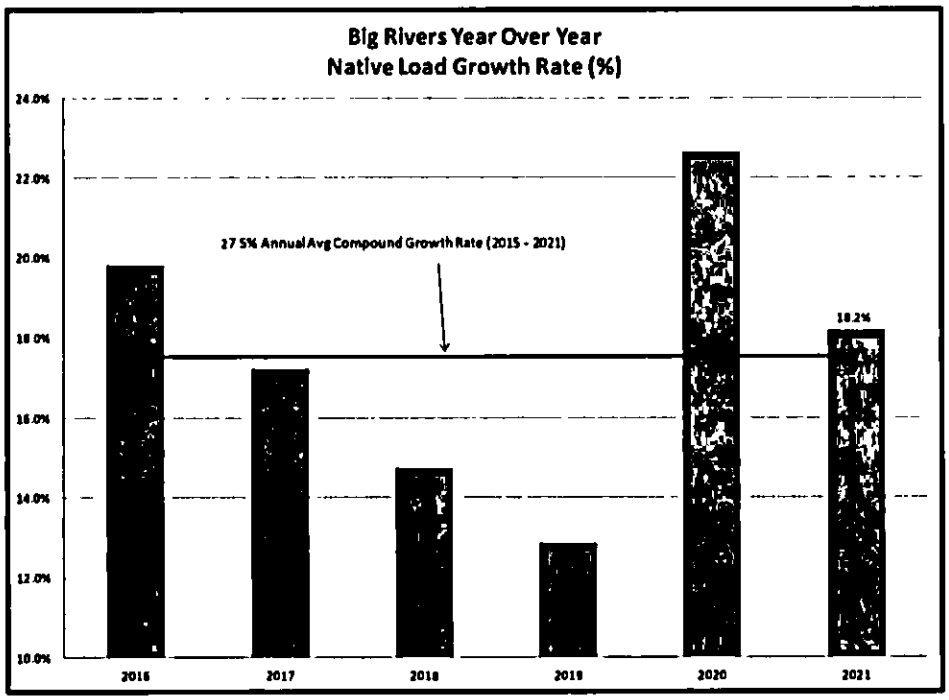
It is almost inconceivable that a utility's native and replacement load requirement will grow this much in such a short period of time, even with a focused effort on economic development. After all, other utilities in Kentucky and in other states are also engaged in focused economic development efforts, and the acquisition of new loads is an extremely competitive undertaking. The 5,256,000 MWh of replacement load assumed by Big Rivers eight years from now is the equivalent of adding 336,923 new residential customers, each using 1,300 kWh per month. That is close to the total number of residential customers currently on the LG&E system.[123]

The following chart indicates the underlying load growth rate, year-over-year, that Big Rivers assumes will occur from 2016 to 2021, and it compares that to the compound growth rate over the period. The lowest year-over-year growth rate occurs in 2019 and is still more than 12%. In 2016, the first year that Replacement Load is expected and just 26 months away, the Company expects to increase its load by about 659,000 MWh or a

[122] Hayet Testimony at 14:2-7.

[123] Hayet Testimony at 14:7-15:4 (citing LG&E's 2012 FERC Form 1, which indicates that it has 346,445 residential customers on average).

19.8% increase over 2015 levels. Overall, the Company's forecast assumes that load will grow at a 17.5% compound average annual growth rate over the period of 2015 to 2021, which is an extraordinary amount of growth for a typical utility.[124]



Big Rivers also made outlandish and baseless assumptions concerning the quality of its projected replacement load. Big Rivers assumed that its projected replacement load would be comprised of high load factor (75%) customers that are willing to be charged a 25% premium above MISO market prices. Big Rivers described the Replacement Load as follows:[125]

> *Big Rivers forecasted replacement load assuming the replacement load could take many forms [...] The replacement load was not meant to be specific, but rather represented what Big Rivers' management believed was a reasonable expectation for load replacement given all of the information available to it at the time. The replacement load was assumed to have a 75% load factor because Big Rivers believed it was likely to be composed of a combination of rural, large industrial, and market transactions.*

[124] Hayet Testimony at 15:5-16:1.

[125] Big Rivers Response to KIUC Data Request 2-32.

The Company's load factor assumption is speculative and self-serving. In addition, the Company admittedly has no objective or analytical support for that assumption.[126] Big Rivers states that the replacement load will be composed of a combination of rural, large industrial and market transactions. However, an average 75% load factor is extremely high, reflecting what might be expected primarily from certain industrial loads, but certainly not from low-load factor residential or commercial loads. Further, even assuming that Big Rivers included MISO economy market sales in its Replacement Load analysis, Big Rivers' off-system sales load factor has never surpassed [redacted]% in the study period.[127]

Big Rivers' 75% average load factor assumption would require new loads with very high load factors to be added to the system, such as large industrial loads. This is unrealistic by comparison to the Company's own experience. Big Rivers' own Large Industrial class has a load factor slightly less than 75%, and the Rural class has a load factor ranging between 49% and 51%.[128] Presumably any new municipal or cooperative load would have a load factor that is similar to that of Big Rivers' Rural class, which is well below the Company's average 75% assumption.[129] In summary, the Company's average load factor assumption of 75% is unrealistic and cannot be attained unless the load is comprised primarily of large industrial loads with extremely high load factors, which is unlikely to occur. The Company has offered no evidence that it can or will be able to attract such loads when it is competing against other utilities in Kentucky and in other states for the same loads.[130]

Even if the Commission is willing to accept that Big Rivers is able to attract some new 75% average load factor customers that are willing to pay a 25% premium above market prices, Big Rivers' assumptions concerning the amount of this highly-prized load that it will attract are frankly laughable. The Company would have to find the equivalent of *28 new Aleris-sized plants* that it could serve to match its Replacement Load assumptions, as shown on the following graph.[131]

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[126] Hayet Testimony at 17:7-9.

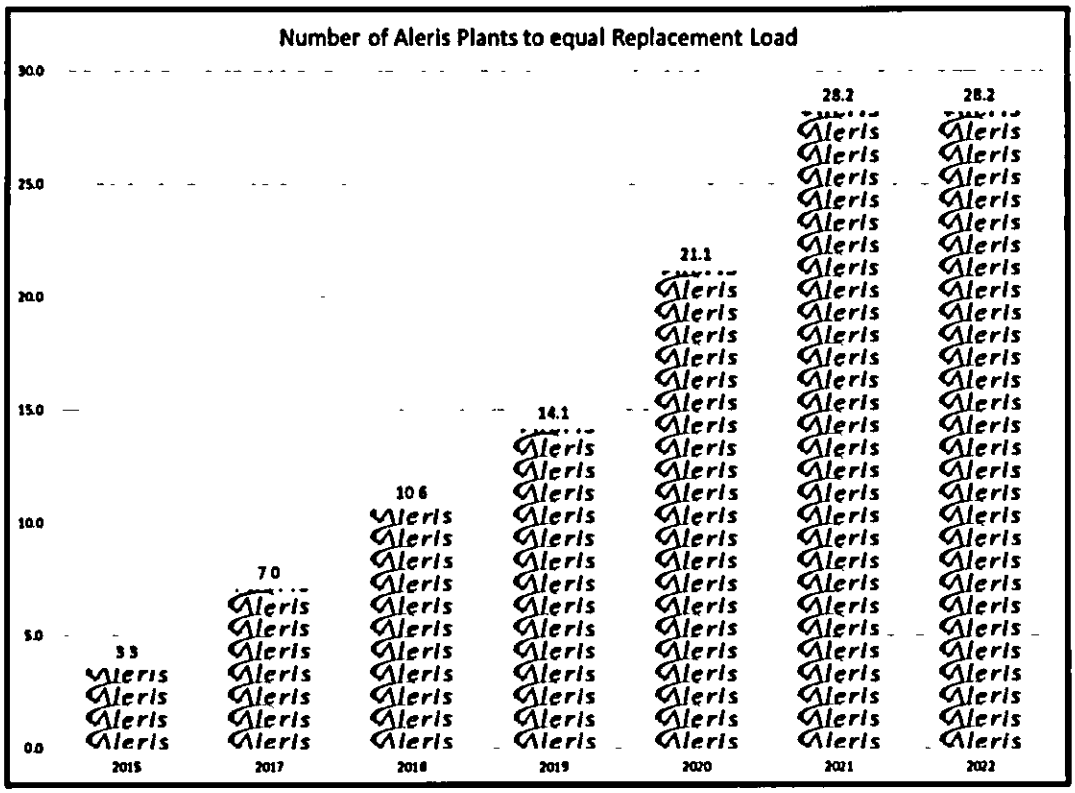
[127] Hayet Testimony at 17:7-22.

[128] Hayet Testimony at 18:1-5 (citing "Demand Energy Budget 2013-2017.xlsx" and "Demand Energy Budget 2018 thru 2026.xlsx").

[129] Hayet Testimony at 18:6-8.

[130] Hayet Testimony at 18:10-15.

[131] Hayet Testimony at 19:4-11.

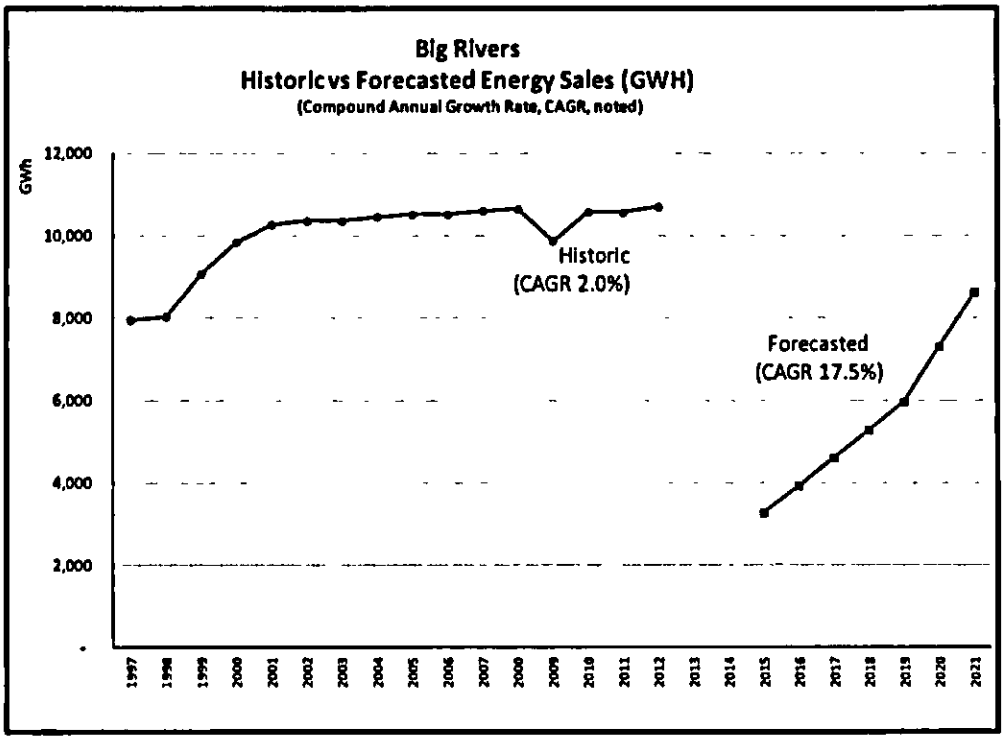


It is simply too far-fetched to expect that Big Rivers would be able to find this many new plants the size of Aleris over this time period. Even one new load the size of Aleris would be cause for rejoicing and a ribbon-cutting ceremony. Assuming 28 such new loads is not grounded in reality.[132]

The load growth on the Big Rivers' system over about the past 15 years provides a basis for evaluating just how unlikely Big Rivers' replacement load projections are. The following graph compares Big Rivers' native load energy sales over the historic period of 1997 to 2012, and compares that to the Company's load forecast beginning in 2015 after the Smelters exit the System.[133]

[132] Hayet Testimony at 20:1-4.

[133] Hayet Testimony at 21:7-10.

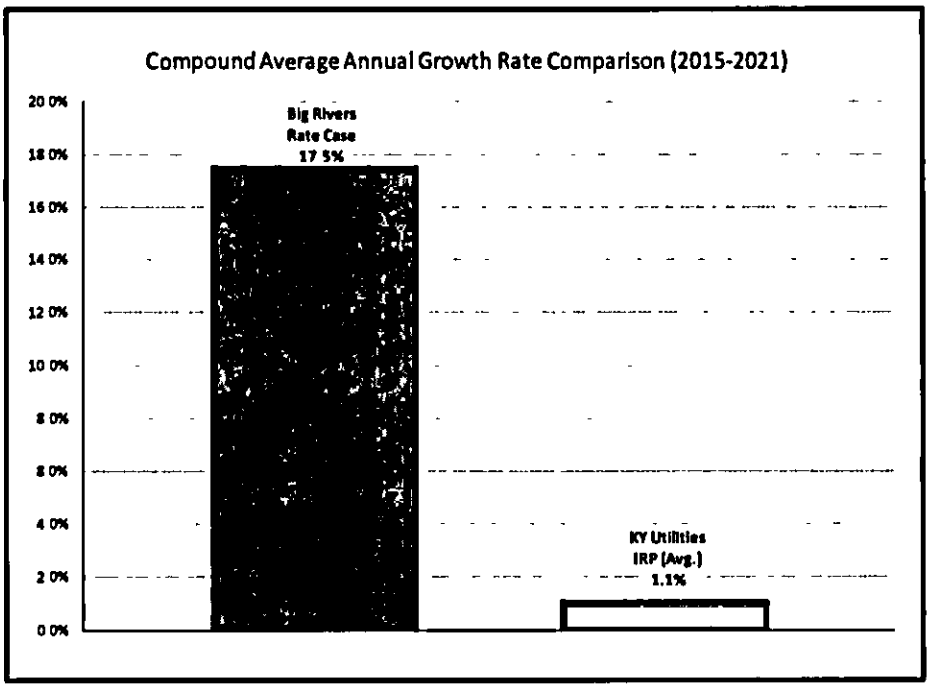


The historic compound average growth rate is 2.0%. After the Smelters exit, load plunges from about 11,000 GWH to under 4,000 GWH. Again, it is simply hard to imagine that it would be possible for the Company to rebound so dramatically as it assumes, and as depicted in this graph. To do that, the Company would have to grow its load beginning in 2015 at a compound average growth rate of 17.5% over the period shown.[134]

Big Rivers' projected load growth rate is significantly higher than that of other utilities in Kentucky, as well as Big Rivers' projections in its own Integrated Resource Plan ("IRP"). The IRPs of other Kentucky utilities (East Kentucky Power Cooperative, Duke Kentucky, Kentucky Utilities, and Louisville Gas & Electric) reported fairly low and consistent growth rates, which are substantially lower than the growth rate Big Rivers is now assuming in its Load Mitigation Plan. The following graph compares the average IRP growth rate projection for all of the utilities with Big Rivers' current projections.[135]

[134] Hayet Testimony at 22:1-6.

[135] Hayet Testimony at 22:10-23:5.



To put this in perspective, the Energy Information Administration ("EIA") 2013 Annual Energy Outlook[136] forecasted total electricity load growth for the entire U.S. at 0.9% per year through 2040, and it references that an *"offset by efficiency gains from new appliance standards and investments in energy efficient equipment"* is built into the forecast. Big Rivers' forecast with the replacement load shows a dramatically higher load growth projection compared to any other utility in Kentucky, and it is dramatically higher than the load growth projection Big Rivers even assumed in its own 2010 IRP. It is clear that the Company's assumption about load growth is completely inconsistent with the small amount of growth predicted by each utility in Kentucky or by other utilities in the U.S.[137]

Big Rivers' assumption is also unrealistic given that it will be competing for new load with other utilities in the Company's surrounding area. For example, the Tennessee Valley Authority recently lost its biggest customer with the closure of the USEC Inc. facility in Paducah, leading to a decline in energy sales of 8,200 GWh from fiscal year 2013 to fiscal year 2014. Thus, TVA may have a lot of excess capacity to sell.[138] In addition, KU/LG&E are already proceeding with a 640 MW natural gas combined cycle plant at Cane Run and recently

[136] 2013 Annual Energy Outlook, http://www.eia.gov/forecasts/aeo/pdf/0383(2013).pdf at 71.

[137] Hayet Testimony at 23:6-24:5.

[138] Ackerman Testimony at 9:19-27; *See also* http://timesfreepress.com/news/2013/may/31/tva-suffers-blow-loses-biggest-customer/.

proposed a second NGCC 700MW in size.[139] Accordingly, Big Rivers may not have new market opportunities by which to find load to match its projections.

Big Rivers conducted no studies to form the basis for its enormous replacement load projections or to determine the feasibility of achieving this magnitude of replacement load growth.[140] And in data responses, the Company could not identify any specific loads that it would add and did not know what the lead time was for new large industrial load:

> *There are no such analyses; however, based on past experience, Big Rivers is aware that there is a significant lead time for new large industrial load site development.*[141]

In other words, although Big Rivers claimed that its replacement load assumptions were the result of *"informed judgment"* and were *"reasonable, reliable, made in good faith, and justified for use by management,"*[142] those assumptions are nothing more than a hopeful guess about what could happen in the future. When the replacement load projections are critically examined, as they should be, they are not reasonable and are not reliable. They are nothing more than wishful conjecture and are unsupported by any objective analyses.[143]

Rather than gaining additional load, Big Rivers' native load is far more likely to deteriorate in the coming years because of its proposed massive rate increases, particularly its industrial load. The impact of a 107% increase will almost certainly encourage manufacturers to reduce their own consumption. For example, KIUC witness Bill Cummings testified that Kimberly-Clark has identified 40 energy efficiency projects for the Owensboro Mill at a capital cost of almost $2.5 million that will reduce electricity consumption by about 4%,[144] which will look much more economic if Big Rivers' massive rate increases are approved. Kimberly-Clark would also likely study investment in gas-fired combined heat and power co-generation facilities.[145] Big Rivers' proposed rate increase will presumably make these types of investments by large industrial customers more likely.

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[139] Ackerman Testimony at 8:21-23.
[140] Big Rivers Response to KIUC Data Request 2-7.
[141] Big Rivers Response to KIUC Data Request 2-35.
[142] Big Rivers Response to KIUC Data Request 2-7b.
[143] Hayet Testimony at 13:5-11.
[144] Cummings Testimony at 6.
[145] Cummings Testimony at 7-8.

Even though it is likely that massive rate increases in industrial rates would lead to reduced consumption, Big Rivers failed to model price elasticity of demand for the industrial class in its projections. This is a serious error. As discussed in the Kentucky Energy and Environment Report mentioned above, manufacturers in Kentucky are more responsive to changes in electricity prices than any other customer group.[146] Sierra Club witness Dr. Ackerman agreed that it is unreasonable to ignore the impact of price elasticity, stating that, "*it simply implausible to assume that industrial customers are unaffected by price increases*, [y]*et that is the implicit assumption BREC made by excluding industrial price elasticity effects*."[147] Accordingly, industrial price elasticity effects should have been included in Big Rivers' projections.[148]

With respect to Rural price elasticity, Mr. Ackerman testified that Big Rivers significantly underestimates the likely reduction in Rural energy consumption as a result of its proposed rate increase. As demonstrated by Dr. Ackerman, Big Rivers' price elasticities are on the low end of the range of public estimates,[149] and Big Rivers' projection of a 5.5% reduction in Rural energy consumption by 2016 assumes a much lower rate increase than Big Rivers is actually proposing.[150] In sum, Big Rivers fails to account for Large Industrial price elasticity and drastically undershoots the likely impact of Rural price elasticity.

b. Big Rivers Failed To Consider CO_2 Impacts Stemming From Regulatory Requirements, Which Will Increase Coal Generation Costs.

In its Load Mitigation Plan, Big Rivers chose to ignore the likely impact that CO_2 regulations will have on the operation of its coal units. A number of pending EPA regulations will likely have CO_2 impacts, including the proposed Carbon Pollution Standards for future power plants and the proposed Carbon Pollution Standards for

[146] KIUC Ex. 8 at 9.
[147] Ackerman Testimony at 17.
[148] *See also* Brevitz Testimony at 28:4-8.
[149] Ackerman Testimony at 16.
[150] Ackerman Testimony at 19.

existing power plants due June 1, 2014.[151] If enacted, it is reasonable to expect that regulations would go into effect in the 2020 to 2022 time period.[152]

Big Rivers' position concerning why it ignored CO_2 impacts was simply that it has only modeled *"...what is known today,"* thereby dismissing any effort to assign a value to future CO_2 costs on the grounds that such costs are uncertain.[153] This is rather curious logic, however, given that financial forecasting involves numerous factors that are uncertain. The question is how to prudently manage such uncertainty, and simply ignoring a major potential costs such as CO_2 is not the way to do so. Big Rivers' decision to ignore CO_2 costs also stands in stark contrast to the Company making up its speculative Replacement Load theory based on nothing more than a simple statement that the Company considers it *"reasonable, reliable, made in good faith, and justified for use by management."* It is unfathomable that the Company believes its Replacement Load assumptions would pass the *"reasonable, reliable, made in good faith, and justified for use by management"* test, but a CO_2 assumption would not.[154]

While there are still many details to be worked out and quite likely legal challenges to deal with, there is more certainty today than in the past that CO_2 will have to be dealt with, and Big Rivers should have at least performed a sensitivity study as part of its Load Mitigation Plan analysis in this proceeding to evaluate the impacts of CO_2. The result would have shown that Big Rivers is particularly vulnerable to CO_2 impacts because most of the energy it produces is derived from burning coal, which would be impacted by CO_2 regulations most heavily.[155]

Since the Company's Load Mitigation Plan analyses did not consider CO_2 impacts, the benefits of bringing back the Wilson and Coleman plants after being laid-up for a period of time are very likely to be

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[151] http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards.

[152] Kentucky Power would likely agree with this timing, because in the Direct Testimony of Scott Weaver in the Mitchell certification proceeding, Case No. 2012-00578, Ex. SCW-3, Kentucky Power's analyses included a reference case assumption that CO_2 would be priced at $15.08/metric ton starting in 2022 and would increase over time to $16.72 per metric ton in 2030. Furthermore, in Georgia Power's recent 2013 IRP, it analyzed two sensitivity cases, one in which CO_2 costs would begin in 2017 and would be priced beginning at $10/metric Ton, and another in which CO_2 costs would begin in 2020 and would be priced beginning at $20/metric Ton. Georgia Power 2013 IRP, Docket No. 36498 (January 31, 2013) Technical Appendix Volume 1, Resource Mix Study, Appendix I at 6.

[153] Big Rivers Response to KIUC Data Request 2-7.

[154] Hayet Testimony at 27:23-28:9.

[155] Hayet Testimony at 28-29.

overstated. In order to give the Commission a sense of their likely impact on Big Rivers' cost, KIUC witness Phil Hayet conducted two CO_2 sensitivity analyses. In 2020, Sensitivity 1 indicates that Big Rivers' total production costs will increase by [redacted] million with CO_2 impacts included. Of this [redacted] million increase, the Coleman and Wilson units are responsible for [redacted] million or about [redacted] of the total impact caused by inclusion of CO_2 costs.[156] Given the magnitude of these potential impacts, CO_2 should have been considered in the Company's analysis.

c. Big Rivers' Based Its Financial Forecast Sensitivity Analyses On Implausible And Unsupported Capacity Prices.

Big Rivers purported to carry out two sensitivities regarding the financial impacts of its Load Mitigation Plan by factoring in MISO capacity prices. The Commission, however, should reject any attempt by Big Rivers to rely on such sensitivity analyses because they are based on the implausible and unexplained assumption that capacity prices will increase nearly 300-fold from 2014 to 2016,[157] and then continue to increase every year thereafter.

Big Rivers was unable to provide any explanation for its nearly 300-fold projected increase in capacity prices except to say that it *"believes the increase is driven by MATS compliance."*[158] While MISO capacity prices typically reflect the amount of capacity available compared to the peak demand in a MISO zone, Big Rivers could not explain what assumptions regarding coal plant retirements, environmental regulations, or carbon prices went into the capacity price forecast.[159] Instead, the Company simply pointed to capacity price forecasts that it received from the consulting firms Wood MacKenzie and IHS Global.[160] This explanation fails, however, because the capacity prices used by Big Rivers in its sensitivity analyses were substantially higher in every year of the analyses than the prices forecast by the consultants.[161] Even assuming that the consulting firm capacity price

[156] A detailed explanation of Mr. Hayet's sensitivity analyses and results are presented at Hayet Testimony at 29:15-35:6.
[157] Sierra Club Ex. 7; Tr. (January 8, 2014) at 18:20:05.
[158] Big Rivers Response to Sierra Club Data Request 2-10.
[159] Id.
[160] Rebuttal Testimony of Robert W. Berry (December 17, 2013)("Berry Rebuttal Testimony") at 11:24-12:12; Ex. Berry Rebuttal 1.
[161] *Compare* Sierra Club Ex. 7 to Ex. Berry Rebuttal 1. For example, Big Rivers' sensitivity analysis projected a capacity value of $8.99 per kW/month in 2016, while Wood MacKenzie projected $5.82 and IHS Global projected $4.68. *See also* Tr. (January 8, 2014) at 18:22:48.

forecasts – which Big Rivers was unable to explain the basis for and did not present a testifying witness from such firms[162] – were reasonable, they do not support the elevated prices used in Big Rivers' sensitivity analyses.

Big Rivers' capacity price projections are also implausible because they exceed the cost-of-new-entry ("CONE") value calculated by MISO. As Dr. Ackerman explained, CONE represents the estimated cost of new capacity in a transmission area, and is typically set at the price of constructing a combustion turbine facility.[163] As such, CONE should serve as a limit on MISO capacity prices, because a utility would not pay for capacity in the MISO auction if it could pursue its own new capacity for a lower price. And while capacity prices in both MISO and PJM have been substantially below CONE and are expected to remain so in PJM through at least 2016, Big Rivers' nearly 300-fold projected increase in capacity prices would put the capacity price at least 20% above the CONE in MISO.[164] Big Rivers suggests that capacity prices must be higher than CONE in order to *"incent the building of new generation."*[165] But this claim is undermined by the fact that the MISO CONE value already provides such an incentive by including a 12% after tax rate of return on the utility's investment.[166]

In short, Big Rivers has provided no basis for its implausibly high projected capacity price and, therefore, the Commission should reject any argument by the Company that such prices somehow justify the Load Mitigation Plan. Big Rivers' capacity price projections, along with its replacement load projections, demonstrate a pattern of Big Rivers inserting unsupportable numbers into their models in order to make their Load Mitigation Plan work on paper.

d. Big Rivers' Failed To Consider Other Costs, Including Environmental Capital And Operating Costs, In Its Modeling Decision Of Whether It Is Economic To Restart Either Wilson Or Coleman.

Another error in Big Rivers' Load Mitigation Plan is its decision not to incorporate certain capital and operating costs associated with the restart of the idled Wilson or Coleman plants. Big Rivers would have to make major capital investments before it could restart either plant and would incur ongoing capital investments and

[162] Tr. (January 8, 2014) at 18:29:30.
[163] Ackerman Testimony at 13.
[164] *Compare* Sierra Club Ex. 10 with Sierra Club Ex. 7; see also Ackerman Testimony at 14; Tr. (January 8, 2014) at 19:24:20.
[165] Berry Rebuttal Testimony at 13:13-21.
[166] Sierra Club Ex. 10 at 4; Tr. (January 8, 2014) at 19:28:08.

increased operating costs for environmental compliance after restart. Assuming that Big Rivers will be able to find lenders willing to fund its merchant generation business (which is questionable given its inability to access the private debt markets), ignoring the return of and return on the increased capital investments in its financial modeling is erroneous.[167]

It does not appear that Wilson and Coleman should be restarted by May 2018 and July 2019, respectively, as the Company assumes in its Load Mitigation Plan modeling analyses.[168] Big Rivers indicated that the Coleman and Wilson plants would each save about $[redacted] million per year in labor and non-labor fixed departmental expenses ("FDE") while laid-up. In order to restart them, it appears that the Company believes it would have to earn margins from off-system sales exceeding $[redacted] million. Otherwise, it would not make sense for the units to be re-started.[169]

Big Rivers' assumption that its gross margins would exceed the fixed cost savings for the Wilson plant in 2018 and for the Coleman plant in 2019 appears to be erroneous. The following table contains variable cost gross margin results that were derived from the Company's production cost results.

[redacted]

The first year that the net margin exceeds $[redacted] million is not until 2021 for each unit. Thus, the Company's own analysis does not justify the earlier restart dates.[170]

Big Rivers claims that the "*bogey*" it must meet in order to justify restarting the Wilson and Coleman plants is the $[redacted] million in costs that it saves from idling the plants. In reality, the "*bogey*" may be as much as $[redacted] million in 2020. This is the result of additional costs that Big Rivers would have to incur before restarting

[167] Hayet Testimony at 35:11-21.
[168] Hayet Testimony at 36:23-24.
[169] Big Rivers Response to KIUC Data Request 1-67.
[170] Hayet Testimony at 36:21-37:11.

the Wilson and Coleman plants in order to meet various environmental requirements, including MATS, CSAPR (if reinstated), CCR, and the 316(b) Cooling Water Intake Rule. These additional costs are set forth below.[171]

ADDITIONAL COSTS - MATS, CO2 SENSITIVITY 2, AND OTHER COSTS										
(millions $)	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
WILSON MATS (O&M + CAP EX)	$4.3	$4.4	$4.4	$4.5	$4.5	$4.6	$4.6	$4.7	$4.7	$4.6
COLEMAN MATS (O&M + CAP EX)	$0.0	$7.1	$7.1	$6.9	$7.2	$7.2	$7.3	$7.3	$7.3	$7.2
CO2 AOJUSTMENT (SENSITIVITY 2)	$0.0	$0.0	$17.6	$18.4	$18.0	$19.2	$18 6	$19.8	$19.7	$20.7
COLEMAN CCR	$0.0	$4.5	$4.4	$4.3	$4.3	$4.2	$4.1	$4.0	$3.9	$3.8
COLEMAN RULE 316(b)	$0.0	$0.5	$0.5	$0.5	$0.4	$0.4	$0.4	$0 4	$0 4	$0.4
Total Additional Costs	$4.3	$16.4	$34.0	$34.6	$34.4	$35.6	$35.0	$36.1	$36.0	$36.7

Under a more stringent environmental scenario that incorporates the costs associated with significant CO_2 regulation, MATS, CCR, Cooling Water Intake Rule, and a successor to CSAPR, the additional costs that should be included in the Coleman and Wilson restart analysis are as follows:[172]

ADDITIONAL COSTS (SENSITIVITY) - MATS, CSAPR, CO2 SENSITIVITY 1, AND OTHER COSTS										
(millions $)	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
WILSON MATS (O&M + CAP EX)	$4 3	$4 4	$4 4	$4 5	$4 5	$4 6	$4 6	$4 7	$4.7	$4 6
COLEMAN MATS (O&M + CAP EX)	$0 0	$7.1	$7.1	$6 9	$7.2	$7.2	$7.3	$7.3	$7.3	$7.2
CO2 ADJUSTMENT (SENSITIVITY 1)	$0 0	$0 0	$55.1	$58.2	$57.1	$61 8	$59.5	$63.2	$62.9	$66 0
COLEMAN CCR	$0 0	$4 5	$4 4	$4.3	$4.3	$4 2	$4 1	$4 0	$3 9	$3 8
COLEMAN RULE 316(b)	$0.0	$0.5	$0.5	$0.5	$0 4	$0 4	$0 4	$0 4	$0 4	$0 4
WILSON CSAPR (O&M + CAP EX)	$17.2	$16 9	$16.7	$16.4	$16 1	$15.8	$15.4	$15.1	$14.7	$14.3
Total Additional Costs	$21.5	$33.4	$88.2	$98.8	$89.6	$93.9	$91.3	$94.7	$93 9	$96.3

The results of an analysis including these costs would likely indicate that the restart of the Coleman and Wilson plants should be delayed for several years beyond what the Company has assumed as part of its Load Mitigation Plan, and possibly should be delayed indefinitely.[173]

Big Rivers' aging coal fleet will require significant additional capital investments to remain in operation. A basic financial analysis requires considering the costs of these additional investments when making the decision about whether it is economic to restart Wilson and/or Coleman as merchant plants. Because it ignored additional

[171] Hayet Testimony at 39:18-40:2.
[172] Hayet Testimony at 40:11-41:1.
[173] Hayet Testimony at 41:2-5.

capital and O&M costs, Big Rivers' modeling is inaccurate and unreliable.[174]

e. In the Event That Its Load Mitigation Plan Fails, Big Rivers' Alternative Is To Permanently Leave Rates At The Historically High Levels Proposed In This Case.

According to Big Rivers, if its proposed rate increase is approved and its Load Mitigation Plan is not successful in lowering rates in the future, the Company's back-up plan is to simply leave its very high rates in place and continue to make its remaining customers pay for 100% of the cost of the excess capacity acquired to serve the smelters. During cross-examination, Mr. Bailey was asked:

> Q. *"If the mitigation plan doesn't work and new load doesn't materialize in sufficient amounts... and it becomes clear over time that the Wilson and Coleman plants aren't economic to continue operating you would need a contingency plan would you not? A plan to get out from under debt that didn't involve relying on these plants to generate revenue?"*
>
> A:*"Maybe, maybe not. There are many ways to judge success here... In Mr. Wolfram's testimony he's provided cost comparison data with other utilities in this state and he has provided data showing where our rates are currently and where they would be if the mitigation plans didn't produce any additional revenue and in the case of industrials they are still middle of the pack... So I'm not sure that's failure necessarily."*[175]

In other words, if the Load Mitigation Plan doesn't work, customers will have to permanently absorb high rates for excess capacity because the Company views the rates as comparatively reasonable. Mr. Bailey's statement shows how far Big Rivers has strayed from its view in Case No. 2012-00535,[176] which was based on the success of the Load Mitigation Plan. Now, *"Big Rivers is not staking its long-term viability on the success of [] the Mitigation Plan,"*[177] but instead to the Commission granting the proposed rate increase.

Mr. Bailey attempts to provide comfort to the Commission by claiming that the Company's industrial rates would still be *"middle of the pack"* in Kentucky.[178] But this statement is misleading for two reasons. First, Mr. Bailey ignores the excessive rates that Rural customers would experience, which are not *"middle of the pack."* As discussed above, Big Rivers' proposed 13.48¢/kWh rate for Rural customers would cause its rates to jump from the cheapest average residential rates in Kentucky to the highest average residential rate in Kentucky,

[174] Hayet Testimony at 41:6-16.
[175] Tr. (January 7, 2014) at 14:42:00.
[176] Big Rivers' Post-Hearing Brief, Case No. 2012-00535 at 35.
[177] Berry Rebuttal Testimony at 5.
[178] KIUC Exhibit 13.

according to 2011 and 2012 EIA numbers.[179] Second, it is misleading to claim that the proposed Large Industrial rates are *"middle of the pack,"* because while it is true that Big Rivers' industrial rates would be the 31st highest out of 48 utilities in Kentucky, the utilities with *"industrial"* rates higher than Big Rivers would all be small municipal and cooperative utilities with no major industrial customers. At the hearing, Mr. Wolfram could not name a single industrial customer served by the municipal and cooperative utilities that will have higher industrial rates than Big Rivers.[180]

The better comparison is to examine Big Rivers' proposed industrial rates against those of other major utilities in Kentucky with large industrial customers. And as mentioned above, Big Rivers' proposed 7.91¢/kWh Large Industrial rate would represent the highest industrial rate compared to the 2012 average industrial rates of any major utility in Kentucky: 28.20% higher than LG&E, 44.08% higher than Kentucky Power, and 45.67% higher than Kentucky Utilities.[181] Big Rivers' current plan for economic viability – permanent rate increases associated with unused excessive capacity – strays so far from the fair, just, and reasonable standard that the Commission must reject it.[182]

9. Becoming A Merchant Generator Is Not A Reasonable Business Model For A Cooperative Utility.

It appears that Big Rivers' primary objective in this case is to turn itself into a merchant generator while pushing all of the risks of that business model onto its remaining native load customers. While Big Rivers bristled at the mention of the term *"merchant generator"* at the hearing,[183] it is hard to describe a utility that wishes to retain 1,000 MW of excess capacity in the hopes of someday profiting from the sales of this excess capacity as anything other than a merchant generator. But a merchant generator model is not appropriate for a

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[179] Sierra Club Ex. 20; KIUC Ex. 12.

[180] Tr. (January 9, 2014) at 14:42:00.

[181] KIUC Ex. 13.

[182] In the event the Commission does not approve Joint Intervenors' Rate Plan, the Commission must condition any rate increase approval on Big Rivers' return to the Commission for a rate adjustment so the Commission can help ensure that the Company is making progress towards responsibly *"right-sizing"* and prudently managing the uncertainties that it faces. This is necessary given Big Rivers' stated intention to make these rates permanent if the Load Mitigation Plan is not successful. The alternative approach of open-ended and excessive rate increases proposed by Big Rivers would, by contrast, allow the Company to continue avoiding the necessary *"right-sizing"* by shifting all of the burden of the excess capacity onto ratepayers.

[183] Tr. (January 8, 2014) at 20:09:34.

cooperative utility like Big Rivers.

Jack Marshall testified on behalf of the Jackson Purchase Board regarding the purpose of the cooperative program in the United States and why cooperative utilities should examine every cost savings measure possible:

> *"The cooperative program was started by Mr. Roosevelt for the people, the residents, and the small businesses of America. These people and the small business people that this program was started for, have been pushed to the bottom of the food chain as far as the rest of the utility world is concerned. These people will pay their fair share, but let us make them pay only their fair share and make those higher on the chain step up and bear their part of the higher costs that are going to occur if this happens. And making sure that every cost savings measure possible will be put into place."*[184]

Further, Attorney General witness Brevitz testified *"[c]onsumers should not fund Big Rivers' Mitigation Strategy through significantly increased rates including plant which is not "used or useful" – for the ultimate benefit of a merchant generation operation."*[185] This statement is particularly true in the cooperative utility setting. As a cooperative utility, Big Rivers should not be asking its customers to serve as guarantors of its adventures in the risky merchant generation business.

Big Rivers is acting to ensure that it remains a merchant generator by refusing to even consider selling the Coleman or Wilson plants for fair market value, stubbornly insisting that the plants be sold at a premium above net book value.[186] Big Rivers' chosen approach to selling those plants artificially constrains the sales process by refusing to recognize that an arm's-length buyer would likely only be willing to pay fair market value, regardless of the net book cost.[187] While the net book values for the Coleman and Wilson plants were $[redacted]/kW and $[redacted]/kW, respectively, as of July 31, 2013, recent market transactions involving sales of coal plants (excluding transfers between divisions of the same corporate parent) have occurred at prices of roughly $160 per kW or less.[188] Moreover, the longer the plants sit idle, the less value they may have since coal units like the Wilson and Coleman plants may be hit harder by pending environmental regulations than other types of plants.

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[184] Tr. (January 8, 2014) at 10:45:15.

[185] Brevitz Testimony at 43:1-4.

[186] Tr. (January 7, 2014) at 15:40:28; *See also* Confidential Sierra Club Ex. 12 for specific pricing information.

[187] Hayet Testimony at 42.

[188] Ackerman Testimony at 23.

Big Rivers' attempts to market its excess power as a merchant generator have largely met with failure. At the hearing, Sierra Club questioned Company witness Berry about Big Rivers' multitude of attempts to win a Request for Proposal ("RFP") and sell its power.[189] To date, none of these attempts have resulted in a successful power contract.[190] In its last rate case, Big Rivers actually refused to provide certain information to Intervenors regarding the marketing of its excess power, which could have provided additional insight into its success as a merchant generator.[191] Big Rivers touted its negotiations with the City of Wayne, Nebraska for the sale of 67 MW of capacity sometime after 2017 at the hearing.[192] However, the structure of that proposed deal is risky since the rate at which Big Rivers agreed to supply power to the City of Wayne is indexed against another utility's costs. Specifically, Big Rivers agreed to provide the City of Wayne power at 10% less than Nebraska Public Power District's costs.[193]

Despite its failures as a merchant generator, Big Rivers is doggedly pursuing more long-term power sales with other parties and could seek to make future deals similar to the proposed Nebraska contracts.[194] If Big Rivers ultimately incurred any revenue losses as a result of entering into such agreements, the Company would likely ask that its remaining customers pay increased rates to make-up for those losses. This would place all of the risks associated with the proposed agreement squarely on the shoulders of Big Rivers' remaining customers.

The Commission should take a step back in this case and ask whether is it appropriate for Big Rivers to enter into risky long-term deals with out-of-state utilities while Big Rivers' customers bear the risk of those deals going south. It is inappropriate for a non-profit cooperative utility like Big Rivers to be in the merchant generator business. Rather, it should act to serve the needs of its native load customers and "*right size*" its system so that those customers are not forced to pay significant costs for plants that are not *"used and useful"* to them.

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[189] Sierra Club Ex. 11.

[190] Tr. (January 8, 2014) at 19:48:05.

[191] Revised Petition of Big Rivers for Confidential Protection, Case No. 2012-00535 (March 6, 2013) at 4 *("A copy of the Confidential Information has been served on all parties that have signed a confidentiality agreement with the exception of two of the attachments to PSC 2-18, which are being provided only to the Commission.")*

[192] Tr. (January 8, 2014) at 15:43:37.

[193] Tr. (January 8, 2014) at 15:23:30 and 15:47:16.

[194] *See* Big Rivers Responses to Post-Hearing Request for Information, Item 4.

B. The Commission Should Reject Big Rivers' Proposed Revenue Requirement.

In this case, the Commission should first establish a *reasonable* revenue requirement and resulting revenue deficiency. It then should determine what portion of that revenue deficiency will be recovered through an initial rate increase and what portion will be recovered through the use of the Economic Reserve and Rural Economic Reserve funds.[195]

Under Big Rivers' proposed approach, there would be no immediate rate increase to customers. Instead, the Economic Reserve and Rural Economic Reserves would be used to resolve its proposed $71.227 million revenue deficiency until those funds are depleted. At that time, there would be an automatic 107% rate increase to Large Industrial customers and an $838 per year increase to the average residential household. For the reasons discussed below, the Commission should reject Big Rivers' proposed "*time bomb*" approach.

1. Big Rivers' Fully Forecasted Test Year Is Fundamentally Flawed And Unreliable.

Big Rivers' proposed $71.227 million revenue deficiency is based upon its fully forecasted future test year, which is inherently unreliable under the facts presented here. Because Big Rivers is in a state of flux, facts and assumptions critical to establishing a reliable fully forecasted test year for Big Rivers are still unknown, including the dates at which the Wilson and Coleman plants actually will be shut down, the level of off-system sales margins Big Rivers will receive, smelter transmission revenue levels, Big Rivers' SSR revenue from the "*must run*" Coleman plant, etc. Additionally, the starting point for Big Rivers' future test year is now flawed because of Big Rivers' recent decision to run Wilson through March 2014. The impacts of the Commission's findings in Case No. 2012-00535 also lead to errors in the Company's test year. Ultimately, while a fully forecasted test year approach may be appropriate for a stable utility, Big Rivers' finances are too uncertain to reliably forecast.

Big Rivers' fully forecasted test year reflects a "*worst-case*" scenario in which all of the current uncertainties are resolved against customers in order to increase the Company's revenue requirement. Big Rivers

[195] Any initial rate increase that is implemented immediately upon the effective date of rates in this proceeding will prolong the life of the Reserve funds because the rate increase will reduce the amount of the Reserve funds that are withdrawn. The greater the initial rate increase, the longer the life of the Reserve funds.

took the same approach in Case No. 2012-00535. But if those uncertainties ultimately resolve themselves in favor of customers, the static revenue requirement approach proposed by Big Rivers could lead to over-earnings for the Company at the expense of those customers. For example, though Big Rivers' projected lower earnings in Case No. 2012-00535, the Company actually earned a "*normalized*" TIER of 1.5 for the twelve months ending December 2013,[196] reflecting margins of $21.2 million that were well in excess the $10.5 million needed to achieve its authorized TIER of 1.2. This was largely due to higher than expected off-system sales and deferred maintenance outages. That Big Rivers' normalized profits in 2013 doubled those authorized by the Commission just months ago in Case No. 2012-00535 demonstrates how a fully forecasted test year may not accurately reflect the Company's actual financial needs.

In this case, Big Rivers actually piled onto its previous approach by *increasing* its claimed revenue deficiency for the amount of the rate increase that it sought, but was not authorized in Case No. 2012-00535.[197] Indeed, Big Rivers reduced the revenues it forecasted in this case by $8,936,828 to *"claw back"* its losses from Case No. 2012-00535.[198] Big Rivers also reduced the expenses in the test year to reflect certain adjustments adopted by the Commission in Case No. 2012-00535 and made other adjustments to reflect more current information than when Big Rivers filed its application. It is inequitable for Big Rivers to attempt to *"claw back"* its losses from the 2012-00535 case in the present case.

In addition, the forecasted test year assumes that Big Rivers would shut down the Coleman plant on February 1, 2014 or, if the plant continued to operate beyond that date, the Coleman SSR revenues would equal the savings reflected in the test year revenue requirement. However, the Commission now knows that is an incorrect assumption. The Coleman SSR revenues that Big Rivers will receive beyond February 1, 2014 significantly exceed the savings that were reflected in Case No. 2012-00535 and in this case. Similarly, the Commission now knows that Big Rivers did not shut down the Wilson plant on January 31, 2014. The off-system

[196] Big Rivers Attachment for Seventh Updated Response to Staff Request for Information 1-43. This TIER is the result of "*normalizing*" Big Rivers' margins to remove the abnormal A&G expense reported by Big Rivers for December 2013. In both 2012 and 2013, Big Rivers' average A&G per month from January to November was $2.2 million. In Dec 2012, the A&G was $2.6 million. If the Dec 2012 amount of $2.6 million is used as the "*normalized*" amount for Dec 2013 in lieu of the actual Dec 2013 amount of $15.2 million, then the 2013 margin will increase from $8.6 million actual to $21.2 million, resulting in a 1.5 TIER.

[197] Rebuttal Testimony of John Wolfram (December 17, 2013) at 32.

[198] Big Rivers Response to Post-Hearing Request for Information, Item 19 (January 24, 2014).

sales revenues that Big Rivers will receive will also exceed the sales savings that were reflected in this case. For all of these reasons, if the Commission merely adopts Big Rivers' proposed static revenue requirement and revenue deficiency, there is a substantial risk that the rate increase ultimately granted would significantly overcompensate the Company.

Rather than adopting Big Rivers' approach, Joint Intervenors recommend that the Commission approve an immediate rate increase of $10.534 million, equivalent to a *reasonable* revenue deficiency, as explained below. The Commission should then order Big Rivers to use the Reserve funds to meet a target TIER set at a level determined to be reasonable by the Commission until those funds are depleted. There would be a monthly "*true-up*" based upon the actual achieved TIER compared to the projected revenues and expenses in Big Rivers' filing. If Big Rivers' revenues in a given month were insufficient to reach the target TIER, the Reserve funds would be used to supplement Big Rivers' income so that it could reach its target TIER. Because the Reserve Funds would be depleted earlier for the business customers, there would be an automatic rate increase for those customers to recover any difference between the *reasonable* revenue deficiency approved by the Commission and the initial rate increase. And after both Reserve Funds were depleted, Big Rivers would have the option to seek additional rate increases from all customers, if necessary.

Joint Intervenors' recommended approach remedies the current flaws in Big Rivers' fully forecasted test year. This approach recognizes that actual experience will determine the resolution of the uncertainties in Big Rivers' fully forecasted test year and that at least some of these uncertainties may be resolved in favor of customers. It addresses these inherent uncertainties by using the Economic Reserve to capture all differences between Big Rivers' financial projections and its actual finances. This ensures that Big Rivers can meet its critical financial metrics, while also protecting customers from harm if the Company's "*worst-case*" projections do not actually materialize.

2. Joint Intervenors Recommend Reducing Big Rivers' Proposed Rate Increase From $71.227 Million To $10.534 Million.

Big Rivers' proposed $71.227 million revenue requirement is overstated and should be adjusted in several ways. The *reasonable* rate increase that should be approved in this case is $10.534 million, with the necessary

adjustments to Big Rivers' proposed revenue requirement outlined on the table below:

Summary of KIUC Adjustments to Big Rivers Revenue Requirement Case No. 2103-00199 $ Million		
Big Rivers Original Requested Increase		$70 397
Big River Adjustment to Increase in Rebuttal Testimony		0 830
Big Rivers Revised Requested Increase in Rebuttal Testimony		$71 227
KIUC Adjustments		
Cease Depreciation Expense - Wilson Station	(20 177)	
Include Transmission Revenue from Century Hawesville and Sebree Smelters	(12 781)	
Remove Coleman and Wilson Severance Amortization Expense	(1 680)	
Reduce Non-Recurring Coleman Lay Up Expenses	(1 600)	
Reduce Allocation of ACES Fees to be Paid By Century	(1 333)	
Share Fixed Costs Due to Excess Capacity with Creditors	(23 121)	
Total KIUC Adjustments		(60 893)
Big Rivers Increase after KIUC Adjustments		$10 534

These adjustments are explained in more detail below.

a. The Revenue Requirement Should Be Adjusted To Remove Depreciation On Wilson Since Big Rivers Should Be Required To Defer That Expense For Possible Recovery At A Future Date.

In Case No. 2012-00535, the Commission held that because the Coleman plant is excess capacity on Big Rivers' system, it would not allow Big Rivers to presently recover the depreciation expense associated with that plant from customers, stating:

> *Having considered all of these factors, the Commission finds it both reasonable and necessary to exclude some costs of the Coleman Station from Big Rivers' rates. It would simply not be fair to require ratepayers to pay all of costs of the excess capacity. Therefore, we will exclude the depreciation expense associated with the Coleman Station from rates at this time, as discussed more fully later in this Order.*[199]

The Commission ordered Big Rivers to defer the depreciation expense, nothing that *"the depreciation expense may be considered for recovery in rates at a future point in time."*[200] Notably, in its Order on rehearing, the Commission imposed specific conditions on whether Big Rivers would be entitled to recover the Coleman depreciation expense in the future, stating:

[199] 535 Order at 19.

[200] 535 Order at 33.

If Big Rivers' load-mitigation plan, which the Rate Order did not criticize, is successful and Coleman is a revenue-producing asset in the future, Big Rivers should have the right to seek consideration of offsetting those future Coleman revenues against its deferred Coleman depreciation. If the mitigation plan is unsuccessful and Coleman produces no or little future revenue, it would not be reasonable to require ratepayers to pay the deferred Coleman depreciation. These are the factors considered by the Commission in reaching its decision on the Coleman depreciation and why the Rate Order stated that future recovery of this depreciation "may be considered."[201]

The Commission should issue a similar decision in this case with respect to the Wilson plant depreciation expense. Like Coleman, the Wilson plant is excess capacity on Big Rivers' system that is not *"used and useful"* to Big Rivers' remaining non-smelter customers. Although Big Rivers has recently decided to temporarily delay the idling of the Wilson plant to make off-system sales through March 2014, this does not change the fact that the plant represents excess capacity with regard to Big Rivers' remaining non-smelter customers. It only reinforces the fact that the Wilson plant is now part of Big Rivers' developing merchant generation business.

Big Rivers' recent attempt to divorce itself from its proposed Load Mitigation Plan makes the fact that the Wilson plant is excess capacity even easier to see. In response to criticisms of the Load Mitigation Plan by Intervenors, Big Rivers began to downplay the importance of its Load Mitigation Plan in its Rebuttal case, claiming:

...Big Rivers is not staking its long-term viability on the success of any element of the Mitigation Plan except this rate case. The goal of the Mitigation Plan is to provide a plan for Big Rivers to follow to mitigate the adverse financial impact of the contract terminations by the Century Hawesville and Century Sebree aluminum smelters. Big Rivers' long-term viability is dependent upon achieving in this case the rate relief it needs. Successful sales of power and/or generation under the Mitigation Plan will simply be an added benefit to Big Rivers' Members in the future by allowing Big Rivers to reduce the rate increase needed due to the smelter contract terminations.[202]

The Company now insists that that the Commission should focus on the forecasted test year, not its Load Mitigation Plan:

This is a rate case, not a proceeding to construct new generating facilities. This case should focus on the rates Big Rivers needs based on its revenues and expenses forecasted for the test period. That forecast is reasonable and is adequately supported by studies.[203]

If the requested rate adjustment is granted, Big Rivers' financial stability will not depend on

[201] 535 Order at 3-4.

[202] Berry Rebuttal Testimony at 5.

[203] Rebuttal Testimony of Mark Bailey (December 17, 2013)("Bailey Rebuttal Testimony") at 18.

increasing off-system sales or any other element of its Mitigation Plan. In fact, as discussed in more detail in the Rebuttal Testimony of Robert W. Berry, with the departure of the smelters, Big Rivers has increased opportunities to market available energy and capacity. Therefore, success of the Mitigation Plan will simply provide additional benefits to Big Rivers' Members.[204]

At hearing, Mr. Bailey continued to downplay the importance of the Load Mitigation Plan stating that Big Rivers has "*seen the Load Mitigation, if you will, as icing on the cake....*"[205] Big Rivers' current view of its Load Mitigation is significantly different than its view in Case No. 2012-00535, where it claimed:

...Big Rivers urges the Commission to exercise 'regulatory patience' by approving Big Rivers' proposed rates and giving it time to execute its Mitigation Plan to realize benefits for its Members...Big Rivers' Mitigation Plan, including this rate request, presents the best possible long-term solution for Big Rivers' Members and their member-owners.[206]

Rather than standing behind its Load Mitigation Plan, Big Rivers now asks the Commission only to consider the fully forecasted test year for purposes of setting rates in this case.

It is perhaps not surprising that Big Rivers is attempting to divert attention away from the Load Mitigation Plan, given that it became clear at the hearing that even using the Company's overly-rosy assumptions, the Plan would leave Big Rivers' customers with excessive rates for years to come and would not lead Big Rivers to achieve the 1.40 TIER that its own witness testified is needed as one part of restoring its financial viability. But Big Rivers' new focus only on the fully forecasted test year does not help the Company, as it makes it even clearer that the Wilson and Coleman plants remain excess capacity that is not *"used and useful"* to its remaining customers. The forecasted test year reflects that the Wilson or Coleman plants provide no value to its remaining customers. Therefore, if Big Rivers' recent narrow view of the case is adopted, the argument against passing the costs of the Wilson and Coleman plants onto customers becomes even stronger.

Big Rivers argues that the Commission should not remove the Wilson depreciation expense from its proposed revenue requirement in this case because doing so would adversely impact the Company's cash flow.[207] As demonstrated at the hearing, Big Rivers overstated its alleged cash flow problem, as the Company currently has ample cash reserves. Pursuant to Big Rivers' Financial Policy, the Company's minimum cash requirement is

[204] Rebuttal Testimony of Billie Richert (December 17, 2013) ("Richert Rebuttal Testimony") at 6.
[205] Tr. (January 7, 2014) at 17:20:07.
[206] Big Rivers' Post-Hearing Brief, Case No. 2012-00535 at 35.
[207] Richert Rebuttal Testimony at 12-14.

equal to 45 days of forecasted fixed operation and maintenance expenses.[208] Company witness Billie Richert testified that 45 days of fixed O&M expenses equals about $25 million.[209] Ms. Richert added that her preference would be to have $35 to $40 million in cash.[210]

However, Big Rivers has approximately $105 million in cash available to it,[211] as Ms. Richert testified:

Q: "And how much money do you have in the bank right now?"

A: "I would say around $90 million, plus we have about $15 [million] in the capex reserve fund."[212]

According to Big Rivers' long-term financial forecast, which assumes that the Commission approves the Company's present rate case request in full, Big Rivers projects that its cash balance will [redacted] to $[redacted] million in four years.[213] In other words, the utility seeks rate increases that will lead to a cash cushion of $141 million so that it can prosper (including giving management bonuses) under any and all circumstances, while draining the businesses of Western Kentucky and burdening residential customers with punishing rate hikes.[214] That is Big Rivers' idea of fairness.

Further, Big Rivers has no financial borrowing needs right now, aside from potential pollution controls related to MATS:

Commissioner Gardner: "Let me ask you a question about what your financial borrowing needs are right now, in other words, one I know of...are for the pollution control. Do you have any other borrowing needs right now, other than potentially MATS?"

A: "We do not."

Q: "Okay. In the forecasted test year, are there any borrowing needs, other than perhaps related to MATS?"

A: "No."[215]

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[208] KIUC Ex. 5 at 2.

[209] Tr. (January 7, 2014) at 16:12:32.

[210] Tr. (January 8, 2014) at 11:24:39 (*"...from day to day, we want to make sure we don't go below $35 to $40 million, and we have built in a cushion. The $25 million covers fixed costs and then we have included another $10 million – usually $35 to $40 million – to cover any emergency situations."*).

[211] KIUC Ex. 3. Big Rivers' cash balance as of October 31, 2013 is $94.598 million.

[212] Tr. (January 7, 2014) at 18:13:04.

[213] KIUC Ex. 6b.

[214] Big Rivers' incentive compensation plan factors in off-system sales margins in calculating bonuses, leading to potential benefits to management from retaining the excess Coleman and Wilson plants. Tr. (January 9, 2014) at 11:50:45.

[215] Tr. (January 8, 2014) at 12:58:52.

The Commission can therefore adopt the same approach for the Wilson depreciation expense that it did for the Coleman depreciation expense without substantially harming Big Rivers' cash flow.

Big Rivers also argues that the Commission should not cease depreciation on Wilson, as it did with Coleman in the 2012-00535 case, because Wilson *may* provide benefits to customers in the future:

> *Even if some of these generating assets are temporarily idled to reduce costs, they provide value to our Members and their retail customers. As explained in the Rebuttal Testimony of Robert W. Berry, these plants continue to provide benefits because they give Big Rivers the best opportunity to mitigate the effects of the smelter contract terminations. We are already beginning to see encouraging developments in our mitigation efforts, even as the regulatory cloud of uncertainty over this case and the rehearing in Case No. 2012-00535 lingers. In addition, as Mr. Berry further testifies, the electric power market is also showing signs of a market rebound. As it does, Big Rivers will be able to leverage its generation capacity to create additional revenues.*[216]

Big Rivers' hope to keep the Wilson and Coleman plants running by marketing its excess power to wholesale customers off-system is well-known. But it is inappropriate for Big Rivers to become a merchant generator of 1,000 MW of capacity while making its native load customers the guarantors of any potential market sales that turn out to be uneconomic.

Mr. Bailey also states in his Rebuttal Testimony that the Wilson and Coleman plants *may* provide benefits to customers because they can be restarted in an emergency if one of its units used to serve native load customers has to shutdown:

> *These assets also allow us a previously unavailable opportunity to encourage additional economic development in the region while at the same time giving us some measure of insurance against a catastrophic shutdown at the other generating stations and against any possibility that the smelters' historically vacillating power purchasing preferences could ever result in them attempting to seek a return to the system, despite their contractual acknowledgements that they will not do so.*[217]

Hence, Mr. Bailey is effectively saying that the Commission should deem the Wilson and Coleman plants *"used and useful"* as *"spare"* generating units in case one of Big Rivers' power plants have to shut down in an emergency. This statement once again shows how far Big Rivers has strayed from fair, just, and reasonable standard. This would be like the Commission maintaining two separate offices at the expense of Kentucky

[216] Bailey Rebuttal Testimony at 8.

[217] Bailey Rebuttal Testimony at 8 (emphasis added).

taxpayers just in case there was an emergency that temporarily shut down its main office building on Sower Boulevard. By this rationale, there could never be a situation in which a power plant could not be considered *"used and useful."*

The Commission should not force Big Rivers' remaining customers to subsidize its decision to enter merchant generation business. Accordingly, the Commission should order Big Rivers to defer the $20.177 million Wilson depreciation expense included in the forecasted test year in this case. And like the Commission's treatment of the Coleman depreciation expense, the Commission should expressly condition future recovery of the Wilson depreciation expense on the Load Mitigation Plan's success.

Adopting the same approach for the Wilson depreciation expense that was adopted for the Coleman depreciation expense will also uphold the Commission's "*balancing of interests*" standard. When asked about how the Commission could uphold that legal standard and still allow Big Rivers to recover Wilson depreciation, Big Rivers failed to point out how a balance would be achieved:

> *Q: "Assume the Commission takes your view that capacity that is idled in the test year should be...the depreciation should be recovered from consumers. How would the Commission achieve the balance between the utility and the shareholders?"*
>
> *A: "Well, the balance is allowing Big Rivers to have stable financial footing so that we will be successful in our mitigation efforts. That's where the link is. We have to be stable financially."*[218]

In Big Rivers' view, a reasonable "*balance of interests*" is providing the Company everything it asks for now in the hopes that someday in the future customers may benefit if its merchant generation business succeeds. That is far from the view that the Commission should adopt in this case.

b. The Commission Should Use The Smelter Transmission Revenues Elther To Reduce The Revenue Requirement Or To Supplement The Economic Reserve Fund.

Though Big Rivers initially failed to address the smelter transmission revenues it will receive,[219] the Company now proposes that it supplement the Economic Reserve Fund with any such revenues.[220] Joint

[218] Tr. (January 7, 2014) at 18:02:38.

[219] Kollen Testimony at 62:1-13.

[220] Bailey Rebuttal Testimony at 11:2-13.

Intervenors do not take issue with this approach. Hence, in this case, the Commission can either make an adjustment to remove the transmission from the revenue requirement proposed or use that revenue to supplement the Economic Reserve Fund.

The Commission should also allocate that smelter transmission revenue in a way that is consistent with how its transmission plant is typically allocated. Specifically, the Commission should require Big Rivers to allocate the smelter transmission revenue first on a 12 CP basis between the Rural and Large Industrial rate classes. Then, the smelter transmission revenue would be allocated among each rate class on an energy basis. This would resolve the Attorney General's concerns regarding the allocation of the smelter transmission revenue and would be consistent with the way in which Big Rivers' transmission costs are allocated.[221] The Attorney General's position on this issue is correct and should be adopted, even though it adversely affects the Large Industrial class.

If the Commission decides to use the smelter transmission revenue to supplement the Economic Reserve Fund rather than as a reduction in the base revenue requirement in this proceeding, then the transmission revenues will result in a rate credits through the Economic Reserve Fund, albeit lagged by several months, to customers of at least $12.781 million annually, effectively resulting in a net rate increase of the same $10.534 million recommended by Joint Intervenors.

c. The Commission Should Supplement The Economic Reserve Funds With Additional Coleman SSR Revenues.

In this case, Big Rivers forecasts that it will receive approximately $28.661 million in savings as a result of the Coleman SSR agreement. In reality, Big Rivers will receive significantly more in savings. This issue is currently subject to Rehearing in Case No. 2012-00535. The Commission should require Big Rivers to supplement the Economic Reserve Fund with any additional revenue that it receives from the SSR Agreement that is not accounted for in the test year.

[221] AG Ex. 8; Tr. (January 9, 2014) at 14:28:35 (*Q: "Transmission revenues should fall the way transmission costs are allocated. That certainly makes sense, doesn't it?" A: "Ideally, one would allocate the costs in the same manner in which one allocated the revenues in a cost of service study, yes."*).

d. The Commission Should Defer And Amortize The Coleman Layup Expenses Because Those Expenses Are Non-Recurring.

The Company included [redacted] million in Coleman layup expenses in the revenue requirement as recurring expenses.[222] But these layup expenses are non-recurring. The Commission should treat all non-recurring revenues and expenses the same. Either they all should be: 1) removed as non-recurring and ignored in the revenue requirement; or 2) removed, deferred, and amortized in the revenue requirement.

Big Rivers has proposed to defer and amortize other non-recurring expenses, though it curiously removed the smelter surcredit revenues from the test year (those revenues are also non-recurring and would increase the revenue requirement). Consequently, the Commission should defer the Coleman layup expenses and amortize them over five years, the same treatment as the Company proposes for other non-recurring expenses. The effect of this recommendation is a reduction of $1.600 million in the revenue requirement.[223]

e. The Commission Should Only Adopt Big Rivers' Proposal To Defer And Amortize MISO Capacity Charges If Those Charges Are Actually Incurred.

Big Rivers assumed that it will incur $0.511 million in MISO capacity charges if Coleman is shutdown contemporaneous with the Alcan termination on January 31, 2014. The Company seeks to defer this amount and recover $0.102 million in amortization expense based on a five-year amortization period. The Commission should adopt the Company's proposal to defer and amortize the MISO capacity charges, but only if they are incurred. Big Rivers may not ultimately incur these costs since it will incur some or all of these expenses only if the Coleman plant is shutdown prior by May 31, 2014.

Whether Big Rivers will ultimately incur these costs will likely still be unknown at the time of the Commission's Order in this case. But uncertainties like these highlight the importance of Joint Intervenors' Rate Plan, which will capture the deferral and amortization expense if the cost is incurred or the savings if the cost is not incurred.

[222] Big Rivers Confidential Response to Attorney General Data Request 2-8.
[223] Kollen Testimony at 64:12-65:9.

f. The Commission Should Not Allow Big Rivers To Defer And Amortize Wilson And Coleman Severance Expenses.

Big Rivers proposes to defer $3.713 million in labor severance costs associated with the shutdown of the Coleman plant this amount and recover $0.743 million in amortization expense based on a five-year amortization period.[224] The Commission should not allow Big Rivers to defer and amortize the severance expenses associated with either the Coleman or Wilson plants.

As Company witness Richert acknowledged, Big Rivers will expense the Wilson and Coleman plant severance costs prior to the start of the test period in this case.

> *Q:* (referring to Ms. Richert's Rebuttal Testimony): *"Does this statement mean that the severance costs will be charged to expense in 2013 prior to the start of the test period Big Rivers is using in this case?*
>
> *"A: Prior to the test period? Yes..."*[225]
>
> ***
>
> *Q: "So you're proposing to amortize [the severance expenses] for ratemaking purposes, correct?*
>
> *A: "Yes"*
>
> *Q: "Even though they're being expensed for accounting purposes?*
>
> *A: "Yes."*[226]

Since Big Rivers will expense those costs prior to the test year in this case, it is not appropriate for Big Rivers to include those expenses in its proposed $71.227 revenue requirement. And in light of the fact that Big Rivers made $24.254 million profit margin as of November 2013 when it budgeted that it would make less than $1 million, the Company can financially absorb these one-time severance costs. Accordingly, the Commission should disallow recovery of Coleman and Wilson severance expenses.

g. The Commission Should Reduce The ACES Fees Expense To Reflect An Allocation To Century.

Big Rivers included $2.272 million in ACES fees expense in its proposed revenue requirement. Big Rivers has been a member-owner of ACES since 2003. ACES acts as an agent to assist the Company, as well as

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[224] Ex. Haner-2.

[225] Tr. (January 8, 2014) at 12:13:17.

[226] Tr. (January 8, 2014) at 12:15:31.

the other members, in managing its energy portfolio while also providing a suite of support services such as energy risk management, portfolio modeling, contract administration, and regulatory services. All members of ACES share in its costs and reimburse ACES based on their relative load allocations. In other words, the allocation to Big Rivers will be reduced due the Smelter load terminations, although on a two-year lagged basis.

Big Rivers agrees that $0.784 million of the ACES fees should be removed from the revenue requirement due to the Hawesville smelter load termination and the Century contracts approved in Case No. 2013-00221.[227] Big Rivers plans to allocate 34.5% of the ACES fees to Century for the Hawesville Smelter pursuant to Exhibit A of the Direct Agreement approved in the Century Contracts Case.[228]

The Commission should also reduce the ACES fees to reflect an allocation to the Sebree Smelter. If the Company enters into a transaction with Century for the Sebree Smelter similar to the one it entered into for the Hawesville Smelter, then the ACES fees should be reduced by another 24.2%, or $0.550 million. The ACES fees were caused by the Sebree Smelter and should be recovered from Century regardless of whether there is any SSR Agreement.

h. The Commission Should Reduce The Revenue Requirement To Reflect An Excess Capacity Adjustment.

The final modification that the Commission should make is to reduce the revenue requirement to reflect an excess capacity adjustment. Joint Intervenors' proposed excess capacity adjustment does not take money away from Big Rivers that it needs to meet its financial obligations. Rather, under Joint Intervenors' Rate Plan, even with the excess capacity adjustment, the Company will have sufficient revenue to meet its authorized TIER on a monthly basis. Hence, the Commission should not view the excess capacity adjustment as some drastic cut that could substantially injure the Company's financial well-being. This excess capacity adjustment is merely a means by which the Commission can establish a reasonable immediate cash rate increase that avoids rate shock to customers. It would not be a permanent disallowance since Big Rivers could seek any additional necessary revenue in a subsequent rate case.

[227] Ex. LK-14 (Big Rivers Response to KIUC Data Request 1-57).

[228] Ex. LK-14 (KIUC 1-57) and Ex. LK-15 (PSC 3-10).

Unlike the circumstances in Case No. 2012-00535, where the Commission rejected a similar recommendation, in this case, the imprudent decision of management not to retain the Sebree smelter on the system on a cost-based rate is the direct cause of the Wilson plant becoming excess capacity. But for such mismanagement on the part of Big Rivers, the Wilson plant would still be operating, the rate increase here would be much smaller, the utility would not have lost its investment-grade credit rating, and Big Rivers would not be trying to turn itself into a merchant generator to the same degree.

There really can be little doubt that under any type of traditional analysis excess generating capacity exists on the Big Rivers system. The 190% reserve margin and the anticipated idling of Coleman and Wilson prove this point. Wholesale market prices and the value of the coal generating assets are now lower than Big Rivers assumed when it agreed to the one-year notice provision in the Smelter contracts as part of the Unwind transaction. This was a risk that Big Rivers and its creditors undertook when the Company entered into the Smelter contracts.

To address these excess capacity issues, Joint Intervenors recommend a middle-ground approach that raises rates to a reasonable level and uses the ratepayer Reserve Funds to assure financial solvency. Yet even under Joint Intervenors' alternative rate plan, some excess capacity adjustment is appropriate. In order to fashion a workable resolution to Big Rivers' excess capacity, we are recommending the Commission make a final adjustment to reduce Joint Intervenors' proposed revenue requirement of $23.121 million (68.7% of $33.655 million), since the smelters made up 68.7% of Big Rivers' internal load.

This excess capacity adjustment is necessary to achieve a balanced approach that equitably shares the cost burden associated with the smelters' departure. Big Rivers' remaining customers did not cause the financial issues the Company raises in this case nor do those customers benefit from the excess capacity resulting from the smelters' departure, which is not physically or economically *"used and useful"* to those customers. Though Big Rivers' remaining customers arguably should not have to pay for any of the costs of that excess capacity, reducing the proposed revenue requirement in this manner is consistent with the balanced approach the Commission has previously used to address such issues.

C. The Commission Should Treat The 16,000 Business Customers Classified As Rural Equally With The 20 Business Customers Classified As Large Industrial With Respect To The Rural Reserve Fund, While Giving Residential, School, Church, And Farm Customers The Full Benefit Of The Rural Reserve Fund.[229]

The Rural Economic Reserve was created by the Commission as a condition of its approval of the Unwind Transaction.[230] In the Unwind Order, the Commission required that the E.ON Entities pay Big Rivers an additional $60.9 million beyond the amount they had already committed to the transaction in order to create the Rural Economic Reserve, which would help offset projected rate increases to Rural customers once the Economic Reserve funds were exhausted.[231]

In the Unwind Case, the Commission relied upon the October 2008 Financial Model results. The 2008 Financial Model assumed that market prices would remain high and that if one or both of the smelters gave notice that they would cease smelting operations Big Rivers' excess generating capacity would be a valuable asset that could be easily marketed so that the cost of this excess capacity would not be a financial burden to Big Rivers' remaining customers. Given this set of assumptions the Commission expected rate stability for the non-smelter rate classes, particularly since the Economic Reserve would be available to provide rate mitigation to *both* Rural and Large Industrial customers.

Unfortunately, the 2008 Financial Model projections for the electric market turned out to be inaccurate. The Hawesville and Sebree smelters have left the system and Big Rivers has not been successful in marketing its excess capacity. As a result, Big Rivers now proposes tremendous rate increases to both Rural *and* Large Industrial customers (68% and 107%, respectively, on an "*all in*" basis).[232] This is a significant change of circumstance that warrants taking action to mitigate the effect of these rate increases on all of the remaining Big Rivers' customers, not just the Rural customers.

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[229] Ben Taylor and the Sierra Club take no position regarding KIUC's Reserve Fund proposal discussed in this section of the Brief.

[230] Direct Testimony of Stephen J. Baron, Case No. 2013-00199 (October 29, 2013)("Baron Testimony") at 4:10-11.

[231] Unwind Order at 23-26.

[232] KIUC Ex. 14.

KIUC initially proposed in its Direct Testimony that there be an equal sharing of the Rural Reserve Fund across all rate classes.[233] KIUC's original proposal would have treated the 20 Large Industrial customers as equal beneficiaries of the Rural Reserve Fund along with the Residential and the 16,000 Rural-Business customers. However, KIUC concedes that it may not be appropriate to shorten the time period in which Residential customers will receive rate mitigation given the fact that Residential customers are facing an average household rate increase of about $838 per year when both of the "*pancaked*" rate cases are factored in.

As expressed in Steve Baron's revised testimony, KIUC supports Residential customers (which also includes School, Church, and Farm customers) receiving the greatest proportionate share of the mitigation funds held by Big Rivers. The real inequity is the preferential treatment received by some business customers (16,000 Rural-business customers), over other business customers (20 Large Industrial customers). In order to address this inequity, KIUC recommends a refinement to the proposal set forth in Mr. Baron's Testimony. This refinement would preserve the full benefit of the Rural Economic Reserve for Residential-Rural customers, but give all business customers: Rural and Large Industrial, their proportionate share of the remainder of the Rural Reserve Fund.

Specifically, KIUC proposes that the Commission amend the terms of the Rural Economic Reserve funds so that those funds can be used to benefit Rural-business customers and Large Industrial customers equally, while preserving the same amount of money for Rural-Residential customers as they would be entitled to currently. The Commission created the Rural Economic Reserve and the Commission can modify it in this case to treat all of Big Rivers' business customers on an equal basis.

[233] Baron Testimony at 7-8.

This is no different than when the Commission allowed Big Rivers to modify the purpose of the Transition Reserves in Case No. 2012-00492, in order to pay off Pollution Control Bonds instead of its original purpose when circumstances changed,[234] and it is no different than Big Rivers' proposal in this case to use the Economic Reserve as a vehicle for ensuring real-time recovery of any transmission revenue from the smelters. Circumstances have changed since the Unwind Case in which these funds were created. It is reasonable to amend the terms of the funds in order to fit the Commission's current understanding of the situation and avoid inequities.

There is no compelling reason to give Rural-business customers the benefit of the Rural Reserve Fund while withholding the same benefit from Large Industrial business customers. The "*Rural*" business customers are primarily commercial customers and smaller industrial customers. Many of these "*Rural*" customers are national or multi-national businesses like Wal-Mart, Burger King, Sam's Club, etc. The proposal to give these customers the benefit of the Rural Reserve Fund while denying this benefit to Large Industrial business customers is arbitrary an inequitable for several reasons.

First, although it is natural to think of Large Industrial as "*big*" customers and Rural-business customers as "*small*" customers this is not uniformly correct. There are many Rural-business customers that are larger than some Large Industrial customers. There are 20 Large Industrial customers on Big Rivers' system. These 20 Large Industrial customers have projected billing demands ranging from 100 kW to 38 MW in 2014.[235] Of these customers, 11 have billing demands less than 4 MW and 4 of these customers have billing demands less than 750 kW. In contrast, there are over 25 Rural-Business customers with billing demands over 1 MW.[236] The chart below compares the number of Rural customers that have billing demands in excess of 1 MW per month to the number of Large Industrial customers with 1 MW or greater loads.[237]

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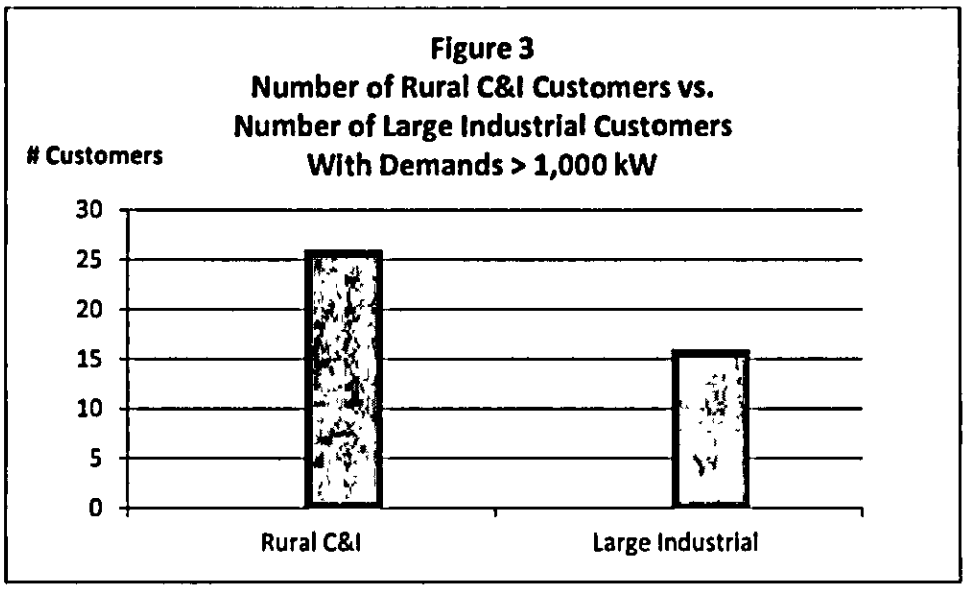
[234] In the Unwind Case, the Commission created a $35 million Transition Reserve so that in the event that the smelters terminated their contracts and sales to the wholesale power market did not produce revenues greater than the smelter rates, the funds in that Reserve could be used to make up the difference. When Big Rivers was unable to secure financing to pay off its 1983 pollution control bonds, which were set to mature in June 2013, the Commission allowed Big Rivers to amend the terms of the Transition Reserve so that Big Rivers could use it to help pay off this debt. In Case No. 2012-00492, Order (March 26, 2013) the Commission stated: "*Big Rivers is authorized to use the Transition Reserve funds to replace up to $35 million of the aforementioned CoBank funds and use them for capital expenditures in the ordinary course of business, as requested in its amended application.*"

[235] Baron Testimony at 12:7-9

[236] Baron Testimony at 14.

[237] Baron Testimony at 14.



In summary, there are several Rural-business customers who will receive Rural Economic Reserve mitigation that are larger, and many more that are roughly the same size, as some members of the Large Industrial rate class customers who will not receive any Rural Economic Reserve funds. Load size alone does not differentiate Rural-business customers from Large Industrial customers.

The only load characteristic that distinguishes "*Rural*" business customers from "*Large Industrial*" business customers is that Large Industrial customers take service at a different voltage than the Rural-business customers. This cost of service difference in voltage level is already factored into customer rates and is not appropriate justification for favoring one group of business customers over another group of business customers. Especially considering that, as explained above, some "*Rural*" customers actually use more power than some "*Large Industrial*" customers.

Second, from an economic development perspective, it is counterproductive to favor Rural business customers, most of which are commercial and retail businesses, over Large Industrial customers, which are entirely manufacturing industries. Obviously, low power rates benefit all businesses. However, low power costs are especially crucial to industrial customers that compete in national or international markets. This principle can be established through a simple example. A commercial customer in Kentucky, a Wal-Mart store for example, faces its primary competition from other retailers in the same electric service territory, perhaps a K-Mart or Target store. An increase or decrease of power rates will not confer an advantage or disadvantage on any single

competitor because they are all served by the same utility at the same rate. Therefore, rate increases are not competitively significant to commercial customers that compete on a local level.

In contrast, the fates of industrial customers that compete in national and international markets are greatly affected by fluctuations in the price of power. The Large Industrial customers of Big Rivers compete with industries all over the world and even compete for capital investments with the other facilities within their own company. Compounding the importance of low cost power for Kentucky industrial customers relative to commercial customers is that much of Kentucky's economic strength depends on the success of maintaining and attracting industrial power users. Unlike most commercial businesses in Kentucky, the addition of new industrial businesses represents an incremental economic gain to Kentucky's economy. To briefly revisit the above example, when a new commercial business, again Wal-Mart, opens a store in Kentucky the jobs created by the Wal-Mart store are offset by the jobs lost from the corresponding elimination of competing businesses. The regional economy may not enjoy any growth at all as a result of the new commercial business because its success comes at the expense of other local commercial businesses.

In contrast, Kentucky industrial businesses that compete in national and international markets always represent a net gain for the regional economy because their primary competition is from businesses located outside of the Commonwealth. When a new industrial manufacturer locates in Kentucky, the jobs it brings are incremental, new jobs. That is why Kentucky, like all other states, fiercely competes for new industry. Toyota in Georgetown is the prime example. The households supported by manufacturing jobs demand the creation of new commercial and service sector jobs because that industrial employee and his or her family will spend their money in the local economy at stores, restaurants etc. From an economic development perspective, the Rural Economic Reserve currently discriminates against exactly the wrong customer class.[238]

Neither the Rural nor the Large Industrial customers bear any responsibility for the large rate increases that Big Rivers seeks to impose. Hence, there is no reasonable basis to protect one rate class from the impacts of Big Rivers' financial problems to a greater extent than another rate class. The Commission should treat each of

[238] Baron Testimony at 15.

these customer groups equally with respect to the very limited mitigation tools that the Commission has at its disposal.

KIUC believes that it is discriminatory and inequitable to provide business customers that happen to be classified as "*Rural*" a greater benefit from the Reserve Funds than business customers that are classified as "*Large Industrial*." Under Big Rivers' proposal, the 16,000 business customers that are categorized as "*Rural*" customers, which face a 68% rate increase from the pancaked rate cases, will not see a rate increase as a result of this case until April of 2015, while the 20 business customers categorized as "*Large Industrial*" will see their rates increase by about 107%, as early as July of 2014. This treatment is discriminatory. One group of business customers should not be given preferential treatment over another group of business customers without appropriate justification.

The mechanics for implementing KIUC's proposed revision to the Rural Reserve Fund are slightly different depending upon whether: 1) the Commission adopts KIUC's proposed Rate Plan to use the Reserve Funds to ensure Big Rivers a monthly earnings target prior to a second rate filing *("hour glass approach");* or 2) the Commission adopts Big Rivers' proposal to use the Reserve Funds to delay the effective date of the rate increase *("time bomb approach").* However, in either case the mechanics of KIUC's proposal are simple and explained in detail in KIUC's Post Hearing Data Response, Question 1. Under either approach, KIUC's proposal to treat all business customers equally would give Residential, School, Church, and Farm customers the exact same benefit as they would receive under Big Rivers' proposal.

D. If the Commission Does Not Accept KIUC's Proposal To Treat All Business Customers Equally With Respect To The Reserve Funds, Then It Should Allow Large Industrial Customers To Access Market-Based Rates For A Portion Of Their Load.

In the event that the Commission does not adopt KIUC's recommendation to utilize the Rural Economic Reserve funds in an equal manner for both the Rural and Large Industrial rate classes, KIUC recommends that the Commission permit Large Industrial customers to purchase a portion of their requirements based on market prices. Effectively, if the Large Industrial class is to be treated differently for ratemaking purposes than the business customers within the Rural class (due to the availability of Rural Economic Reserve mitigation), it is reasonable to

permit these customers an alternative avenue to mitigate their costs similar to the smelters. In other words, if the 20 Large Industrial customers are not treated equally with the 16,000 commercial and industrial customers classified as Rural, then they should be treated equally with the two smelters.[239]

Specifically, the Commission should modify the Large Industrial tariff to permit customers, at their option, to receive up to 15% of their demand and energy requirements priced at market-based rates rather than the standard tariff. Further, such customers should be permitted to gradually increase this percentage, again at a customer's option, by 5% per year up to a maximum of 25% in the third rate effective year. This market-based pricing for a portion of a customer's requirements would be similar to the arrangement being offered to the smelters. Again, this proposal is only an alternative in the event that the Commission does not modify the Rural Economic Reserve to apply the proceeds on an equal basis to both Rural and Large Industrial customers.[240]

This proposal is generally consistent with the pricing provisions of Big Rivers' Standard Rate LICX (Large Industrial Customer Expansion), which allows for market-based rates for new or expansion power associated with loads that are 10 MW or greater. The specific provisions of rate LICX apply to new customers and the expansion load of existing customers. The main difference between KIUC's alternative recommendation in this case (if the Rural Economic Reserve is not used equally for both Rural-business and Large Industrial customers) is that the KIUC proposal would permit any existing Large Industrial customer to utilize market-based rates for a portion of their "*existing*" load. There would be no requirement that the customer actually expand its load per rate LICX as it is currently structured.[241]

There is no legal difference with regard to the key provision of providing a portion of a Large Industrial customer's load at market prices, rather than the standard Big Rivers' Large Industrial rate. Large Industrial customers who elect to utilize this option (the KIUC market price option) would continue to purchase power from Kenergy, Jackson Purchase or Meade County, who in turn would purchase this market priced power from Big Rivers. Thus, there would be no violation of Kentucky's certified territory laws since the Large Industrial customers would still purchase from their respective distribution utility. Neither would there be a violation of the all requirements

[239] Baron Testimony at 23.
[240] Baron Testimony at 23.
[241] Baron Testimony at 24.

contracts the members have with Big Rivers since Big Rivers would still be the wholesale provider. Big Rivers already makes market priced purchases for all customers of the three member cooperatives with cost recovery through both the Fuel Adjustment Clause and the Purchase Power Adjustment. Under this alternative recommendation, Big Rivers would simply direct and assign specific market purchases to Large Industrial customers electing to participate in the program.[242]

E. The Commission Should Adopt Joint Intervenors' Rate Plan, Which Provides For A Reasonable Rate Increase Coupled With The Use Of The Reserve Funds In Order To Provide Time To Resolve Rivers' Excess Capacity Issues.

1. Joint Intervenors' Rate Plan.

Big Rivers has characterized the Commission's choice in this case as between two extreme options; approve 100% of Big Rivers' rate request or force it into bankruptcy. In reality, there is a third viable approach that prevents rate shock to customers and maintains compliance with the Company's debt covenants. That alternative approach would require the Commission to take the following actions in this case:

a) Approve a reasonable base rate increase of $10.534 million for Big Rivers' remaining customers;

b) Direct Big Rivers to use the $131.5 million in the ratepayer Reserve Funds to provide the additional compensation the Company needs to meet a 1.24 TIER target on a monthly basis;

c) Hire an independent third-party expert to conduct a management audit. The primary goal of management audit should be to "*right size*" Big Rivers to fit the non-Smelter load in a reasonable least-cost manner, with all options – including retirement of the Coleman and/or Wilson plants or sale of those plants at fair market value – on the table;

d) Explicitly direct Big Rivers to work with all stakeholders to equitably address excess capacity costs. The Commission should set forth the parameters of the discussions with the creditors and a timeframe for resolution;

e) Require monthly reporting to the Commission, Staff, and Intervenors from a third-party auditor and from Big Rivers on Reserve balance/financial status and on the status of the implementation of the Load Mitigation Plan; and

f) Allow Big Rivers to file for a new rate case prior to the depletion of the Reserve Funds.

[242] Baron Testimony at 24-25.

There are multiple benefits to Joint Intervenors' proposed approach. It avoids a rate shock to customers who would otherwise experience an expected rate *"timebomb"* when the Reserve Funds are depleted. This "*time bomb*" will likely take customers off-guard, particularly since Big Rivers continues to understate the "*all-in*" rate increases that those customers will experience.

Joint Intervenors' Rate Plan also guards against under-earning that would put Big Rivers in danger of default, as well as over-earning by Big Rivers. Unlike Big Rivers' static approach, which fails to account for the significant uncertainties associated with its fully forecasted test year discussed above (i.e. the timing of the idling of Wilson and Coleman, the level of off-system sales margins, the amount of transmission revenue it will receive from the smelters, SSR/must-run costs/revenues, etc.), Joint Intervenors' Rate Plan will ensure that the uncertainties associated with Big Rivers' fully forecasted test year will automatically be accounted for in Big Rivers' rates.

Joint Intervenors' approach also provides critical time in which the Commission can retain a Management Auditor to work out a restructuring and/or easing of the Company's current debt burden with its creditors pursuant to KRS 278.250 and 278.255. As discussed above, Big Rivers is planning on having such discussions with creditors in the near future anyway.[243] If the Commission only approves a reasonable rate increase, as Joint Intervenors' propose, then Big Rivers' creditors will have an incentive to restructure the Company's debt prior to depletion of the Reserve Funds. In addition, all of Big Rivers' stakeholders could provide input in negotiating a solution to Big Rivers' excess capacity issues that does not force its remaining customers to take on the entire cost burden associated with its excess capacity.

The management audit process has worked well for Kentucky utilities in the past. For example, not too long ago, East Kentucky Power Cooperative was teetering with a dangerously low equity ratio, a power plant under construction it did not need, and a Board of Directors that was slow to adapt. This Commission had the foresight to order a management audit that recommended many bitter pills for the good of the organization, and those audit recommendations were followed. Under the leadership of the new CEO, East Kentucky has stable

[243] Tr. (January 8, 2014) at 12:10:45.

rates and a growing equity ratio, Smith Unit 1 was cancelled midway through construction,[244] and East Kentucky's future looks relatively secure as a winter-peaking member of PJM. The same turnaround may be possible for Big Rivers if the Commission orders a management audit in this case.

The additional time provided by Joint Intervenors' approach would also give the Commission and/or Big Rivers an opportunity to comprehensively study the economics of investing additional capital in the Wilson and Coleman plants. Altematively, Big Rivers could use the extra time to sell or otherwise dispose of its excess generating capacity and to reduce its related fixed costs.

Contrary to Company witness Mabey's assertions, Joint Intervenors do not propose an approach that will propel Big Rivers into bankruptcy. Rather, Joint Intervenors' approach maintains the Company's credit metrics until the $131.5 million Reserve Funds are depleted while the Company works with its stakeholders to resolve its excess capacity problems. Prior to the expiration of the Reserve Funds, Big Rivers can file a rate case to recover any additional costs necessary to meet its debt obligations at that time. Consequently, Joint Intervenors' approach actually prevents Big Rivers from filing for bankruptcy.

[244] *See An Investigation of East Kentucky Power Cooperative Inc.'s Need for the Smith Generating Facility*, Case No. 2010-00238, Order (Feb. 28, 2011).

IV. CONCLUSION

WHEREFORE, Joint Intervenors respectfully request that the Commission take the following actions:

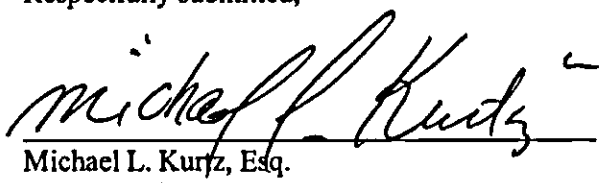
1) Reduce Big Rivers proposed $71.227 million revenue requirement to $10.534 million in order to incorporate the following adjustments:

- A reduction of $20.177 million to reflect ceasing depreciation expense on the Wilson station;
- A reduction of $12.781 million to reflect transmission revenue from the Hawesville and Sebree smelters, unless that transmission revenue is used to supplement the Economic Reserve Fund;
- A reduction of $1.68 million to remove Wilson and Coleman severance amortization expense;
- A reduction of $1.6 million to reduce non-recurring Coleman lay-up expenses;
- A reduction of $1.33 million to reduce the allocation of ACES fees to be paid by Century.
- A reduction of $23.121 million to remove the smelters' share of Big Rivers' excess capacity costs. This adjustment would not harm the Company's financial well-being since Big Rivers would receive any additional revenue that it needs to meet its credit obligations from the Reserve Funds pursuant to Joint Intervenors' Rate Plan.

2) Adopt Joint Intervenors' Rate Plan in order to allow Big Rivers to meet a 1.24 TIER and not default on its loan covenants. In order to implement the Rate Plan, the Commission would:

- Approve a reasonable base rate increase of $10.534 million;
- Direct Big Rivers to use the $131.5 million in the ratepayer Reserve Funds to provide the additional compensation the Company needs to meet its 1.24 TIER target on a monthly basis;
- Hire an independent third-party expert to conduct a management audit to "*right size*" Big Rivers to fit the non-Smelter load in a reasonable least-cost manner with all options – including the retirement of the Coleman and/or Wilson plants or the sale of those plants at fair market value – on the table;
- Explicitly direct Big Rivers to work with all stakeholders to achieve a reasonable negotiated solution to the Company's excess capacity issues prior to the exhaustion of the Reserve Funds;
- Require monthly reporting to the Commission, Staff, and Intervenors from a third-party auditor and from Big Rivers on the Reserve balance/financial status and on the status of the implementation of the Load Mitigation Plan; and
- Allow Big Rivers to file an additional rate case prior to the expiration of the Reserve Funds.

Respectfully submitted,



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COUNSEL FOR BEN TAYLOR AND SIERRA CLUB

February 14, 2014

ATTACHMENT A

Rio Tinto

Alcan Primary Products Corporation
9404 State Route 2096
Robards, KY 42452
USA
T 270 521 7811
F 270 521 7305

August 23, 2012

The Honorable Steve Beshear
Governor of Kentucky
700 Capitol Avenue
Suite 100
Frankfort, KY 40601

Subject: Looking forward for the primary aluminum industry

Dear Governor Beshear,

As you are aware, the aluminum industry in Western Kentucky is facing major challenges which threaten the industry's short term prospects and its long term sustainability. Current aluminum prices are very low and continue to fluctuate daily. Aluminum smelting requires large and reliable quantities of electricity and constitutes the single largest production cost. As a consequence, in looking forward in our industry, current and forecasted energy prices represent the single greatest threat to the viability of this strategic industry in the Commonwealth.

This week, Century Aluminum (Hawesville smelter) announced its intention to exit its existing power contract with Big Rivers Electric Corporation (BREC) within 12 months. This is very disturbing news that will have a detrimental impact on the entire region. Sebree Works faces the same issues and therefore the identical risks as Century regarding the impact of power costs on short and long term profitability.

For months we have been working with authorities to try and find a long term solution for our efficient smelter. We are seeking prices that are fair for, and that allow us to be competitive in, our industry. Under the current situation of low London Metal Exchange (LME) aluminum prices and higher than worldwide average energy costs, we are already struggling to keep the operation even marginally profitable.

We wish to reiterate and emphasize that there is simply no way that the Sebree Works will be able to absorb any portion of the rate increases that will most certainly be sought by BREC in the event of the closure of Century's Hawesville smelter. The outcome of any increase in the rates to the Sebree Works could be its closure. We will therefore strongly oppose any scenario where additional costs are passed on to the Sebree Works and request your support regarding this issue

We look forward to continued work with the Commonwealth and BREC to find a solution that will reduce the threat of closure to our operation and the resulting loss of thousands of direct and indirect jobs. We remain committed to working with all interested constituents and to finding and implementing innovative solutions quickly as did others worldwide.

Rio Tinto

We have very high expectations regarding the study requested by the Public Service Commission and we're hoping that the consultants' forthcoming report will present effective and tangible solutions. This is a must for the whole region.

I conclude by reminding you that we're still available at any moment to work with all involved parties to reach a permanent and long term solution.

Respectfully,

Serge Gosselin
Plant Manager (int.)
Rio Tinto - Sebree Works Aluminum

cc: Mr. Larry Bond, Deputy Chief of Staff
Mr. David L. Armstrong, Chairman, Kentucky Public Service Commission
Mr. James W. Gardner, Vice Chairman, Kentucky Public Service Commission
Ms. Linda Breathitt, Commissioner, Kentucky Public Service Commission
Mr. Larry Hayes, Secretary, Cabinet for Economic Development
Ms. Stephanie Bell, Kentucky Cabinet for Economic Development
Senator David Williams, Kentucky Senate President
Senator Robert Stivers, Kentucky Senate Majority Leader
Representative Greg Stumbo, Kentucky House Speaker
Representative, Rocky Adkins, Kentucky House Majority Leader
Senator Dorsey Ridley
Representative John A. Arnold
Representative Jim Gooch
Representative David Watkins
Mr. Mark Bailey, Big Rivers Electric Corporation
Mr. Greg Starheim, Kenergy Corporation
Mr. Steve Schneider, Century Aluminum

ATTACHMENT B

Rio Tinto Alcan

ALCAN PRIMARY PRODUCTS CORPORATION

January 31, 2013

Mr. Gregory Starheim
President and CEO
Kenergy Corp.
Post Office Box 18
Henderson, Kentucky 42419

Mr. Mark Bailey
President and CEO
Big Rivers Electric Corporation
201 Third Street
Henderson, Kentucky 42420

Re: Retail Electric Service Agreement
NOTICE OF TERMINATION

Gentlemen:

This letter constitutes written Notice of Termination, in accordance with Section 7.3.1 of the Retail Electric Service Agreement, dated July 1, 2009 ("Agreement"), between Alcan Primary Products Corporation ("APPC"), a wholly-owned subsidiary of Alcan Corporation, and Kenergy Corp. ("Kenergy"). APPC is the owner and operator of the aluminum smelter located in Robards, Kentucky (the "Sebree Smelter").

On January 15, 2013, Big Rivers Electric Corporation ("Big Rivers") filed an Application with the Kentucky Public Service Commission (the "KPSC") for an increase in base rates (the "Application"). According to Big Rivers, the Application, if approved, would result in a rate increase of nearly 16%. There is already substantial doubt that the Sebree Smelter is sustainable at the current rate being charged to APPC. The increase contemplated by Application would remove all doubt whatsoever and ensure that the Sebree Smelter is unprofitable and therefore unsustainable. Under the circumstances, APPC has no choice but to furnish this Notice of Termination.

As you are aware, Section 7.3.1 of the Agreement requires the President of Alcan Corporation, the corporate parent of APPC, to represent and warrant that (i) the decision to give this Notice of Termination reflects a business judgment made in good faith to terminate and cease all aluminum smelting operations at the Sebree Smelter, and (ii) it has no current intention of re-commencing smelting operations at the Sebree Smelter. Under the present

circumstances, Mr. Timothy Guerra, the President of Alcan Corporation, makes those representations and warranties in the Certificate attached hereto.

I am advised that, notwithstanding the notice of Century Aluminum of Kentucky ("Century") on August 20, 2012 to terminate its Retail Electric Service Agreement, dated July 1, 2009, Big Rivers and Kenergy have entered into negotiations with Century to waive the obligations of Section 7.3.1 of the Agreement and to otherwise assist Century to access market power in order to keep Century's Hawesville, Kentucky smelter open beyond August 20, 2013. Big Rivers and Kenergy have consistently and routinely indicated that they would keep the Sebree Smelter and Century's Hawesville smelter on equal footing in terms of their respective agreements. Therefore, in the event APPC decides in the future that market power might be an option to keep the Sebree Smelter operational, APPC would expect the same accommodations from Big Rivers and Kenergy on terms no less favorable than those offered to Century.

APPC appreciates the recent efforts of Big Rivers in offering proposals that would restructure the rate formula and other basic terms and conditions of the Agreement. While we are not in agreement at the present time, we welcome continuation of those discussions during the pendency of the rate case in hopes of reaching a mutually acceptable accord. We believe that further discussions would not be inconsistent with this Notice of Termination and indeed are appropriate in order to find ways to retain the jobs and preserve the economic benefits of those jobs for the Commonwealth of Kentucky.

Should you have any questions about this Notice of Termination, please do not hesitate to contact me or any of my colleagues listed below.

ALCAN PRIMARY PRODUCTS CORPORATION

By: _____
Jack Miller
President

cc: Mr. Serge Gosselin
Mr. Donald P. Seberger

Rio Tinto Alcan

ALCAN CORPORATION
8770 West Bryn Mawr Avenue
Chicago, Illinois 60631

Office of the President

CERTIFICATE

The undersigned, Timothy Guerra, a resident of the State of Illinois, hereby represents and warrants that:

1. He is the duly elected President of Alcan Corporation, a Texas corporation (the "Company");

2. The Company is the owner of 100% of the issued and outstanding stock of Alcan Primary Products Corporation, a Texas corporation ("APPC"). APPC is the owner and operator of the aluminum smelter located in Robards, Kentucky (the "Sebree Smelter").

3. By letter dated and delivered concurrently herewith, APPC has furnished written Notice of Termination in accordance with Section 7.3.1 of the Retail Electric Service Agreement, dated July 1, 2009 ("Agreement"), between APPC and Kenergy Corp. (the "Notice of Termination").

4. The decision to furnish the Notice of Termination reflects APPC's and the Company's business judgment made in good faith to terminate and cease all aluminum smelting operations at the Sebree Smelter and that they have no current intention of recommencing operations at that location.

Dated as of the 31st day of January, 2013.

By: _____
Timothy Guerra
President
ALCAN CORPORATION

ATTACHMENT C

SNLTable

Docket Number	Company Name	State	Rate Case Completion Date (mm/dd/yyyy)	Authorized Rate Change/Revenue (%)
D-RPU-85-9	Interstate Power and Light Company	IA	2/10/1986	57.30
C-D-86-11, 89-1	Entergy Louisiana, LLC	LA	7/6/1989	45.10
D-142,098-U	Kansas Gas and Electric Company	KS	9/27/1985	45.00
D-U-32220	Southwestern Electric Power Company	LA	2/27/2013	43.70
D-84-0109/85-0006 (CIPS)	Ameren Illinois Company	IL	5/8/1985	42.00
D-84.11.71	NorthWestern Corporation	MT	8/28/1985	40.00
C-R-870732	Pennsylvania Power Company	PA	5/3/1988	36.50
D-06-0072 (IP)	Ameren Illinois Company	IL	11/21/2006	32.90
D-E-017-GR-81-315	Otter Tail Power Company	MN	6/15/1982	31.20
C-R-870657	Duquesne Light Company	PA	3/23/1988	29.50
D-07-0587 (IP)	Ameren Illinois Company	IL	9/24/2008	29.20
C-U-1008-185	Avista Corporation	ID	2/6/1984	28.00
C-8352	Conowingo Power Company	MD	1/27/1992	27.30
C-10, 124	Otter Tail Power Company	ND	7/20/1981	26.50
D-82-0892 (elec.)	MidAmerican Energy Company	IL	10/13/1983	25.90
C-88-170-EL-AIR	Cleveland Electric Illuminating Company	OH	1/31/1989	25.00
Ca-U-83-26	Avista Corporation	WA	1/19/1984	25.00
C-07-0551-EL-AIR (TE)	Toledo Edison Company	OH	1/21/2009	24.55
D-83.9.68	MDU Resources Group, Inc.	MT	7/2/1984	24.40
C-88-171-EL-AIR	Toledo Edison Company	OH	1/31/1989	24.40
Ca-37803	Southern Indiana Gas and Electric Company, Inc.	IN	2/5/1986	24.30
D-09AL-299E	Public Service Company of Colorado	CO	12/3/2009	23.90
D-6998	Hawaiian Electric Company, Inc.	HI	6/30/1992	23.70
D-83-307-E O-84-142	South Carolina Electric & Gas Co.	SC	3/2/1984	23.30
D-3254	El Paso Electric Company	TX	8/14/1980	23.10
Ca-U-81-15	Avista Corporation	WA	11/25/1981	23.00
C-27882,83	New York State Electric & Gas Corporation	NY	10/20/1981	22.00
C-ER-85-128, EO-85-185	Kansas City Power & Light Company	MO	4/23/1986	21.70
Ca-U-81-41	Puget Sound Energy, Inc.	WA	3/12/1982	21.60
D-U-14495	Entergy Gulf States Louisiana, L.L.C.	LA	11/17/1980	21.60
D-83-302-E O-84-108	Duke Energy Carolinas, LLC	SC	2/22/1984	21.40
C-U-7091	Wisconsin Electric Power Company	MI	7/13/1982	21.30
D-7640	El Paso Electric Company	TX	3/30/1988	21.30
C-ER-2010-0356 (L&P)	KCP&L Greater Missouri Operations Company	MO	5/4/2011	21.30
D-U-14690	Entergy Louisiana, LLC	LA	5/26/1981	21.10
D-RPU-83-22	MidAmerican Energy Company	IA	4/25/1984	21.00
[redacted]	[redacted]	[redacted]	[redacted]	20.50