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February 2, 2018

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FEB 05 2018

PUBLIC SERVICE  
COMMISSION

Gwen R. Pinson  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

**Re: Motion of Ben Taylor and Sierra Club to Intervene In the Matter of The 2017 Integrated Resource Plan Of Big Rivers Electric Corporation, Case No. 2017-00384**

Dear Ms. Pinson:

Please find enclosed for filing the original and ten copies of the Motion of Ben Taylor and Sierra Club to Intervene in Case No. 2017-00384 before the Kentucky Public Service Commission.

This filing contains no confidential information. If you need anything else, please let me know.

Thank you for your attention to this matter.

Sincerely,



Joe F. Childers

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FEB 05 2018

PUBLIC SERVICE  
COMMISSION

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

In the Matter of:

THE 2017 INTEGRATED RESOURCE PLAN OF BIG ) CASE NO.  
RIVERS ELECTRIC CORPORATION ) 2017-00384

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**MOTION TO INTERVENE  
OF BEN TAYLOR AND SIERRA CLUB**

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Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11)(a), Ben Taylor and Sierra Club (collectively “Movants”) respectfully move the Commission for full intervention in the above-captioned case. Having actively participated as intervenors in other integrated resource plan (“IRP”), certificate of public convenience and necessity (“CPCN”), and demand-side management (“DSM”) proceedings in Kentucky and in other jurisdictions, the Movants have a wealth of knowledge and experience in the complex and changing issues that impact Big Rivers Electric Corporation (“Big Rivers” or “the Company”) and its IRP.<sup>1</sup> The Commission granted Movants full intervention in Big Rivers’ 2014 IRP proceeding,<sup>2</sup> two of its rate cases,<sup>3</sup> and its 2012 CPCN filing.<sup>4</sup> In addition, Movants participated in the Focused Management and Operations Audit of Big Rivers that was ordered by the Commission.<sup>5</sup> Movants will use their experience and expertise to present issues and develop facts that will assist the Commission in fully considering Big Rivers’ IRP to help ensure that it reflects a least-cost, least-risk plan for

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<sup>1</sup> Big Rivers Electric Corporation 2017 Integrated Resource Plan (Sept. 21, 2017) (“Big Rivers IRP”).

<sup>2</sup> *In re 2014 Integrated Resource Plan of Big Rivers Electric Corporation*, Case No. 2014-00166.

<sup>3</sup> Case No. 2012-00535, *Application of Big Rivers Electric Corporation for an Adjustment of Rates*; Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates*.

<sup>4</sup> Case No. 2012-00063, *Application of Big Rivers Electric Corporation for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge*.

<sup>5</sup> Focused Management and Operations Audit of Big Rivers Electric Corporation, Prepared for The Kentucky Public

customers. Additionally and in the alternative, Movants seek intervention because their special interests in this proceeding are not adequately represented by any other party to the proceeding.

## I. THE MOVANTS

Movants seek full intervention in order to bring to this proceeding their expertise evaluating integrated resource plans—especially their expertise reviewing whether Big Rivers has fully considered all reasonable options to develop a least-cost, least-risk resource plan that meets its customers’ needs, while continuing to deal with the substantial loss of load that Big Rivers experienced when its two largest customers left the system. Additionally, Movants seek full intervention in order to ensure that their interests in affordable clean energy options are fully and adequately represented.

Movant Ben Taylor is a long-time Sierra Club member and is a customer of Kenergy Corporation, which is a Big Rivers distribution cooperative. Mr. Taylor has a longstanding interest, *inter alia*, in Big Rivers diversifying its supply portfolio to include affordable clean energy options. His address is:

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

Sierra Club is one of the oldest and largest conservation groups in the country, with more than 820,000 members nationally, including more than 6,300 members in Kentucky who belong to the Cumberland Chapter. Many of Sierra Club’s Kentucky members are customers of Big Rivers, like Mr. Taylor, and therefore are directly affected by the rates, policies, terms, and conditions governing Big Rivers’ provision of electricity to them. As a result, these members and Sierra Club have strong, direct financial and policy interests in the resource planning

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Service Commission (Dec. 8, 2015) (“Management Audit”).

decisions made by Big Rivers and the Commission. Sierra Club's Cumberland Chapter address is:

Sierra Club  
Cumberland Chapter,  
P.O. Box 1368  
Lexington, KY 40588-1368

Sierra Club has many years of experience working on energy and electric generation issues throughout the United States, including in Kentucky. Sierra Club advocates for robust investments in demand response, energy storage, energy efficiency, and renewable energy, which produce safe and sustainable jobs while also reducing electric system costs for both customers and utilities, and meanwhile reducing reliance on decreasingly-economical fossil-based generation.

## **II. REQUIREMENTS FOR INTERVENTION**

The Commission's regulations regarding intervention provide that the Commission shall grant a person, as defined by K.R.S. § 278.010(2), leave to intervene in a Commission proceeding upon a timely motion if the Commission finds that the person "has a special interest in the case that is not otherwise adequately represented *or* that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings."<sup>6</sup> Thus, the Commission must grant full intervention if Movants have filed a timely intervention motion; and either have interests in this proceeding that are not adequately represented, or would assist in evaluation of the IRP without unduly complicating or disrupting the proceedings. As explained below, Movants satisfy both of the two independent bases for intervention.

### III. THE COMMISSION SHOULD GRANT MOVANTS FULL INTERVENTION

#### A. This Motion is Timely Filed.

Sierra Club's motion to intervene is timely. Big Rivers filed its 2017 Integrated Resource Plan on September 21, 2017. On November 9, 2017, the Commission issued an order setting a deadline of May 25, 2018, for the filing of intervention motions. Accordingly, this motion is timely.

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

The Commission should grant Movants full intervention because they are "likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings."<sup>7</sup> The Commission previously made this same finding when it granted Movants intervention into Big Rivers' 2014 IRP proceedings,<sup>8</sup> two of Big Rivers' rate cases,<sup>9</sup> as well as the Company's 2012 CPCN filing.<sup>10</sup> The Commission also allowed Movants to participate in the Management Audit process, finding the Movants' views and positions to be "important contributions to be considered by the consultant in preparing the audit report."<sup>11</sup> As in those proceedings, so too will Sierra Club be a valuable,

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<sup>6</sup> 807 KAR 5:001 § 4(11)(b) (emphasis added).

<sup>7</sup> *Id.*

<sup>8</sup> See *In re 2014 Integrated Resource Plan of Big Rivers Electric Corporation*, Case No. 2014-00166, Order, June 25, 2014.

<sup>9</sup> See Case No. 2012-00535, *Application of Big Rivers Electric Corporation For an Adjustment of Rates*, Order, April 17, 2013 at 6 (finding that Movants "possess sufficient expertise on issues that are within the scope of this base rate proceeding, such as whether Big Rivers' proposed rate increase is reasonable in light of all available alternatives to mitigating the loss of a significant load"); Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, July 31, 2013.

<sup>10</sup> See Case No. 2012-00063, *Application of Big Rivers Electric Corporation for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge*, Order, May 21, 2012.

<sup>11</sup> *In re Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period*, Case No. 2013-00199, Order, June 6, 2014, at 4.

active participant in this proceeding, and Movants' participation will not unduly complicate or disrupt this proceeding, but rather will facilitate it as in prior cases.

As the Commission's prior orders indicate, an IRP should consider the full range of demand- and supply-side resources, and should comprehensively account for the costs facing such resources. Sierra Club, on behalf of Movant Ben Taylor and its other members, seeks to present testimony regarding whether Big Rivers has identified a least-cost, least-risk plan in light of the substantial loss of demand the utility needs to serve; the full range of regulatory, capital, operating, and fuel costs that its generating plants face; and the increasing availability of low-cost renewable energy, demand response, energy storage, and energy efficiency resources.

This proceeding comes at a time when Big Rivers is still dealing with, among other things, the loss of two significant smelter contracts, which made up approximately two-thirds of Big Rivers' customer load. The Company's long-term plan to mitigate the loss of load through new customers and increased market sales faces a number of hurdles, including a substantial glut of capacity in the region and the prospect of continued low market energy prices. In addition, the growing availability, and rapidly declining cost, of renewable resources such as wind and solar, demand response, and energy storage, along with the increasing pursuit of the least-cost energy resource—energy efficiency—have increasingly challenged the competitiveness of the fleet of aging fossil generation plants that Big Rivers continues to maintain. In this proceeding, the Commission and Staff are charged with evaluating whether Big Rivers has identified a least-cost, least-risk plan for meeting its customers' needs in light of these and other market, regulatory, and policy developments.

Sierra Club has gained significant expertise on these issues and how they apply to Big Rivers' fleet by participating in previous IRP, CPCN, and general rate dockets, and the Management Audit, concerning this utility that are discussed above; and Sierra Club will bring

that expertise to bear in this proceeding. Specifically, Sierra Club's staff and consultants have extensive experience in resource planning, analyzing the potential for cost effective renewable energy, demand response, energy storage, and energy efficiency, and in the laws and regulations governing energy production. In addition to its long time engagement in Big Rivers' proceedings, Sierra Club has also intervened in proceedings relating to the Kentucky Power Company's 2013 and 2016 IRPs, East Kentucky Power Company's 2012 IRP, and Louisville Gas and Electric Company and Kentucky Utilities Company's ("LG&E/KU") 2011 and 2014 IRPs.<sup>12</sup> Sierra Club has also intervened and provided testimony on complex energy issues before this Commission in several CPCN and DSM dockets.<sup>13</sup> In addition, outside of Kentucky, Sierra Club has intervened and/or provided testimony in resource planning and similar dockets in a number

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<sup>12</sup> See *In re 2016 Integrated Resource Planning Report of Kentucky Power Company to the Public Service Commission of Kentucky*, Case No. 2016-00413; *In re Kentucky Power Company's Integrated Resource Planning Report*, Case No. 2013-00475; *In re The 2012 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Case No. 2012-00149; *In re The 2011 Joint Integrated Resources Plan of Louisville Gas & Electric Company and Kentucky Utilities Company*, Case No. 2011-00140; *In re The 2014 Joint Integrated Resources Plan of Louisville Gas & Electric Company and Kentucky Utilities Company*, Case No. 2014-00131.

<sup>13</sup> See Case No. 2011-00162, *Application of Louisville Gas & Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*; Case No. 2011-00161, *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*; Case No. 2011-00375, *Joint Application of Louisville Gas & Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity to Construct Combined Cycle Natural Gas Plant*; Case No. 2011-00401, *Application of Kentucky Power Company for Certificates of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge*; Case No. 2012-00578, *Application of Kentucky Power Company For: (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of An Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval Of The Assumption by Kentucky Power Company of Certain Liabilities In Connection With the Transfer Of The Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred In Connection With The Company's Efforts to Meet Federal Clean Air Act And Related Requirements; and (5) For All Other Required Approvals and Relief*; Case No. 2013-00259, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Alteration of Certain Equipment at the Cooper Station and Approval of a Compliance Plan Amendment for Environmental Surcharge Cost Recovery*; Case No. 2013-00487, *Application of Kentucky Power Company to Amended its Demand-Side Management Program and for Authority to Implement a Tariff to Recover Costs and Net Lost Revenues, and to Receive Incentives Associated with the Implementation of the Programs*; Case No. 2014-0002, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station and a Solar Photovoltaic Facility at the E.W. Brown Generating Station*; Case No. 2014-0003, *Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Existing, and Addition of New, Demand-Side Management and Energy Efficiency Programs*; Case No. 2017-00097, *Electronic Investigation of the Reasonableness of the Demand Side Management Programs and Rates of Kentucky Power Company*.

of states, including Arkansas, California, Colorado, Florida, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, North Carolina, Oregon, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, Washington, and West Virginia.

Meanwhile, Movants' participation as full intervenors will not unduly complicate this proceeding; rather, it will assist the Commission's review in this case as it has occurred in prior dockets. For example, the Staff Report on Big Rivers' 2014 IRP cited approvingly to several recommendations made by the Sierra Club.<sup>14</sup> Movants expect to file comments that would be similarly helpful to the Commission's review of Big Rivers' 2017 IRP. Movants are represented by experienced counsel and will comply with all deadlines in the proceeding established by the Commission. As such, Movants' participation will not disrupt this proceeding.

**C. Movants Have a Special Interest in This Proceeding That Is Not Otherwise Adequately Represented.**

807 K.A.R. 5:001 § 4(11) provides two alternative bases for granting full intervention. Parties need to have either a special interest not adequately represented or present issues and facts that will help the Commission fully consider the matter. As explained in Section III.B., above, Movants will present issues and facts that will help the Commission fully consider the matter. The Commission can grant full intervention on that basis alone and need not consider Movants' special interest. Nevertheless, as explained below, Movants also have special interests that are not adequately represented, as another independent basis for intervention.

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<sup>14</sup> See *In re 2014 Integrated Resource Plan of Big Rivers Electric Corporation*, Case No. 2014-00166, Staff Report at 20-21 (adopting Sierra Club's critiques that the IRP should have "included some number of scenarios in which not all of Big Rivers' generating units operated for the entire planning period" as well as "scenarios in which it does not secure the desired 800 MW of replacement load," and agreeing with Sierra Club's belief that a delay in retiring generating units could lead to a costlier outcome); *id.* at 30 (sharing Sierra Club's concern that there was too large a gap between the level of DSM/EE Big Rivers proposed and the significantly higher achievable potential amounts found in the DSM/EE potential study that Big Rivers had carried out by GDS).



Individual Movant Ben Taylor is a customer of Kenergy Corporation, which is a Big Rivers distribution cooperative. As a customer, Mr. Taylor helps to fund Big Rivers' operations, and the outcome of this proceeding will directly impact his bill. In addition, Mr. Taylor lives within the Big Rivers service territory and is impacted by the economic and other impacts of the resource decisions that Big Rivers makes.

Organizational Movant Sierra Club has members who are customers and ratepayers of Big Rivers, and therefore Sierra Club has the interests that the individual Movant does. In addition, Movants' desire to promote renewable energy, energy storage, demand response, and energy efficiency resources in Kentucky is directly related to the issues involved in reviewing and commenting on Big Rivers' IRP.

Movants' interests are not adequately represented by the current or potential intervenors in this proceeding. At present, the Commission has granted full intervention only to the Attorney General of the Commonwealth of Kentucky.<sup>15</sup> Respectfully, the Attorney General cannot fully and adequately represent Movants' interests. The Attorney General has the unenviable task of representing all consumers and all of their diverse interests, even if some of the interests are diametrically opposed to each other. The Attorney General may not be able to represent the Movants' interest, or at least not as forcefully, because of this obligation to represent all consumers. Courts have "repeatedly held that private companies can intervene on the side of the government, even if some of their interests converge."<sup>16</sup>

Movants' intervention is warranted so that their interests, noted above, are represented.

#### **IV. CONCLUSION**

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

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<sup>15</sup>*In re 2017 Integrated Resource Plan of Big Rivers Electric Corp.*, Case No. 2017-00384, Order, Nov. 7, 2017.

<sup>16</sup>*Hardin v. Jackson*, 600 F. Supp. 2d 13, 16 (D.D.C. 2009).

Dated: February 2, 2018

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

Counsel certifies that an original and ten (10) copies of the foregoing MOTION TO INTERVENE OF BEN TAYLOR AND SIERRA CLUB were transmitted to the Commission via overnight courier for filing; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail to:

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This 2nd day of February, 2018.



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JOE F. CHILDERS