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May 31, 2018

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JUN 01 2018

PUBLIC SERVICE
COMMISSION

VIA OVERNIGHT DELIVERY

Ms. Gwen R. Pinson
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: *In the Matter of: Notice of Termination of Contracts and Application of Big Rivers Electric Corporation for a Declaratory Order and for Authority to Establish a Regulatory Asset—Case No. 2018-00146*

Dear Ms. Pinson:

Enclosed for filing are an original and ten copies of Big Rivers Electric Corporation's Response to the Motion to Intervene of Kentucky Industrial Utility Customers, Inc.

I certify that, on this date, a copy of this letter and a copy of the response were served on each of the persons listed on the attached service list by electronic mail.

Please confirm the Commission's receipt of this information by placing the Commission's date stamp on the enclosed additional copy and returning it to Big Rivers in the self-addressed, postage paid envelope provided; and please feel free to contact me with any questions you may have about this filing.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tyson Kamuf".

Tyson Kamuf
Corporate Attorney,
Big Rivers Electric Corporation

BIG RIVERS ELECTRIC CORPORATION

**IN THE MATTER OF: NOTICE OF TERMINATION OF CONTRACTS AND
APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR A
DECLARATORY ORDER AND FOR AUTHORITY TO ESTABLISH A
REGULATORY ASSET**

CASE NO. 2018-00146

Service List

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**PUBLIC SERVICE
COMMISSION**

Hon. Michael L. Kurtz
Hon. Kurt J. Boehm
Hon. Jody Kyler Cohn
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the matter of:

NOTICE OF TERMINATION OF CONTRACTS)
AND APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR A) Case No.
DECLARATORY ORDER AND FOR) 2018-00146
AUTHORITY TO ESTABLISH A)
REGULATORY ASSET)

**BIG RIVERS ELECTRIC CORPORATION’S RESPONSE TO THE MOTION
TO INTERVENE OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS,
INC.**

Comes Big Rivers Electric Corporation (“Big Rivers”), pursuant to 807 KAR 5:001 Section 5(2), and for its response to the Motion to Intervene of Kentucky Industrial Utility Customers, Inc. (“KIUC”) filed on May 29, 2018, states as follows.

The authority of the Public Service Commission of Kentucky (the “Commission”) to grant a motion to intervene “is not unlimited.” *In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates, Order, P.S.C. Case No. 2012-00535 (April 17, 2013).* Under 807 KAR 5:001 Section 4(11)(b), the Commission may grant leave to intervene only if either: (i) the requesting entity has a “special interest in the case that is not otherwise adequately represented;” or (ii) “that intervention is likely to present issues or to develop facts that assist the [C]ommission in fully considering the matter without unduly complicating or disrupting the proceedings.” The Commission grants requests for intervention “only upon a determination that the criteria set forth in 807 KAR 5:001 [Section 4(11)(b)] have been satisfied.” *In the Matter of: The 2008 Joint Integrated*

1 *Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities*
2 *Company*, Order, P.S.C. Case No. 2008-00148 (July 18, 2008). KIUC, therefore,
3 must demonstrate that it satisfies the requirements of at least one of the
4 Commission’s grounds for intervention. However, as explained below, KIUC has
5 failed to demonstrate that it satisfies either ground for intervention with respect to
6 this proceeding, and its motion should therefore be denied.

7 **I. KIUC Has Failed to Show that It Has a Special Interest in this**
8 **Proceeding that Is Not Otherwise Adequately Represented.**

9 In order to meet the first ground for intervention under 807 KAR 5:001
10 Section 4(11)(b), KIUC must demonstrate that it has an “special interest in the
11 case.” KIUC has failed to meet this requirement.

12 The present proceeding relates to a dispute between Big Rivers and the City
13 of Henderson, Kentucky/the City of Henderson Utility Commission (“Henderson”)
14 relating to the expiration of a series of contracts (the “Station Two Contracts”) that
15 relate to the operation of Henderson’s Station Two generating station. KIUC is not
16 a party to the Station Two Contracts. Instead, the only interest KIUC alleges is
17 that it is a representative of two large industrial retail customers of Kenergy Corp.,
18 who is a distribution cooperative member-owner of Big Rivers. KIUC makes no
19 allegation of any interest, let alone a special interest, in the contract dispute
20 between Big Rivers and Henderson or the Station Two Contracts.

21 The interest of these two customers and its representative in this proceeding
22 is no different than that of any of the other more than 116,000 retail customers of
23 Big Rivers’ distribution cooperative member-owners. The Commission has

1 consistently held that status as a customer is not a sufficient special interest to
2 warrant full intervention. *See, e.g., In the Matter of: Application of Louisville Gas*
3 *and Electric Company for a Certificate of Public Convenience and Necessity and*
4 *Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge,*
5 *Order, P.S.C. Case No. 2009-00198 (August 28, 2009); In the Matter of: Application*
6 *of Kentucky Utilities Company for an Order Approving the Establishment of a*
7 *Regulatory Asset, Order, P.S.C. Case No. 2009-00174 (June 26, 2009).*

8 Furthermore, even were KIUC to allege it had a particular position with respect
9 to the issues present in this proceeding, “a particular position on issues pending
10 in this case does not create the requisite ‘special interest’ to justify full
11 intervention.” *In the Matter of: Joint Application of Louisville Gas and Electric*
12 *Company, Association of Community Ministries, Inc., People Organized and*
13 *Working for Energy Reform, and Kentucky Association for Community Action, Inc.*
14 *for the Establishment of a Home Energy Assistance Program, Order, P.S.C. Case*
15 *No. 2007-00337 (September 14, 2007).* Thus, KIUC has failed to satisfy the
16 requirements of the “special interest” ground for intervention.

17 **II. KIUC Has Failed to Show that It Is Likely to Present Issues or to**
18 **Develop Facts that Will Assist the Commission in Fully**
19 **Considering the Matter Without Unduly Complicating or**
20 **Disrupting the Proceedings.**

21 In order to meet the other permissible ground for intervention under 807
22 KAR 5:001 Section 4(11)(b), KIUC must demonstrate the likelihood of presenting
23 issues or developing facts that “assist the [C]ommission in fully considering the

1 matter without unduly complicating or disrupting the proceedings.” KIUC has
2 failed to make such a showing.

3 KIUC takes for granted that it should be granted leave to intervene as a
4 matter of course because it has intervened “in almost all major Big Rivers rate
5 matters over the last ten years.” KIUC Motion to Intervene at p. 3. But KIUC
6 fails to allege any issues it seeks to raise or facts it seeks to develop that will
7 assist the Commission *in this matter*. While KIUC makes a general allegation
8 in its motion that it has “special skill and expertise,” it makes no reference to
9 any issue that is the subject of this proceeding with which it will assist the
10 Commission.

11 As noted above, this proceeding relates to a contract dispute between Big
12 Rivers and Henderson. KIUC’s failure to point to any issues or facts involving
13 this contract dispute is particularly significant given that Henderson’s
14 comments filed on this matter on May 22, 2018, indicate that even Henderson is
15 not disputing the relief Big Rivers has requested in this matter (although
16 Henderson “reserves its right to intervene and contest any request or
17 supplemental filing by Big Rivers requesting *different or additional relief*
18 outside of the present filing” (emphasis added)). Thus, KIUC’s intervention can
19 serve only to unduly complicate or disrupt the proceeding.

20 Moreover, to the extent that the expiration of the Station Two Contracts
21 is relevant to ratemaking, KIUC is free to address it in relevant rate cases, fuel
22 adjustment clause reviews, or environmental surcharge reviews in the future.

1 While Big Rivers is asking for a regulatory asset to defer the costs related to the
2 contract termination, recovery of those costs through rates is not a subject of
3 this case and will instead be addressed in Big Rivers' next rate case. Raising
4 ratemaking issues in this proceeding would unduly complicate and disrupt the
5 proceeding by distracting from the appropriate scope of this proceeding and
6 endangering a timely resolution of this matter, which Big Rivers has requested no
7 later than August 31, 2018, to give Henderson adequate time to make alternate
8 arrangements for Station Two and for Henderson's power supply needs.

9 Thus, KIUC has failed to demonstrate that it is likely to present issues or
10 to develop facts that will assist the Commission in fully considering the subject
11 matter of this case without unduly complicating or disrupting the proceeding.

12 **III. Conclusion.**

13 Because KIUC has failed to demonstrate that it satisfies either ground for
14 intervention under 807 KAR 5:001 Section 4(11)(b), its Motion to Intervene
15 should be denied.

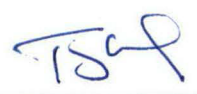
16 WHEREFORE, Big Rivers respectfully requests that the Commission deny
17 KIUC's Motion to Intervene.

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On this the 31st day of May, 2018.

Respectfully submitted,



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