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June 27, 2018

VIA OVERNIGHT DELIVERY

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

RECEIVED

JUN 28 2018

PUBLIC SERVICE
COMMISSION

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 in the above-referenced matter are an original and ten (10) copies of Big Rivers Electric Corporation's Motion to Amend the Procedural Schedule. I certify that, on this date, copies of this letter and all attachments 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 "TK", is written over a faint, larger version of the signature.

Tyson Kamuf
Corporate Attorney,
Big Rivers Electric Corporation

BIG RIVERS ELECTRIC CORPORATION

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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1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION

3 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)

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COMMISSION

4 **MOTION OF BIG RIVERS ELECTRIC CORPORATION TO AMEND THE**
5 **PROCEDURAL SCHEDULE**

6 Comes Big Rivers Electric Corporation (“Big Rivers”), by counsel, and
7 respectfully moves the Kentucky Public Service Commission (“Commission”) for an
8 order amending the procedural schedule in this matter. In support of this motion,
9 Big Rivers states as follows:

10 The Commission established a procedural schedule by order dated June 1,
11 2018, and amended the procedural schedule by order dated June 13, 2018. Both the
12 original and the amended procedural schedule allow for intervenors to file
13 testimony, but neither procedural schedule allows for Big Rivers to file rebuttal
14 testimony.

15 The Attorney General, Kentucky Industrial Utility Customers, Inc. (“KIUC”)
16 and IBEW Local 1701 have filed motions to intervene. The Commission has
17 granted the Attorney General and KIUC’s motions to intervene, and IBEW Local
18 1701’s motion is pending.

19 Big Rivers should be given the opportunity to respond to any allegations or
20 arguments the Attorney General or KIUC make in their testimonies or responses to

1 information requests. KIUC, for example, has indicated that it will argue (i) that
2 Big Rivers should be required to write off (instead of deferring in a regulatory asset
3 as Big Rivers has requested) the approximately \$89.6 million undepreciated asset
4 that Big Rivers has on its books related to Station Two; and (ii) if Big Rivers is
5 allowed to defer that amount in a regulatory asset, that regulatory asset should be
6 offset by “all non-variable Station Two costs (except debt service and TIER)
7 currently being recovered in base rates and the environmental surcharge, not just
8 depreciation.” Reply of KIUC at pp. 5-6. KIUC’s proposed write off could have
9 significant negative consequences to Big Rivers, its ability to borrow money, and its
10 ability to regain its investment grade credit ratings, and Big Rivers should be given
11 the opportunity to present evidence on the financial impact to Big Rivers of having
12 to take the write off proposed by KIUC. Big Rivers should similarly be given the
13 opportunity to dispute the reasonableness and fairness of KIUC’s proposal that Big
14 Rivers be required to offset the regulatory asset with all non-variable Station Two
15 costs, to explain the consequences of such a proposal, and to refute any estimates or
16 calculations of such amounts that KIUC may assert.

17 Big Rivers renews its objection to the motion to intervene filed by IBEW
18 Local 1701 for the reasons stated in Big Rivers’ response to that motion filed on
19 June 15, 2018. But in the event IBEW Local 1701 is permitted to intervene, Big
20 Rivers should likewise have an opportunity to respond to any allegations or
21 arguments it makes. Due process requires that Big Rivers be given the opportunity
22 to present evidence to rebut the intervenors’ testimony and responses to

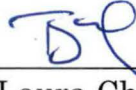
1 information requests, just as the intervenors are given an opportunity to offer
2 testimony in response to Big Rivers' application and responses to information
3 requests. *See Util. Regulatory Comm'n v. Kentucky Water Serv. Co.*, 642 S.W.2d
4 591, 593 (Ky. App. 1982) ("Due process requires, at a minimum, that persons forced
5 to settle their claims of right and duty through the judicial process be given a
6 meaningful opportunity to be heard. It has been said that no hearing in the
7 constitutional sense exists where a party does not know what evidence is considered
8 and is not given an opportunity to test, explain or refute....Indeed, the Due Process
9 Clause forbids any agency to use evidence in a way that forecloses an opportunity to
10 offer a contrary presentation") (citations omitted); *Mayfield Gas Co. v. Pub. Serv.*
11 *Comm'n*, 259 S.W.2d 8, 10–11 (Ky. 1953) ("In *Wisconsin Telephone Co. v. Public*
12 *Service Commission*, 232 Wis. 274, 287 N.W. 122, 593, a 'formal hearing' was
13 considered as analogous to a common law hearing and held to include: (1) the right
14 to seasonably know the charges; (2) the right to meet such charges by competent
15 evidence; and (3) the right to be heard by counsel upon the probative force of the
16 evidence adduced by both sides, and upon the law applicable thereto"); *Am. Beauty*
17 *Homes Corp. v. Louisville & Jefferson Cty. Planning & Zoning Comm'n*, 379 S.W.2d
18 450, 456 (Ky. 1964) ("Administrative proceedings affecting a party's rights which
19 did not afford an opportunity to be heard could likewise be classified as arbitrary");
20 *In the Matter of: Application of Big Rivers Electric Corporation for a General*
21 *Adjustment in Rates*, Order, P.S.C. Case No. 2011-00036 (Apr. 12, 2012) at p. 2 ("To
22 ensure that due process is afforded all parties by allowing them an adequate

1 opportunity to present evidence and arguments on all of the issues now being
2 investigated in this rehearing, the procedural schedule will be revised, as discussed
3 below”).

4 WHEREFORE, Big Rivers respectfully requests that the Commission enter
5 an order amending the procedure schedule to allow Big Rivers to file rebuttal
6 testimony on or before August 31, 2018.

1 On this the 27th day of June, 2018.

2 Respectfully submitted,

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