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APR 22 2009

**PUBLIC SERVICE
COMMISSION**

VIA OVERNIGHT MAIL

April 21, 2009

Mr. Jeff Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

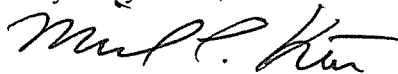
Re: Case No. 2009-00040

Dear Mr. Derouen:

Please find enclosed the original and twelve (12) copies of the RESPONSE OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. TO MOTION TO STRIKE filed in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please place this document of file.

Very Truly Yours,



Michael L. Kurtz, Esq.

BOEHM, KURTZ & LOWRY

MLKkew

Attachment

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by electronic mail (when available) and first-class postage prepaid mail to all parties on the 21ST day of April, 2009.

Mark A Bailey
President CEO
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42419-0024

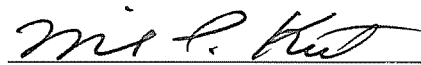
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Michael L. Kurtz, Esq.

“Mr. Chairman, there's not an outstanding motion, but, just for the record, I wanted to inform the Commission that, given the lack of resources, the expedited schedule in this matter, that we have not objected to this continuing. I think that would have been all for naught because KIUC did move for a continuance or an amended procedural schedule. That was denied. So we did not pursue the same course, again thinking it would not be successful. So our participation today will be extremely limited.” Transcript at p. 5.

At the March 26, 2009 hearing considerable evidentiary leeway was given to Big Rivers. For example, over the objections of KIUC and the AG, Big Rivers was allowed to introduce a new prepared written exhibit (that could have been pre-filed in its direct case) under the guise or redirect examination, and to engage in oral redirect examination of matters that were not the subject of cross exam. (Transcript at 80, 92). The Chairman allowed the new written exhibit because “[w]e want to hear this” and allowed the expansive redirected oral testimony “[i]n the sake of moving forward.” (Transcript at 81, 92).

Simultaneous briefs were filed on April 8, 2009. On April 13, 2009 Big Rivers filed a motion to strike the brief of KIUC *“on the grounds that it offers and relies upon information from documents that are not evidence in the record of this case.”* (Motion at p. 1). This motion is aimed at KIUC’s entire brief, even those portions which make no reference to the allegedly improper information.

The documents in question are two attachments to KIUC’s brief. Attachment A is a single balance sheet page from the January 2002-2009 financial records of Big Rivers. Big Rivers submits this information to the Commission every month and it is part of the Commission’s official records. KIUC obtained these financial records from the Commission.¹ Attachment B is a credit ratings report of Big Rivers issued by Moody’s. Big Rivers submitted this report to the Commission in the related Unwind case (Case No. 2007-00455) after the March 26, 2009 emergency hearing. This Moody’s Credit Report was requested in KIUC’s first set of data requests here. Item 1-10 asked Big Rivers to *“provide all documents, memos, presentations or e-mails provided to or received from Moody’s in the past twelve*

months.” As stated in our data request, these interrogatories are “*continuing in nature, and information which the responding party later becomes aware of, or has access to, and which is responsive to any request is to be made available to*” KIUC. By agreement, this data request was subsequently limited to Moody’s information relevant to the rate case, not the Unwind. The final Moody’s credit rating and the discussion of the liquidity provided by the \$15 million CFC line of credit is relevant to the rate case. Therefore, the Moody’s report should already be part of this record.

Simultaneous with this pleading, KIUC is filing a motion asking the Commission to incorporate by reference Attachments A and B.

Big Rivers cannot claim that it is unfamiliar with its own financial statements. Nor can Big Rivers claim that they are inaccurate. Nor can Big Rivers claim that they are not relevant. Nevertheless, Big Rivers objects. If KIUC would have had more than 48 hours to review the responses to its discovery and put together its case it is likely that we would have introduced the Attachment A January 2002-2009 financial reports at the hearing. The Moody’s report (Attachment B) should already be a part of the record. Now Big Rivers wants the Commission to turn a blind eye toward relevant information simply because the information undermines its case. Big Rivers’ plea of procedural unfairness rings hollow in light of the considerable procedural and evidentiary leeway afforded to it leading up to the March 26, 2009 hearing and at the hearing itself.

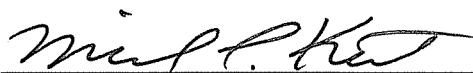
The efforts of Big Rivers’ Washington D.C. and local legal teams to have the Commission decide this case in a vacuum where only the Utility’s side is heard is contrary to the public interest. A 21.6% rate increase would do serious damage to the economy. Such a rate hike should only be approved after careful consideration of all of the facts.

¹ Big Rivers January 1998-2009 RUS Forms 12a filed with the Commission were requested in KIUC’s April 20, 2009 data requests.

The record in this case is still open. The Commission is perfectly capable to review the information contained in Attachments A and B, or any other relevant information, and give it appropriate weight without prejudice to the Utility.

This Commission has always put substance over form. It should do so again and deny the motion to strike.

Respectfully submitted



Michael L. Kurtz, Esq.

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April 21, 2009