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**Via Overnight Mail**

July 11, 2011

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

RECEIVED

JUL 12 2011

PUBLIC SERVICE  
COMMISSION

**Re: Case No. 2011-00036**

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC's (KIUC) RESPONSE TO MOTION OF KENERGY CORP. TO SUBMIT REBUTTAL TESTIMONY; AND KIUC'S MOTION TO STRIKE REBUTTAL TESTIMONY OF JACK D. GAINES to be filed in the above-referenced matter.

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.


**BOEHM, KURTZ & LOWRY**

MLKkew  
Attachment

cc: Certificate of Service  
David C. Brown, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail (when available) or by mailing a true and correct copy by overnight mail, unless other noted, this 11<sup>th</sup> day of July, 2011 to the following

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

In The Matter Of: The Application Of Big Rivers Corporation For :  
General Adjustment of Rates : Case No. 2011-00036

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**KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. (KIUC) RESPONSE TO  
MOTION OF KENERGY CORP. TO SUBMIT REBUTTAL TESTIMONY;  
AND  
KIUC's MOTION TO STRIKE REBUTTAL TESTIMONY OF JACK D. GAINES**

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**I. INTRODUCTION**

On March 11, 2011, the Commission issued its Order setting out the procedural schedule in this docket. The Order sets a schedule in which intervenors are afforded one opportunity to file direct testimony with no ability to file testimony in rebuttal to other intervenors. Per the Order, the only party that is permitted to file rebuttal testimony is the Applicant, Big Rivers Electric Corporation ("Big Rivers").

On April 1, 2011 the Commission granted Kenergy Corp.'s ("Kenergy") Motion to participate in this proceeding as an intervenor. On July 6, 2011, Kenergy filed a Motion requesting leave to file the Rebuttal Testimony of its witness Jack D. Gaines along with the Rebuttal Testimony of Mr. Gaines. Kenergy's Motion states that "[a]lthough intervenor testimony was due on May 24, 2011, Kenergy had no testimony to file in response to the application [of Big Rivers]", but "*in light of [KIUC's direct testimony] Kenergy desires to rebut a portion of the KIUC testimony...*" Kenergy concludes that "[n]o undue prejudice exists as this testimony is filed timely as rebuttal testimony."

For the reasons set forth below, KIUC opposes Kenergy's Motion and moves to strike the Rebuttal Testimony of Jack Gaines.

## II. ARGUMENT IN SUPPORT OF MOTION TO STRIKE

### 1. Kenergy's Motion And Testimony Violates The Commission's March 11, 2011 Order.

The Commission's March 11, 2011 Order does not permit intervenors to file rebuttal testimony. The Order states:

*"Intervenor testimony, if any, in verified prepared form shall be filed no later than... 5/24/11."*<sup>1</sup>

The Order further states:

*"Big Rivers shall file, in verified form, its rebuttal testimony no later than... 7/6/11."*<sup>2</sup>

The Order does not set a date for intervenor rebuttal testimony. The only party that is permitted to file rebuttal testimony is Big Rivers. Kenergy's filed rebuttal testimony violates the explicit language of the Order and should be stricken on that basis alone.

### 2. KIUC And Other Intervenors Are Unduly Prejudiced By Kenergy's Filing.

KIUC, the Attorney General and other intervenors were not permitted by the Commission's procedural order to file testimony to rebut intervenor direct testimony. Any disagreement between intervenors on the issues addressed in intervenor testimony must be taken up during cross-examination and in post-hearing briefs. Like the other intervenors, Kenergy has this opportunity. It would be unduly prejudicial and unprecedented to allow one intervenor to pre-file testimony rebutting the position of other intervenors while requiring all other intervenors to address opposing testimony using only cross-examination and briefs.

### 3. Kenergy's Rationale For Filing Testimony During The Applicant Rebuttal Phase Rather Than The Intervenor Direct Phase Of The Procedural Schedule Does Not Comport With Mr. Gaines' Testimony.

As noted above, Kenergy's stated rationale for filing rebuttal, rather than direct, testimony pursuant to the commission's scheduling Order is that "*Kenergy had no testimony to file in response to the application [of Big Rivers]*", but "*in light of [KIUC's direct testimony] Kenergy desires to rebut a portion of the KIUC testimony...*"

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<sup>1</sup> Order (March 11, 2011), Appendix A.

<sup>2</sup> Order (March 11, 2011), Appendix A.

This rationale is not consistent with Mr. Gaines' Rebuttal Testimony. Mr. Gaines' testimony does address Big Rivers' direct testimony and attempts to adjust a position of Big Rivers' witness Steven Seelye.

On pages 5 and 6 of his Rebuttal Testimony, Mr. Gaines argues that certain additional revenue contributions that Mr. Seelye included in Big Rivers class cost of service should be excluded. As a result, Mr. Gaines' quantification of the subsidy paid to Rural customers is in stark contrast with the quantification submitted by Mr. Seelye and Mr. Baron. Mr. Seelye and Mr. Baron are in agreement that a large subsidy is paid to Rural customers in current rates. Depending on the cost-of-service methodology and TIER adjustment used, Seelye and Baron calculate that the subsidy paid to Rurals at current rates ranges from \$11.1 million<sup>3</sup> to \$18.3 million.<sup>4</sup> Mr. Gaines, on the other hand, presents a very different picture of the rate subsidy paid to Rural customers than either Seelye or Baron. Mr. Gaines states that Rural customers are receiving a *de minimis* subsidy of only \$157,936.<sup>5</sup> Mr. Gaines *is* rebutting Big Rivers' direct testimony.

Intervenor testimony in response to Big Rivers' Application and direct testimony should have been filed on May 24, 2011 along with all other intervenor direct testimony. It is improper to file such testimony during the period prescribed for Big Rivers' rebuttal testimony.

4. **If The Commission Allows Kenergy's Rebuttal Testimony Into The Record Intervenors Should Be Afforded The Right To Conduct Discovery And Pre-File Responsive Testimony.**

Mr. Gaines' testimony addresses technical issues concerning the TIER adjustment and cost of service methodologies. KIUC strongly disagrees with the substantive claims made in Mr. Gaines' testimony. If the Commission allows Kenergy's rebuttal testimony into the record the other intervenors should be permitted to conduct discovery and to file surrebuttal testimony in order to examine the information and assumptions that underlie Mr. Gaines' conclusions and to respond accordingly. The playing field should be level.

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<sup>3</sup> Direct Testimony of William Steven Seelye, Exhibit 57, page 18, line 24.

<sup>4</sup> Direct Testimony of Stephen Baron, Exhibit SJB-6 Revised, line 4.

<sup>5</sup> Rebuttal Testimony of Jack D. Gaines, p. 9.

### III. CONCLUSION

For the foregoing reasons, the Commission should deny Kenergy's Motion to Submit Rebuttal Testimony and strike the pre-filed Rebuttal Testimony of Jack Gaines. In the alternative, if the Commission grants the admission of Mr. Gaines' Testimony, the Commission should establish a procedural schedule to allow intervenors to conduct discovery and file surrebuttal testimony to address Mr. Gaines' Rebuttal Testimony.

Respectfully submitted,



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July 11, 2011