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December 5, 2011

Federal Express

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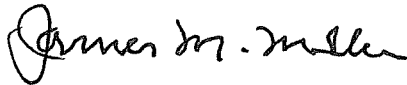
PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: Notice and Application of Big Rivers
Electric Corporation for a General Adjustment in Rates,
PSC Case No. 2011-00036*

Dear Mr. DeRouen:

Enclosed for filing are an original and ten (10) copies of Big Rivers Electric Corporation's Petition for Rehearing in the above referenced matter. I certify that a copy of this letter and petition have been served on each of the persons shown on the attached service list.

Sincerely yours,



James M. Miller

JMM/ej
Enclosures

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR) Case No. 2011-00036
A GENERAL ADJUSTMENT IN RATES)

Big Rivers Electric Corporation's Petition for Rehearing

Big Rivers Electric Corporation ("*Big Rivers*"), by and through its counsel, applies to the Kentucky Public Service Commission ("*Commission*") pursuant to KRS 278.400 and related sections, and 807 KAR 5:001, Section 4, and related sections for rehearing of the Commission's order dated November 17, 2011 (the "*Order*"). Big Rivers states as follows in support of this petition applying for rehearing ("*Petition*"):

Big Rivers, the applicant in this proceeding, seeks rehearing on four matters, which are presented in the form of the following four issues:

- The Commission erroneously failed to allow Big Rivers to recover its expenses incurred in this proceeding.
- The Commission's recalculation of Big Rivers' *pro forma* depreciation adjustment is mathematically erroneous.
- The Commission erroneously failed to allow Big Rivers to include the test period-end Construction Work In Progress

1 (“*CWIP*”) balances in the determination of depreciation
2 expense for those projects that were in service before the
3 end of the test period, or placed in service after the end of
4 the test period (i.e., October 31, 2010), but before the
5 effective date of the new rates (i.e., September 1, 2011).

- 6 • The Commission incorrectly made a finding of fact that
7 “[t]he financial model Big Rivers relied upon in
8 conjunction with the Unwind Transaction did not include
9 any Smelter TIER Adjustment revenues.”

10 These matters are described below in further detail.

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Issue 1

*The Commission erroneously failed to allow Big Rivers
to recover its expenses incurred in this proceeding.*

18 Big Rivers requested that the Commission allow it to adjust its
19 test period operating expense to include one-third of the total amount
20 of the actual rate case expenses incurred by Big Rivers in this
21 proceeding.¹ The total expenses incurred by Big Rivers, as shown in its
22 last update filed on August 18, 2011, were \$1,976,029.71.² The actual
test period rate case expense amount was \$17,924. Accordingly, the

¹ Application Exhibit 51, Testimony of John Wolfram, Exhibit Wolfram-2, Reference Schedule 2.13, and Application Exhibit 55, Testimony of Mark A. Hite, page 24, Lines 7 through 16; Post-Hearing Brief of Big Rivers, page 48.

² Big Rivers’ Fifth Supplemental Response dated August 18, 2011, to Item PSC 1-52(c), page 2 of 2, and Attachment for Fifth Supplemental Response to Item PSC 1-52(c).

1 *pro forma* adjustment should be \$640,753 ($\$1,976,029.71 / 3 - \$17,924$).
2 However, the Order makes no mention of Big Rivers' rate case
3 expenses, or of the *pro forma* adjustment as originally proposed by Big
4 Rivers in Exhibit Wolfram-2, Reference Schedule 2.13.

5 The Commission's long-standing practice in rate cases is to allow
6 the utility to include a three-year amortization of its actual rate case
7 expense in its revenue requirement.³ This standard practice has been
8 recognized in numerous rate proceedings before this Commission.⁴ The
9 amount of the rate case expense allowed is based upon the most recent
10 actual expenses incurred reported by the utility in the case record
11 through periodic updates directed by the Commission. Big Rivers
12 seeks a rehearing on what appears to be an inadvertent oversight by
13 the Commission to allow Big Rivers to recover its rate case expenses in

³ See, for example, *In the Matter of: Application of Delta Natural Gas Company, Inc., For An Adjustment of Rates*, P.S.C. Case No. 2010-00116, order dated October 21, 2010, pages 12-13, and *In the Matter of: Application of Louisville Gas and Electric Company to Adjust Its Gas Rates and To Increase Its Charges For Disconnecting Service, Reconnecting Service, and Returned Checks*, P.S.C. Case No. 2000-00080, order dated September 27, 2000, page 39.

⁴ See, for example, *In the Matter of: Application of Delta Natural Gas Company, Inc., For An Adjustment of Rates*, P.S.C. Case No. 2004-00067, order dated November 10, 2004; *In the Matter of: Application of Kentucky Utilities Company for An Adjustment of Base Rates*, P.S.C. Case No. 2009-00548, order dated July 30, 2010; *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Electric and Gas Base Rates*, P.S.C. Case No. 2009-00549, order dated July 30, 2010; *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Gas and Electric Rates, Terms and Conditions*, P.S.C. Case No. 2003-00433, order dated June 30, 2004; *In the Matter of: Application of Kentucky Utilities Company for An Adjustment of its Electric Rates, Terms and Conditions*, P.S.C. Case No. 2003-00434, order dated June 30, 2004.

1 this proceeding in a manner consistent with long-standing Commission
2 practice.

3
4 *Issue 2*

5
6 *The Commission's recalculation of Big Rivers'*
7 *pro forma depreciation adjustment is mathematically erroneous.*

8
9 The Commission disallowed the portion of Big Rivers' proposed
10 depreciation adjustment related to CWIP, and recalculated the
11 proposed depreciation adjustment to reflect that disallowance. Order,
12 page 20. Big Rivers submits that an apparent mathematical error
13 resulted in the recalculated depreciation expense adjustment being
14 \$450,000 too low.

15 The Commission states on page 20 that it will "limit the
16 adjustment to the amount derived by applying Big Rivers' proposed
17 depreciation rates to its test period-end plant in service balances. This
18 results in an adjustment that increases Big Rivers' depreciation
19 expense by \$3,489,340 and an adjusted depreciation expense level of
20 \$40,218,778." In its footnote 44, the Commission correctly notes that
21 Big Rivers' proposed depreciation expense of \$42,532,089 less
22 depreciation on test period-end CWIP balance of \$2,313,311 =
23 \$40,218,778. However, when the adjusted depreciation expense of
24 \$40,218,778 is compared to the uncontested test period amount of
25 \$36,279,438, the difference – and thus the *pro forma* adjustment for

1 depreciation expenses required by this Order – equals \$3,939,340. In
2 the Order, however, the Commission states that this difference is
3 \$3,489,340. The correct difference (\$3,939,340) varies from the amount
4 cited in the Commission Order (\$3,489,340) by \$450,000, to the
5 detriment of Big Rivers.

6 Big Rivers seeks rehearing to correct the mathematical error in
7 the determination of the depreciation expense adjustment by
8 increasing Big Rivers' depreciation expenses by an additional \$450,000,
9 for a total upward adjustment of depreciation expense by \$3,939,340
10 (rather than the \$3,489,340 stated in the Order), so that the total
11 adjusted level of depreciation expense is \$40,218,778.

12
13 *Issue 3*

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15 *The Commission erroneously failed to allow*
16 *Big Rivers to include the test period-end CWIP balances*
17 *in the determination of depreciation expense*
18

19 The Commission erroneously disallowed the portion of Big
20 Rivers' proposed depreciation adjustment related to CWIP, and
21 recalculated the proposed depreciation adjustment to reflect that
22 disallowance. Order, page 20. The Commission states on page 20 of
23 the Order:

24 [W]e will not authorize a level of depreciation expense that
25 reflects the accrual of depreciation on Big Rivers' test-year-end
26 balance. Going beyond the end of test year plant in service
27 balances is inconsistent with the concept of a historical test year
28 and a violation of the broad 'matching principle' described

1 previously in this Order. For this reason, we will limit the
2 adjustment to the amount derived by applying Big Rivers'
3 proposed depreciation rates to its test-year-end plant in service
4 balances.

5
6 Big Rivers seeks in this Petition to include in its depreciation
7 adjustment the amount of depreciation on CWIP projects placed in
8 service during the period through the date on which Big Rivers' new
9 rates became effective, September 1, 2011. This is consistent with prior
10 decisions of the Commission, and does not violate the ratemaking
11 "matching principle."

12 In Case No. 90-158,⁵ the Commission allowed LG&E to include
13 CWIP as of the end of its test period in the depreciation adjustment.
14 Furthermore, the Commission has explicitly allowed the inclusion of
15 CWIP balances as of the end of the test period to be included in the
16 calculation of adjusted depreciation expenses for Delta Natural Gas
17 Company.⁶ The Commission has allowed the same treatment in other
18 cases for Kentucky Utilities⁷ and for LG&E.⁸ The Commission has

⁵ *In the Matter of: Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, P.S.C. Case No. 90-158, Order dated December 21, 1990, page 6.

⁶ See *In the Matter of: Application of Delta Natural Gas Company, Inc., For An Adjustment of Rates*, P.S.C. Case No. 2010-00116, order dated October 21, 2010, pages [12-13], and Application, Volume 1, Tab 27, Schedule 4.

⁷ See *In the Matter of: Application of Kentucky Utilities Company for An Adjustment of Base Rates*, P.S.C. Case No. 2009-00548, Order dated July 30, 2010.

1 encouraged taking depreciation on CWIP under circumstances where
2 there is no issue about matching the depreciation expense against
3 revenue created by the project.⁹

4 None of the CWIP projects Big Rivers proposes to depreciate
5 generate additional revenue that would offset the impact on revenue
6 requirement of the depreciation expenses on the CWIP projects.
7 Therefore, there is no matching issue with respect to those projects.
8 The depreciation expenses on these CWIP projects are known and
9 measurable, and it is necessary to include these expenses in revenue
10 requirements in order for rates to reflect an appropriate level of
11 expenses on a going-forward basis.

12 As of the end of the test period, \$18,654,606.93 of the CWIP
13 balance of \$46,802,137.97 was in service. And an additional
14 \$16,109,062.14 of the test year-end CWIP balance of \$46,802,137.97
15 was placed in service after the end of the test period, but prior to the
16 date Big Rivers' new rates became effective. Together, \$34,763,669.07
17 of the \$46,802,137.97 CWIP balance was placed in service prior to the

⁸ See *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Electric and Gas Base Rates*, Case No. 2009-00549, Order dated July 30, 2010.

⁹ See *In the Matter of: The Application of the Crittenden-Livingston County Water District for Approval of a Proposed Increase in Rates for Water Service, to Increase Non-Recurring Charges and to Revise Its Tariff*, P.S.C. Case No. 2005-00355, order dated December 20, 2005 and February 1, 2006.

1 effective date of the new rates, representing \$1,644,154.07¹⁰ of the
2 \$2,313,311 in depreciation expense disallowed by the Commission.
3 Accordingly, Big Rivers seeks on rehearing to add \$1,644,154.07 of
4 depreciation expense.

5 The Oracle R12 project comprised \$10,941,111.58 of the
6 \$16,109,062.14,¹¹ and the annual depreciation on that amount is
7 \$1,125,840.38. There is a particularly compelling case for allowing
8 that depreciation expense on the Oracle R12 project:

9 • The \$1,125,840.38 of depreciation expense on the Oracle
10 R12 project has material significance for Big Rivers that is not
11 reflected in the rates approved by the Commission. For Big Rivers, the
12 difference between a Margins for Interest Ratio (“*MFIR*”) of 1.24 and
13 1.10 is only \$6,677,036 (\$11,446,348 - \$4,769,312). So Big Rivers has
14 very little maneuvering room between the maximum margins available
15 to it under the terms of the smelter contracts (a 1.24 Contract TIER),
16 and the margins required to achieve its required MFIR. As Mr.
17 Blackburn explained in his direct testimony (Application Exhibit 49,
18 page 9), Big Rivers’ MFIR for the fiscal year 2010 would have been 1.10
19 if its margins had been only \$2.3 million (\$6,990,915 - \$4,706,423 =
20 \$2,284,492) less than they were. This is a very narrow margin of error

¹⁰ This is net of the City of Henderson’s share of additions to Station Two and estimated retirements.

¹¹ Rebuttal Testimony of Mark Hite filed July 6, 2011, page 15.

1 for a company with revenues of \$527.3 million; so narrow, in fact, that
2 the additional depreciation expense of \$2,313,311 that was disallowed
3 by the Commission in its Order (\$42,532,089 - \$40,218,778) is
4 approximately equal to the entire \$2.3 million margin described by Mr.
5 Blackburn as the margin of error.

6 Mark Bailey, in his rebuttal testimony (filed July 6, 2011, at
7 page 9), described the contractual limitations and penalties that
8 constrict the range of Big Rivers' margins as creating what he called
9 "the rate needle." Thus, while \$1,125,840.38 of depreciation expense
10 on the Oracle R12 project (or the total \$1,644,154.07 of additional
11 depreciation expense on the \$34,763,669.07 of CWIP sought in this
12 Petition) may not seem significant for some utilities, it is very
13 important to Big Rivers because it comprises such a significant portion
14 of Big Rivers' margin of error for meeting its MFIR and TIER
15 requirements.

16 • The Oracle R12 project was placed in service in December
17 of 2010,¹² less than two months after the end of the test period, and
18 depreciation expense on that amount began appearing on Big Rivers'
19 books in January of 2011. Big Rivers' ratepayers were receiving the
20 benefits of that project before this case was filed, and months before
21 the proposed rates went into effect on September 1, 2011.

¹² This is the in-service date stated in Big Rivers' response to Item 30 of the
KIUC Second Information request, Attachment for Item KIUC 2-30(d), page 7
of 28, Project W960.

1 • The annual depreciation rate in the 2010 Depreciation
2 Study for account 391.2, the account for the Oracle R12 project, is
3 10.29% under the Commission-approved depreciation rates. If Big
4 Rivers cannot begin recovering depreciation on this 10-year property
5 until the conclusion of its next rate case, it will be denied recovery of a
6 significant portion of the Oracle R12 project cost.

7 • There are no retirements associated with the Oracle R12
8 project.¹³

9 • As already noted above, none of the CWIP projects in
10 question, including the Oracle R12 project, generate revenue.

11 Big Rivers accordingly seeks rehearing to correct the erroneous
12 exclusion from the determination of annual depreciation expense of
13 test period-end CWIP balances for property placed in service prior to
14 the end of the test period, or after the end of the test period but prior to
15 the effective date of the new rates. At a minimum, Big Rivers' test
16 period-end depreciation expenses should be increased to \$41,862,932
17 (\$40,218,778¹⁴ + \$1,644,154).

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¹³ Rebuttal Testimony of Mark Hite filed July 6, 2011, page 15, lines 4 - 9.

¹⁴ This amount of \$40,218,778 reflects the \$450,000 mathematical correction that is the subject of Issue 2 of this Petition.

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Issue 4

The Commission incorrectly made a finding of fact that “[t]he financial model Big Rivers relied upon in conjunction with the Unwind Transaction did not include any Smelter TIER Adjustment revenues.”

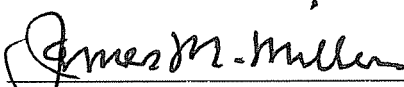
The Commission states on page 6 of the Order that “[t]he financial model Big Rivers relied upon in conjunction with the Unwind Transaction did not include any Smelter TIER Adjustment revenues.” That finding is erroneous. First, the unwind financial model referred to in this finding is not part of the record in this proceeding, so there is no basis in the record for this finding. Second, if granted rehearing on this issue Big Rivers will produce the unwind financial model to show that, in fact, the unwind financial model does show Smelter TIER Adjustment revenues in each of the years 2011 through 2023. Big Rivers requests that rehearing be granted on this issue for the sole purpose of having this finding eliminated from the Order, and for revision by the Commission of any other findings of fact and conclusions of law in the Order that the Commission may deem appropriate to change as a result of eliminating that finding.

WHEREFORE, Big Rivers respectfully requests that the Commission make its order granting Big Rivers’ application for rehearing on the matters described in this Petition, and granting Big Rivers all other relief to which it may appear entitled.

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On this the 5th day of December, 2011.

SULLIVAN, MOUNTJOY, STAINBACK
& MILLER, P.S.C.


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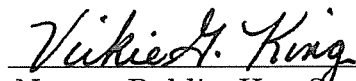
Verification

I, C. William Blackburn, the Senior Vice President Financial & Energy Services & Chief Financial Officer for Big Rivers Electric Corporation, hereby state that I have read the foregoing Petition and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 5th day of December, 2011.


C. William Blackburn

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

The foregoing verification statement was SUBSCRIBED AND SWORN to before me by C. William Blackburn as Senior Vice President Financial & Energy Services & Chief Financial Officer for Big Rivers Electric Corporation, on this the 5th day of December, 2011.


Notary Public, Ky., State at Large
My commission expires: 03-03-2014