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Via Overnight Mail

May 2, 2012

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

RECEIVED

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**PUBLIC SERVICE
COMMISSION**

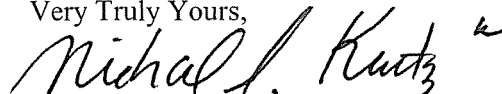
Re: Case No. 2012-00063

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.'s REPLY TO BIG RIVERS ELECTRIC CORPORATION'S RESPONSE TO MOTION TO DISMISS for filing 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
Quang Nyugen, Esq.
David C. Brown, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail (when available) and by mailing a true and correct copy by regular, U.S. Mail, unless other noted, this 2nd day of May, 2012 to the following



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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF: THE APPLICATION OF BIG RIVERS :
ELECTRIC CORPORATION FOR APPROVAL OF ITS 2012 : Case No. 2012-00063
ENVIRONMENTAL COMPLIANCE PLAN., FOR APPROVAL OF ITS :
AMENDED ENVIRONMENTAL COST RECOVERY SURCHARGE :
TARIFF, FOR CERTIFICATES OF PUBLIC CONVENIENCE AND :
NECESSITY, AND FOR AUTHORITY TO ESTABLISH A :
REGULATORY ACCOUNT :

**KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC'S REPLY TO
BIG RIVERS ELECTRIC CORPORATION'S RESPONSE TO MOTION TO DISMISS**

I. INTRODUCTION

Kentucky Industrial Utility Customers, Inc. ("KIUC") submits this Reply to Big Rivers Electric Corporation's ("Big Rivers") April 26, 2012 Response to KIUC's Motion to Dismiss.

II. ARGUMENT

1. Big Rivers' Claim That The Commission Lacks Authority To Dismiss Its Application Is Not Supported By KRS 278.020 and KRS 278.183.

On page 2 of its Response, Big Rivers argues that the Commission does not have authority to dismiss an application that meets all applicable filing requirements of KRS 278.020 and KRS 278.183.

Big Rivers states:

"Both statutes require the Commission to rule on the merits of an application and neither statute grants the Commission authority to dismiss an application that meets all applicable filing requirements because the application does not contain all the information an intervenor might request." (Response p. 2)

With respect to KRS 278.020, that section gives the Commission broad authority to approve, modify or disapprove an application; and gives the Commission discretion to conduct a hearing or decide the case as filed. KRS 278.020(1) states:

“Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part...”

If the Commission determines that the evidence presented in Big Rivers Application and testimony is insufficient to determine the reasonableness and cost-effectiveness of Big Rivers’ proposed Certificate and ECR plan, the Commission has authority to dismiss it without prejudice, pursuant to KRS 278.020.

With respect to KRS 278.183, Big Rivers’ Application and testimony does not meet “*all applicable filing requirements*” so its Application can be, and should be, dismissed. KRS 278.183 requires that the Commission conduct a hearing in order to “[c]onsider and approve the plan and rate surcharge if the commission finds the plan and rate surcharge reasonable and cost-effective for compliance with the applicable environmental requirements...” As explained in KIUC’s Motion to Dismiss, Big Rivers has not submitted sufficient evidence to support a finding that its plan is reasonable and cost-effective. Big Rivers’ Application and supporting testimony merely states the utility’s conclusion that its plan is cost-effective. Big Rivers fails to provide sufficient data or testimony to support its conclusion. Big Rivers’ unsupported claim that its plan is cost-effective is insufficient evidence for the utility to establish a *prima facie* case that its plan is “*reasonable and cost-effective*” per KRS 278.183. Without this *prima facie* case, the KRS 278.183(2) hearing requirement is not applicable.

As explained in KIUC’s Motion to Dismiss, Big Rivers’ Application is missing critical information needed to support its proposal. This information includes, but is not limited to:

- Sargent & Lundy models and electronic spreadsheets used to assess compliance options.

- PACE Global information provided to ACES Power Marketing, which includes forward hourly energy prices, monthly coal prices, monthly natural gas prices, and monthly allowance prices.
- Big Rivers' plant specific data provided to ACES Power Marketing.
- The ACES Power Marketing production cost models used.
- The Big Rivers' corporate financial model used and studies of compliance alternatives.
- Testimony from a PACE Global witness to support their projections of forward hourly energy prices, monthly coal prices, monthly natural gas prices and monthly allowance prices.
- Testimony from an ACES witness to support the production cost model runs.
- The assumptions under the sensitivity studies which assume the loss of the 7,300,000 mWh Smelter load at the end of 2013 (70% of native load sales) were not provided. So the Commission and Intervenors are left to guess whether Big Rivers assumed it would sell 7,300,000 mWh into the wholesale market as a merchant generator (for how much?), would close power plants (at what cost?), would sell power plants (at what price?), would merge with another G&T cooperative or would be acquired by an investor-owned electric utility.

As the Attorney General has also noted in its own Motion to Dismiss, filed on April 25, 2012, Big Rivers' Application fails to provide sufficient evidence with which the Commission can make the determinations required under KRS 278.183 and KRS 278.020. Therefore, Big Rivers has not made a *prime facie* showing and has failed to meet its burden of proof with substantial evidence.

2. Big Rivers' Submission Of New Evidence In Its Response To KIUC's Motion To Dismiss Does Not Cure The Utility's Deficient Application.

On page 3 of its Response, Big Rivers contends that KIUC's "*real complaint* [in the KIUC Motion to Dismiss] *seems to be that it has insufficient time to conduct discovery.*" Big Rivers attempts to resolve this perceived complaint by providing additional evidence in support of its conclusion that its ECR plan is reasonable and cost-effective. Big Rivers states that it recognizes:

"the time constraints placed on the Commission and parties... [and] given that KIUC's Motion to Dismiss indicates certain information that KIUC may later ask for in discovery, Big Rivers provides the following information mentioned in the Motion to Dismiss in lieu of waiting for KIUC's discovery requests:

1. *Electronic copies of the spreadsheet models used in the cost effectiveness evaluation; and*
2. *PACE Global price curve data for energy prices, fuel prices, and allowance prices.”*

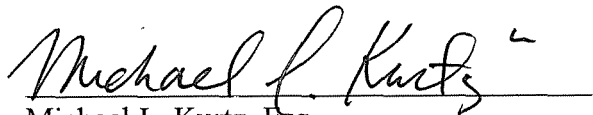
This unsolicited offer of additional data by Big Rivers is merely an attempt to back-fill an Application that was insufficient to support Big Rivers’ proposal, and an admission against interest that it’s Application was indeed deficient. Further, Big Rivers has not offered a witness to sponsor this new evidence.

The appropriate cure for a deficient filing is not for Big Rivers to haphazardly provide some of the missing evidence, without a sponsoring witness, as a part of its response to a Motion to Dismiss. Instead, the Commission should require Big Rivers to withdraw and re-file its Application with the proper supporting documents sponsored by a Big Rivers witness.

III. CONCLUSION

For the foregoing reason KIUC respectfully requests that the Commission dismiss, without prejudice, the April 2, 2012 Application of Big Rivers.

Respectfully submitted,



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May 2, 2012