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Via Courier

February 22<sup>nd</sup>, 2013

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

**Re: Docket CASE NO. 2012-00535 Reply In Support Of Petition For Full  
Intervention**

Dear Mr. Derouen:

Enclosed for the filing are an original and ten copies of *Ben Taylor and Sierra Club's Reply in Support of Petition for Full Intervention* and a certificate of service in docket 2012-00535 before the Kentucky Public Service Commission. This filing contains no confidential information.

Sincerely,

Ruben Mojica  
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PUBLIC SERVICE  
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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS )  
ELECTRIC CORPORATION, INC. ) CASE NO. 2012-00535  
FOR AN ADJUSTMENT OF RATES )

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BEN TAYLOR AND SIERRA CLUB’S REPLY IN SUPPORT OF  
PETITION FOR FULL INTERVENTION

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Ben Taylor and Sierra Club (collectively “Movants”) petitioned the Commission for full intervention in this proceeding in which Big Rivers Electric Corporation (“Big Rivers” or “Company”) is seeking to significantly increase its customers’ rates in order to address a substantial loss of load and decline in off-system sales revenue. In their Intervention Petition, Movants demonstrated that they satisfy the test for intervention set forth in 807 KAR 5:001 § 4(11)(b) because they offer expertise that would assist in evaluation of whether the proposed rate increase is fair, just, and reasonable in light of other resource options, not addressed in Big Rivers’ application, for reducing impacts to ratepayers. In addition, Movants have special interests in this proceeding arising from their desire to promote energy efficiency, peak demand reduction, renewable energy, and cost-effective low carbon energy sources through utility regulatory proceedings. As such, there are two separate bases upon which Movants satisfy the standards for full intervention.

In its response brief, Big Rivers attacks a strawman by erroneously claiming that Movants are seeking to raise environmental issues that are beyond the scope of this proceeding. The Company also incorrectly asserts that the Attorney General already represents Movants’ interests in this proceeding. These arguments are inconsistent with the facts, the law, and the

Commission's rulings granting Sierra Club intervention in six previous proceedings. As such, the Commission should reject Big Rivers' opposition and allow Movants to intervene as full parties in this proceeding.

**I. Movants Will Present Issues and Develop Facts That Will Assist the Commission in Fully Considering the Matter Without Unduly Complicating or Disrupting the Proceedings.**

As Movants explained in their Petition (Petition at pp. 5-8), and as the Commission has found with regards to Sierra Club on six previous occasions,<sup>1</sup> the Movants qualify for full intervention because they are "likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings." 807 KAR 5:001 § 4(11)(b). This proceeding raises important questions regarding whether Big Rivers' proposal to significantly raise its customers' rates in order to make up for the loss of the Century smelter load and the decline in off-system sales revenues is "fair, just, and reasonable." KRS 278.030(1), 278.190(3). Such a determination can only be made after a consideration of the numerous options – such as generating unit retirements and increased demand side management ("DSM") – available to mitigate the cost impacts of the loss of load and declining off-system sales revenue. Sierra Club's staff and consultants have extensive expertise in the resource planning, DSM, and regulatory issues raised in evaluating such options

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<sup>1</sup>Application of Kentucky Power for Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets (Docket No. 2012-00578); Application of Louisville Gas & Electric for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge (Docket No. 2011-00162), Application of Kentucky Utilities for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge (Docket No. 2011-00161); Joint Application of Louisville Gas & Electric and Kentucky Utilities for Certificates of Public Convenience and Necessity to Construct Combined Cycle Natural Gas Plant (Docket No. 2011-00375); Application of Kentucky Power Company for Approval of its 2011 Environmental Compliance Plan and Certificates of Public Convenience and Necessity (Docket No. 2011-00401); Application of Big Rivers Electric Cooperative for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge (Docket No. 2012-00063).

from their active participation in previous Commission proceedings and in public utility cases in at least twenty other states. As such, the Commission should grant Movants full intervention in this proceeding.

Big Rivers does not directly challenge Sierra Club's expertise but, instead, attempts to dismiss that expertise as irrelevant by mis-citing a prior Commission decision and erroneously construing Movants' petition as raising nothing but "generalized environmental grievances." (Big Rivers' Resp. at pp. 9-10). Big Rivers claims that a September 7, 2012 Commission Order found that knowledge or experience regarding efficiency and renewable energy is not sufficient to establish knowledge about ratemaking issues. (*Id.* at p. 10). But the language that the Company relies on does not appear anywhere in the September 7 Order that Big Rivers cites to, which actually found a proposed intervenor's "knowledge and experience of rail logistical services" insufficient to demonstrate the requisite knowledge about ratemaking issues.<sup>2</sup>

Big Rivers extrapolates from the non-existent language that "information in the area of renewable energy and energy efficiency does not have a sufficient nexus to general ratemaking to be of any assistance in this matter." (Big Rivers Resp. at 10). But such a claim has been flatly rejected in a recent rate proceeding involving Kentucky Utilities Company, where the Commission explained that:

For over 30 years, the Commission has historically noted the importance of energy efficiency (conservation) as a ratemaking standard. "It is intended to minimize the 'wasteful' consumption of electricity and to prevent consumption of scarce resources..."

In recent years the Commission has emphasized the importance of energy efficiency, and has often considered it and DSM in conjunction with a requested increase in the customer charge.

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<sup>2</sup> *In the Matter of: Application of Louisville Gas & Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, KY PSC Case No. 2012-00222, Order of Sept. 7, 2012 at p. 5

.....

with the potential for huge increases in the costs of generation and transmission as a result of aging infrastructure, low natural gas prices, and stricter environmental requirements, we will strive to avoid taking actions that might disincent energy efficiency.<sup>3</sup>

In fact, the Commission's rules require that the applicant provide a discussion of its "existing programs to achieve improvements in efficiency and productivity." 807 KAR 5:001 § 16(12)(a). And Big Rivers included in its application a description of its minimal DSM programs, explaining that "the purpose of these programs is to provide low cost, reliable power to Big Rivers' members." (Testimony of Mark Bailey at p. 15 line 12 to p. 16 line 2; see also Testimony of Albert Yockey at p. 7 lines 1-2, p. 13 line 1 to p. 17 line 10). As such, Big Rivers' contention that energy efficiency issues are irrelevant to this proceeding is baseless.

Big Rivers' attempt to portray Movants as raising merely environmental concerns similarly fails. (Big Rivers Resp. at 10, 11). As Movants already explained, they:

are not seeking intervention to opine about the environmental impacts of Big Rivers' coal plants and its environmental compliance plans. Instead, Movants are seeking to present testimony regarding whether the Rate Increase proposed by Big Rivers, which will further Big Rivers' dependence on its existing coal assets, is just and reasonable in light of the substantial loss of demand the utility needs to serve, the full range of regulatory, capital, operating, and fuel costs that the Big Rivers plants face, and the increasing availability of low cost energy efficiency and renewable energy alternatives.

(Petition at p. 7). In fact, Big Rivers' own response brief acknowledges that Movants seek intervention to ensure that a "robust examination of the comparative options available to Big Rivers" occurs so that the "lowest cost mix of supply- and demand-side resources" is identified. (Big Rivers Resp. at p. 9). The Company does not even attempt to explain how such testimony

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<sup>3</sup> *In the Matter of Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Ky. PSC Case No. 2012-00221, Dec. 20, 2012 Order at pp. 7, 8, and 11 (citations omitted).

would purportedly constitute only “generalized environmental grievances,” which is not surprising given that it, of course, would not.

The two prior Commission Orders cited by Big Rivers on this point are inapposite. In both of those Orders, the Commission rejected the proposed intervention of Geoffrey M. Young given that he specifically stated he was seeking intervention for the purpose of “reducing pollution that can harm people and the natural environment,”<sup>4</sup> addressing the “quality of the air and the level of pollution emitted” by power plants,<sup>5</sup> and “protecting the trees, animals, microorganisms, watersheds, airsheds, and ecosystems of the Commonwealth.”<sup>6</sup> By contrast, Movants here have disavowed any intent to raise such environmental concerns in this proceeding and, instead, have identified specific issues relevant to the reasonableness of Big Rivers’ proposed rate increase that they intend to present expertise on.

Big Rivers also asserts that Movants’ intervention would “unduly complicate and disrupt this proceeding,” but that assertion is primarily based on the already-discussed faulty claim that Movants “seek to address issues that are beyond the scope of ratemaking.” (Big Rivers Resp. at pp. 10-11). The Company also suggests that Movants’ submission of requests for information before their intervention was granted complicates the proceeding, and incorrectly implies that Movants’ Petition was untimely. (*Id.* at p. 11). But Movants timely filed their intervention Petition within a month of when Big Rivers filed its application, and only fourteen days after the Commission issued its procedural schedule in this proceeding, which did not include a deadline for intervening. Movants also submitted their initial requests for information pursuant to the

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<sup>4</sup> *In the Matter of the Joint Application Pursuant to 1994 House Bill No. 501 For the Approval of Kentucky Power Company Collaborative Demand-Side Management Programs and Authority to Implement a Tariff to Recover Costs, Net Loss Revenues and Receive Incentives Associated With the Implementation of the Kentucky Power Company Collaborative Demand-Side Management Programs*, KY PSC Case No. 2008-00350, Oct. 13, 2008 Order at p. 4

<sup>5</sup> *Id.*

<sup>6</sup> *In the Matter of Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Base Rates*, KY PSC Case No. 2008-00252, Oct. 10, 2008 Order at p. 5.

schedule set forth by the Commission. As such, Big Rivers' claim that Movants have "unduly complicate[d] or disrupt[ed] this proceeding" should be rejected.

**II. Movants Have Special Interests in This Proceeding That Are Not Adequately Represented.**

As a separate basis for intervention, Movants also demonstrated that they have special interests in this proceeding that are not adequately represented by the other parties. (Petition at pp. 8-11). Such special interests stem from the fact that Mr. Taylor and other Sierra Club members are customers of one of Big Rivers' distribution cooperatives. In addition, Sierra Club has interests in this proceeding stemming from its role as a national organization that seeks to promote energy efficiency, renewable energy, and other low carbon generation sources as the most reasonable and least cost way for utilities such as Big Rivers to maintain essential electric services, respond to changing market conditions, and meet new and emerging regulations.

Big Rivers makes a failed attempt to overcome this showing by claiming that any interests Movants may have in this proceeding are adequately represented by the Attorney General. (Big Rivers Resp. at pp. 5, 8). It is true that the Attorney General is statutorily entitled to intervene in Commission proceedings in order to represent customer interests. As Movants explained in their Petition, however, the Attorney General cannot adequately represent Movants' focused interests because he has the unenviable task of representing all customers with diverse and sometimes conflicting interests. (Petition at pp. 9-10). In addition, the Attorney General's presence in Commission proceedings has not been interpreted to foreclose other customer intervention as is demonstrated by the fact that the Kentucky Industrial Utility Customers ("KIUC") have successfully intervened in this and numerous other Commission proceedings in which the Attorney General has also intervened. Similarly, the Attorney General's presence in

this proceeding should not foreclose Movants' ability to intervene and represent their interests in ensuring that the full range of options for addressing Big Rivers' significant loss of load and revenues, including the potential retirement of some generating resources and pursuit of demand side management, are fully and objectively evaluated.

Big Rivers next contends that Sierra Club's representation of the interest of its members who are customers of the Company would somehow "circumvent long-standing procedural rules." (Big Rivers Resp. at p. 8). But the Commission regularly recognizes the ability of KIUC to represent the interests of its industrial members who are utility customers, and the Commission has held that Sierra Club can do the same on behalf of its members.<sup>7</sup> There is no reason that Sierra Club should not be able to also do so here.

Finally, Big Rivers repeats its flawed argument that Movants' interests in this proceeding are solely environmental, going so far as to claim that "Sierra Club's proposed intervention is a charade designed to turn a ratemaking proceeding into an environmental policy proceeding." (Big Rivers Resp. at p. 6). The Company provides no justification for this claim, which is baseless as Movants have explained repeatedly that they seek intervention to ensure that a full range of options for achieving a least cost approach for Big Rivers' customers is evaluated in assessing whether the Company's proposed rate increase is fair, just, and reasonable.

### **III. Conclusion**

Faced with a substantial loss of load and declining off-system sales revenues, Big Rivers is seeking to drastically increase its customers' rates so that the Company can maintain a business as usual approach of investing in all of its existing generating units while continuing to

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<sup>7</sup> *In the Matter of Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities From Bluegrass Generation Company, LLC in Lagrange, Kentucky*, KY PSC Case No. 2011-00375, Dec. 14, 2011 Order at p. 7.



invest less per year into DSM than the Company is spending for professional services on this rate filing. On its face, such proposal appears to not be fair, just, or reasonable. And Big Rivers' business as usual approach becomes even more unreasonable once the growing set of costs facing the Company's generating units, and the expanding set of options for satisfying Big Rivers' energy needs, are fully considered.

Movants have special interests, not adequately represented, in ensuring that such full consideration occurs. And Movant Sierra Club has a proven track record both before the Commission and in other state public utility proceedings of providing expertise that assists the Commission in fully considering the matter at hand. Big Rivers has provided no basis for excluding such expertise or for foreclosing the representation of Movants' special interests in this proceeding.

For the foregoing reasons, and those set forth in Movants' Petition, the Commission should grant Movants full intervention status.

Respectfully submitted,



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Dated: February 22, 2013

## CERTIFICATE OF SERVICE

I certify that I mailed a copy of this Reply in Support of Petition for Full Intervention by US Mail on February 22, 2013 to the following:

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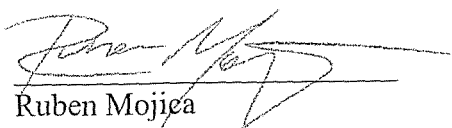
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