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May 22, 2013

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

**Re: Docket CASE NO. 2012-00535**

Dear Mr. Derouen:

Enclosed for the filing are an original and ten copies of the *MOTION OF BEN TAYLOR AND SIERRA CLUB TO COMPEL BIG RIVERS ELECTRIC CORPORATION TO RESPOND TO THEIR SUPPLEMENTAL REQUESTS FOR INFORMATION, AND TO SUPPLEMENT THEIR TESTIMONY* and a certificate of service in docket 2012-00535 before the Kentucky Public Service Commission. This filing contains no confidential information.

Sincerely,

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

**In the Matter of:**

**Application of Big Rivers Electric Corporation                    )**  
**For a General Adjustment in Rates                                    )** **CASE NO. 2012-00535**  
**)**

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**MOTION OF BEN TAYLOR AND SIERRA CLUB TO COMPEL BIG RIVERS  
ELECTRIC CORPORATION TO RESPOND TO THEIR SUPPLEMENTAL  
REQUESTS FOR INFORMATION, AND TO SUPPLEMENT THEIR TESTIMONY**

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Ben Taylor and the Sierra Club (collectively, “Intervenors”) hereby move the Kentucky Public Service Commission (“Commission”) to compel Big Rivers Electric Corporation (“BREC”) to fully respond to Intervenors’ supplemental requests for information, and to provide an adequate opportunity for Intervenors to submit supplemental testimony after such responses are provided. BREC has failed to respond to Intervenors’ requests relating to two key issues in this proceeding based on unsupported claims that the requests do not seek relevant or admissible evidence. First, BREC has refused to produce modeling and projections for conditions that it believes its generating units will face after 2016, despite the fact that BREC is asking the Commission here to approve a requested rate increase that is premised on BREC’s currently uneconomic generating units becoming competitive again in the market several years down the road. Second, BREC has refused to produce information regarding a “tentative agreement” that it has reached with the Century Aluminum smelter, whose departure prompted this rate increase request, to provide Century with market power – let alone has BREC explained how the term sheet it has worked out with Century would affect this proceeding. BREC’s refusal to produce information on these two critical issues in this proceeding has hindered Intervenors’ ability to fully participate in order to ensure that the full range of options for addressing BREC’s

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. Accordingly, Intervenor respectfully request that the Commission compel BREC to fully respond to requests SC 2-2, 2-3, 2-4, 2-5, 2-8, 2-13c, and 2-24 through 2-28 by a date certain, and to grant Intervenor leave to submit supplemental testimony within 10 days of the date of such production.<sup>1</sup>

### **I. Background**

On January 15, 2013, BREC filed an application for a rate increase pursuant to the Public Service Commission's authority under the Kentucky Revised Statutes and Kentucky Administrative Code to regulate the electric utilities in the state. KRS § 278.180, and 807 KAR 5:011, Sections 6(3)(b). BREC seeks approval to change its base rates and tariffs for electric service. The proposed changes will result in a net increase in operating revenue of approximately \$74.5 million per year, roughly a 21.4% increase.<sup>2</sup> BREC cites the termination of a contract with the Century Aluminum smelter as causing roughly \$63 million of the revenue shortfall, with off-system sales decreases and depreciation rate changes causing the remaining \$11 million.<sup>3</sup> BREC claims the rate increase is needed to maintain investment level credit ratings. BREC asserts that these ratings are especially important as it plans to spend \$212 million for capital improvements and asset replacement for its generating units, \$60 million for compliance with the Mercury and Air Toxics Standard, and additional spending on deferred unit maintenance over the next four years.<sup>4</sup>

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<sup>1</sup> In an effort to resolve these issues without involving the Commission, counsel for Intervenor sent BREC's counsel a letter via electronic mail regarding the inadequacy of BREC's responses on May 20, 2013. On May 21, 2013, BREC's counsel contacted Intervenor's counsel by phone to notify Intervenor that BREC would not be producing any additional information in response to Intervenor's requests.

<sup>2</sup> See BREC Application for a General Adjustment in Rates, at 4.

<sup>3</sup> Direct Testimony of Mark Bailey, p.8.

<sup>4</sup> Direct Testimony of Robert Berry, pp.15-16.

This proceeding comes at a critical juncture for BREC. As a result of the Century smelter termination, BREC will lose 482MW of peak load starting August 20, 2013. And since BREC filed its application, its second smelter customer, Alcan, has announced its planned termination, which will reduce BREC's peak load by an additional 372MW for which BREC intends to seek yet another rate increase on top of any rate increase approved by the Commission in this proceeding.<sup>5</sup> In addition, the recent significant decrease in current and projected natural gas prices, along with the increasing availability of demand side management and renewable resources, have lowered the market price of power, thereby reducing BREC's off system sales revenues. And existing or expected federal Clean Air Act and Clean Water Act regulations will require BREC to install pollution controls on any coal generating units that continue operating for more than a couple more years.

The combined impact of all of these developments is that the economic viability of BREC's coal-fired generation assets has decreased significantly. Yet BREC has applied for a substantial rate increase that does not address any of these fundamental changes in supply- and demand-side conditions and simply asks consumers to pay 20% more – with a further significant rate increase request likely soon on its way to account for Alcan's departure – so that the company can continue to maintain its same set of aging generating units that it may no longer need to serve its substantially reduced load.

**II. The Commission Should Require BREC to Produce Its Modeling and Projections for Years beyond 2016 that BREC Claims Show that Its Generating Units Will Return to Profitability in the Future.**

BREC's first set of inadequate responses are to Intervenors' requests for information 2-2, 2-3, 2-4, 2-5, and 2-8, each of which seek different aspects of BREC's production cost modeling, or projections of market conditions, commodity prices, energy sales, and generating unit

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<sup>5</sup> See Big Rivers Electric Corporation – Notice of Intent, KPSC Case No. 2013-00199 (May 17, 2013).

operating conditions beyond 2016. In response to these requests, BREC admits that it has in its possession modeling and other information that it has not produced to Intervenors, but BREC refuses to produce this information on the grounds that it is not relevant to this proceeding.<sup>6</sup> Specifically, BREC claims that because its requested rate increase in this proceeding “is based upon Big Rivers’ 2013-2016 budget and financial plan,” the information that it has in its possession concerning how the strategy upon which its 2013-2016 plan is based will perform in subsequent years should not be produced to Intervenors or considered by the Commission.<sup>7</sup>

BREC’s claim that neither the Commission nor Intervenors should be able to evaluate the company’s modeling and projections for after 2016 is myopic and inconsistent with the Commission’s mandate to approve the requested more than 20% rate increase only if it finds that such increase is just and reasonable and represents a least cost approach for ratepayers. The Commission cannot find that BREC’s requested rate increase is just, reasonable, or least cost without first evaluating whether alternative to the requested rate increase are available that will be less costly to ratepayers. Given that BREC’s rate increase request here was prompted by a massive downsizing in BREC’s peak load due to the imminent departures of the Century and Alcan smelters – which total over two-thirds (over 750 MW) of BREC’s current peak load – the most obvious less costly alternative would be for BREC to reduce its expenses by retiring or selling generating capacity that it no longer needs and can no longer profitably use. In response to Intervenors’ requests for information, however, BREC admits that it has not considered this alternative, based on an assumption that its generating units will provide “significant benefits . . . in the future”:

Big Rivers has not evaluated the retirement, rather than idling, of any of its generating units as an option for mitigating the impact of the termination of the

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<sup>6</sup> BREC Resp. to Sierra Club Request for Information 2-2.

<sup>7</sup> *Id.*

Century contract and/or the decline in off-system sales. Despite the fact that current wholesale electricity market prices are low, Big Rivers' generating units have significant remaining useful life and Big Rivers' members would be unduly harmed if Big Rivers were to retire assets instead of temporarily idling them. Although Big Rivers' members will continue to incur some costs over the next three years associated with idled units, Big Rivers' members will be able to reap significant benefits from the units in the future, either by selling wholesale power and using the proceeds to reduce member rates or by supporting the Western Kentucky economy by supplying power to industries.<sup>8</sup>

At the same time, in its testimony in this proceeding, BREC acknowledges that because current wholesale electricity market prices are "depressed" relative to the cost of generating power from its units, the company does not anticipate that it will be able to rely on off-system sales to reduce its rates at least "for the next few years" (i.e., until after 2016), and BREC has not been able to identify any other customers to date to replace the smelters' load.<sup>9</sup>

The only way that BREC's requested rate increase could be a just and reasonable solution to its current predicament is if the company is right that, at some point several years down the road, the electricity markets will change such that BREC's aging generating units that are not currently competitive in the market will become so again and thus "reap significant benefits" for ratepayers, as the company claims. The only way for the Commission, Staff, and Intervenors to evaluate those claims, however, is for the company to produce the modeling and projections on which they are based in response to Intervenors' requests for information. By refusing to produce this information, BREC is essentially asking the Commission to take it on faith that its current request for an over 20% rate increase – with a further significant rate increase request soon on its way – will pay off in the long run. The Commission should not accept BREC's claims based on blind faith, but should instead order BREC to produce any modeling or

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<sup>8</sup> BREC Resp. to Sierra Club Request for Information 1-23. Similarly, BREC contends that it expects to end the proposed idling of the Wilson Station in 2019 on the basis that ACES market price forecast projections show that Wilson will be profitable again at that time. See BREC Resp. to Sierra Club Request for Information 1-21d.

<sup>9</sup> Direct Testimony of Robert Berry, pp. 20-21.

projections responsive to Intervenors' requests SC 2-2, 2-3, 2-4, 2-5, and 2-8 so that the Commission, Staff, and Intervenors can critically evaluate the basis of BREC's claims.

In addition, BREC's claim that post-2016 data is irrelevant also founders on the fact that the company has produced some modeling and other information in this proceeding covering the post-2016 time period. In response to AG 1-89c, BREC produced its June 2012 Load Concentration Analysis and Mitigation Plan, which the Company reports that it is implementing,<sup>10</sup> accompanied by economic modeling runs that evaluate various responses to the loss of the smelter loads through at least the year 2023. The Commission should not allow BREC to cherry-pick the information that it produces regarding post-2016 conditions. If the production cost modeling identified in response to SC 2-2 is the same as one or more of the modeling runs produced in response to AG 1-89c, BREC should identify such modeling run or runs. If the production cost modeling referenced in response to SC 2-2 is different than the modeling upon which the Plan was based, then it should be produced as relevant to the reasonableness of the Load Concentration Analysis and Mitigation Plan and BREC's implementation of that Plan.

### **III. The Commission Should Require BREC to Produce Documents and Information Regarding Its Tentative Agreement with Century.**

A second set of inadequate responses are to SC 2-13c and 2-24 through 2-28, in which Big Rivers declined to produce any information regarding the "tentative agreement" that the Century smelter announced had been reached on a framework for providing market price power to the smelter. Given that the rate increase proposed in this proceeding was triggered by the Century smelter's termination of its power purchase agreement, information regarding the potential for Century to reestablish an agreement with Big Rivers is plainly relevant here. This

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<sup>10</sup> Berry Testimony at pp. 19-20.

issue is already pending before the Commission, having been raised by the Kentucky Industrial Utility Customers (“KIUC”) in its May 3 Petition for Leave to Conduct Supplemental Discovery. The Attorney General filed comments in support of KIUC’s Petition on May 10.

While BREC’s May 7 response to KIUC portrays the agreement as too tentative to provide any relevant or admissible evidence, BREC acknowledges in that filing that it has reached an agreement with Century on a “non-binding term sheet that will serve as the framework for definitive documents that are currently being drafted.”<sup>11</sup> At a minimum, the Commission should require BREC to produce the term sheet and an explanation for how the tentatively agreed upon terms would impact its rate increase request.

**IV. The Commission Should Allow Intervenors to Submit Supplemental Testimony Concerning Any Information It Compels BREC to Produce.**

The ability of the Commission, Staff, and Intervenors to evaluate the documents and information that Intervenors respectfully request that the Commission compel BREC to produce is critical to the Commission’s ultimate decision as to whether the over 20% rate increase sought by BREC in this proceeding is just and reasonable. The current case management schedule requires that Intervenors submit their testimony by the end of business on this Friday, May 24. BREC’s failure to produce the documents and information sought by this motion, however, means that Intervenors will not be able to submit testimony that fully evaluates these critical issues unless they are given an opportunity to submit supplemental testimony that addresses any new documents and information that BREC produces. Allowing Intervenors an opportunity to submit such supplemental testimony would not unduly delay this proceeding, as Intervenors intend to submit their testimony on all other issues in this proceeding by this Friday’s deadline and seek only to provide supplemental testimony that is limited to addressing any new

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<sup>11</sup> Response of Big Rivers Electric Corporation to Kentucky Industrial Utility Customers, Inc.’s Petition for Leave to Conduct Supplemental Discovery (May 7, 2013), at p. 2.

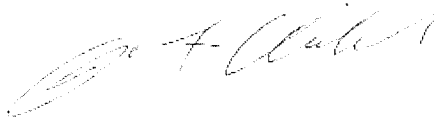


documents or information that the Commission might order BREC to produce in response to this motion. Accordingly, Intervenor request that the Commission establish a date certain by which BREC will be required to provide complete responses to the requests for information discussed above, and extend the deadline for Intervenor to submit supplemental testimony within 10 days of the date of such production.

**V. Conclusion**

For the foregoing reasons, Intervenor request that the Commission compel BREC to fully respond to Intervenor's supplemental requests for information numbers SC 2-2, 2-3, 2-4, 2-5, 2-8, 2-13c, and 2-24 through 2-28 by a date certain, and to grant Intervenor leave to submit supplemental testimony within 10 days of the date of such production.

Respectfully submitted,



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Dated: May 22, 2013

## CERTIFICATE OF SERVICE

I certify that I mailed a copy of the Motion Of Ben Taylor And Sierra Club to Compel Big Rivers Electric Corporation to Respond to their Supplemental Requests For Information, and to Supplement their Testimony to the following on May 22, 2013:

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