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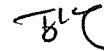
Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

Re: ***In the Matter of: The Application of Big Rivers Electric Corporation  
for a General Adjustment in Rates, PSC Case No. 2012-00535***

Dear Mr. Derouen:

Enclosed for filing are an original and ten copies of Big Rivers Electric Corporation's response to Ben Taylor and Sierra Club's May 22, 2013, Motion to Compel. I certify that on this date, a copy of this letter and a copy of the response were served on the persons listed on the attached service list by first class mail, postage prepaid.

Sincerely,



Tyson Kamuf

TAK/sgc  
Enclosures

cc: Billie Richert  
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MAY 28 2013

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

PUBLIC SERVICE  
COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC )  
CORPORATION FOR A GENERAL ) Case No. 2012-00535  
ADJUSTMENT IN RATES )

**RESPONSE OF BIG RIVERS ELECTRIC CORPORATION TO BEN TAYLOR AND  
SIERRA CLUB’S MOTION TO COMPEL**

Comes Big Rivers Electric Corporation (“Big Rivers”), by counsel, and for its response to the Motion to Compel filed by Ben Taylor and Sierra Club (collectively, “Sierra Club”), states as follows:

**A. Introduction.**

1. Sierra Club filed its Motion to Compel on May 22, 2013, asking the Public Service Commission (“Commission”) to compel Big Rivers to provide additional information and documents in response to Items 2, 3, 4, 5, 8, 13c, 24, 25, 26, 27, and 28 of Sierra Club’s Supplemental Requests for Information (“SC 2-2,” “SC 2-3,” “SC 2-4,” “SC 2-5,” SC “2-8,” “SC 2-13c,” “SC 2-24,” “SC 2-25,” “SC 2-26,” SC 2-27,” and “SC 2-28,” respectively).

2. Big Rivers has already provided an extensive amount of data and modeling in support of its 2013-2016 budget and financial plan that it filed as part of its application. That data and modeling forms the basis for the rate relief it seeks in this proceeding. Big Rivers believes it has adequately demonstrated that the rate relief it is seeking is reasonable and necessary to enable it to meet its financial obligations to its creditors and to attract necessary capital in order to continue to provide adequate service to its members at rates that are fair, just, and reasonable.



1 2016, claiming that “BREC is asking the Commission here to approve a requested rate increase  
2 that is premised on BREC’s currently uneconomic generating units becoming competitive again  
3 in the market several years down the road.”<sup>5</sup> However, that claim is not true. Big Rivers’  
4 proposed rates are not based on the post-2016 modeling that Sierra Club claims it needs. Instead,  
5 the proposed rates are based solely upon Big Rivers’ budget and financial plan for the forecasted  
6 test period.

7 6. Sierra Club argues:

8 The Commission cannot find that BREC’s requested rate increase is just,  
9 reasonable, or least cost without first evaluating whether alternative to the  
10 requested rate increase are available that will be less costly to ratepayers. Given  
11 that BREC’s rate increase request here was prompted by a massive downsizing in  
12 BREC’s peak load due to the imminent departures of the Century and Alcan  
13 smelters – which total over two-thirds (over 750 MW) of BREC’s current peak  
14 load – the most obvious less costly alternative would be for BREC to reduce its  
15 expenses by retiring or selling generating capacity that it no longer needs and can  
16 no longer profitably use.<sup>6</sup>

17  
18 7. Sierra Club offers no support for the numerous inaccurate statements in its  
19 argument. First, this case was not in any way prompted by Alcan’s decision to terminate its  
20 retail power contract, and Sierra Club offers no basis for its statement that is contrary to the  
21 record.

22 8. Second, Sierra Club states that it would be less costly for Big Rivers to retire or  
23 sell generating capacity and that “Big Rivers can no longer profitably use” its generating  
24 capacity. Sierra Club offers no basis for these unfounded assertions. It is also contrary to Sierra  
25 Club’s supposed need to review Big Rivers’ post-2016 modeling to analyze the viability of Big  
26 Rivers’ generation if it has already concluded that it is less costly for Big Rivers to retire or sell  
27 generating capacity or that Big Rivers’ units will not be profitable in the future. Sierra Club

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<sup>5</sup> Sierra Club Motion to Compel at page 1.

<sup>6</sup> Sierra Club Motion to Compel at page 4.

1 offers no basis for its argument that the Commission can only grant a rate increase that is the  
2 allegedly a least cost approach, in any event.

3 9. Big Rivers' long-term projections of the viability of its generating units versus  
4 other alternatives for capacity would be relevant in other types of cases, such as a case requesting  
5 a certificate of public convenience and necessity ("CPCN") to construct new generation or to  
6 install significant environmental compliance equipment or an integrated resource plan ("IRP")  
7 case. However, this is not a CPCN case, an environmental compliance plan case, or an IRP case.  
8 This is a rate case based on a forward looking test period that ends August 31, 2014. Debates  
9 over the projected price of coal in 2027 do not belong in this case.

10 10. Sierra Club's argument that the projected price of coal in 2027 is relevant is  
11 premised on the false assertions that Big Rivers chose to implement this rate case rather than  
12 consider the "less costly" alternatives of selling or retiring generating units. However, as shown  
13 in Big Rivers' response to Item 2 of the Commission Staff's Second Request for Information  
14 ("PSC 2-18"), Big Rivers is currently pursuing the alternative of selling a unit. Nevertheless,  
15 Big Rivers has demonstrated that it must have new rates in effect beginning August 20, 2013,  
16 and Big Rivers has stated that it will file its next rate case in late June, with rates that would be  
17 effective on or before the termination of Alcan's retail power contract on January 31, 2014.  
18 Thus, the rates in this case will be in effect from August 20, 2013, through January 31, 2014. So,  
19 unless Big Rivers has a deal to sell a generating unit by January 31, 2014, it would be  
20 inappropriate to base Big Rivers' rates in this case on the assumption that Big Rivers will be able  
21 to sell a generating unit. Additionally, absent an agreement with a willing buyer, there would be  
22 no basis for the Commission to assume a sales price or date for the purpose of setting rates.

1           11.     Also, as Big Rivers demonstrated in Case No. 2012-00063, the reason Big Rivers  
2 cannot retire generating capacity is because it would trigger a loss in the amount of the book  
3 value of the unit(s) and would reduce Big Rivers' equity in the same amount. It is vitally  
4 important for Big Rivers to maintain its equity, especially now that all three of its credit ratings  
5 are below investment grade. Big Rivers' equity is one of the few remaining positives in the eyes  
6 of the credit rating agencies.

7           12.     Thus, since Big Rivers is pursuing the alternative of selling a unit, Sierra Club's  
8 claim that Big Rivers chose to seek a rate increase rather than sell generating capacity is wrong.  
9 Further, since there is no basis for assuming that Big Rivers will be able to sell its generating  
10 capacity by January 31, 2014, and since Big Rivers' post-2016 modeling and projections have no  
11 impact on Big Rivers' ability to sell generating capacity, Big Rivers' post-2016 modeling and  
12 projections will not impact Big Rivers' proposed rates and are therefore irrelevant to this case.

13           13.     Similarly, since Big Rivers cannot retire generating capacity because of its need  
14 to maintain equity, Big Rivers' post-2016 modeling and projections do not impact the decision  
15 not to consider retiring generating capacity, they will not impact Big Rivers' proposed rates, and  
16 they are therefore irrelevant to this case.

17           14.     Sierra Club further argues that production cost modeling referenced in Big  
18 Rivers' response to SC 2-2 is relevant to the reasonableness of Big Rivers' Load Concentration  
19 Analysis and Mitigation Plan (the "Mitigation Plan") and Big Rivers' implementation of that  
20 Mitigation Plan.<sup>7</sup> Although the mitigation steps Big Rivers is undertaking are relevant to  
21 whether Big Rivers' requested rate relief is necessary, the modeling runs used to develop the  
22 Mitigation Plan are not relevant to the question of whether the rates Big Rivers proposes are fair,

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<sup>7</sup> Sierra Club Motion to Compel at page 6.



1 just and reasonable. That is because no matter what the modeling shows, it does not change the  
2 fact that Big Rivers needs that requested rate relief beginning August 20, 2013, in order to be  
3 able to meet its financial obligations and to attract necessary capital. Big Rivers has outlined the  
4 steps it is taking to mitigate the rate increase, and Big Rivers believes the steps it has taken are  
5 reasonable. Unfortunately, those efforts have not eliminated the need for a rate increase  
6 beginning August 20, 2013. The post-2016 modeling cannot change the amount of the rate  
7 increase Big Rivers needs on August 20, 2013. It is therefore irrelevant to this proceeding.  
8 Presenting its case in this manner is not “cherry-picking,” as Sierra Club accuses;<sup>8</sup> it is, instead,  
9 merely a conscious decision by Big Rivers to tailor its proof to the legal requirements for this  
10 case and to avoid becoming mired in an irrelevant dispute about long-term projections that do  
11 not belong in a rate case.

12 **C. The Commission should deny as moot Sierra Club’s request to compel Big Rivers to**  
13 **provide information about a tentative agreement with Century Aluminum Company.**  
14

15 15. The second category that forms the basis of the Motion to Compel includes SC 2-  
16 13c and SC 2-24 through SC 2-28. These requests seek information about a tentative agreement  
17 on a term sheet between Big Rivers and Century Aluminum Company (“Century”).

18 16. On May 22, 2013, the Commission granted Kentucky Industrial Utility  
19 Customers, Inc.’s (“KIUC”) Petition for Leave to Conduct Supplemental Discovery and required  
20 Big Rivers to respond to KIUC’s third requests for information. SC 2-24 and SC 2-28 are  
21 identical to the questions in KIUC’s third requests for information. As the agreement between  
22 Big Rivers and Century is not final, SC 2-13c only asks Big Rivers to “describe the salient  
23 elements of the agreement,” which is redundant of the questions in SC 2-24 through SC 2-28.  
24 As such, Sierra Club’s request for the Commission to compel Big Rivers to respond to SC 2-13c

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<sup>8</sup> See Sierra Club Motion to Compel at page 6.

1 and SC 2-24 through SC 2-28 should be denied as moot and should not be used as an excuse to  
2 further delay these proceedings to the further prejudice Big Rivers.

3 **D. Big Rivers will be prejudiced by any further delay.**

4 17. It is a waste of time and resources to allow Sierra Club to take this proceeding off  
5 course and change the focus from the reasonableness of the proposed rates to more distant  
6 modeling and projections that will not impact the proposed rates. This wastefulness is magnified  
7 by the fact that Big Rivers will file its next rate case in late June. Consequently, any rates  
8 approved in this case will be in effect only until January 31, 2014.

9 18. But beyond just being a waste of time and resources to Big Rivers and the  
10 Commission, further delaying this case amplifies the uncertainty associated with Big Rivers  
11 having to put rates into effect subject to refund on August 20, potential refunds, and the  
12 appearance to the credit rating agencies of an erratic, unpredictable, and unsupportive state  
13 regulatory process, at a time when Big Rivers is working to find ways to regain its investment  
14 grade credit ratings and return to a stable financial condition. Further delay also hampers the  
15 ability of Big Rivers to timely complete negotiations with Century and submit a proposed  
16 agreement (if one is reached) for review and approval by the Commission.

17 19. Finally, Sierra Club was granted intervention based on the Commission's finding  
18 that Sierra Club's intervention would not unduly complicate or disrupt the proceedings<sup>9</sup> despite  
19 the fact that Sierra Club filing its motion to intervene simultaneous with its first requests for  
20 information virtually assured that, if successful on its motion, the procedural schedule would  
21 have to be delayed, to the prejudice of Big Rivers, who had to begin preparing responses to the  
22 Sierra Club information requests due to the uncertainty of when and whether it would be

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<sup>9</sup> See order dated April 17, 2013, at page 6.

1 required to file its responses. Sierra Club claims that requiring Big Rivers to respond to the  
2 requests for information and then giving Sierra Club time to file supplemental testimony will not  
3 unduly delay the proceedings.<sup>10</sup> But by filing its Motion to Compel two days before its  
4 testimony was due, Sierra Club has once again virtually assured that, if successful on its motion,  
5 the procedural schedule may once again be delayed. This would further prejudice Big Rivers by  
6 further truncating the time in which Big Rivers has to propound its information requests and/or  
7 file rebuttal testimony.

8           20. Sierra Club could have easily filed a motion to compel much earlier. Certain of  
9 the questions that are the subject of the Motion to Compel are almost identical to questions from  
10 Sierra Club's First Requests for Information. For example, SC 2-3 is almost identical to Item 25  
11 of Sierra Club's First Requests for Information. Big Rivers made clear in its responses to Sierra  
12 Club's First Requests for Information that it did not consider information beyond 2016 relevant  
13 and was not providing the irrelevant information. Sierra Club did not file a motion to compel at  
14 that time; instead it chose to wait until two days prior to its testimony being due to file its Motion  
15 to Compel. Having once waived its right to contest Big Rivers not providing the post-2016 data,  
16 Sierra Club should not be rewarded for its ambush tactics by prejudicing Big Rivers with the  
17 equally damaging alternatives of a still-further compressed procedural schedule or yet another  
18 delay in the hearing.

19           WHEREFORE, Big Rivers respectfully requests that the Commission deny Sierra Club's  
20 Motion to Compel.

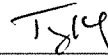
21           On this the 24<sup>th</sup> day of May, 2013.

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<sup>10</sup> See Sierra Club Motion to Compel at page 7.

Respectfully submitted,



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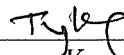
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Counsel for Big Rivers Electric Corporation

**Certificate of Notice**

I certify that a true and accurate copy of the foregoing was served by first class mail, postage prepaid, upon the persons listed on the service list accompanying this response, on this the 24<sup>th</sup> day of May, 2013.



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Tyson Kamuf