

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

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PUBLIC SERVICE
COMMISSION

Via Overnight Mail

June 28, 2013

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

Re: **Case No. 2012-00535**

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of KIUC's MOTION FOR LEAVE TO USE IN THE PUBLIC HEARING INFORMATION FILED UNDER SEAL BY BIG RIVERS ELECTRIC CORPORATION 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.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY

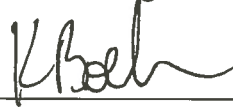
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Attachment

cc: Certificate of Service
Quang Nyugen, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail (when available) and by regular U.S. mail, unless other noted, this 28th day of June, 2013 to the following:



Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.

Mark A Bailey, President CEO
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42419-0024

Honorable Thomas C Brite
Attorney At Law
Brite & Hopkins, PLLC
83 Ballpark Road
P.O. Box 309
Hardinsburg, KY 40143

David Brown, Esq.
Stites & Harbison, PLLC
1800 Providian Center
400 West Market Street
Louisville, KY 40202

Jennifer B Hans
Lawrence W. Cook
Dennis G. Howard, II
Assistant Attorney General's Office
1024 Capital Center Drive, Ste 200
Frankfort, KY 40601-8204

J. Christopher Hopgood
Dorsey, King, Gray, Norment & Hopgood
318 Second Street
Henderson, KY 42420

Burns E Mercer, Manager
Meade County R.E.C.C.
P. O. Box 489
Brandenburg, KY 40108-0489

Honorable James M Miller
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KY 42302-0727

G. Kelly Nuckols
President & CEO
Jackson Purchase Energy Corporation
2900 Irvin Cobb Drive
P. O. Box 4030
Paducah, KY 42002-4030

Billie J Richert
Vice President Accounting, Rates & CFO
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42419-0024

Donald P Seberger
Rio Tinto Alcan
8770 West Bryn Mawr Avenue
Chicago, IL 60631

Melissa D Yates, Esq.
Denton & Keuler, LLP
555 Jefferson Street
P. O. Box 929
Paducah, KY 42002-0929

Gregory Starheim
President and CEO
Kenergy Corp.
Post Office Box 18
Henderson, KY 42419-0018

Edward T. Depp
Dinsmore & Shohl LLP
101 South Fifth Street
Suite 2500
Louisville, KY 40202

Joe Childers
Joe F. Childers & Associates
300 Lexington Building
201 West Short Street
Lexington, KY 40507

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF: THE APPLICATION OF BIG RIVERS : Case No. 2012-00535
ELECTRIC CORPORATION FOR AN ADJUSTMENT OF :
RATES :

**MOTION OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. FOR
LEAVE TO USE IN THE PUBLIC HEARING INFORMATION FILED UNDER SEAL BY
BIG RIVER'S ELECTRIC CORPORATION**

Comes Kentucky Industrial Utility Customers, Inc. ("KIUC") and moves the Kentucky Public Service Commission ("Commission") for leave to use information filed under seal by Big Rivers Electric Corporation, ("Big Rivers") during the public portion of the Evidentiary Hearings beginning on July 1, 2013. The information at issue was filed under seal by Big Rivers per separate Petitions of Big Rivers for Confidential Protection filed on February 28, 2013 and June 24, 2013.

KIUC requests that the Commission allow parties to reference this information of which Big Rivers claims confidential treatment during the hearing without the Commission going into a closed session. Although KIUC does not plan an extensive discussion of Big Rivers' claimed-confidential information, references to such information will likely be frequent enough that going in and out of closed sessions may prove to be disruptive to the hearing process. Further, members of the public that have not signed confidentiality agreements that wish to follow the hearing, either in person or online, would undoubtedly find it difficult to fully understand the issues discussed at the hearing if they are continuously shut out of sessions. KIUC believes that it is important that the Commission and the parties make every effort to make the hearings accessible to the public.

Finally, the information that KIUC seeks permission to discuss in open sessions is not information that is likely to cause Big Rivers competitive harm. Below is a description of the information that KIUC seeks to discuss in an open session:

- **MISO market capacity as projected by Wood-Mackenzie and IHS Global (Exhibit Berry Rebuttal 1)**. This exhibit shows the future value of MISO market capacity as projected by Wood-Mackenzie and IHS Global. The information contained in this Exhibit was purchased by Big Rivers from Wood-Mackenzie and IHS Global. Big Rivers claims that this information is competitively sensitive. This information is not specific to Big Rivers, but rather contains projections of the overall MISO capacity market in future years. It does not relate to Big Rivers, but to the market as a whole. Any individual that wishes to view this information would only need to contract with Wood-Mackenzie and IHS Global in order to obtain identical information. In this sense, it is not treated as confidential for any other reason than to protect the financial interests of Wood-Mackenzie and IHS Global.
- **ACES market price forecast (Exhibit Siewert 2.3, page 1, line 9; page 13, line 9; page 25, line 9)**. Big Rivers' financial model contains redacted future market projections provided to Big Rivers by ACES Power Marketing. Like the MISO market capacity forecasts discussed above, this information pertains to the market as a whole and is not specific to Big Rivers. This information can be obtained by any individual willing to pay ACES for its projections. It is not competitively sensitive and the public disclosure of which will not affect Big Rivers ability to compete in wholesale power markets. Big Rivers does not contend that it is obligated by ACES Power Marketing to keep its market projections confidential.
- **Big Rivers' Current and Projected Expenses and Capital Costs Contained In Its Financial Model and Statement of Operations (Exhibit Siewert-2.3 & 3.3)**. Big Rivers' Financial Model and Statement of Operations contain numerous projections related to Big Rivers' current and future operation and maintenance expenses and environmental and non-environmental capital costs. Big Rivers contends that this information about its "inner workings is generally recognized as confidential" and the disclosure of which could provide an unfair commercial advantage to a third party. KIUC believes that it is extremely unlikely that the public disclosure of Big Rivers' projected O&M and capital costs could ever be used to gain an unfair advantage in the wholesale power market. There are millions of megawatt hours traded every day on the MISO market. It is hard to fathom how any individual could glean an advantage by reviewing the projected O&M expenses of a utility that makes up an extremely small portion of the total MISO market. Big Rivers' request for this information to be treated as confidential appears to be made out of an overabundance of caution rather than some realistic concern that this information could be used by market competitors. The interest in providing the public with a full understanding of Big Rivers' rate requests surely outweighs any remote and speculative chance that an unfair advantage could be derived from the public disclosure of this information.
- **Information relating to negotiations between Big Rivers, Century, and Alcan (Big Rivers Responses to AG 1-171)**. Big Rivers' Responses to AG 1-171 contains correspondence between Big Rivers and the two smelters relating to negotiations for new contracts or market access. This information was certainly confidential prior to the Smelters serving their termination notices. But after the contract termination notices have been sent, pre-termination information holds no competitive value.

Wherefore, KIUC respectfully requests that the Commission allow KIUC and the other parties to reference the information described above during the Evidentiary Hearings that begin on July 3, 2013, without going into a closed session. KIUC does not believe that the disclosure of any of this information will result in a competitive disadvantage to Big Rivers. Any small chance that this information could be used to gain an unfair advantage is outweighed by the public's right to information related to Big River's approximately \$70 million rate request.

Respectfully submitted,



Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513) 421-2764
E-Mail: mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

**COUNSEL FOR KENTUCKY INDUSTRIAL
UTILITY CUSTOMERS, INC.**

June 28, 2013