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June 13, 2014

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

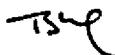
*Also Licensed in Indiana

Re: In the Matter of: 2014 Integrated Resource Plan of Big Rivers Electric Corporation, P.S.C. Case No. 2014-00166

Dear Mr. DeRouen:

Enclosed on behalf of Big Rivers Electric Corporation ("Big Rivers") in the above referenced matter are an original and ten copies of Big Rivers' Response to Kentucky Industrial Utility Customers, Inc.'s Motion for Leave to Respond and Reply of Big Rivers to Kentucky Industrial Customer's Inc.'s Response in Opposition to the Petition of Big Rivers for Confidential Treatment. I certify that on this date, a copy of this letter and attachment were served on the parties listed on the attached service list by regular mail.

Sincerely,



Tyson A. Kamuf

TAK/ej
Enclosures

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**Office of the Attorney General of
the Commonwealth of Kentucky**

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
3
4

5 In the Matter of:

6
7 THE 2014 INTEGRATED RESOURCE PLAN OF) CASE NO. 2014-00166
8 BIG RIVERS ELECTRIC CORPORATION)
9

10
11 **RESPONSE OF BIG RIVERS ELECTRIC CORPORATION TO KENTUCKY**
12 **INDUSTRIAL UTILITY CUSTOMERS, INC.'S MOTION FOR LEAVE TO RESPOND**
13 **AND REPLY OF BIG RIVERS ELECTRIC CORPORATION TO KENTUCKY**
14 **INDUSTRIAL UTILITY CUSTOMERS, INC.'S RESPONSE IN OPPOSITION TO THE**
15 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**
16 **TREATMENT**
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19 1. On June 12, 2014, Kentucky Industrial Utility Customers, Inc. ("KIUC") filed (i)
20 a motion for leave to respond to Big Rivers Electric Corporation's May 15, 2014, petition for
21 confidential treatment, and (ii) a response to that petition. Comes now Big Rivers Electric
22 Corporation ("Big Rivers"), through counsel, and hereby submits its response to KIUC's motion
23 for leave to respond and its reply to KIUC's response.

24 **Big Rivers' Response to KIUC's Motion for Leave to Respond**

25 2. Big Rivers filed its petition for confidential treatment with the Kentucky Public
26 Service Commission ("Commission") on May 15, 2014, and Big Rivers mailed notice of the
27 filing of its 2014 Integrated Resource Plan ("IRP") to KIUC's counsel on or before May 15.
28 KIUC filed its motion to intervene on May 23, 2014, and the Commission granted that motion on
29 May 28, 2014.

30 3. KIUC has offered no valid excuse for why it failed to respond to the petition for
31 confidential treatment within 7 days of the petition being filed, within 7 days of filing its motion
32 to intervene, or even within 7 days of the Commission granting KIUC's motion to intervene.

1 KIUC does claim that it “needed sufficient time [after receiving the unredacted IRP on May 31,
2 2014] to examine Big Rivers’ 114-page 2014 [IRP] and assorted attachments in detail and to
3 compare the redacted information in the 2014 IRP with previous filings made by Big Rivers.”
4 KIUC’s motion at pp. 1-2. However, nothing in the Commission’s regulations provides that a
5 person opposing a petition for confidential treatment must or should have access to the
6 confidential material prior to responding to the petition. Instead, the Commission’s regulations
7 provide that “[a] party may respond to a motion for confidential treatment within seven (7) days
8 after it is filed with the commission.” 807 KAR 5:001 Section 13(e). KIUC has not offered
9 good cause as to why it should be granted leave to file its untimely response, and KIUC’s motion
10 should therefore be denied.

11 4. KIUC’s claim that it “needed time” after receiving the unredacted IRP to review
12 the IRP and associated attachments is without merit. KIUC had access to the redacted IRP in the
13 middle of May. It had plenty of time to review the non-confidential material in the IRP and
14 associated appendices prior to receiving the unredacted IRP. Additionally, the types of
15 information for which Big Rivers sought confidential protection are easily identifiable in the
16 redacted IRP. KIUC has not offered good cause to explain why it waited until after receiving the
17 unredacted IRP before beginning its review. As such, its motion should be denied.

18 5. KIUC has also not offered good cause to explain why it waited more than 7 days
19 after receiving the unredacted IRP prior to filing its response. The confidential information
20 consists of (i) transmission system maps (the confidential treatment of which KIUC does not
21 contest); (ii) resource assessment inputs, outputs, and results (which KIUC does not even
22 mention in its response); (iii) charts and graphs on 5 pages of the IRP; and (v) Big Rivers’ 2013
23 Load Forecast and information about the 2013 Load Forecast. KIUC offers no explanation as to

1 why it could not have reviewed this information within 7 days of receiving the unredacted IRP,
2 especially since KIUC has received much of the confidential information (including the 2013
3 Load Forecast) in previous cases. As such, KIUC has not offered good cause to allow it to file
4 its late response, and its motion should be denied.

5 6. KIUC claims that “no party will be prejudiced by granting KIUC’s Motion for
6 Leave to Respond.” KIUC motion at p. 2. However, Big Rivers is prejudiced by having to
7 expend time and resources to respond to *another* untimely pleading¹ in response to a Big Rivers
8 petition for confidential treatment. For the foregoing reasons, KIUC’s motion should be denied.

9 **Big Rivers’ Reply to KIUC’s Response to the Petition for Confidential Treatment**

10 7. Confidential treatment of the confidential information Big Rivers filed with its
11 2014 IRP should be granted for the reasons stated in Big Rivers’ May 15, 2014, petition for
12 confidential treatment.

13 8. KIUC challenges confidential treatment for three types of information: historical
14 information, projections that KIUC claims are stale, and documents that KIUC claims Big Rivers
15 did not seek to protect as confidential in its 2010 IRP or environmental compliance filings.
16 KIUC’s motion at p. 2. KIUC’s challenges should be rejected for the following reasons.

17 9. The historical information that KIUC references is found on three graphs on pages
18 24-26 of the IRP. Big Rivers is not seeking confidential treatment of this historical information.
19 In fact, the actual historical amounts represented by the graphs are provided publicly in the charts
20 on the same pages as the graphs. However, Big Rivers did redact the entirety of the graphs
21 because it was unable to satisfactorily redact only the portion of the graphs containing projected
22 information.

¹ See, e.g., Big Rivers’ September 20, 2013, response to KIUC’s Motion for Public Disclosure and Request for an Expedited Ruling in Case No. 2013-00199.

1 10. The projections that KIUC claims are stale are projected energy rates provided in
2 a chart on page 50 of the IRP. *See* KIUC's motion at p. 3. KIUC claims these projections are
3 stale because they are based on the rates Big Rivers proposed in Case No. 2013-00199 and the
4 Commission has since approved different rates. However, Big Rivers' projections of its rates
5 provide insight to its competitors in the wholesale power market and to potential power
6 purchasers about Big Rivers' expectations regarding its cost to generate power, which, if
7 publicly disclosed, would put Big Rivers at a competitive disadvantage when competing for
8 wholesale power sales.

9 11. KIUC next argues that confidential treatment should be denied to certain
10 information because Big Rivers filed similar information in its 2010 IRP and did not seek
11 confidential treatment for that type of information in that case. All of the confidential
12 information KIUC lists in this category (see KIUC's response at p. 4) except for the projected
13 rate information, which is addressed above, is taken from Big Rivers' 2011 and 2013 Load
14 Forecasts, while the 2010 IRP was based on Big Rivers' 2009 Load Forecast. Big Rivers has
15 determined that its 2011 Load Forecast was filed publicly in Case No. 2012-00535,² and Big
16 Rivers withdraws its request for confidential treatment of information taken from the 2011 Load
17 Forecast.³

18 12. The 2013 Load Forecast has not been filed publicly, and in fact, Big Rivers
19 sought confidential treatment for the 2013 Load Forecast when it was filed in Case No. 2013-
20 00199.⁴ While Big Rivers did not assert that disclosure of the 2009 and 2011 Load Forecasts

² *See* Big Rivers' response to Item 79 of the Attorney General's First Request for Information in Case No. 2012-00535.

³ This information appears in the "2011 Load Forecast" column of Tables 3.1, 3.2, and 3.3 on pages 24-26 of the 2014 IRP.

⁴ *See* Big Rivers' response to Item 83 of the Attorney General's Second Request for Information in Case No. 2013-00199.

1 would cause it competitive harm, Big Rivers' operations have changed substantially since then,
2 primarily as a result of the smelter contract terminations and the anticipated idling of two .
3 generating stations. Big Rivers is diligently pursuing its plan to mitigate the loss of the smelter
4 load, which includes actively marketing the approximately 800 MW of generating capacity freed
5 up by the smelter contract terminations. Because of this, the projections found in Big Rivers'
6 load forecast have become extremely sensitive. The potential risk to Big Rivers if its
7 competitors are able to use Big Rivers' projections to gain a competitive advantage has been
8 exponentially magnified by the smelter contract terminations, resulting in confidential treatment
9 for the load forecast now being necessary. Confidential treatment for the 2013 Load Forecast
10 should be granted for the reasons stated in Big Rivers' May 15, 2014, petition for confidential
11 treatment.

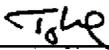
12 13. Finally, KIUC argues that Big Rivers publicly provided information about
13 projected environmental compliance costs in Case No. 2012-00063, and that as a result, the
14 environmental compliance cost projections contained in the 2014 IRP should not be granted
15 confidential protection. However, the projections provided in Case No. 2012-00063 are not the
16 same as the projections provided on page 91 of the 2014 IRP. Big Rivers has treated the
17 environmental compliance costs projections provided in the 2014 IRP as confidential, and public
18 disclosure of that information would provide other participants in the wholesale power market
19 insight into Big Rivers' cost of producing power, putting Big Rivers at a competitive
20 disadvantage for the reasons stated in Big Rivers' May 15, 2014, petition for confidential
21 treatment. Potential contractors or suppliers of materials for the environmental control
22 equipment and potential power suppliers could use the information to manipulate their bids to

1 Big Rivers, which would also put Big Rivers at a competitive disadvantage for the reasons stated
2 in the May 15 petition for confidential treatment.

3 14. Big Rivers requests that the Commission deny KIUC's motion, strike KIUC's
4 response as untimely, and grant Big Rivers' May 15, 2014, petition for confidential treatment.

5 On this the 13th day of June, 2014.

6 Respectfully submitted,
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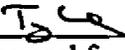
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22 *Counsel for Big Rivers Electric Corporation*
23
24

25 **Certificate of Service**

26
27 I certify that a true and accurate copy of the foregoing was served by Federal Express or
28 by regular mail upon the persons listed on the accompanying service list, on or before the date
29 this document is filed with the Kentucky Public Service Commission.
30

31 On this the 13th day of June, 2014,
32
33

34 
35 _____
Counsel for Big Rivers Electric Corporation