

March 31, 2015

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Via Federal Express

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

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Re: *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2013 through April 30, 2014*
Case No. 2014-00230; and

In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2012 through October 31, 2014
Case No. 2014-00455

Dear Mr. Derouen:

Enclosed for filing in the above-referenced matters are an original and ten (10) copies of Big Rivers Electric Corporation's response to Kentucky Industrial Utility Customers, Inc.'s motion to compel discovery. I certify that on this date, a copy of this letter and a copy of the response were served on each of the persons listed on the attached service list by first-class mail.

Sincerely,



Tyson Kamuf
Counsel for Big Rivers Electric Corporation

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Enclosures

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Service List
PSC Case No. 2014-00230
PSC Case. No. 2014-00455

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In the Matter of:

AN EXAMINATION OF THE APPLICATION)
OF THE FUEL ADJUSTMENT CLAUSE OF)
BIG RIVERS ELECTRIC CORPORATION) Case No. 2014-00230
FROM NOVEMBER 1, 2013 THROUGH)
APRIL 30, 2014)

AN EXAMINATION OF THE APPLICATION)
OF THE FUEL ADJUSTMENT CLAUSE OF)
BIG RIVERS ELECTRIC CORPORATION) Case No. 2014-00455
FROM NOVEMBER 1, 2012 THROUGH)
OCTOBER 31, 2014)

**BIG RIVERS ELECTRIC CORPORATION’S RESPONSE TO KENTUCKY
INDUSTRIAL UTILITY CUSTOMERS, INC.’S MOTION TO COMPEL DISCOVERY**

Comes Big Rivers Electric Corporation (“Big Rivers”), by counsel, and for its response
to the Motion to Compel Discovery filed by Kentucky Industrial Utility Customers, Inc.
 (“KIUC”) on March 26, 2015, states as follows.

KIUC’s Motion to Compel Discovery requests the Public Service Commission
 (“Commission”) to compel Big Rivers to respond to Item 1 of KIUC’s Request for Information
 (“KIUC 1-1”), which requests Big Rivers to perform calculations comparing the fuel cost
 included in the fuel adjustment clause (“FAC”) calculation in each month of the two-year review
 period to the fuel cost that would have been included in Big Rivers’ FAC in each of those
 months had Big Rivers allocated its lowest fuel cost generation to native load sales.¹ KIUC 1-1
 requests that Big Rivers perform these calculations in the same manner as Big Rivers performed

¹ KIUC Motion to Compel Discovery at p. 1.

1 the calculations for its response to Item 3 of the Commission Staff's Third Request for
2 Information in Case No. 2014-00230 ("PSC 3-1").²

3 Big Rivers objected to KIUC 1-1 on the grounds that it was overly broad and unduly
4 burdensome.³ The burden required to respond to KIUC 1-1 is unreasonable given that the
5 requested information would only be relevant if (1) the Commission determined that Big Rivers'
6 fuel practices were unreasonable during the period under review; (2) that a refund is appropriate;
7 and (3) the refund should be based on the methodology Big Rivers used in responding to PSC 3-
8 1.

9 PSC 3-1 asked Big Rivers to compare its actual FAC amounts for the six-month period
10 under review at that time to the FAC amounts that would have resulted had Big Rivers allocated
11 its lowest fuel cost generation to native load customers on an hourly basis.⁴ Big Rivers
12 explained in response that it did not have the processes in place to perform the requested
13 calculations.⁵ Instead, Big Rivers provided an estimate of the impact of switching
14 methodologies by allocating to native load on an hourly basis the least cost units based on the
15 units' monthly average costs and then applying the cost differential per MWh to FAC generation
16 volumes used to serve native load.⁶

17 Interestingly, the methodology Big Rivers employed in responding to PSC 3-1 is quite
18 different from the methodology proposed by KIUC. So, even if the Commission determines that
19 not using KIUC's proposed methodology during the review period was unreasonable and that a
20 refund is appropriate, a response to KIUC 1-1 would not give the difference (or anything close to
21 the difference) between what the FAC amounts actually were and what those amounts would

² *Id.*

³ Big Rivers' response to KIUC 1-1.

⁴ PSC 3-1.

⁵ Big Rivers' response to PSC 3-1.

⁶ *Id.*

1 have been under KIUC’s methodology. In fact, KIUC’s proposal that Big Rivers “allocate its
2 incremental fuel costs to off-system sales”⁷ could very well result in FAC charges higher than
3 under Big Rivers’ current methodology.⁸

4 The monthly cost methodology Big Rivers used in its response to PSC 3-1 is also
5 different than the hourly stacked cost methodology Big Rivers plans to propose as part of its next
6 base rate proceeding, which Big Rivers expects to file in 2016. As explained in its response to
7 PSC 3-1, Big Rivers does not currently have the tools necessary to perform the hourly stacked
8 cost allocation requested in that question. However, Big Rivers is in the process of developing
9 the necessary software as part of that next base rate case. This is a significant undertaking.
10 While Big Rivers expects to have the necessary processes developed prior to 2016, it does not
11 currently have the tools necessary to determine the difference between the FAC amounts in the
12 review period and what those amounts would have been had Big Rivers employed an hourly
13 stacked cost approach.

14 KIUC asserts in its Motion to Compel Discovery that “Big Rivers’ current method is not
15 used by any other utilities in Kentucky.”⁹ KIUC fails to realize that no two generating utilities in
16 Kentucky (with the exception of post-merger Kentucky Utilities Company and Louisville Gas &
17 Electric Company) utilize the same allocation methodology. KIUC also fails to realize that no
18 other utility in Kentucky uses the monthly cost methodology that Big Rivers used in responding
19 to PSC 3-1.

20 Thus, the monthly cost methodology Big Rivers used in its response to PSC 3-1 is
21 different than the methodology proposed by KIUC, it is different from the hourly stacked cost
22 methodology Big Rivers will propose in its next rate case, and it is different than the hourly

⁷ KIUC Motion to compel Discovery at p. 2.

⁸ Big Rivers’ post-hearing brief in Case No. 2014-00230.

⁹ KIUC Motion to Compel Discovery at p. 3.

1 stacked cost methodologies used by other utilities. Absent findings from the Commission that
2 Big Rivers' current methodology is unreasonable and that, despite these differences in
3 methodologies, the methodology Big Rivers used in its response to PSC 3-1 should be used by
4 Big Rivers to allocate fuel costs, a response to KIUC 1-1 is unnecessary and is thus an undue
5 burden.

6 Compelling a response to KIUC 1-1 is all the more unreasonable when the amount of
7 time required for the response is taken into account. The calculations Big Rivers performed for
8 its response to PSC 3-1 cover six months of the two-year review period for which KIUC 1-1
9 requests calculations. Except for those six months, the information requested by KIUC 1-1
10 would require an unreasonable amount of new work. The calculations for the six months
11 covered by PSC 3-1 required Big Rivers' personnel approximately 20 hours to perform, and Big
12 Rivers estimates that the calculations for the remainder of the two-year period covered by KIUC
13 1-1 will require an additional 40 to 60 hours to perform. Big Rivers believes such a request is
14 overly broad and unduly burdensome.

15 KIUC argues in its Motion to Compel Discovery that it "is entitled to a response to
16 [KIUC 1-1] under Rule 26.02(1)" of the Kentucky Rules of Civil Procedure ("CR").¹⁰ But CR
17 26.02¹¹ clearly does not allow one party to require another party to respond to any question
18 regardless of the burden. In fact 26.03(1) expressly provides that "the court . . . may make any
19 order which justice requires to protect a party or person from annoyance, embarrassment,
20 oppression, or undue burden or expense, including one or more of the following: (a) that the

¹⁰ *Id.*

¹¹ Although CR 26.02 does not govern Commission proceedings, the Commission has relied on it as persuasive authority: "KRS 278.310 provides that the Commission is not bound by the technical rules of legal evidence, and the applicability of the Kentucky Rules of Civil Procedure [] is limited to civil actions in the Court of Justice. However, in adjudicating discovery disputes of this nature, we find it appropriate to consider CR 26.02(1), which delineates the scope of discovery in judicial proceedings." Order dated September 1, 2011, in *In the Matter of: Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162.

1 discovery not be had”¹² The Commission, too, has exercised its authority to limit unduly
2 burdensome information requests.¹³ Therefore, CR 26.02 does not entitle KIUC to compel
3 responses to unduly burdensome requests.

4 KIUC asserts in its Motion to Compel Discovery that it is “arbitrary and unreasonable”
5 for Big Rivers to object to KIUC 1-1 since Big Rivers did not object to PSC 3-1.¹⁴ Big Rivers
6 did not comprehend the extent of the work that would be required when it began preparing the
7 response to PSC 3-1. Once the extent of the burden had become clear, Big Rivers had already
8 devoted significant time to the response, and it made sense to finish the task. Moreover, the
9 response to KIUC 1-1 is expected to require two to three times as much work as the response to
10 PSC 3-1. Since the burden of responding to KIUC 1-1 is expected to be so much greater than the
11 burden of responding to PSC 3-1, the fact that Big Rivers did not object to PSC 3-1 should not be
12 determinative of whether Big Rivers should be required to respond to KIUC 1-1.

13 KIUC argues in its Motion to Compel Discovery that Big Rivers had 14 days to prepare a
14 response to KIUC 1-1 and could have requested an extension of time.¹⁵ But Big Rivers’
15 objection is not about the length of time it had to prepare a response; its objection is that the
16 burden required to respond to the question is unreasonable.

17 Finally, Big Rivers does not believe that its current methodology is unreasonable, that
18 forcing Big Rivers to adopt a different methodology outside of a general rate case would be

¹² CR 26.03(1); *see also Com., Cabinet for Health & Family Servs. v. Chauvin*, 316 S.W.3d 279, 306 (Ky. 2010) (“To further protect the Cabinet’s KASPER data, however, the Court of Appeals, invoked CR 26.03, which permits the courts to fashion protective orders in order to prevent discovery from becoming unduly burdensome”).

¹³ *See, e.g.,* Order dated October 24, 2007, in *In the Matter of: The Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main*, Case No. 2007-00134 (“We find that LWC’s objection to producing the documents should be overruled, but that the production of documents should be limited . . . producing a listing of all projects and their production schedules, even for the smallest of projects, is excessive and unduly burdensome”).

¹⁴ KIUC Motion to Compel Discovery at p. 3.

¹⁵ *Id.* at pp. 3-4.

1 reasonable, or that a refund would be appropriate. As explained in Big Rivers’ post-hearing brief
2 in Case No. 2014-00230, Big Rivers has used system average fuel costs in its FAC for a number
3 of years, it used system average fuel costs in its last three rate cases, and the Commission has
4 approved the use of the system average fuel costs.¹⁶ Big Rivers’ continued use of system
5 average fuel costs is thus a reasonable methodology.

6 KIUC claims that “Big Rivers’ current method . . . was expressly rejected by the
7 Commission in a previous Order.”¹⁷ This claim is blatantly false. In Case No. 94-458-A, the
8 Commission explained that “Big Rivers uses system average fuel cost to allocate fuel costs
9 among its native load customers and firm off-system customers. It uses incremental costs,
10 however, to allocate fuel costs to non-firm off-system sales.”¹⁸ The Commission found this use
11 of system average fuel costs to be reasonable.¹⁹ Although Big Rivers generally used incremental
12 costs to allocate fuel costs to non-firm off-system sales at that time, Big Rivers also used system
13 average fuel costs to allocate fuel costs to non-firm off-system sales when Big Rivers’ Energy
14 Management System was not functioning properly, and the Commission also found this use of
15 system average fuel cost to be reasonable.²⁰ What the Commission rejected was KIUC’s claim
16 that Big Rivers should be forced to use system average fuel costs in all cases. But the
17 Commission did not find that using system average in all cases would be unreasonable.

¹⁶ Big Rivers’ post-hearing brief in Case No. 2014-00230.

¹⁷ KIUC Motion to Compel Discovery at p. 3.

¹⁸ Order dated June 19, 1996, in *In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1994 to April 30, 1995*, Case No. 94-458-A, at p. 2; see also Order dated March 5, 1996, in *In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1992 to October 31, 1994*, Case No. 94-458.

¹⁹ See Order dated June 19, 1996, in *In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1994 to April 30, 1995*, Case No. 94-458-A, at pp. 2-5.

²⁰ See *id.* at p. 5.

Certificate of Service

I certify that a true and accurate copy of the foregoing was served by regular mail upon the persons listed on the accompanying service list, on or before the date the foregoing is filed with the Kentucky Public Service Commission.

On this the 31st day of March, 2015,

EBP
Counsel for Big Rivers Electric Corporation

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