June 27, 2018

VIA OVERNIGHT DELIVERY

Ms. Gwen R. Pinson
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: In the Matter of: Notice of Termination of Contracts and Application of Big Rivers Electric Corporation for a Declaratory Order and for Authority to Establish a Regulatory Asset—Case No. 2018-00146

Dear Ms. Pinson:

Enclosed for filing in the above-referenced matter are an original and ten (10) copies of Big Rivers Electric Corporation’s Motion to Amend the Procedural Schedule. I certify that, on this date, copies of this letter and all attachments were served on each of the persons listed on the attached service list by electronic mail.

Please confirm the Commission’s receipt of this information by placing the Commission’s date stamp on the enclosed additional copy and returning it to Big Rivers in the self-addressed, postage paid envelope provided; and please feel free to contact me with any questions you may have about this filing.

Sincerely,

Tyson Kamuf
Corporate Attorney,
Big Rivers Electric Corporation
BIG RIVERS ELECTRIC CORPORATION

NOTICE OF TERMINATION OF CONTRACTS AND APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR A DECLARATORY ORDER AND FOR AUTHORITY TO ESTABLISH A REGULATORY ASSET

CASE NO. 2018-00146

Service List

Hon. Kent A. Chandler
Hon. Rebecca W. Goodman
Assistant Attorneys General
700 CAPITAL AVE., SUITE 20
FRANKFORT KY 40601-8204
Kent.Chandler@ky.gov
Rebecca.Goodman@ky.gov

Hon. Michael L. Kurtz
Hon. Kurt J. Boehm
Hon. Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 E. Seventh St., Suite 1510
Cincinnati, OH 45202-4454
MKurtz@BKLlawfirm.com
KBoehm@BKLlawfirm.com
JKylerCohn@BKLlawfirm.com

Hon. Allyson Steele Beridon
Branstetter, Stranch & Jennings, PLLC
3142 Losantiville Avenue, Suite A
Cincinnati, OH 45213-1393
alysonb@bsjffirm.com
COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

NOTICE OF TERMINATION OF )
CONTRACTS AND APPLICATION OF BIG )
RIVERS ELECTRIC CORPORATION FOR A ) Case No.
DECLARATORY ORDER AND FOR ) 2018-00146
AUTHORITY TO ESTABLISH A )
REGULATORY ASSET )

MOTION OF BIG RIVERS ELECTRIC CORPORATION TO AMEND THE
PROCEDURAL SCHEDULE

Comes Big Rivers Electric Corporation ("Big Rivers"), by counsel, and

respectfully moves the Kentucky Public Service Commission ("Commission") for an

order amending the procedural schedule in this matter. In support of this motion,

Big Rivers states as follows:

The Commission established a procedural schedule by order dated June 1,

2018, and amended the procedural schedule by order dated June 13, 2018. Both the

original and the amended procedural schedule allow for intervenors to file

testimony, but neither procedural schedule allows for Big Rivers to file rebuttal

testimony.

The Attorney General, Kentucky Industrial Utility Customers, Inc. ("KIUC")

and IBEW Local 1701 have filed motions to intervene. The Commission has

granted the Attorney General and KIUC's motions to intervene, and IBEW Local

1701's motion is pending.

Big Rivers should be given the opportunity to respond to any allegations or

arguments the Attorney General or KIUC make in their testimonies or responses to
information requests. KIUC, for example, has indicated that it will argue (i) that Big Rivers should be required to write off (instead of deferring in a regulatory asset as Big Rivers has requested) the approximately $89.6 million undepreciated asset that Big Rivers has on its books related to Station Two; and (ii) if Big Rivers is allowed to defer that amount in a regulatory asset, that regulatory asset should be offset by “all non-variable Station Two costs (except debt service and TIER) currently being recovered in base rates and the environmental surcharge, not just depreciation.” Reply of KIUC at pp. 5-6. KIUC’s proposed write off could have significant negative consequences to Big Rivers, its ability to borrow money, and its ability to regain its investment grade credit ratings, and Big Rivers should be given the opportunity to present evidence on the financial impact to Big Rivers of having to take the write off proposed by KIUC. Big Rivers should similarly be given the opportunity to dispute the reasonableness and fairness of KIUC’s proposal that Big Rivers be required to offset the regulatory asset with all non-variable Station Two costs, to explain the consequences of such a proposal, and to refute any estimates or calculations of such amounts that KIUC may assert.

Big Rivers renews its objection to the motion to intervene filed by IBEW Local 1701 for the reasons stated in Big Rivers’ response to that motion filed on June 15, 2018. But in the event IBEW Local 1701 is permitted to intervene, Big Rivers should likewise have an opportunity to respond to any allegations or arguments it makes. Due process requires that Big Rivers be given the opportunity to present evidence to rebut the intervenors’ testimony and responses to
information requests, just as the intervenors are given an opportunity to offer
testimony in response to Big Rivers' application and responses to information
requests. See Util. Regulatory Comm'n v. Kentucky Water Serv. Co., 642 S.W.2d
591, 593 (Ky. App. 1982) ("Due process requires, at a minimum, that persons forced
to settle their claims of right and duty through the judicial process be given a
meaningful opportunity to be heard. It has been said that no hearing in the
constitutional sense exists where a party does not know what evidence is considered
and is not given an opportunity to test, explain or refute....Indeed, the Due Process
Clause forbids any agency to use evidence in a way that forecloses an opportunity to
offer a contrary presentation") (citations omitted); Mayfield Gas Co. v. Pub. Serv.
Comm'n, 259 S.W.2d 8, 10–11 (Ky. 1953) ("In Wisconsin Telephone Co. v. Public
Service Commission, 232 Wis. 274, 287 N.W. 122, 593, a 'formal hearing' was
considered as analogous to a common law hearing and held to include: (1) the right
to seasonably know the charges; (2) the right to meet such charges by competent
evidence; and (3) the right to be heard by counsel upon the probative force of the
evidence adduced by both sides, and upon the law applicable thereto"); Am. Beauty
Homes Corp. v. Louisville & Jefferson Cty. Planning & Zoning Comm'n, 379 S.W.2d
450, 456 (Ky. 1964) ("Administrative proceedings affecting a party's rights which
did not afford an opportunity to be heard could likewise be classified as arbitrary");
In the Matter of: Application of Big Rivers Electric Corporation for a General
Adjustment in Rates, Order, P.S.C. Case No. 2011-00036 (Apr. 12, 2012) at p. 2 ("To
ensure that due process is afforded all parties by allowing them an adequate
opportunity to present evidence and arguments on all of the issues now being investigated in this rehearing, the procedural schedule will be revised, as discussed below”).

WHEREFORE, Big Rivers respectfully requests that the Commission enter an order amending the procedure schedule to allow Big Rivers to file rebuttal testimony on or before August 31, 2018.
On this the 27th day of June, 2018.

Respectfully submitted,

Laura Chambliss
Tyson Kamuf
Big Rivers Electric Corporation
201 Third Street
P.O. Box 727
Henderson, Kentucky 42419-0024
Phone: (270) 827-2561
Facsimile: (270) 827-1201
laura.chambliss@bigrivers.com
tyson.kamuf@bigrivers.com

James M. Miller
SULLIVAN MOUNTJOY, PSC
100 St. Ann Street
P. O. Box 727
Owensboro, Kentucky 42302-0727
Phone: (270) 926-4000
Facsimile: (270) 683-6694
jmiller@smsmlaw.com

Norman T. Funk
Thomas J. Costakis
KRIEG DEVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
Phone: (317) 636-4341
Facsimile: (317) 636-1507
tfunk@kdlegal.com
tcostakis@kdlegal.com

Counsel for Big Rivers Electric Corporation