

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC
ATTORNEYS AT LAW

Ronald M. Sullivan
Jesse T. Mountjoy
Frank Stainback
James M. Miller
Michael A. Fiorella
Allen W. Holbrook
R. Michael Sullivan
Bryan R. Reynolds
Tyson A. Kamuf
Mark W. Starnes
C. Ellsworth Mountjoy
Susan Montalvo-Gesser

September 14, 2010

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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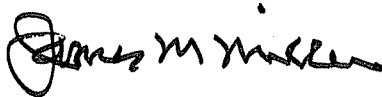
**PUBLIC SERVICE
COMMISSION**

Re: In the Matter of: Application of Big Rivers Electric Corporation
for Approval to Transfer Functional Control of Its Transmission
System to Midwest Independent Transmission System
Operator, Inc., PSC Case No. 2010-00043

Dear Mr. DeRouen:

Enclosed for filing in this case on behalf of Big Rivers Electric Corporation ("Big Rivers") is the supplemental testimony of C. William Blackburn. Mr. Blackburn's supplemental testimony presents and explains the "Stipulation and Agreement" signed by the parties, which is attached as an Exhibit CWB Supplemental-1 to his supplemental testimony. The Stipulation and Agreement settles the issues between and among the parties in this matter, and is presented for approval by the Public Service Commission. The original signature pages of counsel for the Attorney General, Kentucky Industrial Utility Customers Inc. and Midwest Independent Transmission System Operators, Inc., will be filed Wednesday, September 15, 2010. I certify that a copy of this letter and enclosures has been served on each party on the attached service list.

Sincerely yours,



James M. Miller

JMM/ej
Enclosures

cc: David Crockett
Albert Yockey
Douglas Beresford
John Lilyestrom

Telephone (270) 926-4000
Telecopier (270) 683-6694

100 St. Ann Building
PO Box 727
Owensboro, Kentucky
42302-0727

Service List
Case No. 2010-00043

Keith L. Beall
Gregory A. Troxell
Midwest ISO, Inc.
701 City Center Drive
P.O. Box 4202
Carmel, Indiana 46082-4202

Mark David Goss
Frost Brown Todd LLC
Suite 2800
250 West Main Street
Lexington, KY 40507-1749

David C. Brown, Esq.
STITES & HARBISON
1800 Providian Center
400 West Market Street
Louisville, Kentucky 40202

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

Hon. Dennis G. Howard, II
Hon. Lawrence W. Cook
Assistant Attorneys General
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

1 COMMONWEALTH OF KENTUCKY

2
3 BEFORE THE PUBLIC SERVICE COMMISSION

4
5 In the Matter of:

6
7 Application of Big Rivers Electric)
8 Corporation for Approval to Transfer)
9 Functional Control of Its Transmission) CASE NO. 2010-00043
10 System to Midwest Independent)
11 Transmission System Operator, Inc.)

12
13 SUPPLEMENTAL TESTIMONY OF C. WILLIAM BLACKBURN
14 IN SUPPORT OF STIPULATION AND AGREEMENT
15 September 13, 2010
16

17 **Q. Please state your name and position.**

18
19 A. My name is C. William Blackburn. I am the Big Rivers Electric Corporation
20 (“Big Rivers”) Senior Vice President Financial and Energy Services and Chief Financial Officer.
21 I am the same C. William Blackburn who filed testimony attached as Exhibit 3 to the
22 Application in this matter.
23

24 **Q. What is the purpose of your testimony?**

25
26 A. The purpose of my testimony is to introduce a document titled “Stipulation and
27 Agreement,” by which the parties in this case have reached agreement on the fundamental issue
28 presented by Big Rivers’ Application, and have made certain mutual agreements on other
29 matters. I will also describe briefly the process by which the Stipulation and Agreement was
30 negotiated. The purposes of the Stipulation and Agreement are to demonstrate to the Public

1 Service Commission (“Commission”) that the parties do not oppose Big Rivers’ membership in
2 the Midwest ISO, and to avoid a protracted hearing in this case.

3

4 **Q What was your role in the negotiation of the Stipulation and Settlement?**

5

6 A. I have been involved on behalf of Big Rivers in all of the business negotiations
7 regarding the Stipulation and Agreement.

8

9 **Q. Please describe how the Stipulation and Agreement came to be.**

10

11 A. Big Rivers has been unequivocal in its dealings with the Midwest ISO, and in
12 numerous statements made in the Application, pleadings and responses to information requests
13 in this proceeding, that Big Rivers proposes to transfer functional control of its transmission
14 system to the Midwest ISO, and to become a member of the Midwest ISO, principally to resolve
15 its regulatory and operational needs to have Contingency Reserve Service to operate its system in
16 accordance with NERC’s Contingency Reserve rules. Joining the Midwest ISO has the potential
17 to be quite expensive, although, as the testimony shows, there could also be considerable
18 offsetting benefits to Midwest ISO membership. So Big Rivers, its members and the energy-
19 intense aluminum companies (“Smelters”) who are affected by Big Rivers’ costs have conducted
20 an exhaustive search for a way to satisfy Big Rivers’ Contingency Reserve requirement by an
21 alternate means.

22 Prior to the filing of the Application, and over the course of this proceeding, Big Rivers
23 and the Smelters met on several occasions to discuss options to address the Contingency Reserve

1 issue. The most recent meeting occurred on August 19, 2010, with representatives of KIUC,
2 including the Smelters. At that meeting all parties agreed that there is no reasonable alternative
3 to Midwest ISO membership to solve Big Rivers' Contingency Reserve requirement on a timely
4 basis. During that meeting and subsequently, Big Rivers and KIUC have discussed issues that
5 Big Rivers' Midwest ISO membership raises for the KIUC, potential opportunities created by
6 that membership and how Big Rivers might give some comfort regarding issues that concern
7 KIUC, including the Smelters. The results of those discussions, which concluded on September
8 10, 2010, are memorialized in the terms of the Stipulation and Agreement attached to this
9 supplemental testimony as Exhibit CWB Supplemental 1. Subsequent to Big Rivers and KIUC
10 reaching agreement, the draft Stipulation and Agreement was submitted to the Attorney General
11 and the Midwest ISO, the other parties in this proceeding, who have now signed the Stipulation
12 and Agreement.

13

14 **Q. Have the parties to the Stipulation and Agreement recommended that the**
15 **Commission authorize Big Rivers to transfer functional control of its transmission system**
16 **to the Midwest ISO, as Big Rivers requested in the Application?**

17

18 A. Yes. In paragraph number 1 of the Stipulation and Agreement, the parties agree
19 that the Commission should approve Big Rivers transferring functional control of its
20 transmission system to the Midwest ISO in accordance with the statutory requirements under
21 which the Application was filed by Big Rivers.

22

1 **Q. Which paragraphs of the Stipulation and Agreement contain the substantive**
2 **agreements between Big Rivers and KIUC?**

3
4 A. Paragraphs 2, 3, 4 and 5 of the Stipulation and Agreement contain what could be
5 considered the substantive agreements reached between Big Rivers and KIUC.

6
7 **Q. Please explain the nature of the agreements found in paragraph numbers 2**
8 **and 3 of the Stipulation and Agreement.**

9
10 A. In response to Commission Staff Information Request 1-17, and KIUC Data
11 Request 2-13, Big Rivers expressed the view that it could flow certain Midwest ISO costs
12 through the Purchase Power Adjustment mechanisms in the wholesale power supply contracts
13 related to smelter retail service, known as the Non-FAC PPA, and the Purchase Power regulatory
14 asset authorized by the Commission in its March 6, 2009 Order in Case No. 2007-00455, also
15 known as the Big Rivers “unwind transaction” case. Big Rivers’ subsequent research disclosed
16 that FERC accounting requires that those costs be accounted for in accounts that are different
17 from the accounts incorporated in those Purchase Power Adjustment mechanisms. To allay
18 KIUC’s concerns that Big Rivers was still considering using the Non-FAC PPA to recover
19 Midwest ISO administrative costs or FERC fees, and to clarify the record in this case as to Big
20 Rivers’ intentions, Big Rivers agreed to paragraph numbers 2 and 3 of the Stipulation and
21 Agreement.

1 **Q. Are there other agreements in the Stipulation and Agreement related to how**
2 **Big Rivers will seek to recover the costs incurred by it as a member of the Midwest ISO?**

3
4 A. Yes. In paragraph number 4 of the Stipulation and Agreement, Big Rivers agrees
5 to seek amendment of the wholesale power supply contracts related to smelter service to exclude
6 from the contractual Tier Adjustment Charge contained in Section 4.7 of those wholesale power
7 agreements all costs allocated to Big Rivers under the Midwest ISO Transmission Expansion
8 Plan, which is usually referred to as “MTEP.” Big Rivers views these costs as system costs
9 which should, in the future, be allocated among all classes of Big Rivers’ ratepayers. Without
10 the contract amendments, the Smelters could be required to pay 100% of those costs under the
11 Tier Adjustment Charge, to the extent that the Tier Adjustment Charge is below the ceiling
12 imposed in the contracts.

13
14 **Q. What agreements are contained in the Stipulation and Agreement relating to**
15 **opportunities created by Midwest ISO membership?**

16
17 A. As the Commission knows, one of the alternatives considered by Big Rivers as a
18 potential element of a plan to satisfy its NERC Contingency Reserve requirement is to
19 incorporate up to 320 megawatts of power committed to the Smelters under the Smelter-related
20 wholesale power contracts that the Smelters thought they could make available on an
21 interruptible basis. While no viable, comprehensive plan incorporating smelter interruptible
22 power could be achieved, Midwest ISO membership may present an opportunity to take
23 advantage of the Smelters’ ability and willingness to interrupt a portion of their smelting process

1 and thereby curtail their respective loads for a brief period. Big Rivers has agreed, as provided
2 in paragraph number 5, to work with the Smelters to explore and implement plans for the
3 Smelters to sell demand response service, and perhaps provide back-up service that would allow
4 Big Rivers to sell its spinning reserves. At this point we have done little more than identify these
5 subjects for investigation, and do not know what physical, contractual, legal or regulatory issues
6 might need to be solved to make either of these concepts a reality. Big Rivers' commitment is to
7 work with the Smelters to see if either of these ideas is viable, and can be accomplished without
8 detriment to Big Rivers or its members. Big Rivers has also agreed to investigate whether the
9 demand response arrangements can be feasibly extended to the Large Industrial customers on its
10 member's systems.

11

12 **Q. Are there any other substantive agreements in the Stipulation and**
13 **Agreement?**

14

15 A. No. Paragraph No. 6 was added to clarify that nothing in the Stipulation and
16 Agreement is intended to constitute a waiver by Big Rivers of its rate options for recovery of
17 Midwest ISO costs, except as expressly provided in the Stipulation and Agreement, and that the
18 other parties to the Stipulation and Agreement are not waiving their rights to object to the
19 lawfulness or reasonableness of any rate methodology Big Rivers may propose to collect those
20 costs. But that paragraph just states what the parties believe is the case in any event.

21

22 **Q. Please explain the purpose of paragraph number 7 of the Stipulation and**
23 **Agreement.**

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A. This paragraph explains that the agreement of the parties to this Stipulation and Agreement is conditioned upon the Stipulation and Agreement being approved by the Commission without material change or condition unacceptable to any affected party. The paragraph then sets forth a resolution mechanism for dealing with any material change or condition imposed by the Commission that is unacceptable to an affected party. The purpose of this paragraph is to make sure each party gets the benefit of its bargain, and to give the parties a procedure by which they can attempt to restructure their agreement if the Commission does not accept the Stipulation and Agreement as proposed.

Q. Please explain the purpose of paragraph number 8 of the Stipulation and Agreement.

A. Our understanding is that the Commission requires that all agreements of a party in connection with the settlement be included in the settlement agreement. The settlement of the issues presented to the Commission for decision in this case is contained in Paragraphs 1 and 2 of the Stipulation and Agreement. Paragraphs 3 through 5 of the Stipulation and Agreement contain other substantive agreements between or among two or more of the parties that are collateral to the issues presented to the Commission by Big Rivers in its Application, but are included for purposes of full disclosure. By “collateral,” I mean that the issues on which the parties reached agreement in Paragraphs 3 through 5 of the Stipulation and Agreement are not presented to the Commission for decision in this case, and do not have to be resolved by the Commission to decide the issue of whether Big Rivers should be permitted to transfer functional

1 control of its transmission system to the Midwest ISO. Even if the Commission does not
2 approve the Stipulation and Agreement as a part of this case, so long as Big Rivers transfers
3 functional control of its transmission system to the Midwest ISO under authority granted by the
4 Commission in this case, all the agreements in this Stipulation and Agreement will still be
5 enforceable contractual obligations of the Parties.

6

7 **Q. Should the Stipulation and Agreement be accepted and approved by the**
8 **Public Service Commission?**

9

10 A. Yes. Paragraphs 1 and 2 of the Stipulation and Agreement contain the well-
11 informed conclusions of the parties that the relief requested by Big Rivers in the Application
12 should be granted. The contractual agreements between and among the parties in Paragraphs 3
13 through 5 incorporate concepts the parties have discussed relating to how they will deal with
14 collateral issues raised by Big Rivers' anticipated membership in the Midwest ISO. Big Rivers
15 believes that its obligations in those agreements are reasonable. It was under no compulsion to
16 make any of those agreements. Big Rivers urges the Commission to accept the Stipulation and
17 Agreement, and make the Stipulation and Agreement a part of its order in this matter.

18

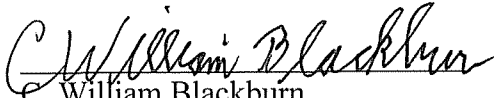
19 **Q. Does this conclude your supplemental testimony?**

20

21 A. Yes.


1
2 **VERIFICATION**
3

4 I verify, state, and affirm that I prepared or supervised the preparation of my
5 Supplemental Testimony filed with this verification, and that this Supplemental Testimony is
6 true and accurate to the best of my knowledge, information, and belief formed after a reasonable
7 inquiry.
8

9
10 
11 C. William Blackburn
12

13
14 COMMONWEALTH OF KENTUCKY)
15 COUNTY OF HENDERSON)
16

17 SUBSCRIBED AND SWORN TO before me by C. William Blackburn on this the 13th
18 day of September, 2010.
19

20 
21 _____
22 Notary Public, Ky. State at Large
23 My Commission Expires 03-03-2014
24

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Application of Big Rivers Electric)
Corporation for Approval to Transfer)
Functional Control of Its Transmission) Case No. 2010-00043
System to Midwest Independent)
Transmission System Operator, Inc.)

STIPULATION AND AGREEMENT

Applicant, Big Rivers Electric Corporation ("Big Rivers"), and intervenors Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"), Kentucky Industrial Utility Customers, Inc. ("KIUC") and the Attorney General of the Commonwealth of Kentucky ("Attorney General"), Big Rivers, Midwest ISO, KIUC and the Attorney General being all the parties to this proceeding (each, a "Party," and collectively, the "Parties"), stipulate and agree as follows pursuant to 807 K.A.R. 5:001, Section 4(6):

1. The proposal of Big Rivers to transfer functional control of its transmission system to Midwest ISO is for a proper purpose and consistent with the public interest under KRS 278.218(2), and should be approved by the Public Service Commission ("Commission").
2. Big Rivers' application in this proceeding does not seek authorization from the Commission to recover any Midwest ISO administrative costs or Federal Energy Regulatory Commission

("FERC") fees, for which it becomes obligated (currently charged under Schedules 10, 16 and 17 to the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff ("Midwest ISO Tariff")), through the Non-FAC Purchased Power Adjustment mechanisms in its wholesale power supply contracts.

3. Big Rivers will not attempt to recover any Midwest ISO administrative costs or FERC fees, for which it becomes obligated (currently charged under Schedules 10, 16 and 17 to the Midwest ISO Tariff), through the Non-FAC Purchased Power Adjustment mechanisms in its wholesale power supply contracts.

4. Big Rivers and KIUC, on behalf of Alcan Primary Products Corporation ("Alcan") and Century Aluminum of Kentucky General Partnership ("Century," and Alcan and Century collectively, the "Smelters"), agree that Big Rivers agrees to amend the July 16, 2009 Smelter-related wholesale power agreements with Kenergy Corp. to exclude from the contractual Tier Adjustment Charge contained in Section 4.7 of those wholesale power agreements all costs allocated to Big Rivers under the Midwest ISO Transmission Expansion Plan ("MTEP")(currently charged under Midwest ISO Schedule 26), and agrees to seek approval of such amendments. Such amendments shall become effective with the effective date of the order of the Commission in the next general base rate case filed by Big Rivers. In

that rate case or in any other proceeding, Big Rivers will propose to allocate MTEP costs as a system cost among all classes of Big Rivers' ratepayers: Rural, Large Industrial and Smelter.

5. Big Rivers agrees with KIUC that Big Rivers will work with Century and Alcan to explore and implement plans for the Smelters to sell demand response service (including regulation service) to Midwest ISO, and for Big Rivers to sell its spinning reserves into the Midwest ISO ancillary services market with the Smelters providing back-up through curtailment of their respective loads, provided that (i) Big Rivers is not required to assist with or agree to any such arrangements that may adversely affect Big Rivers' or its members' operations, finances or existing contractual relationships, and (ii) any such arrangements must receive all necessary regulatory, creditor and other approvals. Subject to those approvals, such arrangements may be directly with Midwest ISO or with Big Rivers acting as agent. Big Rivers shall be given a reasonable opportunity to participate in any discussions between the Smelters and Midwest ISO regarding such arrangements. Big Rivers agrees with KIUC that Big Rivers will work with its members' Large Industrial Customers to explore and implement plans for similar demand response arrangements, provided that (i) Big Rivers is not required to assist with or agree to any such arrangements that may adversely affect Big Rivers' or its members'

operations, finances or existing contractual relationships, and (ii) any such arrangements must receive all necessary regulatory, creditor and other approvals.

6. This Stipulation and Agreement shall not be construed to limit the rate methodology by which Big Rivers may seek to recover Midwest ISO administrative costs, FERC fees, MTEP costs or any other costs related to its Midwest ISO membership, or the schedule by which Big Rivers may seek to recover those costs except as expressly provided for in paragraphs 2, 3 and 4 of this Stipulation and Agreement; provided, however, that no other Party shall have waived its right to object to any such rate methodology as being unlawful or unreasonable. Moreover, the Attorney General strongly opposes any surcharge not expressly authorized by statute or case law, and nothing in this Stipulation and Agreement shall be interpreted as the Attorney General's acquiescence to any type of rate recovery not expressly authorized by statute or case law.

7. This Stipulation and Agreement is subject to the approval of the Commission without material change or condition unacceptable to any affected Party. In the event the Commission requires a material change to this Stipulation and Agreement or imposes material conditions in its order approving the Stipulation and Agreement, which change or condition is not acceptable to an affected Party, the Parties

agree to confer within five (5) business days of the date of the Commission order and attempt to negotiate in good faith an alteration acceptable to the Commission and to all Parties resolving the required change or condition. If the Parties cannot resolve the required change or condition in a manner acceptable to the Commission, then the affected Party may seek rehearing or appeal of the required condition or change.

8. This Stipulation and Agreement shall not be construed to divest the Commission of jurisdiction under KRS Chapter 278. The only acceptance, approval or authorization sought from the Commission by the Parties is with respect to paragraphs 1 and 2 of this Stipulation and Agreement. If Big Rivers transfers functional control of its transmission system to the Midwest ISO as a result of an order entered by the Commission in this proceeding, then even if this Stipulation and Agreement is not approved by the Commission, all agreements between or among the Parties contained herein shall constitute the enforceable contractual obligations of the Parties.

9. The Parties agree to act in good faith and to use their best efforts to recommend to the Commission that this Stipulation and Agreement be accepted and approved without conditions other than as contained in this Stipulation and Agreement. The Parties will not appeal or seek rehearing of findings by the Commission in an order in

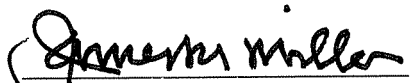
this proceeding that the proposal of Big Rivers to transfer functional control of its transmission system to Midwest ISO is for a proper purpose and consistent with the public interest, and is approved. Each signatory waives all cross-examination of the other Parties' witnesses, except the witness offered by Big Rivers to support the Stipulation and Agreement.

10. Each signatory to this Stipulation and Agreement has consulted with his or her respective client or clients regarding the terms of this Stipulation and Agreement, and has been duly authorized to sign this Stipulation and Agreement on behalf of that client or clients. KIUC represents that Alcan and Century have read and agreed to the terms and conditions of this Stipulation and Agreement.

11. This Stipulation and Agreement shall be filed with the Commission on or before the hearing in this matter scheduled to commence on September 15, 2010.

12. The agreements between or among the Parties in this Stipulation and Agreement represent all the agreements between or among the Parties on the subjects covered by this Stipulation and Agreement, and cannot be amended except in writing, signed by all the Parties.

STIPULATED AND AGREED, as of this ___ day of September, 2010:

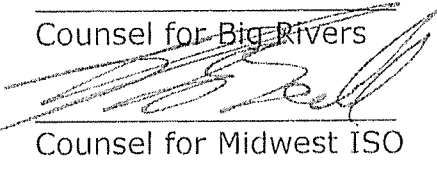

Counsel for Big Rivers

Counsel for Midwest ISO

Counsel for KIUC

Counsel for the Attorney General

Counsel for Big Rivers



Counsel for Midwest ISO

Counsel for KIUC

Counsel for the Attorney General

Counsel for Big Rivers

Counsel for Midwest ISO

Michael P. Kurt

Counsel for KIUC

Counsel for the Attorney General

Counsel for Big Rivers

Counsel for Midwest ISO

Counsel for KIUC

Counsel for the Attorney General