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September 27, 2010

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

RECEIVED

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PUBLIC SERVICE
COMMISSION

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

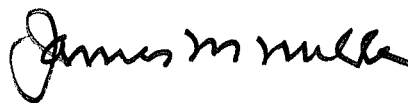
Dear Mr. Derouen:

Enclosed for filing are an original and nine copies of the Joint Post-Hearing Brief of Big Rivers Electric Corporation and Kentucky Industrial Utility Customers, Inc., and an original and nine copies of Big Rivers' responses to the data requests asked at the September 15, 2010, hearing in this matter.

Also enclosed are original verification pages for two of the witnesses listed on the data request responses, C. William Blackburn and David G. Crockett, and a facsimile copy of the verification page for the other witness, Clair J. Moeller. Mr. Moeller's original verification page will be filed as soon as it is available.

I certify that a copy of this letter, a copy of the brief, and a copy of the data request responses have been served upon each of the persons shown on the attached service list.

Sincerely yours,



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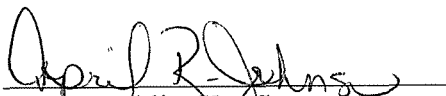
VERIFICATION

I verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.


David G. Crockett

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by David G. Crockett on this the 24th day of September, 2010.


Notary Public, Ky. State at Large
My Commission Expires 8-9-2014

VERIFICATION

I verify, state, and affirm that the data request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

C. William Blackburn
C. William Blackburn

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by C. William Blackburn on this the 24th
day of September, 2010.

April R. Johns
Notary Public, Ky. State at Large
My Commission Expires 8-9-2014

VERIFICATION

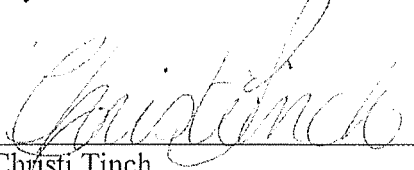
I, Clair J. Moeller, Vice-President of Midwest Independent Transmission System Operator, Inc. verify, state, and affirm that I prepared or supervised the preparation of the data request responses filed with this Verification for which I am listed as a witness, and that those responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Clair J. Moeller

STATE OF INDIANA)
COUNTY OF HAMILTON)

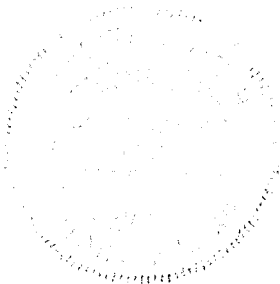
SUBSCRIBED AND SWORN TO before me by Clair J. Moeller on this 27th day of September, 2010.



Christi Tinch

Notary Public

My Commission Expires August 15, 2013



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)	CASE NO. 2010-00043
ITS TRANSMISSION SYSTEM TO MIDWEST)	
INDEPENDENT TRANSMISSION SYSTEM)	
OPERATOR, INC.)	

JOINT POST-HEARING BRIEF
OF BIG RIVERS ELECTRIC CORPORATION
AND KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

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COMMONWEALTH OF KENTUCKY
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JOINT POST-HEARING BRIEF
OF BIG RIVERS ELECTRIC CORPORATION
AND KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

Big Rivers Electric Corporation (“Big Rivers”) and Kentucky Industrial Utility Customers, Inc. (“KIUC”) by counsel, for their post-hearing brief in this matter, state as follows:

I. INTRODUCTION AND BACKGROUND

Big Rivers is seeking the Public Service Commission’s (“Commission”) approval to transfer functional control of its transmission system to the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) effective December 1, 2010.¹ Big Rivers seeks to join the Midwest ISO principally to enable it to satisfy the “Contingency Reserve” reliability standard mandated by the North American Electric Reliability Corporation (“NERC”),² as approved by the Federal Energy Regulatory Commission (“FERC”) and enforced through NERC’s “Regional Entity,” SERC Reliability Corporation. Big Rivers must comply with the NERC Contingency Reserve standard in order to maintain reliable system operations, and also to avoid substantial penalties for noncompliance under federal law, including potential fines of up to \$1 million per day for each violation.³

¹ See Applicant’s Hearing Exhibit 2 (setting forth the proposed timeline for Big Rivers’ integration with the Midwest ISO).

² Direct Testimony of David G. Crockett, Application Exhibit 2, Exhibit DGC-2.

³ Direct Testimony of David G. Crockett, Application Exhibit 2, p. 17, at l. 4-14.

Big Rivers previously satisfied the NERC Contingency Reserve standard through membership in certain reserve sharing arrangements, most recently the Midwest Contingency Reserve Sharing Group (“MCRSG”) pursuant to the Midwest Contingency Reserve Sharing Group Agreement (“MCRSG Agreement”).⁴ However, the MCRSG Agreement terminated as of December 31, 2009, notwithstanding the efforts of Big Rivers to extend its term.⁵ Beginning well in advance of that date, Big Rivers investigated alternative arrangements for satisfying its Contingency Reserve obligations following termination of the MCRSG Agreement, and determined that committing to join the Midwest ISO was the only economically feasible option available to Big Rivers.⁶ While this proceeding has been ongoing, Big Rivers has continued to investigate potential alternative means to satisfy its Contingency Reserve needs, and has not identified any solution that is more economically feasible than joining the Midwest ISO.⁷ Indeed, even Dr. Morey, the witness for KIUC, agrees that joining the Midwest ISO is the least cost option for Big Rivers to satisfy its Contingency Reserve obligations at this time.⁸

No party opposes Big Rivers’ proposal to become a member of the Midwest ISO, and in a Stipulation and Agreement (“Stipulation”) the parties have agreed that the proposed transfer of functional control of Big Rivers’ transmission system to the Midwest ISO is for a proper purpose and consistent with the public interest under KRS 278.218(2) and should be approved by the

⁴ *Id.* at p. 11, l. 18-p.12, l. 20.

⁵ *Id.* at p. 16, l. 1-21.

⁶ *Id.* at p. 30, l. 18-p. 31, l. 5; Direct Testimony of Mark A. Bailey, Application Exhibit 1, p. 5, l. 8-11.

⁷ Big Rivers’ Second Update to Response to Commission Staff’s First Data Request, September 7, 2010, Item 1; Big Rivers’ Response to Commission Staff’s First Data Request, April 7, 2010, Item 1.

⁸ Testimony of Dr. Mathew J. Morey, Video Transcript of September 15, 2010 Hearing (“Tr.”) at 13:44’40; Tr. 13:52’00; Tr. 14:09’45. *See also* Supplemental Testimony of C. William Blackburn, Applicant’s Hearing Exhibit 1, p. 3, l. 2-4 (“[A]ll parties agree[] that there is no reasonable alternative to Midwest ISO membership to solve Big Rivers’ Contingency Reserve requirement on a timely basis.”).

Commission.⁹ In addition, the Stipulation addresses certain understandings among the parties regarding future proceedings involving proposals by Big Rivers to recover costs associated with its membership in the Midwest ISO,¹⁰ although the only acceptance, approval or authorization sought from the Commission by the parties is with respect to Paragraphs 1 and 2 of the Stipulation.¹¹

Prompt Commission approval of the proposed transfer and the Stipulation is necessary in order to ensure that Big Rivers will be able to meet its Contingency Reserve obligations in the future. At present, Big Rivers is meeting its Contingency Reserve needs with service provided pursuant to Attachment RR of the Midwest ISO tariff; however, that arrangement currently is due to expire on January 1, 2011.¹² Big Rivers currently plans to integrate into the Midwest ISO on December 1, 2010; if integration does not occur on that date, the Attachment RR service arrangement would expire pursuant to its terms prior to the next scheduled opportunity for Big Rivers to integrate into the Midwest ISO.¹³ The Midwest ISO has already agreed, subject to FERC approval, to extend the term of service to Big Rivers under Attachment RR once to accommodate the schedule of this proceeding,¹⁴ and further extensions are not available absent Midwest ISO approval before November 1 and FERC approval before the end of the year. Accordingly, Big Rivers is requesting that the Commission issue an order approving the

⁹ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, Exhibit CWB Supplemental-1, ¶ 1. Parties to the Stipulation include Big Rivers, the Midwest ISO, KIUC, and the Attorney General of the Commonwealth of Kentucky (“Attorney General”).

¹⁰ *Id.* at ¶¶ 2-6.

¹¹ *Id.* at ¶ 8.

¹² Big Rivers’ Update to Application, September 7, 2010.

¹³ Testimony of C. William Blackburn, Tr. 11:31’08 (explaining that the Midwest ISO prefers to integrate new members on a quarterly basis).

¹⁴ Originally Big Rivers’ arrangement under Attachment RR was due to expire on September 30, 2010. Direct Testimony of David G. Crockett, Application Exhibit 2, p. 38, l. 1-5. The Midwest ISO has filed for FERC approval of the extended Attachment RR service agreement in FERC Docket No. ER10-2080-000.

proposed transfer and the Stipulation no later than November 1, 2010, to enable Big Rivers to meet the scheduled December 1, 2010 integration date.

II. STANDARD OF REVIEW

The Commission has determined that KRS 278.218 is the appropriate statute applicable to its investigation of Big Rivers' proposal to transfer functional control of its transmission system to the Midwest ISO.¹⁵ Thus, the standard of review for the Commission to apply in this case is whether the proposed transfer "is for a proper purpose and is consistent with the public interest." KRS 278.218(2). The Commission has stated that a party seeking approval of a transfer of functional control

"must show that the proposed transfer will not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission's imposition of reasonable conditions on the acquiring party. The acquiring party should demonstrate that the proposed transfer is likely to benefit the public through improved service quality, enhanced service reliability, the availability of additional services, lower rates or a reduction in utility expenses to provide present services. Such benefits, however, need not be immediate or readily quantifiable."¹⁶

The record developed in this proceeding demonstrates that the proposed transfer meets the "proper purpose" and "public interest" standards of KRS 278.218(2).

¹⁵ See March 15, 2010 Procedural Order, p. 1.

¹⁶ *In the Matter of: Kentucky Power Co. dba American Elec. Power*, Case No. 2002-00475, Order dated July 17, 2003, 2003 WL 21853060 at *1 (Ky. P.S.C.) (quoting *Application for Approval of the Transfer of Control of Kentucky-American Water Co. to RWE Aktiengesellschaft and Thames Water Aqua Holdings GMBH*, Case No. 2002-00018, Order dated May 30, 2002, at 7-8).

III. BIG RIVERS' PROPOSED TRANSFER OF FUNCTIONAL CONTROL OVER ITS TRANSMISSION SYSTEM, AND THE ASSOCIATED STIPULATION, ARE CONSISTENT WITH THE PUBLIC INTEREST AND SHOULD BE APPROVED.

A. Big Rivers' proposal to transfer functional control of its transmission system to the Midwest ISO is the only feasible solution currently available to Big Rivers to satisfy its Contingency Reserve obligations.

As noted above, the parties to this proceeding have thoroughly examined any and all possible alternatives and have reviewed the details surrounding Big Rivers' proposal to join the Midwest ISO. Following that detailed scrutiny, the parties stipulated that Big Rivers' proposal to transfer functional control of its transmission system to the Midwest ISO is for a proper purpose and consistent with the public interest, and therefore the parties submit that the request should be approved by the Commission.¹⁷ Aside from the Stipulation, however, Big Rivers has presented uncontroverted evidence showing that the proposed transfer is the only economically feasible option available to Big Rivers at this time to satisfy Big Rivers' obligation to comply with the NERC Contingency Reserve standard and to maintain reliable transmission system operations. As Mr. Bailey, Big Rivers' President and Chief Executive Officer, testified: "[J]oining the Midwest ISO is necessary for Big Rivers to safely provide reliable electric service to its customers at a reasonable cost."¹⁸

Big Rivers is proposing to join the Midwest ISO in order to obtain a source of Contingency Reserve to enable it to satisfy mandatory reliability standards established by NERC and approved by FERC.¹⁹ As a registered Balancing Authority, Big Rivers is required to comply with such standards, including the NERC Contingency Reserve standard.²⁰ Mr. Crockett, Big

¹⁷ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, Exhibit CWB Supplemental-1, ¶ 1.

¹⁸ Direct Testimony of Mark A. Bailey, Application Exhibit 1, p. 12, l. 10-12. *See also* Direct Testimony of David G. Crockett, Application Exhibit 2, p. 33, l. 10-12.

¹⁹ Direct Testimony of Mark A. Bailey, Application Exhibit 1, p. 4, l. 17-21; Direct Testimony of David G. Crockett, Application Exhibit 2, Exhibit DGC-2.

²⁰ Direct Testimony of David G. Crockett, Application Exhibit 2, p. 4, at l. 6-9 and Exhibit DGC-2.

Rivers' Vice President System Operations, explained that the purpose of this standard is to ensure that a Balancing Authority is able to utilize its Contingency Reserve to balance resources and demand, and return interconnection frequency within defined limits following a Reportable Disturbance.²¹ Failure to comply with the Contingency Reserve standard could subject Big Rivers to penalties of up to \$1 million per day for any period of violation.²²

Prior to January 1, 2010, Big Rivers satisfied its Contingency Reserve obligations through its membership in various reserve sharing groups, most recently as a member of the MCRSG.²³ Mr. Crockett testified that participation in reserve sharing group arrangements substantially reduced the amount of Contingency Reserve that Big Rivers needed to maintain. Standing alone, Big Rivers must maintain 417 MW of Contingency Reserve, whereas under the MCRSG Agreement prior to its termination, Big Rivers only needed to maintain 32 MW of Contingency Reserve.²⁴

When it became apparent that the MCRSG Agreement was likely to terminate as of December 31, 2009, Big Rivers initially believed that it could fulfill its Contingency Reserve obligation by purchasing Contingency Reserve in the Midwest ISO Ancillary Services Market; however, the Midwest ISO informed Big Rivers in April 2009 that the Midwest ISO tariff precluded it from supplying Contingency Reserve outside of the Midwest ISO footprint.²⁵ Moreover, Big Rivers did not resume control over its generating units until the Unwind Transaction closed in mid-July 2009,²⁶ and thus it was not initially clear whether Big Rivers itself would need to make the arrangements necessary to address the Contingency Reserve issue.

²¹ Direct Testimony of David G. Crockett, Application Exhibit 2, p. 7, l. 11-14. *See also* Direct Testimony of David G. Crockett, Application Exhibit 2, Exhibit DGC-1, p. 17 (defining "Reportable Disturbance").

²² Direct Testimony of David G. Crockett, Application Exhibit 2, p. 17, l. 4-6.

²³ *Id.* at p. 11, l. 18-p. 12, l. 20.

²⁴ *Id.* at p. 11, l. 1-13. 417 MW is the maximum capacity of the Wilson Unit, the loss of which is Big Rivers' most severe single contingency.

²⁵ *Id.* at p. 19, l. 1-7.

²⁶ Direct Testimony of Mark A. Bailey, Application Exhibit 1, p. 7, l. 21-p. 8, l. 2.

Nevertheless, Big Rivers explored all options that were available to enable it to continue to meet its Contingency Reserve obligation.²⁷ Due to the lack of available generation capacity from any sources directly interconnected with Big Rivers and the lack of available transmission capacity needed to access remote generation sources, Big Rivers had only two viable options to continue to meet its Contingency Reserve obligations as of January 1, 2010: (1) self-supply, coupled with reliance upon interruptions of service to the Smelters, and (2) join the Midwest ISO.²⁸ No other option could have been implemented within the timeframe available to Big Rivers.²⁹

Big Rivers employed Mr. Ralph Luciani of the Charles River Associates consulting firm to perform an economic assessment of the self-supply and Midwest ISO membership options.³⁰ Mr. Luciani explained that the self-supply option would be feasible if Big Rivers were to construct new peaking capacity to supply an additional 200 MW, but that this might not be necessary if the Smelters were able to provide 200 MW of interruptible load to Big Rivers during a Contingency Reserve event.³¹ Big Rivers discussed with the Smelters the possible incorporation of up to 320 MW of power committed to the Smelters under Big Rivers' wholesale power contracts for service to the Smelters that the Smelters thought they could make available on an interruptible basis; however, no viable, comprehensive plan incorporating Smelter interruptible power could be achieved.³²

²⁷ *Id.* at p. 5, l. 1-11; Direct Testimony of David G. Crockett, Application Exhibit 2, p. 31, l. 2-5. Mr. Crockett described the alternatives for meeting Big Rivers' Contingency Reserve needs that Big Rivers investigated, and how this investigation was conducted. *Id.* at p. 18, l. 5-p. 32, l. 2.

²⁸ *Id.* at p. 30, l. 18-p. 31, l. 2. Although Big Rivers could not join the Midwest ISO immediately as of January 1, 2010, it was able to obtain backstop Contingency Reserve service under Attachment RR to the Midwest ISO's tariff for a 9-month period while Big Rivers pursued full integration into the Midwest ISO. *Id.* at p. 31, l. 16-21.

²⁹ For example, pursuing a "legislative fix" to enable Big Rivers to participate in a reserve sharing group with the Tennessee Valley Authority ("TVA") could not realistically have been achieved by January 1, 2010. Testimony of Mark A. Bailey, Tr. 10:17'02.

³⁰ Direct Testimony of Ralph L. Luciani, Application Exhibit 4, p. 5, l. 15-19.

³¹ *Id.* at p. 10, l. 21- p. 12, l. 3.

³² Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, p. 5, l. 17-22. At best, relying upon Smelter interruptibility could only be viewed as a temporary expedient to be employed while a long-term solution

Mr. Luciani concluded that for the period 2011-2015, joining the Midwest ISO would produce \$132.8 million in present value benefits to Big Rivers as compared to the self-supply option, assuming that Big Rivers were required to construct the additional 200 MW of peaking capacity.³³ Even if Big Rivers were able to fully rely upon Smelter interruptibility for the additional 200 MW, Mr. Luciani calculated that joining the Midwest ISO would still provide a \$32.3 million present value benefit to Big Rivers over the self-supply option.³⁴ Both of these benefit calculations reflect \$56.7 million in decreased costs to serve Big Rivers' native load, as well as estimates of the additional costs that Big Rivers would incur as a Midwest ISO member, including Midwest ISO administrative charges, FERC fees, and internal Big Rivers staffing and equipment costs.³⁵ As noted above, it proved impossible for Big Rivers to rely upon Smelter interruptibility. Because the self-supply option without Smelter interruptibility would require peaking capacity that could not possibly be brought online prior to the January 1, 2010 deadline facing Big Rivers, Big Rivers concluded that participation in the Midwest ISO was the only economically feasible alternative available to it.³⁶ Significantly, Mr. Luciani testified that he is aware of no utility of Big Rivers' size that relies solely on self-supply to meet the NERC Contingency Reserve requirements.³⁷

No party disputes that joining the Midwest ISO is the least cost option available to Big Rivers to satisfy its Contingency Reserve obligations at this time. Testifying on behalf of KIUC, Dr. Morey initially contended that Big Rivers had significantly underestimated the costs which it would incur as a result of becoming a member of the Midwest ISO, largely because Big Rivers

was identified and implemented. Direct Testimony of David G. Crockett, Application Exhibit 2, p. 46, l. 16-p. 47, l. 2.

³³ Direct Testimony of Ralph L. Luciani, Application Exhibit 4, p. 28, l. 10-12 & Table 2.

³⁴ *Id.* at p. 28, l. 19-p. 29, l. 2 & Table 2.

³⁵ *Id.* at p. 25, l. 7-8 & Exhibit RLL-3.

³⁶ Direct Testimony of David G. Crockett, Application Exhibit 2, p. 31, l. 2-5.

³⁷ Testimony of Ralph L. Luciani, Tr. 15:27'51.

had not included in its cost-benefit analysis an estimate of its share of the costs of Midwest ISO Transmission Expansion Plan (“MTEP”) projects.³⁸ The Midwest ISO has since filed with FERC to establish a new transmission project and cost allocation category called Multi Value Project (“MVP”), which are defined as “projects that enable the reliable and economic delivery of energy in support of documented energy project mandates and address, through the development of a robust transmission system, multiple reliability and/or economic issues affecting multiple transmission zones.”³⁹ The Midwest ISO has estimated that Big Rivers’ *potential* annual exposure of the costs of these projects might be \$10.9 million in 2015, and could escalate to \$30 million in 2025.⁴⁰ However, the Midwest ISO also has estimated that Big Rivers would concurrently benefit through annual cost savings associated with these projects in the amount of \$7 million in 2015, growing to \$26 million in 2025.⁴¹

It is important to recognize that the Midwest ISO’s estimates of costs and benefits to Big Rivers assume that all of the identified MVP projects will be built in a timely fashion and will qualify for cost sharing. The MVP process is a very recent proposal that is still pending before FERC, and multiple protests to the proposal have just recently been filed. Under the proposed MVP process, to qualify for cost sharing, a project must meet at least one of three criteria: it must either (1) enable the reliable delivery of energy in support of a documented public policy mandate or law; (2) provide multiple types of economic value across multiple pricing zones; or (3) address at least one reliability issue associated with a NERC or Regional Entity standard and provide economic value to multiple pricing zones.⁴² Moreover, each MVP project would be

³⁸ Direct Testimony of Dr. Mathew J. Morey, KIUC Exhibit 1, p. 4, l. 16-17.

³⁹ Midwest ISO Supplemental Response to Commission Staff’s Second Data Request, August 20, 2010, Item 1, p. 7, l. 27-p. 8, l. 1. The Midwest ISO’s filing is pending before FERC.

⁴⁰ *Id.* at p. 11, l. 7-20.

⁴¹ *Id.* at p. 10, l. 13-18.

⁴² *Id.* at p. 8, l. 4-12.

subject to multiple review processes, including (but not limited to) scrutiny through the applicable Midwest ISO stakeholder planning processes, review and approval by the Midwest ISO Board as a qualifying MVP project, local siting reviews, and other applicable state and local regulatory prudence or environmental reviews, approvals, and challenges.⁴³

Given the foregoing eligibility criteria and reviews, it currently is very uncertain how many of the currently anticipated MVP projects will ultimately be analyzed and vetted through the Midwest ISO stakeholder process, and when.⁴⁴ Thus, the cost estimates provided by the Midwest ISO represent a far from certain, highest cost scenario. Moreover, if it is determined that a given transmission project qualifies for MVP treatment, Big Rivers would also enjoy additional benefits that would flow from such projects because of the integrated Midwest ISO market, such as reduced congestion, greater access to low cost wind energy, reduced production costs, and reduced transmission losses.⁴⁵ Dr. Morey's additional concern that Big Rivers' all-requirements contracts with its members would not be accorded Grandfathered Agreement ("GFA") status⁴⁶ was resolved by FERC, which accepted the inclusion of those contracts as GFAs.⁴⁷ Notwithstanding Dr. Morey's initial concerns raised in his prefiled testimony, Dr. Morey did note in his testimony and reiterated at the hearing that joining the Midwest ISO is the

⁴³ *Id.* at p. 12, l. 1-11.

⁴⁴ Response of Ralph L. Luciani, p. 6, l. 1-p. 7, l. 10.

⁴⁵ Midwest ISO Supplemental Response to Commission Staff's Second Data Request, August 20, 2010, Item 1, p. 9, l. 13-p. 10, l. 2. Indeed, the Midwest ISO added the projected costs and benefits associated with MTEP cost allocations through 2015 to Mr. Luciani's analysis and showed that, even assuming that all identified "Starter MVP Projects" are built as proposed, the net benefits to Big Rivers through 2015 will be \$29.2 million as compared with the stand-alone case. *Id.* at p. 11.

⁴⁶ Direct Testimony of Dr. Mathew J. Morey, KIUC Exhibit 1, p. 3, l. 19-20.

⁴⁷ Response of Ralph L. Luciani, p. 7, l. 15-21 & Exhibit RLL-4. Big Rivers provides service to its members through "all-requirements" contracts. Those contracts do not include the wholesale power supply contracts between Big Rivers and its member, Kenergy Corp., for service to the Smelters. The Smelter-related wholesale power supply contracts were not eligible for GFA status.

least cost option for Big Rivers to satisfy its Contingency Reserve obligations at this time,⁴⁸ and that further delay to search for alternatives is not “viable.”⁴⁹

B. Membership in the Midwest ISO is likely to benefit Big Rivers, its members, and ratepayers.

Joining the Midwest ISO will not adversely affect Big Rivers’ rights to use its transmission system to provide service to its members’ load,⁵⁰ and it will provide important reliability benefits to Big Rivers, its members, and its ratepayers. Most importantly, Big Rivers will have access to a large pool of operating reserves to satisfy its Contingency Reserve requirements.⁵¹ Additionally, Midwest ISO membership will provide benefits beyond just resolving the Contingency Reserve issue. While Big Rivers represents only 1.1 percent of the Midwest ISO load, the Midwest ISO has estimated that Big Rivers could enjoy up to 1.9 percent of the benefits of Midwest ISO membership under the Midwest ISO’s Value Proposition calculation.⁵² Mr. Moeller estimated that the annual net benefit to Big Rivers could range between \$20.6 and \$26 million.⁵³ These benefits provide further support for Big Rivers’ proposal to join the Midwest ISO.

As a member of the Midwest ISO, Big Rivers will have access to additional resources for mitigating and resolving congestion problems, it will have broader and easier access to markets for selling its excess power resources, it will have access to additional generation resources, and it will be able to take advantage of the Midwest ISO’s ability to preemptively analyze possible reliability problems across a broader geographic area.⁵⁴ More specifically, the Midwest ISO’s

⁴⁸ Testimony of Dr. Mathew J. Morey, Tr. 13:44’40; Tr. 13:52’00; Tr. 14:09’45.

⁴⁹ *Id.* at 14:11’25.

⁵⁰ Direct Testimony of C. William Blackburn, Application Exhibit 3, p. 4, l. 1-3.

⁵¹ Direct Testimony of David Zwergel, Application Exhibit 6, p. 9, l. 14-p. 10, l. 6.

⁵² Midwest ISO Supplemental Response to Commission Staff’s Second Data Request, August 20, 2010, Item 1, p. 10, l. 13-17.

⁵³ Direct Testimony of Clair J. Moeller, Application Exhibit 5, p. 31, l. 13-17 & Exhibit CJM-2, Table 1.

⁵⁴ Direct Testimony of David G. Crockett, Application Exhibit 2, p. 33, l. 15-p. 34, l. 1.

congestion management system determines the least-cost option and responds to congestion on a five-minute interval, providing increased efficiency to the benefit of market participants.⁵⁵ The Midwest ISO will be able to use this process to relieve congestion that adversely impacts Big Rivers' ability to access the market when it has surplus energy available, leading to increased revenues from off-system sales.⁵⁶ Moreover, joining the Midwest ISO may permit Big Rivers to collect greater transmission revenues than it otherwise would as non-member, given its geographic location and the ability of entities today to "bypass" Big Rivers when transmitting energy to/from TVA, the Southwest Power Pool, and the Midwest ISO.⁵⁷

Furthermore, the inclusion of Big Rivers' generation in the Midwest ISO's Day-Ahead Energy and Operating Reserve Market will enable Big Rivers to access additional generation automatically in real-time, without the need to schedule a purchase and arrange transmission service.⁵⁸ Joining the Midwest ISO will allow Big Rivers to benefit from the Midwest ISO's ability to "see" developments in the entire Midwest region, including Kentucky beyond the Big Rivers system, and to act preemptively to protect reliability, while adding Big Rivers to the Midwest ISO will improve the reliability of the entire Midwest ISO footprint.⁵⁹ Big Rivers also will enjoy the benefit of improved regional transmission planning that identifies potential issues in a broader transmission footprint.⁶⁰

Midwest ISO membership also will bring certain additional concrete benefits to Big Rivers that would not be available outside of the Midwest ISO. Big Rivers will have additional opportunities to sell energy to higher cost areas, and in those instances where Big Rivers needs

⁵⁵ Direct Testimony of Clair J. Moeller, Application Exhibit 5, p. 12, l. 5-22; Direct Testimony of David Zwergel, Application Exhibit 6, p. 10, l. 10-p. 11, l. 3.

⁵⁶ Direct Testimony of C. William Blackburn, Application Exhibit 3, p. 10, l. 9-19.

⁵⁷ Direct Testimony of Ralph L. Luciani, Application Exhibit 4, p. 31, l. 10-17.

⁵⁸ Direct Testimony of Clair J. Moeller, Application Exhibit 5, p. 13, l. 8-17.

⁵⁹ *Id.* at p. 13, l. 17-p. 14, l. 4.

⁶⁰ Direct Testimony of Ralph L. Luciani, Application Exhibit 4, p. 32, l. 7-11; Direct Testimony of David Zwergel, Application Exhibit 6, p. 12, l. 9-13.

additional energy to serve its load, the clearing prices in the Midwest ISO market will provide greater transparency and cost savings than would be available outside of the Midwest ISO.⁶¹ In addition, Big Rivers could benefit from membership in the Midwest ISO if it were to lose one or both of the Smelters as customers, because Big Rivers would have enhanced options for selling its low cost excess capacity that would result from loss of the Smelter load.⁶²

Big Rivers recognizes that many of the costs and benefits of joining the Midwest ISO are not readily and easily quantifiable at this time, and that if circumstances change, continued participation by Big Rivers in the Midwest ISO may prove to be no longer be beneficial. Although Big Rivers was required to commit to an initial five-year membership period,⁶³ Big Rivers may withdraw from the Midwest ISO as early as December 31, 2014, subject to one year's advance notice and the payment of exit fees.⁶⁴ Big Rivers has committed to review the costs and benefits of Midwest ISO membership on a regular basis to ensure that Big Rivers' participation in the Midwest ISO continues to be in the best interests of Big Rivers, its members, and its ratepayers, and to communicate the results of those reviews to the Commission.⁶⁵ Big Rivers also has committed to continue to evaluate its options for compliance with the NERC Contingency Reserve requirement.⁶⁶

Furthermore, Midwest ISO witness Moeller, while on the witness stand, committed to work and coordinate with the Commission, its Staff, and any interested party to schedule and participate in informal, informational meetings to discuss Midwest ISO-related developments and issues at reasonable intervals, such as semi-annually, following Big Rivers' integration as a

⁶¹ Direct Testimony of Richard Doying, Application Exhibit 7, p. 11, l. 1-p. 12, l. 3.

⁶² Direct Testimony of C. William Blackburn, Application Exhibit 3, p. 4, l. 14-p. 5, l. 4.

⁶³ Testimony of Mark A. Bailey, Tr. 10:26'55.

⁶⁴ Big Rivers Response to Data Requests from the Formal Hearing, September 28, 2010, Item 4; Direct Testimony of David G. Crockett, Application Exhibit 2, p. 35, l. 1-11.

⁶⁵ Testimony of Mark A. Bailey, Tr. 10:18'35.

⁶⁶ *Id.* at Tr. 10:18'18; Tr. 10:25'58.

full transmission-owning member of the Midwest ISO.⁶⁷ These Midwest ISO informational meetings could be held at the Commission's offices on a schedule acceptable to the Commission. The proposed Midwest ISO informational meetings are not intended to replace or supplant the Commission's direct involvement and participation through the Midwest ISO existing open stakeholder processes, nor the Commission's role and active participation in the Organization of MISO States. Rather, these Midwest ISO informational meetings were offered and proposed as a way to supplement existing processes and avenues of open stakeholder involvement. The offered Midwest ISO informational meetings would focus on providing summary background and current information about the Midwest ISO intended to assist the Commission better and more fully understanding the Midwest ISO, its operations, and how the Midwest ISO operations benefit Kentucky, its member entities, and ultimately its ratepayers. An added benefit of these informational meetings would be to provide a venue and forum to review and discuss possible lingering concerns related to the City of Henderson that came up at the end of the evidentiary hearing.

C. The Stipulation is in the public interest and should be approved.

Prior to the hearing in this proceeding, Big Rivers, the Midwest ISO, KIUC, and the Attorney General entered into a Stipulation reflecting their agreement that the parties support Big Rivers' proposal to join the Midwest ISO and also reflecting their agreement on certain collateral matters.⁶⁸ The Stipulation originated in negotiations between Big Rivers and KIUC, and once they had reached agreement, the draft Stipulation was submitted to the Attorney General and the Midwest ISO, who joined in the Stipulation.⁶⁹ There was no quid pro quo provided to any party

⁶⁷ Testimony of Clair J. Moeller, Tr. 15:51'55.

⁶⁸ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, p. 1, l. 26-p. 2, l. 2.

⁶⁹ *Id.* at p. 2, l. 22-p. 3, l. 12.

for agreeing to the Stipulation.⁷⁰ Big Rivers submits that the Stipulation is in the public interest and should be approved by the Commission without modification.

Paragraph 1 of the Stipulation, which reflects the parties' support of Big Rivers' proposal to join the Midwest ISO, has been discussed above. Paragraphs 2 and 3 of the Stipulation clarify the record to state that Big Rivers is not seeking in this proceeding, and will not seek in the future, to recover certain Midwest ISO administrative costs or FERC fees through the Purchase Power Adjustment mechanisms in its wholesale power supply contracts for service to Big Rivers' members and the Smelters (the "Non-FAC PPA").⁷¹ Big Rivers had indicated in data responses to the Staff and to KIUC that it believed that it could flow these costs through the Non-FAC PPA, but discovered through subsequent research that FERC requires these costs to be recorded in accounts that are different from those incorporated in the Non-FAC PPA.⁷² These paragraphs of the Stipulation are in the public interest because they reflect the parties' agreement that Big Rivers will not seek to recover the costs at issue through a particular mechanism that Big Rivers cannot use in any event.⁷³

Paragraph 4 of the Stipulation reflects Big Rivers' agreement to seek amendments to its wholesale power supply contracts for service to the Smelters to exclude all MTEP costs allocated to Big Rivers from the contractual Tier Adjustment Charge under those contracts.⁷⁴ Absent such amendments, the Smelters could be required to bear all or part of the MTEP costs if the Tier Adjustment Charge is below the ceiling imposed in the contracts. Big Rivers views the MTEP costs as system costs that should be allocated among all classes of Big Rivers' ratepayers (Rural,

⁷⁰ Testimony of C. William Blackburn, Tr. 11:34'20.

⁷¹ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, Exhibit CWB Supplemental-1, ¶¶ 2-3.

⁷² Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, p. 4, l. 10-17.

⁷³ Testimony of C. William Blackburn, Tr. 11:00'55; Tr. 11:36'17.

⁷⁴ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, Exhibit CWB Supplemental-1, ¶ 4.

Large Industrial and Smelter) because all ratepayers will benefit from Big Rivers' membership in the Midwest ISO.⁷⁵

Paragraph 5 of the Stipulation provides that Big Rivers agrees to work with the Smelters to explore and implement plans for the Smelters (and potentially the Large Industrial Customers of Big Rivers' members) to sell demand response services into the Midwest ISO's markets, and for the Smelters to provide back-up service that may allow Big Rivers to sell spinning reserves into the Midwest ISO ancillary services market.⁷⁶ This follows from Big Rivers' consideration of the possibility of incorporating Smelter interruptible power as part of a self-supply option for meeting Big Rivers' Contingency Reserve obligations.⁷⁷ Although this did not prove to be a feasible option, Big Rivers recognizes that there may be economic opportunities available once Big Rivers has become a Midwest ISO member, and is willing to work with the Smelters and other large industrials to see if these opportunities are viable, so long as there is no detriment to Big Rivers or its members.⁷⁸

Paragraph 6 of the Stipulation clarifies that except as specifically provided in Paragraphs 2-4, the Stipulation does not limit the rate methodology by which Big Rivers may seek to recover Midwest ISO administrative costs, FERC fees, MTEP costs, or any other costs associated with Big Rivers' membership in the Midwest ISO, and that no party has waived its rights to challenge any rate methodology by which Big Rivers seeks to recover such costs.⁷⁹ This simply reflects that Big Rivers and the parties retain their rights with respect to Big Rivers' recovery of costs

⁷⁵ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, p. 5, l. 8-12; Testimony of C. William Blackburn, Tr. 11:08'12.

⁷⁶ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, Exhibit CWB Supplemental-1, ¶ 5.

⁷⁷ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, p. 5, l. 17-21.

⁷⁸ *Id.* at p. 6, l. 1-8; Testimony of C. William Blackburn, Tr. 11:47'44. Note, however, that the Smelters and large industrials would not be able to participate directly in supplying demand response to the Midwest ISO if the Commission denies their participation. Testimony of Richard Doying, Tr. 17:22'53.

⁷⁹ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, Exhibit CWB Supplemental-1, ¶ 6.

resulting from its membership in the Midwest ISO, which would be true in any event.⁸⁰ Big Rivers is not seeking Commission approval for any recovery or treatment with respect to the costs of Midwest ISO membership at this time. While Big Rivers did acknowledge in the Stipulation that those costs may not be recovered through the Non-FAC PPA and that the MTEP costs should not be recovered through the Tier Adjustment Charge, the Stipulation does not mean that the Smelters or other ratepayers will not bear their fair share of the costs of Midwest ISO membership. The remaining paragraphs of the Stipulation are procedural in nature.⁸¹

IV. CONCLUSION

Big Rivers must comply with the NERC Contingency Reserve standard in order to maintain reliable system operations, and also to avoid the potential incurrence of substantial penalties for noncompliance under federal law. After diligently investigating the alternatives available to enable Big Rivers to meet its Contingency Reserve needs once the MCRSG Agreement terminated on December 31, 2009, Big Rivers determined that joining the Midwest ISO was the only economically feasible alternative available to it. Neither Big Rivers nor any party to this proceeding has identified any superior alternative. Accordingly, based on the Application, the prefiled testimony and exhibits, the Stipulation and the record as a whole, Big Rivers' proposal to transfer functional control of its transmission system to the Midwest ISO is for a proper purpose and is consistent with the public interest, and Big Rivers requests that the Commission issue an order approving the proposed transfer and Paragraphs 1 and 2 of the Stipulation no later than November 1, 2010.

Dated this the 27th day of September, 2010.

⁸⁰ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, p. 6, l. 15-20.

⁸¹ Supplemental Testimony of C. William Blackburn, Hearing Exhibit 1, Exhibit CWB Supplemental-1, ¶¶ 7-12.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief was served via U.S. mail, first-class, postage prepaid, this 27th day of September, 2010, upon the following persons:

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September 28, 2010

1 **Item 1)** *Provide the FERC accounting rule that prevents Big Rivers from*
2 *recovering Midwest ISO administrative costs or FERC fees through the Non-FAC*
3 *PPA.*

4
5 **Response)** FERC Order 668, issued on December 16, 2005 in Docket No. RM04-12-
6 000, established three new FERC sub-accounts (Account 561.4, Scheduling, System
7 Control and Dispatching Services; Account 561.8, Reliability Planning and Standards
8 Development Services; and Account 575.7, Market Facilitation, Monitoring and
9 Compliance Services) for public utility members of RTOs to use to record their share of
10 costs billed to them by an RTO (in the case of Big Rivers, amounts that will be billed by
11 the Midwest ISO under its Transmission, Markets and Services Tariff Schedules 10, 16
12 and 17). (See 113 FERC ¶61,276 at ¶¶ 63 through 68) The Non-FAC PPA does not
13 include these three new FERC accounts.

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15 **Witness)** C. William Blackburn
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1 **Item 2)** *Provide Big Rivers' budgeted cost for services to be provided by Aces*
2 *Power Marketing assuming Big Rivers integrates into the Midwest ISO.*

3
4 **Response)** Aces Power Marketing ("APM") will continue to provide limited
5 generation dispatch services to Big Rivers after Big Rivers' final integration into
6 Midwest ISO. For these services, Big Rivers will pay APM a monthly fixed fee of
7 \$10,792 beginning September 1, 2010, or an amount otherwise agreed by Big Rivers and
8 APM. Those payments will continue through December 31, 2010. After that time, the
9 amount of the payments will be determined by the terms of the existing Bilateral
10 Agreement between Big Rivers and APM.

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13 **Witness)** C. William Blackburn
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1 **Item 3)** *Explain the derivation of the 1.7% load ratio share value (and the other*
2 *load ration share values) used to allocate certain benefits and costs to Big Rivers.*

3

4 **Response)**

Big Rivers Load Ratio Share Values

5

6
7 **1.7%**

8 The 1.7% represents Big Rivers' load ratio share of Midwest ISO peak demand based on
9 2009 values. This percentage is used to estimate Big Rivers' share of the various
10 Midwest ISO value proposition values as described in the Testimony of Clair Moeller.
11 The Big Rivers value is based on all load (both GFA and non-GFA load) with the
12 Midwest ISO peak demand based on current members, including First Energy, Duke-
13 Ohio and Duke-Kentucky. The table below shows the values used.

14

	2010 Peak Demand (MW)
[1] Big Rivers Electric's Projected 2010 Peak Load	1,657
[2] Midwest ISO Total Energy Withdrawals	99,208
[3] Big Rivers Load Ratio Share ([1] / [2])	1.7%

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18 Notes:

19 [1] = Highest peak load in past 12 months (January 16, 2009)

20 [2] = Non-Coincident Peak 10-year LBA forecast for 2010

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Big Rivers Load Ratio Share Values (*continued*)

1.1%

The 1.1% represents Big Rivers' non-GFA load ratio share of Midwest ISO energy withdrawals based on 2009 values. This load ratio share value is used to estimate Big Rivers' charges for *future* Multi-Value Projects (see cost estimates provided for Midwest ISO Supplemental Response to PSC 2-1 in Figure 2, line 3). Note that the Big Rivers energy value represents only non-GFA load and the Midwest ISO energy withdrawals include First Energy, Duke-Ohio, and Duke-Kentucky. The table below shows the 2009 energy withdrawal values used.

	2009 Energy Withdrawals (MWh)
[1] Big Rivers Non-GFA Load 2009 Energy Withdrawals	6,295,617
[2] Midwest ISO Total Energy Withdrawals	553,607,263
[3] Big Rivers Load Ratio Share ([1] / [2])	1.1%

Notes:

[1] = Energy value sourced from Big Rivers 2009 Annual Report. Note that the energy value provided in the 2009 Annual Report of 2,885,491 MWh for the Smelter contracts represents only 5.5 months. The 2009 annual value reflected above of 6,295,617 was calculated by taking the 2,885,491 MWh dividing it by 5.5 months to get an average monthly MWh value then multiplying it times 12 months to arrive at an annualized value estimate.

[2] = Midwest ISO energy values based on 2009 actual withdrawals

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Big Rivers Load Ratio Share Values (*continued*)

1.9%

The 1.9% represents Big Rivers load ratio share (including all of Big Rivers load) of Midwest ISO energy withdrawals based on 2009 values, excluding First Energy since they were excluded when the benefits analysis was performed. This load ratio share value is used to estimate Big Rivers share of the benefits associated with the MVP starter projects, see supplemental response to PSC 2-1 in Figure 2 on line 2. The table below shows the 2009 energy withdrawal values used.

	2009 Energy Withdrawals (MWh)
[1] Big Rivers 2009 Energy Withdrawals (represents all Big Rivers Load)	9,454,649
[2] Midwest ISO Total Energy Withdrawals excluding FirstEnergy (incl. Big Rivers)	494,072,375
[3] Big Rivers Load Ratio Share ([1] / [2])	1.9%

Notes:

[1] = Energy value sourced from Big Rivers 2009 Annual Report. Note that the energy value provided in the 2009 Annual Report of 2,885,491 MWh for the Smelter contracts represents only 5.5 months. The 2009 annual value of 6,295,617 (see note 1 above under 1.1%), for the Smelter contracts is included in the 9,594,530 MWh shown in the table immediately above. The remaining 3,159,032 MWh differential represents the 2009 energy withdrawals for Big Rivers' rural and large industrial member customers.

[2] = Midwest ISO energy values based on 2009 actual withdrawals

Witness) Clair J. Moeller, Midwest ISO

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1 **Item 4) Describe the procedures and timing for Big Rivers to withdraw from**
2 **the Midwest ISO after it initially transfers functional control.**

3
4 **Response)** As counsel for the Midwest ISO explained in a letter to the Commission
5 dated September 16, 2010, the Midwest ISO Transmission Owners Agreement (Exhibit
6 10 to the Application) (“Agreement”) specifies (at Article Five, Section I) that a
7 transmission owning member of the Midwest ISO (such as Big Rivers), may withdraw
8 upon written notice to the Midwest ISO. The withdrawal cannot be effective until
9 December 31 of the calendar year following the calendar year in which notice is given
10 and cannot become effective any earlier than five years after the date on which the
11 withdrawing owner executed the Agreement.

12
13 As evidenced in Exhibit 10, Big Rivers executed the Agreement on
14 December 22, 2009, and thus, if it becomes a transmission owning member of the
15 Midwest ISO, it may withdraw as early as December 31, 2014 if it provides notice prior
16 to December 31, 2013. Note that the example provided by counsel for the Midwest ISO
17 in its September 16 letter showing a December 31, 2015 withdrawal date assumed a
18 hypothetical situation under which a party had executed the Agreement on December 1,
19 2010. As Big Rivers actually executed the Agreement on December 22, 2009, it may
20 withdraw as early as December 31, 2014. The Midwest ISO has reviewed the
21 clarification provided in this paragraph and agrees that it is correct.

22
23
24 **Witness)** David G. Crockett

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1 **Item 5)** *Explain how the generation and load of HMP&L will be treated if Big*
2 *Rivers joins the Midwest ISO.*

3
4 **Response)** If Big Rivers joins the Midwest ISO, the load of Henderson Municipal
5 Power & Light (“HMP&L”) and HMP&L’s entitlement to Station Two will continue to
6 be treated as they are today. On May 26, 2010, FERC issued an order in Docket No.
7 ER10-1024-000, granting the Midwest ISO’s proposal to amend Attachment P to the
8 Midwest ISO tariff to add several Big Rivers agreements to the list of grandfathered
9 agreements (“GFA”) under the tariff. In particular, FERC approved the Midwest ISO
10 proposal to grant carved-out GFA status to all deliveries by Big Rivers to serve HMP&L
11 load. Pursuant to this carved-out GFA status, Big Rivers will continue to generate
12 electric energy from Station Two and deliver it to serve the needs of HMP&L pursuant to
13 the existing contractual arrangements between the parties. Such deliveries will be subject
14 to Midwest ISO administrative charges, but the HMP&L entitlement from Station Two
15 and the HMP&L load will not be subject to energy charges under the Midwest ISO’s
16 Energy Markets and HMP&L will not be allocated any charges for Midwest ISO
17 Transmission Expansion Plan projects. On September 22, 2010, Big Rivers notified the
18 Midwest ISO that Big Rivers would be the “Market Participant” with respect to the
19 HMP&L load and Station Two. This means that Big Rivers will be responsible for all
20 submissions of schedules associated with such load and generation and with the
21 submission of offers to sell any energy, capacity and ancillary services available from
22 Station Two in excess of the amounts committed to HMP&L.

23
24 HMP&L notified Big Rivers on September 24, 2010, that if HMP&L participates
25 in the Midwest ISO, it will register its annual reserved capacity and related energy. The
26 Midwest ISO has explained to HMP&L that the deadline for Market Participant

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1 registration of assets for December 1, 2010, has passed, but that HMP&L would have the
2 opportunity to qualify as a Market Participant and register its assets for future modeling
3 cycles.

4
5
6 **Witness)** C. William Blackburn