

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR APPROVAL) CASE NO. 2012-00492
TO ISSUE EVIDENCES OF INDEBTEDNESS)

ATTORNEY GENERAL'S PRELIMINARY COMMENTS
SUBJECT TO PARTICIPATING IN POTENTIAL SUBSEQUENT HEARING

On November 14, 2012 Big Rivers Electric Corporation ("Big Rivers") filed its application in the instant matter seeking the Commission's approval to issue evidences of new indebtedness. The Attorney General filed a petition for intervention, which the Commission granted on December 28, 2012. A procedural order was issued on December 18, 2012 which provided for one round of interrogatories from intervenors. The procedural order also provided a deadline for intervening parties to file comments and to request a hearing. The Attorney General wishes to file preliminary comments at this time, but because other intervenors may wish to request a formal hearing and due to the great import attached to this matter, the Attorney General also reserves his right to fully participate in a hearing, and to file a post-hearing brief.

Big Rivers seeks, *inter alia*, to refinance its Series 1983 Ohio County Pollution Control bonds by means of Ohio County issuing new, Series 2013A bonds in an amount up to \$58.8 million. While the proceeds of the Series 2013A bonds would be used to pay the principal portion of the older bonds' purchase price, Big Rivers proposes to pay from its own funds the interest due on the older bonds through the date of purchase.

Big Rivers' re-marketing agent, Goldman Sachs, has opined that the interest rate on the Series 2013A bonds would have to be "in the range of 6.0% or higher, if the bonds can be successfully marketed."¹ Big Rivers argues that payment of the Series 1983 bonds on or before the maturity date is essential in order to avoid a default, which would trigger negative ratings actions from the major credit rating agencies.² Big Rivers asserts that issuance of the Series 2013A bonds would allow it to protect its current level of liquidity.³

The Attorney General has rarely if ever intervened in a utility's petition to issue evidences of indebtedness. However, he has become gravely concerned about Big Rivers' financial condition, especially in light of the August 20, 2012 notice from Century Aluminum ("Century") that it has terminated its Retail Electric Service Agreement with Big Rivers' distribution cooperative, Kenergy Corporation. Century is responsible for approximately 37% of Big Rivers' wholesale revenues.⁴ As a result of Century's notice, and as illustrated in the petition as well as in Big Rivers' responses to data requests, three credit rating agencies have revised downward the credit ratings of both Big Rivers and the Ohio County Series 1983 pollution control bonds.⁵ Therefore, any and all actions that could impact Big Rivers' financial condition need to be reviewed with great care. The Attorney General believes the issues presented in the instant matter are indicative of Big Rivers' overall financial condition, and thus will

¹ Application, p. 6, emphasis added.

² *Id.*, p. 10.

³ *Id.*, pp. 7-8.

⁴ *Id.*, p. 6

⁵ *Id.*, pp. 6-7.

become inextricably intertwined with Big Rivers' recently-filed base rate case, Case Number 2012-00535.⁶

Accordingly, the Attorney General believes that careful consideration of the matters set forth in the instant application will doubtlessly provide a useful head start for the Commission, staff, and the parties' understanding and evaluating the significant and complex concerns regarding Big Rivers financial condition that will doubtlessly be of central concern in Case Number 2012-00535. Notably, the Commission should consider that Big Rivers' application for approval to issue new debt instruments likely would place it in the credit markets while such markets may be volatile due to urgent matters before Congress regarding the debt ceiling, federal budgeting, and sequester. These potential near-term credit market circumstances must be at least part of the reason for Goldman Sachs' conditional statement, highlighted above: "*if the bonds can be successfully marketed.*"

While the Attorney General expresses utmost support for Big Rivers' long-term financial stability and understands that time factors are crucial in this proceeding, he reserves his final position on the instant matter until all parties have had the opportunity to request a hearing. If any other party(ies) request a hearing, the Attorney General hereby indicates his support of proceeding to a hearing, and will fully participate therein, including the possible tendering of a final brief. A formal hearing

⁶ Big Rivers filed its notice of intent to file its base rate case on December 4, 2012. The application in that case could thus be filed very shortly. Obviously, the outcome of the instant case will also have direct bearing on Big Rivers' debt service cost in Case No. 2012-00535, which is always at issue in any base rate proceeding.

could well produce more evidence and offer the transparency necessary for the Commission to reach a decision in such a crucial matter.

Respectfully submitted,
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ATTORNEY GENERAL



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Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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