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**Via Overnight Mail**

January 9, 2013

Mr. Jeff Derouen, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

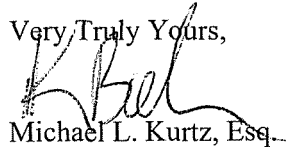
**Re: Case No. 2012-00492**

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC's REQUEST FOR HEARING AND MEMORANDUM IN SUPPORT for filing in the above-referenced matter.

By copy of this letter, all parties listed on the Certificate of Service have been served. Please place these documents of file.

Very Truly Yours,



Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.

**BOEHM, KURTZ & LOWRY**

MLKkew  
Attachment

cc: Certificate of Service  
Quang Nyugen, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail (when available) and by regular U.S. Mail, unless other noted, this 9<sup>th</sup> day of January, 2013 to the following



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PUBLIC SERVICE  
COMMISSION

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF: THE APPLICATION OF BIG RIVERS :  
ELECTRIC CORPORATION FOR APPROVAL TO ISSUE : Case No. 2012-00492  
EVIDENCES OF INDEBTEDNESS :

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**REQUEST FOR HEARING OF  
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.**

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**I. INTRODUCTION**

KIUC intervened in this proceeding on behalf of Domtar Paper Co., LLC, Kimberly Clark Corporation and Aleris International, Inc.<sup>1</sup> Pursuant to the Commission's December 18, 2012 Order, KIUC respectfully requests that the Commission schedule a hearing in which parties and the Commission are able to cross-examine Big Rivers' witnesses regarding its plan to refinance \$58.8 million in Series 1983 tax free pollution control bonds. A Memorandum in Support is attached.

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<sup>1</sup> Neither Alcan Primary Products Corporation nor Century Aluminum of Kentucky, General Partnership are participating in this KIUC intervention.

## II. MEMORANDUM IN SUPPORT

On November 13, 2012 Big Rivers Electric Corporation (“Big Rivers”) filed an Application at the Kentucky Public Service Commission seeking permission to refinance \$58.8 million in Series 1983 tax free pollution control bonds. The “1983 Bonds” are currently held by Dexia Credit Local (“Dexia”) at an interest rate of 3.25% and have a maturity date of June 1, 2013. Big Rivers seeks permission to refinance the 1983 Bonds on March 1, 2013 (three months prior to the maturity date of the 1983 Bonds) at an estimated interest rate of 6.0% “or higher.”<sup>2</sup> At a 6.0% interest rate, Big Rivers estimates that the new “2013A Bonds” will cost \$1.6 million per year more than the current Bonds.<sup>3</sup>

KIUC believes that the Application and Testimony filed by Big Rivers does not provide sufficient details to allow the Commission to find that it is necessary and appropriate pursuant to KRS 278.300(3). KIUC intends to explore at least the following issues through cross-examination of Big Rivers’ witnesses:

1. Big Rivers estimates that the 1983 Bonds can be marketed at an interest rate of 6.0%, but casts doubt on its ability to actually secure this interest rate. Big Rivers’ Application states that the interest rate “*would be in the range of 6.0% or higher per annum, if the bonds can be successfully marketed.*”<sup>4</sup> Each of the three rating agencies (S&P, Moody’s and Fitch) have expressed serious concerns regarding Big Rivers’ risk profile following Century Aluminum’s notice of termination of its retail electric contract on August 20, 2012.

On August 21, 2012, immediately following Century’s notice of termination, Moody’s downgraded its rating for Big Rivers’ Series 2010A PCB debt from Baa2 to Baa1. A Moody’s report dated August 21, 2012 states that the “*ratings actions primarily reflect increased financial and*

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<sup>2</sup> Application p. 8.

<sup>3</sup> See attachment to BREC Response to KIUC 1-8, page 16.

<sup>4</sup> Application p. 6.

*operating risks for BREC due to the August 20, 2012 announcement by Century Aluminum Company that its subsidiary Century Aluminum of Kentucky issued a 12-month notice to terminate its power contract with BREC for its Hawesville, Kentucky smelter.”*<sup>5</sup> Later in August, Fitch placed the same Big Rivers’ PCB debt on “negative watch”<sup>6</sup> and S&P revised its outlook of this PCB debt from stable to negative,<sup>7</sup> each citing the termination of the Century contract as the cause. Big Rivers’ states in response to KIUC-16 that the “6% or higher interest rate anticipated for the refunding of these bonds is based upon these credit ratings.”

If Alcan gives notice of termination of its contract with Big Rivers the rating agencies will reassess Big Rivers’ risk profile and another, perhaps more drastic, round of downgrades will occur. Big Rivers states that a “*Notice of Termination from Alcan would have comparable and possibly more negative impact on Big Rivers’ ability to refinance until such time as Big Rivers demonstrates its ability to replace the additional lost revenue through a general rate case and mitigation measures.*”<sup>8</sup> The concerns described above raise the following issues:

- If Alcan gives notice of termination of its contract, eliminating (along with the loss of the Century load) two-thirds of Big Rivers’ MWh sales to members, will Big Rivers’ be able to market its 1983 Bonds at all, and if so at what rate?
- Is it reasonable for the Commission to approve a financing deal in which the ultimate interest rate is unknown and could be significantly in excess of Big Rivers’ 6.0% estimate?
- Is there a rate above 6.0% at which it would be more beneficial for Big Rivers to explore other options for refunding its 1983 Bonds?
- Should the 1983 Bonds be paid off with cash and/or other reserve accounts, with long-term financing delayed until a later date?

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<sup>5</sup> See attachment to BREC Response to KIUC 1-9, page 237.

<sup>6</sup> See attachment to BREC Response to KIUC 1-9, page 201; “*The rating reflects the decision by Century Aluminum Co. to terminate its power contract with Big Rivers...*”

<sup>7</sup> See attachment to BREC Response to KIUC 1-9, page 449; S&P states that its, “*outlook revision reflects [S&P’s] concerns about the strength and stability of the utility’s revenue stream following its leading customer’s issuance of a 12-month notice to terminate its power contract with BREC.*”

<sup>8</sup> BREC Response to KIUC 1-16, p. 1 of 2.

2. Big Rivers states that the new 2013A Bonds will be subject to an option call for redemption after 10 years,<sup>9</sup> meaning that Big Rivers will not be able to pre-pay or refinance the Bonds for 10 years after closing. If credit markets become more favorable to borrowers and/or Big Rivers' risk profile improves in the future, this provision will prevent Big Rivers from pre-paying the Bonds or refinancing at a better rate. This provision is especially of concern because Big Rivers will be paying an inflated rate based upon its poor credit profile. The market data provided by Big Rivers shows that the estimated 6.0% rate for the 2013A Bonds is on the extreme high-end of the market even among other BBB- rated utilities in 2012.<sup>10</sup> That inflated rate will be locked in for 10 years. More information is needed to understand whether this provision can be improved through further negotiations, or whether delaying the refinancing is more prudent.

3. Per the terms of the 1983 Bonds, the PCB debt must be refinanced by June 1, 2013. However, Big Rivers proposes to refinance three months prior to maturity on March 1, 2013. As stated above, the current interest rate on the 1983 Bonds is 3.25%, significantly less than the 6% (or higher) rate of the new Bonds. Big Rivers estimates that issuing the Bonds three months early will cost approximately \$400,000.<sup>11</sup> Big Rivers has not provided sufficient justification for incurring these costs. Is it reasonable to refinance to a higher interest rate three months early?

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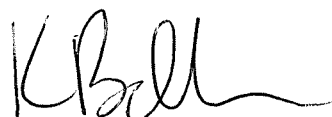
<sup>9</sup> Application p. 6.

<sup>10</sup> Attachment to Big Rivers Response to KIUC 1-3, pp. 137-155.

<sup>11</sup> Big Rivers Response to KIUC 1-8, p. 22 of 41.

**WHEREFORE**, Kentucky Industrial Utility Customers, Inc. respectfully requests that pursuant to its December 18, 2012 Order, the Commission schedule a hearing in which parties and the Commission will be permitted to cross-examine Big Rivers' witnesses regarding its plan to refinance \$58.8 million in Series 1983 tax free pollution control bonds.

Respectfully submitted,



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Kurt J. Boehm, Esq.

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**COUNSEL FOR KENTUCKY INDUSTRIAL  
UTILITY CUSTOMERS, INC.**