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March 13, 2014

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MAR 14 2014
PUBLIC SERVICE COMMISSION

Via Federal Express

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

Re: *In the Matter of: The Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, PSC Case No. 2012-00535

Dear Mr. Derouen:

Enclosed for filing in the above referenced matter are an original and ten copies of Big Rivers Electric Corporation's Response to the Comments on Rehearing and Request for Hearing jointly filed by Kentucky Industrial Utility Costomers, Inc., the Attorney General, Ben Taylor, and Sierra Club. I certify that on this date, a copy of this letter and a copy of the response were served on each of the persons listed on the attached service list by Federal Express or by first class mail, postage prepaid.

Sincerely,

Tyson Kamuf

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MAR 14 2014

PUBLIC SERVICE
COMMISSION

Big Rivers
ELECTRIC CORPORATION

Your Touchstone Energy® Cooperative

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

APPLICATION OF BIG RIVERS	)	
ELECTRIC CORPORATION FOR A	)	Case No. 2012-00535
GENERAL ADJUSTMENT IN RATES	)	

**Response of Big Rivers Electric Corporation
to the Comments on Rehearing and Request for Hearing
by Kentucky Industrial Utility Customers, Inc.,
Attorney General, Ben Taylor, and Sierra Club
(collectively, the Joint Intervenors)
dated March 4, 2014**

FILED: March 14, 2014

ORIGINAL

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR A GENERAL ADJUSTMENT IN RATES	)))	Case No. 2012-00535

RESPONSE OF BIG RIVERS ELECTRIC CORPORATION TO THE COMMENTS ON REHEARING AND REQUEST FOR HEARING BY KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC., ATTORNEY GENERAL, BEN TAYLOR, AND SIERRA CLUB

Big Rivers Electric Corporation ("Big Rivers"), through counsel, submits this response to the Comments on Rehearing (the "Joint Intervenor Comments") jointly filed by Kentucky Industrial Utility Customers, Inc., the Attorney General, Ben Taylor, and Sierra Club (collectively, the "Joint Intervenors"). For the reasons set out in the following sections, the Kentucky Public Service Commission ("Commission") should rule that there is no newly discovered evidence supporting any adjustment to Big Rivers' revenue requirement.

I. INTRODUCTION AND PROCEDURAL BACKGROUND.

The Commission held an evidentiary hearing in this matter on July 1-3, 2013, at its offices in Frankfort, Kentucky. The Commission issued its order on Big Rivers' proposed rate adjustment on October 29, 2013 (the "Rate Order").

On December 10, 2013, the Commission granted rehearing "to explore the issue of when the amount of SSR revenues was determined and known to Big Rivers and whether any such additional revenues should be recognized in establishing Big Rivers' revenue requirement." (Order dated December 10, 2013, at p. 6.) In support of its order granting rehearing, the Commission found that the System Support Resource ("SSR") Agreement filing made by Big

Rivers and Midcontinent Independent System Operator, Inc. ("MISO") with the Federal Energy Regulatory Commission ("FERC") on November 1, 2013, gave "reason to believe that Big Rivers may have been aware of the higher amount of SSR revenues it would receive prior to the issuance of the Rate Order" three days prior. (*Id.*) The Commission framed the relevant legal issue as "whether the MISO FERC filing should be considered newly discovered evidence." (*Id.*)

As the discovery produced in this rehearing process illustrates, there is no "newly discovered evidence" supporting any adjustment to Big Rivers' revenue requirement. Moreover, the Joint Intervenors largely ignore the fact that Big Rivers did not know the amounts or types of SSR reimbursements it might receive until after the hearing and after the Rate Order. The Commission should, consequently, reject the Joint Intervenors' claims, and no changes should be made to Big Rivers' revenue requirement.

Aside from that dispositive issue, altering Big Rivers' revenue requirement in the manner suggested by the Joint Intervenors would violate both the matching principle and the rule against single-issue rate making. And from a factual perspective, the Joint Intervenors continue to misstate that Big Rivers will receive budgeted amounts under the SSR Agreement, when instead, the record reflects that Big Rivers will only receive reimbursement for expenses actually incurred. The Joint Intervenors compound this mistake by grossly mischaractizing the reimbursement Big Rivers will receive under the SSR Agreement as "profit." They also overstate the amounts of reimbursement by relying on "whole year" budgeted amounts even though the reimbursements will only cover the actual expenditures during the eight months the SSR Agreement is anticipated to be effective.

The Joint Intervenors then attempt to unilaterally expand the scope of rehearing by raising a new claim seeking an adjustment to address alleged "profits" on off-system sales occurring in January and February of 2014. Not only are the Joint Intervenors wrong that Big Rivers – a not-for-profit electric cooperative – makes "profits" on off-system sales from its Coleman generating station during the period of the SSR Agreement, they ignore the facts that: (i) they never raised the issue of off-system sales in their petition for rehearing; and (ii) the Commission did not grant rehearing on this issue.

Finally, the Joint Intervenors propose that if the Commission orders any refunds, they should be added to the Economic Reserve. Although Big Rivers does not oppose this mechanism in the abstract, the absence of any basis for adjustment of its revenue requirement renders this request moot.

Accordingly, the Commission should not adjust the revenue requirement approved in its Rate Order.

II. FACTUAL BACKGROUND OF THE SSR AGREEMENT.

At the close of the hearing in this matter, it was not known what the final budget for the SSR Agreement would contain, and Big Rivers had not yet even submitted a proposed budget to MISO at that time. The uncertainty around the SSR budget continued through negotiations among Big Rivers, MISO, and Century until October 31, 2013, when MISO and the Independent Market Monitor ("IMM") approved an SSR budget that Big Rivers had submitted to MISO on October 29, 2013. On November 1, 2013, Big Rivers and MISO executed and filed the SSR Agreement with FERC. That agreement was based on the SSR budget that was approved by MISO and the IMM on October 31, 2013.

The SSR Agreement provides that Big Rivers will be reimbursed by MISO only for the actual, incremental costs Big Rivers incurs to operate its Coleman generating station as an SSR. That is, the SSR Agreement only permits Big Rivers to be reimbursed for the actual costs of operating Coleman as an SSR, minus the Coleman-related costs that Big Rivers would incur if it were to idle Coleman Station. The SSR Agreement further contains a true-up mechanism to ensure Big Rivers does not profit under this arrangement.

A timeline of the negotiations and filing of the SSR Agreement is attached for the Commission's convenience as Exhibit 1. All dates postdate the formal hearing by at least two months.

III. BIG RIVERS' RATES CANNOT BE ADJUSTED BASED ON NEW EVIDENCE THAT DID NOT EXIST AT THE TIME OF THE HEARING.

The only new evidence that may be presented on rehearing is "evidence that could not with reasonable diligence have been offered on the former hearing." (KRS 278.400.) Citing the Kentucky Supreme Court, the Commission has held that "on rehearing, a party may present 'newly discovered evidence' which has been judicially defined to be limited to evidence that existed at the time of the former hearing, not 'new evidence' which did not exist at the time of the former hearing." (Order dated November 15, 2013, in *In the Matter of Application of Ky. Power Co.*, Case No. 2012-00578 (*citing Stephens v. Kentucky Utilities Co.*, 569 S.W.2d 155, 158 (Ky. 1978)).) The SSR Agreement upon which the Joint Intervenors' allegations are based was filed with FERC on November 1, 2013, and did not exist at the time of the hearing in July 2013. As such, it cannot be used as evidence on rehearing.

The Joint Intervenors point to no evidence that existed at the time of the hearing to support any of the allegations in their comments. Instead, the Joint Intervenors allege, without any actual evidence or support, that Big Rivers "was well aware that the parties had reached agreement on the specific costs that it would recover in SSR payments by early October 2013." (Joint Intervenor Comments at p. 2.) While the error with this allegation is addressed further in the following section, any alleged agreement in early October 2013 still would have occurred well after July 2013; therefore, it "did not exist at the time of the former hearing" and cannot be used as evidence on rehearing. Even the initial SSR budget Big Rivers proposed to MISO was developed subsequent to the hearing and, as shown in Exhibit 1, was first submitted to MISO (who had yet to approve the budget) on September 16, 2013, more than two months after the hearing.

Thus, the Joint Intervenors have not identified any evidence that the Commission can consider on rehearing, and their proposed adjustments to Big Rivers' revenue requirement should be denied.

IV. BIG RIVERS DID NOT KNOW THE AMOUNT OF SSR PAYMENTS TO WHICH MISO WOULD AGREE UNTIL MISO APPROVED THE SSR BUDGET ON OCTOBER 31, 2013, AND BIG RIVERS STILL DOES NOT KNOW WHETHER FERC WILL APPROVE THE SSR AGREEMENT.

As noted in the previous section, the Joint Intervenors allege that Big Rivers "was negotiating the SSR Agreement while this proceeding was pending and was well aware that the parties had reached agreement on the specific costs that it would recover in SSR payments by early October 2013." (Joint Intervenor Comments at p. 2.) The Joint Intervenors offer no evidence to support their allegation that Big Rivers and MISO had reached an agreement on SSR payments by early October 2013. Indeed, they acknowledge that "[t]he quantification of costs was not finalized until October 31, 2013," but they nevertheless allege that "the specific costs that would be recovered were listed and quantified in multiple earlier versions of the Excel spreadsheet developed for this purpose." (Joint Intervenor Comments at p. 2, n. 2.)

The referenced spreadsheets appear to be the SSR budgets Big Rivers proposed to MISO during the negotiations with MISO over the SSR Agreement. Big Rivers submitted the first such proposed budget to MISO on September 16, 2013, more than two months after the hearing in this proceeding, and therefore, it cannot be considered on rehearing.

Even if that initial budget could be considered as evidence on rehearing, proposals made in the course of negotiations are not the same as an agreement, and there was no agreement with MISO regarding the SSR budget until October 31, 2013, after the Commission had already issued the Rate Order. That budget was based on a three unit Coleman SSR and differed from the previously proposed budget Big Rivers had submitted to MISO on October 9, 2013, which was based on a two unit Coleman SSR. Thus, the Joint Intervenors' allegation that Big Rivers and MISO had agreed to an SSR budget prior to October 31, 2013, is factually incorrect and is unsupported by the evidence.

Additionally, at the time of the hearing in this proceeding, Big Rivers did not even have the information that the Joint Intervenors are attempting to use to justify a reduction in Big Rivers' revenue requirement for the SSR reimbursements for incremental administrative and general ("A&G") headquarters expenses, for incremental carrying costs on fuel and materials and supplies ("M&S") inventories, and for incremental property tax and property insurance expenses. Big Rivers first calculated its proposed 7.85% return on fuel and M&S inventories on September 4, 2013. Big Rivers first identified the headquarters positions that would be eliminated with Coleman Station idled subsequent to September 26, 2013. Big Rivers learned only on October 1, 2013, that its estimated incremental property taxes would be lower with Coleman Station idled. And, it was not until October 3, 2013, that Big Rivers learned that its incremental property insurance costs would be lower with Coleman Station idled.

Finally, FERC did not accept the SSR Agreement until December 20, 2013. Even then, it did so subject to refund and further FERC order. Meanwhile, Century has filed a protest with FERC regarding the budget for the SSR Agreement. If FERC ultimately issues an order finding that the SSR budget should be adjusted, any payments made pursuant to the SSR Agreement will be subject to refund for the difference between the proposed and the adjusted budgets. Thus, even though MISO has approved the SSR budget, Big Rivers will not know the amount of the SSR payments it will receive until FERC grants final approval of the SSR Agreement.

V. ADJUSTING BIG RIVERS' REVENUE REQUIREMENT BASED ON THE SSR AGREEMENT WOULD VIOLATE THE MATCHING PRINCIPLE AND THE RULE AGAINST SINGLE-ISSUE RATE MAKING.

Not only would adjusting Big Rivers' revenue requirement based on the post-hearing SSR Agreement violate the rule that evidence on rehearing must exist at the time of the hearing, as described in Sections III and IV of this response, it would also violate the matching principle and the rule against single-issue rate making.

With regard to the matching principle, the Commission has explained, "For ratemaking purposes, the matching principle means that all revenues, expenses, rate base components, plant additions, and capital items are updated to the same period." (Order dated March 30, 2002, in Case No. 2011-00096, at p. 7.) The Joint Intervenors' proposal would require the Commission to update only payments under the SSR Agreement for events occurring after the hearing, while not adjusting all other revenues, expenses, rate base components, plant additions, and capital items to the same period. Consequently, the Joint Intervenors' proposal would violate the matching principle, and it should be denied.

Similarly, the Commission has stated that "[c]ourts have generally held that regulatory commissions may not establish rates based on a single expense or revenue source," and it has utilized one court's explanation of the rule against single-issue rate making:

> The rule against single-issue ratemaking recognizes that the revenue formula is designed to determine the revenue requirement based on the aggregate costs and demand of the utility. Therefore, it would be improper to consider changes to components of the revenue requirement in isolation. Often times a change in one item of the revenue formula is offset by a corresponding change in another component of the formula.

(Order dated February 21, 1997, in Case No. 94-453 at pp. 6-7 (quoting *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n*, 585 N.E.2d 1032 (Ill. 1991)).) The Joint Intervenors' proposal would require the Commission to adjust Big Rivers' revenue requirement based on a change to one component of the revenue requirement (SSR payments) resulting from post-hearing events without considering changes in other components of the revenue requirement. Consequently, the Joint Intervenors' proposal would violate the rule against single-issue rate making, and it should be denied.

VI. THE COMMISSION SHOULD REJECT THE JOINT INTERVENORS' PROPOSED ADJUSTMENTS FOR THE SSR BUDGET ITEMS PERTAINING TO A&G HEADQUARTERS EXPENSES, RETURN ON FUEL AND M&S INVENTORY, AND PROPERTY TAXES AND INSURANCE EXPENSES.

Even beyond the legal reasons for rejecting the Joint Intervenors' proposed adjustments to Big Rivers' revenue requirement, the Commission should deny them because the amounts the Joint Intervenors claim Big Rivers has received for headquarters expenses, return on rate base, and property taxes and insurance are incorrect.

A. The Joint Intervenors wrongly claim that "Big Rivers has recovered $1.804 million in A&G headquarters expenses on an estimated annual basis from MISO and Century since August 2013" and that "[t]he expenses for these 15 A&G headquarters employees also were included in the revenue requirement recovered from customers since August 20, 2013."

The Joint Intervenors' allegation that "Big Rivers has recovered $1.804 million in A&G headquarters expenses on an estimated annual basis from MISO and Century since August 2013" (Joint Intervenor Comments at p. 3) is incorrect. Big Rivers has not recovered $1.804 million in A&G headquarters expenses from MISO or Century.

First, the $1.804 million cited by the Joint Intervenors is the amount Big Rivers is budgeted to receive under the SSR Agreement if the SSR is in effect for a full year. As previously explained, Big Rivers only receives its actual costs under the SSR Agreement, not the budgeted amount. Moreover, the SSR Agreement will not be in effect for a full year. The SSR Agreement became effective September 1, 2013. On February 25, 2014, MISO issued its required 60 day notice to terminate the Coleman SSR Agreement effective April 30, 2014. Thus, the SSR Agreement will only be in effect for eight months.

Second, not all of the $1.804 million in annual A&G headquarters expenses were included in Big Rivers' revenue requirement. The $1.804 million represents the annual cost of 15 headquarters positions for which Big Rivers is to be reimbursed under the SSR Agreement, assuming FERC ultimately approves the agreement as submitted. As shown in Big Rivers' response to Item 8b of the Joint Intervenors' Supplemental Rehearing Requests for Information, Big Rivers had already removed five of the 15 headquarters positions from its revenue requirement when it filed its application in this matter. Big Rivers did not know at the time it filed the application which headquarters positions would be eliminated. Subsequent to September 26, 2013, when it identified the positions that would be eliminated, Big Rivers recognized that five of those positions were positions that it had not included in its revenue requirement. Thus, only 10 positions are both included in the revenue requirement and included in the SSR budget.

Third, Big Rivers takes a conservative approach to budgeting labor, and Big Rivers does not budget for its full complement of employees. In the forecast relied on in this case, Big Rivers assumed that an average of 14.67 positions would be open each month during the forecasted test period, and it removed all costs associated with those positions. The removal of those costs more than makes up for the costs associated with the 10 positions that are in both the forecast and the SSR Agreement.

B. The Joint Intervenors wrongly claim that "Big Rivers has recovered $0.716 million for a 7.85% return on fuel and M&S inventory on an estimated annual basis from MISO and Century since August 2013."

The Joint Intervenors' allegation that "Big Rivers has recovered $0.716 million for a 7.85% return on fuel and M&S inventory on an estimated annual basis from MISO and Century since August 2013" (Joint Intervenor Comments at p. 5) is also incorrect.

First, as with the A&G headquarters expense, Big Rivers has not recovered $0.716 million for a return on fuel and M&S inventory. That amount is the annual amount Big Rivers is budgeted to receive if the SSR Agreement is in effect for a full year. Again, however, the SSR Agreement is expected to be in effect for only eight months, and Big Rivers will only receive reimbursement for its actual expenses, not the budgeted amount.

Second, the return on fuel and M&S inventory reimburses Big Rivers for the incremental carrying costs of fuel, reagent, and materials and supplies required to operate the Coleman Station during the term of the SSR Agreement. If Big Rivers did not have to run Coleman Station, Big Rivers would not have to use its funds for the fuel, reagent, and materials and supplies required to operate Coleman Station, and Big Rivers would otherwise be able to invest those funds, pay down debts, or both. The Joint Intervenors suggest that because Big Rivers' short-term investment returns are close to 0%, these carrying costs should be discounted accordingly, but that only holds true if one assumes that Big Rivers would irrationally apply those funds to short-term investments with close to a 0% return rather than pay down debt with a higher interest rate. Thus, these carrying costs are synonymous with Big Rivers' Cost of Capital & Cost of Debt, a calculation for which is provided in Big Rivers' response to Item 2 of the Commission Staff's Supplemental Rehearing Requests for Information.

Moreover, although the reimbursement Big Rivers is budgeted to receive for the carrying costs is not included in Big Rivers' revenue requirement, the payment does not provide a profit to Big Rivers. Instead, it makes Big Rivers whole and ensures no costs of operating Coleman Station under the SSR Agreement are borne by Big Rivers' Members.

Third, regulated utilities are entitled to earn a fair and reasonable rate of return on their investments. Crediting the carrying cost paid through the SSR as an offset to the revenue requirement would be tantamount to denying Big Rivers a return on its investment related to fuel, reagent, and materials and supplies. If Big Rivers was operating Coleman, but not under SSR status, Big Rivers' revenue requirement would include a carrying cost or return in the form of TIER. Because it would be appropriate to include the return or carrying costs in Member rates if Coleman were not under SSR status, it is similarly appropriate for Big Rivers to receive the return or carrying costs when Coleman is operated under SSR status.

The Joint Intervenors claim that "[t]his revenue should be included in the Company's revenue requirement to offset the interest expense and TIER margin on the debt used to finance this investment." (Joint Intervenor Comments at p. 3.) However, no debt is used to finance the fuel and M&S inventories. Thus, this claim should be rejected.

C. The Joint Intervenors wrongly claim that "Big Rivers has recovered $0.110 million in avoidable property tax and insurance expenses on an estimated annual basis through the SSR since August 2013."

The Joint Intervenors' allegation that "Big Rivers has recovered $0.110 million in avoidable property tax and insurance expenses on an estimated annual basis through the SSR since August 2013" (Joint Intervenor Comments at p. 6) is also incorrect. Big Rivers has not recovered $0.110 million for incremental property tax and insurance expense. Once again, the Joint Intervenors incorrectly assume that Big Rivers will recover the budgeted amount (not the actual amount), and they overlook the fact that the SSR Agreement will not be in place for a full year.

Although Big Rivers will be reimbursed under the SSR Agreement for incremental property taxes and insurance associated with the Coleman SSR – assuming FERC approves the SSR Agreement as submitted – that reimbursement will amount to $9,186.50 per month, for the five-month period between September 1, 2013, and January 31, 2014, when the rates approved in the Rate Order were in effect. If this amount were credited entirely to the demand charge for the RDS and LIC rate schedules on a 12-CP basis, it would reduce the monthly demand charge for each rate class by $0.00136/kW-month.

VII. THE JOINT INTERVENORS' NEW CLAIM SHOULD BE REJECTED.

In the their comments, the Joint Intervenors allege for the first time that Big Rivers' revenue requirement should be adjusted to reflect purported profits from off-system sales revenues from Big Rivers' Coleman Station as a result of cold weather events that occurred not only after the dates of the hearing and the Rate Order, but also after the date on which the right to seek rehearing expired:

> the temporary increase in wholesale power prices in January and February 2014 resulting from extremely cold weather this winter may have allowed Big Rivers to receive revenue from off-system sales out of the Coleman Plant in excess of its SSR costs for at least those two months. Any such profits from off-system sales are being retained by Big Rivers rather than being credited back to customers despite the fact that customers are continuing to pay for all of the fixed costs of the Coleman station other than depreciation, which is currently deferred per the Commission's Order in this case.

(Joint Intervenor Comments at p. 2.) This new claim should be rejected outright because the new claim is raised untimely, and Big Rivers did not receive any off-system sales revenues from Coleman Station. KRS 278.400 requires petitions for rehearing to be filed within twenty days of the service of an order. The Joint Intervenors did not seek rehearing of this issue within twenty days of service of the Rate Order. As such, this claim should be rejected.

Had the Joint Intervenors sought rehearing of this issue, the Commission should have denied that request because the Joint Intervenors did not raise this issue during the case, and the Commission has denied rehearing in previous cases where a party voluntarily declined to present the argument or evidence during the case only to try to raise the issue for the first time on rehearing. (*See, e.g.*, Order dated October 17, 2005, in *In the Matter of: Application of Kentucky Power Company for Approval of an Amended Compliance Plan for Purposes of Recovering Additional Costs of Pollution Control Facilities and to Amend its Environmental Cost Recovery Surcharge Tariff*, Case No. 2005-00068 ("Kentucky Power had a full and fair opportunity in this proceeding to propose an alternative means of reflecting income taxes in the rate of return calculation for the environmental surcharge...Kentucky Power had full knowledge of the tax issue raised by KIUC and Kentucky Power's rebuttal testimony could have included the evidence it now seeks to present on rehearing. Based on a review of all of Kentucky Power's rehearing arguments, the Commission finds that rehearing should be denied"); Order dated January 29, 1991, in *In the Matter of: An Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 90-158 ("LG&E did not propose to recover the costs of this rate case through rates. To raise such costs for the first time on rehearing is improper").)

In addition, the weather events that form the factual basis of the Joint Intervenors' new claim occurred in January and February of 2014, months after the hearing. Because this information was unknown at the time of the hearing, it cannot be used as evidence on rehearing.

Finally, the Joint Intervenors' claim is not supported by any evidence, and it is untrue. The Joint Intervenors do not include a single citation to support their claim that Big Rivers profits from off-system sales from Coleman, and such a claim is untrue and contrary to the evidence that is in the record. As Big Rivers has explained, Big Rivers does not make any profit on the SSR Agreement. When MISO dispatches Coleman, Big Rivers must offer Coleman into MISO at its marginal cost of generation, and Big Rivers is reimbursed for its marginal cost of generation. (*See* Big Rivers' November 22, 2013, update to its response to PSC 4-3.) Under the terms of the SSR Agreement, Big Rivers receives no benefits from any spike in prices paid in the market for the generation output of Coleman. Thus, Big Rivers makes no profits on off-system sales from Coleman, and the Joint Intervenors' claim to the contrary should be rejected.

VIII. CONCLUSION.

For the foregoing reasons, Big Rivers requests that the Commission reject the Joint Intervenors' claims and make no adjustments to the rates approved in the Rate Order.

On this the 13th day of March, 2014.

Respectfully submitted,

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Certificate of Service

I certify that a true and accurate copy of the foregoing was served by Federal Express or by regular mail upon the persons listed on the service list accompanying this response, on or before the date this petition is filed with the Kentucky Public Service Commission.

On this the 13th day of March, 2014,

Counsel for Big Rivers Electric Corporation

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