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September 19, 2013

**RECEIVED**  
SEP 20 2013  
PUBLIC SERVICE  
COMMISSION

**VIA FEDERAL EXPRESS**

Hon. Jeff R. Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
Frankfort KY 40601-8294

***RE: In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates, Case No. 2013-00199***

Dear Mr. Derouen:

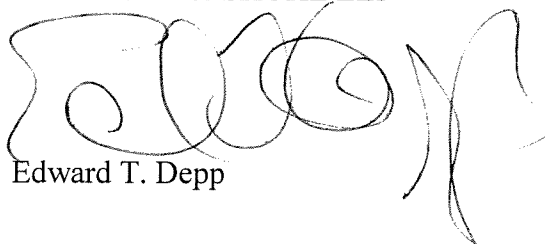
With this letter we have enclosed one (1) original and eleven (11) copies of the Response of Big Rivers Electric Corporation to Kentucky Industrial Utility Customers, Inc.'s Motion for Public Disclosure and Request for an Expedited Ruling.

Please return a file stamped copy in the enclosed self-addressed postage prepaid envelope.

Thank you and if you have any questions, please call me.

Sincerely,

DINSMORE & SHOHL LLP



Edward T. Depp

ETD/bmt

Enclosures

cc: All Parties of Record

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1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY  
3  
4

5 In the Matter of:

6  
7 Application of Big Rivers Electric )  
8 Corporation for a General ) Case No. 2013-00199  
9 Adjustment In Rates )  
10

11  
12 **RESPONSE OF BIG RIVERS ELECTRIC CORPORATION TO KENTUCKY**  
13 **INDUSTRIAL UTILITY CUSTOMERS, INC.'S MOTION FOR PUBLIC DISCLOSURE**  
14 **AND REQUEST FOR AN EXPEDITED RULING**  
15

16 1. Comes now Big Rivers Electric Corporation ("Big Rivers"), through counsel, and  
17 hereby submits its response to Kentucky Industrial Utility Customers, Inc.'s ("KIUC") Motion  
18 for Public Disclosure and Request for an Expedited Ruling.

19 2. On August 19, 2013, the Kentucky Office of the Attorney General ("AG") filed  
20 its Initial Requests for Information in this matter. In AG 1-158, the AG requested "copies of the  
21 summary results of all Financial Model runs provided to the Big Rivers Board of Directors in the  
22 period January 1, 2012 to current."

23 3. With the filing of its response to AG 1-158, Big Rivers petitioned the Kentucky  
24 Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 13 and KRS  
25 61.878, to grant confidential treatment to an attachment to the response. That petition remains  
26 pending.

27 4. On September 11, 2013, KIUC filed its Response in Opposition to the Petition of  
28 Big Rivers Electric Corporation for Confidential Protection. The Commission's regulations  
29 provide that "[a] party may respond to a motion for confidential treatment within seven (7) days  
30 after it is filed with the commission." 807 KAR 5:001 Section 13(e). KIUC filed its Response

1 on September 11, 2013, which was eight days after Big Rivers filed its Petition for Confidential  
2 Treatment. KIUC's Response was not timely filed.

3 5. KIUC then filed the present “Motion for Public Disclosure.” Regardless of how  
4 KIUC has styled the pleading, its motion is either another untimely response to Big Rivers’  
5 Petition for Confidential Treatment or a transparent “end-run” around 807 KAR 5:001 Section  
6 13(e). Big Rivers must now, once more, expend its resources to respond to an inappropriate  
7 filing from KIUC. The pleading should be rejected for failure to comply with the Commission’s  
8 regulations, and it should be stricken from the record.

9 6. While not conceding the propriety of the motion, Big Rivers categorically denies  
10 the allegations contained therein. For example, KIUC alleges, “Big Rivers' practice of disclosing  
11 only a one-year sliver of rate impact information, while maintaining that all other information  
12 regarding customer rate impacts is confidential, violates the spirit and letter of these rules and  
13 regulations.”<sup>1</sup> Big Rivers has not claimed that customer rate impact is confidential; it has  
14 claimed that the attachment to its response to AG 1-158, which is a presentation to the Board of  
15 Directors, is confidential, as discussed in paragraph 8, below. Moreover, KIUC’s statement is, at  
16 best, misleading, as it ignores the rate impact information that Big Rivers filed publicly,  
17 including but not limited to Big Rivers’ response to PSC 2-10, which, unlike the relevant pages  
18 in the attachment to the response to AG 1-158, provides a clear view of the retail impact of the  
19 reserve fund depletion on Rural and Large Industrial customers.

20 7. Big Rivers also denies KIUC’s inaccurate allegations that Big Rivers has  
21 previously waived a claim for confidential treatment of any of the information it seeks to protect.  
22 The confidential attachment to Big Rivers’ response to AG 1-158 is a presentation to Big Rivers’  
23 Board of Directors; that presentation contains a summary of the outputs of the Big Rivers

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<sup>1</sup> KIUC Motion for Public Disclosure at pp. 3-4.

1 Financial Model. The Commission has previously granted confidential treatment to this type of  
2 information. *See, e.g.*, April 25, 2013, Order in P.S.C. Case No. 2012-00535 (granting  
3 confidential treatment to minutes of the Big Rivers Board of Directors meetings and Big Rivers'  
4 Financial Model).

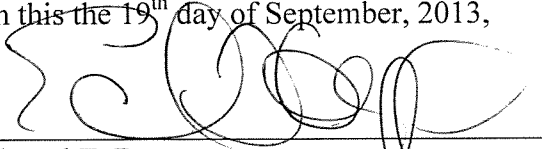
5 8. For the reasons stated in Big Rivers' Petition for Confidential Treatment and its  
6 reply to KIUC's untimely September 11, 2013 response, the attachment produced in response to  
7 AG 1-158 is entitled to confidential treatment. Information such as this, which bears upon a  
8 company's detailed inner workings, is generally recognized as confidential or proprietary. *See,*  
9 *e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does  
10 not take a degree in finance to recognize that such information concerning the inner workings of  
11 a corporation is 'generally recognized as confidential or proprietary'"); *In the Matter of: The Joint*  
12 *Application of Duke Energy Corp., Cinergy Corp., Duke Energy Ohio, Inc., Duke Energy*  
13 *Kentucky, Inc., Diamond Acquisition Corp., and Progress Energy, Inc., for Approval of the*  
14 *Indirect Transfer of Control of Duke Energy Kentucky, Inc.*, P.S.C Case No. 2011-00124 (Dec. 5,  
15 2011); *In the Matter of: The Joint Petition of Kentucky-American Water Co., Thames Water*  
16 *Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua U.S. Holdings, Inc., and*  
17 *Am. Water Works Co., Inc. for Approval of a Change in Control of Kentucky-American Water*  
18 *Co.*, P.S.C. Case No. 2006-00197 (Aug. 29, 2006) (holding that reports from the joint applicants'  
19 financial advisors and all board of director minutes and information is confidential because  
20 competitors could use it to gain unfair competitive advantage). The Commission presumably  
21 had a reason for amending its regulations on January 4, 2013, to reduce time for response to a  
22 petition for confidential treatment from ten days to seven days. If that change is to have any  
23 meaning, parties should be required to observe the rule.



**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 attached service list, on or before the date this response is filed with the Kentucky Public Service Commission.

On this the 19<sup>th</sup> day of September, 2013,

  
\_\_\_\_\_  
Edward T. Depp

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