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**Via Overnight Mail**

May 16, 2014

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

**Re: Case No. 2013-00199**

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of the PETITION FOR REHEARING OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC., THE ATTORNEY GENERAL, AND BEN TAYLOR AND SIERRA CLUB 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.

Jody Kyler Cohn, Esq.

**BOEHM, KURTZ & LOWRY**

MLKkew  
Attachment

cc: Certificate of Service  
Quang Nyugen, Esq.  
Richard Raff, Esq.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 19 2014  
PUBLIC SERVICE  
COMMISSION

In The Matter of: The Application of Big Rivers Electric Corporation for an Adjustment of Rates. : Case No. 2013-00199  
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PETITION FOR REHEARING OF  
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.,  
THE ATTORNEY GENERAL, AND BEN TAYLOR AND THE SIERRA CLUB

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Pursuant to KRS 278.400, Kentucky Industrial Utility Customers, Inc. (“KIUC”), the Attorney General of the Commonwealth of Kentucky (“AG”), by and through his Office of Rate Intervention, and Ben Taylor and Sierra Club (“Sierra Club”) (collectively, “Joint Parties”) petition the Kentucky Public Service Commission (“Commission”) for Rehearing of its April 25, 2014 Order in Case No. 2013-00199 (“Order”). The Joint Parties seek rehearing of the Commission’s Order to: 1) clarify the mechanics by which Big Rivers Electric Corporation (“Big Rivers”) will draw from the Economic Reserve (“ER”) Fund and Rural Economic Reserve (“RER”) Fund; and 2) request that the Commission allow interested parties to participate in the management audit process that the Commission established in its Order. A Memorandum in Support is attached.

MEMORANDUM IN SUPPORT

1. **Big Rivers Should Begin Drawing From The RER Fund When The ER Fund No Longer Has Sufficient Cash To Offset 100% Of The Rate Increase.**

The Commission should clarify exactly how the RER fund and ER fund will work together to temporarily offset the rate increase approved by the Commission.

On page 36 and 37 of the Order, the Commission approved Big Rivers’ proposal to accelerate the use of the ER fund and the RER fund to temporarily offset 100% of the rate increase to customers. The Commission explained that Big Rivers will first draw down the ER fund in order to offset 100% of the rate increase, and “[u]pon exhaustion of the ER fund, the MRSM will utilize the RER fund...”<sup>1</sup>

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<sup>1</sup> Order at 36.

The Joint Parties do not object to the Commission's finding, but note that per the Commission's Order on page 12, the ER fund will be continuously replenished as long as Big Rivers receives transmission and ancillary service revenues from the Hawesville smelter. At some point in the coming months, however, the bulk of the cash currently contained in the ER fund will be depleted and the stream of transmission and ancillary service revenue from Century will not be sufficient to offset 100% of the rate increase to customers. Hence, while the ER fund will never be completely exhausted as long as revenue continues to flow to Big Rivers from the Hawesville smelter, those revenues will at some point be insufficient to offset the entire rate increase to customers.

Therefore, the Commission should clarify its Order by explaining that Big Rivers should begin drawing from the RER when the ER fund no longer has sufficient cash to offset 100% of the rate increase to customers, not when the ER fund is completely exhausted.

**2. Interested Parties Should Be Given The Opportunity To Participate In The Management Audit Process.**

On page 48 of its Order, the Commission determined that it will undertake a focused management audit of Big Rivers in order to review Big Rivers' efforts to mitigate the impact of the loss of the smelter loads. The Commission states:

*[P]ursuant to the authority set forth in KRS 278.255, the Commission will engage an independent consultant to perform a focused management audit of Big Rivers' efforts to mitigate the impact of the loss of the smelter loads. This audit will review the strategic planning, management, and decision-making of Big Rivers relating to the mitigation efforts. The major focus of the audit will be on the steps that Big Rivers has undertaken or should undertake to mitigate any further financial impact relating to the loss of the smelter load.<sup>2</sup>*

Joint Parties support the Commission's actions with regard to a management audit and request clarification of the management audit process.

In previous cases in which the Commission has issued a Request for Proposals ("RFP") for an outside consultant to review and advise the Commission on a specific issue, interested parties were given a chance to comment and otherwise contribute to the process prior to the issuance of a final report. For example, in the

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<sup>2</sup> Order at 48.

Commission's management audit of East Kentucky Power Cooperative ("EKPC"),<sup>3</sup> a Preliminary Draft of the Audit Scope, which set out the objectives of the audit, was circulated before the actual RFP was issued. The AG and KIUC were invited to attend a meeting at the outset of the process and were allowed to submit comments. Additionally, a meeting was held with the EKPC Board of Directors for the purpose of discussing the audit report and how EKPC planned to implement the audit.

Likewise, in 2012, the Commission issued an RFP for a study to consider what assistance, if any, the Commission should give to large industrial customers given rising electric prices. Christensen Associates Energy Consulting, LLC, the consulting group that prepared the report, sought and received information from interested parties through survey questionnaires, memoranda, and in-person and telephone interviews.<sup>4</sup>

Joint Parties believe that a process that encourages input from interested parties is also appropriate in the Commission-ordered management audit of Big Rivers. The intervenors in the rate case (KIUC, the Attorney General, Sierra Club and the distribution cooperatives) have an established history of participating in proceedings affecting Big Rivers' service. Each intervenor has the expertise and experience to offer a unique and knowledgeable perspective on the issues facing Big Rivers that can assist the auditor and the Commission in reaching a fair and comprehensive conclusion regarding the best course of action for Big Rivers.

Including interested parties in the auditing process may prove essential to reaching a proposed course of action that is beneficial to Big Rivers and its customers. For example, the auditor faces the task of evaluating the reasonableness of a number of potential options for addressing Big Rivers' excess capacity including, but not limited to, marketing that capacity off-system through long-term contracts at below-tariff prices (apparently Big Rivers' preferred option), retiring the Coleman and/or Wilson plants, or selling the plants or their energy at a price that will lessen the burden on Big Rivers' Rural and Large Industrial customers. And there are numerous other scenarios that may incorporate one or more of these options. Each of these scenarios is further complicated by the fact that the Cross State Air Pollution Rule ("CSAPR") was recently upheld by the U.S. Supreme Court, which reversed an earlier D.C. Circuit decision vacating CSAPR.

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<sup>3</sup> Order in Case No. 2008-00436.

<sup>4</sup> See Energy Rate Impacts on Kentucky Industry, prepared for Commonwealth of Kentucky by Christensen Associates Energy Consulting, LLC (October 8, 2012) at 4.

The input of interested parties is needed in order to fully vet any of these options in light of the costs and risks facing Big Rivers generating assets. Customers would certainly want to comment if Big Rivers sold a large amount of power off-system at prices lower than tariff rates and those customers were forced to bear some or all of the downside risk. Likewise, any solution that involves the smelters would necessarily involve extensive input from Century and representatives of Rural and Large Industrial customers. Big Rivers' excess capacity problem is not just Big Rivers' problem. It is also a problem for its customers that have a vested interest in Big Rivers operating in an efficient and cost-effective manner.

A reasonable procedure for including interested parties in the audit process is to extend the opportunity to comment that is provided for in 807 KAR 5:013, Section 4 to all intervenors. Section 4 provides that the utility may file comments during the management audit process within the following times:

- Fifteen (15) working days from receipt of the draft request for proposal.
- Fifteen (15) working days from receipt of each bidder's proposal including the initial work plan.
- Twenty (20) working days from receipt of the preliminary draft report.
- Ten (10) working days from receipt of the final draft report.

Joint Parties believe that extending the right to comment to intervenors will assist the Commission and the auditor in reaching a fair and comprehensive conclusion in the final report.

807 KAR 5:013, Section 6 specifically states that the Commission can deviate from the auditing rules for good cause. Joint Parties respectfully request that the Commission extend the utility's right to comment to interested parties.

Wherefore, the Joint Parties request that the Commission clarify and modify its Order in accordance with the recommendations set forth above.

Respectfully submitted,



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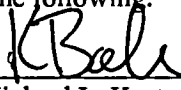
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail (when available) and by Overnight Mail, unless other noted, this 16<sup>TH</sup> day of May, 2014 to the following:

  
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