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July 1st, 2013

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

Re: Docket CASE NO. 2013-00221

Dear Mr. Derouen:

Enclosed for the filing are an original and ten copies of the *PETITION OF BEN TAYLOR AND SIERRA CLUB FOR FULL INTERVENTION* and a certificate of service in docket 2013-00221 before the Kentucky Public Service Commission. This filing contains no confidential information.

Sincerely,

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

In the Matter of:

**JOINT APPLICATION OF KENERGY)
CORP. AND BIG RIVERS ELECTRIC)
CORPORATION FOR APPROVAL OF)
CONTRACTS AND FOR A)
DECLARATORY ORDER)**

CASE NO. 2013-00221

**PETITION OF BEN TAYLOR AND
SIERRA CLUB FOR FULL INTERVENTION**

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11)(b), Ben Taylor and Sierra Club (collectively “Movants”) petition the Commission for full intervention in this case. The Movants have expertise in the issues raised in this application for a declaratory order and approval of certain documents executed between Kenergy Corp. (“Kenergy”), Big Rivers Electric Corporation (“Big Rivers”), and Century Aluminum of Kentucky General Partnership (“Century”). The Movants also have knowledge concerning the operations and rates of Big Rivers based on the Movants’ participation in recent rate and certificate of public convenience and necessity cases involving Big Rivers,¹ and their potential involvement in a third, pending Big Rivers case.² Accordingly, Movants will present issues and develop facts that will assist the

¹ *In re Application of Big Rivers Electric Corporation for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2012-00063); *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates* (Docket No. 2012-00535).

² *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates* (Docket No. 2013-00199). Movants filed a motion to intervene on July 1, 2013.

Commission's review of this application. Moreover, the Movants have specialized interests in this proceeding that are not adequately represented by the existing parties.

On June 12, 2013, Big Rivers and Kenergy filed an application requesting entry of a declaratory order and approval of various contracts negotiated between Big Rivers, Kenergy, and Century.³ Last year, Century gave notice of its intent to terminate the contract by which Big Rivers provides power to Century's Hawesville smelter. According to Big Rivers, losing the contract with the Hawesville smelter will result in a \$63 million revenue shortfall that the Company will experience in addition to a \$11.5 million shortfall that it is already facing, due principally to declining off-system sales from its coal-fired generating units.⁴ To compensate for these revenue shortfalls, Big Rivers filed its first rate increase request.⁵

Soon after Big Rivers filed its first rate increase request, the company's second smelter customer, located in Sebree, announced that it too will be terminating its contract with Big Rivers.⁶ Century recently acquired the Sebree smelter from Rio Tinto Alcan.⁷ The Sebree smelter is Big Rivers' second-largest customer, representing 368 MW of peak load,⁸ which is

³ *In re Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order* (Docket No. 2013-00221).

⁴ Direct Testimony of Mark Bailey, p.8, in Docket No. 2012-00535.

⁵ *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates* (Docket No. 2012-00535).

⁶ See, e.g., *Rio Tinto Alcan May Shutter Sebree Aluminum Plant*, CHICAGO TRIBUNE, Feb. 7, 2013, available at http://articles.chicagotribune.com/2013-02-07/news/sns-rt-metals-aluminumriotinto1n0b7hkq-20130207_1_rio-tinto-alcan-sebree-aluminum; *Rio Tinto Alcan Aluminum Smelter Gives 12-Month Notice to Power Supplier*, EVANSVILLE COURIER & PRESS, Feb. 1, 2013, available at <http://www.courierpress.com/news/2013/feb/01/rio-tinto-alcan-aluminum-smelter-gives-12-month-no/>.

⁷ Press Release, Century Aluminum Completes Acquisition of Sebree, KY Smelter, Century Aluminum (June 3, 2013), available at <http://investor.shareholder.com/cenx/releasedetail.cfm?ReleaseID=768660>; *Century Aluminum to Buy Alcan's Sebree Smelter*, EVANSVILLE COURIER & PRESS, May 23, 2013, available at <http://www.courierpress.com/news/2013/apr/29/century-aluminum-buy-alcans-sebree-smelter/>.

⁸ Direct Testimony of John Wolfram, at p.6, in Docket No. 2012-00535.

approximately 24% of the monthly peak load in 2013, and will rise to approximately 35% of monthly peak load if the Hawesville smelter is no longer part of Big Rivers' system.⁹ Big Rivers recently projected that the Sebree smelter would represent 48% of total MWh load in 2014, the first full calendar year after termination of the contract with the Hawesville smelter.¹⁰ In response to this loss of additional revenue, on May 17, 2013, Big Rivers filed a notice of intent to file an application for a general adjustment in rates.¹¹

Kenergy and Big Rivers request Commission approval of contracts providing that, at least initially, Big Rivers will procure market-priced power, which it will sell to Kenergy, which will in turn resell the power to the Century smelter in Hawesville.¹² The contracts create various obligations for Big Rivers and Kenergy to provide services to Century,¹³ which will no longer be part of the load served by Big Rivers' generating units. Those obligations may impact the operations and revenues of Big Rivers, and in turn affect rates. As a result, a decision in this proceeding is related to, and will affect, Big Rivers' two pending rate cases. Moreover, since the contracts obligate Kenergy and Big Rivers to provide services to an entity that no longer is part of system load, it is critical to ensure that any costs and risks created by these contracts are fair to ratepayers. Given the Movants' participation in other Big Rivers rate proceedings, the Movants would bring significant expertise on these issues to this proceeding.

⁹ Direct Testimony of Dr. Frank Ackerman, at p. 6, in Docket No. 2012-00535.

¹⁰ Application of Big Rivers Electric Company, Tab 31, Attachment 4, in Docket No. 2012-00535. The company projected that the remaining smelter would represent 3,159,206 MWh load out of 6,551,701 MWh total load in 2014.

¹¹ *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates*, Notice of Intent, received May 20, 2013 (Docket No. 2013-00199).

¹² Direct Testimony of Gregory Starheim, at pp. 7-10, in Docket No. 2013-00221.

¹³ Direct Testimony of Robert W. Berry, at pp. 22-47, in Docket No. 2013-00221.

Additionally, the contracts may affect the fate of Big Rivers' Coleman generating facility, which previously served the load at the Hawesville smelter. Although Big Rivers has signaled intentions to idle the facility, the contracts appear to indicate that if Century requires demand above a certain threshold then the Midcontinent Independent System Operator ("MISO") may require a System Support Resource ("SSR") agreement that would keep Coleman operating to ensure reliability of the electrical grid.¹⁴ If a SSR agreement is entered, ratepayers could be affected by the incremental operating costs that would not otherwise be incurred absent the proposed contracts. The Movants have experience evaluating similar power supply agreements and SSR agreements¹⁵ and would bring this expertise to the current proceeding.

The Commission has granted the Movants permission to intervene in two prior, related cases involving Big Rivers: the 2012 Certificate for Public Convenience and Necessity ("CPCN") proceeding, case number 2012-00063;¹⁶ and the first application for a rate increase, case number 2012-00535.¹⁷ Movants seek intervention here in order to address related issues and offer expertise that will assist the Commission in reviewing this Century contract proceeding. Given that the Commission has previously permitted the Movants to intervene in

¹⁴ Compliance Filing, at pp. 2-3, in Docket No. 2013-00221.

¹⁵ For example, Organizational Movant the Sierra Club intervened in the recent Federal Energy Regulatory Commission ("FERC") proceeding to revise MISO's tariffs governing SSR agreements. *See Order Conditionally Accepting Tariff Revisions and Requiring Compliance Filings* at 4, FERC Docket No. ER 12-2302-000 (Sept. 21, 2012). The Sierra Club also intervened in the FERC proceeding regarding MISO's first use of an SSR agreement, negotiated between MISO and the City of Escanaba. *See Order Conditionally Accepting Tariff Filings* at 6, FERC Docket No.'s 13-37-000, 13-37-001, 13-38-000 (Mar. 4, 2013).

¹⁶ *In re Application of Big Rivers Electric Corporation for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2012-00063).

¹⁷ *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates*, Order dated April 17, 2013, (Docket No. 2012-00535).

cases filed by Big Rivers that involve related issues, the Commission should also allow the Movants to intervene in this case.

I. THE MOVANTS

Movants seek full intervention in order to bring to this proceeding their expertise in developing plans for providing a lower cost and cleaner energy future, evaluating power supply and SSR agreements and their impact on ratepayers, and to ensure that their interests in lower cost and cleaner energy options are adequately represented. Movant Ben Taylor is a customer of Kenergy Corporation, which is a Big Rivers distribution cooperative. Mr. Taylor is a long-time Sierra Club member and has a deep interest in seeing Big Rivers transform to meet the new reality in a way that is both low cost and cleaner. His address is as follows:

Ben Taylor
419 Yelvington Grandview Road
Maceo, KY 42355-9749

Sierra Club is one of the oldest conservation groups in the country with over 625,000 members nationally in sixty-four chapters in all fifty states including the District of Columbia and Puerto Rico. Sierra Club has almost 5,000 members in Kentucky, which are part of the Cumberland Chapter. The Cumberland Chapter's address is:

Sierra Club
Cumberland Chapter
P.O. Box 1368
Lexington, KY40588-1368

II. LEGAL BACKGROUND

In recent Orders, the Commission has noted that permissive intervention is appropriate if both the statutory and regulatory limitations on intervention are met. First, KRS 278.040(2) requires that the person seeking intervention have an interest in the rates or service of the utility in question. A person who is a customer of the utility filing the case satisfies the first statutory

condition.¹⁸ Second, a person must have a special interest not adequately represented by the existing parties or be likely to present issues or develop facts that will assist the Commission in reviewing the case; and intervention cannot unduly complicate or disrupt the proceedings.¹⁹ The Commission's regulations provide that:

The commission shall grant a person leave to intervene if the commission finds that a person has a special interest in the case that is not otherwise adequately represented **or** that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings

807 K.A.R. 5:001 § 4(11)(b) (emphasis added).

In short, the Commission should grant intervention if the Movants (1) have an interest in the proceeding, such as an interest as customers, and (2) either possess knowledge and expertise that will assist the Commission or have an interest not adequately represented by the existing parties. As explained below, Movants satisfy the requirements for intervention.

III. THE COMMISSION SHOULD GRANT MOVANTS FULL INTERVENTION.

A. This Petition to Intervene is Timely Filed.

As an initial matter, this request to intervene is timely. On June 12, 2013, Kenergy and Big Rivers filed an application requesting entry of a declaratory order and approval of several contracts. Movants submit this petition for intervention on July 1, 2013, the deadline established by the Commission for filing a motion to intervene in this case.²⁰ Given that this motion is being

¹⁸ *In re Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates*, Order dated April 17, 2013 at 5-6 (Docket No. 2012-00535).

¹⁹ *Id.* at 5.

²⁰ *In re Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Order dated June 28, 2013 (Docket No. 2013-00221).

submitted according to the Commission's schedule, approximately two weeks after the filing of the application, and prior to the close of discovery, the motion is timely.

B. Movants Will Present Issues and Develop Facts That Will Assist the Commission in Fully Considering the Matter Without Unduly Complicating or Disrupting the Proceedings.

The Commission should grant Movants full intervention as they are "likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings." 807 K.A.R. 5:001 § 4(11)(b). This proceeding is related to the first Big Rivers rate case, in which the Movants have been granted intervention, and is related to the second Big Rivers rate request, in which the Movants have filed a motion to intervene. The Commission's review of the proposed contracts at issue in this docket is highly relevant to ensuring that Big Rivers' rates are just and reasonable.

Additionally, the contracts presented for Commission approval should be reviewed to determine whether they are fair to ratepayers. The contracts obligate Kenergy and Big Rivers to incur costs and risks to provide services to an entity that is no longer part of Big Rivers' load and no longer pays rates to cover the costs of the system. Thus it is critical to review the contracts to ensure that ratepayers are not asked to bear unreasonable costs in order to provide power to an off-system entity. Likewise, the proposed contracts raise issues concerning the fate of the Coleman facility and how any costs incurred to keep Coleman running are allocated. As explained below, the Movants have extensive experience in analyzing these issues regarding just and reasonable rates, power supply agreements, and SSR agreements.

Movant Sierra Club has developed expertise that encompasses a broad range of environmental and energy concerns that fully complement the technical and policy issues parties will face in this proceeding. In particular, Sierra Club's staff and consultants have extensive

experience in resource planning and in the laws and regulations governing electric utilities, including SSR agreements. Movant Sierra Club has participated in development of the MISO tariffs governing SSR agreements generally.²¹ Additionally, Sierra Club intervened in the proceeding regarding MISO's first-ever use of an SSR agreement, which was negotiated between MISO and the City of Escanaba, Michigan regarding the Escanaba Power Plant.²²

Sierra Club has recently intervened and provided testimony in seven other dockets before this Commission, including Big Rivers' previous application for a CPCN to retrofit a number of its existing generating units (Case No. 2012-00063) and the currently pending Big Rivers rate case (Case No. 2012-00535).²³ Sierra Club has also regularly presented testimony before the U.S. Congress and various state legislatures on issues related to the electric utility industry, including energy efficiency, renewable energy, and coal generation.

Movants are not seeking intervention to opine about the environmental impacts of Big Rivers' coal plants and its environmental compliance plans. Instead, Movants are seeking to intervene in order to provide analysis of whether the proposed contracts are fair to ratepayers and will result in just and reasonable rates,. These issues are implicated by the request for

²¹ See *Order Conditionally Accepting Tariff Revisions and Requiring Compliance Filings* at 4, FERC Docket No. ER 12-2302-000 (Sept. 21, 2012).

²² See *Order Conditionally Accepting Tariff Filings* at 6, FERC Docket No. 13-37-000, 13-37-001, 13-38-000 (Mar. 4, 2013).

²³ See *Application of Louisville Gas & Electric for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2011-00162), *Application of Kentucky Utilities for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2011-00161); *Joint Application of Louisville Gas & Electric and Kentucky Utilities for Certificates of Public Convenience and Necessity to Construct Combined Cycle Natural Gas Plant* (Docket No. 2011-00375); *Application of Kentucky Power Company for Approval of its 2011 Environmental Compliance Plan and Certificates of Public Convenience and Necessity* (Docket No. 2011-00401); *Application of Big Rivers Electric Corporation for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2012-00063); *Application of Kentucky Power for Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets* (Docket No. 2012-00578); *Application of Big Rivers Electric Corporation, Inc. for an Adjustment of Rates* (Docket No. 2012-00535).

Commission approval of these contracts. As such, Movants are seeking intervention to address topics that are directly at issue in this proceeding.

Finally, the Movants are represented by experienced counsel and will comply with all deadlines in the proceeding established by the Commission. As such, Movants' participation will not disrupt this proceeding.

C. Movants Have Special Interests in This Proceeding That Are Not Adequately Represented.

As explained above, the Movants will present issues and facts that will help the Commission review this application. Therefore, the Commission can grant full intervention on that basis alone and need not consider the Movants' special interests. Nevertheless, the Movants also have special interests that are not adequately represented.

Ben Taylor, the individual Movant, is a customer and ratepayer of Kenergy Corporation, which is one of Big Rivers' distribution cooperative members. Mr. Taylor helps fund Big Rivers' operations, and the Commission's decision about whether to approve these contracts may impact his bills. In addition, the individual Movant lives within the Big Rivers distribution cooperatives' service territory and, therefore, is impacted by the economic, public health, and environmental effects of the resource decisions that Big Rivers makes. Organizational Movant Sierra Club has member(s) who are customers and ratepayers of a distribution cooperative of Big Rivers and, therefore, have the same interests as the individual Movant.

Movants' interests are not adequately represented by any of the parties in the proceeding, as none of the other parties can adequately represent the organizational Movant's interests as a national organization that seeks to promote energy efficiency, renewable energy, and other low carbon generation sources as the most reasonable and cost-effective way for Big Rivers to maintain essential electric services and meet new and emerging federal regulatory requirements.

IV. CONCLUSION

For the foregoing reasons, the Movants respectfully request full intervention in this matter.

Respectfully submitted,



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Dated: July 1, 2013

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this Petition for Full Intervention by US mail on July 1, 2013 to the following:

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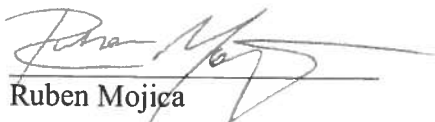
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