

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

RECEIVED

MAR 26 2015

PUBLIC SERVICE
COMMISSION

Via Overnight Mail

March 25, 2015

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

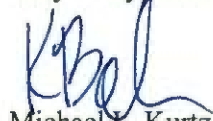
Re: Case No. 2014-00230 and 2014-00455

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of the KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC's MOTION TO COMPEL DISCOVERY AND REQUEST FOR PROCEDURAL CONFERENCE for filing in the above-referenced matters.

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

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 25TH day of March, 2015 to the following:



Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.

Roger Hickman
Regulatory Affairs Manager
Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

James M. Miller
Tyson Kamuf
Sullivan, Mountjoy, Stainback & Miller, P.S.C.
100 St. Ann Street
P. O. Box 727
Owensboro, Kentucky 42302-0727

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

**AN EXAMINATION OF THE APPLICATION)
OF THE FUEL ADJUSTMENT CLAUSE OF) CASE NO. 2014-00230
BIG RIVERS ELECTRIC CORPORATION)
FROM NOVEMBER 1, 2013 THROUGH)
APRIL 30, 2014.)**

**AN EXAMINATION OF THE APPLICATION)
OF THE FUEL ADJUSTMENT CLAUSE OF) CASE NO. 2014-00455
BIG RIVERS ELECTRIC CORPORATION)
FROM NOVEMBER 1, 2012 THROUGH)
OCTOBER 31, 2014.)**

**MOTION TO COMPEL DISCOVERY
AND REQUEST FOR PROCEDURAL CONFERENCE
OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.**

Kentucky Industrial Utility Customers, Inc. ("KIUC") hereby moves the Kentucky Public Service Commission ("Commission") to enter an order requiring Big Rivers Electric Corporation ("Big Rivers") to respond to Item 1 of KIUC's March 6, 2015 Request For Information ("KIUC-1").

KIUC-1 requests that Big Rivers quantify its fuel adjustment clause ("FAC") if Big Rivers had assigned its lowest fuel cost generation to native load customers each hour and compare that amount to the dollar amount that was included in the calculation during the two-year review period that is the subject of this case. KIUC-1 states:

"For each month during the period under review in this proceeding, please provide the dollar amount of fuel costs that would have been included in the calculation of the fuel adjustment clause if Big Rivers had assigned its lowest fuel cost generation to native load customers each hour and compare that amount to the dollar amount that was included in the calculation. Please provide the information in the same format as the Attachment to Big Rivers' Response to Commission Staff's Third Request for Information, Item No. 1 in Case No. 2014-00230. Please provide all workpapers electronically in spreadsheet format, with all formulas intact."

On March 20, 2015 Big Rivers filed its responses to KIUC's Information Requests and objected to providing a response to KIUC-1. Big Rivers states that it "*objects to [KIUC-1] on the grounds that it is overly broad and unduly burdensome.*"

KIUC contacted Big Rivers in an attempt to resolve this discovery dispute informally, but the parties were not able to come to an agreement. Therefore, KIUC respectfully requests that the Commission enter an order requiring Big Rivers to provide a complete response to KIUC-1. KIUC also requests that the Commission schedule a procedural conference, conducted via telephone, so that parties can discuss amending the procedural in light of this discovery dispute. KIUC requests that this procedural conference be held on Thursday, March 26, 2015. A Memorandum in Support is attached.

MEMORANDUM IN SUPPORT

1. KIUC-1 Seeks Relevant Information That Is Discoverable Pursuant To Kentucky Rule Of Civil Procedure 26.02(1).

The primary issue in this case is *what is the appropriate method for allocating fuel costs between Big Rivers' native load customers and off-system sales?* Big Rivers' proposes to continue its current practice which allocates system average fuel costs to all sales (native load and off-system), as a starting point, and then makes a series of additional adjustments which results in native load paying the same or higher fuels costs than off-system sales. KIUC recommends that the Commission instead require Big Rivers to assign its lowest fuel cost generation to native load customers and allocate its incremental fuel costs to off-system sales. KIUC-1 seeks to determine the dollar difference to customers of these two methodologies over the 2-year review period.

The information requested in KIUC-1 is relevant to the subject matter of the pending action and is significant to the Commission's consideration of this case. Big Rivers provided the same information in response to Commission Staff's Third Request for Information, Item No. 1 ("Staff 3-1") in Case No. 2014-00230 with respect to that case's 6-month review period.¹ That Response showed that Big Rivers' customers paid between \$1.22/MWh to \$1.56/MWh in additional costs in each of the 6 months of the review period due to Big Rivers'

¹ See Big Rivers' Response to Commission Staff's Third Request for Information, Item No. 1 in Case No. 2014-00230.

fuel allocation methodology. Big Rivers' current method is not used by any other utility in Kentucky and was expressly rejected by the Commission in a previous Order.²

Kentucky Rule of Civil Procedure 26.02(1), regarding the scope of discovery, provides that “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party...” Big Rivers makes no objection on the grounds of relevance or privilege. Therefore, KIUC is entitled to a response to KIUC-1 under Rule 26.02(1)

2. KIUC-1 Is Not “Overly Broad” Or “Unduly Burdensome.”

KIUC disputes Big Rivers' objection to KIUC-1 which simply states that the Information Request is “overly broad” and “unduly burdensome.” First, KIUC-1 is not overly broad. KIUC-1 is a request to quantify the dollar difference between KIUC's and Big Rivers' differing positions in this case. It is narrowly tailored to solicit information that is wholly relevant to the fundamental issue facing the Commission. KIUC has requested this information in the exact same format requested by Commission Staff in Staff 3-1 in Case No. 2014-00230. In that case, which is consolidated with Case No. 2014-00455, Big Rivers provided a complete response to Staff 3-1 and made no claim that Staff 3-1 was overly broad. Its objection to the same request from KIUC is arbitrary and unreasonable.

KIUC-1 is also not unduly burdensome. Big Rivers does not, dispute that it is able to provide a complete response to KIUC-1 because Big Rivers has already provided the same information in response to Staff 3-1 in Case No. 2014-00230 with respect to that case's 6-month review period.³ Big Rivers did not object to providing this information when Staff asked for it in that case.

Given this experience, Big Rivers should have a working knowledge of exactly how to extract the requested information from its files in order to satisfy KIUC's request. Nevertheless, KIUC would not doubt Big Rivers if it were to claim that it would take multiple hours of labor to prepare a response to KIUC-1. But this is precisely why the Commission allowed Big Rivers 14 days to complete its discovery responses. Commission

² See KPSC Case No. 94-458, March 5, 1996 Order, p. 1

³ See Big Rivers' Response to Commission Staff's Third Request for Information, Item No. 1 in Case No. 2014-00230.

proceedings often require parties to respond to lengthy, time-consuming discovery. If Big Rivers needed more than 14 days to provide a response to KIUC-1 it should have requested an extension of time to complete its response. Instead, Big Rivers waited until March 20th to inform KIUC that it considers KIUC-1 to be unduly burdensome. The Commission should require Big Rivers to respond to KIUC-1 in the same manner that it responded to Staff 3-1 in Case No. 2014-00230.

3. KIUC Requests That A Conference Be Scheduled In Order To Discuss Amending The Procedural Schedule.

As explained above, the information requested in KIUC-1 is important to KIUC's direct case. KIUC does not wish to submit testimony until this information is provided. It is therefore appropriate to schedule a conference in order to discuss amending the procedural schedule given this discovery dispute. KIUC proposes that a procedural conference be held on Thursday, March 26, 2015.

WHEREFORE, for the foregoing reasons, KIUC respectfully moves that the Commission issue an order directing Big Rivers to provide a complete response to KIUC-1. KIUC also requests that the Commission schedule a procedural conference on Thursday, March 26, 2015, or on some other appropriate date.

Respectfully submitted,



Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513) 421-2764
E-Mail: mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

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

March 25, 2015