

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC	)	
CORPORATION FOR APPROVAL OF ITS 2012	)	
ENVIRONMENTAL COMPLIANCE PLAN, FOR	)	
APPROVAL OF ITS AMENDED	)	
ENVIRONMENTAL COST RECOVERY	)	CASE NO.
SURCHARGE TARIFF, FOR CERTIFICATES OF	)	2012-00063
PUBLIC CONVENIENCE AND NECESSITY,	)	
AND FOR AUTHORITY TO ESTABLISH A	)	
REGULATORY ACCOUNT	)	

O R D E R

On June 6, 2012, Intervenors, Kentucky Industrial Utility Customers, Inc., Ben Taylor and Sierra Club, and the Attorney General, filed a joint motion seeking to compel the production of certain information from Big Rivers Electric Corporation's affiliate, ACES Power Marketing ("ACES"). Specifically, Intervenors seek production of the database that ACES developed as well as the input files that ACES utilized in running its planning and risk models. Intervenors argue that they have propounded specific discovery concerning the ACES modeling process. Although Intervenors acknowledge that Big Rivers has provided all the data that Big Rivers provided to ACES, Intervenors contend that "Big Rivers has failed to require or request ACES to produce the database ACES designed to run the Ventyx Planning and Risk model used in its production cost modeling for Big Rivers' Application. Intervenors submit that such database is plainly relevant to this proceeding, and responsive to their data requests."<sup>1</sup> Alternatively,

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<sup>1</sup> Intervenors' Joint Motion to Compel, p. 2.

Intervenors request that a subpoena duces tecum be issued pursuant to KRS 278.320 to require the production of the database directly from ACES.

On June 11, 2012, Big Rivers filed a response to the motion to compel, arguing that it had been fully responsive to all of the data requests propounded thus far in this proceeding and noting that none of the Intervenors' requests for information specifically refers to, or asks for production of, the ACES database. Moreover, Big Rivers asserts that it "provided a substantial amount of model-related data, including data related to the ACES model, even before it was required to file its responses to"<sup>2</sup> the formal discovery requests. Big Rivers further contends that the information it has produced contains all of the input data and input assumptions ACES used in its models and all of the output data. With such information already provided, Big Rivers maintains that "a modeler competent with the Ventyx/ABB model would have everything needed to run the models and to validate ACES' results."<sup>3</sup>

Big Rivers characterizes the Intervenors' complaint as being that the information provided by Big Rivers is in a different format than the database format. Big Rivers contends that it is the Intervenors' responsibility to put the inputs into the proper format and that the ACES database is superfluous because the necessary input data required to populate such a database has been provided. Nonetheless, Big Rivers has been working with ACES to overcome the obstacles to ACES providing the Big Rivers specific database to Intervenors. Big Rivers informs that ACES is willing to provide the database subject to Intervenors paying for any costs associated with Intervenors'

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<sup>2</sup> Big Rivers' Response to Intervenors Joint Motion to Compel, pp. 1-2.

<sup>3</sup> Id., at 4.

request for the database, including Ventyx's costs of stripping the database of non-Big Rivers information. Among other things, Big Rivers notes that ACES will provide the stripped-down database only to those Intervenors, or their retained consultants, who have a Ventyx license and who agree to sign a confidential agreement and an agreement limiting the use of the database to the instant proceeding.

On June 12, 2012, Intervenors filed a joint motion to stay the procedural schedule until such time that Big Rivers provides a full response to Intervenors' initial sets of information requests. Intervenors state that the current procedural schedule requires that supplemental data requests be served on Big Rivers no later than June 13, 2012. Intervenors argue that Big Rivers has failed to provide the database used in the production cost modeling that Big Rivers used to support its application, and that some of the files produced by Big Rivers in response to discovery from KIUC were corrupted. Without such information, Intervenors contend that they would not have a fair opportunity to submit supplemental data requests unless a stay of the procedural schedule is granted.

On June 12, 2012, a telephonic informal conference was held to discuss the status of the discovery issue and Intervenors' motion to stay the procedural schedule. As a result of those discussions, Big Rivers reiterated its willingness to provide the database subject to the conditions set forth in its response to Intervenors' joint motion to compel, except that Big Rivers would absorb the costs of the strip down of the database subject to it being able to recover those costs as part of this proceeding. Intervenors accepted the conditions set forth by Big Rivers.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the parties have been able to come to a resolution of the discovery issues that were the subject of Intervenors' motion to compel. The Commission further finds that Intervenors have not established good cause to stay the proceedings. The Commission, however, finds that the procedural schedule as established pursuant to our Order issued on April 30, 2012, should be amended to allow Intervenors additional time to issue their supplemental data requests and the remainder of the procedural schedule should be revised accordingly.

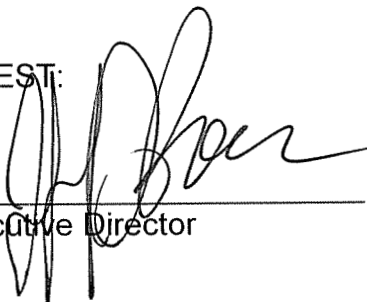
IT IS THEREFORE ORDERED that:

1. Intervenors' joint motion to compel is denied as moot.
2. Intervenors' joint motion to stay the procedural schedule is denied.
3. The procedural schedule attached as an appendix to this Order shall be followed in this case. This schedule shall supersede the procedural schedule appended to the Commission's April 30, 2012 Order.
4. The official record of this proceeding shall be by video only.
5. Big Rivers shall publish newspaper notice of the public hearing in accordance with the provisions of 807 KAR 5:011, Section 8(5).
6. Any request to cancel or postpone this hearing shall be made by motion filed with the Commission at least one week before the hearing is scheduled to commence.

By the Commission

ENTERED *PA*  
JUN 19 2012  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



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Executive Director

Case No. 2012-00063

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2012-00063 DATED JUN 19 2012

- All supplemental requests for non-modeling related information to Big Rivers Electric Corporation ("Big Rivers") shall be filed no later than ..... 6/22/12
- All supplemental requests for modeling-related information to Big Rivers shall be filed no later than ..... 6/27/12
- Big Rivers shall file responses to all supplemental requests for information no later than ..... 7/6/12
- Intervenor testimony, if any, in verified prepared form, shall be filed no later than..... 7/18/12
- All requests for information to Intervenors shall be filed no later than ..... 7/27/12
- Intervenors shall file responses to requests for information no later than ..... 8/6/12
- Big Rivers shall file, in verified form, its rebuttal testimony no later than ..... 8/14/12
- Public Hearing to be held in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, at 10:00 a.m., Eastern Daylight Time, for the purpose of cross-examination of witnesses of Big Rivers and Intervenors ..... 8/22/12

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