

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR A DECLARATORY ORDER)	CASE NO.
)	2016-00278
)	

ORDER

This matter arises upon the motion of the city of Henderson, Kentucky, and the Henderson Utility Commission d/b/a Henderson Municipal Power & Light (jointly “Henderson”), filed December 8, 2016, for an Order setting a briefing schedule for the submission of simultaneous briefs and simultaneous replies. In support of its motion, Henderson states that a briefing schedule will allow the parties to address all issues raised in the pleadings and discovery, including the jurisdictional issue raised by Henderson.

On December 13, 2016, Big Rivers Electric Corporation (“Big Rivers”) filed a response requesting that a hearing be scheduled followed by the submittal of briefs. Big Rivers argues that the relief it seeks by way of a declaratory order, if approved, may require the Commission “to change a rate or service standard, or change or abrogate contractual language.”¹ However, Big Rivers argues that KRS 278.200 requires a hearing to be held before any change could be required by the Commission. Lastly, Big Rivers asserts that because it is seeking affirmative relief from the Commission in the

¹ Response of Big Rivers Electric Corporation to Motion for Briefing Schedule of city of Henderson, Kentucky, and Henderson Utility Commission, d/b/a Henderson Municipal Power & Light at 1.

form of a declaratory order, Big Rivers has the burden of proving its case and should, therefore, have the opportunity to file the first and last briefs. Big Rivers asserts that Henderson should have the opportunity to file the second brief in response to Big Rivers' first brief. Big Rivers also argues that this briefing schedule assures that Big Rivers, which has the burden of proof, has an opportunity to respond to any issues first disclosed by Henderson in its written arguments.

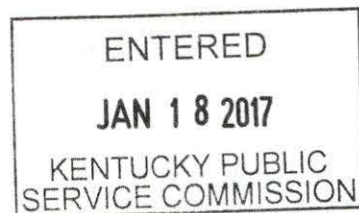
On December 16, 2016, Henderson filed a reply in support of its motion for a briefing schedule, arguing that a full briefing on the threshold jurisdictional issue alone could lead to the disposition of this matter without expending Commission resources on an inquiry into the merits of Big Rivers' application. Henderson also argues that KRS 278.200 is inapplicable because Big Rivers' application implicated neither rates nor services as those two terms are defined in KRS Chapter 278. Lastly, Henderson maintains that equity demands a briefing schedule calling for the submission of simultaneous briefs and simultaneous replies.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that a hearing is necessary for the protection of the parties' substantial rights, pursuant to 807 KAR 5:001, Section 9(1), given that this matter involves the complex interpretation of the Power Sales contract entered into between Henderson and Big Rivers. A hearing will also assist the Commission in determining whether the declaratory order requested by Big Rivers implicates rates or service issues within our jurisdiction. The Commission further finds that a staggered briefing schedule subsequent to the close of the hearing is appropriate because Big Rivers has the burden of proof in this matter.

IT IS HEREBY ORDERED that:

1. The motion of Henderson for a simultaneous briefing schedule is denied.
2. A hearing in this matter shall be held on Tuesday, February 7, 2017, at 10:00 a.m. Eastern Standard Time, at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky.
3. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9)(a), the record of the formal hearing in this matter shall be by digital video recording.
4. Big Rivers shall file its brief addressing all factual and legal issues in this matter no later than February 28, 2017.
5. Henderson shall file a response brief no later than March 14, 2017.
6. Big Rivers shall file a reply no later than March 21, 2017.

By the Commission



ATTEST:


Executive Director

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