

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS &	)	
ELECTRIC COMPANY AND KENTUCKY	)	
UTILITIES COMPANY FOR CERTIFICATES OF	)	
PUBLIC CONVENIENCE AND NECESSITY FOR	)	CASE NO.
THE CONSTRUCTION OF A COMBINED	)	2014-00002
CYCLE COMBUSTION TURBINE AT THE	)	
GREEN RIVER GENERATING STATION AND A	)	
SOLAR PHOTOVOLTAIC FACILITY AT THE	)	
E.W. BROWN GENERATING STATION	)	

ORDER

On February 5, 2014, Big Rivers Electric Corporation (“Big Rivers”) filed a motion requesting that it be granted full intervenor status in the instant matter. Big Rivers states that it owns or operates 1,819 MW of electric generating capacity in western Kentucky, approximately 850 MW of which recently became available as a result of two large industrial customers’ leaving the Big Rivers’ system. Big Rivers asserts that its interest in this matter is to assist the Commission in ascertaining that available alternatives to the projects that Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “Joint Applicants”) have proposed in this case have been adequately and thoroughly evaluated. One such alternative, as Big Rivers points out, is its available generating capacity. Big Rivers further asserts that its expertise and knowledge are unique and will enable it to assist the Commission in fully considering the issues presented in this matter without unduly complicating or disrupting the proceedings.

On February 12, 2014, Joint Applicants filed a response objecting to Big Rivers' motion for intervention. Joint Applicants contend that Big Rivers is not a customer of the Joint Applicants, but rather was one of the bidders who responded to the Joint Applicants' Request for Proposals ("RFP"), which bid was ultimately determined by the Joint Applicants not to be the least-cost alternative to meet its customers' future energy needs. Joint Applicants rely upon the Kentucky Court of Appeals decision in *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App., Feb. 2, 2007) for the proposition that an unsuccessful bidder to an RFP, like Big Rivers, should not be allowed intervention in a subsequent certificate case resulting from the RFP. Joint Applicants assert that the Commission has consistently applied the *EnviroPower* standard and has done so recently in Case No. 2012-00578<sup>1</sup> wherein the Commission denied the petition to intervene by an unsuccessful bidder to a RFP that had been issued by Kentucky Power Company. Joint Applicants argue that allowing Big Rivers to intervene would unduly complicate the proceedings and render the competitive bidding process engendered by the RFP meaningless if Big Rivers were to be given an opportunity to scrutinize the Joint Applicants' decision-making process.

On February 17, 2014, Big Rivers filed a reply in support of its motion to intervene. Big Rivers argues that as a Commission-regulated utility, it has an interest in its own rates and service and that its rates and service could be affected by the

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<sup>1</sup> Case No. 2012-00578, Application of Kentucky Power Company for (1) a 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; (2) Approval of the Assumption by Kentucky Power of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief (Ky. PSC July 5, 2013).

proceeding at bar. Big Rivers contends that the Commission should evaluate the Joint Applicants' proposal from a statewide perspective, because the decision regarding the proposal of the Joint Applicants in this case will impact not only the ratepayers of the Joint Applicants, but also ratepayers in Kentucky as a whole. Big Rivers also contends that it will be able to present issues or develop facts to assist the Commission in its investigation of this matter, as it has generating capacity to offer as an alternative to the Joint Applicants' proposal and because of its expertise, knowledge, and experience in utility regulation, resource planning, and energy production. Big Rivers also points out that it has an interest in this proceeding because it has direct transmission interconnections with the Joint Applicants, and the decision in this matter could potentially impact Big Rivers' transmission planning activities and investment requirements. Big Rivers asserts that it is also a retail and transmission customer of KU.

Joint Applicants filed a sur-reply, arguing that its RFP effectively encompassed and achieved the statewide perspective goal of identifying available Kentucky-based energy and capacity resources. Joint Applicants assert that the instant matter is not an appropriate forum in which to address Big Rivers' capacity situation and that Big Rivers' intervention would unduly complicate and disrupt the proceedings. Lastly, the Joint Applicants argue the fact that Big Rivers is a KU customer is of no significance because that interest is already represented by the Attorney General, who is an intervenor in this proceeding.

In analyzing Big Rivers' motion to intervene, the Commission finds that the only person that has a statutory right to intervene is the Attorney General ("AG") pursuant to

KRS 367.150(8)(b). Intervention by all others is permissive and within the sound discretion of the Commission. The issue of intervention was definitively addressed in the *EnviroPower* case in which the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention, but that discretion is not unlimited. The appellate court then enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person or entity seeking intervention have an interest in the rates and service of a utility, as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 4(11), requires that the movant demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the overriding motive for Big Rivers' request to intervene is to have the Commission specifically consider Big Rivers' proposal, which was submitted in response to the Joint Applicants' RFP and which was ultimately determined by the Joint Applicants to not be the least-cost alternative. Having found that Big Rivers' ultimate interest in this matter is that of an unsuccessful bidder to the Joint Applicants' RFP, we find that the *EnviroPower* case is dispositive of the issue of Big Rivers' intervention request. There, *EnviroPower* was an unsuccessful bidder in an RFP for power that had been issued by East Kentucky Power Cooperative, Inc. ("EKPC"). *EnviroPower* subsequently requested to intervene in EKPC's application for authority to construct a

new generating facility which EKPC had proposed to construct in lieu of accepting the bid that EnviroPower had submitted in response to the RFP. The Commission denied EnviroPower's intervention and the Court of Appeals affirmed the denial of intervention, holding that as a mere bidder in response to an RFP, EnviroPower had no vested interest that would entitle it to intervene in the Commission's proceedings. Here, as a mere bidder, Big Rivers has no vested or special interest in any issue before the Commission in this proceeding, and it is not likely to present issues or develop facts that would assist the Commission without unduly complicating or disrupting the proceedings.

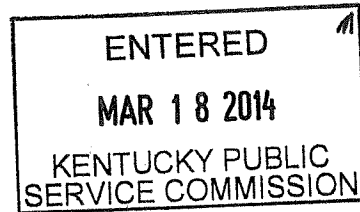
Although we acknowledge Big Rivers' capacity situation and encourage it to continue its efforts to diligently carry out its load-mitigation plan, allowing Big Rivers to intervene would undermine the integrity of the competitive nature of the RFP process by permitting Big Rivers access to potentially confidential information submitted by other bidders to the Joint Applicants RFP and would frustrate the finality of the RFP process. Further, with respect to Big Rivers' interest as a KU transmission customer, Big Rivers has failed to demonstrate that the construction proposed in this case will have any impact on its transmission service or its transmission interconnections with KU. Lastly, we find that Big Rivers' interest as a retail electric customer of KU is the same interest as that of any other KU customer, and that such interest is otherwise adequately represented by the AG.

Big Rivers will have ample opportunity to participate in this proceeding, even though it is not granted intervenor status. It can review all public documents filed in this case and monitor the proceedings via the Commission's website at the following web address: [http://psc.ky.gov/efs/efs\\_search.aspx?case=2014-00002](http://psc.ky.gov/efs/efs_search.aspx?case=2014-00002).


The Commission encourages Big Rivers to file comments as frequently as it chooses, and notes that those comments will be entered into the record of this case. Additionally, the Commission will provide Big Rivers an opportunity to present any information that it wishes for the Commission to consider in this matter at the beginning of the formal evidentiary hearing to be held on July 8, 2014, at 10:00 a.m. Eastern Daylight Time in Hearing Room 1 of the Commission's offices.

IT IS THEREFORE ORDERED that Big Rivers' motion to intervene is denied.

By the Commission



ATTEST

  
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