

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE	)	
APPLICATION OF THE FUEL ADJUSTMENT	)	CASE NO.
CLAUSE OF BIG RIVERS ELECTRIC	)	2023-00013
CORPORATION FROM NOVEMBER 1, 2020	)	
THROUGH OCTOBER 31, 2022	)	

ORDER

Pursuant to 807 KAR 5:056, Section 3(4), the Commission established this case<sup>1</sup> on September 6, 2023, to review and evaluate the operation of the Fuel Adjustment Clause (FAC) of Big Rivers Electric Corporation (BREC) for the two-year period that ended on October 31, 2022. As part of this review, BREC submitted certain information, pursuant to Commission Order, concerning its compliance with 807 KAR 5:056. In its November 20, 2023 Order, the Commission scheduled a hearing<sup>2</sup> in this matter for January 4, 2024, and amongst other things, ordered BREC to give notice of the hearing in compliance with 807 KAR 5:001, Section 9(2)(b).<sup>3</sup>

On January 5, 2024, pursuant to 807 KAR 5:001, Section 22, BREC filed with the Commission a motion<sup>4</sup> seeking deviation from the notice of public hearing requirements of 807 KAR 5:001, Section 9(2)(b). As grounds for its motion, BREC stated that it

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<sup>1</sup> Order (Ky. PSC Sept. 6, 2023).

<sup>2</sup> Order (Ky. PSC Nov. 20, 2023) at 1, paragraph 1.

<sup>3</sup> Order (Ky. PSC Nov. 20, 2023) at 1, paragraph 4.

<sup>4</sup> Motion for Approval to Deviate from Rule (filed Jan. 5, 2024).

forwarded a notice of public hearing to the Kentucky Press Service for publication in newspapers of general circulation in BREC's service area in the first available publication on or after December 14, 2023, and that on the morning of December 11, 2023, the Kentucky Press Service sent orders to 25 newspapers to publish BREC's notice of public hearing.

BREC asserted that, despite its efforts, the hearing notice did not run in one of the 25 newspapers in BREC's service area. The *Hancock Clarion* failed to timely run the hearing notice in the newspaper's hard copy. BREC stated that it was not made aware of the hearing notice deficiency until January 3, 2024, at which time it was too late to have a new hearing notice published in the *Hancock Clarion*. BREC informed the Commission about the *Hancock Clarion* hearing notice deficiency by cover letter<sup>5</sup> on January 3, 2023, and in person by counsel<sup>6</sup> at the hearing held on January 4, 2024.

BREC stated that it has published notice in the vast majority of the newspapers in its service territory, including the *Owensboro Messenger-Inquirer*, which services multiple Kentucky counties including Hancock County. Furthermore, BREC asserted that a copy of the notice of hearing published by the *Owensboro Messenger-Inquirer* and dated December 21, 2023, was digitally available on the *Hancock Clarion's* website. BREC argued that it has substantially complied with the Commission's notice regulations and has ensured that the public had sufficient notice of the proceeding and a meaningful opportunity to participate, and that deviation from the regulation is appropriate.

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<sup>5</sup> Read 1<sup>st</sup> Letter – Proof of Publication (filed Jan. 3, 2024).

<sup>6</sup> Hearing Video Transcript (HVT) of the Jan. 4, 2024 Hearing at 04:13:20-04:14:17.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that BREC has substantially complied with the notice requirements of 807 KAR 5:001, Section 9(2)(b), that this substantial compliance has satisfied the requirements of the regulation, and, pursuant to 807 KAR 5:001, Section 22, that it should be granted deviation from the notice requirements contained therein.<sup>7</sup> Good cause has been shown to grant the deviation.

IT IS THEREFORE ORDERED that BREC's motion to deviate from the requirements of 807 KAR 5:001, Section 9(2)(b) is granted.

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<sup>7</sup> See Case No. 2015-00234, *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2014 Through April 30, 2015* (Ky. PSC Dec. 4, 2015), Order, in which two of 92 newspapers failed to run notice but other newspapers in the same counties, did run notice.

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

  
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Commissioner



ATTEST:

  
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Executive Director

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