

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

2014 INTEGRATED RESOURCE PLAN OF BIG	)	CASE NO.
RIVERS ELECTRIC CORPORATION	)	2014-00166

ORDER

On June 16, 2014, Petitioners, Century Aluminum of Kentucky General Partnership ("Century Aluminum") and Century Aluminum Sebree LLC ("Century Sebree"), filed a petition requesting that they be granted full intervenor status in the instant matter. Petitioners note that, through certain Commission-approved contractual arrangements, they are supplied with electric power purchased on the open market by Kenergy Corp. Under the current arrangements, Big Rivers Electric Corporation ("Big Rivers") purchases power on the open market on behalf of Petitioners and transmits that power to Kenergy for delivery to the aluminum reduction facilities located in Hawesville and Sebree, Kentucky, which are owned and operated by Century Aluminum and Century Sebree, respectively. Petitioners contend that they have a special interest in this matter because they are transmission customers and potential purchasers of Big Rivers' Coleman Generating Station. In particular, Petitioners state that Big Rivers' decision concerning the disposition of the Coleman Generating Station could impose significant risk on Big Rivers' transmission system and its ability to deliver the amount of power needed by the Hawesville facility. Petitioners also state that Big Rivers' decision not to conduct live-line transmission maintenance would increase the risk of load curtailment at the Hawesville facility, which, in turn, would reduce the transmission

revenues received by Big Rivers and impact the cost mitigation on Big Rivers' customers. Petitioners contend that Big Rivers' resource plan would impact the reliability and cost of transmission service to Petitioners' smelting facilities. Petitioners assert that they have a special interest in this matter that cannot be adequately represented by any other party and that they intend to assist the Commission's review of this proceeding.

On June 23, 2014, Big Rivers filed a response raising certain objections to Petitioners' request to intervene in this proceeding. Big Rivers argues that Petitioners' interest as a transmission customer does not satisfy the statutory requirement for intervention. Big Rivers maintains that Petitioners' claimed transmission reliability concerns relate to the regional bulk power system, which is within the control of the Midcontinent Independent System Operator, Inc. ("MISO") and the Federal Energy Regulatory Commission ("FERC") and which issue is not a relevant subject for the instant proceeding. Big Rivers also points out that Petitioners purchase transmission services from MISO. Big Rivers further points out that Petitioners are members of MISO and that Petitioners could protect their interests in transmission reliability through the MISO regional transmission plan stakeholder process.

Big Rivers contends that the idling of the Coleman Generating Station does not create any transmission reliability issue because Petitioners have installed a Special Protective Scheme system at the Hawesville facility that assures the reliability of the transmission system. Moreover, Big Rivers asserts that the live-line maintenance issue has already been determined as one that should be resolved through contractual negotiations between Big Rivers and Petitioners.

Big Rivers argues that Petitioners' interest as a potential purchaser of the Coleman Generating Station is not an interest that would entitle Petitioner to intervene in this proceeding. Big Rivers avers that Petitioners' claimed interest as a potential purchaser would be in direct conflict with the interests of all of Big Rivers' customers because Petitioners would seek to have any sale take place on terms that are most advantageous to Petitioners and would utilize the instant proceeding as a leveraging tool in any potential negotiations with respect to the Coleman Generating Station.

Lastly, Big Rivers contends that Petitioners' intervention would complicate and disrupt the instant proceeding, noting that Petitioners are seeking intervention only to re-litigate the issue of live-line maintenance and to use the proceedings as a venue to supplement or re-negotiate the current Commission-approved contracts which allow Petitioners to purchase power at market-based rates.

On June 30, 2014, Petitioners filed a reply in support of their petition, arguing that they possess the requisite special interest to intervene in the matter at bar based upon their "unique contractual relationship with Big Rivers."<sup>1</sup> Petitioners state that their interest in participating in this matter is to provide input that may assist Commission Staff in preparing its report and that they are uniquely positioned to provide relevant information, given their knowledge of the Big Rivers system. Petitioners contend that Big Rivers' Integrated Resource Plan ("IRP") addresses certain issues that may affect Petitioners' contractual obligations. Petitioners note, for example, that Big Rivers' IRP contains transmission plans that may impact the obligations of both Petitioners and Big Rivers under the companies' current contractual arrangement.

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<sup>1</sup> Reply of Century Aluminum of Kentucky General Partnership and Century Aluminum Sebree LLC to Response of Big Rivers Electric Corporation to Petition for Full Intervention, p. 1.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the only person that has a statutory right to intervene is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission. In the unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), 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 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 seeking intervention have an interest in the rates or 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 a person 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.

The Commission further finds that Petitioners have failed to establish that they have an interest in Big Rivers' rates or service. Although Petitioners state that they are transmission customers, they do not directly state that they are transmission customers of Big Rivers. We agree with Big Rivers' contention that Petitioners purchase transmission services from MISO pursuant to MISO-tariffed rates, which are under FERC's jurisdiction. We note that only those customers of Big Rivers' member cooperatives who receive electricity produced by Big Rivers pay the rates and receive

the services which are subject to regulation by this Commission. Thus, only those customers have an interest in those rates and services. In light of the fact that Petitioners are not purchasing electricity produced by Big Rivers, we find that they have no interest in the rates and services of Big Rivers.

Likewise, the Commission finds that Petitioners have not adequately established that they have a special interest in the instant proceeding. To the extent that Petitioners have any interest in the provision of service by Big Rivers, that interest is derived from the contractual arrangements on which Petitioners currently purchase power at market-based rates. Those contractual arrangements do not sufficiently constitute an interest which would permit Petitioners to intervene in the instant matter. Petitioners are not left without recourse, since they may protect their contractual interest in Big Rivers' service through enforcement of the provisions of the various contracts themselves.

Lastly, we find that Petitioners have failed to show that, if allowed to intervene, they would be able to present issues or develop facts that would assist us in fully considering the matter without unduly complicating or disrupting the proceedings. Petitioners state that they have an interest in Big Rivers' transmission planning process. Because Big Rivers is a MISO member and MISO has functional control over Big Rivers' transmission system, we note that Big Rivers' transmission planning process is dictated primarily by MISO's Transmission Expansion Planning process. Further, we find that Petitioners' claimed interests in having Big Rivers perform live-line transmission maintenance and as a possible purchaser of the Coleman Generating Station are not relevant to the instant proceeding. Accordingly, we find that Petitioners' request for intervention should be denied.

Petitioners will have ample opportunity to participate in this proceeding even though they are not granted intervenor status. Petitioners can review all documents filed in this case and monitor the proceedings via the Commission's website at the following web address: <http://psc.ky.gov/Home/Library?type=Cases&folder=2014cases/2014-00166>. Petitioners may also file comments as frequently as they choose, and those comments will be entered into the record of this case.

IT IS THEREFORE ORDERED that Petitioners' petition for intervention is denied.

By the Commission

Vice Chairman James W. Gardner  
dissenting.

ENTERED  
AUG 07 2014  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

Dissenting Opinion of  
Vice Chairman James W. Gardner

I respectfully dissent. I agree with my colleagues that the subject of the contracts approved in Case No. 2013-00221<sup>1</sup> and Case No. 2013-00413,<sup>2</sup> and the live-line maintenance issues are not relevant subjects in this Integrated Resource Plan ("IRP") matter.

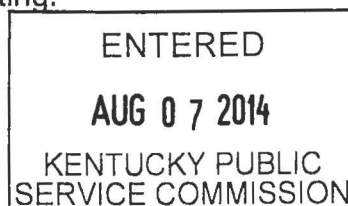
I disagree with their conclusion about transmission planning. Just because Big Rivers is a member of MISO, which has functional control over Big Rivers' transmission system, does not preclude transmission planning from being a topic of examination in the instant IRP matter. In fact, Transmission Planning, including planned projects, is expressly a separate subject in Section 6 of Big Rivers' 2014 IRP.

I believe we should always err on the side of allowing putative parties to intervene. Hearing from multiple points of view helps make the decision-making process more informed, and thus better. The proceeding may be longer and messier; that, however, is a small price to pay for a better-developed record and a potentially better decision.

ATTEST:

  
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Executive Director

James W. Gardner, Vice Chairman  
Kentucky Public Service Commission  
dissenting.



<sup>1</sup> Case No. 2013-00221, Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order (Ky. PSC Aug. 14, 2013)

<sup>2</sup> Case No. 2013-00413, Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order (Ky. PSC Jan. 30, 2014).

Honorable Kurt J Boehm  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

Joe F Childers  
Joe F. Childers & Associates  
300 Lexington Building  
201 West Short Street  
Lexington, KENTUCKY 40507

Jennifer Black Hans  
Assistant Attorney General  
Office of the Attorney General Utility & Rate  
1024 Capital Center Drive  
Suite 200  
Frankfort, KENTUCKY 40601-8204

Kristin Henry  
Staff Attorney  
Sierra Club  
85 Second Street  
San Francisco, CALIFORNIA 94105

Honorable Tyson A Kamuf  
Attorney at Law  
Sullivan, Mountjoy, Stainback & Miller, PSC  
100 St. Ann Street  
P.O. Box 727  
Owensboro, KENTUCKY 42302-0727