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September 30, 2016

Skill. Integrity. Efficiency.

VIA FEDERAL EXPRESS

Dr. Talina R. Mathews
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

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OCT 3 2016

PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: Application of Big Rivers
Electric Corporation for a Declaratory Order*
Case No. 2016-00278

Dear Dr. Mathews:

Enclosed for filing on behalf of Big Rivers Electric Corporation are an original and ten copies of the Response of Big Rivers Electric Corporation to Motion to Compel of City of Henderson, Kentucky, and Henderson Utility Commission, d/b/a Henderson Municipal Power & Light. I certify that on this date, a copy of this letter and a copy of all the enclosures were served on all persons listed on the attached service list. Please feel free to contact me if you have any questions.

Sincerely yours,

James M. Miller
Counsel for Big Rivers Electric Corporation

Enclosures

cc: Service List

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION
3
4

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OCT 8 2016

PUBLIC SERVICE
COMMISSION

5 IN THE MATTER OF:

APPLICATION OF BIG RIVERS ELECTRIC)
CORPORATION FOR A DECLARATORY) Case No.
ORDER) 2016-00278

6
7 **RESPONSE OF BIG RIVERS ELECTRIC CORPORATION TO**
8 **MOTION TO COMPEL OF CITY OF HENDERSON, KENTUCKY AND**
9 **HENDERSON UTILITY COMMISSION, d/b/a**
10 **HENDERSON MUNICIPAL POWER & LIGHT**
11

12 Big Rivers Electric Corporation (“Big Rivers”) files this response to the Motion to
13 Compel filed by the City of Henderson, Kentucky, and the Henderson Utility Commission, d/b/a
14 Henderson Municipal Power & Light (jointly referenced hereinafter as “Henderson”).
15 Henderson’s motion concerns Big Rivers’ objection to responding to Henderson’s Request for
16 Information Nos. 10 and 11. For the reasons set forth below, the Public Service Commission
17 (the “Commission”) should deny Henderson’s Motion to Compel.

18 807 KAR 5:001 Section 4(12)(e) requires Henderson to include in its motion to compel a
19 description of the information requested, the reasons why it is relevant to the issues in the case,
20 and the efforts taken to resolve any disagreement over the production of the requested
21 information. Henderson has failed to satisfy the second requirement because it cannot proffer a
22 legitimate reason why the requested information is relevant to the issues in this case.

23 Henderson’s Requests Nos. 10 and 11 and Big Rivers’ response to each are set forth below:

24 Item 10) Please refer to the Direct Testimony of Robert W. Berry, page 11. Please describe
25 in detail the process whereby Big Rivers registered, without Henderson’s approval and over
26 Henderson’s objection, the Station Two Units and/or capacity with the Midcontinent
27 Independent System Operator, Inc. (hereinafter “MISO”), including any statements or other
28 representations made to MISO that Big Rivers possessed the right or the authorization to
29 register the said Units.
30

1 Response) Big Rivers objects to this request on the grounds that it overly broad, unduly
2 burdensome, and seeks information that is neither relevant nor likely to lead to the discovery
3 of admissible evidence.
4

5 Item 11) Please explain in detail Big Rivers' position that it possessed the right or
6 authorization to register with MISO that portion of energy and/or generating capacity that is
7 within Henderson's annual Station Two reserved capacity. Provide any documentation or
8 other work papers supporting your position.

9 Response) Big Rivers objects to this request on the grounds that it overly broad, unduly
10 burdensome, and seeks information that is neither relevant nor likely to lead to the discovery
11 of admissible evidence.

12 Requests Nos. 10 and 11 ask about Big Rivers' decision to register Station Two with the
13 Midcontinent Independent System Operator, Inc. ("MISO") and whether Big Rivers had the legal
14 right to do so. While Big Rivers acted properly in registering the Station Two units with MISO
15 as part of its contractual obligations with regard to Station Two and Henderson's failure to
16 timely register the units, getting into why Big Rivers was required to register the Station Two
17 units at the time and the contractual requirements applicable to the registration, and delving into
18 the discussions that occurred in 2010 between or among Big Rivers, Henderson, and MISO
19 relating to the registration of the units simply has nothing to do with the contractual provisions
20 applicable to this case or with the question at issue in this case: which party is responsible for the
21 Variable Costs¹ of Excess Henderson Energy that Big Rivers declines to take pursuant to its
22 rights under the Power Sales Contract, as amended.

23 When the Commission considers a motion to compel, it focuses on the relevancy of the
24 information requested:

25 It is a long recognized legal principle, with regard to discovery, that such proceedings
26 must be kept within reasonable bounds and restricted to questions having substantial and
27 material relevancy.
28

¹ Unless otherwise indicated herein, capitalized terms have the same meaning as defined in Big Rivers' Application filed in this case.

1 *MCI Communications, et al. v. Windstream Kentucky West, Inc., et al.*, Case No. 2007-00503, p.
2 2, Order dated May 14, 2010. The Commission also noted this requirement of relevancy in the
3 cases cited by Henderson in its Motion to Compel, *DPI Teleconnect, LLC v. Bell South*
4 *Telecommunications, Inc.*, Case No. 2005-00455, pp. 2-3, Order dated April 7, 2009 (generally
5 speaking, a party has a right to discover any relevant information, and the information requested
6 must be relevant to the proceeding); and *Application of Big Rivers Electric Corporation for*
7 *Adjustment in Rates*, Case No. 2011-00036, p. 3, Order dated July 25, 2011 (motion to compel
8 was granted based on a finding that the information referred to in witness testimony was relevant
9 to the case).

10 On page 2 of the Motion to Compel, Henderson claims that Requests No. 10 and No. 11
11 are relevant to the issues in this case because Big Rivers' Application and the testimony of Mr.
12 Berry attached as Exhibit 10 to the Application discuss "the relationship involving Excess
13 Henderson Energy, the membership of Big Rivers in MISO, and the sale of that energy into the
14 MISO system." Henderson argues that it is therefore entitled to discovery of information on the
15 relationship between Excess Henderson Energy and MISO. However, Requests No. 10 and No.
16 11 do not ask for information about the relationship between Excess Henderson Energy and
17 MISO. Instead, they ask Big Rivers to explain the right and authority that Big Rivers had to
18 register the Station Two units with MISO. Mr. Berry's testimony on page 11 does not discuss
19 whether Big Rivers had the legal right to register the Station Two units with MISO. Instead, Mr.
20 Berry provides a general background about the current energy market, which involves the offer
21 of energy, including Excess Henderson Energy, into the MISO market each day, and what
22 happens to the revenues received from MISO for that energy.

1 Indeed, the information that Henderson argues it is entitled to receive about Excess
2 Henderson Energy and MISO was provided by Big Rivers in response to Henderson’s Request
3 for Information No. 12, a copy of which is attached hereto as Exhibit A.² Big Rivers’ response
4 to Henderson’s Request No. 12 explained in detail why Big Rivers joined MISO, how MISO
5 works in regard to the sale of energy and capacity, and what happens with Excess Henderson
6 Energy sold into MISO. Also, Big Rivers makes clear in its response to Request No. 12 that
7 “while registration may provide certain benefits relating to access to the MISO market, the
8 proceeds of sales of Energy or Capacity in that market are not remuneration received for
9 registering in MISO.” Delving into the process and decision making that occurred in 2010 with
10 respect to registering the Station Two units goes far afield of simply asking about the
11 relationship between Excess Henderson Energy and MISO, and thus unnecessarily complicates
12 this proceeding.

13 The current case has nothing to do with Big Rivers’ decision to join MISO in 2010. In
14 this case, Big Rivers has asked the Commission to enforce the Power Sales Contract between Big
15 Rivers and Henderson and issue an order finding that Big Rivers is not responsible for the
16 Variable Costs of any Excess Henderson Energy that Big Rivers declines to take in accordance
17 with its rights under the Power Sales Contract, and that Henderson is responsible for those
18 Variable Costs. In the alternative, Big Rivers has asked the Commission, if it interprets the
19 Power Sales Contract to provide that Big Rivers is responsible for the Variable Costs of
20 Henderson’s Excess Henderson Energy that is not taken and utilized by Big Rivers, that the

² Big Rivers also identified in its response to Henderson’s Request No. 12 a confidential Excel spreadsheet consisting of over 21,000 pages that shows the net proceeds/losses incurred by Big Rivers from the sale of Energy associated with Henderson’s Annual Reservation from December 1, 2010 through June 2016. Big Rivers will provide this information to Henderson when Henderson signs and returns to Big Rivers an appropriate confidentiality agreement.

1 Commission find this requirement is not fair, just and reasonable, and hold that Big Rivers is not
2 responsible under the Station Two Contracts for these Variable Costs. Nothing about Big
3 Rivers' registration of Station Two with MISO in 2010 will change which party is responsible
4 for the Variable Costs of Excess Henderson Energy that Big Rivers declines to take. Therefore,
5 the Commission should deny Henderson's Motion to Compel.

6 On this the 30th day of September, 2016.

7 Respectfully submitted,
8

9
10 
11 _____
12 James M. Miller
13 R. Michael Sullivan
14 Tyson Kamuf
15 SULLIVAN, MOUNTJOY, STAINBACK
16 & MILLER, P.S.C.
17 100 St. Ann Street
18 P. O. Box 727
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21 Facsimile: (270) 683-6694
22 jmiller@smsmlaw.com
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24 tkamuf@smsmlaw.com

25 *Counsel for Big Rivers Electric Corporation*
26

27
28 **Certificate of Service**

29 I certify that a true and accurate copy of the foregoing was or will be served by regular
30 mail, by Federal Express, or by hand delivery upon the persons listed on the accompanying
31 service list, on or before the date the foregoing is filed with the Kentucky Public Service
32 Commission.
33

34
35 On this the 30th day of September, 2016.
36

37
38 
39 _____
40 Counsel for Big Rivers Electric Corporation
41

Service List
Case No. 2016-00278

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Henderson, Kentucky 42420

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Big Rivers Electric Corporation
201 Third Street
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BIG RIVERS ELECTRIC CORPORATION

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
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dated August 29, 2016

September 12, 2016

1 Item 12) *Please provide any and all documentation, calculations,*
2 *reconciliations, analyses, or other work papers indicating the amount of*
3 *remuneration Big Rivers has received from MISO and/or other entities in*
4 *exchange for the registration of the Station Two Units, and the amount of*
5 *revenue Big Rivers has received from MISO and/or other entities either*
6 *through the sale or offer of energy and/or capacity within Henderson's*
7 *annual Station Two reserved capacity from the date of the registration*
8 *through the date of the answering of these requests.*

9
10 **Response):** Big Rivers objects to this information request on the grounds that it is
11 overly broad and vague. Additionally, Big Rivers objects to the information request
12 insofar as it equates benefits of "registration" with consideration received for sales of
13 Energy or Capacity. While registration may provide certain benefits relating to
14 access to the MISO market, the proceeds of sales of Energy or Capacity in that market
15 are not remuneration received for registering in MISO.

16 Subject to and without waiving its objections, Big Rivers states that it joined
17 MISO because of its legal and contractual obligation to maintain compliance with
18 regulatory standards and requirements for Station Two, including the contingency



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1 reserve standard of the North American Electric Reliability Corporation (“NERC”) as
2 approved by the Federal Energy Regulatory Commission. On page 7 of its order,
3 dated November 1, 2010, in Case No. 2010-00043 (the “November 2010 Order”), the
4 Commission concurred with the parties to that proceeding that joining MISO was “*the*
5 *only feasible alternative . . . for Big Rivers to comply with NERC’s contingency reserve*
6 *requirement*” (emphasis added). Indeed, if not for the regulatory requirements and
7 NERC standards, Big Rivers would not have joined MISO. At the time of the
8 November 2010 Order, MISO was the most cost-effective alternative for Big Rivers
9 to meet the regulatory requirements and NERC standards for Station Two. As
10 reported in Big Rivers’ *Midcontinent Independent System Operator Annual*
11 *Cost/Benefit Update for Kentucky Public Service Commission*, which Big Rivers files
12 annually pursuant to Finding No. 2 of the November 2010 Order, MISO membership
13 continues to be the most cost-effective alternative.

14 Since joining MISO, Big Rivers has administratively participated in resource
15 auctions in which Big Rivers offers Capacity by participating in the Planning
16 Resource Auction in keeping with the requirements of the MISO Open Access
17 Transmission, Energy and Operating Reserve Markets Tariff. In such situations, Big
18 Rivers offers its Capacity (including Station Two) into the auction, and

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1 simultaneously purchases back its matching load obligation (including Henderson's
2 load). Station Two's Capacity within Henderson's Annual Reservation has never
3 been utilized by Big Rivers for its own benefit or use. A confidential Excel
4 spreadsheet showing the net proceeds/losses incurred by Big Rivers from the sale of
5 Energy associated with Henderson's Annual Reservation since December 1, 2010,
6 through June 2016 is being provided on the attached electronic medium. A document
7 showing the net proceeds/losses incurred by Big Rivers from the sale of Capacity
8 associated with Henderson's Annual Reservation since December 1, 2010 through
9 June 2016 is attached as Attachment 2 to this response.

10 The Energy sold by Big Rivers into MISO associated with Henderson's Annual
11 Reservation that is in excess of Henderson's Native Load in a given hour is Excess
12 Henderson Energy. Any Excess Henderson Energy not taken by Big Rivers, and the
13 net MISO revenues resulting from that Energy being sold to MISO, belong to
14 Henderson, as do the variable costs associated with generating that
15 Energy. Beginning with the June 1, 2016 invoice, Big Rivers paid those revenues
16 directly to Henderson each month by check, although to this point, Henderson has
17 returned those checks.

18

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1 Witness) Robert W. Berry and Mark Eacret