



October 7, 2016

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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 10 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 Motion of Big Rivers Electric Corporation to file Surreply to Reply of City of Henderson, Kentucky, and Henderson Utility Commission, d/b/a Henderson Municipal Power & Light to Big Rivers Electric Corporation's Response to Motion to Compel. The proposed Surreply is attached as Exhibit A to the motion.

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 by first-class mail and electronic mail. 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

Service List
Case No. 2016-00278

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City Attorney
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Big Rivers Electric Corporation
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1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION
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4

5 IN THE MATTER OF:

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

6
7 **MOTION OF BIG RIVERS ELECTRIC CORPORATION TO FILE**
8 **SURREPLY TO REPLY OF CITY OF HENDERSON, KENTUCKY AND**
9 **HENDERSON UTILITY COMMISSION, d/b/a**
10 **HENDERSON MUNICIPAL POWER & LIGHT TO BIG RIVERS**
11 **ELECTRIC CORPORATION'S RESPONSE TO MOTION TO COMPEL**
12

13 Big Rivers Electric Corporation (“Big Rivers”) moves the Public Service Commission
14 (“Commission”) for leave to file a surreply to the reply filed by the City of Henderson,
15 Kentucky, and the Henderson Utility Commission, d/b/a Henderson Municipal Power & Light
16 (collectively, “Henderson”) to Big Rivers’ response to Henderson’s Motion to Compel. The
17 surreply is tendered with this motion. For the reasons set forth below, the Commission should
18 grant Big Rivers leave to file the surreply.

19 Henderson moved to compel Big Rivers to respond to Henderson’s First Request for
20 Information Items 10 and 11, which asked Big Rivers to explain the right and authority it had to
21 register Station Two with the Midcontinent Independent System Operation, Inc. (“MISO”). In
22 its original motion, Henderson made a vague argument that the discovery at issue was relevant to
23 “the relationship involving Excess Henderson Energy, the membership of Big Rivers in MISO,
24 and the sale of that energy into the MISO system.” Henderson provided no explanation to
25 support this argument. Big Rivers confined its response to the vague argument raised in
26 Henderson’s motion. 807 KAR 5:001, Section 5(2).


27 In its reply, Henderson makes a new argument as to why the discovery at issue is
28 relevant, and this argument is based on a fundamentally incorrect presumption and understanding

1 of the relevance of the Midcontinent Independent System Operator, Inc. (“MISO”) to generation
2 of Excess Henderson Energy from Station Two. Indeed, MISO and Big Rivers’ registration of
3 Station Two with MISO have nothing to do with the generation of Excess Henderson Energy.
4 Since Big Rivers has never had an opportunity to address this argument, Big Rivers is entitled to
5 an opportunity to explain to the Commission why this argument lacks merit.

6 The Commission’s regulation on motion practice does not provide for a surreply to a
7 motion. 807 KAR 5:001, Section 5. But its regulations do allow for a deviation from its rules
8 for good cause shown. 807 KAR 5:001, Section 22. The Commission should not decide
9 Henderson’s motion without a correct description of the relationship between the operation of
10 Station Two and MISO, and this is good cause for allowing filing of Big Rivers’ tendered
11 surreply.

12 WHEREFORE, Big Rivers requests that the Commission grant this motion and give Big
13 Rivers leave to file its surreply tendered with this motion.

14 On this the 7th day of October, 2016.

15 Respectfully submitted,
16 
17 _____
18 James M. Miller
19 R. Michael Sullivan
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Certificate of Service

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

On this the 11th day of October, 2016.


Counsel for Big Rivers Electric Corporation

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION
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4

5 IN THE MATTER OF:

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

6
7 **SURREPLY OF BIG RIVERS ELECTRIC CORPORATION TO**
8 **REPLY OF CITY OF HENDERSON, KENTUCKY AND**
9 **HENDERSON UTILITY COMMISSION, d/b/a**
10 **HENDERSON MUNICIPAL POWER & LIGHT TO BIG RIVERS**
11 **ELECTRIC CORPORATION'S RESPONSE TO MOTION TO COMPEL**
12

13 Big Rivers Electric Corporation ("Big Rivers") files this surreply to the reply filed by the
14 City of Henderson, Kentucky, and the Henderson Utility Commission, d/b/a Henderson
15 Municipal Power & Light (collectively, "Henderson") to Big Rivers' response to Henderson's
16 Motion to Compel. At issue in Henderson's Motion to Compel are Big Rivers' responses to
17 Henderson's First Request for Information Items 10 and 11, which ask Big Rivers to explain the
18 right and authority it had to register Station Two with Midcontinent Independent System
19 Operator, Inc. ("MISO").

20 Big Rivers files this surreply to correct erroneous statements made by Henderson in its
21 reply that were omitted from the vague arguments in its motion to compel. In that reply,
22 Henderson argues for the first time in the proceedings on the Motion to Compel that Big Rivers
23 should be required to describe and produce all documents related to Big Rivers' authority to
24 register the Station Two generating units in MISO because (i) the documents "appear to bear
25 directly upon Big Rivers' claim that Excess Henderson Energy must be generated and must be
26 sold into the MISO market," and (ii) "are relevant to the proceeding insofar as they relate to
27 requirements for generating Henderson's energy, and the assignment of responsibility for
28 variable costs associated with that generation."

1 First, Big Rivers “claim” that unwanted Excess Henderson Energy must be generated is
2 based entirely upon the terms of the Station Two Contracts and Big Rivers’ understanding of
3 Henderson’s directions to Big Rivers for operating the units. MISO does not require Big Rivers
4 to generate unwanted Excess Henderson Energy from Station Two. And Henderson can point to
5 nothing in the MISO tariff that remotely relates to assignment of responsibility between Big
6 Rivers and Henderson under the Station Two Contracts for the variable costs associated with
7 unwanted Excess Henderson Energy because no such provisions exist.

8 Big Rivers’ position is clearly stated in its responses to the other information requests in
9 this matter. *See* Big Rivers’ response to Henderson’s First Request for Information, Items 7, 8
10 and 9. In those responses, Big Rivers explained why Excess Henderson Energy is generated by
11 Station Two, and it has nothing to do with MISO. Big Rivers operates Station Two in
12 accordance with the terms of the Station Two Contracts with Henderson. On more than one
13 occasion, Henderson has informed Big Rivers that Big Rivers exercises its rights and obligations
14 under the Station Two Contracts subject to Henderson’s ownership, management and control.
15 Big Rivers has suggested to Henderson that one or both units of Station Two be idled or placed
16 in standby service when it is uneconomical to operate the units. In response, Henderson
17 objected, claimed that Big Rivers does not have the right to do that, and threatened to sue Big
18 Rivers if it did so. *See* Big Rivers’ response to Henderson’s First Request for Information Item
19 8. So, Henderson requires Big Rivers to maintain continuous operation of both units of Station
20 Two, even when it is uneconomic to do so.

21 During hours when it is uneconomic for Station Two to generate energy, Big Rivers
22 operates both units so as to generate only the minimum amount of energy required to maintain
23 safe and reliable operation of the units, which is 115 megawatts for Unit 1 and 120 megawatts

1 for Unit 2. *See* Big Rivers’ response to Henderson’s First Request for Information Item 7. The
2 Station Two units must generate this amount of energy because the units must maintain a
3 minimum operating temperature for safe and continuous operation of the Selective Catalytic
4 Reduction (“SCR”) system installed to reduce NOx emission as required by Clean Air Act
5 regulations. *See* Big Rivers’ response to Henderson’s First Request for Information Item 9.
6 Since Henderson has objected to putting either unit in standby status, Station Two must generate
7 a minimum of 235 megawatts each hour when both units are running and at least 115 megawatts
8 each hour when only one unit is running. Since Henderson’s reserved capacity is currently 115
9 megawatts, Excess Henderson Energy is generated each and every hour that Henderson’s native
10 load is less than its reserved capacity, so long as at least one of the units is running. Thus,
11 generation of this Excess Henderson Energy has nothing to do with Big Rivers’ joining MISO or
12 the registration of the Station Two units with MISO.

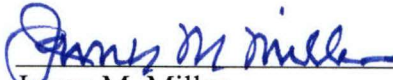
13 It is telling that Henderson concedes in its reply that the information it is seeking is
14 “relevant to the proceeding insofar as [it] relate[s] to requirements for generating Henderson’s
15 energy, and the assignment of responsibility for variable costs associated with that generation.”
16 Big Rivers’ relationship with MISO has nothing to do with either the requirements for generating
17 unwanted Excess Henderson Energy, or the assignment of responsibility for variable costs
18 related to that energy. This means that by Henderson’s own test, the information sought by
19 Henderson is irrelevant to this proceeding.

20 The information Henderson seeks to compel Big Rivers to produce is irrelevant to this
21 proceeding, involves an issue that is immaterial to the issue before the Commission, and
22 Henderson’s Motion to Compel should be denied.

23 On this the 7th day of October, 2016.

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Respectfully submitted,



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Certificate of Service

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On this the 7th day of October, 2016.



Counsel for Big Rivers Electric Corporation