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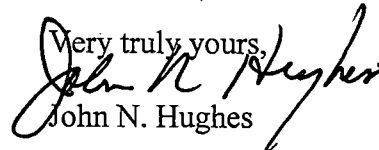
Talina Mathews
Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: Big Rivers: Case No. 2016-00278

Dear Ms. Mathews:

Please file the attached Direct testimony of Gary Quick on behalf of the Henderson Utility Commission.

If you have any questions about this matter, please contact me.

Very truly yours,

John N. Hughes

Attorney for Henderson Utility
Commission d/b/a Henderson
Municipal Power and Light

Attachment

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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

**APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR) CASE NO. 2016-00278
A DECLARATORY ORDER)**

DIRECT TESTIMONY

OF

**GARY QUICK
GENERAL MANAGER OF HENDERSON MUNICIPAL POWER & LIGHT**

ON BEHALF OF

**INTERVENOR CITY OF HENDERSON, KENTUCKY, AND
HENDERSON UTILITY COMMISSION d/b/a
HENDERSON MUNICIPAL POWER & LIGHT**

DIRECT TESTIMONY

OF

GARY QUICK

Table of Contents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

Page

I. INTRODUCTION.....3
II. PURPOSE OF TESTIMONY.....3
III. THE NATURE OF THE DISPUTE.....4
IV. RELIEF REQUESTED.....10

1
2 **I. INTRODUCTION**
3
4

5 **Q-1 Please state your name, business address, and position, and provide a brief**
6 **summary of your professional experience.**
7

8 A-1 My name is Gary Quick. I am the General Manager of Henderson Municipal Power &
9 Light, located at 100 Fifth Street, Henderson, Kentucky, 42420. I have held that position
10 since January 2006. As General Manager, I oversaw Henderson's involvement in the
11 2009 "Unwind Transaction" in which Big Rivers Electric Corp. regained control of its
12 electric system from E.ON U.S., LLC, and resumed its rights and obligations under its
13 various contracts with the City of Henderson, and Henderson's municipally owned
14 electric utility, Henderson Municipal Power & Light. I am also familiar with the
15 numerous contractual disputes which have emerged between Henderson and Big Rivers,
16 including a prolonged arbitration proceeding in which Big Rivers sought interpretation of
17 the same contract it now brings before the Commission. Prior to accepting the position
18 with Henderson Municipal Power & Light, I was Director of a municipally owned
19 electric system in Jacksonville Beach, Florida, a rapidly growing area which at that time
20 served some 36,000 utility customers. I also served eight years as General Manager of the
21 Board of Public Works in Macon, Missouri, and prior to that, roughly 20 years in various
22 positions with Missouri Power & Light Co., including 10 years as District Manager of
23 that utility.
24

25 **II. PURPOSE OF TESTIMONY**

26 **Q-2 What is the purpose of your testimony?**
27

1 A-2 The purpose of my testimony is to articulate Henderson's special interest in this
2 proceeding, to correct misstatements and mischaracterizations set forth by Big Rivers,
3 and to provide support for Henderson's position that the Commission is not the
4 appropriate forum in which to seek interpretation of a contract freely and voluntarily
5 negotiated between sophisticated parties.
6

7 **III. THE NATURE OF THE DISPUTE**

8 **Q-3 How would you characterize the dispute Big Rivers has presented to the**
9 **Commission?**

10
11 A-3 As acknowledged both in the testimony of Big Rivers President & CEO Robert
12 W. Berry, and in Big Rivers' responses to Henderson's First Requests for Information,
13 the dispute giving rise to Big Rivers' Application for a Declaratory Order is a contractual
14 dispute which requires the Commission to engage in contractual interpretation.

15 As a matter of background, Henderson and Big Rivers in 1970 entered into a
16 series of contracts for the construction, operation, and maintenance of two coal-fired
17 electric generating units known collectively as "Station Two." Henderson owns the
18 Station Two Units, which currently have a total net generating capacity of 312
19 megawatts. Big Rivers is required to operate and maintain the units in accordance with
20 the terms of the 1970 contracts, which have since undergone numerous amendments.
21 Under the terms of the Power Sales Contract, as amended, Henderson annually reserves a
22 portion of the Station Two generating capacity to serve the city and its inhabitants. The
23 remaining capacity is allocated to Big Rivers. Each party is responsible for its
24 proportionate share of the annual net rated generating capacity expense associated with
25 Station Two. During the life of the contracts, certain provisions have given rise to

1 disputed claims. Most recently, in 2009, Big Rivers filed an action in the Henderson
2 Circuit Court, and sought a declaration of its rights with respect to energy that exceeded
3 the amount Henderson needed in a given hour to serve its native load, but that was equal
4 to or less than the amount of energy associated with the generating capacity Henderson
5 had reserved. At Big Rivers' request, the Henderson Circuit Court referred the matter to
6 an arbitration panel, which determined that this excess energy was Henderson's to use or
7 schedule for sale to a third party, subject to Big Rivers' first right to match the third
8 party's firm offer. The Arbitration Award was confirmed by the Henderson Circuit Court,
9 and affirmed by the Kentucky Court of Appeals. In August 2015, the Kentucky Supreme
10 Court denied Big Rivers' petition for certiorari review.

11 The primary relief Big Rivers sought in the arbitration proceeding was a
12 declaration that Henderson did not have the contractual right to sell energy associated
13 with its reserved capacity to third parties without first offering that energy to Big Rivers
14 at the price of \$1.50 per MWh. Prior to, during, and after the arbitration proceeding, Big
15 Rivers refused to allow Henderson to schedule or take its energy for sale to third parties,
16 and continues to deprive Henderson of energy associated with its reserved capacity while
17 reimbursing Henderson only \$1.50 per MWh for the "Excess Henderson Energy" it
18 claims it has taken.

19 For reasons Big Rivers has declined to explain, Big Rivers now asks the
20 Commission to interpret the Power Sales Contract in a way that sanctions a recent and
21 unilateral change in practice concerning the generation of Station Two energy, and the
22 assignment of responsibility for variable production costs. This unilateral change is
23 inconsistent with Exhibit A of the Indemnification Agreement that Big Rivers and

1 Western Kentucky Energy Corp. executed in 2009. This unilateral change is also
2 inconsistent with practice reflected in the monthly invoices Big Rivers has provided to
3 Henderson since 2009, in compliance with Section 3.8(c) of the Power Sales Contract, as
4 amended. One key provision at issue is Section 6.7 of the Power Sales Contract, as
5 amended, which provides that each party is to replace, at its own cost, all fuel and
6 reagents consumed for production of that party's Station Two energy. Henderson does
7 not have the right to take Big Rivers' supply of coal and lime inventories, and nothing in
8 Section 6.7, or any other provision, permits Big Rivers to take Henderson's supply of
9 coal and lime inventories to generate energy and sell that energy to a third party without
10 Henderson's approval.

11 **Q-4 What is "Excess Henderson Energy?"**

12 A-4 The term "Excess Henderson Energy" is a term that came into being with the
13 1998 Amendments to the Power Sales Contract. Under Section 3.8 of the amended
14 contract, "Excess Henderson Energy" is energy which is within Henderson's reserved
15 capacity, and which is not scheduled or taken by the City. Thus, "Excess Henderson
16 Energy" is that energy which Henderson, for whatever reason, has neither scheduled or
17 taken for the use of the City and its inhabitants, nor scheduled or taken by Henderson for
18 sale to third parties. "Excess Henderson Energy" is a defined contractual term, and
19 should not be confused with mere "excess" or "surplus" energy, which is that energy
20 which exceeds the amount Henderson needs to serve its native load in a given period of
21 time, but is equal to or less than the amount of energy associated with Henderson's
22 capacity reservation for that given time period. In the event that Henderson's reserved
23 capacity is used to generate energy above Henderson's native load, the energy above

1 native load does not become "Excess Henderson Energy" until and unless Henderson
2 elects to either not schedule or not take the energy for its own use, or offer the energy for
3 sale to third parties. The Power Sales Contract, as amended, in Section 3.8 makes clear
4 that, where there is "Excess Henderson Energy," Big Rivers is entitled to exercise its
5 option to take or not take that energy and, if taken, to pay Henderson at a rate equal to
6 \$1.50 per MWh taken. Furthermore, Big Rivers must provide, at its own cost, the full
7 replacement of all fuels and reagents consumed from the Station Two fuel and reagent
8 reserves for the production of "Excess Henderson Energy" and energy associated with the
9 "Excess Henderson Capacity" so taken by it. The Arbitration Award did nothing to
10 change the contractual definition of "Excess Henderson Energy," nor did it confer upon
11 Big Rivers a contractual right to generate and dispose of energy within Henderson's
12 reserved capacity in a way that does not meet with Henderson's approval, or to seize
13 Henderson's tangible assets. The arbitration proceeding referenced earlier merely
14 confirmed the existing contractual language.

15 **Q-5 Is Big Rivers required to generate all of the energy associated with Henderson's**
16 **reserved Station Two capacity?**

17
18 **A-5** No. Big Rivers is required to generate only that energy which Henderson schedules or
19 takes, up to Henderson's reserved capacity. Big Rivers acknowledges in its responses to
20 Henderson's First Requests for Information that Big Rivers can, and frequently does,
21 operate the Station Two Units to generate only the minimum amount of energy required
22 to maintain safe and reliable operation. Based upon unsubstantiated data submitted by
23 Big Rivers, the Units can be operated to generate as little as 115 megawatts for Unit 1,
24 and as little as 120 megawatts for Unit 2, and still remain in safe and reliable operation.
25 Using the methodology Big Rivers has historically asserted, and agreed to in the above-

1 referenced Indemnification Agreement, for the generation of Station Two energy, the
2 energy taken by Big Rivers would be generated first. Under the current capacity split
3 (115 megawatts for Henderson, and 197 megawatts for Big Rivers), Big Rivers could run
4 the Units at their purported minimum levels totaling 235 megawatts, and never generate
5 energy above Henderson's native load. This is the methodology explained by Mr. Berry
6 in his response to the First Staff Data Request Item 8 and is predicated on the formula
7 approved in the Indemnification Agreement between Big Rivers and Western Kentucky
8 Energy Corp., executed on July 16, 2009.

9
10 **Q-6 Please describe the "unilateral change in practice" Big Rivers recently adopted.**

11
12 A-6 For reasons unknown to Henderson, Big Rivers has changed the methodology for
13 calculating the generation of energy at Station Two, and now asserts that the energy related to
14 Henderson's total reserved capacity is generated first, which includes energy not scheduled or
15 taken by Henderson.

16
17 **Q-7 Have Henderson and Big Rivers attempted to reach an agreement concerning the
18 best way in which to handle the generation of unprofitable energy?**

19
20 A-7 On September 8, 2016, Mike Pullen, Vice President of Production for Big Rivers,
21 sent a letter to Ken Brooks, Henderson's Interim Power Production Director, requesting
22 that the parties meet to discuss the various options for minimizing economic losses at
23 Station Two. Contrary to the statement made in Big Rivers' response to Request No. 5 of
24 Henderson's First Request for Information, Henderson did respond to this request, and
25 expressed a willingness to schedule a meeting for that purpose. A meeting was
26 subsequently scheduled to take place in September 2016. Prior to the date of the

1 scheduled meeting, Mr. Brooks forwarded a draft Confidentiality Letter Agreement to
2 Mr. Pullen, along with a request that Mr. Pullen execute the agreement on behalf of Big
3 Rivers before the meeting. Big Rivers failed to return the executed Confidentiality Letter
4 Agreement, and, on the morning the meeting was to have taken place, advised Henderson
5 that the meeting was canceled. Henderson remains willing to meet with Big Rivers to
6 discuss the issues outlined above, provided Big Rivers agrees in writing to maintain the
7 confidentiality of the discussions, and refrain from using the substance of the discussions
8 in any judicial or administrative proceeding. As of this filing, a meeting is tentatively
9 scheduled for October 26, 2016.

10 **Q-8 What is Henderson's position in this matter?**

11 A-8 Henderson believes that the application, testimony and data responses by Big Rivers raise
12 a number of legal issues related to the interpretation of the contracts between Big Rivers
13 and Henderson. Any interpretation of those issues directly impacts the decision by the
14 Commission in this case. For example, the issue of Big Rivers' lack of Henderson's
15 consent to act as its MISO Market Participant, and to register Henderson's Station Two
16 generation Units, directly affects the marketing of Henderson energy that Big Rivers
17 claims is the basis of its application. Additionally, the question of the applicability of the
18 methodology used to calculate "Excess Henderson Energy" as provided in the Indemnity
19 Agreement between Big Rivers and Western Kentucky Energy Corp., which has been
20 followed by Big Rivers up until June, 2016, but which it now seeks Commission approval
21 to modify, directly impacts the relief Big Rivers seeks from the Commission. There is
22 also the issue of the appropriate characterization of "Excess Henderson Energy," an issue
23 directly related to the interpretation of the Power Sales Contract and one that has already


1 211 Sower Boulevard
2 P.O. Box 615
3 Frankfort, Kentucky 40602-0615

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1 **VERIFICATION**

2 I, Gary Quick, General Manager of Henderson Municipal Power & Light, hereby state
3 and affirm that the foregoing testimony was prepared by me, or under my supervision, and all
4 statements contained therein are true and correct to the best of my knowledge and belief, this the
5 21st day of October, 2016.
6
7
8
9

10 
11 _____
12 Gary Quick, General Manager
13 Henderson Municipal Power & Light

13 STATE OF KENTUCKY
14 COUNTY OF HENDERSON
15

16 The foregoing verification statement was SUBSCRIBED AND SWORN to before me by
17 Gary Quick, General Manager of Henderson Municipal Power & Light, on this the 21st day of
18 October, 2016.
19
20
21
22

23 
24 _____
25 NOTARY PUBLIC, STATE AT LARGE
26 #484598
27 MY COMMISSION EXPIRES: 3/20/17
28 NOTARY ID: 484598