



SULLIVAN, MOUNTJOY,
STAINBACK & MILLER, P.S.C.
Attorneys

James M. Miller
Attorney
Direct (270) 691-1640
jmiller@smsmlaw.com

Skill. Integrity. Efficiency.

December 12, 2016

VIA FEDERAL EXPRESS

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

RECEIVED

DEC 13 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 ("Big Rivers") are an original and ten copies of the response of Big Rivers to the motion of City of Henderson, Kentucky, and Henderson Utility Commission d/b/a Henderson Municipal Power & Light for a briefing schedule. I certify that on this date, a copy of this letter and response have been served this day by electronic mail and U.S. mail on the persons shown on the attached service list.

Sincerely Yours,

James M. Miller
Counsel for Big Rivers Electric Corporation

JMM/abg

Enclosures

cc: Robert W. Berry
DeAnna Speed
Laura Chambliss

Service List
PSC Case No. 2016-00278

Hon. John N. Hughes
Attorney at Law
124 West Todd Street
Frankfort, Kentucky 40601

Hon. H. Randall Redding
Hon. Sharon W. Farmer
KING, DEEP & BRANAMAN
127 North Main Street
Post Office Box 43
Henderson, Kentucky 42419-0043
*Attorneys for Henderson Utility
Commission d/b/a Henderson
Municipal Power & Light*

Hon. Dawn Kelsey, City Attorney
City of Henderson
222 First Street
Henderson, Kentucky 42420
Attorney for City of Henderson

RECEIVED

DEC 13 2016

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

1
2
3
4
5

IN THE MATTER OF:

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

6
7
8
9
10
11

RESPONSE OF BIG RIVERS ELECTRIC CORPORATION TO MOTION FOR BRIEFING SCHEDULE OF CITY OF HENDERSON, KENTUCKY AND HENDERSON UTILITY COMMISSION, d/b/a HENDERSON MUNICIPAL POWER & LIGHT

12
13
14
15

Big Rivers Electric Corporation (“Big Rivers”) files this response to the Motion for a Briefing Schedule filed by the City of Henderson, Kentucky, and the Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (jointly referenced hereinafter as “Henderson”).

16
17
18
19
20
21
22

Henderson seeks to resolve this case on briefs that “allow the parties to address all issues raised in the pleadings and discovery.” But to the extent that the Public Service Commission (“Commission”) finds it necessary to change a rate or service standard, or change or abrogate contractual language to grant the relief sought by Big Rivers in its application, KRS 278.200 requires that the Commission do so only after a hearing. Since the relief sought by Big Rivers¹ may require such action by the Commission, briefing must be postponed until after a hearing is held.

23
24
25

Rather than eliminate “unnecessary” proceedings, Henderson’s proposal could multiply the steps required to conclude this case. If the Commission follows Henderson’s procedural suggestions and then rules in Big Rivers’ favor, Henderson could appeal that order, a hearing

¹ The relief sought by Big Rivers is described in the application, paragraphs 16 through 18 on pages 6 and 7, and in the rebuttal testimony of Robert W. Berry, pages 28:20 through 21:13.

1 would still be required under KRS 278.200, a second set of briefs will likely be required, and the
2 final order of the Commission will be subject to appeal. And the hearing and all subsequent
3 steps would occur while the appeal of the first order is pending. A better approach is to conclude
4 the evidentiary and legal aspects of the case simultaneously, leaving the prospect of a single
5 appeal.

6 Big Rivers also disagrees with Henderson's request for simultaneous briefs and
7 simultaneous replies. Big Rivers filed this case seeking affirmative relief from the Commission
8 in the form of a declaratory order, making this proceeding more like a civil proceeding. Big
9 Rivers has the burden of proving its case and, as is the practice in a civil proceeding, should have
10 the first and last briefs². While Big Rivers acknowledges that simultaneous briefs have
11 frequently been ordered in its rate cases, that has occurred after a hearing and by agreement of
12 the parties, where the issues have been well-defined in the hearing, the application of the law is
13 relatively settled, and there is a statutory time frame within which the Commission must decide
14 the case. In this case, Big Rivers should first file its brief after the hearing, followed by
15 Henderson's brief, concluding with Big Rivers' reply brief. This briefing schedule assures that
16 Big Rivers, which has the burden of proof, has an opportunity to respond to any issues first
17 disclosed by Henderson in its written arguments.

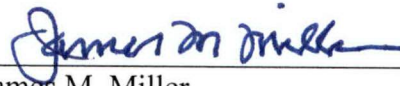
18 For the reasons stated, Henderson's motion should be denied, and this matter should be
19 set for hearing.

20 On this the 12th day of December, 2016.

21
22
23
24

² See, for example, CR 76.12(2)(a).

Respectfully submitted,



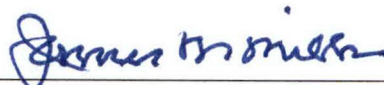
James M. Miller
R. Michael Sullivan
Tyson Kamuf
SULLIVAN, MOUNTJOY, STAINBACK
& MILLER, P.S.C.
100 St. Ann Street
P. O. Box 727
Owensboro, Kentucky 42302-0727
Phone: (270) 926-4000
Facsimile: (270) 683-6694
jmiller@smsmlaw.com
msullivan@smsmlaw.com
tkamuf@smsmlaw.com

Counsel for Big Rivers Electric Corporation

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 12th day of December, 2016.



Counsel for Big Rivers Electric Corporation