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Skill. Integrity. Efficiency.

January 23, 2017

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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JAN 24 2017

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 Big Rivers Electric Corporation's Motion for an Order Permitting Use of Deposition at Hearing.

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

JMM/abg

Enclosures

cc: Service List

Service List
PSC Case No. 2016-00278

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Attorney for City of Henderson

1 COMMONWEALTH OF KENTUCKY

2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

3 In the Matter of:

4 APPLICATION OF BIG RIVERS)
5 ELECTRIC CORPORATION FOR A)
6 DECLARATORY ORDER)

CASE NO. 2016-00278

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8 MOTION FOR AN ORDER
9 PERMITTING USE OF DEPOSITION
10 AT HEARING
11

PUBLIC SERVICE
COMMISSION

12 Big Rivers Electric Corporation (“*Big Rivers*”) moves the Public Service
13 Commission (“Commission”) for an order permitting it to use the deposition of Gary
14 Quick dated June 13, 2011, for purposes of cross-examination in the hearing in this
15 matter scheduled for February 7, 2017, because the parties have been unable to
16 reach agreement that Big Rivers may use the deposition as proposed. Mr. Quick’s
17 deposition was taken in the arbitration between Big Rivers and City of Henderson,
18 Kentucky, and City of Henderson Utility Commission d/b/a Henderson Municipal
19 Power & Light (collectively, “Henderson”), American Arbitration Association Case
20 No. 52 198 00173 10. In that case, the parties signed a broad “Agreed Protective
21 Order” pursuant to Rule 26.03 of the Kentucky Rules of Civil Procedure (“CR
22 26.03”) because it appeared “that certain discovery will involve confidential,
23 sensitive, proprietary, personal and/or commercial information. . . .” Rather than
24 specify the individual documents to be accorded confidential treatment, the Agreed
25 Protective Order covered everything produced in the case. A copy of the Agreed

1 Protective Order is attached to this motion. While the document is titled “Agreed
2 Protective Order”, it is only signed by counsel for the parties; the arbitration panel
3 did not sign it. Thus, the document is a confidentiality agreement, not an order.

4 The Agreed Protective Order provides, in part, as follows:

5 4. The parties understand that a party may desire to use
6 documents or things produced in this arbitration in a
7 subsequent proceeding in a public court of law. However,
8 the parties agree that any such production is subject to
9 further negotiations among the parties, and such
10 negotiations must occur before any production takes
11 place.

12
13 5. The restrictions may be altered and supplemented only by
14 a written stipulation between the parties filed with and
15 approved by the AAA or by order of the AAA on motion.
16

17 The American Arbitration Association panel that heard the arbitration was
18 disbanded following completion of its duties in 2012. Counsel for Big Rivers has
19 contacted Henderson counsel Randall Redding for purposes of negotiating use of Mr.
20 Quick’s deposition, but at this point no agreement has been reached. With the
21 hearing in this matter just two weeks away, Big Rivers must file this motion now to
22 give the Commission time to rule on the motion before commencement of the
23 hearing. Big Rivers will continue to seek agreed resolution of this issue.

24 Big Rivers seeks authority to use Mr. Quick’s deposition for cross-
25 examination purposes in the hearing because the deposition includes a discussion
26 by Mr. Quick of issues directly relevant to this proceeding. Mr. Quick’s testimony in
27 his deposition discusses issues that have been openly discussed in detail by all
28 parties in this proceeding in the public record. Big Rivers believes that no

1 information it will use from the deposition is “confidential, sensitive, proprietary,
2 personal and/or commercial information” that the Agreed Protective Order was
3 intended to protect, or that CR 26.03 contemplates should be protected. Big Rivers
4 will provide no further details in this motion about the contents of the deposition
5 because, until it is authorized to do so, it will not produce the deposition or discuss
6 details about its contents. But Big Rivers does represent that the contents of Mr.
7 Quick’s deposition will inform the Commission’s deliberations in this case.

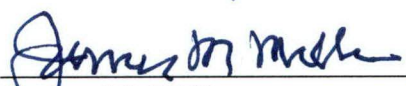
8 The Commission sets the rules for its hearings (KRS 278.310) and has the
9 power to issue subpoenas. KRS 278.320. The Commission’s rules have long held
10 that a party cannot fail to respond to a request for information on grounds of
11 confidentiality, 807 KAR 5:001, Section 13(6)(a), and may not even be excused from
12 producing any paper at a hearing on the ground that the paper may tend to
13 incriminate him or subject him to penalty or forfeiture. KRS 278.350. Thus, the
14 Commission has broad authority over the conduct of its hearings and the documents
15 introduced in those hearings, and the fact that Mr. Quick’s deposition falls under
16 the sweeping confidentiality coverage of the Agreed Protective Order should not
17 prevent the use of Mr. Quick’s deposition.

18 For the foregoing reasons, Big Rivers requests that the Commission enter an
19 order authorizing Big Rivers to use Mr. Quick’s deposition at the hearing for the
20 purposes of cross-examination, notwithstanding the Agreed Protective Order, and
21 for all other relief to which Big Rivers may appear entitled.

22 Respectfully submitted, this 23rd day of January, 2017.

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PSC

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