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**PUBLIC SERVICE
COMMISSION**

**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)	

**RESPONSE OF CITY OF HENDERSON, KENTUCKY, AND
HENDERSON UTILITY COMMISSION,
d/b/a HENDERSON MUNICIPAL POWER & LIGHT,
TO BIG RIVERS ELECTRIC CORPORATION'S
MOTION FOR AN ORDER PERMITTING
USE OF DEPOSITION AT HEARING**

The City of Henderson, Kentucky, and the Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (jointly referenced hereinafter as "Henderson"), file this response to the motion of Big Rivers Electric Corporation (hereinafter "Big Rivers") to use the deposition of Gary Quick dated June 13, 2011, for cross-examination purposes during the hearing of this matter scheduled for February 7, 2017.

Both Henderson and Big Rivers had multiple opportunities to exchange information requests during the discovery phase of this proceeding. If Mr. Quick's deposition testimony in the wholly distinct arbitration proceeding raised an issue relevant to Big Rivers' application for a declaratory order, the issue should have been addressed in the form of an information request. Now that discovery is closed, Henderson is less than agreeable to the use of supplemental materials in the absence of an order requiring the same.

In response to Big Rivers' request to introduce Mr. Quick's arbitration deposition at the hearing before the Kentucky Public Service Commission (hereinafter "Commission"), Henderson required only that Big Rivers explain the relevance of that testimony to the pending

1 application, and identify specifically the portion or portions of the deposition it intends to
2 introduce. Big Rivers has declined to do either.


3 Big Rivers in its motion does not disclose either to Henderson or to the Commission the
4 substance and relevance to the instant action of deposition testimony taken from Mr. Quick
5 nearly six (6) years ago in a hearing before an arbitration panel. Rather, Big Rivers makes only a
6 vague reference to “a discussion by Mr. Quick of issues directly relevant to this proceeding.” In
7 response to Henderson’s request that Big Rivers identify the specific portion or portions of the
8 deposition it intended to use, Big Rivers merely referred Henderson to a lengthy passage
9 spanning more than eighty (80) pages.

10 The Agreed Protective Order referenced in Big Rivers’ motion and entered in the
11 arbitration proceeding presumably contemplated a true negotiation between the parties
12 concerning the potential disclosure of protected materials. Such a negotiation would have
13 involved an exchange of proposals with the aim of reaching an agreement on mutually
14 acceptable terms. But Big Rivers’ request to introduce Mr. Quick’s arbitration deposition at the
15 Commission hearing instead came in the form of a demand, accompanied by an unwillingness to
16 reach a compromise that would have assured the protection of sensitive information from public
17 scrutiny. It is this absence of a spirit of negotiation that violates the Agreed Protective Order, and
18 forms the basis of Henderson’s objection to Big Rivers’ motion.

19 Henderson is, at a minimum, entitled to know prior to the hearing precisely which
20 “issues” addressed in the arbitration proceeding are relevant to Big Rivers’ application for a
21 declaratory order, so that Henderson can adequately prepare to address those issues, and avoid
22 the danger of undue surprise. For similar reasons, Henderson is entitled to know with specificity
23 the testimony to be used in the cross-examination of Mr. Quick.

1 For the foregoing reasons, the Commission should deny Big Rivers' motion. In the
2 alternative and without waiving the foregoing, Henderson requests that the Commission order
3 Big Rivers to explain the relevance of the prior deposition to the instant proceeding, and to
4 identify with specificity the portion of portions of that testimony it intends to use in cross-
5 examining Mr. Quick. In the event the Commission grants Big Rivers' motion, Henderson
6 reserves the right to introduce the arbitration testimony of Big Rivers' personnel on the same
7 terms and for the same purposes governing the use of Mr. Quick's deposition.

8 Respectfully submitted,
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15 **CERTIFICATE OF SERVICE**
16

17 I hereby certify that a true and exact copy of the foregoing was forwarded this 27th day
18 of January, 2017, via U.S. Mail, postage prepaid, or via facsimile, electronic mail, and/or hand
19 delivery, to the following:
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