



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

James M. Miller  
Attorney  
[jmiller@smsmlaw.com](mailto:jmiller@smsmlaw.com)

January 28, 2017

Skill. Integrity. Efficiency.

VIA FEDERAL EXPRESS

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

RECEIVED

JAN 30 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 Reply of Big Rivers Electric Corporation to Response of City of Henderson, Kentucky and Henderson Utility Commission d/b/a Henderson Municipal Power and Light to 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

Enclosure

cc: Service List

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*



1 copy of Mr. Quick's deposition on December 19, 2016, to review in connection with Big Rivers'  
2 request to use the deposition in the hearing.

3 Henderson next complains that it "required only that Big Rivers explain the relevance of  
4 the testimony to the pending application, and identify specifically the portion or portions of the  
5 depositions it intends to introduce;" that instead of a "true negotiation," Big Rivers' request to  
6 use the deposition "came in the form of a demand, accompanied by an unwillingness to reach a  
7 compromise that would have assured the protection of sensitive information from public  
8 scrutiny;" and that "[i]t is this absence of a spirit of negotiation that violates the Agreed  
9 Protective Order, and forms the basis of Henderson's objection to Big Rivers' motion."  
10 Response at p. 2.

11 Big Rivers' view of its request and the subsequent negotiations differs greatly from  
12 Henderson's characterization. Big Rivers believes it initiated negotiations to use the deposition  
13 on December 19, 2016, through a telephone conversation between Big Rivers' counsel and  
14 Henderson's counsel, followed up by an e-mail message forwarding a copy of Mr. Quick's  
15 deposition and requesting a response by January 6, 2017. On January 6, Henderson's counsel  
16 asked to postpone his response to Big Rivers' request until the Commission ruled on Henderson'  
17 motion for a briefing schedule. Immediately upon receiving the Commission's order scheduling  
18 a hearing, Big Rivers' counsel renewed Big Rivers' request. Henderson's counsel then  
19 responded that Henderson was "reluctant to agree" to the request, but would "reconsider if you  
20 will identify the portion(s) of Mr. Quick's deposition testimony you wish to use at the PSC  
21 hearing, and the purpose for which the testimony would be used."

22 In a January 23, 2017, e-mail, Big Rivers' counsel then identified relevant pages from the  
23 deposition and the exact purposes for which the deposition would be used:

1 We would plan to have available for use at the hearing pages 112 through 194 of  
2 Mr. Quick's deposition. The purpose for which the deposition would potentially  
3 be used, of course, is to compare what Mr. Quick said in his deposition against  
4 what he has said in the record of this case or what he says at the hearing.

5 Henderson's counsel's response was to request that Big Rivers "identify with specificity the  
6 topic and the page number of the testimony in the deposition you intent [sic] to use we will  
7 reconsider your request to use the Gary Quick deposition excerpts." In other words, Henderson  
8 conditioned its potential consent to use of the deposition on Big Rivers providing Henderson its  
9 cross examination for Mr. Quick. Even if Big Rivers could identify all its cross-examination for  
10 Mr. Quick prior to him testifying at the hearing, Henderson's demand to see that attorney work  
11 product and trial strategy is unreasonable.

12 Big Rivers believes that it has, in fact, provided reasonable responses to Henderson's  
13 demands. Big Rivers identified the range of pages in Mr. Quick's deposition in which he  
14 discussed the subject of Excess Henderson Energy. And Big Rivers clearly stated that it would  
15 only use the portions of the deposition that compare with statements that Mr. Quick has or will  
16 make in this case, thereby limiting the subject matter to issues in this case. All e-mail exchanges  
17 between Big Rivers' counsel and Henderson's counsel are attached to this reply so the  
18 Commission can judge whether Big Rivers' discussions with Henderson have been adequate.<sup>1</sup>

19 Henderson further accuses Big Rivers of being unwilling "to reach a compromise that  
20 would have assured the protection of sensitive information from public scrutiny." But as its own  
21 description of its demands show, Henderson never raised the subject of protecting sensitive

---

<sup>1</sup>The redaction in the e-mail message dated January 6, 2017, from Big Rivers' counsel to Henderson's counsel is of privileged information regarding litigation in which Big Rivers and Henderson have a mutual, common interest and that is unrelated to the issues in this proceeding.

1 information.<sup>2</sup> As Big Rivers stated in its Motion, it is not aware of any confidential information  
2 in the portions of the deposition it has identified, and the subjects discussed in those portions of  
3 the deposition have been openly discussed in detail by both parties in this proceeding. However,  
4 if Henderson identifies material in the deposition that is legally entitled to confidential treatment,  
5 the Commission is well-equipped to take appropriate action at the hearing to protect the  
6 information, such as granting confidential protection to the deposition excerpts and going into  
7 confidential session when the information is discussed during the hearing.

8 Finally, Henderson states that if the Commission grants Big Rivers' motion, Henderson  
9 reserves the right to use the arbitration depositions of Big Rivers' personnel. Big Rivers  
10 certainly agrees that Henderson is entitled to the same rights as Big Rivers. That means that  
11 prior to the hearing Henderson can present Big Rivers with a proposal to use information  
12 covered by the Agreed Protective Order, with an explanation comparable to what Big Rivers  
13 provided to Henderson, and Big Rivers can take appropriate steps to protect any information  
14 Henderson proposes to use that Big Rivers considers to be confidential.

15 Big Rivers filed the Motion because Mr. Quick's deposition is subject to the Agreed  
16 Protective Order that protects from disclosure all information disclosed in the arbitration, and  
17 because Big Rivers wants the certainty of an order from the Commission permitting it to use the  
18 deposition in the hearing. But Henderson expresses no concern about the confidentiality of any  
19 of the information Big Rivers has designated for potential use in the hearing, and in fact  
20 criticizes Big Rivers for not disclosing detailed information from the confidential deposition in  
21 its Motion. Henderson opposes Big Rivers' motion principally because Big Rivers has not

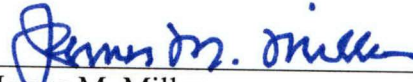
---

<sup>2</sup> See Response, pages 1:31 through 2:2 ("Henderson required only that Big Rivers explain the relevance of that testimony to the pending application, and identify specifically the portion or portions of the deposition it intends to introduce . . ."), and e-mail messages from Redding to Miller dated January 19, 2017, and January 23, 2017.

1 provided Henderson its litigation plans for using the deposition to cross-examine Mr. Quick.  
2 Based on the foregoing, the Commission should grant Big Rivers' Motion.

3 On this the 28<sup>th</sup> day of January, 2017.

4 Respectfully submitted,

5  
6 

7  
8 \_\_\_\_\_  
9 James M. Miller  
10 R. Michael Sullivan  
11 Tyson Kamuf  
12 SULLIVAN, MOUNTJOY, STAINBACK  
13 & MILLER, P.S.C.  
14 100 St. Ann Street  
15 P. O. Box 727  
16 Owensboro, Kentucky 42302-0727  
17 Phone: (270) 926-4000  
18 Facsimile: (270) 683-6694  
19 jmillersmsmlaw.com  
20 msullivan@smsmlaw.com  
21 tkamuf@smsmlaw.com

22 *Counsel for Big Rivers Electric Corporation*

## Jim Miller

---

**From:** Jim Miller  
**Sent:** Monday, December 19, 2016 4:26 PM  
**To:** Randall Redding  
**Subject:** Quick Deposition  
**Attachments:** 2011 06-13 QUICK, Gary - Condensed.pdf

Randall,

Here is Gary Quick's deposition from the arbitration that we requested agreement from Henderson to use in the PSC case. We would like to know by January 6, 2017, whether Henderson will agree to allow Big Rivers to use the deposition. Best wishes for the holiday.

Jim

James M. Miller  
Sullivan, Mountjoy, Stainback & Miller, P.S.C.  
100 St. Ann Street (42303)  
P. O. Box 727  
Owensboro, Kentucky 42302-0727  
Telephone (270) 926-4000  
Direct Dial (270) 691-1640  
Fax (270) 683-6694



SULLIVAN, MOUNTJOY,  
STAINBACK & MILLER

### Confidentiality Statement:

This message from the law firm of Sullivan, Mountjoy, Stainback & Miller, P.S.C. contains information that is privileged and confidential, and is solely for the use of the intended recipient. If you are not the intended recipient, be aware that any review, disclosure, copying, distribution, or use of the contents of this message is strictly prohibited. If you have received this message in error, please immediately destroy it and notify us at (270) 926-4000.



**Jim Miller**

---

**From:** Randall Redding <rredding@kdblaw.com>  
**Sent:** Friday, January 06, 2017 2:58 PM  
**To:** Jim Miller  
**Cc:** Gary Quick (gquick@hmpl.net); jnhughes@johnnhughespesc.com; Sharon Farmer; Linda Clary  
**Subject:** RE: Big Rivers - Henderson PSC Case

Dear Jim:

As you know, we are awaiting the Commission's ruling on Henderson's motion to brief the issues raised in discovery, and forego a formal hearing on the application. We would prefer to postpone any further discussion concerning the use of any arbitration depositions and/or testimony until the Commission determines whether a hearing will take place.

Thanks,

Randall

---

**From:** Jim Miller [mailto:jmiller@smsmlaw.com]  
**Sent:** Friday, January 06, 2017 11:28 AM  
**To:** Randall Redding  
**Subject:** Big Rivers - Henderson PSC Case  
**Importance:** High

Randall:

I left you a message asking where Henderson is on our request for consent to use Gary Quick's deposition from the arbitration in any hearing we may have in the PSC case? I would like to hear from you today, as indicated in my initial request before Christmas.

[REDACTED]

Jim

James M. Miller  
Sullivan, Mountjoy, Stainback & Miller, P.S.C.  
100 St. Ann Street (42303)  
P. O. Box 727  
Owensboro, Kentucky 42302-0727  
Telephone (270) 926-4000  
Direct Dial (270) 691-1640  
Fax (270) 683-6694



SULLIVAN, MOUNTJOY,  
STAINBACK & MILLER

Confidentiality Statement:

This message from the law firm of Sullivan, Mountjoy, Stainback & Miller, P.S.C. contains information that is privileged and confidential, and is solely for the use of the intended recipient. If you are not the intended recipient, be aware that any review, disclosure, copying, distribution, or use of the contents of this message is strictly prohibited. If you have received this message in error, please immediately destroy it and notify us at (270) 926-4000.

## Jim Miller

---

**From:** Randall Redding <rredding@kdbl.com>  
**Sent:** Monday, January 23, 2017 3:50 PM  
**To:** Jim Miller  
**Cc:** Sharon Farmer; jnhughes@johnnhughespsc.com  
**Subject:** RE: PSC hearing use of Quick testimony

Jim, if you will identify with specificity the topic and the page number of the testimony in the deposition you intent to use we will reconsider your request to use the Gary Quick deposition excerpts.

H. Randall Redding  
KING, DEEP and BRANAMAN  
127 North Main Street  
Post Office Box 43  
Henderson, KY 42419-0043  
(270) 827-1852; FAX: (270) 826-7729  
[rredding@kdbl.com](mailto:rredding@kdbl.com)

---

**From:** Jim Miller [<mailto:jmiller@smsmlaw.com>]  
**Sent:** Monday, January 23, 2017 2:52 PM  
**To:** Randall Redding  
**Cc:** Sharon Farmer; Linda Clary; [dskelsey@cityofhendersonky.org](mailto:dskelsey@cityofhendersonky.org); [jnhughes@johnnhughespsc.com](mailto:jnhughes@johnnhughespsc.com); Tyson Kamuf; Mike Sullivan  
**Subject:** RE: PSC hearing use of Quick testimony

Randall,

We would plan to have available for use at the hearing pages 112 through 194 of Mr. Quick's deposition. The purpose for which the deposition would potentially be used, of course, is to compare what Mr. Quick said in his deposition against what he has said in the record of this case or what he says at the hearing. Big Rivers already has a copy of the deposition, so I am not sure why failing to raise this in discovery makes any difference, and the issue of the agreed protective order would have to be addressed, in any event.

Hopefully this explanation is sufficient for your purposes. But because we are now only two weeks from the hearing date, we are going to file a motion seeking permission to use the deposition to get that process started in case we do not reach agreement on use of the Quick deposition.

Jim

James M. Miller  
Sullivan, Mountjoy, Stainback & Miller, P.S.C.  
100 St. Ann Street (42303)  
P. O. Box 727  
Owensboro, Kentucky 42302-0727  
Telephone (270) 926-4000  
Direct Dial (270) 691-1640  
Fax (270) 683-6694



SULLIVAN, MOUNTJOY,  
STAINBACK & MILLER

Confidentiality Statement:

This message from the law firm of Sullivan, Mountjoy, Stainback & Miller, P.S.C. contains information that is privileged and confidential, and is solely for the use of the intended recipient. If you are not the intended recipient, be aware that any review, disclosure, copying, distribution, or use of the contents of this message is strictly prohibited. If you have received this message in error, please immediately destroy it and notify us at (270) 926-4000.

---

**From:** Randall Redding [<mailto:rredding@kdblaw.com>]

**Sent:** Thursday, January 19, 2017 4:05 PM

**To:** Jim Miller

**Cc:** Sharon Farmer; Linda Clary

**Subject:** PSC hearing use of Quick testimony

Dear Jim:

As you are aware, both parties had multiple opportunities to exchange information requests during the discovery phase of the PSC proceeding. If Mr. Quick's prior arbitration testimony raised an issue you believe to have some relevance to the PSC application, we would have anticipated the issue to be addressed in the form of an information request. Now that discovery is closed, we are reluctant to agree to the use of supplemental materials in the absence of a PSC Order requiring the same. We are prepared to reconsider if you will identify the portion(s) of Mr. Quick's deposition testimony you wish to use at the PSC hearing, and the purpose for which the testimony would be used.

H. Randall Redding  
KING, DEEP and BRANAMAN  
127 North Main Street  
Post Office Box 43  
Henderson, KY 42419-0043  
(270) 827-1852; FAX: (270) 826-7729  
[rredding@kdblaw.com](mailto:rredding@kdblaw.com)