

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

DEC 28 2011

APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION, INC.)
FOR AN ADJUSTMENT OF RATES)

Case No. 2011-00036

PUBLIC SERVICE
COMMISSION

ATTORNEY GENERAL'S COMMENTS REGARDING
COMMISSION'S CONTINUING JURISDICTION

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and states as follows for his comments regarding the Commission's continuing jurisdiction in this matter.

Intervenor Kentucky Industrial Utility Customers, Inc. ("KIUC"), on or about December 1, 2011 filed an appeal pursuant to KRS 278.410 of the Commission's Final Order in this matter dated November 17, 2011.¹ On or about December 6, 2011, Big Rivers filed a motion for rehearing pursuant to KRS 278.400. On December 8, 2011 the Commission granted Big Rivers' motion. On December 14, 2011 KIUC filed a motion requesting that the Commission vacate its Order granting the rehearing and dismiss Big Rivers' petition for rehearing, and on or about that same date Big Rivers instituted its own appeal in Franklin Circuit Court.² On December 20, 2011, the Commission entered an order allowing the parties to file memoranda of law in response to KIUC's motion to vacate the Commission's order granting Big Rivers' rehearing. On or about December 21, 2011 the Commission filed its Answer in Franklin Circuit Action No. 11-CI-1700.


¹ Franklin Circuit Court, Div. I, Action No. 11-CI-1700.

² Franklin Circuit Court, Div. II, Action No. 11-CI-1757.

The Attorney General has neither filed a motion for rehearing, nor has it filed an appeal in the Franklin Circuit Court. However, the Attorney General has filed Answers in Franklin Circuit Court Action Nos. 11-CI-1700 and 11-CI-1757.

The Attorney General believes that the substantive issues underlying the instant case were -- and remain -- complex, and were the subject of intense and thorough litigation. Given that both KIUC and Big Rivers have filed their own appeals in Franklin Circuit Court, one or both parties will continue to seek redress in Franklin Circuit Court even if the Commission should proceed with Big Rivers' rehearing.³ For that reason, the Attorney General believes that the interests of judicial economy would be best served by allowing the Franklin Circuit Court to immediately hear all contested issues arising from the instant case. The Attorney General further believes that both appeals at the Franklin Circuit Court should be consolidated into one division.

Respectfully submitted,
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³ The likelihood that the Franklin Circuit Court will ultimately have to resolve all issues being appealed is underscored by the fact the Commission's own answer to KIUC's appeal includes an affirmative defense in which it sets forth its belief that it should retain jurisdiction to hear Big Rivers' rehearing.

Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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