

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC	)	
CORPORATION FOR APPROVAL OF ITS 2012	)	
ENVIRONMENTAL COMPLIANCE PLAN, FOR	)	
APPROVAL OF ITS AMENDED	)	CASE NO.
ENVIRONMENTAL COST RECOVERY	)	2012-00063
SURCHARGE TARIFF, FOR CERTIFICATES OF	)	
PUBLIC CONVENIENCE AND NECESSITY,	)	
AND FOR AUTHORITY TO ESTABLISH A	)	
REGULATORY ACCOUNT	)	

O R D E R

On April 23, 2012, Kentucky Industrial Utility Customers, Inc. ("KIUC") filed a motion seeking to dismiss Big Rivers Electric Corporation's ("Big Rivers") application for failure to provide sufficient evidence upon which the Commission could make a determination as required under KRS 278.020 and KRS 278.183. KIUC contends that Big Rivers has not provided the critical information needed by the Commission to make a determination as to whether the proposed environmental compliance plan is the least-cost alternative and whether the proposed projects are required by public convenience and necessity. In particular, KIUC details the following information that it deems to be critical and missing from the Big Rivers' application:

Sargent & Lundy models and electronic spreadsheets used to assess compliance options.

PACE Global information provided to Aces Power Marketing, which includes forward hourly energy prices, monthly coal prices, monthly natural gas prices, and monthly allowance prices.

Big Rivers' plant specific data provided to ACES Power Marketing.

The Aces Power Marketing production cost models.

The Big Rivers' corporate financial model used and studies of compliance alternatives.

Testimony from a PACE Global witness to support their projections of forward hourly energy prices, monthly coal prices, monthly natural gas prices and monthly allowance prices.

Testimony from an ACES witness to support the production cost model runs.

The assumptions under the sensitivity studies which assume the loss of the 7,300,000 mWh [sic] Smelter load at the end of 2013 (70% of native load sales) were not provided. So the Commission and Intervenors are left to guess whether Big Rivers assumed it would sell 7,300,000 mWh [sic] into the wholesale market as a merchant generator (for how much?), would close power plants (at what cost?), would sell power plants (at what price?), would merge with another G&T cooperative or would be acquired by an investor-owned electric utility.<sup>1</sup>

Given the six-month statutory period in which this case has to be determined, KIUC argues that the parties to this proceeding should not be required to waste valuable time during the discovery process to obtain information that should have been provided by Big Rivers in its application. Rather, KIUC recommends that the matter be dismissed without prejudice and Big Rivers be allowed to re-file a proper application.

On April 25, 2012, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), filed a motion in which he joins KIUC's request in dismissing Big Rivers' application for failing to meet its burden of proof with substantial evidence.

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<sup>1</sup> KIUC's Motion to Dismiss, p. 3.

On April 26, 2012, Big Rivers filed its response to the motions to dismiss, arguing that KRS 278.020 and KRS 278.183 require the Commission to rule on the merits of an application that has met the minimum filing requirements. Because the Commission has determined that Big Rivers' application has satisfied the minimum filing requirements, it is entitled to a ruling on the merits. Big Rivers further argues that it has provided substantial evidence in support of its application and that it should be entitled to a determination on its proposals on the merits after a hearing has been conducted. Lastly, being cognizant of the time constraints in which this case is to be processed and the likelihood that the information referenced in KIUC's motion would be requested during discovery, Big Rivers provided information concerning the spreadsheet models used in the cost effectiveness evaluation and the PACE Global price curve data for energy prices, fuel prices, and allowance prices.

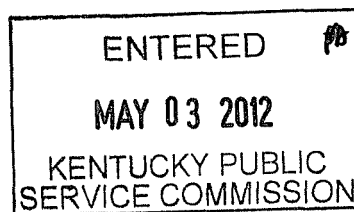
Having reviewed the motion and being otherwise sufficiently advised, the Commission finds that, on April 10, 2012, Big Rivers' application was deemed to have satisfied the minimum filing requirements and the application was accepted for filing on April 2, 2012. Having met the minimum filing requirements, the Commission further finds that dismissal at this stage of the proceedings would be premature. Therefore, we will allow the case to proceed and the evidentiary record to be developed before making a final determination on the merits of Big Rivers' proposal. By separate order, the Commission will establish a procedural schedule to process this matter.

The Commission will also take this opportunity to address the AG's concerns that applications be employed with full transparency and contain the evidence necessary to make a full and informed decision on the merits. The Commission acknowledges that it

is entirely within the discretion of an applicant utility to present as robust an application as it wishes in support of its requests, subject, of course, to our minimum filing requirements for that particular case. However, where, as here, the Commission is prescribed by statute to render a decision within a certain time period, the applicant utility runs the risk of having the record not being fully developed within the constrained discovery period and, therefore, risks an adverse ruling as a result of failing its burden of proof.

IT IS THEREFORE ORDERED that KIUC's and the AG's motions to dismiss are denied.

By the Commission



ATTEST:

  
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Executive Director

Jennifer B Hans  
Assistant Attorney General's Office  
1024 Capital Center Drive, Ste 200  
Frankfort, KENTUCKY 40601-8204

Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

Honorable James M Miller  
Attorney at Law  
Sullivan, Mountjoy, Stainback & Miller, PSC  
100 St. Ann Street  
P.O. Box 727  
Owensboro, KENTUCKY 42302-0727