

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)	CASE NO.
CORPORATION FOR A DECLARATORY)	2016-00278
ORDER)	

ORDER

This matter arises upon the motion of the city of Henderson, Kentucky, and the Henderson Utility Commission d/b/a Henderson Municipal Power & Light (jointly "Henderson"), filed August 19, 2016, for an Order compelling Big Rivers Electric Corporation ("Big Rivers") to provide responses to Henderson's Initial Request for Information, Items 10 and 11. Henderson's Initial Request for Information, Item 10, states as follows:

Please refer to the Direct Testimony of Robert W. Berry, page 11. Please describe in detail the process whereby Big Rivers registered, without Henderson's approval and over Henderson's objection, the Station Two Units and/or capacity with the Midcontinent Independent System Operator, Inc. (hereinafter "MISO"), including any statements or other representations made to MISO that Big Rivers possessed the right or the authorization to register the said Units.

Henderson's Initial Request for Information, Item 11, states as follows:

Please explain in detail Big Rivers' position that it possessed the right or authorization to register with MISO that portion of energy and/or generating capacity that is within Henderson's annual Station Two reserved capacity. Provide any documentation or other work papers supporting your position.

Big Rivers objected to both requests on the grounds that the discovery requests were broad, unduly burdensome, and sought information that was neither relevant nor likely to lead to the discovery of admissible evidence.

In support of its motion, Henderson contends that Big Rivers' application "discusses the relationship involving Excess Henderson Energy, the membership of Big Rivers in MISO, and the sale of that energy into the MISO system."¹ Henderson also avers that Big Rivers' application "discusses the economic conditions affecting the sale of Excess Henderson Energy into the MISO system."² Henderson further relies on certain statements contained in the Testimony of Robert W. Berry, attached as an exhibit to Big Rivers' application, which discusses the Excess Henderson Energy and the marketing of that energy into MISO. Based on the references to Henderson and MISO in Big Rivers' application and pre-filed direct testimony, Henderson contends that the relationship between Excess Henderson Energy and MISO would appear to be significant to the request for relief that Big Rivers is seeking in this case. Henderson argues that the discovery questions at issue would enable it to determine the relevance of the relationship between Excess Henderson Energy and MISO.

In its response, Big Rivers argues that the motion should be denied because Henderson has failed to proffer sufficient reasons why the discovery requests at issue are relevant to the issues in this matter, as required under 807 KAR 5:001, Section 4(12)(e). Big Rivers maintains that the questions pertaining to Big Rivers' decision to

¹ Henderson's motion at 2.

² *Id.*

register Station Two with MISO, and whether Big Rivers had the legal right to do so, is not relevant to the central issue raised by Big Rivers' application, to wit, who is responsible for the variable costs of Excess Henderson Energy that Big Rivers declines to take pursuant to the Power Sales Contract, as amended.

Big Rivers asserts that the interrogatories at issue do not ask for information about the relationship between Excess Henderson Energy and MISO, but instead seek information regarding the right and authority of Big Rivers to register the Station Two units with MISO. Big Rivers contends that its response to Henderson's First Request for Information, Item 12, explains in detail why Big Rivers joined MISO, how MISO works in regard to the sale of energy and capacity, and what happens with Excess Henderson Energy sold into MISO.

In its reply in support of its motion to compel, Henderson argues that the contractual relationship between Big Rivers and MISO, and the purported authority under which Big Rivers entered into that relationship on behalf of Henderson, appear to bear directly on Big Rivers' claim that Excess Henderson Energy must be generated and must be sold into the MISO market. Henderson notes that Big Rivers has acknowledged, through a discovery response and via direct testimony, that the power sale contracts between Big Rivers and Henderson require that the Station Two units operate at a certain minimum capacity output level to ensure safe and reliable operation of those units. Henderson contends, however, that it has never advised Big Rivers regarding an obligation to generate Excess Henderson Energy as that term is defined in Section 3.8 of the Power Sales Contract, as amended. Henderson argues that it is

entitled to information that relates to requirements for generating Henderson's energy, and the assignment of variable costs associated with that generation.

On October 10, 2016, Big Rivers filed a motion for leave to file a surreply to address the arguments raised by Henderson in its reply memorandum. In support of its motion, Big Rivers states that Henderson's reply contained an incorrect presumption and understanding of the relevance of MISO to generation of Excess Henderson Energy from Station Two. Big Rivers requests an opportunity to address this argument through a surreply.

In its surreply, which was tendered along with its motion for leave, Big Rivers points out that its position that unwanted Excess Henderson Energy must be generated is based upon the terms of the Station Two contracts and Big Rivers' understanding of Henderson's directions to Big Rivers for operating the units. Big Rivers contends that Henderson would not allow Big Rivers to idle, or place in standby service, one or both units of Station Two when it is uneconomical to operate the units. Thus, Big Rivers states that during hours when it is uneconomical for Station Two to generate energy, Big Rives operates both units so as to generate only the minimum amount of energy required to maintain a minimum operating temperature for safe and continuous operation of Station Two's selective catalytic reduction system. Big Rivers argues that the information sought by Henderson is irrelevant to this matter and concerns an issue that is immaterial to the issue before the Commission.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the information sought by Henderson in Items 10 and 11 of its initial discovery request is not relevant to this proceeding. The information regarding

Big Rivers' authority to register Station Two with MISO and/or the genesis of Big Rivers' authority to do so has no bearing on the resolution of the issues in this matter. The information sought by Henderson in Items 10 and 11 of its discovery request is, therefore, not relevant to the issues to this matter and Henderson's request to compel disclosure of this information should be denied.

The Commission, however, finds that the record is insufficient regarding the extent of Big Rivers' obligation to run Station Two in situations where Station Two's output has cleared the MISO markets. Although Big Rivers states that "MISO does not require Big Rivers to generate unwanted Excess Henderson Energy from Station Two,"³ the Commission notes that it is not fully clear whether an obligation exists in situations where Station Two has cleared the MISO markets. For example, to the extent that Big Rivers bids Station Two into the MISO capacity and energy markets and Station Two clears those markets, would Big Rivers then be obligated to generate the entire capacity output of Station Two for delivery into the MISO markets? Accordingly, we find that Big Rivers should submit a response to clarify Big Rivers' obligation to generate the entire capacity of Station Two when the units clear the capacity and energy markets.

IT IS HEREBY ORDERED that:

1. The motion of Henderson to compel is denied.
2. Within seven days of the date of this Order, Big Rivers shall file a response to the data request attached as an Appendix to this Order.

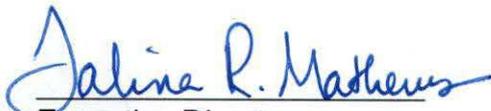
³ Big Rivers' surreply at 2.

3. Big Rivers' motion for leave to file its surreply is granted and its surreply submitted on October 10, 2016, is accepted for filing and deemed part of the official record in this matter.

By the Commission

ENTERED
NOV 21 2016
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2016-00278 DATED **NOV 21 2016**

Provide a detailed explanation of Big Rivers' obligation to run Station Two in situations where Big Rivers bids Station Two into the MISO capacity and energy markets and Station Two clears those markets.

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