

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

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

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MOTION OF CITY OF HENDERSON, KENTUCKY, AND  
HENDERSON UTILITY COMMISSION,  
d/b/a HENDERSON MUNICIPAL POWER & LIGHT,  
TO COMPEL RESPONSE BY  
BIG RIVERS ELECTRIC CORPORATION

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The City of Henderson, Kentucky, and the Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (jointly referenced hereinafter as "Henderson"), by counsel, move for an order compelling Big Rivers Electric Corporation (hereinafter "Big Rivers") to respond to Questions 10 and 11 of Henderson's Initial Request for Information. The questions and responses are:

Item 10) 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.

Response) Big Rivers objects to this request on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence.

Item 11) 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.

Response) Big Rivers objects to this request on the grounds that it is overly broad,

unduly burdensome, and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence.

On page 4 of its application, Big Rivers discusses the relationship involving Excess Henderson Energy, the membership of Big Rivers in MISO, and the sale of that energy into the MISO system. Subsequently, the application discusses the economic conditions affecting the sale of Excess Henderson Energy into the MISO system. Based on the references to Henderson and MISO in the application, the relationship between Excess Henderson Energy and MISO would appear to be significant to the request for relief Big Rivers is seeking in this case. That significance can be determined only through discovery of the information Henderson has requested.

Additionally, Mr. Berry makes similar statements in his testimony. Beginning on page 11, Mr. Berry discusses the Excess Henderson Energy and the marketing of that energy into MISO. Apparently, Mr. Berry believes that Henderson and MISO are integral elements of the allegations supporting its request for relief. Without a response to the questions, Henderson cannot determine the relevance of his assertions.

Henderson has the right to discover the basis of allegations in the application and Mr. Berry's testimony. Big Rivers has introduced these issues into the case and cannot decline to explain their relevance by refusing to respond to Henderson's discovery request.

The Commission is not bound by the Civil Rules of Procedure or Evidence, but has used both as guides for supporting its determinations of the relevance of discovery matters. For example:

The scope of discovery in Kentucky is very broad. Kentucky Rules of Civil Procedure provide:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it

relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.' ... Ky. Civil Rule 26.02(1)

Therefore, generally speaking, AT&T would have a right to discover of DPI any relevant information that is not privileged. There has been no claim by DPI that any of the information sought by AT&T is privileged. ...

CR 26.02(1) states that "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . ." Kentucky Rules of Evidence 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *DPI Teleconnect, LLC v. BellSouth Telecommunications, Inc. d/b/a/ AT&T Kentucky*, Case No. 2005-00455, pp. 2-3, Order dated April 7, 2009.

The Commission has also ruled that issues included in testimony are discoverable:

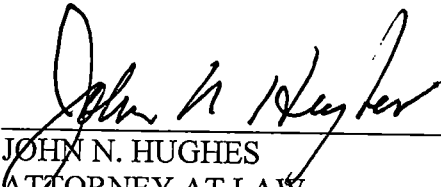
Big Rivers claims that the information on E.ON's payments to the Smelters is relevant in this case due to KIUC referencing such payments in the direct testimony of two of its witnesses in this case.

With respect to Item No. 41, the KIUC testimony does refer to the E.ON payments to the Smelters, and Big Rivers is entitled to seek discovery related to its assertion that the Smelters are attempting to retain certain benefits under their power contracts while trying to avoid certain burdens. *Application of Big Rivers Electric Corporation for Adjustment in Rates*, Case No. 2011-00036, p. 3 July 25, 2011.

Just as the issues included in the E.ON testimony were relevant to Big Rivers and discoverable, the issues asserted by Mr. Berry in his testimony are relevant to Henderson and should be equally discoverable.

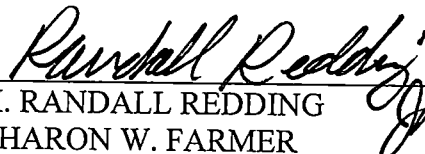
For these reasons, Henderson moves for an order compelling Big Rivers to respond to Questions 10 and 11 of the Initial Request for Information.

Respectfully submitted,

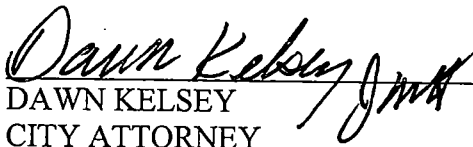
  
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**CERTIFICATE OF SERVICE**

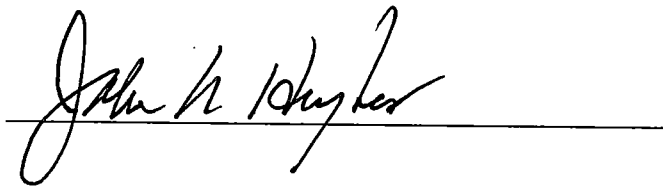
I hereby certify that a true and exact copy of the foregoing was forwarded this 26 day of September, 2016, via U.S. Mail, postage prepaid, or via facsimile, electronic mail, and/or hand delivery, to the following:

James M. Miller  
R. Michael Sullivan  
Tyler Kamuf  
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*Attorneys for Big Rivers Electric Corp.*

Original to:

Dr. Talina R. Mathews  
Executive Director  
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A handwritten signature in cursive script, reading "John H. Hughes", is written over a horizontal line.