

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)	
CORPORATION FOR TERMINATION OF)	
CONTRACTS AND A DECLARATORY ORDER)	CASE NO.
AND FOR AUTHORITY TO ESTABLISH A)	2018-00146
REGULATORY ASSET)	

ORDER

This matter arises upon the motion of the International Brotherhood of Electrical Workers Local 1701 (“IBEW”), filed June 8, 2018, requesting intervention in this proceeding. In support of its motion, IBEW states that it is a labor organization that represents 250 employees at Big Rivers Electric Corporation (“Big Rivers”), 79 of whom work pursuant at the Station Two Generating Station (“Station Two”). IBEW asserts that the interests of its members are unique and separate from the public interest in that the potential termination of the contracts at issue in this proceeding could negatively impact those IBEW members currently employed by Big Rivers at Station Two. In particular, IBEW states that it has a special interest in the services of Big Rivers because its members, who are employed at Station Two, “provide the core of [Big Rivers] service of generating, transmitting, and selling electric power.”¹ IBEW avers that its interest cannot be adequately represented by any other in this matter. IBEW also states that it is uniquely positioned to provide information on the type and scope of work at Station Two, which would assist the Commission in determining whether Station Two is no longer capable of normal, continuous, reliable operation.

¹ IBEW Motion at 3.

On June 15, 2018, Big Rivers filed a response objecting to IBEW's request to intervene. Big Rivers contends that IBEW has failed to establish it has a special interest, in the matter that relates to Big Rivers' service or rates, to justify a grant of intervention. Big Rivers cites to the Commission's denial of IBEW's motion to intervene in Big Rivers' last rate case, Case No. 2013-00199,² in support of its argument. Lastly, Big Rivers asserts that IBEW's interest in this matter regarding the impact of the termination of the Station Contracts on Big Rivers' workforce is an interest that relates to matters covered by the collective bargaining agreement between Big Rivers and IBEW.

On June 20, 2018, IBEW filed a reply in support of its motion to intervene and in response to Big Rivers' objection to same. IBEW contends that its members, in their capacities as employees and ratepayers of Big Rivers, have an interest in the determination of whether Station Two remains operational. IBEW reiterates its ability to assist the Commission in presenting facts and developing issues relating to Big Rivers' ability to provide safe and reliable service. IBEW argues that the Commission has historically granted IBEW full intervenor status because of its expertise in the day-to-day operations of an electric utility. IBEW relies upon past Commission decisions in Case Nos. 97-300,³ 98-474,⁴ and 2004-00507⁵ in support of its proposition that a union

² Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period* (Ky. PSC Nov. 12, 2013).

³ Case No. 97-300, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of Merger* (Ky. PSC July 24, 1997).

⁴ The Commission notes that IBEW Local 2100 was granted intervention in Case No. 98-426, *Application of Louisville Gas and Electric Company for Approval of an Alternative Method of Regulation of its Rates and Service* (Ky. PSC Oct. 9, 1998). Case No. 98-474 involved a similar application made by Kentucky Utilities Company.

⁵ Case No. 2004-00507, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate for the Expansion of Trimble County Generating Station* (Ky. PSC Mar. 4, 2005).

representing employees of a utility can make valuable contributions to the development of issues that fall within the Commission's regulatory authority.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission proceeding is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.⁶ The Court of Appeals has held that the Commission's discretion to grant or deny a motion to intervene is not unlimited, and has enumerated the limits on the Commission's discretion, with one arising under statute, the other under regulation.⁷ The statutory limitation, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."⁸ The regulatory limitation is set forth in 807 KAR 5:001, Section 4(11)(a), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that the movant's intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the pending motion to intervene, the Commission finds that IBEW has failed to establish that it has an interest in the rates and service of Big Rivers. We note that IBEW does not assert that it is a customer of Big Rivers or that it receives electric

⁶ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

⁷ *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

⁸ *Id.* at 3.

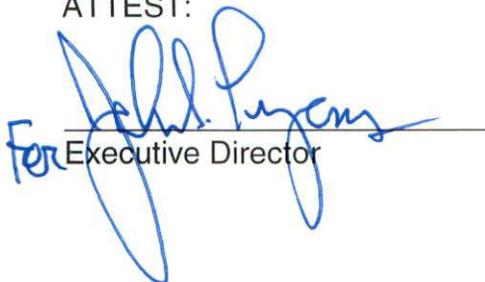
service from a distribution cooperative served by Big Rivers. Although IBEW states that some of its union members, who are employed by Big Rivers, are also customers of distribution cooperatives that are member-owners of Big Rivers, the interest of those union members in the rates and service of Big Rivers is no different from the other residential customers within the Big Rivers' system. We further note that the Attorney General is an intervenor in this matter and is tasked with representing the interests of those customers. Lastly, we find that IBEW has failed to demonstrate that, if permitted to intervene, it will present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. IBEW focuses upon the knowledge of its members who are employed by Big Rivers at Station Two to establish that it will be able to present issues and develop facts as to Station Two's operational capability to generate power in a safe and reliable manner. The central issue in the instant matter, however, is whether Station Two is no longer capable of normal, continuous, reliable operation for the economical production of electricity. Thus, the issue of impact in this matter is the economic viability of Station Two and IBEW has failed to demonstrate any expertise in the economic competitiveness of Station Two.

IT IS HEREBY ORDERED that IBEW's motion to intervene is denied.

By the Commission

ENTERED
JUN 27 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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Case No. 2018-00146

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