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June 14, 2018

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JUN 15 2018

PUBLIC SERVICE
COMMISSION

VIA OVERNIGHT DELIVERY

Ms. Gwen R. Pinson
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: *In the Matter of: Notice of Termination of Contracts and Application of Big Rivers Electric Corporation for a Declaratory Order and for Authority to Establish a Regulatory Asset—Case No. 2018-00146*

Dear Ms. Pinson:

Enclosed for filing in the above-referenced matter are an original and ten copies of Big Rivers Electric Corporation's Response to the Petition for Full Intervention of IBEW Local 1701.

I certify that, on this date, a copy of this letter and a copy of the response were served on each of the persons listed on the attached service list by electronic mail.

Please confirm the Commission's receipt of this information by placing the Commission's date stamp on the enclosed additional copy and returning it to Big Rivers in the self-addressed, postage paid envelope provided; and please feel free to contact me with any questions you may have about this filing.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tyson Kamuf".

Tyson Kamuf
Corporate Attorney,
Big Rivers Electric Corporation

BIG RIVERS ELECTRIC CORPORATION

NOTICE OF TERMINATION OF CONTRACTS AND APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR A DECLARATORY ORDER AND FOR AUTHORITY TO ESTABLISH A REGULATORY ASSET

CASE NO. 2018-00146

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PUBLIC SERVICE
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the matter of:

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

**BIG RIVERS ELECTRIC CORPORATION’S RESPONSE TO THE PETITION
FOR FULL INTERVENTION OF IBEW LOCAL 1701**

Comes Big Rivers Electric Corporation (“Big Rivers”), pursuant to 807 KAR 5:001 Section 5(2), and for its response to the Petition for Full Intervention of IBEW Local 1701 (“IBEW”), states as follows.

In denying a petition to intervene that IBEW filed in Big Rivers’ last rate case that is strikingly similar to the petition that IBEW has filed here, the Commission noted that the Court of Appeals ruled in the unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007) that

this Commission retains power in its discretion to grant or deny a motion for intervention but that discretion is not unlimited...The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility, as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 4(11), requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the

1 Commission in fully considering the matter without unduly
2 complicating or disrupting the proceedings.¹

3 In that case (Case No. 2013-00199), the Commission found that IBEW did not
4 have a special interest in the proceeding because its interest in Big Rivers' labor
5 costs was shared by all of Big Rivers' customers and its interest in the impact of the
6 case on Big Rivers' employees did not have "a sufficient nexus to Big Rivers' rates or
7 service to constitute a special interest."²

8 The only difference between IBEW's interest in Case No. 2013-00199 and its
9 interest in the present case is that in Case No. 2013-00199, IBEW claimed it was
10 uniquely positioned to provide information on Big Rivers' projected labor costs,
11 whereas in the present case, IBEW is claiming it "is uniquely positioned to provide
12 information to the Commission regarding the type and scope of work" performed by
13 Big Rivers' union employees.³ This alleged interest does not satisfy the special
14 interest requirement for intervention. Moreover, Big Rivers' management is
15 capable and qualified to provide the Commission information on the work the union
16 does and also on the condition and reliability of the power plants. Finally, IBEW's
17 interest asserted in this case in "provid[ing] input as to the effect of the termination
18 on the workforce"⁴ is an interest that relates to matters covered by the collective

¹ *In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period*, Order, P.S.C. Case No. 2013-00199 (Nov. 12, 2013) ("2013 Order"), at pp. 2-3. The 2013 Order is attached hereto as Exhibit A.

² *Id.* at p. 3.

³ IBEW's Petition for Full Intervention at p. 3.

⁴ *Id.* at pp. 3-4.

1 bargaining agreement between Big Rivers and IBEW and not to matters within the
2 Commission's jurisdiction over rates and service.⁵

3 WHEREFORE, Big Rivers respectfully requests that the Commission deny
4 IBEW's Petition for Full Intervention.

5 On this the 14th day of June, 2018.

6 Respectfully submitted,

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8 
9

10 _____
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12 Tyson Kamuf
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39 *Counsel for Big Rivers Electric Corporation*

⁵ 2013 Order at p. 3.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC) CASE NO.
CORPORATION FOR A GENERAL) 2013-00199
ADJUSTMENT IN RATES SUPPORTED BY)
FULLY FORECASTED TEST PERIOD)

ORDER

On July 31, 2013, Petitioner, International Brotherhood of Electrical Workers Local 1791, filed a petition requesting that it be granted full intervenor status in the instant matter. In support of its request, Petitioner asserts that it has a special interest in this proceeding in that Petitioner is the bargaining agent for almost 300 Big Rivers Electric Corporation ("Big Rivers") employees who operate and maintain the generating stations owned by Big Rivers. Petitioner avers that its special interest cannot be adequately represented by any other entity and that its participation in this matter will not unduly prejudice any party. In particular, Petitioner maintains that it has a special interest in Big Rivers' labor costs because its union members, who are employed by Big Rivers, will be performing the maintenance and operational work that Big Rivers is proposing in its application. Petitioner points out that Big Rivers is proposing to potentially idle certain power plants and that the costs of any severance packages resulting from this decision would be speculative without Petitioner's input. Petitioner contends that Big Rivers' rate application could limit the compensation and working condition Big Rivers is able to offer its maintenance and operational employees and that Petitioner has a contractual and statutory obligation to protect the wages, benefits, and

working conditions of its members, including those union members who are also employed by Big Rivers. Petitioners also contend that its interests in Big Rivers' labor costs cannot be adequately represented by any other party to this proceeding, noting that none of the other parties to this matter possess the Petitioner's ability to engage in a collective bargaining process with Big Rivers. If allowed to intervene and participate in this matter, Petitioner maintains that it will assist the Commission in fully considering whether Big Rivers' labor cost projections are accurate and complete.

In analyzing the instant petition to intervene, the Commission finds that the only person that has a statutory right to intervene 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.¹ In the recent unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention but that discretion is not unlimited. The Court then enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility, as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 4(11), requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts

¹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Having reviewed the motion and being otherwise sufficiently advised, the Commission finds that Petitioner has not sufficiently established that it has a special interest in this proceeding. Petitioner's claims that it has a special interest in Big Rivers' labor costs and benefits obligations and how those expenditures will affect Petitioner's union member's work performance. However, all of Big Rivers' customers share an interest in seeing that Big Rivers' labor and benefits costs are at an adequate and reasonable level such that it would enable Big Rivers to provide power in a safe and reliable manner. Petitioner also claims that it has an interest in Big Rivers' application because any potential rate adjustment could limit the compensation and working conditions Big Rivers is able to offer Petitioner's members. We find that a claimed interest in the amount of compensation or the provision of working conditions is not a sufficient nexus to Big Rivers' rates or service to constitute a special interest. Further, we do not have expertise nor jurisdiction over these issues raised by Petitioner.

The Commission further finds that Petitioner has failed to establish that it has a special interest in this matter that is not otherwise adequately represented, notwithstanding Petitioner's generalized representation that its current members would be impacted by Big Rivers' application. Big Rivers provides power to approximately 112,000 customers, and each one of those customers will be impacted financially by the issues in this rate case. The petition to intervene does not specify how the interests of Big Rivers' generation station employees differ from the interests of all other customers of Big Rivers. As ratepayers and customers, the interest of those Big Rivers' generation

station employees who are members of Petitioner is adequately represented by the AG, who is an intervenor in this matter and is more than sufficiently knowledgeable about ratemaking issues and principles.

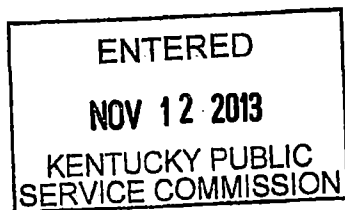
Petitioner will have ample opportunity to participate in this proceeding even though it is not granted intervenor status. Petitioner can review all documents filed in this case and monitor the proceedings via the Commission's website at the following web address:

[http://psc.ky.gov/Home/Library?type=Cases&folder=2012 cases/2013-00199](http://psc.ky.gov/Home/Library?type=Cases&folder=2012%20cases/2013-00199).

Petitioner may also file comments as frequently as it chooses, and those comments will be entered into the record of this case. Finally, it may also attend and present public comment at the evidentiary hearing to be held at our offices in Frankfort, Kentucky. The date for that hearing has been scheduled to commence on January 7, 2014, at 10:00 a.m. Eastern Standard Time.

IT IS THEREFORE ORDERED that Petitioner's request for intervention is denied.

By the Commission



ATTEST:


Executive Director

Case No. 2013-00199

EXHIBIT A

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