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June 19, 2018

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***Via U.S. Overnight Mail***

Ms. Gwen R. Pinson  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

RECEIVED

JUN 20 2018

PUBLIC SERVICE  
COMMISSION

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

Dear Ms. Pinson:

Please accept the enclosed original and ten (10) copies of IBEW Local 1701's reply to Big Rivers' response to its motion to intervene. Thank you.

Sincerely,



Alyson Steele Beridon

RECEIVED

COMMONWEALTH OF KENTUCKY

JUN 20 2018

BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION

In the Matter of:

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

REPLY TO BIG RIVERS' RESPONSE TO THE MOTION TO INTERVENE OF IBEW LOCAL 1701

**I. Introduction**

Big Rivers has opposed IBEW Local 1701's (Union or IBEW) motion to intervene on the grounds that IBEW does not have a special interest in the matter and that its involvement will not assist the Commission.

**II. The Union Has a Special Interest in this Proceeding Not Otherwise Represented.**

Big Rivers refers the Commission to its order denying IBEW's petition for intervention in Case No. 2013-00199 and asserts that the instant case and that one are "strikingly similar."<sup>1</sup> The instant case is in fact "strikingly similar" to a number of other Commission cases discussed below, where the Commission has allowed unions representing employees to intervene. Whether or not a plant remains open is of vital interest to the Union that represents workers there as both employees and ratepayers. This is an interest not represented by any other party to this matter.

<sup>1</sup> Big Rivers Electric Corp.'s Reponse to the Petition for Full Intervention of IBEW Local 1701, pp. 1, 2.

Big Rivers further cites *EnviroPower, LLC v. Kentucky Public Service Commission* for the proposition that the statutory limitations on intervention necessarily operate to keep the Union out of this matter for lack of special interest.<sup>2</sup> However, this case is distinguishable from *EnviroPower*. In *EnviroPower*, the would-be intervenor was merely a rejected bidder, and not even a rate-payer.<sup>3</sup> This is very different from an organization representing 250 workers, nearly one third of which work at the plant in question.<sup>4</sup> Additionally, Big Rivers' argument here ignores the line of cases noted below in which the Commission allowed unions representing workers to fully intervene.

The Union's interest here is that of its members, specifically employees at the plant that Big Rivers seeks to idle. The Commission has historically allowed intervention by unions that represent utility employees. In Case No. 2004-00507, the Commission granted IBEW full intervenor status on the grounds that it had expertise as a result of its day-to-day involvement in operations. The Commission recognized that the Union representing workers can make valuable contributions to development of issues that fall within the Commission's regulatory authority and not, as Big Rivers suggests, only to those issues that "relate[s] to matters covered by the collective bargaining agreement between Big Rivers and IBEW..."<sup>5</sup> Case No. 2004-00507 was merely one of many where the Commission granted a union's

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<sup>2</sup> Big Rivers Electric Corp.'s Response to the Petition for Full Intervention of IBEW Local 1701, pp. 1-2.

<sup>3</sup> *EnviroPower, LLC v. Kentucky Public Service Commission*, 2007 App. Unpub. LEXIS 121 (Ky. App. 2007)

<sup>4</sup> IBEW LOCAL 1701's Petition for Full Intervention, p. 1.

<sup>5</sup> Big Rivers Electric Corp.'s Response to the Petition for Full Intervention of IBEW Local 1701, pp. 2-3.

request to intervene. Others include the consolidated rate cases of 97-300 and 98-474. The weight of authority is in favor of the Union.

### **III. The Union's Intervention Will Assist the Commission**

Big Rivers states in a conclusory fashion that the Union “does not satisfy the special interest requirement for intervention” and further that the Commission should rely solely on Big Rivers’ management for information.<sup>6</sup> That approach would suffice if the Commission’s only role in these proceedings is to rubber-stamp Big Rivers’ management decisions, but it is not. The Commission’s mission is to “foster the provision of safe and reliable service at a reasonable price to the customers of jurisdictional utilities...”<sup>7</sup> Provision of safe and reliable service requires the Commission to gather and analyze data objectively. In order to do that, the Commission cannot simply rely on one source of information, analysis, and opinion. The Union must be able to submit and review data requests as a full intervenor in order to assist the Commission to more fully develop its understanding instead of relying on one point of view.

Further, the Union’s position in this case is analogous to the Sierra Club’s and Natural Resources Defense Council’s motion to intervene in Case No. 2011-00161. The petitioners’ motion to intervene in that case was granted, in part because

“The Commission [was], however, persuaded that the NRDC and Sierra Club, acting on behalf of their Kentucky members, do possess sufficient expertise on issues that are within the scope of these environmental proceedings, such as whether the compliance plans proposed by KU and LG&E are reasonable and cost-effective in light of a full range of available alternatives. The Commission notes that the NRDC and Sierra

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<sup>6</sup> Big Rivers Electric Corp.’s Responses to the Petition for Full Intervention of IBEW Local 1701, p. 1-2.

<sup>7</sup> <https://psc.ky.gov/Home/About#AbtComm>.

Club have intervened in similar proceedings in other states and that Petitioners are represented by experienced counsel. Therefore, the Commission finds that intervention by Petitioners is likely to present issues or develop facts that will assist in the review of the KU and LG&E environmental compliance plans without unduly complicating or disrupting the review.”<sup>8</sup>

Just as Sierra Club and NRDC have special expertise in environmental matters, the Union has expertise in operational matters. In this way, it is like the Sierra Club and NRDC, who were granted intervenor status as representatives of their members whose interest was sufficient to satisfy the statutory limitation for intervention. The Commission granted the Sierra Club’s and NRDC’s motion to intervene on behalf of their members because they possessed “sufficient expertise on issues that are within the scope of these environmental compliance proceedings...” The Union likewise possesses “expertise on issues that are within the scope” of these proceedings.<sup>9</sup>

#### **IV. Conclusion**

The Commission has granted intervention where an organization has special expertise, and has also granted intervention to unions that represent members at the utility in question. The Union and its members have a special interest here, and the Union’s petition should be granted.

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<sup>8</sup> Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge, Order Granting the Sierra Club’s and National Resources Defense Council’s Motion to Intervene (2011-00161).

<sup>9</sup> Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge, Order Granting the Sierra Club’s and National Resources Defense Council’s Motion to Intervene (2011-00161), p. 8.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'ASB', is written over a horizontal line.

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## CERTIFICATE OF SERVICE

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by overnight mail to Ms. Gwen Pinson, Executive Director, Public Service Commission, 211 Sower Blvd. Frankfort, Kentucky, 40601. A copy of the foregoing has been served by electronic mail on the following persons this the 19th day of June, 2018:



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