

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION)	
APPLICATION FOR APPROVAL OF)	
CONTRACT AMENDMENTS WITH THE CITY)	CASE NO. 94-032
OF HENDERSON AND CITY OF HENDERSON,)	
UTILITY COMMISSION AND TO FILE PLAN)	
FOR COMPLIANCE WITH CLEAN AIR ACT)	
AND ENVIRONMENTAL SURCHARGE)	

O R D E R

Kentucky Industrial Utility Customers ("KIUC") has applied for rehearing of the Commission's Order of June 2, 1994. Big Rivers Electric Corporation ("Big Rivers") has moved to strike certain exhibits which KIUC introduced at hearing and the related cross-examination and testimony of Big Rivers' General Manager, Paul A. Schmitz. More than 20 days having elapsed since the filing of KIUC's application, it is denied by operation of law. KRS 278.400. Big Rivers' motion is hereby denied.

On June 2, 1994, the Commission granted Big Rivers' Motion to Compel and ordered KIUC to provide certain information and documents which Big Rivers had requested. In its application for rehearing, KIUC contends that the items are "either physically impossible to provide, privileged, or not relevant to this case." KIUC's Application at 1. It provides no additional information, however, to support its contentions.

To further support its application, KIUC notes that it has provided "six volumes of answers to over 150 multi-part information

requests from Big Rivers and [Commission] Staff." It also notes that Big Rivers made no "attempt whatsoever to work out its discovery requests with KIUC" and suggests that such failure is an adequate ground for reversal of the Commission's June 2, 1994 Order.

In the Commission's view, KIUC has failed to provide any persuasive reason to disturb the June 2, 1994 Order. It has failed to demonstrate that the information sought was either irrelevant or privileged. While KIUC has provided a large amount of information in response to various requests for information, Big Rivers' requests were not unreasonable given the complexity and significance of the issues in this proceeding. Further, Big Rivers was under no legal requirement to "work out" its discovery requests with KIUC. While such action is preferable to litigation, Big Rivers' actions were not unreasonable in view of the time constraints imposed by KRS 278.183.

As to Big Rivers' Motion to Strike, Big Rivers argues that KIUC failed to comply with discovery requests and then sought to introduce certain of the requested documents as exhibits during its cross-examination of Big Rivers witness Schmitz. It further contends that certain of these exhibits were unsponsored or derived by unidentified persons or based on unidentified sources of information. Big Rivers contends that KIUC's action denied it due process of law and that the appropriate remedy is to strike the exhibits and related cross-examination.

It is unclear from the record whether any of the exhibits in question were covered by Big Rivers' discovery request. Several of the exhibits were obtained from the Rural Electrification Administration under the Freedom of Information Act after KIUC's witnesses had filed their written testimony and responded to Big Rivers' discovery request. Given the timing of their receipt, these exhibits could not have been used by KIUC witnesses to form any judgment or opinion about Big Rivers as expressed in their written testimony. Therefore, they do not fall within the purview of Item 57 of Big Rivers' discovery request.

More importantly, none of the cited exhibits have been admitted as evidence. As the Commission made clear during the course of the hearing in this matter, these exhibits have been admitted solely for identification purposes.¹ They are not evidence. This limited admission does not place Big Rivers at an unfair disadvantage nor does it interfere with Big Rivers' right to due process.

As to these cited exhibits, the only evidence which the Commission will consider is Schmitz's testimony. In determining the weight to be given to that testimony, the Commission will consider a wide variety of factors, including, inter alia, Schmitz's knowledge and familiarity with a particular exhibit.


¹ Although the Court Reporter has noted the admission of KIUC Cross-Exhibit PAS-24 into the record without any qualifications, it was not the intent of the Commission that this exhibit be admitted other than for the limited purpose of identification. To the extent that KIUC Cross-Exhibit PAS-24 was admitted for purposes other than identification, we hereby reverse such ruling.

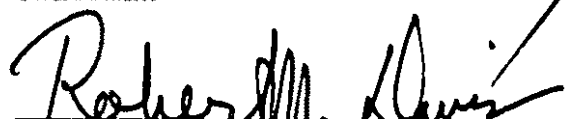
IT IS THEREFORE ORDERED that:


1. KIUC's Application for Rehearing is denied.
2. Within 5 days from the date of this Order, KIUC shall comply with the June 2, 1994 Order.
3. Big Rivers' Motion to Strike is denied.

Done at Frankfort, Kentucky, this 8th day of July, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director