

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| APPLICATION OF BIG RIVERS ELECTRIC |) | CASE NO. |
| CORPORATION FOR AN ADJUSTMENT OF |) | 2012-00535 |
| RATES |) | |

ORDER

The matter is before the Commission upon a motion filed by Big Rivers Electric Corporation ("Big Rivers") to strike portions of the Direct Testimony of Frank Ackerman and two of his exhibits that were filed on behalf of Ben Taylor and Sierra Club (collectively "Sierra Club"). The Ackerman testimony discusses and includes as exhibits the testimonies of two other individuals, Rachel S. Wilson and William Steinhurst, that were filed on behalf of Sierra Club in Case No. 2012-00063,¹ Big Rivers' most recent environmental compliance plan case, including all of the exhibits that were attached to their respective testimonies. Dr. Ackerman is the only witness on behalf of the Sierra Club in this case. Big Rivers contends that Sierra Club's attempt to incorporate testimonies and exhibits of witnesses that are not being presented in this case, but were presented in a prior, unrelated case, is a violation of the company's due-process rights. Big Rivers argues that it would have no opportunity to cross-examine the relevant witnesses should Sierra Club be allowed to incorporate the testimonies at issue into the instant proceeding. Big Rivers further argues that it could not have been able to cross-

¹ Case No. 2012-00063, *Application of Big Rivers for Approval of Its 2012 Environmental Compliance Plan, for Approval of Its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account* (Ky. PSC Oct. 1, 2012).

examine Wilson and Steinhurst during the pendency of Case No. 2012-00063 with respect to the implications of their testimony on the current proceeding, given that the issues in the prior case were different from the issues in this proceeding. Lastly, Big Rivers requests that any references to the Wilson and Steinhurst testimonies by Dr. Ackerman in his testimony be stricken as well.

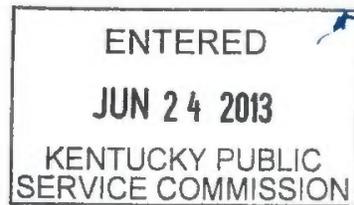
Sierra Club filed a response, arguing that the motion should be denied as without merit. Sierra Club contends that the submission of the Ackerman testimony does not implicate Big Rivers' right to due-process, as the opinions expressed in the testimony are entirely those of Dr. Ackerman. Sierra Club further contends that Big Rivers will have the right to cross-examine Dr. Ackerman at the hearing, and will be able to question Dr. Ackerman concerning opinions he formed based upon his review of the testimonies filed by Ms. Wilson and Mr. Steinhurst in Case No. 2012-00063. Sierra Club argues that Dr. Ackerman's sworn testimony identifies certain issues which were raised in Case No. 2012-00063 and are also relevant to the instant proceeding, such as future environmental costs facing Big Rivers' coal-fired generating units and the potential for demand-side management and other energy resources to provide a cost-effective alternative to those units. According to Sierra Club, Dr. Ackerman relied upon the testimonies at issue in forming his testimony, and he will be able to answer any questions at the hearing in this matter.

Having reviewed the motion to strike, the response thereto, and being otherwise sufficiently advised, the Commission finds that, on the basis of Sierra Club's representation that Dr. Ackerman will be able to answer questions about the Wilson and Steinhurst testimonies, the inclusion of those prior testimonies as exhibits to the

Ackerman testimony in this proceeding does not violate Big Rivers' rights to due-process. Big Rivers and all parties will be afforded a full opportunity at the hearing in this matter to cross-examine Dr. Ackerman on his testimony and exhibits, including his opinions formed upon his reliance on the Wilson and Steinhurst testimonies.

IT IS THEREFORE ORDERED that Big Rivers' motion to strike is denied without prejudice.

By the Commission



ATTEST:



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Case No. 2012-00535

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