

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

ENTERED
NOV 12 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Mark A Bailey
President CEO
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42419-0024

Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

Honorable Thomas C Brite
Attorney At Law
Brite & Hopkins, PLLC
83 Ballpark Road
P.O. Box 309
Hardinsburg, KENTUCKY 40143

Burns E Mercer
Manager
Meade County R.E.C.C.
P. O. Box 489
Brandenburg, KY 40108-0489

Thomas J Cmar
5042 North Leavitt Street, Suite 1
Chicago, ILLINOIS 60625

Honorable James M Miller
Attorney at Law
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KENTUCKY 42302-0727

Shannon Fisk
Earthjustice
1617 JFK Boulevard, Suite 1675
Philadelphia, PENNSYLVANIA 19103

Ruben Mojica
Sierra Club Environmental Law Program
85 2nd Street, 2nd Floor
San Francisco, CALIFORNIA 94105

Jennifer B Hans
Assistant Attorney General's Office
1024 Capital Center Drive, Ste 200
Frankfort, KENTUCKY 40601-8204

G. Kelly Nuckols
President & Ceo
Jackson Purchase Energy Corporation
2900 Irvin Cobb Drive
P. O. Box 4030
Paducah, KY 42002-4030

Kristin Henry
Staff Attorney
Sierra Club
85 Second Street
San Francisco, CALIFORNIA 94105

Billie J Richert
Vice President Accounting, Rates & CFO
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42419-0024

J. Christopher Hopgood
Dorsey, King, Gray, Norment & Hopgood
318 Second Street
Henderson, KENTUCKY 42420

Melissa D Yates
Attorney
Denton & Keuler, LLP
555 Jefferson Street
P. O. Box 929
Paducah, KENTUCKY 42002-0929