

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF KENERGY CORP.)
AND BIG RIVERS ELECTRIC CORPORATION) CASE NO.
FOR APPROVAL OF CONTRACTS AND FOR A) 2013-00221
DECLARATORY ORDER)

ORDER

On July 1, 2013, Ben Taylor and Sierra Club (collectively "Movants") filed a petition seeking full intervention in the instant proceeding. This case involves a joint request by Big Rivers Electric Corporation ("Big Rivers"), a generation and transmission cooperative, and Kenergy Corp. ("Kenergy"), one of its distribution cooperatives, for approval of new special contracts for electric service to Century Aluminum of Kentucky General Partnership ("Century Kentucky"). Movants characterize the issues in this case as including "the fate of the Coleman facility and how any costs incurred to keep Coleman running are allocated,"¹ and they assert that "it is critical to ensure that any costs and risks created by these contracts are fair to ratepayers." They further state that Movants' participation in a pending Big Rivers rate case and prior Big Rivers environmental construction case will allow them to bring significant expertise on these issues.² Movants contend that, if allowed to intervene, they would present issues or develop facts that would assist the Commission in fully considering the matter without

¹ Petition of Ben Taylor and Sierra Club for Full Intervention at 7.

² *Id.* at 3.

unduly complicating or disrupting the proceedings. In particular, Movants note that they have experience in resource planning and in the laws and regulations governing electric utilities, including SSR [System Stability Resource] agreements as utilized by the Midcontinent Independent System Operator (“MISO”) for generating units that must run for reliability purposes.³

Additionally, Movants argue that they have a special interest in this proceeding that is not otherwise adequately represented. Mr. Taylor points out that he is a customer of Kenergy Corp., which purchases and receives wholesale power from Big Rivers, and any decisions by the Commission to approve the Century Kentucky contracts may impact Mr. Taylor’s electric bills. Mr. Taylor further points out that he would be directly impacted by the economic, public health, and environmental effects stemming from the resource decisions that Big Rivers makes. Sierra Club contends that it has members who are customers and ratepayers of Big Rivers’ distribution cooperatives and, as such, have the same interests as Mr. Taylor.

Movants contend that their interests are not adequately represented by any of the parties to this matter. In particular, Movants assert that the Attorney General (“AG”), who is an intervenor in this matter and who is tasked with representing the overall public interest, cannot adequately protect Movants’ narrow interests in promoting “energy efficiency, renewable energy, and other low carbon generation resources as the most reasonable and cost effective way for Big Rivers to maintain essential electric services and meet new and emerging federal regulatory requirements.”⁴

³ *Id.* at 7-8.

⁴ *Id.* at 9.

On July 8, 2013, Big Rivers filed a response to Movants' petition, objecting to Movants' request for full intervention on the grounds that Movants have neither a special interest in this matter that is not otherwise adequately represented nor would Movants' intervention in the proceeding assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Big Rivers notes that in its pending rate case, the Commission determined that the Movants did not have a special interest sufficient to justify intervention, although intervention was granted therein upon the finding that Movants were likely to present issues or develop facts to assist the Commission without unduly complicating or disrupting the proceedings.⁵ Big Rivers asserts that as a rate payer, Mr. Taylor similarly lacks in this contract case a special interest that is not adequately represented by the AG, which has been granted intervention, and that any interests of Mr. Taylor are not special interests within the meaning of the regulation governing intervention in Commission proceedings, 807 KAR 5:001, Section 4(11)(b). Moreover, Big Rivers maintains that any interest Mr. Taylor may have is adequately represented by the AG, whose office not only has considerable experience with utility proceedings, but also possesses significant expertise in representing the interests of utility customers throughout the state before the Commission.

Big Rivers argues that Sierra Club's expressed interests in promoting energy efficiency, renewable energy, and other low carbon generation sources cannot be considered special interests within the context of this proceeding which is to review a

⁵ Case No. 2012-00535, Application of Big Rivers Electric Corporation for an Adjustment of Rates (Ky. PSC Apr. 17, 2013).

special contract to serve one customer. Big Rivers contends that Sierra Club's interests relate to environmental issues and no such issues exist in this case.

Big Rivers contends that Movants' expertise and experience in ratemaking are not a sufficient basis to grant intervention here because Movants have the ability to address any rate issues in the relevant rate cases. Since the AG has already been granted intervention, allowing Movants to intervene would "unduly complicate and disrupt this proceeding—a dangerous proposition in light of the exigent circumstances and rapid procedural timeline necessitated by the impending termination of the existing service agreements with Century."⁶ Big Rivers also argues that there is no MISO SSR agreement pending before the Commission for approval in this case, so any expertise of Movants on that issue is not sufficiently related to the contract issues with Century Kentucky that are pending. Accordingly, Big Rivers requests that Movants' request for full intervention be denied.

On July 15, 2013, Movants filed a reply memorandum in support of their request for intervention. Movants contend that they have fully set forth grounds satisfying their request. Movants state that they have expertise in the evaluation of supply-side and demand-side alternatives, evaluation of the impacts of contract rates, analysis of the potential use of a SSR agreement and cost allocations thereunder, and analysis of the impact of contracts and SSR agreements on the continued use of generation resources. In analyzing the instant petition to intervene, the Commission finds that the only person that has a statutory right to intervene is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the

⁶ Big Rivers Electric Corporation's Response and Objection [sic] Petition of Ben Taylor and Sierra Club for Full Intervention, pp. 10-11.

Commission.⁷ 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)(b) 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 Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In reviewing the petition to intervene, we find that Mr. Taylor is a customer of Kenergy Corp., which is one of three distribution cooperatives that own and purchase power from Big Rivers. In applying the statutory limitations applicable to intervention, the Commission further finds that Mr. Taylor, as a customer in the Big Rivers' system, has an interest in the rates which are the subject of this application. Although the Sierra Club lacks that interest on its own behalf because it is not a Big Rivers' customer, it is requesting to intervene on behalf of Mr. Taylor, who is a customer in the Big Rivers' system. With respect to the regulatory limitation upon intervention as set forth in 807 KAR 5:001, Section 4(11)(b), the Commission is not persuaded by Movants' claims that

⁷ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

they have a special interest that is not otherwise adequately represented. While Movants certainly have an interest in Big Rivers' rates being fair, just, and reasonable, they have not established how their interest in this issue differs from the interest of all other Big Rivers' customers or how the AG's representation is not adequate to protect their interest.

Further, while the Sierra Club, acting on behalf of Mr. Taylor, certainly has expertise in a number of issues, the Commission is not persuaded that any of those issues are pending in this case, which is limited to a special contract with Century Kentucky. Specifically, there are no issues related to promoting energy efficiency, renewable energy, and other low carbon generation sources, and no evaluation of supply-side and demand-side alternatives. There is no SSR agreement pending before the Commission for approval, and no request for any cost allocation under a SSR agreement. To the extent that Movants desire to address the impacts of the Century Kentucky contract on the rates of all other ratepayers and on generating resources, the proper venue for those issues is Big Rivers pending rate case where those issues were raised. Therefore, the Commission finds that Movants do not have a special interest that is not adequately represented and Movants intervention is not likely to present issues or develop facts that will assist in the review of the Century Kentucky contract without unduly complicating or disrupting the review.

IT IS THEREFORE ORDERED that Movants' petition for full intervention is denied.

By the Commission

ENTERED
JUL 19 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST.



Executive Director

Case No. 2013-00221

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

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

Edward T Depp
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

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

Michael Early
Century Aluminum
1300 SW Fifth Avenue, Suite 1750
Portland, OREGON 97201

DeAnna Speed
Director Rates and Budgets
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42419-0024

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

Gregory J Starheim
President and CEO
Kenergy Corp.
6402 Old Carydon Road
P. O. Box 18
Henderson, KY 42419

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

Robert A. Weishaar, Jr.
McNees Wallace & Nurick LLC
777 N. Capitol Street, NE, Suite 401
Washington, DISTRICT OF COLUMBIA

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

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

Bernard F Lovely
Bowles Rice McDavid Graff & Love LLP Attorneys
333 West Vine Street, Suite 1700
Lexington, KENTUCKY 40507-1639