

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY AND KENTUCKY)
UTILITIES COMPANY FOR CERTIFICATES)
OF PUBLIC CONVENIENCE AND NECESSITY)
FOR THE CONSTRUCTION OF A COMBINED) CASE NO. 2014-00002
CYCLE COMBUSTION TURBINE AT THE)
GREEN RIVER GENERATING STATION AND)
A. SOLAR PHOTOVOLTAIC FACILITY AT THE)
E.W. BROWN GENERATING STATION)

**BIG RIVERS ELECTRIC CORPORATION'S REPLY TO LOUISVILLE GAS AND
ELECTRIC COMPANY'S AND KENTUCKY UTILITIES COMPANY'S RESPONSE TO
BIG RIVERS ELECTRIC CORPORATION'S MOTION TO INTERVENE**

Comes Big Rivers Electric Corporation ("*Big Rivers*"), through counsel, and for its reply to the response to Big Rivers' Motion to Intervene (the "*Response*") filed by Louisville Gas and Electric Company ("*LG&E*") and Kentucky Utilities Company ("*KU*") (together, the "Applicants"), states as follows.

The Kentucky Public Service Commission ("*Commission*") explained in a recent Big Rivers case how it analyzes motions to intervene:

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 Commission. 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.¹

Big Rivers satisfies these criteria because it has an interest in the rates or service of a utility and a special interest in this proceeding which is not otherwise adequately represented, and its intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceeding. For these reasons, the Commission should exercise its “sound discretion”² to permit intervention by Big Rivers.

I. Big Rivers has an interest in the rates or service of a utility and a special interest in this proceeding.

The Applicants argue that Big Rivers has no special interest in this proceeding that is not otherwise adequately represented because Big Rivers is not a customer of the Applicants and is a mere unsuccessful bidder in response to the Applicants’ Request for Proposal (“RFP”) for alternatives to constructing a new generating plant. Big Rivers concurs with the Applicants, as the Kentucky Public Service Commission has found in previous cases, that being “a mere bidder” that was unsuccessful gives Big Rivers “no vested or special interest”³ in the outcome of this proceeding. Big Rivers is not a mere bidder, however. Big Rivers is a Commission-

¹ Order dated April 17, 2013, in *In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates*, PSC Case No. 2012-00535 (footnotes omitted); *see also* Order dated October 2, 2012, in *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, PSC Case No. 2012-00222.

² Order dated April 17, 2013, in *In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates*, PSC Case No. 2012-00535.

³ Order dated July 5, 2013, in *In the Matter of: Application of Kentucky Power Company for (1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief*, PSC Case No. 2012-00578.

regulated utility. The Commission regulates Big Rivers' rates to its member cooperatives and the member cooperatives' rates to their respective retail member-consumers. Big Rivers certainly has an interest in its own rates and service, and Big Rivers' rates and service could be affected by this proceeding.

The Applicants acknowledge in their Response that in this proceeding, "[t]he issue before the Commission is whether the Companies chose the least reasonable cost solution to meet need from the dozens of proposals made."⁴ As Big Rivers explained in its Motion to Intervene, Big Rivers has approximately 850 MW of uncommitted generating capacity that recently became available and that may be a better solution to the Applicants' need for power than the Applicants' proposed construction projects. Whether or not Big Rivers is granted leave to intervene in this proceeding, Big Rivers' available generating capacity is relevant to the Commission's consideration of the Applicants' proposal. Even the Applicants concede that in this proceeding, the Commission "will examine the Companies' RFP process to confirm that the Companies have, as a result of that process, presented the least reasonable cost solution," and that "[t]he Commission will determine whether the Companies properly analyzed the bids and made the correct decisions."⁵ If the Commission determines that in rejecting Big Rivers' bid, the Applicants did not "present the least reasonable cost solution" or make "the correct decisions," that determination will affect not only the Applicants' rates and service, but it will also affect Big Rivers' rates and service that are directly and adversely affected by Big Rivers idling approximately 850 MW of generating capacity.

Big Rivers' broader view of this case as implicating statewide interests rather than just the Applicants' service territories is not novel. On October 9, 1986, the Commission entered an

⁴ Response at p. 7.

⁵ Response at pp. 5, 7.

order creating Administrative Case No. 308.⁶ The purpose of the docket was “to review and analyze options available for meeting the state’s electricity needs.”⁷ The Commission noted in the order that

Kentucky’s electrical utilities have traditionally concerned themselves with meeting the needs of their separate service areas. But given the enormous costs of building new power plants and the uncertainties of a changing economy, the time has come to explore a more cooperative approach in which the utilities work together to meet the needs of the entire state.⁸

Administrative Case No. 308 grew out of problems two utilities faced when the capacity of new power plants under construction exceeded the requirements of their systems. In reaching the decision to delay the completion of LG&E’s Trimble 1, the Commission considered the interests of ratepayers in Kentucky other than LG&E ratepayers.⁹ It found that “the interests of the ratepayers of LG&E and the other utilities in Kentucky would be best served by considering options developed with a statewide perspective.”¹⁰ The Commission concluded that it was required to consider “options developed with a statewide perspective.”¹¹ In concluding that completion of Trimble 1 should be delayed by three years, the Commission acknowledged that its decision would add to the ultimate cost of completion of the plant, but held:

However, the Commission believes the cost will be outweighed by the benefits that accrue to LG&E ratepayers, as well as other Kentucky ratepayers, by using the current abundant generating capacity in Kentucky to develop a statewide planning strategy.¹²

⁶ Order dated October 9, 1986, in *In the Matter of: An Inquiry Into Kentucky’s Present and Future Electric Needs and the Alternatives for Meeting Those Needs*, Administrative Case No. 308. This case culminated on December 18, 1990, with the adoption of regulations establishing the integrated resource planning process for electric utilities found in 807 KAR 5:058.

⁷ *Id.* at p. 1.

⁸ *Id.*, at p. 2.

⁹ Order dated October 14, 1985, in *In the Matter of: An Investigation and Review of Louisville Gas and Electric Company’s Capacity Expansion Study and the Need for Trimble County Unit No. 1*, PSC Case No. 9243.

¹⁰ *Id.*, at p. 21.

¹¹ *Id.*

¹² *Id.* at pp. 21-22.

When Big Rivers sought to recover the costs of its new Wilson Station through its rates, in its final order in that case the Commission expressed grave concern about the risks associated with Big Rivers' dependence on the aluminum smelter customer load, and said:

The Commission's awareness of this problem was an important element in establishing our state-wide planning docket [Administrative Case 308]. In that docket we are examining, among other things, the long-term prospects of sharing capacity among the state's electric utilities, rather than permitting utilities to continue the traditional practice of adding new capacity based primarily on forecasts of their internal loads. That docket offers hope that Big Rivers' one-industry problem can be mitigated in the long run.¹³

As the Commission recognized in its orders in Administrative Case 308, Case No. 9243 and Case No. 9613, its decision regarding the proposal of the Applicants in this case to construct new generating resources will affect ratepayers in Kentucky in addition to the Applicants' ratepayers. Those other ratepayers certainly include Big Rivers' ratepayers, and Big Rivers is in the best position to represent the interests of its member-ratepayers in this case.

In previous cases, the Commission has granted intervention on the basis that the entity seeking leave to intervene is likely to present issues or to develop facts that assist the Commission's investigation even where the entity is not a customer of the utility and has no special interest other than as a competitor of the utility.¹⁴ Big Rivers has generating capacity to

¹³ Order dated March 17, 1987, in *In the Matter of: Big Rivers Electric Corporation's Notice of Changes in Rates and Tariffs for Wholesale Electric Service and of a Financial Workout Plan*, PSC Case No. 9163, at p. 15.

¹⁴ See, e.g., Order dated September 14, 2012, in *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, PSC Case No. 2012-00222, at p. 4 ("we find that although Stand Energy is a gas marketer and a competitor of LG&E, not a customer, Stand Energy was granted intervention in Case No. 2010-00146. Since the issue of LG&E's gas transportation thresholds is being investigated in this case as a follow-up to Case No. 2010-00146, we find that Stand Energy is likely to present issues or to develop facts that assist the Commission in our investigation of that issue. For these reasons we will grant Stand Energy limited intervention to participate solely on the issue of gas transportation thresholds"); Order dated October 2, 2012, in *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, PSC Case No. 2012-00222, at pp. 2, 6 ("On September 19, 2012, LG&E filed an objection to Hess' motion for full intervention. LG&E argues that Hess' only interest in

offer to the Applicants in competition to the Applicants' decision to self-supply, and because of its position and experience, Big Rivers will be able to assist the Commission's investigation in this proceeding to determine whether the Applicants' decision to self-supply is reasonable, cost-effective, and in the best interest of the Applicants' ratepayers.

The Commission has allowed Sierra Club to intervene in proceedings before it because of the expertise Sierra Club offers on subjects under consideration by the Commission, even though Sierra Club would not typically qualify for intervention under the Commission's regulations,¹⁵ Big Rivers likewise brings far more information and expertise to this proceeding that are material to the public policy concerns of the Commission than would a "mere bidder." Its participation in

this proceeding is to further its own commercial interests as a competitor of LG&E, noting that the Commission lacks jurisdiction to allow a third party, such as Hess—that is not even a customer of the utility—to utilize a regulatory proceeding to advance its financial and commercial interests...we find that Hess is likely to present issues or to develop facts that assist the Commission in our investigation of that issue. For these reasons, we will grant Hess limited intervention to participate solely on the issue of gas transportation thresholds"); Order dated August 9, 2013, in *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates for Gas Service*, PSC Case No. 2013-00167 ("In addition, although Interstate Gas is a gas marketer and a competitor of Columbia Gas, not a customer, Interstate Gas was granted intervention in Case Nos. 2007-0008 and 2009-00141 and the Commission finds that Interstate Gas is likely to present issues or to develop facts that assist the Commission in its investigation of these issues. For these reasons, the Commission will grant Interstate Gas full intervention limited to participation on the issues of Columbia's Customer Choice Program and its transportation thresholds levels and any other matters related thereto").

¹⁵ See Order dated July 11, 2011, in *In the Matter of: The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, PSC Case No. 2011-00140 ("The Commission is, 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 this IRP case, such as energy efficiency, demand-side management, and resource planning. The NRDC and Sierra Club have intervened in similar proceedings in other states. The Sierra Club was previously granted intervention in an IRP proceeding involving East Kentucky Power Cooperative, Inc., and the Petitioners are represented by experienced counsel. Therefore, the Commission finds that intervention by the Petitioners is likely to present issues or develop facts that will assist the staff in its review of the KU and LG&E IRP without complicating or disrupting the review") (footnote omitted); Order dated December 14, 2011, in *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities from Bluegrass Generation Company, LLC in La Grange, Kentucky*, PSC Case No. 2011-00375 ("The Commission is, however, persuaded that the NRDC and Sierra Club, acting on behalf of their Kentucky members, do possess expertise on issues that are within the scope of this proceeding, such as whether generation supply options 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 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 KU's and LG&E's CPCN request without unduly complicating or disrupting the review").

this case would be a valuable asset to the Commission as it considers a case with far-reaching implications.

Big Rivers also has an interest in this case because it has direct transmission interconnections with LG&E and KU. Any plant additions, capacity expansions or closures by the Applicants have the potential to affect Big Rivers' transmission planning activities and investment requirements. Big Rivers recently went through the Midcontinent Independent System Operator, Inc. ("*MISO*") Attachment Y process in connection with decisions it was making about the operation of its Wilson and Coleman generating stations. Both LG&E and KU were considered and participated in that process.

If Big Rivers not being "a customer of the Companies"¹⁶ is considered an impediment to Big Rivers' intervention in this case, that problem is easily solved. Big Rivers is a customer of KU. Big Rivers has two retail accounts with KU ([REDACTED] [REDACTED] and [REDACTED]). Big Rivers is also a transmission customer of KU where Big Rivers serves a retail customer delivery point on the Big Rivers system from KU's transmission lines. Thus, Big Rivers is not a "mere bidder" and has a special interest in the rates and service of the Applicants because Big Rivers is a customer of the Applicants.

II. Big Rivers' interest in this proceeding is not otherwise adequately represented.

The Applicants' position that Big Rivers should be denied intervention because the Attorney General and Kentucky Industrial Utility Customers, Inc. ("*KIUC*") will "dissect" and "scrutinize" the Applicants' RFP process¹⁷ is uninformed. Big Rivers certainly concurs with the Applicants that these intervenors will give the Applicants' proposal a diligent, critical examination on behalf of their constituents in this case. But even though the Attorney General

¹⁶ Response at p. 1.

¹⁷ Response at pp. 4-5.

and KIUC have constituents on the Big Rivers system who would benefit from revenue earned by Big Rivers from its available generating capacity, both have been silent on Big Rivers' Motion to Intervene. Moreover, Big Rivers believes that the positions adverse to Big Rivers' resource mitigation plan taken by the Attorney General and KIUC in Case Nos. 2012-00535 and 2013-00199, both of which cases are still pending before the Commission, are inconsistent with the interests of Big Rivers and the likely positions Big Rivers will take if permitted to intervene in this case. As a result, the Attorney General and KIUC fundamentally cannot and should not be expected to adequately represent Big Rivers' interests in this proceeding.

III. Big Rivers' intervention is likely to present issues and develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceeding.

Contrary to the assertions of the Applicants in their Response, Big Rivers' intervention in this proceeding is likely to present issues and develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceeding. Big Rivers is in the best position to offer evidence and to respond to questions about its available generating capacity. Big Rivers owns or operates 1819 MW of generating capacity and has extensive expertise in the subjects at issue in this proceeding. Big Rivers and its staff have expertise and experience in resource planning and in the laws and regulations governing energy production. Big Rivers and its staff have participated in similar Commission proceedings in the past, including proceedings involving resource planning and proceedings relating to certificates of public convenience and necessity ("CPCNs"). Big Rivers is represented by counsel with experience in Commission proceedings, including CPCN proceedings, will comply with deadlines established by the Commission, and will not disrupt the proceedings. As such, the

Commission should find that Big Rivers is likely to present issues and develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceeding.

The Applicants argue that by having the opportunity to file comments, “Big Rivers will have ample opportunity to do what it states it wants to do in its Motion to Intervene in the way of assisting the Commission” without intervening.¹⁸ However, critical portions of the information and analysis supplied by the Applicants in this proceeding have been provided under a petition for confidential treatment, and redacted from their application. Without intervening and having access to such information, Big Rivers’ ability to assist in any meaningful way the Commission’s investigation into the reasonableness and appropriateness of the Applicants’ decision to self-supply in light of other alternatives will be severely impaired.

IV. Conclusion.

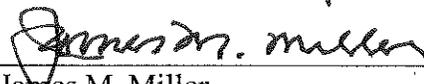
The Commission’s regulations provide: “The commission shall grant a person leave to intervene if the commission finds that a person has a special interest in the case that is not otherwise adequately represented or that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.”¹⁹ Based on the foregoing, the Commission should grant Big Rivers leave to intervene, should find that Big Rivers has a special interest in the case that is not otherwise adequately represented, and should find that Big Rivers’ intervention is likely to present issues and to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceeding.

On this the 17th day of February, 2014.

¹⁸ Response at p. 6.

¹⁹ 807 KAR 5:001 Section 4(11)(b).

Respectfully submitted,



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