

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY POWER)	
COMPANY FOR (1) A GENERAL ADJUSTMENT OF ITS)	
RATES FOR ELECTRIC SERVICE; (2) AN ORDER)	
APPROVING ITS 2017 ENVIRONMENTAL COMPLIANCE)	Case No.
PLAN; (3) AN ORDER APPROVING ITS TARIFFS AND)	2017-00179
RIDERS; (4) AN ORDER APPROVING ACCOUNTING)	
PRACTICES TO ESTABLISH REGULATORY ASSETS AND)	
LIABILITIES; AND (5) AN ORDER GRANTING ALL)	
OTHER REQUIRED APPROVALS AND RELIEF)	

RIVERSIDE GENERATING COMPANY'S
REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

Comes now Riverside Generating Company, L.L.C. ("Riverside"), by counsel, and for its Reply to the Response filed herein by Kentucky Power Company ("Kentucky Power") to Riverside's Motion for Leave to Intervene in the above-styled proceeding, respectfully states as follows:

Riverside has an interest in this case because Kentucky Power has proposed, without notice or substantive explanation, to amend certain critical Special Terms and Conditions of its Tariff N.U.G. The proposed revisions, if approved, may significantly change the scope of the tariff's applicability, and thus may meaningfully impact Riverside and other non-utility generators both now and in the future. Riverside's unique and limited interest in this case is not shared by any other existing or prospective party, primarily because Riverside is (at least ostensibly¹) the only Kentucky Power customer served under retail Tariff N.U.G. Based on

¹ As mentioned in Riverside's Motion, Kentucky Power has filed testimony in this proceeding which claims the company has no customers taking service under Tariff N.U.G. *See* Riverside's Motion, p. 3, n. 5, and accompanying text. It is certainly possible that Kentucky Power overlooked more customers than just Riverside in

these facts, and because it is imperative that the process to amend and approve Tariff N.U.G. include a perspective other than just Kentucky Power's, Riverside respectfully requests that it be granted intervention over the unfounded objections of the applicant.

In its Response and at the hearing held on Riverside's Motion on July 24, 2017, Kentucky Power attempted to minimize and mischaracterize Riverside's interest in this proceeding. Essentially, Kentucky Power would have this Commission believe that Riverside's interest with respect to the service it receives as a non-utility generator begins and ends with the disputed question of whether Riverside's two unique generating facilities in Kentucky Power's service territory are located on the same site or on different sites.² That issue relates to the question of how the tariff applies to Riverside, but it is not the issue that Riverside is concerned about in this proceeding.

Riverside's interest herein arises from Kentucky Power's apparent attempt to change the scope of the retail Tariff N.U.G. to make the tariff narrower in application. In other words, while there is a dispute (as confirmed by Kentucky Power at the July 24th hearing) as to how the tariff applies to Riverside, Kentucky Power is seeking to limit the universe of entities to whom the tariff may apply. Any effort by Kentucky Power to surreptitiously hamstring Riverside's arguments as to how the retail Tariff N.U.G. should be applied by narrowing the scope of the tariff is objectionable and constitutes compelling evidence that Riverside has special and unique

reaching this false conclusion (the utility chose not to address or correct this issue as part of its Response or during the hearing held July 24, 2017), but the fact remains that Riverside has a real, specific concern for the terms of the service offered non-utility generators under Tariff N.U.G.

² Riverside provided considerable information to Kentucky Power approximately one month ago demonstrating that its two facilities in Eastern Kentucky are in fact separate sites for purposes of Kentucky Power's Tariff N.U.G. Kentucky Power has yet to provide a written, substantive response, although its counsel stated at the conclusion of the hearing held in this matter on July 24, 2017, that the utility believes Riverside does not satisfy the requirements for remote self-supply under either the existing or proposed Tariff N.U.G. *See* July 24, 2017 Hearing Video Record ("HVR") at 4:25:40 p.m. For Kentucky Power to take and advocate a position on the parties' commercial dispute in this context simply evidences, yet again, that the utility wants to make Riverside's intervention about the parties' existing dispute rather than about the actual tariff amendments proposed.

interest that is not otherwise adequately represented. Moreover, now that the Tariff N.U.G. is subject to revision, Riverside's interests can only be protected if it is allowed to participate in this case.

Riverside has a definitive and unparalleled interest in every existing and proposed term of Tariff N.U.G. Indeed, irrespective of the parties' ongoing discussions, Riverside is compelled to seek to participate in this case to help ensure that the ultimately-approved tariff rates and terms applicable to non-utility generators are fair, just and reasonable. If Kentucky Power's proposed tariff amendments were approved in this proceeding and Riverside did nothing to challenge them herein, Kentucky Power would most certainly argue that Riverside's failure to challenge the amendments equated to acquiescence. Kentucky Power's decision to seek amendment of those rates and terms serves as the predicate of Riverside's proposed participation in this case.

As a unique customer that obtains service from Kentucky Power under a different schedule (and thus on different terms) than any other customer, Riverside's interests in this proceeding are both special and incapable of adequate representation by another party.³ While the ongoing discussions of the parties remain undoubtedly relevant in that they, *inter alia*, underscore the need for Kentucky Power to have tariff terms in place that are both reasonable and reasonably understood, the Commission should reject Kentucky Power's erroneous attempt to elevate the discussions to the sole impetus of Riverside's Motion for Leave to Intervene.

Kentucky Power's second argument against Riverside's intervention—essentially that Riverside should not be a party to this case because the confidential record is likely to include certain information inappropriate for disclosure to Riverside—is perhaps even less cogent than

³ Notably, the Attorney General's Office of Rate Intervention has stated on the record that it does not anticipate providing testimony or conducting discovery concerning Tariff N.U.G. See HVR at 2:21:28 p.m. The other party already granted intervention in this case, Kentucky Industrial Utility Customers, Inc., has no objection to Riverside's intervention. See HVR at 2:28:13 p.m.

its first. Neither statute, regulation, nor Commission directive mandates that Kentucky Power provide all intervenors unfettered access to its confidential filings in this proceeding; occasionally, circumstance and reason require an applicant to seek to withhold information not only from public disclosure, but also from disclosure to one or more parties to a case.⁴ As noted by Kentucky Power in its Response, it is common practice for an applicant and each individual intervenor to enter into a non-disclosure agreement to prescribe the terms by which certain confidential information will be made available. There is no apparent reason why Kentucky Power and Riverside could not execute and abide by such an agreement with respect to this case, and there can be no reasonable suggestion that doing so would be unduly complicated or disruptive of this proceeding. Moreover, as Riverside's witness stated at the July 24th hearing, Riverside has no desire to gain access to Kentucky Power's competitive information and would agree that such information need not be provided to Riverside even under an obligation of confidentiality.

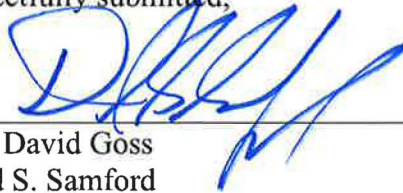
Finally, Riverside's discovery in this case will be directed to the meaning and reasoning behind Kentucky Power's proposed revisions to Tariff N.U.G. As such, Riverside does not object to the imposition of reasonable parameters defining the scope of permissible discovery in this proceeding.

⁴ See, e.g., Case No. 2015-00267, EKPC's Motion for Confidential Treatment, p. 7, n. 4 ("In light of the similar positions of EKPC and KU/LG&E as Kentucky generation and transmission utilities, certain Confidential Information contained in EKPC's responses is inappropriate for disclosure to KU/LG&E and will likely be excluded from the materials that are to be produced under the terms of the utilities' confidentiality and nondisclosure agreement."). Riverside, of course, has not indicated it has any interest in or right to the limited information Kentucky Power fears will be so problematic ("operating costs and characteristics of [the utility's] generating assets"), and it acknowledges that, as a competitor of Kentucky Power's in the PJM wholesale marketplace, it may be restricted in the information it may review as part of this case. To be clear, however, Riverside seeks intervention in this proceeding only as a Kentucky Power *customer*, and only to assist the Commission in its examination of the rates and terms of service proposed by Kentucky Power under its *retail* electric tariff. Kentucky Power's concerns about potential competitive disadvantage are unfounded.

WHEREFORE, Riverside respectfully requests that it be allowed to intervene in this proceeding.

This 26th day of July, 2017.

Respectfully submitted,



Mark David Goss
David S. Samford
M. Evan Buckley
GOSS SAMFORD, PLLC
2365 Harrodsburg Road, Suite B-325
Lexington, Kentucky 40504
(859) 368-7740
mdgoss@gosssamfordlaw.com
david@gosssamfordlaw.com
ebuckley@gosssamfordlaw.com

Counsel for Riverside Generating Company, L.L.C.

CERTIFICATE

In accordance with 807 KAR 5:001, Section 8, the undersigned certifies that this document is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on July 26, 2017; that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means; and that the original and six (6) copies of the document transmitted electronically will be filed with the Commission in paper medium within two business days from the date of the electronic filing.



Counsel for Riverside Generating Company, L.L.C.