

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

<b>APPLICATION OF BIG RIVERS</b>	)	
<b>ELECTRIC CORPORATION FOR</b>	)	<b>CASE NO. 2021-00378</b>
<b>ENFORCEMENT OF COMMISSION ORDER</b>	)	
	)	

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**MOTION OF CITY OF HENDERSON, KENTUCKY, AND  
HENDERSON UTILITY COMMISSION,  
d/b/a HENDERSON MUNICIPAL POWER & LIGHT, TO INTERVENE  
IN APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR ENFORCEMENT OF COMMISSION ORDER**

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The City of Henderson, Kentucky, and the Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (jointly “Henderson”), by counsel, and pursuant to 807 KAR 5:001(4)(11), hereby move the Kentucky Public Service Commission (“Commission”) for leave to intervene in this matter. 807 KAR 5:001(4)(11) provides:

(11) Intervention and parties.

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant’s full name, mailing address, and electronic mail address and shall state his or her interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

2. The motion may include a request by movant for delivery of commission orders by United States mail and shall state how good cause exists for that means of delivery to movant.

(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her 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.

On September 29, 2021, Big Rivers Electric Corp. (“Big Rivers”) filed an application asking the Commission to bring an action in the Franklin Circuit Court seeking an Order compelling Henderson to comply with the terms of a Commission Order entered on August 2, 2021. Specifically, Big Rivers wants the Commission to seek entry of a judgment against Henderson in an unspecified and unverified sum as reimbursement for Henderson’s purported share of past and future decommissioning costs and other expenses. The request is the outgrowth of an application Big Rivers filed on July 31, 2019, seeking Commission approval for its calculation of amounts due from one party to another as a product of their former contractual relationship. Henderson moved for and was granted leave to intervene in that proceeding, which is identified in Commission records as Case No. 2019-00269. Henderson has appealed the August 2, 2021, Commission Order entered in that case on numerous grounds, including but not limited to the ground the Commission is without jurisdiction to adjudicate what are purely contractual disputes unrelated to any rate or service standard.

The Commission Order that Big Rivers seeks to “enforce” is an unlawful Order based upon an improper exercise of jurisdiction. The now-terminated contracts between Henderson and Big Rivers neither fixed nor regulated a rate or service standard, a prerequisite for an exercise of Commission jurisdiction pursuant to KRS 278.200. Henderson has an interest in the issues raised in Big Rivers’ application and stands to be affected by the Commission’s decision. Henderson is entitled to protect its interests and to defend against the pursuit of a judgment based upon an Order that is unlawful, arbitrary, vague, ambiguous, and is being challenged on appeal.

The movants' names and addresses are:

City of Henderson  
222 First St.  
Henderson, KY 42420

and

Henderson Utility Commission  
100 Fifth St.  
Henderson, KY 42420

Service upon the movants should be directed to counsel listed below.

This intervention is made for the purpose of assisting the Commission with the development of facts relevant to a decision and will not unduly delay or impede the proceedings. This case will have a direct and material effect upon Henderson's legal rights, duties, privileges, or other legal interests associated with the terminated Station Two contracts. The information Henderson can present is directly related to Big Rivers' pending request for enforcement.

Henderson has a substantial and special interest in a Commission determination in this proceeding that is not and cannot be otherwise adequately represented by any other party. The Commission's grant of intervenor status to Henderson is likely to present issues or develop facts that facilitate the Commission's full consideration of this matter without unduly complicating or disrupting the proceedings. Henderson's experience with Big Rivers and with the issues give Henderson detailed knowledge of the issues that are before the Commission, and will provide the Commission with additional information that has not been presented and which will not otherwise be presented.

The Commission has previously allowed Henderson to intervene in Case Nos. 2007-00455, 2016-00278, and 2016-00269 on the basis of its contractual relationship with Big Rivers.

For these reasons, Henderson moves for an order granting intervention.

Respectfully submitted,

/s/H. Randall Redding

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*Attorneys for Henderson Utility Commission, d/b/a  
Henderson Municipal Power & Light*

/s/Dawn Kelsey

Dawn Kelsey, Esq.

City Attorney

City of Henderson

222 First Street

Henderson, Kentucky 42420

*Attorney for City of Henderson*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was forwarded this 5<sup>th</sup> day of October, 2021, via U.S. Mail, postage prepaid, or via facsimile, electronic mail, and/or hand delivery, to the following:

Tyson Kamuf, Esq.

Senthia Santana, Esq.

Gregory E. Mayes, Jr., Esq.

Big Rivers Electric Corp.

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*Attorneys for Big Rivers Electric Corp.*

Original to:

Linda Bridwell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

/s/H. Randall Redding