

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

IN THE MATTER OF:

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



**CITY OF HENDERSON, KENTUCKY, AND
HENDERSON UTILITY COMMISSION,
d/b/a HENDERSON MUNICIPAL POWER & LIGHT'S
POSITION STATEMENT REGARDING CONTINUED ABEYANCE**



The City of Henderson, Kentucky, and the Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (jointly “Henderson”), by counsel, and pursuant to the Kentucky Public Service Commission (“Commission”) order entered August 1, 2023, submit the following statement in support of its position that the Commission’s existing order holding this matter in abeyance should remain in effect.

On October 11, 2021, the Commission, on its own motion, entered an order placing this matter in abeyance pending guidance from the Franklin Circuit Court concerning the complex issues raised in consolidated appeals of two (2) Commission orders. Nothing which has occurred since that time should prompt the Commission to reverse its order. Any action to lift the abeyance order and proceed on Big Rivers Electric Corp.’s (“Big Rivers”) request for enforcement is as premature as ever.

On November 29, 2021, in a hearing before the Commission on Big Rivers’ motion to lift the abeyance order, Big Rivers acknowledged that the order dated August 2, 2021, does not specify the amount supposedly due from one party to the other and thus provides insufficient basis for a judicial enforcement action. (*VR 9:36:32 – 9:37:01*). Big Rivers in that hearing asked the

Commission to issue a new order which would “adjudicate the dollars and cents,” require Henderson to pay a specific sum of money to Big Rivers and, failing such payment, to seek Commission enforcement of this new order in the Franklin Circuit Court. (*VR 9:36:30*). Big Rivers proposes the Commission review and approve invoices on a monthly basis (*VR 9:35:15*), a process that would require the continual issuance of updated orders and continual filing of enforcement actions by the Commission in the Franklin Circuit Court, potentially on a monthly basis. For the Commission to assume such a burden before the Franklin Circuit Court decides the threshold jurisdictional and substantive issues raised in the appeals would be a waste of time and resources and would frustrate the interest in judicial economy. What, for instance, if the Commission were to devote untold resources to “adjudicating the dollars and cents,” only for the Court to find the Commission had improperly exercised jurisdiction or erred in assigning each party its percentage of liability? All the effort devoted to invoice review and collections would have been for naught.

Henderson objects to the reopening of Commission Case No. 2019-00269 and to the issuance of a new or revised order. The Commission’s exercise of jurisdiction over these matters is disputed and the issue is pending before the Franklin Circuit Court. Any action the Commission takes now to enforce the order could be rendered moot. An action to enforce a new or revised order likewise would be subject to jurisdictional challenge and would unnecessarily impose a significant burden on the Commission to review each of many invoices for multiple disputed contractual activities. It would be an unnecessary waste of Commission resources to review Big Rivers’ claims, which are entirely dependent upon the assumption that the Commission has jurisdiction over the contracts, should the Franklin Circuit Court find the Commission’s exercise of jurisdiction in Case No. 2016-00278 was improper.

The Franklin Circuit Court ultimately can be expected to provide a measure of the clarity the Commission sought in its abeyance order. Until then, Big Rivers' request for enforcement should continue to be held in abeyance. Continued abeyance serves the interest in judicial economy and does not prejudice either party.

Respectfully submitted,

/s/H. Randall Redding _____

H. Randall Redding, Esq.

Sharon W. Farmer, Esq.

King, Deep & Branaman

127 North Main Street, P.O. Box 43

Henderson, Kentucky 42419-0043

Telephone: (270) 827-1852

rredding@kdbl.com

sfarmer@kdbl.com

*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 ____ day of August, 2023, via U.S. Mail, postage prepaid, or via facsimile, electronic mail, and/or hand delivery, to the following:

Tyson Kamuf, Esq.

Sentia Santana, Esq.

Big Rivers Electric Corp.

201 Third Street, P.O. Box 727

Henderson, Kentucky 42419-0024

tyson.kamuf@bigrivers.com

sentia.santana@bigrivers.com

Michael L. Kurtz
Kurt J. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

Attorneys for Big Rivers Electric Corp.

/s/H. Randall Redding