

**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)	
)	

**RESPONSE OF CITY OF HENDERSON, KENTUCKY, AND
HENDERSON UTILITY COMMISSION,
d/b/a HENDERSON MUNICIPAL POWER & LIGHT, TO MOTION OF
BIG RIVERS ELECTRIC CORPORATION TO LIFT ABEYANCE**

The City of Henderson, Kentucky, and the Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (jointly “Henderson”), by counsel, in response and objection to the Motion of Big Rivers Electric Corp. (“Big Rivers”) to lift the abeyance imposed in the Commission’s Order dated October 11, 2021, hereby states as follows:

The Kentucky Public Service Commission (“Commission”) recognized in its abeyance Order “the multiplicity of actions currently pending in the Franklin Circuit Court” and the need to obtain “clarity from the [Court] on the claims and motions asserted in that forum” before proceeding on Big Rivers’ application for an enforcement action. Big Rivers’ decision to withdraw one of its pending Counterclaims should not change the Commission’s analysis.

The Order Big Rivers wants the Commission to enforce¹ is one of two Commission Orders currently on appeal in a consolidated action before the Franklin Circuit Court. Any enforcement action would be premature for a number of reasons.

First, Henderson appeals on numerous procedural and substantive grounds, including but not limited to the ground the Commission is without jurisdiction to adjudicate what are purely

¹ Commission Order dated August 2, 2021, entered in Case No. 2019-00269.

contractual disputes unrelated to any rate or service standard. The Court's determination of the threshold jurisdictional issue will provide a measure of the clarity the Commission seeks in its abeyance Order. If the Court decides the Commission Order was based upon an improper exercise of jurisdiction and is therefore unlawful, then further expenditure of judicial resources becomes unnecessary. Continued abeyance pending the outcome of the jurisdictional dispute serves the interest in judicial economy and does not prejudice either party.

Additionally, even if the Court ultimately deems the Commission's Order to be lawful, which Henderson maintains it is not, the Order is not sufficiently precise to serve as a basis for any monetary judgment. The Order declined to confirm the accuracy of Big Rivers' calculation of decommissioning and other costs which are "constantly in flux." The Commission further declined Big Rivers' invitation to assume indefinite oversight of plant decommissioning or to establish a process for submission and approval of monthly invoices. The Commission would have to undertake this task if amounts purportedly due from one party to another are ever to be quantified. Until such time as the Commission identifies a sum due and payable from one party to the other, enforcement of the Order is premature and indeed impossible. A judicial finding that the issues raised in the Franklin Circuit Court pleadings and the underlying Commission proceedings fall outside the scope of Commission jurisdiction would eliminate the need for Commission involvement in further proceedings. The public interest in judicial economy demands that Big Rivers' enforcement application continue to be held in abeyance pending a Court determination of the jurisdictional issue.

WHEREFORE, Henderson respectfully requests the Commission:

1. Grant Henderson's Motion to Intervene in this action filed on October 5, 2021, for the reasons set forth therein; and

2. Deny Big Rivers' Motion to lift the abeyance of this matter pending the Franklin Circuit Court's ruling on the jurisdictional issue.

Respectfully submitted,

/s/H. Randall Redding

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was forwarded this 21st day of October, 2021, via U.S. Mail, postage prepaid, or via facsimile, electronic mail, and/or hand delivery, to the following:

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Original to:

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