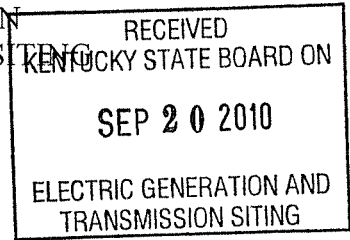


COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING



In the Matter of:)
)
APPLICATION OF SOUTHERN INDIANA)
GAS & ELECTRIC CO., D/B/A VECTREN)
ENERGY DELIVERY OF INDIANA, INC.)
FOR A CONSTRUCTION CERTIFICATE TO)
CONSTRUCT AN ELECTRIC TRANSMISSION)
LINE FROM ITS A.B. BROWN PLANT TO THE)
BIG RIVERS EHV STATION)

CASE NO. 2010-00223

MOTION TO DISQUALIFY

The City of Henderson, Henderson Municipal Power & Light, and Henderson Water Utility (hereinafter "Intervenors"), by counsel, respectfully request that Hugh McCormick, a member of the Kentucky State Board on Electric Generation and Transmission Siting ("Siting Board"), recuse himself from the above-referenced matter. As grounds for this motion, Intervenors state as follows:

Southern Indiana Gas & Electric Co., d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren") and Big Rivers Electric Corporation ("Big Rivers") have entered into a collaborative agreement to connect Vectren's A.B. Power Plant with Big Rivers' Reid Station. Big Rivers obviously has a significant financial interest in this project. Although Vectren is formally listed as the applicant on the application for a certificate to construct a nonregulated electric transmission line ("Application"), Big Rivers has been integral to the application process. Big Rivers has had a significant part in planning and developing a substantial portion of Vectren's Application, as evidenced by the numerous exhibits to the Application, many of which contain

Big Rivers' company emblem, not Vectren's. Big Rivers, therefore, has essentially acted as a co-applicant to Vectren.

Pursuant to KRS 278.702(1)(d)(3), "*Ad hoc* public members appointed to the board shall have no direct financial interest in the facility proposed to be constructed." Likewise, KRS 278.702(4) provides, in pertinent part, that "[n]o member of the [Siting] [B]oard . . . shall have any financial interest in any facility the application for which comes before the board" Mr. McCormick has been designated as an *ad hoc* member of the Siting Board under KRS 278.702(1)(d)(2). Mr. McCormick has been an employee of Big Rivers for over thirty years, was employed by Big Rivers at the time of his assuming a seat on the Siting Board, and acknowledged this fact at the Public Hearing held in this matter. Further, upon information and belief, Mr. McCormick has been on medical leave from Big Rivers for several months and is anticipated to retire in the near future. Mr. McCormick's employment, medical benefits and retirement compensation are inextricably linked to Big Rivers' continued financial success. Mr. McCormick, therefore, has an economic and financial interest as a consequence of Big Rivers' relationship with Vectren. Accordingly, he must be disqualified from acting as a member of the Siting Board in this action.

Furthermore, the Siting Board's function is to review and grant or deny certificates for the construction of electric generating facilities and transmission lines that are not regulated by the Kentucky Public Service Commission. *See* KRS 278.714(3). In this capacity, the Siting Board acts as an adjudicatory body with the power to convene a formal evidentiary hearing and issue a final ruling on the matter. *See* KRS 278.712. The members of the Siting Board, therefore, sit in a judicial capacity for purposes of this process.

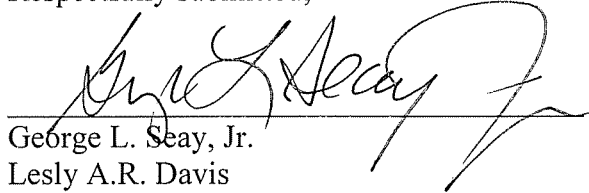
In this regard, KRS 26A.015(2)(c) requires that a judge disqualify himself “[w]here he knows that he, individually or as a fiduciary, . . . has a pecuniary or proprietary interest in the subject matter in controversy or in a party to the proceeding.” Additionally, KRS 26A.015(2)(e) requires a judge to disqualify himself when that judge “has knowledge of any . . . circumstances in which his impartiality *might reasonably be questioned*.” Likewise, Canon 3E(1) of SCR 4.300 states, in pertinent part, that “[a] judge *shall* disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned” Additionally, Canon 2 of SCR 4.300 states that a judge “shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.” Thus, in 2006, the Kentucky Supreme Court held that “the standard for determining whether a motion [to disqualify] is legally sufficient is whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial [hearing].” *Dean v. Bondurant*, 193 S.W.3d 744, 748 (Ky. 2006).

Fundamental fairness and due process require a neutral, impartial decision maker. These notions certainly prohibit any decision maker who has a financial stake in the outcome from hearing and ruling upon the matter. According to a prevailing treatise on administrative law, “[i]t is generally accepted that any financial interest, no matter how small, is impermissible.” *Administrative Law*, Funk & Seamon, Chapter 4, II(C)(1), p. 127 (entitled “The Need for an Impartial Judge”). Mr. McCormick’s relationship to the overall project, at the very least, presents an appearance of impropriety.

For the reasons stated above, it is clear that Hugh McCormick’s ability to remain impartial in this matter is reasonably questionable, and further that he has a financial interest in the subject matter of this action. Thus, pursuant to KRS 278.702, KRS 26A.015 and the Kentucky Canons of Judicial Conduct and applicable case law, the Intervenors respectfully

request that Hugh McCormick be disqualified from acting as a member of the Siting Board in this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE


This is to certify that the original and ten true and correct copies of the foregoing has been served upon the following, by hand delivery, at the filing office of the Kentucky Public Service Commission, on this the 20th day of September, 2010:

Hon. Richard W. Bertelson, III
Counsel
Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, KY 40602-0615

Mr. Jeff Derouen
Executive Director
Public Service Commission
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and via U.S. Mail, postage prepaid to:

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