

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)	CASE NO.
CORPORATION FOR AN ADJUSTMENT OF)	2012-00535
RATES)	

ORDER

On May 22, 2013, Ben Taylor and Sierra Club (collectively "Sierra Club") filed a motion seeking to compel Big Rivers Electric Corporation ("Big Rivers") to respond to certain supplemental discovery requests that Sierra Club propounded to Big Rivers. Sierra Club contends that Big Rivers failed to produce modeling and projections for conditions that it believes its generating units will face after 2016. Sierra Club also contends that Big Rivers has failed to produce information concerning a tentative agreement to provide market-priced power to Century Aluminum of Kentucky General Partnership ("Century"). Century is an existing customer that is currently served at a Commission-regulated rate, but it has given notice of intent to terminate its existing service contract as of August 20, 2013. Sierra Club argues that Big Rivers' refusal to provide such information has hindered Sierra Club's ability to analyze whether Big Rivers has fully considered all available options to address its significant loss of load and revenues. In addition to its request to compel, Sierra Club also seeks leave to file supplemental testimony.

With respect to those questions seeking Big Rivers' projections of market conditions, commodity prices, energy sales, and generating unit operating conditions

beyond 2016 (i.e., Sierra Club's Supplemental Requests for Information Items No. 2-2, 2-3, 2-4, 2-5, and 2-8), Sierra Club contends that such information is relevant to the issue of whether Big Rivers' requested rate increase is just and reasonable.

The only way that [Big Rivers'] requested rate increase could be a just and reasonable solution to its current predicament is if the company is right that, at some point several years down the road, the electricity markets will change such that [Big Rivers'] aging generating units that are currently competitive in the market will become so again and thus 'reap significant benefits' for ratepayers, as the company claims. The only way for the Commission, Staff, and Intervenors to evaluate those claims, however, is for the company to produce the modeling and projections on which they are based in response to Intervenors' requests for information.¹

Sierra Club argues that Big Rivers cannot claim that the information requested is not relevant, given that the company has produced some modeling and economic information beyond 2016. Sierra Club notes that Big Rivers has provided economic modeling runs that evaluate various scenarios resulting from the loss of the smelters' loads through 2023. Sierra Club contends that Big Rivers should not be allowed to "cherry pick" which information it can disclose regarding post-2016 conditions.

With respect to Big Rivers' tentative agreement with Century (i.e., Sierra Club's Supplemental Requests for Information Items No. 2-13c, and 2-24 through 2-28), Sierra Club avers that this information is clearly relevant, given that the rate application was precipitated, in large part, by Century's notice of termination of its wholesale power agreement with Big Rivers.

¹ Sierra Club Motion to Compel, p. 5.

Last, Sierra Club requests that it should be allowed an opportunity to file supplemental testimony limited to any information that is the subject of this motion to compel. Sierra Club contends that Big Rivers' failure to provide complete and full responses to Sierra Club's discovery requests have hindered Sierra Club from being fully able to evaluate and address Big Rivers' application prior to the deadline to the filing of intervenor testimony on May 24, 2013, and that allowing Sierra Club an opportunity to submit limited supplemental testimony would not unduly delay proceedings.

In response to Sierra Club's motion, Big Rivers maintains that it has provided extensive information concerning its 2013-2016 budget and financial plan, which forms the basis for the rate relief it is seeking in this matter. Big Rivers notes that the proposed rates are based on its budget and financial plan for the forecasted test period ending August 31, 2014, not on the post-2016 modeling that Sierra Club claims it needs. Big Rivers contends that the information sought to be compelled by Sierra Club will not impact the rate relief Big Rivers is seeking, nor will it assist the Commission in determining whether the proposed rate increase is fair, just, and reasonable.

Big Rivers argues that long-term projections of the viability of its generating units versus other alternatives for capacity would be relevant in cases concerning a request for a certificate of public convenience and necessity to construct new generating plants or to implement an environmental compliance plan or in matters involving the submission of an integrated resource plan. Big Rivers distinguishes the instant matter in that it involves a base rate increase and that arguments over the projected price of

coal in 2027 is not relevant to a determination of the reasonableness of Big Rivers' proposed rate increase.

Big Rivers contends that any post-2016 modeling would not have an impact on the company's decision either to retire or sell any of its generating units. Therefore, according to Big Rivers, its post-2016 production modeling and projections would not have an impact on its proposed rates. It contends the information that Sierra Club seeks is not relevant to the instant proceeding.

Big Rivers argues that the modeling runs used to develop its load mitigation plan are not relevant to whether Big Rivers' proposed rates are fair, just, and reasonable. Big Rivers reasons that regardless of what the modeling indicates, its proposed rate increase will still be necessary beginning August 20, 2013 in order to be able to meet its financial obligations and attract necessary capital.

Big Rivers points out that it has disclosed information concerning the tentative agreement with Century and that Sierra Club's request relating to this information should be denied as moot.

Last, Big Rivers contends that the Sierra Club's motion, due to its timing would require if granted that the procedural schedule be revised again and that Big Rivers would suffer prejudice through the reduction of time it would be allowed in which to propound its discovery and/or file rebuttal testimony.

On June 3, 2013, Sierra Club filed a reply memorandum in support of its motion to compel. Sierra Club argues that there is no legal basis for Big Rivers' proposition to limit the review of its proposed rates to only the 12-month test period running through August 31, 2014. Sierra Club contends that the record establishes that "[Big Rivers']

requested rate increase could only be just and reasonable if there is a credible expectation that it will be beneficial for ratepayers in the long run for the Company to continue investing in all four of its coal plants. [Big Rivers] claims that it will be, but refuses to disclose any of the modeling or projections upon which that claim is purportedly based.”²

Sierra Club reiterates that Big Rivers’ post-2016 modeling and forecasts are relevant to whether the proposed rate increase is just and reasonable. Sierra Club argues that Big Rivers proposal to increase its rates is based, in part, on the assumption that the company will be able to make sufficient margins in its off-system sales beyond 2016 which would ultimately fully mitigate the loss of the Century load. Given that Big Rivers’ 2013-2016 budget and financial plan were developed based on the assumption that the company’s generating fleet would continue to be operational beyond 2016, Sierra Club asserts that Big Rivers’ should be compelled to produce its post-2016 modeling so that all relevant information regarding the company’s rate increase and alternatives to it are fully considered. For example, Sierra Club states that a full and complete evaluation of Big Rivers’ market forecasts is directly relevant to the question of whether the company’s rate increase request would be more beneficial to its ratepayers, as compared to other options such as debt restructuring or bankruptcy.

Sierra Club acknowledges that Big Rivers has provided information relating to the tentative agreement reached between Big Rivers and Century pursuant to an order issued by the Commission on May 22, 2013, and that Sierra Club’s request to compel disclosure of this information is moot.

² Reply in Support of the Motion of Ben Taylor and Sierra Club to Compel Big Rivers Electric Corporation to Respond to Their Supplemental Requests for Information, and to Supplement Their Testimony, p. 1.

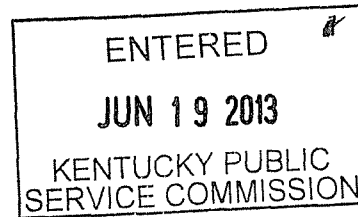
Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that Big Rivers' post-2016 modeling information is relevant to a full determination of whether its proposed rate increase is fair, just, and reasonable. Because the proposed rate request is in large part due to the loss of the Century load, such information will also be critical to assess whether Big Rivers' mitigation efforts reflect a reasonable long-term solution to address the loss of a significant load. For these reasons, we will require Big Rivers to electronically serve each party with a copy of its post-2016 modeling information on June 21, 2013 and file hard copies with the Commission by June 24, 2013. In light of the fact that the formal evidentiary hearing is less than two weeks away, we will allow Sierra Club until June 28, 2013 to file supplemental testimony on the limited issue of Big Rivers' post-2016 production modeling, and allow Big Rivers an opportunity at the hearing to present rebuttal testimony on this issue. The Commission also finds that the discovery issue relating to the tentative agreement between Big Rivers and Century is moot.

IT IS THEREFORE ORDERED that:

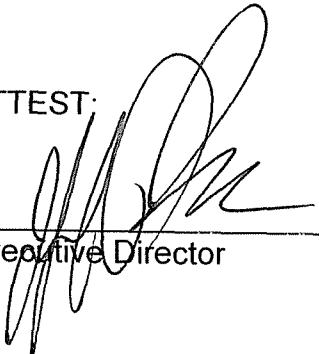
1. Sierra Club's motion to compel Big Rivers to fully respond to Sierra Club's Supplemental Requests for Information Items No. 2-2, 2-3, 2-4, 2-5, and 2-8 is granted, and Big Rivers shall electronically serve each party with a copy of its responses on June 21, 2013 and file hard copies with the Commission by June 24, 2013.
2. Sierra Club shall file by June 28, 2013, any supplemental testimony on the limited issue of Big Rivers' post-2016 production modeling and Big Rivers shall have an opportunity at the hearing to present rebuttal testimony on this issue.

3. Sierra Club's motion to compel Big Rivers to fully respond to Sierra Club's Supplemental Requests for Information Items No. 2-13c, and 2-24 through 2-28 is denied as moot.

For the Commission



ATTEST:



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Case No. 2012-00535

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