

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 February 14, 2013, Ben Taylor and Sierra Club (collectively “Movants”) filed a petition seeking full intervention in the instant proceeding. Movants assert that their purpose in seeking intervention is to “ensure that their interests in lower cost and cleaner energy options are fully represented, and to bring to this proceeding their expertise in developing plans for providing a lower cost and cleaner energy future.”<sup>1</sup> Movants contend that, if allowed to intervene, they would present issues or develop facts that would assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. In particular, Movants note that they have experience and expertise in “advancing technical and regulatory solutions to increasing renewable and demand side energy sources,”<sup>2</sup> and would make sure that Big Rivers Electric Corporation (“Big Rivers”) has examined all available demand-side and supply-side options to mitigate the magnitude of the requested rate increase. To that end, Movants maintain that they will utilize their expertise and resources to explore additional alternatives for replacing capacity, investigate Big Rivers’ analysis, and proffer evidence

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<sup>1</sup> Petition of Ben Taylor and Sierra Club for Full Intervention, p. 3.

<sup>2</sup> *Id.* at 5.

in favor of energy efficiency, renewable energy resources, and other low-carbon generation technologies.

Additionally, Movants argue that they have a special interest in this proceeding that is not otherwise adequately represented. Mr. Taylor points out that he is a customer of Kenergy Corp., which purchases and receives wholesale power from Big Rivers, and any rate increase proposed by Big Rivers would have a direct impact on Mr. Taylor's electric bills. Mr. Taylor further points out that he would be directly impacted by the economic, public health, and environmental effects stemming from the resource decisions that Big Rivers makes. Sierra Club contends that it has members who are customers and ratepayers of Big Rivers' distribution cooperatives and, as such, have the same interests as Mr. Taylor.

Movants contend that their interests are not adequately represented by any of the parties to this matter. In particular, Movants assert that the Attorney General ("AG"), who is an intervenor in this matter and who is tasked with representing the overall public interest, cannot adequately protect Movants' narrow interests in promoting "energy efficiency, renewable energy, and other low carbon generation resources as the most reasonable and cost effective way for Big Rivers to maintain essential electric services and meet new and emerging federal regulatory requirements."<sup>3</sup>

On February 18, 2013, Big Rivers filed a response to Movants' petition, objecting to Movants' request for full intervention on the grounds that Movants have neither a special interest in this matter that is not otherwise adequately represented nor would Movants' intervention in the proceeding assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Big Rivers contends

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<sup>3</sup> *Id.* at 9.

that Mr. Taylor's expressed interests are not special interests within the meaning of the regulation governing intervention in Commission proceedings, 807 KAR 5:001, Section 4(11)(b). Moreover, Big Rivers maintains that any interest Mr. Taylor may have is adequately represented by the AG, whose office not only has considerable ratemaking experience but also possesses significant expertise in representing the interests of utility customers throughout the state before the Commission.

Big Rivers argues that Sierra Club's expressed environmental interests cannot be considered special interests within the context of a base rate proceeding. Big Rivers contends that environmental issues are outside the scope of the Commission's expressed and acknowledged jurisdictional authority. Big Rivers further claims that the recent prior cases that Sierra Club has intervened in did not involve a base rate case, but rather were environmental compliance proceedings and a proceeding involving a request to construct a natural gas-fired power plant. Big Rivers thus concludes that Sierra Club has failed to establish a recognizable special interest in this rate proceeding.

Regarding Sierra Club's purported economic interests, such as low-cost energy service, Big Rivers asserts that Sierra Club cannot claim such interests as its own because those interests are actually interests of its members. The claimed economic interests are shared by all of the ratepayers in the Big Rivers system and those interests are adequately represented by the AG, according to Big Rivers.

Big Rivers contends that Movants' expertise and experience in renewable energy and energy-efficiency matters would not be of any assistance in cases where, as here, the proceeding involves ratemaking principles. Rather, Big Rivers argues, the pursuit of

such an agenda is “nothing more than distracting, generalized environmental grievances that are beyond the scope of this rate application proceeding.”<sup>4</sup> Big Rivers maintains that Movants’ actions have already unduly complicated and disrupted this proceeding, noting that Movants proffered data requests even though they are not parties to the proceeding and that those data requests seek information that are beyond the scope of issues in this rate case. Accordingly, Big Rivers requests that Movants’ request for full intervention be denied.

On February 22, 2013, Movants filed a reply memorandum in support of their request for intervention. Movants contend that they have fully set forth grounds satisfying their request. Movants state that they have expertise that would assist in the evaluation of whether the proposed rate increase is fair, just, and reasonable in light of other resource options for reducing impacts to ratepayers. Movants further state that they have a special interest in this proceeding to promote energy efficiency, peak-demand reduction, renewable energy, and cost-effective low-carbon energy sources, and that their special interest is not otherwise adequately represented. Movants assert that their special interest is relevant in rate matters, citing to the final order in Case No. 2012-00222.<sup>5</sup> Movants argue that their intervention would not unduly complicate and disrupt this proceeding in light of their ability to conduct a robust examination of the reasonableness of Big Rivers’ proposed rate increase and whether Big Rivers has identified the “lowest cost mix of supply- and demand-side resources.”

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<sup>4</sup> Big Rivers Electric Corporation's Response to Petition of Ben Taylor and Sierra Club for Full Intervention, p. 10.

<sup>5</sup> *Application of Louisville Gas & Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge* (Ky. PSC Sept. 7, 2012).

In analyzing the instant petition to intervene, the Commission finds that the only person that has a statutory right to intervene is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.<sup>6</sup> In the recent unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention, but that discretion is not unlimited. The Court then enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility, as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 4(11)(b) requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In reviewing the petition to intervene, we find that Mr. Taylor is a customer of Kenergy Corp., which is one of three distribution cooperatives that own and purchase power from Big Rivers. In applying the statutory limitations applicable to intervention, the Commission further finds that Mr. Taylor, as a customer in the Big Rivers' system, has an interest in the rates which are the subject of this application. Although the Sierra Club lacks that interest on its own behalf because it is not a Big Rivers' customer, it is

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<sup>6</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

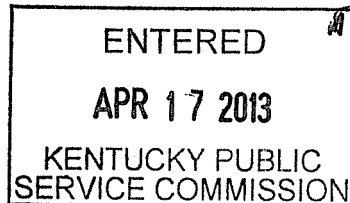
requesting to intervene on behalf of Mr. Taylor who is a customer in the Big Rivers' system. To the extent that Movants seek to address issues that impact the rates of Big Rivers, such as whether Big Rivers has fully considered all reasonable options to mitigate the cost impacts of the loss of a significant load, including generating unit retirements and increased demand-side management efforts, those issues are within the scope of the Commission's jurisdiction and this proceeding. Thus, Movants have an interest in the rates of Big Rivers and in this proceeding, and that interest is sufficient to satisfy the statutory limitation for intervention under KRS 278.040(2).

With respect to the regulatory limitation upon intervention as set forth in 807 KAR 5:001, Section 4(11)(b), the Commission is not persuaded by Movants' claims that they have a special interest that is not otherwise adequately represented. While Movants certainly have an interest in Big Rivers' rates being fair, just, and reasonable, they have not established how their interest in this issue differs from the interest of all other Big Rivers' customers or how the AG's representation is not adequate to protect their interest.

The Commission is, however, persuaded that the Sierra Club, acting on behalf of Mr. Taylor, does possess sufficient expertise on issues that are within the scope of this base rate proceeding, such as whether Big Rivers' proposed rate increase is reasonable in light of all available alternatives to mitigating the loss of a significant load. Therefore, the Commission finds that intervention by Movants is likely to present issues or develop facts that will assist in the review of Big Rivers' rate application without unduly complicating or disrupting the review.

IT IS THEREFORE ORDERED that Movants' petition for full intervention is granted.

By the Commission



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