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Comments to Kentucky Public Service Commission Concerning Big Rivers Electric Corporation Power Purchase Agreement with the Kentucky Municipal Energy Agency

Case No. 2016-00306

These comments are submitted on behalf of the Kentucky Resources Council and EnvisionFranklinCounty. The Kentucky Resources Council, Inc. is a nonprofit membership corporation headquartered in Frankfort, Kentucky. EnvisionFranklinCounty is a citizen's organization in Franklin County, Kentucky that promotes a healthy, beautiful, and thriving community and encourages development that results in good relationships among people, the land and future generations. Both organizations have many members who are electricity customers and ratepayers of the Frankfort Plant Board (FPB).

We are writing to ask that the PSC deny the request from Big Rivers Electric Corporation to maintain the confidentiality of their Power Purchase Agreement (PPA) with the Kentucky Municipal Energy Agency. This power contract could impact thousands of Kentucky ratepayers among the three Cooperatives supplied by Big Rivers, as well as the nine municipal electric utilities who have committed to purchasing power through the KyMEA. It is in the public interest that the terms of this contract be made publicly available. While we recognize that the PSC does not have jurisdiction over the municipal utilities who are members of the KyMEA, the terms of this contract appear to affect the ratepayers served by Jackson Purchase, Meade County RECC, and Kenergy, each of whom purchase power from Big Rivers Electric.

EnvisionFranklinCounty and the KRC have been working to understand the implications of the power contract between the KyMEA and the FPB, which includes the PPA between KyMEA and Big Rivers

Electric. We believe our comments have a bearing onthe PSC's proceedings in this case, No. 2016-00306. We are concerned that the extensive redactions of material terms of the contract hinder independent public review and scrutiny of the terms, making it near-impossible to determine whether the participation of the FPB in an agreement with KyMEA to purchase power under the contract is in the best interest of FPB ratepayers, and the degree to which the contract creates financial exposure to the FPB's ratepayers and community. Such risks could also impact the customers of Jackson Purchase, Meade County RECC and Kenergy, for whom the PSC has an interest.

In July 2016 the Kentucky Municipal Energy Agency (KyMEA) presented an "All-Requirements" (AR) power supply contract to the Frankfort Plant Board (FPB). We understand that the same contract was presented to eight other municipal electric utilities in Kentucky. The contract included 100 MW of coal-fired capacity from Big Rivers Electric Corporation, 90 MW of natural gas peaking capacity from Paducah Power Systems (PPS), and 100 MW of coal-fired capacity from Illinois Power Marketing Company (IPMC). The proposed AR contract was presented to the FPB board by consultants working for the KyMEA during the regularly-scheduled July board meeting and was presented as a finished product. The board was asked to vote to approve the contract at their subsequent board meeting in August 2016.

The July 2016 FPB board meeting was the first time that the public was presented with any specific information about the AR contract, and no process was provided for public review or scrutiny of the contract. Prior to the vote on August 16 the AR contract was not made available to the public for their review, nor did the FPB, to our knowledge, secure or conduct an independent analysis of the contract and its effects on FPB ratepayers. The only analysis of the contract offered to the FPB board and community was that presented by nFront Consulting, the consultants for the KyMEA, who we understand to have developed the contract. (On August 19 Andy McDonald submitted an Open Records Request to the FPB which requested the following records: "KyMEA All-Requirements Contract, any analysis performed by any party for the FPB regarding the contract." The documents provided did not include any independent analysis of the contract apart from documents by nFront Consulting.)

The lack of transparency of this process contrasts with the PSC rate-setting process for Investor-Owned Utilities and for Cooperatives, in which all interested parties – from low-income consumers to large industrial customers, from commercial businesses to environmental advocacy groups, and the Attorney General's office, can review in detail every aspect of proposed power contracts in order to be assured that the decisions are in the best interests of the ratepayers and represent the least-cost option. The process by which municipal utilities conduct their business and enter into contracts that obligate ratepayers, should be no less robust and no less transparent.

On the day prior to the vote on the AR contract, EnvisionFranklinCounty submitted a letter to the FPB requesting that they delay the vote on the contract to allow more time for public scrutiny of the agreement. This letter was also shared with the Frankfort City Commission and the Franklin County Fiscal Court. The KRC also submitted a letter in support of EnvisionFranklinCounty's request. During the board meeting on August 16 nine members of the community made public comments, requesting a delay of the vote. Earlier that day the KyMEA consultants met with members of the Frankfort City Commission and Franklin County Fiscal Court, arguing for approval of the contract (according to people who attended the meetings). After a three hour board meeting and another lengthy explanation of the contract from the KyMEA, the board approved the contract in a 3-2 vote.

EnvisionFranklinCounty and KRC have several serious concerns with the process by which the AR contract was presented and approved.

- The process by which the contract was presented to the FPB did not enable ratepayers and the community to independently review and evaluate the contract. The original AR contract and associated PPA's were not made available to the public prior to the vote.
- The FPB did not conduct an independent review of the contract to evaluate whether it represented the best option for the FPB and ratepayers. The FPB relied exclusively on the analysis provided by the KyMEA, which was the party selling the contract to the FPB.
- Approval of the contract was expedited based on arguments from the FPB staff and KyMEA that any delay would lead to negative financial consequences.
- To our knowledge the FPB did not evaluate alternative power supply options independent of the KyMEA.

We are concerned that absent opportunity to scrutinize the material contract terms, the FPB ratepayers cannot be assured that this contract represent the best or least cost option for the FPB's ratepayers. To quote from the letter submitted by EnvisionFranklinCounty to the FPB board on August 15, 2016:

> We are concerned that this contract, which includes a 10-year commitment to coal power from Big Rivers Electric, involves major financial risks for the FPB and community.
>
> The energy sector is in a period of rapid change, with increasing regulation of coal, major changes in natural gas markets, and rapidly expanding renewable energy use. A series of significant environmental regulations have begun to impact the coal industry and are causing either massive investment in pollution control technologies or the closure of coal plants. The KyMEA should answer what impact the following regulations will have on the FPB's rates over the life of this contract.
>
> 1- What impact will the EPA's Mercury Rule have on our rates?
>
> 2- What impact will new water protection regulations (the "ELG" rule) have on our rates?
>
> 3- How will coal ash disposal regulations impact our rates?
>
> 4- What impact could carbon regulation (via the Clean Power Plan) have on our rates?
>
> Big Rivers Electric has the highest rate of carbon emissions of any utility in the country.[1] This heightens our concern over the risks of committing to them through 2029. According to their website, Big Rivers has not yet decided how they will comply with the ELG water toxics rule or what it will cost. However, Vectren, a utility serving Evansville, Indiana, is facing $230 million in compliance costs with the ELG rule. This at least raises the possibility that Big Rivers' costs could be substantial and would likely be passed on to their customers.[2] "[3]

We are also concerned that terms of the AR contract could create impediments to the development of energy efficiency, conservation, and renewable energy within the FPB's portfolio and community. Energy efficiency and conservation are widely recognized as the least-cost source of energy and the cost of renewables has been declining steadily for many years. We are concerned that this contract, which commits the FPB to coal and natural gas through 2029, might preclude more economical opportunities in the years to come.

Following the FPB's vote to approve the AR contract, EnvisionFranklinCounty, in partnership with the Kentucky Conservation Foundation, hired an independent consultant, Synapse Energy Economics, to do what the FPB should have, which is to seek independent analysis ofthe contract. Synapse was tasked with assessing how the contract affects the FPB's prospects of using renewable energy and energy efficiency over the next 13-plus years (the term of the contract) and the relative rate impacts and financial risks of this contract versus other options the FPB might have.

Synapse's analysis is being frustratedby the significant number ofredactions in the Big Rivers-KyMEA PPA. In a letter to EnvisionFranklinCounty and the Kentucky Conservation Foundation, dated October 17, 2016, Synapse's Sarah Jackson wrote:

> Among these documents, the PPA with Big Rivers Electric has been extensively redacted, to an extent that limits our ability to complete the analysis that you have tasked us with. The KyMEA provided a cover letter accompanying the PPA which stated that Big Rivers chose to redact information which they deemed to be confidential, to prevent their competitors from gaining a competitive advantage. The information that Big Rivers has redacted includes not only prices but entire sections, section headings, headings within the table of contents, entire pages, and entire Exhibits at the end of the PPA. This contrasts with the PPAs from both PPS and IPMC, in which only specific pricing figures are redacted.
>
> We find this degree of secrecy to be unwarranted, especially in light of the disclosures made by the other utilities. We encourage you to ask the FPB and the KyMEA to speak with Big Rivers Electric and urge them to release the full, non-redacted, original version of the PPA, so that there can be a full and open assessment of the terms of contract. They should at least make public everything that was made available in the other two PPA's—namely everything except the prices.
>
> If we cannot see the original PPA, we would ask Big Rivers to provide the following information:
>
> 1) At a bare minimum, section headings, definitions, and exhibit names should be unredacted.
>
> 2) Please unredact the "term" section.
>
> 3) Please unredact the "dispute resolution" section.
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> 4) How are the prices of capacity and energy determined? Please explain in detail. For example, please explain if, and if so, how anticipated capital expenditures

(such as those required for environmental compliance) are factored into the setting of prices.

5) How much capacity is being purchased? Please provide if it is fixed or variable and how the amount is determined.

6) Can the buyer decrease the capacity purchased before the end of the contract? If so, at what point and what is required to do so? Are there any penalties and other consequences for doing so?

7) What is the consequence for the buyer if they do not use the full capacity that they have contracted for in a particular billing cycle?

8) How much energy is being purchased? Please provide if it is fixed or variable and how the amount is determined.

9) What is the consequence for the buyer if they do not use all of the energy that they have contracted for in a particular billing cycle?

10) Can the buyer decrease the energy purchased before the end of the contract? If so, at what point and what is required to do so? Are there any penalties and other consequences for doing so?

11) Which of the seller's generating assets would provide capacity and energy?

12) Under what conditions could the seller or buyer terminate the contract?

13) Under what conditions could the seller or buyer amend the contract prices or volumes procured?

In lieu of the original, non-redacted PPA, we could work with answers to these specific questions from Big Rivers. However, that solution is less than ideal. You are seeking an independent evaluation of this contract and its implications for the FPB's ratepayers and community. If we are forced to rely only on selected portions of the contract that Big Rivers chooses to show us, our analysis of the contract will be limited. The specific language used in contracts makes a difference. It would be much better if we could see the text for ourselves, as opposed to depending on Big Rivers to interpret the contract for us.[4]

Absent disclosure of the terms identified by Synapse Energy Economics, FPB ratepayers, and those of Jackson Purchase, Meade County RECC, and Kenergy cannot determine whether the contract protects their interests. The request for confidentiality from Big Rivers appears overbroad and denies their electric customers the right to evaluate the benefits and risks of their power supply options. If the PSC allows Big Rivers to hold the many terms and conditions redacted by Big Rivers from the PPA contract confidential it would set a poor precedent. Secrecy concerning the material terms of power contracts involving regulated utilities, as well as publicly-owned municipal utilities, is not in the public interest. Without an open, transparent review of such contracts, no one can defend the position that these contracts represent the best and least cost option for ratepayers.

We ask that you deny Big Rivers Electric's request for confidentiality at the earliest possible date and make the original, unredacted Power Purchase Agreement between Big Rivers and the KyMEA available for review by the public or in the alternative, that only those terms that merit confidential business information status be allowed to be redacted.

Sincerely,

Andy McDonald

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Kentucky Resources Council

Andy McDonald
EnvisionFranklinCounty

References

[1] From the Evansville Courier & Press: http://archive.courierpress.com/news/big-rivers-has-nations-highest-rate-of-carbon-emissions-report-ep-1191898320-324867481.html

[2] The US EPA approved the ELG Rule in 2015 to limit toxic water pollution from the wastewater from power plants. Vectren, a utility serving Evansville, Indiana with a coal power plant, is facing $230 million in costs to comply with the ELG Rule. Big Rivers Electric has not announced its cost for compliance with the ELG Rule. http://content.sierraclub.org/press-releases/2016/07/sierra-club-calls-vectren-clean-energy-transition-plan

[3] Letter from EnvisionFranklinCounty to Mr. Ralph Ludwig, August 15, 2016.

[4] Letter from Sarah Jackson, Synapse Energy Economics, Inc. to EnvisionFranklinCounty et al., October 17, 2016.