

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)	
CORPORATION FOR TERMINATION OF)	CASE NO.
CONTRACTS AND A DECLARATORY ORDER)	2018-00146
AND FOR AUTHORITY TO ESTABLISH A)	
REGULATORY ASSET)	

ORDER

The matter is before the Commission upon a motion filed by Kentucky Industrial Utility Customers, Inc. (KIUC), requesting an Order compelling Big Rivers Electric Corporation (BREC) to respond to KIUC's First Set of Data Requests, Items 18–24 and 26–29. KIUC also requests that the Commission direct BREC to amend its confidentiality agreement in this matter by deleting paragraph 7 of the agreement, which allows BREC to unilaterally address potential breaches of the agreement. In accordance with the Commission's Order of July 11, 2018, KIUC and BREC each filed briefs in support of their respective positions on July 20, 2018. A hearing for the purpose of taking oral arguments on KIUC's motion was held on July 25, 2018.

DISCUSSION AND FINDINGS

During the July 25, 2018 oral arguments, KIUC withdrew its request to compel BREC to file responses to Items 22, 23, 27 and 28, noting that it was able to glean this information from various confidential BREC filings. Also during the hearing, BREC agreed to provide a response to Item 29 and did so on July 31, 2018. The only discovery items still in dispute are Items 18–21, 24, and 26.

KIUC contends that in regards to the scope of discovery, pursuant to Kentucky Rules of Civil Procedure 26.02(1), “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party” KIUC argues that BREC should be compelled to provide responses to the discovery requests at issue because all of the information sought is highly relevant and directly related to its claims and defenses concerning BREC’s request to establish an \$89.6 million regulatory asset. Therefore, KIUC asserts that BREC should be compelled to provide responses to the identified questions.

Specifically, KIUC contends that Items 18–21 request information from BREC concerning the current deferred depreciation regulatory asset, gross plant, and accumulated depreciation for the Coleman and Wilson units at the end of each month since December 2016. KIUC asserts that this information is necessary in order for it to assess the total current outstanding deferral that BREC’S customers may have to pay in a future rate proceeding. KIUC also contends that Item 24 seeks information on the monthly gross plant and accumulated depreciation for each of BREC’s generating plants, excluding Coleman and Wilson, since December 2016. KIUC states that BREC provided only information for Station Two. KIUC avers that this information is relevant to its claims because the revenues to recover the depreciation expense provides positive cash flows, and because the depreciation expense is included in several relevant credit metrics used for ratemaking purposes and monitored by BREC’s lenders. Lastly, KIUC maintains that Item 26 relates to the potential impact on customer rates if BREC is authorized to defer the \$89.6 million. KIUC argues that this information is relevant when considering whether

to approve BREC's deferral request and that such information should be readily available to BREC.

BREC argues that KIUC is improperly requesting discovery information on speculative rate issues that are not part of this proceeding. BREC contends that if the Commission grants BREC's request to establish the approximately \$89.6 million regulatory asset then KIUC would have ample opportunity to litigate whether BREC should be allowed to recover these expenses in BREC's next base rate case. Consequently, BREC states that KIUC is attempting to turn this case into a rate case, but only on a single issue, in order for KIUC to prevent BREC from ever having the chance to recover the expenses associated with the regulatory asset in the next rate case.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the subject discovery requests may lead to information regarding the reasonableness of BREC's request to establish a regulatory asset. Accordingly, the information should be produced by BREC. The Commission further finds that the controversy surrounding the confidentiality agreement is moot given that KIUC has already signed the agreement. The Commission, however, finds that the provisions of paragraph 7 of BREC's confidentiality agreement with KIUC are unreasonable and the Commission will not enforce the language of paragraph 7 of that agreement. Because the information required to be produced by this Order was not available to the intervenors prior to the deadline for issuing supplemental data requests to BREC, the Commission finds that the current procedural schedule should be revised to allow the intervenors an opportunity to conduct limited additional discovery on the issue related to BREC's request to establish a regulatory asset. Lastly, as indicated at the July 25, 2018 hearing, the

Commission will issue a separate interim order addressing BREC's declaratory requests associated with the economic viability of the Station Two Generating Station and the termination of the contracts associated with the Station Two Generating Station. The remaining issue regarding BREC's request to establish a regulatory asset will be bifurcated and addressed separately.

IT IS THEREFORE ORDERED that:

1. KIUC's Motion to Compel Discovery Responses is granted as it relates to Items 18–21, 24, and 26 of KIUC's First Set of Data Requests.

2. KIUC's Motion to Compel Discovery Responses is denied, as moot, with respect to Items 22, 23, 27, 28, and 29 of KIUC's First Set of Data Requests.

3. Within three days of the date of this Order, BREC shall file the responses to Items 18–21, 24, and 26 of KIUC's First Set of Data Requests.

4. KIUC's request to direct BREC to amend the confidentiality agreement is denied as moot.

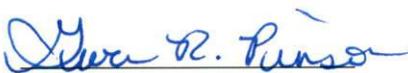
5. The amended procedural schedule set forth in the Appendix to this Order shall be followed in this case.

6. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2018-00146 DATED **AUG 13 2018**

Supplemental requests for information to BREC relating to
BREC's request for a regulatory asset shall be
filed no later than 08/22/18

BREC shall file responses to the limited supplemental
requests for information no later than 08/31/18

Requests for information to Intervenors
shall be filed no later than..... 09/10/18

Intervenors shall file responses to requests
for information no later than..... 09/19/18

BREC shall file rebuttal testimony no later than... 09/28/18

Requests for information on BREC's rebuttal testimony
shall be filed no later than..... 10/08/18

BREC's responses to requests for information on its
rebuttal testimony shall be filed no later than..... 10/18/18

BREC or any Intervenor shall request either a hearing or that the
case be submitted for decision based on the record no later than..... 10/25/18

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