

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	CASE NO.
ELECTRIC CORPORATION FOR ENFORCEMENT)	2021-00378
OF COMMISSION ORDER)	

ORDER

Big Rivers Electric Corporation (BREC) filed an application pursuant to 807 KAR 5:001, Section 19, and KRS 278.030, 278.040, 278.200, and 278.390 requesting the Commission use its discretionary authority granted under KRS 278.390 to enforce its final Order in Case No. 2019-00269 against the city of Henderson and Henderson Utility Commission (collectively, Henderson) through application to Franklin Circuit Court.¹ On October 11, 2021, the Commission, on its own motion, placed this matter in abeyance pending additional orders from the Franklin Circuit Court,² which is currently considering an appeal of Case No. 2019-00269 in Civil Action No. 21-CI-00667.³ On August 1, 2023, because the Franklin Circuit Court had not issued an order on the appeal and due to passage of time and potential change in circumstances, the Commission, on its own

¹ Case No. 2019-00269, *Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (Ky. PSC Aug. 2, 2021).

² Order (Ky. PSC Oct. 11, 2021).

³ *City of Henderson, Kentucky, and Henderson Utility Commission, d/b/a Henderson Municipal Power & Light v. Kentucky Public Service Commission, et al.*, Franklin Circuit Div. 1, Civil Action No. 21-CI-00667, Complaint (Sept. 15, 2021).

motion, found that BREC and Henderson, either jointly or individually, should provide an update on their positions regarding whether this matter should remain in abeyance.⁴

In response to the Commission's August 1, 2023 Order, Henderson stated the case should remain in abeyance pending an order from the Franklin Circuit Court on the appeal, because the court could find that the Commission does not have jurisdiction to determine the amounts owed under the Station Two Contracts, which were at issue in Case No. 2019-00269, or could reverse the Commission's substantive determinations regarding how amounts owed should be determined. Henderson argued that opening another investigation now would be inefficient and would not be in the interest of judicial economy.⁵

BREC stated that the Commission's rationale for holding the case in abeyance is no longer applicable, because the application was "held in abeyance pending a ruling from the Franklin Circuit Court on Henderson's motion to dismiss BREC's counterclaim filed in Civil Action No. 21-CI-00667" and BREC withdrew its counterclaim.⁶ Further, BREC claimed that Henderson has still not paid all of the amounts due pursuant to the Order in Case No. Case No. 2019-00269. BREC argued that neither the appeal nor the abeyance order stayed the effect of the Order in Case No. 2019-00269 and Henderson's continuing failure to comply with the Order is harming BREC and its members.⁷

⁴ Order (Ky. PSC Aug. 1, 2023).

⁵ Henderson's Position Statement Regarding Continued Abeyance (filed Aug. 22, 2023).

⁶ BREC's Statement of Position (filed Aug. 22, 2023) at 4.

⁷ BREC's Statement of Position at 4-11; see *also* BREC's Response to Henderson's Position Statement (filed Sept. 5, 2023) (in which BREC stated that Henderson is required to comply with the final Order in Case No. 2019-00269 pending appeal and encouraged the Commission to exercise its discretionary authority authorized in KRS 278.390).

Having reviewed the parties responses to the Commission's August 1, 2023 Order, and being otherwise sufficiently advised, the Commission finds that this matter should remain in abeyance pending an order from the Franklin Circuit Court or some other material change in circumstances. As noted by Henderson, a decision by the court, particularly as to the Commission's jurisdiction, could have implications in this matter, and the Commission is concerned that further substantive orders in this matter and appeals of those orders could delay final orders from the Franklin Circuit Court, which would not be in the interest of any parties.⁸ Further, there is no evidence that immediate action in this matter is necessary to prevent irreparable harm to BREC or Henderson.

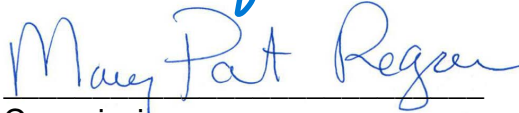
IT IS THEREFORE ORDERED that this matter shall remain in abeyance pending further order by the Commission, upon its own motion or a motion of the parties, removing it from abeyance.

⁸ A related case was fully briefed and submitted to the Franklin Circuit Court in 2018, but it was placed in abeyance, in part, pending the resolution of Case No. 2019-00269. That appeal, which was consolidated with the appeal of Case No. 2019-00269, is pending resolution by the Franklin Circuit Court along with the appeal of Case No. 2019-00269.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

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APR 19 2024 bsb
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