

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR A GENERAL ADJUSTMENT IN RATES SUPPORTED BY FULLY FORECASTED TEST PERIOD)	CASE NO.
)	2013-00199
)	
)	

ORDER REGARDING CONFIDENTIAL TREATMENT

On September 3, 2013, Big Rivers Electric Corporation (“Movant”) filed a motion, pursuant to 807 KAR 5:001, Section 13, requesting that certain materials filed with the Commission be afforded confidential treatment and not be placed in the public record subject to public inspection.

In support of its motion, Movant states that the information it is requesting to be held confidential is contained in certain of its responses to the discovery requests of the Kentucky Industrial Utility Customers, Inc. (“KIUC”), the Office of the Attorney General (“AG”), Ben Taylor and the Sierra Club (collectively “Sierra Club”), and Commission Staff. In particular, Movant seeks confidential protection for the following information:

- Responses to KIUC’s First Request for Information, Items 8, 12, 13, 14, 21, 22, 29, 39, 40, 42, 43, 61, and 67 (“KIUC 8,” “KIUC 12,” “KIUC 13,” “KIUC 14,” “KIUC 21,” “KIUC 22,” “KIUC 29,” “KIUC 39,” “KIUC 40,” “KIUC 42,” “KIUC 43,” “KIUC 61,” and “KIUC 67” respectively).
- Responses to AG’s Initial Request for Information, Items 5, 41, 45, 52, 53, 57, 73, 76, 86, 95, 98, 101, 102, 105, 106, 108, 121, 125, 126, 127, 129, 139, 141, 146, 154, 158, 163, 164, 196, 202, 226, 227, 237, 245, 265, 279, 285, 287, and 292 (“AG 5,”

“AG 41,” “AG 45,” “AG 52,” “AG 53,” “AG 57,” “AG 73,” “AG 76,” “AG 86,” “AG 95,” “AG 98,” “AG 101,” “AG 102,” “AG 105,” “AG 106,” “AG 108,” “AG 121,” “AG 125,” “AG 126,” “AG 127,” “AG 129,” “AG 139,” “AG 141,” “AG 146,” “AG 154,” “AG 158,” “AG 163,” “AG 164,” “AG 196,” “AG 202,” “AG 226,” “AG 227,” “AG 237,” “AG 245,” “AG 265,” “AG 279,” “AG 285,” “AG 287,” and “AG 292” respectively).

- Responses to Commission Staff’s Second Request for Information, Items 14, 15, 16, 19, 22, 30, 33, and 34 (“PSC 2-14,” “PSC 2-15,” “PSC 2-16,” “PSC 2-19,” “PSC 2-22,” “PSC 2-30,” “PSC 2-33,” and “PSC 2-34” respectively).
- Sierra Club’s Initial Request for information, Items 20, 25, and 26 (“SC 20,” “SC 25,” and “SC 26” respectively).

The information is more particularly described as: (KIUC 8) – concerning details regarding the possible sale of generating assets; (KIUC 12) – concerning data regarding projected fuel purchase volume and costs; (KIUC 13) – concerning projections of market power prices; (KIUC 14) – concerning projected off-system sales prices, volumes and revenue; (KIUC 21) – concerning projected operation and maintenance (“O & M”) costs; (KIUC 22) concerning projected O & M costs; (KIUC 29) – concerning planned capital expenditures; (KIUC 39) – concerning proprietary generating plant performance benchmarking data, which data is the proprietary and confidential work product of Navigant Consulting; (KIUC 40) – concerning Big Rivers’ planned outage schedules; (KIUC 42) – concerning attachments to the response that includes planned capital expenditures; (KIUC 43) – concerning projected variable O & M costs, including the costs of fuel, reagent and disposal; (KIUC 61) – concerning projected variable O & M costs, including the cost of emission allowances; (KIUC 67) – concerning projected O

& M cost information; (AG 5) – concerning data regarding planned outages, projected off-system sales volumes and revenues, projected margins and projected O & M expenses; (AG 41) – concerning communications protected by one or more confidentiality agreements, commercially sensitive negotiations between Alcan and Big Rivers regarding the supply of electric power to the Sebree smelter, planned outages, and a confidential proposal presented by ACES for short-term electric supply call options; (AG 45) – concerning O & M costs; (AG 52) – concerning minutes of Big Rivers’ Internal Management Committee meetings; (AG 53) – concerning minutes from meetings of the Big Rivers Board of Directors; (AG 57) – concerning details regarding the possible sale of generating assets; (AG 73) – concerning a run of Big Rivers’ Financial Model which contains, among other information, data regarding off-system sales, O & M costs, margins, and capital expenditures; (AG 76) – concerning O & M cost information; (AG 86) – concerning projected off-system sales, O & M costs, and margins; (AG 95) – concerning projected electric energy prices and sales revenues; (AG 98) – concerning production cost model runs; (AG 101) – concerning Big Rivers’ planned outage schedule; (AG 102) – concerning Big Rivers’ projected capital expenditures; (AG 105) – concerning projected off-system sales volumes and fixed departmental expenses; (AG 106) – concerning projected off-system sales volumes and fixed departmental expenses; (AG 108) – concerning critical energy infrastructure information regarding the reliability of Big Rivers’ transmission system; (AG 121) – concerning studies regarding Big Rivers’ transmission system and the regional transmission system; (AG 125) – concerning information regarding off-system sales; (AG 126) – concerning confidential bilateral agreements between Big Rivers and ACES

Power Marketing; (AG 127) – concerning projected capital expenditures; (AG 129) – concerning a detailed map of Big Rivers’ transmission system; (AG 139) – concerning inputs to and runs of Big Rivers’ load forecast, which is the proprietary and confidential work product of GDA Associates; (AG 141) – concerning individual customer usage data; (AG 146) – concerning inputs to and runs of Big Rivers’ load forecast; (AG 154) – concerning projected O & M costs; (AG 158) concerning outputs of Big Rivers’ financial model; (AG 163) concerning inputs to and runs of Big Rivers’ load forecast; (AG 164) – concerning inputs to and runs of Big Rivers’ load forecast; (AG 196) – concerning projected O & M expenses; (AG 202) – concerning projected O & M expenses; (AG 226) – concerning a run of Big Rivers’ load forecast; (AG 227) – concerning inputs to Big Rivers’ Financial Model; (AG 237) – concerning sensitive internal financial documents, including Big Rivers’ general ledger; (AG 245) – concerning proprietary and confidential compensation studies provided by Towers Watson and the National Rural Electric Cooperative Association; (AG 265) – concerning internal financial documents, including Big Rivers’ general ledger; (AG 279) – concerning projected O & M expenses; (AG 285) – concerning a confidential proposal presented by GDS Associates; (AG 287) – concerning projections of off-system sales, O & M costs, and margins; (AG 292) – concerning planned capital expenditures and plant additions; (PSC 2-14) – concerning power price forecasts, variable O & M costs, and off-system sales; (PSC 2-15) – concerning information regarding confidential negotiations for the sale of generating assets; (PSC 2-16) – concerning details regarding negotiations for off-system sales and a possible sale of generating assets; (PSC 2-19) – concerning information regarding projections for capital expenditures, purchased power, variable O & M costs, off-system

sales, outages, fixed departmental expenses, and electric energy revenues; (PSC 2-22) – concerning information regarding projections for off-system sales, variable O & M costs, capital expenditures, and margin; (PSC 2-30) – concerning projections for production costs; (PSC 2-33) – concerning projections for O & M costs; (PSC 2-34) – concerning projected market metrics regarding off-system sales; (SC 20 and SC 25) – concerning the proprietary and confidential work product of GDS Associates; and (SC 26) – concerning projected capital expenditures and information regarding possible sales of generating assets.

On September 16, 2013, KIUC filed a motion¹ arguing that certain of Movant's response AG 158 should not be kept confidential. KIUC contends that the response contains projected rate information for rural and large industrial customers forecasted by Movant over a 15-year period, from 2012 through 2027, and that public disclosure of such information would not have a detrimental impact on Movant's ability to compete in the wholesale power markets or the credit markets. KIUC argues that public disclosure of the rate impact information is critical to the public's understanding of Movant's rate request. KIUC also argues that Movant has already publicly disclosed some of the information that Movant seeks to have protected. Lastly, KIUC contends that the Commission's statutes and regulations recognize a customer's right to know the total impact of a utility's proposed rate increase. KIUC cites to KRS 278.180 and 807 KAR 5:001, Section 17(4)(b) and (c), for the proposition that a utility is required to provide the public with accurate information regarding a proposed rate increase.

¹ Although KIUC styled its pleading as a motion, the Commission will treat this as a response to Movants' confidentiality motion.

Having carefully considered the motions and the materials at issue, the Commission finds that:

1. Portions of the responses to the AG 158, which contains Movant's projected rates for rural and large industrial customers in the years 2012 through 2027, do not meet the criteria for confidential treatment and are not exempted from public disclosure. Specifically, the disclosure of information contained on page 11 of the response under the line heading labeled "Rural Rate (\$ per MWH)"² and page 12 of the response under the line heading labeled "Large Industrial Rate (\$ per MWH),"³ would not result in a competitive disadvantage to Movant. The materials in all other portions of Movant's response to AG 158, *e.g.*, the forecasted sales volumes and revenues at the top and bottom of both pages 11 and 12, meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c), and 807 KAR 5:001, Section 13.

2. All other materials for which Movant seeks confidential treatment meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c), and 807 KAR 5:001, Section 13.

3. With the exception of the information contained in Movant's responses to AG 108, AG 121, and AG 129, the materials for which Movant seeks confidential treatment should not be placed in the public record or made available for public inspection for a period of five years from the date of the instant petition.

² The ten lines below this heading, ending with the line labeled "Rate."

³ The nine lines below this heading, ending with the line labeled "Rate."

4. With respect to the information contained in Movant's responses to AG 108, AG 121, and AG 129, which concerned Movant's system reliability and system mapping information, these materials that Movant is seeking confidential treatment should not be placed in the public record or made available for inspection indefinitely so long as the Movant's transmission system remains in place.

IT IS THEREFORE ORDERED that:

1. Movant's motion for confidential protection is hereby granted in part and denied in part.

2. Movant's request for confidential treatment of its response to AG 158, under the line headings labeled "Rural Rate (\$ per MWH)" and "Large Industrial Rate (\$ per MWH)" as contained on pages 11 and 12 respectively of the response is denied.

3. Movant's responses to AG 108, AG 121, and AG 129 shall not be placed in the public record nor made available for public inspection for an indefinite period so long as the Movant's transmission system remains in place.

4. The remainder of the materials for which Movant seeks confidential treatment shall not be placed in the public record nor made available for public inspection for five years from the date of this Order. At the end of this period, the material shall be placed in the record. The Movant may request the material continue to be treated as confidential but must demonstrate that the material still falls within the exclusions established in KRS 61.878.

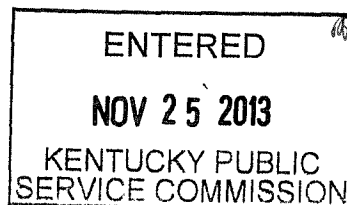
5. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

6. Movant shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

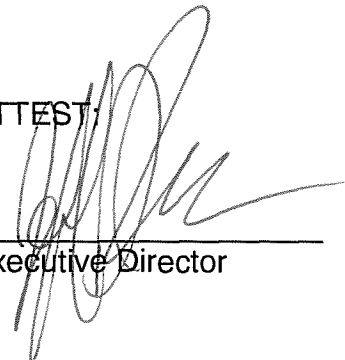
7. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order, the Commission shall notify the Movant in writing and direct Movant to demonstrate within 20 days of its receipt of the notice that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Movant is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. The Commission shall not make the requested materials available for inspection for 20 days following an Order finding that the materials no longer qualify for confidential treatment to allow Movant to seek a remedy afforded by law.

By the Commission



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