

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR A DECLARATORY ORDER)	CASE NO.
)	2016-00278

ORDER

On July 29, 2016, Big Rivers Electric Corporation (“Big Rivers”) filed a petition, pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection for a period of five years to portions of the Direct Testimony of Robert W. Berry (“Berry Testimony”), which was attached as Exhibit 10 to Big Rivers’ application for a declaratory order (“Application”). The designated materials for which confidential protection is requested are on page 15, lines 1 and 17, Exhibit RWB_1; and Exhibit RWB_2 of the Berry Testimony. The materials are more specifically described as variable production cost information for the Station Two generating plant operated by Big Rivers and totals from which the variable production cost information could be readily calculated.

In support of its petition requesting confidential treatment, Big Rivers asserts that the designated materials contain commercially sensitive information that if publicly disclosed would place Big Rivers at a competitive disadvantage. The designated materials provide insight into Big Rivers’ cost of producing power and would indicate the prices at which Big Rivers is willing to buy or sell power. Big Rivers contends that public disclosure of the designated materials would impair Big Rivers’ ability to generate or sell power at competitive rates in the wholesale power markets. Big Rivers further

contends that public disclosure of the designated materials could adversely affect Big Rivers' revenue and margins, which could make Big Rivers appear less creditworthy and thus impair its ability to compete in the credit markets. Lastly, Big Rivers asserts that public disclosure of the designated materials would give its competitors an unfair competitive advantage because they could use the information to potentially underbid Big Rivers in wholesale power transactions. Big Rivers states that the designated materials in Exhibit 10 to the Application are generally recognized as confidential and thus exempt from public disclosure pursuant to KRS 61.878(1)(c).

Having carefully considered the petition and the materials at issue, the Commission finds that the designated materials contained in Exhibit 10 to the Application are records that are generally recognized as confidential or proprietary, and which, if openly disclosed, could result in commercial harm to Big Rivers, and therefore 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.

IT IS THEREFORE ORDERED that:

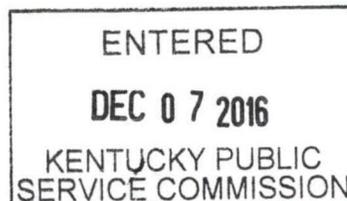
1. Big Rivers' petition for confidential protection for designated material in Exhibit 10 to the Application is granted.
2. The materials set forth in Exhibit 10 to Big Rivers' Application shall not be placed in the public record or made available for public inspection for a period of five years, or until further Orders of this Commission.
3. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

4. Big Rivers shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

5. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then Big Rivers shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Big Rivers is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. 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 in order to allow Big Rivers to seek a remedy afforded by law.

By the Commission



ATTEST:


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