

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On September 12, 2016, Big Rivers Electric Corporation ("Big Rivers") filed a petition, pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection to portions of its responses to Commission Staff's First Request for Information ("Staff's First Request") and its responses to the First Request for Information from the city of Henderson, Kentucky, and Henderson Utility Commission d/b/a Henderson Municipal Power & Light ("Henderson's First Request"). Also on September 12, 2016, Big Rivers filed a motion to deviate from 807 KAR 5:001, Section 13(2)(a)(3), which requires a party requesting confidential treatment to file one copy of the designated information in paper medium with the confidential material redacted, and to file one unredacted copy in paper medium with the confidential material identified by underscoring or highlighting in transparent ink.¹

The designated materials for which confidential protection is requested are more specifically described as the following:

¹ Pursuant to 807 KAR 5:001, Section 13(2)(e), a case conducted by using electronic filing procedures, such as this proceeding, shall comply with procedures established in 807 KAR 5:001, Section 8, except than an unredacted copy of the material for which confidentiality is requested is not to be filed electronically. Therefore, although 807 KAR 5:001, Section 13(2)(a)(3), states that a party shall file ten redacted copies in paper medium of material for which confidentiality is requested, in an electronic case, the filing party would be required to file only one redacted copy in paper medium pursuant to 807 KAR 5:001, Section 8(3).

- Big Rivers' response to Staff's First Request, Item 4, Attachment, pages 3 and 4, which contains variable production costs for energy sold by Big Rivers, and market prices and revenues from the sale of energy purchased and sold by Big Rivers. Big Rivers requests that the designated material contained in its response to Staff's First Request, Item 4, be held confidential for a period of five years.

- Big Rivers' response to Staff's First Request, Item 6.a., which contains invoices submitted by Big Rivers to the city of Henderson that reveal detailed hourly generation from generating units operated by Big Rivers, hourly detail of energy purchased by Big Rivers, hourly energy market prices, and related payment obligations. Big Rivers requests that the designated material contained in its response to Henderson's First Request, Item 6.a., be held confidential for an indefinite period of time.

- Big Rivers' response to Henderson's First Request, Item 12, which is an Excel spreadsheet containing hourly generation detail from generating units operated by Big Rivers, hourly detail of energy purchased and sold by Big Rivers, hourly market price and revenues from the sale of that energy, and the hourly variable cost of producing that energy. Big Rivers requests confidential treatment for the entire spreadsheet because the confidential information is intertwined with non-confidential information, and thus cannot be redacted without breaking formulas or rendering the spreadsheet unusable. Big Rivers requests that the designated material contained in its response to Henderson's First Request, Item 12, be held confidential for a period of five years.

In support of its petition requesting confidential treatment, Big Rivers asserts that the designated materials in its responses to Staff's First Request, Items 4 and 6.a., and Henderson's First Request, Item 12, contain commercially sensitive information that if publicly disclosed would place Big Rivers at a competitive disadvantage, and thus are exempt from public disclosure pursuant to KRS 61.878(1)(c). Big Rivers states that its ability to successfully compete in the wholesale power market is dependent upon its ability to obtain the maximum price for the power it sells and to keep its cost of production as low as possible. Big Rivers contends that the designated materials provide insight into the energy that Big Rivers will have available on an hourly basis, its cost of producing power on an hourly basis, and the prices at which Big Rivers is willing to buy or sell power. Big Rivers argues that public disclosure of the designated materials would impair its ability to generate or sell power at competitive rates in the wholesale power markets, which could adversely affect Big Rivers' revenue and margins. 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.

Also in support of its petition requesting confidential treatment, Big Rivers states that the designated materials in its response to Henderson's First Request, Item 12, contain the city of Henderson's energy usage information, which, if publicly revealed, would constitute an unwarranted invasion of privacy and are records that are generally recognized as confidential and thus exempt from public disclosure pursuant to KRS 61.878(1)(a).

In its motion to deviate from 807 KAR 5:001, Section 13(2)(a)(3), Big Rivers requests to submit its response to Henderson's First Request, Item 12, in electronic media on a CD-ROM in lieu of a copy in paper medium. As a basis for the motion to deviate, Big Rivers states that it cannot redact the confidential information and maintain the spreadsheet's formulas intact.

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

1. The designated materials contained in Big Rivers' responses to Staff's First Request, Items 4 and 6.a., and Henderson's First Request, Item 12, 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.

2. The designated materials contained in Big Rivers' response to Henderson's First Request, Item 12, are records that, if openly disclosed, would constitute an unwarranted invasion of privacy, and therefore meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a).

3. Big Rivers has shown good cause to permit it to deviate from the filing requirements of 807 KAR 5:001, Section 13(2)(a)(3), and its request for a deviation to file its response to Henderson's First Request, Item 12, on CD-ROM only should be granted.

IT IS THEREFORE ORDERED that:

1. Big Rivers' petition for confidential protection for designated material in its responses to Staff's First Request, Items 4 and 6.a., and Henderson's First Request, Item 12, is granted.

2. Big Rivers' motion to deviate from the filing requirements of 807 KAR 5:001, Section 13(2)(a)(3), is granted.

3. The materials set forth in Big Rivers' responses to Staff's First Request, Items 4 and 6.a., 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.

4. The materials set forth in Big Rivers' response to Henderson's First Request, Item 12, shall not be placed in the public record or made available for public inspection for an indefinite period of time, or until further Orders of this Commission.

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

6. Big Rivers 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 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.

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

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Salina R. Mathews".

Executive Director

*Dawn Kelsey
City Attorney
City of Henderson
222 First Street
Henderson, KENTUCKY 42420

*Honorable James M Miller
Attorney at Law
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KENTUCKY 42302-0727

*Honorable John N Hughes
Attorney at Law
124 West Todd Street
Frankfort, KENTUCKY 40601

*Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

*H. Randall Redding
King, Deep & Branaman
127 North Main Street
P.O. Box 43
Henderson, KENTUCKY 42419

*Sharon W Farmer
King, Deep & Branaman
127 North Main Street
P.O. Box 43
Henderson, KENTUCKY 42419