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September 12, 2017

VIA FEDERAL EXPRESS

John S. Lyons
Acting Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

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SEP 13 2017

PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: An Examination of the Application of
the Fuel Adjustment Clause of Big Rivers Electric Corporation
from November 1, 2016 through April 30, 2017*
Case No. 2017-00287

Dear Mr. Lyons:

Enclosed for filing in the above-referenced matter are: (i) an original and ten copies of Big Rivers' responses to the information requested in the Appendix to the Public Service Commission's August 30, 2017, order in this matter, and (ii) an original and ten (10) copies of a petition for confidential treatment.

I certify that on this date, a copy of this letter, a copy of the responses, and a copy of the petition were served on all parties listed on the attached service list by first-class mail.

Sincerely,

Tyson Kamuf
Counsel for Big Rivers Electric Corporation

TAK/abg

Enclosures

cc: Service List

Service List
PSC Case No. 2017-00287

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SEP 13 2017

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

AN EXAMINATION OF THE APPLICATION OF)	
THE FUEL ADJUSTMENT CLAUSE OF BIG)	CASE NO.
RIVERS ELECTRIC CORPORATION FROM)	2017-00287
NOVEMBER 1, 2016 THROUGH APRIL 30,)	
2017)	

PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL PROTECTION

1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the Public Service Commission of Kentucky (“Commission”), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential protection to certain information contained in Big Rivers’ responses and/or the attachments to Big Rivers’ responses to Items 5 and 19 of the information requested in the Appendix to the Commission’s August 30, 2017, order in this matter (the “Confidential Information”).

2. The Confidential Information consists of information about Big Rivers’ ongoing off-system sales (Item 5 response), information about bids for fuel contracts (Item 19 response), and a bid tabulation sheet (Item 19.b.iv attachment).

3. One (1) copy of the pages containing Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this petition. A copy of those pages, with the Confidential Information redacted, or a sheet noting that the entirety of the pages have been redacted, is being filed with the original and each of the ten (10) copies of Big Rivers’ responses to the information requests filed with this petition. 807 KAR 5:001 Section 13(2)(a)(3).

1 4. This petition and one (1) copy of Big Rivers' responses with the Confidential
2 Information redacted have been served on all parties to this proceeding. 807 KAR 5:001 Section
3 13(2)(b).

4 5. If and to the extent the Confidential Information becomes generally available to
5 the public, whether through filings required by other agencies or otherwise, Big Rivers will
6 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
7 13(10)(b).

8 6. As discussed below, the Confidential Information is entitled to confidential
9 protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to
10 an agency or required by an agency to be disclosed to it, generally recognized as confidential or
11 proprietary, which if openly disclosed would permit an unfair commercial advantage to
12 competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1); 807 KAR 5:001
13 Section 13(2)(a)(1). Section I below explains that Big Rivers operates in competitive
14 environments in the wholesale power market and in the credit market. Section II below shows
15 that the Confidential Information is generally recognized as confidential or proprietary. Section
16 III below demonstrates that public disclosure of the Confidential Information would permit an
17 unfair commercial advantage to Big Rivers' competitors.

18 **I. Big Rivers Faces Actual Competition**

19 7. As a generation and transmission cooperative, Big Rivers competes in the
20 wholesale power market. This includes not only the short-term bilateral energy market, the day-
21 ahead and real time energy and ancillary services markets, and the capacity market to which Big
22 Rivers has access by virtue of its membership in Midcontinent Independent System Operator,
23 Inc. ("MISO"), but also forward bilateral long-term agreements and wholesale agreements with

1 utilities and industrial customers. Big Rivers' ability to successfully compete in the market is
2 dependent upon a combination of its ability to: 1) obtain the maximum price for the power it
3 sells, and 2) keep its cost of production as low as possible. Fundamentally, if Big Rivers' cost of
4 producing a unit of power increases, its ability to sell that unit in competition with other utilities
5 is adversely affected.

6 8. Big Rivers also competes for reasonably priced credit in the credit markets, and
7 its ability to compete is directly impacted by its financial results. Lower revenues and any events
8 that adversely affect Big Rivers' margins will adversely affect its financial results and potentially
9 impact the price it pays for credit. A competitor armed with Big Rivers' proprietary and
10 confidential information will be able to increase Big Rivers' costs or decrease Big Rivers'
11 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A utility the size of
12 Big Rivers that operates generation and transmission facilities will always have periodic cash
13 and borrowing requirements for both anticipated and unanticipated needs. Big Rivers expects to
14 be in the credit markets on a regular basis in the future, and it is imperative that Big Rivers
15 improve and maintain its credit profile.

16 9. Accordingly, Big Rivers has competitors in both the power and capital markets,
17 and its Confidential Information should be protected to prevent the imposition of an unfair
18 competitive advantage.

19 **II. The Confidential Information is Generally Recognized as Confidential or**
20 **Proprietary**

21 10. The Confidential Information for which Big Rivers seeks confidential treatment
22 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky
23 law.

1 11. The Confidential Information in the response to Items 5 shows future off-system
2 sales; the information in the response to Item 19 relates to selected bids for fuel contracts; and
3 the Confidential Information in the attachment to Item 19.b.iv is a bid tabulation sheet.

4 12. Public disclosure of the future off-system sales information will give Big Rivers’
5 suppliers, buyers, and competitors insight into when Big Rivers will have power available to sell
6 into the market or when Big Rivers needs power, and the amount of power Big Rivers has to sell
7 or will need. Information about a company’s detailed inner workings is generally recognized as
8 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907
9 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such
10 information concerning the inner workings of a corporation is ‘generally recognized as
11 confidential or proprietary’”). Moreover, the Commission has previously granted confidential
12 treatment to similar information. *See, e.g.,* letter from the Commission dated July 20, 2010, in
13 Administrative Case No. 387 (granting confidential treatment to a list of future scheduled
14 outages, which can give competitors insight into Big Rivers’ wholesale power needs); two letters
15 from the Commission dated December 11, 2012, in *In the Matter of: Application of Big Rivers*
16 *Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of*
17 *its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public*
18 *Convenience and Necessity, and for Authority to Establish a Regulatory Account*, P.S.C. Case
19 No. 2012-00063 (granting confidential treatment to Big Rivers’ off-system sales).

20 13. The Confidential Information contained in Big Rivers’ response to Item 19 and in
21 the attachment thereto relate to a spot and term coal supply solicitation issued by Big Rivers, and
22 it reveals confidential bids supplied by fuel suppliers and Big Rivers’ ranking of those bids, and
23 it gives insight into the internal, confidential bid selection methodology that Big Rivers uses.

1 14. The Commission has often found that similar information relating to competitive
2 bidding is generally recognized as confidential and proprietary. *See, e.g., In the Matter of:*
3 *Application of the Union Light, Heat and Power Company for Confidential Treatment*, Order,
4 P.S.C. Case No. 2003-00054 (August 4, 2003) (finding that bids submitted to a utility were
5 confidential). In fact, the Commission has granted confidential protection to the same type of
6 information that is presented in the bid tabulation sheets when provided by other utilities in cases
7 involving a review of their fuel adjustment clauses. *See, e.g.,* letter from the Commission dated
8 October 23, 2009, granting confidential protection to East Kentucky Power Cooperative, Inc.'s
9 bid tabulation sheet and related information in P.S.C. Case No. 2009-00286; letter from the
10 Commission dated December 11, 2009, granting confidential protection to Kentucky Utilities
11 Company's coal bid analysis procedure in P.S.C. Case No. 2009-00287. The Commission has
12 also granted confidential protection to the bid tabulation sheets that Big Rivers filed in previous
13 reviews of its fuel adjustment clause. *See, e.g.,* letter from the Commission dated May 10, 2010,
14 in P.S.C. Case No. 2009-00510; letter from the Commission dated September 22, 2010, in P.S.C.
15 Case No. 2010-00269. Thus, both the information in the response to Item 19 and the
16 information in the attachment to the response to Item 19 are generally recognized as confidential
17 or proprietary.

18 15. The Confidential Information is not publicly available, is not disseminated within
19 Big Rivers except to those employees and professionals with a legitimate business need to know
20 and act upon the information, and is not disseminated to others without a legitimate need to
21 know and act upon the information. As such, the Confidential Information is generally
22 recognized as confidential and proprietary.

23 **III. Disclosure of the Confidential Information Would Permit an Unfair**
24 **Commercial Advantage to Big Rivers' Competitors**

1 16. Disclosure of the Confidential Information would permit an unfair commercial
2 advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition
3 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
4 competitive injury if that Confidential Information was publicly disclosed.

5 17. In P.S.C. Case No. 2003-00054, the Commission implicitly accepted Union Light,
6 Heat & Power's ("ULH&P") argument that the bidding contractors would not want their bid
7 information publicly disclosed, and that disclosure would reduce the contractor pool available to
8 ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with other gas
9 suppliers. *In the Matter of: Application of the Union Light, Heat and Power Company for*
10 *Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003). Similarly, in *Hoy*
11 *v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found that without
12 protection for confidential information provided to a public agency, "companies would be
13 reluctant to apply for investment tax credits for fear the confidentiality of financial information
14 would be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769
15 (Ky. 1995).

16 18. In Big Rivers' case, if confidential treatment of the bid-related information and
17 the bid tabulation sheets is denied, potential bidders would know that their bids would be
18 publicly disclosed, which could reveal information to their competitors about their
19 competitiveness. Because many companies would be reluctant to have such information
20 disclosed, public disclosure of the bid information would likely suppress the competitive bidding
21 process and reduce the pool of bidders willing to bid to supply Big Rivers' fuel needs, driving up
22 Big Rivers' fuel costs (which could then drive up the cost of credit to Big Rivers) and impairing
23 its ability to compete in the wholesale power market.

1 19. Additionally, in P.S.C. Case No. 2003-00054, ULH&P argued, and the
2 Commission implicitly accepted, that if the bids ULH&P received were publicly disclosed,
3 contractors on future work could use the bids as a benchmark, which would likely lead to the
4 submission of higher bids. *In the Matter of: Application of the Union Light, Heat and Power*
5 *Company for Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003).
6 The Commission also implicitly accepted ULH&P's further argument that the higher bids would
7 lessen ULH&P's ability to compete with other gas suppliers. *Id.*

8 20. In Big Rivers' case, potential market power purchasers could use the information
9 related to Big Rivers' future off-system sales to know when and to the extent Big Rivers is long
10 on power and could use that information to manipulate their bids, leading to lower revenues to
11 Big Rivers and placing it at an unfair competitive disadvantage in the credit markets. Likewise,
12 knowledge of this information would give power producers and marketers with which Big
13 Rivers' competes in the wholesale power market an unfair competitive advantage because they
14 could use that information to potentially underbid Big Rivers in wholesale transactions. It would
15 also give potential suppliers to Big Rivers a competitive advantage because they will be able to
16 manipulate the price of power bid to Big Rivers in order to maximize their revenues, thereby
17 driving up Big Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power
18 and credit markets.

19 21. Accordingly, the public disclosure of the information that Big Rivers seeks to
20 protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers' competitors with an unfair
21 commercial advantage.

22 **IV. Time Period**

1 22. Big Rivers requests that the Confidential Information contained in the response to
2 Items 19 and in the attachment to the response to Item 19.b.iv remain confidential indefinitely
3 because until Big Rivers changes its bid selection methodology, the public disclosure of the
4 information could be used to Big Rivers' competitive disadvantage for the reasons stated above.
5 Big Rivers requests that the Confidential Information contained in the response to Item 5 remain
6 confidential for a period of five (5) years from the date of this petition, which will allow
7 sufficient time for the information to become sufficiently outdated to no longer pose a
8 competitive risk to Big Rivers. 807 KAR 5:001 Section 13(2)(a)(2).

9 **V. Conclusion**

10 23. Based on the foregoing, the Confidential Information is entitled to confidential
11 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due
12 process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v.*
13 *Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

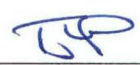
14 WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect
15 as confidential the Confidential Information.

16 On this the 12th day of September, 2017.

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Respectfully submitted,



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