

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION)	
FILING OF WHOLESALE CONTRACTS)	CASE NO.
PURSUANT TO KRS 278.180 AND KAR)	2014-00134
5:011 §13)	

ORDER

On July 16, 2014, Big Rivers Electric Corporation (“Movant” or “Big Rivers”) filed a petition, pursuant to 807 KAR 5:001 § 13, KRS 61.878(1)(c), and KRS 278.160(3), requesting that the Commission grant confidential protection of portions of Movant’s Responses to Commission Staff’s (“Staff”), Kentucky Office of the Attorney General’s (“AG”), and Kentucky Industrial Utility Customers, Inc.’s (“KIUC”) respective Initial Requests for Information (“Initial Request”). Movant requests that its responses to Item 12 of the AG’s Initial Request and Item 4 of KIUC’s Initial Request remain confidential for a period of five years, and that the remainder of the designated information remain confidential for an indefinite period of time. The portions of the responses at issue in this petition include the rates to be paid and contract terms of three Market Based Rate Partial and Full Requirements Agreements (collectively “PPAs”) entered into between Movant and, respectively, Northeast Nebraska Public Power District; the city of Wayne, Nebraska; and the city of Wakefield, Nebraska.

Along with the petition for confidential treatment, Movant also filed a motion for deviation from the requirement in 807 KAR 5:001 § 13 that Movant file a highlighted

paper copy and ten redacted paper copies of material containing confidential information submitted pursuant to a petition for confidential treatment. The material at issue in the motion for deviation was provided in electronic format as attachments to Movant's responses to portions of the AG's and KIUC's discovery requests.

In support of its petition of confidential treatment, Movant argues that the designated information would permit an unfair commercial advantage to Movant's competitors if it were publicly disclosed, thus is generally recognized as confidential, and is exempt from public disclosure pursuant to KRS 61.878(1)(c) and KRS 278.160(3). Movant further argues that public disclosure of the information sought to be protected would impair its ability to compete in the wholesale power market and its ability to successfully negotiate future PPAs.

In support of its motion for deviation, Movant argues that the files total over 100 pages, and thus are so voluminous that the files would overburden the paper record in this matter. Movant further argues that the files are designed for electronic viewing or contain information, such as formulas, that are viewable only in electronic format. Lastly, Movant argues that the pervasive nature of the confidential information makes the production of redacted versions ineffectual and unhelpful to the Commission, the parties, and the public.

Having carefully considered the petition for confidential treatment and the materials at issue, and the motion for deviation, the Commission finds that:

1. The materials for which Movant seeks confidential treatment that are contained in Movant's responses to Commission Staff's, AG's, and KIUC's respective Initial Requests, with the exception of the materials designated in Appendix B to this

Order, are records that are generally recognized as confidential or proprietary, and which if openly disclosed would permit an unfair commercial advantage to competitors, and therefore meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001 § 13, KRS 61.878(1)(c), and KRS 278.160(3).

2. The materials contained in Appendix B to this Order do not meet the criteria for confidential treatment under 807 KAR 5:001 § 13, KRS 61.878(1)(c), and KRS 278.160(3). The Commission finds that disclosure of the materials contained in Appendix B to this Order would not impose upon Movant any unfair competitive disadvantage in future negotiations involving wholesale power purchase agreements. This is particularly so given the Commission's need to be able to fully and specifically address the cost impact in its final determination of this matter, and given that Movant's members and retail customers have a right to know the evidence upon which the Commission relied in determining whether the costs of the PPAs are fair, just, and reasonable. Big Rivers' request for confidential treatment should be denied for the materials contained in Appendix B to this Order.

3. Movant has established good cause to deviate from the requirements governing the filing of paper copies of confidential materials contained in Movants' responses to KIUC's and AG's respective Initial Requests for Information. The Commission finds that the responses to AG's Initial Request for Information, Item 12 and KIUC's Initial Request for Information, Items 4, 7, 8 and 10, are viewable only in electronic format and therefore Big Rivers may substitute electronic copies on DVD for the paper copies to be filed with the Commission.

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 information set forth in Appendix A to this Order is granted. Movant's responses to Item 12 of the AG's Initial Request and Item 4 of KIUC's Initial Request shall remain confidential for a period of five years, and the remaining information set forth in Appendix A shall remain confidential for an indefinite period of time.

3. Movant's request for confidential treatment of information set forth in Appendix B to this Order is denied.

4. Movant's motion to deviate from the filing requirements of 807 KAR 5:001 § 13 is granted.

5. The materials for which Movant's request for confidential treatment has been granted for five years shall not be placed in the public record or made available for public inspection for five years. The materials for which Movant's request for confidential treatment has been granted for an indefinite time shall not be placed in the public record or made available for public inspection for an indefinite period of time.

6. The materials for which Movant's request for confidential treatment has been denied shall not be placed in the public record or made available for inspection for 20 days from the date of this Order in order to allow Movant to seek a remedy afforded by law.

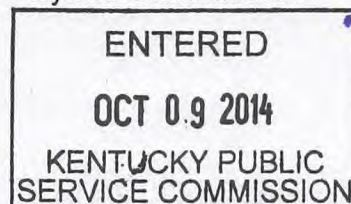
7. Use of the materials that were granted confidential treatment in any Commission proceeding shall be in compliance with 807 KAR 5:001 § 13(9).

8. Movant shall inform the Commission if the materials granted confidential protection become publicly available or no longer qualify for confidential treatment.

9. 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, Movant 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 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.

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

By the Commission



ATTEST:



Executive Director

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2014-00134 **OCT 09 2014**

MATERIALS FROM RESPONSES TO REQUESTS FOR INFORMATION GRANTED CONFIDENTIAL TREATMENT

1. Staff's Initial Request for Information
 - a. Item 1.e: projections of energy and capacity prices.
 - b. Item 1.f: projections of energy and capacity prices.
 - c. Item 1.g: projections of energy and capacity prices.
 - d. Item 1.i.2: basis for confidential PPA term negotiations.
2. AG's Initial Request for Information
 - a. Item 2.a.i: projections of energy and capacity prices.
 - b. Item 2.a.ii: projections of energy and capacity prices.
 - c. Item 2.b.i: allocations of costs.
 - d. Item 3: allocations of energy and capacity costs and responsibilities
 - e. Item 4: allocations of energy and capacity costs and responsibilities
 - f. Item 5: projections of energy and capacity prices.
 - g. Item 6: projections of energy and capacity prices.
 - h. Item 7.a: projections of costs and financial forecasts.
 - i. Item 7.c.ii: projections of energy and capacity prices.
 - j. Item 7.d: projections of energy and capacity prices.
 - k. Item 7.e: projections of energy and capacity prices.
 - l. Item 8: methodology for future rate.

- m. Item 9: projections of energy and capacity prices.
 - n. Item 10: allocation of reporting responsibilities.
 - o. Item 11: allocation of energy costs.
 - p. Item 12: cost models and financial forecasts.
3. KIUC's Initial Request for Information
- a. Item 4: projections of capital expenditures.
 - b. Item 7: projections of revenue and expenses.
 - c. Item 8: projections of revenue and expenses.
 - d. Item 9: projections of capacity, revenue and expenses.
 - e. Item 10: commercial negotiations.

APPENDIX B

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2014-00134 **OCT 09 2014**

MATERIALS FROM RESPONSES TO REQUESTS FOR INFORMATION DENIED CONFIDENTIAL TREATMENT

1. Staff's Initial Request for Information
 - a. Item 1.a: services to be provided and procured by Big Rivers under the PPAs.
 - b. Item 3: whether PPAs will exceed variable costs of providing service.
2. AG's Initial Request for Information
 - a. Item 2.a.iii: potential capacity market.
 - b. Item 2.b.ii: estimates of annual costs of PPAs.
 - c. Item 7.b: calculation factor.
 - d. Item 7.c.i: impact of wind generation on the PPAs.

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