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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)
CORPORATION FOR A GENERAL) CASE NO. 2011-00036
ADJUSTMENT IN RATES)

**PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL
PROTECTION**

1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 7 and KRS 61.878(1)(a), to grant confidential protection to portions of its responses to Items 25(b) and 26 of the Commission Staff's First Information Request (the "Information Request"). The information Big Rivers seeks to protect as confidential (the "Confidential Information") is (i) information related to the compensation paid to each member of its Board of Directors and (ii) information related to the salaries and other compensation of each of its executive officers and any increases thereto.

2. One (1) sealed copy of the responses to Items 25 and 26 with the Confidential Information highlighted with transparent ink is attached to this petition. A copy of the responses to Items 25 and 26 with the Confidential Information redacted is attached to the original and each of the ten (10) copies of Big Rivers' responses to the Information Request filed with this Petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).

3. A copy of this petition and a copy of the redacted responses to Items 25 and 26 have been served on all parties to this proceeding. 807 KAR 5:001 Section 7(2)(c). Big Rivers will provide a copy of the unredacted responses to any party who signs a confidentiality agreement.

1 4. If and to the extent the Confidential Information becomes generally available to
2 the public, whether through filings required by other agencies or otherwise, Big Rivers will
3 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
4 7(9)(a).

5 5. The Confidential Information is entitled to confidential protection based upon
6 KRS 61.878(1)(a), which protects “[p]ublic records containing information of a personal nature
7 where the public disclosure thereof would constitute a clearly unwarranted invasion of personal
8 privacy.” KRS 61.878(1)(a). 807 KAR 5:001 Section 7(2)(a)(1). This Commission has
9 explained that that “provision is intended to protect from public disclosure any information
10 contained in public records that reveals the details of an individual's private life when the
11 individual's privacy interest in the information outweighs the public interest in the information.”
12 Order dated April 30, 1997, in *In the Matter of: Application of Louisville Gas and Electric*
13 *Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out*
14 *Certain Transactions in Connection Therewith*, Case No. 89-374, at 1-2.

15 6. The Confidential Information is the compensation of the individual directors and
16 executive officers of Big Rivers. The Kentucky Court of Appeals has stated that “information
17 such as . . . wage rate . . . [is] generally accepted by society as [a] detail[] in which an individual
18 has at least some expectation of privacy” and that “few things in our society are deemed of a
19 more intimate nature than one's income. This information is commonly treated circumspectly.”
20 *Zink v. Dept. of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).
21 Moreover, this Commission has applied KRS 61.878(1)(a) to protect salary information when the
22 information is tied to individual employees, stating that “the right of each individual employee
23 within a job classification to protect [salary] information as private outweighs the public interest

1 in the information. Thus, the salary paid to each individual within a classification is entitled to
2 protection from public disclosure.” Order dated April 30, 1997, in *In the Matter of: Application*
3 *of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of*
4 *Exchange and to Carry Out Certain Transactions in Connection Therewith*, Case No. 89-374, at
5 2; *see also* Letter dated December 1, 2003, in PSC Case Nos. 2003-00334 and 2003-00335
6 (granting confidential protection to the compensation information of certain employees). Thus,
7 the public disclosure of the Confidential Information would constitute a clearly unwarranted
8 invasion of person privacy.

9 7. In Case No. 89-374, the Commission granted confidential protection to the
10 individually identified compensation information of employees of Louisville Gas and Electric
11 Company (“LG&E”), but in doing so, the Commission noted:

12 As a public utility, compensation paid by LG&E to its employees is subject to
13 scrutiny not only by this Commission but also by its customers...Therefore,
14 information on file with the Commission regarding the salaries paid generally
15 within each employee classification should be available for customers to
16 determine whether those salaries are reasonable. However, the right of each
17 individual employee within a job classification to protect [salary] information as
18 private outweighs the public interest in the information.

19
20 Order dated April 30, 1997, in *In the Matter of: Application of Louisville Gas and Electric*
21 *Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out*
22 *Certain Transactions in Connection Therewith*, Case No. 89-374, at 2.

23 8. In the present case, since the Confidential Information relates to the compensation
24 information of a small number of named directors and executive officers, Big Rivers is not able
25 to publicly disclose the compensation information by classification without essentially allowing
26 the individuals associated with the compensation information to be readily identified.
27 Nevertheless, there is no legitimate public interest in public disclosure of the Confidential

1 Information because Big Rivers has only three customers – its three distribution cooperative
2 members, and they are already aware of the Confidential Information. Moreover, as Big Rivers
3 has already stated above that it will provide the Confidential Information to any party to this
4 proceeding that signs a confidentiality agreement, and any retail customers of the distribution
5 cooperatives who wish to challenge the reasonableness of the compensation can seek to
6 intervene in this proceeding and obtain the Confidential Information by signing a confidentiality
7 agreement. Thus, no public purpose is served by public disclosure of the Confidential
8 Information, and the privacy interests of Big Rivers' individual directors and executive officers
9 in their compensation information clearly outweigh any public interest in the public disclosure of
10 the information.

11 9. The Confidential Information is not publicly available, is not disseminated within
12 Big Rivers except to those employees and professionals with a legitimate business need to know
13 and act upon the information, and is not disseminated to others without a legitimate need to
14 know and act upon the information.

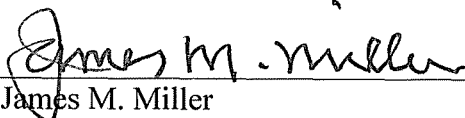
15 10. Based on the foregoing, the Confidential Information is entitled to confidential
16 protection.

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

19 On this the 18th day of March, 2011.

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James M. Miller
Tyson Kamuf
Sullivan, Mountjoy, Stainback & Miller, P.S.C.
100 St. Ann Street
P.O. Box 727
Owensboro, Kentucky 42302-0727
(270) 926-4000

and

Douglas L. Beresford
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5819

COUNSEL FOR BIG RIVERS
ELECTRIC CORPORATION