

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

RECEIVED

MAY 15 2013

PUBLIC SERVICE  
COMMISSION

In the Matter of:

Application of Big Rivers Electric )  
Corporation for a General ) Case No. 2012-00535  
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 13 and KRS 61.878, to grant confidential protection to certain information Big Rivers is filing with its responses to the May 6, 2013 Supplemental Requests for Information from Ben Taylor and the Sierra Club (collectively, “Sierra Club” or “SC”). The information Big Rivers seeks to protect as confidential is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information includes portions of the responses and/or attachments for the responses to Items 3, 8, and 18 of Sierra Club’s Supplemental Requests for Information (“SC 2-3,” “SC 2-8,” and “SC 2-18,” respectively).

3. One (1) copy of the hardcopy 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 is being filed with the original and each of the ten (10) copies of the responses to the information requests filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3) and 13(2)(b).

4. A copy of this petition with the Confidential Information redacted has been served on all parties to this proceeding. 807 KAR 5:001 Section 13(2)(c). A copy of the Confidential Information has been served on all parties that have signed a confidentiality agreement.

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

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

**I. Information Protected by KRS 61.878(1)(m)**

7. The Confidential Information contained in the response to SC 2-18 is entitled to confidential protection based upon KRS 61.878(1)(m), which protects “[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act . . . .”

8. The Confidential Information contained in the response to SC 2-18 includes detailed technical information about Big Rivers' transmission system. This information was derived from a transmission system map to which the Commission granted confidential treatment on April 25, 2013. *See* Order Regarding Request for Confidential Treatment, Ky. P.S.C. Case No. 2012-00535 (April 25, 2013) (finding that information “which concerned Big Rivers' system reliability and system mapping information . . . should not be placed in the public record or made

available for inspection indefinitely so long as Big Rivers' transmission system remains in place.”).

**II. Information Protected by KRS 61.878(1)(c)(1)**

9. As discussed below, the Confidential Information in the attachments to the responses to SC 2-3 and SC 2-8 is entitled to confidential protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1).

10. The Confidential Information is of the same nature as information to which the Commission recently granted confidential treatment in this case. *See* Order Regarding Request for Confidential Treatment, Ky. P.S.C. Case No. 2012-00535 (April 25, 2013) (granting confidential treatment to various forecasted and projected financial and operational information).

**A. Big Rivers Faces Actual Competition.**

11. Big Rivers, as a participant in the credit markets and the wholesale power markets, faces economic competition from other entities.

12. Big Rivers competes in the wholesale power market to sell energy it produces in excess of its members' needs. Big Rivers' ability to successfully compete in the wholesale power market is dependent upon a combination of its ability to negotiate the maximum price for the power sold and its ability to keep its cost of production as low as possible. If Big Rivers' cost of producing a kilowatt-hour of energy increases, its ability to sell that kilowatt-hour in competition with other utilities is adversely affected.

13. Big Rivers also competes for reasonably priced credit in the credit markets, and its ability to compete is directly impacted by its financial results. Any event that adversely affects Big Rivers' margins will adversely affect its financial results and potentially impact the price it pays for credit. As was described in the proceeding before this Commission in the Big Rivers Unwind Transaction, P.S.C. Case No. 2007-00455, Big Rivers expects to be in the credit markets on a regular basis in the future.<sup>1</sup>

14. As is evidenced by these economic pressures, Big Rivers has "competitors" as contemplated under KRS 61.878(1)(c)(1) and faces actual competition from market participants.

**B. The Confidential Information is Generally Recognized as Confidential or Proprietary.**

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

16. The Confidential Information contained in the attachment to the response to SC 2-3 includes data about Big Rivers' projected generation and projected fleet emission allowance budget.

17. The Confidential Information contained in the attachment to the response to SC 2-8 includes data about Big Rivers' projected off-system purchases and sales of energy.

18. Information about a company's detailed inner workings is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is 'generally recognized as

---

<sup>1</sup> See Order dated March 6, 2009, in *In the Matter of: Joint Application of Big Rivers, E.ON, LG&E Energy Marketing, Inc., and Western Kentucky Energy Corporation for Approval to Unwind Lease and Power Purchase Transactions*, P.S.C. Case No. 2007-00455, pages 27-30 and 37-39.

confidential or proprietary”); *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from “the ability to ascertain the economic status of the entities without the hurdles systemically associated with the acquisition of such information about privately owned organizations”).

19. Moreover, the Commission has previously granted confidential protection to information similar to the Confidential Information. *See, e.g.*, Order Regarding Request for Confidential Treatment, Ky. P.S.C. Case No. 2012-00535 (April 25, 2013); letters from the Commission dated July 28, 2011, and December 20, 2011, in *In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, P.S.C. Case No. 2011-00036 (granting confidential treatment to multi-year forecast); letter from the Commission dated December 21, 2010, in *In the Matter of: The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, P.S.C. Case No. 2010-00443 (granting confidential treatment to fuel cost projections, revenue projections, market price projections, financial model outputs, etc.); two letters from the Commission dated December 11, 2012, in *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account*, P.S.C. Case No. 2012-00063 (granting confidential treatment to Big Rivers’ O&M expenses, and off-system sales and revenues).

20. Accordingly, the information for which Big Rivers seeks confidential treatment is recognized as confidential or proprietary under Kentucky law and is entitled to confidential protection as further discussed below.

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

21. Disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer competitive injury if that Confidential Information was publicly disclosed, and the information should therefore be subject to confidential treatment.

22. Public disclosure of Big Rivers' projected prices for emission allowances and off-system sales and purchases would give market participants insight into the prices at which Big Rivers is willing to buy and sell emission allowances and power. In PSC Case No. 2003-00054, the Commission granted confidential protection to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P argued, and the Commission implicitly accepted, that if the bids it received were publicly disclosed, contractors on future work could use the bids as a benchmark, which would likely lead to the submission of higher bids. *See Order in In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, P.S.C. Case No. 2003-00054 (Aug. 4, 2012). The Commission also implicitly accepted ULH&P's further argument that the higher bids would lessen ULH&P's ability to compete with other gas suppliers. *Id.* In Big Rivers' case, disclosure of its emission allowance and market price projections could be used as a benchmark, which suppliers or purchasers could use to manipulate the bidding process, leading to higher prices or reduced revenues for Big Rivers and impairing its ability to compete in the wholesale power and credit markets.

23. Potential market power purchasers could use the information related to Big Rivers' projected off-system sales and purchases, projected generation, and projected emission budgets to know when Big Rivers is long on power and could use that information to manipulate

their bids, leading to lower revenues to Big Rivers and placing it at an unfair competitive disadvantage in the credit markets.

24. Additionally, public disclosure of information about Big Rivers' projected production costs (such as emission allowance costs) and projected wholesale power needs would give the power producers and marketers with which Big Rivers competes in the wholesale power market an unfair competitive advantage because they could use that information to potentially underbid Big Rivers in wholesale transactions. It would also give potential suppliers to Big Rivers a competitive advantage because they will be able to manipulate the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit markets.

25. In light of the above, the Confidential Information claimed by Big Rivers should be granted confidential protection.

### **III. Time Period**

26. Big Rivers requests that the Confidential Information protected by KRS 61.878(1)(m) remain confidential indefinitely so long as Big Rivers' transmission system remains in place.

27. Big Rivers requests that all other Confidential Information remain confidential for a period of five (5) years from the date of this petition, which should allow sufficient time for the projected data to become historical and sufficiently outdated that it could not be used to determine similar confidential information at that time. 807 KAR 5:001 Section 13(2)(a)(2).

### **IV. Conclusion**

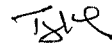
28. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due

process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Comm'n v. Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

On this the 14th day of May, 2013.

Respectfully submitted,



---

James M. Miller  
Tyson A. Kamuf  
SULLIVAN, MOUNTJOY, STAINBACK  
& MILLER, P.S.C.  
100 St. Ann Street  
P. O. Box 727  
Owensboro, Kentucky 42302-0727  
Phone: (270) 926-4000  
Facsimile: (270) 683-6694  
jmiller@smsmlaw.com  
tkamuf@smsmlaw.com

and

Edward T. Depp  
Dinsmore & Shohl LLP  
101 South Fifth Street  
Suite 2500  
Louisville, KY 40202  
Phone: (502) 540-2347  
Facsimile: (502) 585-2207  
tip.depp@dinsmore.com

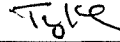
*Counsel for Big Rivers Electric Corporation*



**Certificate of Service**

I certify that, on the date this petition was filed with the Kentucky Public Service Commission, a true and accurate copy of the foregoing was served by Federal Express or by hand delivery upon the persons listed on the accompanying service list.

On this the 14<sup>th</sup> day of May, 2013.



---

*Counsel for Big Rivers Electric Corporation*