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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

MAY 17 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 portions of a budget variance/financial report Big Rivers is filing as an update to Tab 38 to its application in this matter. The information Big Rivers seeks to protect as confidential is hereinafter referred to as the “Confidential Information.”

2. One (1) copy of the pages containing Confidential Information, with the Confidential Information highlighted with transparent ink is being filed with this petition. A copy of the pages containing Confidential Information, with the Confidential Information redacted, is being filed with the original and each of the ten (10) copies of Big Rivers’ updated response to Tab 38 filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

3. 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.

4. 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

1 and act upon the information, and is not disseminated to others without a legitimate need to
2 know and act upon the information.

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

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

13 I. Big Rivers Faces Actual Competition

14 7. Big Rivers competes in the wholesale power market to sell energy excess to its
15 members’ needs. Big Rivers’ ability to successfully compete in the wholesale power market is
16 dependent upon a combination of its ability to get the maximum price for the power sold, and
17 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers’ cost
18 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with
19 other utilities is adversely affected.

20 8. Big Rivers also competes for reasonably priced credit in the credit markets, and
21 its ability to compete is directly impacted by its financial results. Any event that adversely
22 affects Big Rivers’ margins will adversely affect its financial results and potentially impact the
23 price it pays for credit. As was described in the proceeding before this Commission in the Big

1 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis
2 in the future.¹

3 **II. The Confidential Information is Generally Recognized as Confidential or**
4 **Proprietary**

5
6 9. The Confidential Information for which Big Rivers seeks confidential treatment
7 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky
8 law.

9 10. The Confidential Information consists of information about Big Rivers' variable
10 production costs and off-system sales volumes, and other information that if not granted
11 confidential treatment could be used to calculate the Confidential Information.

12 11. Public Disclosure of the Confidential Information would reveal detailed
13 information relating to Big Rivers' cost of producing power and the amount of power Big Rivers
14 has available for off-system sales. Knowledge of such data will give Big Rivers' suppliers and
15 competitors an unfair competitive advantage.

16 12. Public disclosure of the variable production costs will give Big Rivers' suppliers,
17 buyers, and competitors insight into Big Rivers' cost of producing power, which would indicate
18 the prices at which Big Rivers is willing to buy or sell power.

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

¹ 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*, PSC Case No. 2007-00455, pages 27-30 and 37-39.

1 treatment to similar information. *See, e.g.*, two letters from the Commission dated December 11,
2 2012, in *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its*
3 *2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost*
4 *Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for*
5 *Authority to Establish a Regulatory Account*, PSC Case No. 2012-00063 (granting confidential
6 treatment to Big Rivers' O&M expenses, and off-system sales revenues). In fact, the
7 Commission has granted confidential treatment to the same type of information as the
8 Confidential Information that appeared in earlier budget variance reports. *See* Order dated May
9 6, 2013, in PSC Case No. 2013-00535.

10 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**
11 **Advantage to Big Rivers' Competitors**
12

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

17 15. The Confidential Information includes material such as Big Rivers' variable
18 production costs. If that information is publicly disclosed, potential power suppliers and
19 purchasers would have insight into the prices at which Big Rivers is willing to buy and sell
20 power in the market, and they could manipulate the bidding process, leading to higher prices or
21 lower revenues for Big Rivers and impairing its ability to compete in the wholesale power and
22 credit markets. In PSC Case No. 2003-00054, the Commission granted confidential protection to
23 bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P argued, and the
24 Commission implicitly accepted, that if the bids it received were publicly disclosed, contractors
25 on future work could use the bids as a benchmark, which would likely lead to the submission of

1 higher bids. Order dated August 4, 2003, in *In the Matter of: Application of the Union Light,*
2 *Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054. The
3 Commission also implicitly accepted ULH&P's further argument that the higher bids would
4 lessen ULH&P's ability to compete with other gas suppliers. *Id.* Similarly, potential power
5 suppliers and purchasers manipulating Big Rivers' bidding process would lead to higher costs or
6 lower revenues to Big Rivers and would place it at an unfair competitive disadvantage in the
7 wholesale power market and credit markets.

8 16. Additionally, public disclosure of the variable cost information and off-system
9 sales volumes would give the power producers and marketers with which Big Rivers competes in
10 the wholesale power market insight into Big Rivers' cost of producing power and the amount of
11 power Big Rivers has to sell into the market. Knowledge of this information would give those
12 power producers and marketers an unfair competitive advantage because they could use that
13 information to potentially underbid Big Rivers in wholesale transactions. It would also give
14 potential suppliers to Big Rivers a competitive advantage because they will be able to manipulate
15 the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big
16 Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit
17 markets.

18 **IV. Time Period**

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

24 **V. Conclusion**

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1 I certify that a true and accurate copy of the foregoing was served by Federal Express or
2 by first class mail, postage prepaid upon the persons listed on the service list that accompanies
3 this petition, on this the 16th day of May, 2013.

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TK
Tyson Kamuf