

RECEIVED
AUG 22 2013
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION)
OF THE FUEL ADJUSTMENT CLAUSE OF)
BIG RIVERS ELECTRIC CORPORATION) CASE NO. 2013-00266
FROM NOVEMBER 1, 2012 THROUGH)
APRIL 30, 2013)

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(1)(c), to grant confidential protection to a fuel contract solicitation bid tabulation sheet (the "Confidential Information") filed as an exhibit to Big Rivers' response to Item 19 of the requests for information contained in the Appendix to the Commission's August 8, 2013, Order in this matter.

2. Big Rivers seeks confidential treatment of the entirety of the bid tabulation sheet. One (1) sealed copy of the bid tabulation sheet printed on yellow paper is attached to this petition. A page indicating that the bid tabulation sheet is being filed under seal is attached to the original and each of the ten (10) copies of Big Rivers' responses to Item 19 filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

3. There are currently no other parties to this proceeding on which copies of this petition can be served. 807 KAR 5:001 Section 13(2)(c).

4. 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

1 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
2 13(10)(a).

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

9 **I. Big Rivers’ Faces Actual Competition**

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

16 7. Big Rivers also competes for reasonably-priced credit in the credit markets, and
17 its ability to compete is directly impacted by its financial results. Any event that adversely
18 affects Big Rivers’ margins will adversely affect its financial results and potentially impact the
19 price it pays for credit. As was described in the proceeding before this Commission in the Big
20 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis
21 in the future.¹

¹ See Order dated March 6, 2009, *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 know and act upon the information. As such, the Confidential Information is generally
2 recognized as confidential and proprietary.

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

5 10. Disclosure of the Confidential Information would permit an unfair commercial
6 advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition
7 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
8 competitive injury if the Confidential Information was publicly disclosed. In PSC Case No.
9 2003-00054, the Commission granted confidential protection for bids submitted to Union Light
10 Heat & Power ("ULH&P"). ULH&P's argued, and the Commission implicitly accepted, that the
11 bidding contractors would not want their bid information publicly disclosed, and that disclosure
12 would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs,
13 hurting its ability to compete with other gas suppliers. Order dated August 4, 2003, in *In the*
14 *Matter of: Application of the Union Light, Heat and Power Company for Confidential*
15 *Treatment*, PSC Case No. 2003-00054. Similarly, in *Hoy v. Kentucky Indus. Revitalization*
16 *Authority*, the Kentucky Supreme Court found that without protection for confidential
17 information provided to a public agency, "companies would be reluctant to apply for investment
18 tax credits for fear the confidentiality of financial information would be compromised. *Hoy v.*
19 *Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

20 11. In Big Rivers' case, if confidential treatment of the bid tabulation sheets is denied,
21 potential bidders would know that their bids would be publicly disclosed, which could reveal
22 information to their competitors about their competitiveness. Because many companies would
23 be reluctant to have such information disclosed, public disclosure of Big Rivers' bid tabulation

1 sheets would likely suppress the competitive bidding process and reduce the pool of bidders
2 willing to bid to supply Big Rivers' fuel needs, driving up Big Rivers' fuel costs (which could
3 then drive up the cost of credit to Big Rivers) and impairing its ability to compete in the
4 wholesale power market.

5 12. Also, the information contained in the bid tabulation sheets reveals the procedure
6 and strategies Big Rivers follows and the factors and inputs it considers in evaluating bids for
7 fuel supply. If the documents are publicly disclosed, potential bidders could manipulate the bid
8 solicitation process to the detriment of Big Rivers and its members by tailoring bids to
9 correspond to and comport with Big Rivers' bidding criteria and process. In PSC Case No.
10 2003-00054, the Commission granted confidential protection to bids submitted to ULH&P. In
11 addition to the other arguments discussed above, ULH&P argued, and the Commission implicitly
12 accepted, that if the bids it received were publicly disclosed, contractors on future work could
13 use the bids as a benchmark, which would likely lead to the submission of higher bids. Order
14 dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat and Power*
15 *Company for Confidential Treatment*, PSC Case No. 2003-00054. The Commission also
16 implicitly accepted ULH&P's further argument that the higher bids would lessen ULH&P's
17 ability to compete with other gas suppliers. *Id.* Similarly, potential bidders manipulating Big
18 Rivers' bidding process would lead to higher fuel costs to Big Rivers and would place it at an
19 unfair competitive disadvantage in the wholesale power market.

20 **IV. Time Period**

21 13. Big Rivers requests that the Confidential Information remain confidential
22 indefinitely because until Big Rivers changes its bid selection methodology, the public disclosure
23 of the bid tabulation sheet could be used to Big Rivers' competitive disadvantage for the reasons

