

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

2014 INTEGRATED RESOURCE PLAN OF BIG) CASE NO.
RIVERS ELECTRIC CORPORATION) 2014-00166

ORDER REGARDING REQUEST FOR CONFIDENTIAL TREATMENT

Procedural History

On May 15, 2014, Big Rivers Electric Corporation (“Big Rivers”) filed its 2014 Integrated Resource Plan (“IRP”), which is required to be filed with the Commission pursuant to 807 KAR 5:058. Along with the 2014 IRP, Big Rivers, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, filed a petition seeking confidential treatment for certain material in its 2014 IRP.

On May 23, 2014, Kentucky Industrial Utility Customers, Inc. (“KIUC”) filed a motion to intervene, which was granted by an Order entered on May 28, 2014. On May 30, 2014, the Kentucky Office of the Attorney General (“AG”) filed a motion to intervene, which was granted by an Order entered June 9, 2014.

On June 12, 2014, KIUC filed a motion for leave to respond to Big Rivers’ petition for confidential treatment and tendered with its motion a response in opposition to Big Rivers’ petition. The AG has indicated his support of KIUC’s position by being a signatory to the KIUC motion for leave to respond and tendered response.

On June 16, 2014, Big Rivers filed a response to the KIUC motion for leave to respond and a reply to KIUC’s tendered response. Big Rivers urges the Commission to

deny KIUC's motion for leave to respond and to strike KIUC's response in opposition to Big Rivers' petition as untimely.¹

Discussion

The Commission is a public agency subject to Kentucky's Open Records Act, and all public records of the Commission "shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."² Therefore, "all material on file with the commission shall be available for examination by the public unless the material is confidential."³ Any party requesting a grant of confidential treatment for material has the burden to prove that the material falls within the exclusions from disclosure enumerated in the Open Records Act.⁴

807 KAR 5:001, Section 13(2), sets forth the procedure for making a request for confidential treatment for certain material filed by Big Rivers in its IRP. 807 KAR 5:001, Section 13(2), requires Big Rivers to establish "specific grounds pursuant to KRS 61.878, upon which the commission should classify the material as confidential."⁵ It also requires Big Rivers to "state the time period in which the material should be treated as confidential and the reasons for the time period."⁶

¹ Response of Big Rivers to KIUC's Motion for Leave to Respond and Reply of Big Rivers to KIUC's Response in Opposition to the Petition of Big Rivers for Confidential Treatment ("Big Rivers' Response to KIUC's Motion for Leave to Respond and Reply to Opposition of Petition"), p. 6.

² KRS 61.872(1).

³ 807 KAR 5:001, Section 13(1). The material specifically identified in Big Rivers' request is accorded confidential treatment pending action by the Commission or its executive director. 807 KAR 5:001, Section 13(4).

⁴ *Id.*, Section 13(2)(c).

⁵ *Id.*, Section 13(2)(a)(1).

⁶ *Id.*, Section 13(2)(a)(2).

In terms of identifying the material for which confidential treatment is sought, 807 KAR 5:001, Section 13(2)(a)(3), requires Big Rivers to support its request with the following:

[T]en (10) copies of the material in paper medium with those portions obscured for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

807 KAR 5:001, Section 13(2)(b), provides:

The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties.

807 KAR 5:001, Section 13(2)(d), addresses responses to a motion for confidential treatment and provides:

Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after it is filed with the commission.

1. KIUC Motion for Leave to Respond to Big Rivers' Petition for Confidential Treatment

Big Rivers filed its IRP and petition for confidential treatment on May 15, 2014. Pursuant to 807 KAR 5:001, Section 13(2)(d), there is a seven-day period in which a party may respond without the issuance of a Commission Order, and that period expired on May 22, 2014. KIUC filed a motion to intervene on May 23, 2014, and intervention

was granted by an Order entered on May 28, 2014. Therefore, KIUC was not a party to the case until after the expiration of the seven-day period.

On June 12, 2014, KIUC filed a motion for leave to respond to Big Rivers' petition for confidential treatment. With its motion, KIUC tendered a response. In support of its motion, KIUC states that it did not receive a non-redacted version of the IRP until May 31, 2014, and that "it needed sufficient time to examine" Big Rivers' IRP and "to compare the redacted information in the 2014 IRP with previous filings" made by Big Rivers.⁷ In arguing that no party will be prejudiced by granting the motion, KIUC states, "[a] procedural schedule has not yet been set in this proceeding and no intervenor testimony or discovery has yet been issued."⁸

In opposing KIUC's motion, Big Rivers states that "'KIUC has offered no valid excuse for why it failed to respond to the petition for confidential treatment within 7 days of the petition being filed, within 7 days of filing its motion to intervene, or even within 7 days of the Commission granting KIUC's motion to intervene."⁹ Big Rivers states that "[t]he types of information for which Big Rivers sought confidential protection are easily identifiable in the redacted IRP."¹⁰ Big Rivers states that "KIUC had access to the redacted IRP in the middle of May," and that "nothing in the Commission's regulations provides that a person opposing a petition for confidential treatment must or should

⁷ KIUC's Motion for Leave to Respond and Response in Opposition to the Petition of Big Rivers for Confidential Treatment ("KIUC's Motion for Leave and Response in Opposition to Petition"), pp. 1-2.

⁸ *Id.*, p. 2.

⁹ Big Rivers' Response to KIUC's Motion for Leave to Respond and Reply to Opposition of Petition, p. 1.

¹⁰ *Id.*, p. 2.

have access to the confidential material prior to responding to the petition.”¹¹ Big Rivers indicates that it “is prejudiced by having to expend time and resources to respond to *another* untimely pleading in response to a Big Rivers’ petition for confidential treatment (emphasis in the original).”¹²

Big Rivers filed its IRP and its petition for confidential treatment on the same day, May 15, 2014. KIUC filed a motion to intervene on May 23, 2014, eight days following the filing of the IRP. KIUC obtained a non-redacted version of the IRP on May 31, 2014, three days following the Commission’s Order granting its motion to intervene. The Commission finds that KIUC acted without unreasonable delay in moving to become a party to this proceeding and obtaining the non-redacted material for review.

Big Rivers’ petition for confidential treatment for certain material in its 2014 IRP seeks a significant increase in the amount and type of material to be afforded confidential treatment over what was sought in its 2010 IRP filing.¹³ The Commission expects parties to conduct a reasonable inquiry concerning the material prior to filing a response to a motion for confidential treatment. Although the Kentucky Rules of Civil Procedure have not been adopted by the Commission, Civil Rule 11 provides persuasive guidance on this point, and, in pertinent part, it states:

The signature of an attorney or party constitutes a certification by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of

¹¹ *Id.*, p. 2.

¹² *Id.*, p. 3.

¹³ Case No. 2010-00443, *2010 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Nov. 15, 2010).

existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

While the Commission agrees with Big Rivers' assertion that access to the confidential material may not be necessary in all instances before responding to a petition for confidential treatment, the Commission finds that KIUC's decision to acquire and review a non-redacted version of Big Rivers' 2014 IRP filing was part of a reasonable inquiry into the merits of Big Rivers' petition. KIUC filed its response before the Commission ruled on Big Rivers' petition, and under the circumstances presented here, we find that KIUC did not unreasonably delay filing its response and no prejudice has resulted from KIUC's having filed its response late. KIUC has shown good cause to grant its motion to accept its late-filed response.

2. Big Rivers' Petition for Confidential Treatment

A. Maps of Big Rivers' Transmission System

Big Rivers cites KRS 61.878(1)(m)(1) in seeking confidential treatment for Figure 1.3 and Appendix E, which are maps of Big Rivers' transmission system.¹⁴ Big Rivers requests that the information remain confidential indefinitely.¹⁵ The Commission notes that Big Rivers supplies an electronic version of Appendix E on a CD-ROM. KIUC does not challenge Big Rivers' request pursuant to KRS 61.878(1)(m)(1) for confidentiality of transmission system information.¹⁶

¹⁴ Petition of Big Rivers for Confidential Treatment, p. 2.

¹⁵ *Id.*, p. 9.

¹⁶ KIUC's Motion for Leave and Response in Opposition to Petition, p. 2.

The Commission has reviewed the information and finds that the maps are infrastructure records that disclose the location, configuration, or security of public utility critical systems. The Commission finds that the disclosure of the records 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. The Commission finds that the reasonable likelihood of the threat will continue as long as the transmission system remains in place. The Commission concludes that Big Rivers has met its burden of proof that the items are excluded from disclosure under KRS 61.878. The Commission concludes that the protection should extend indefinitely. The Commission grants Big Rivers' petition for confidential treatment of these two items.

B. Redaction of Non-Confidential Historic Information

Big Rivers' petition cites KRS 61.878(1)(c)(1) as a basis for seeking confidential treatment for the remaining material which it has redacted.¹⁷ KIUC disputes "the appropriateness of confidential treatment for other information which Big Rivers seeks to protect."¹⁸

For Figures 3.1, 3.2, and 3.3 of its 2014 IRP, Big Rivers redacts historical information concerning number of customers, energy requirements and peak demand, respectively. KIUC states that Big Rivers' "[p]etition contains no explanation of how such historic information could permit an unfair commercial advantage to its competitors."¹⁹ In its reply, and for the first time, Big Rivers indicates that it "is not

¹⁷ Petition of Big Rivers for Confidential Treatment, pp. 3-9.

¹⁸ KIUC's Motion for Leave and Response in Opposition to Petition, p. 2.

¹⁹ *Id.*, p. 3.

seeking confidential treatment of this historical information.”²⁰ Big Rivers indicates in its reply that it redacted “the entirety of the graphs because it was unable to satisfactorily redact only the portion of the graphs containing the projected information.”²¹

The entirety of Figures 3.1, 3.2, and 3.3 are highlighted as if confidential in the non-redacted pages submitted in support of Big Rivers’ request for confidential treatment; therefore, the petition identifies the entirety of these items as confidential. 807 KAR 5:001, Section 13(2)(a)(3), requires a party seeking confidential treatment to identify “only those portions which disclose confidential material.” “Text pages or portions thereof which do not contain confidential material shall not be included in this identification.”²² Big Rivers’ petition does not comply with 807 KAR 5:001, Section 13(2)(a)(3).

The entirety of Figures 3.1, 3.2, and 3.3 are redacted in the public version of the 2014 IRP filed with the Commission and served upon KIUC; therefore, the petition identifies to other parties and the public that the entirety of these items are within the scope of the request. 807 KAR 5:001, Section 13(2)(b), requires a party seeking confidential treatment to serve on all parties “[t]he motion and one (1) copy in of the material in paper medium, with only those portions for which confidentiality is sought redacted. . . .” The petition does not comply with 807 KAR 5:001, Section 13(2)(b).

807 KAR 5:001, Section 13, requires Big Rivers to restrict its identifications and redactions to material for which confidential treatment is sought. Big Rivers’ petition

²⁰ Big Rivers’ Response to KIUC’s Motion for Leave to Respond and Reply to Opposition of Petition, p. 3.

²¹ *Id.*, p. 3.

²² 807 KAR 5:001, Section 13(2)(a)(3).

does not contain any discussion concerning an inability to satisfactorily redact Figures 3.1, 3.2, and 3.3, and Big Rivers redacted material that it knew was not confidential. This approach is contrary to the Commission's regulations because it withholds from the other parties and the public information that should be publicly available.

If a party believes that it is unable to comply with Section 13, then the party should provide notice to the Commission, and it may also file a motion for deviation. A motion for a deviation to permit the redaction of non-confidential information would need to demonstrate how withholding the non-confidential information from public inspection is permissible pursuant to KRS 61.870 to KRS 61.884.²³

In light of Big Rivers' admission that it is not seeking confidential treatment for the historical information contained in Figures 3.1, 3.2, and 3.3, the Commission finds that the information should be publicly disclosed.

C. Big Rivers' Withdrawal of Confidential Request for 2011 Load Forecast

Big Rivers' 2014 IRP contains load forecast data from its 2010 IRP, which is unredacted, and from its 2011 and 2013 Load Forecasts. For Tables 3.1, 3.2, and 3.3, Big Rivers presents information from its 2011 Load Forecast unredacted for the years 2011 through 2013 and redacted for the years 2014 through 2026. On these same tables, Big Rivers presents information from its 2013 Load Forecast unredacted for the year 2013 and redacted for the years 2014 through 2028. In its reply to KIUC, Big Rivers states that it "has determined that its 2011 Load Forecast was filed publicly in Case No. 2010-00535," and Big Rivers also states that it "withdraws its request for

²³ See 807 KAR 5:001, Section 13(7).

confidential treatment of information taken from the 2011 Load Forecast.”²⁴ Big Rivers did not provide revised tables as attachments to its reply to KIUC. Big Rivers did not file a revised or amended petition for confidentiality or a motion to substitute the pages containing the unredacted information into the record; therefore, material for which Big Rivers no longer seeks confidential treatment remains redacted in the public record for the 2014 IRP.

The policy of the Open Records Act is “free and open examination of public records” and that exceptions provided by KRS 61.878 are “strictly construed.”²⁵ When a party withdraws a request for confidential treatment of material submitted in a case, the proper course of action is to file with the Commission and serve on all parties a revised or amended petition, along with unredacted copies of the material no longer deemed to be confidential.

In light of the fact that Big Rivers has withdrawn its request for confidential treatment of the 2011 Load Forecast, the Commission finds that this request should be denied as moot and the information contained in the 2011 Load Forecast should be made publicly available.

D. Big Rivers’ 2013 Load Forecast

Big Rivers has requested confidential treatment for its entire 2013 Load Forecast, which is set forth in Appendix A to its 2014 IRP, as well as for its discussion of the 2013 Load Forecast appearing in other parts of the IRP.²⁶ Big Rivers states:

²⁴ Big Rivers’ Response to KIUC’s Motion for Leave to Respond and Reply to Opposition of Petition, p. 4.

²⁵ KRS 61.871.

²⁶ Petition of Big Rivers for Confidential Treatment, p. 4.

Public disclosure of the 2013 Load Forecast and projected energy and demand requirements would reveal Big Rivers' fundamental financial data and projections, and current and forecasted load demand.²⁷

Big Rivers seeks confidential protection for a period of five years from the date of its petition.²⁸ Big Rivers states that a five-year period "should allow sufficient time for the projected data to become historical and sufficiently outdated" so that "it could not be used to determine similar confidential information at that time or to competitively disadvantage Big Rivers."²⁹

In opposing Big Rivers' petition, KIUC states that Big Rivers' then most recent load forecast was publicly available in its 2010 IRP.³⁰ KIUC argues that Big Rivers has not provided "justification for why the public nature of such information has drastically changed with its new IRP filing."³¹

In its reply, Big Rivers states:

The 2013 Load Forecast has not been filed publicly, and in fact, Big Rivers sought confidential treatment for the 2013 Load Forecast when it was filed in Case No. 2013-00199.³²

²⁷ *Id.*, p. 6.

²⁸ *Id.*, p. 9.

²⁹ *Id.*

³⁰ KIUC's Motion for Leave and Response in Opposition to Petition, pp. 3-4.

³¹ *Id.*, p. 4.

³² In Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period* (Ky. PSC June 28, 2013), Big Rivers sought confidential treatment of the load forecast for Jackson Purchase RECC. *See also* Big Rivers Response to the OAG Second Request for Information, Item 83, filed Sept. 16, 2013, from that proceeding.

Big Rivers further states:

While Big Rivers did not assert that disclosure of the 2009 and 2011 Load Forecasts would cause it competitive harm, Big Rivers' operations have changed substantially since then, primarily as a result of the smelter contract terminations and the anticipated idling of two generating stations. Big Rivers is diligently pursuing its plan to mitigate the loss of the smelter load, which includes actively marketing the approximately 800 MW of generating capacity freed up by the smelter contract terminations. Because of this, the projections found in Big Rivers' load forecast have become extremely sensitive.³³

The Commission finds that Big Rivers' 2009 Load Forecast was filed without redaction in its 2010 IRP, while Big Rivers' 2011 Load Forecast was filed publicly in Case No. 2012-00535.³⁴ Load forecasts are also routinely provided without redactions by other electric utilities in their respective IRP filings as required by 807 KAR 5:058.³⁵ Load forecasts are not generally recognized as confidential or proprietary, and Big Rivers has not shown why its 2013 Load Forecast should be treated differently from its prior load forecasts. The Commission concludes that Big Rivers has not met its burden

³³ Big Rivers' Response to KIUC's Motion for Leave to Respond and Reply to Opposition of Petition, p. 5.

³⁴ *Id.*, p. 4 [reference to location of 2011 Load Forecast in Case No. 2012-00535, *Application of Big Rivers Electric Corporation for an Adjustment of Rates* (Ky. PSC filed Jan. 15, 2013)].

³⁵ See, for example, Case No. 2014-00131, *2014 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC Apr. 21, 2014); Case No. 2011-00140, *The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC Apr. 21, 2014); Case No. 2013-00475, *Integrated Resource Planning Report of Kentucky Power Company to the Kentucky Public Service Commission* (Ky. PSC Dec. 20, 2013); Case No. 2009-00339, *2009 Integrated Resource Plan of Kentucky Power Company* (Ky. PSC Aug. 17, 2009); Case No. 2012-00149, *2012 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.* (Ky. PSC Apr. 20, 2012); Case No. 2009-00106, *2009 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.* (Ky. PSC Apr. 21, 2009); Case No. 2011-00235, *2011 Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Ky. PSC July 1, 2011); and Case No. 2008-00248, *The 2008 Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Ky. PSC July 1, 2008).

to show that the 2013 Load Forecast qualifies for confidential treatment pursuant to KRS 61.878(1)(c)(1).

The Commission further finds that information in the 2013 Load Forecast such as Big Rivers' projections of its number of customers³⁶ and peak demands for each year of the 2014 IRP³⁷ is indicative of the type of information that Big Rivers seeks to keep confidential. The Commission finds that Big Rivers' petition does not state with sufficient specificity the unfair commercial advantage that would occur if information such as its number of customers or peak demands were openly disclosed.

In order to meet its burden of proof, Big Rivers must not only show that the material in question is generally recognized as confidential or proprietary, Big Rivers must also show that the information would permit an unfair commercial advantage to competitors if openly disclosed.³⁸ The information must provide "substantially more than a trivial unfair advantage."³⁹ Blanket statements are not sufficient to satisfy this requirement. The Commission concludes, for a second, independent reason, that Big Rivers has not met its burden to show that the 2013 Load Forecast contains any material that qualifies for confidential treatment pursuant to KRS 61.878(1)(c)(1). Accordingly, we find that the 2013 Load Forecast should be denied and made publicly available.

³⁶ Big Rivers' 2014 IRP, Table 4.5, p. 34.

³⁷ Big Rivers' 2014 IRP, Table 4.2, p. 31.

³⁸ KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13(2)(c). *See also Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195 (Ky. 1997).

³⁹ *Southeastern United Medigroup, Inc.*, 952 S.W.2d 195, 199 (Ky. 1997).

E. Fuel Cost Projections

Big Rivers seeks confidential treatment of its fuel cost projections as identified in Table 9.4 in its 2014 IRP.⁴⁰ Big Rivers asserts that the “information provides insight into Big Rivers’ cost of producing power and would indicate the prices at which Big Rivers is willing to buy or sell power and production factors.”⁴¹ Big Rivers requests confidential treatment for a period of five years.⁴² KIUC does not provide a specific response concerning fuel cost projections.

The Commission finds that fuel cost projections are indicative of the cost to produce power and are generally recognized as confidential or proprietary. The Commission further finds that Big Rivers’ fuel cost projections would permit an unfair commercial advantage to competitors if openly disclosed. Big Rivers has met its burden to show that fuel cost projections fall within the exclusion from disclosure requirements enumerated in 61.878(1)(c)(1), and Big Rivers’ fuel cost projections should remain confidential for a period of five years subject to 807 KAR 5:001, Section 13(10)(b).

F. Projected Environmental Compliance Costs

Big Rivers seeks confidential treatment for projections of its operating and maintenance (“O&M”) costs⁴³ and its capital costs regarding its Environmental Cases 1 and 2 appearing on Table 8.3 of its 2014 IRP.⁴⁴ Big Rivers’ petition does not specifically identify or discuss Table 8.3 or capital costs for its Environmental Cases.

⁴⁰ Petition of Big Rivers for Confidential Treatment, pp. 4 and 7-8.

⁴¹ *Id.*, p. 5.

⁴² *Id.*, p. 9.

⁴³ Petition of Big Rivers for Confidential Treatment, pp. 4-5.

⁴⁴ Big Rivers’ 2014 IRP, pp. 90-91.

KIUC states that “the environmental compliance cost information that Big Rivers seeks to redact in its 2014 IRP was filed publicly by the Company in its previous environmental compliance case (Case No. 2012-00063).”⁴⁵ KIUC states that “[t]he Commission should therefore maintain consistency and allow the types of information that have previously been made publicly available to remain publicly available in this case.”⁴⁶ Big Rivers replies that “the projections provided in Case No 2012-00063 are not the same as the projections provided on page 91 of the 2014 IRP.”⁴⁷

KIUC does not specifically identify information on Table 8.3 that is in the public domain. KIUC argues that information on Table 8.3 is a “type of information” that has been publicly disclosed and that “[s]imilar information” has been made publicly available.⁴⁸ KIUC’s position ignores that the timing of a disclosure and the nature of the proceeding are factors relevant to the analysis.

The Commission finds that in Case No. 2012-00063, Big Rivers sought approval of an environmental compliance plan.⁴⁹ The Commission finds that Big Rivers’ Application in Case No. 2012-00063 included a request for the Commission to “grant Big Rivers a CPCN [Certificate of Public Convenience and Necessity] for each of the

⁴⁵ KIUC’s Motion for Leave and Response in Opposition to Petition, p. 5.

⁴⁶ *Id.*

⁴⁷ Big Rivers’ Response to KIUC’s Motion for Leave to Respond and Reply to Opposition of Petition, p. 5.

⁴⁸ KIUC’s Motion for Leave and Response in Opposition to Petition, p. 5.

⁴⁹ See Case No. 2012-00063, *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* (Ky. PSC Apr. 2, 2012).

projects listed in the 2012 Plan (except for the Station Two projects).⁵⁰ The Commission finds that the Direct Testimony of Robert W. Berry on behalf of Big Rivers in Case No. 2012-00063 includes non-redacted information pertaining to capital costs and O&M costs for environmental compliance projects.⁵¹ The Commission finds that the information submitted by Big Rivers in Case No. 2012-00063 was in support of an application for authorization to construct specific projects, rather than as part of an IRP, which is a 15-year projection of future events and needs based on current information.

The Commission finds that information concerning capital costs and O&M costs are not generally recognized as confidential or proprietary when submitted in support of a request for a CPCN. However, projected capital costs and O&M costs are generally recognized as confidential or proprietary when submitted as part of an integrated resource plan. KIUC does not identify any costs that relate to a project for which an application for a CPCN has been filed or for which cost recovery is currently being sought. The Commission finds that Big Rivers' capital cost and O&M cost projections on Table 8.3 would permit an unfair commercial advantage to competitors if openly disclosed. The Commission concludes that Big Rivers has met its burden to show that capital cost and O&M cost projections for its Environmental Cases fall within the exclusion from disclosure requirements enumerated in 61.878(1)(c)(1). The Commission concludes that the material should remain confidential for a period of five years subject to 807 KAR 5:001, Section 13(10)(b).

⁵⁰ *Id.*, p. 8.

⁵¹ *Id.*, Application, Exhibit 4 (Direct Testimony of Robert W. Berry), pp. 18-24.

G. Present Value of Costs of Different Resource Plans

Big Rivers seeks confidential treatment of the present value of four alternative capacity expansion plans, which are summarized in Table 10.3 of its IRP.⁵² Although Big Rivers' petition does not specifically identify or discuss Table 10.3, its petition does discuss many of the components set forth in Table 10.3. KIUC does not provide a specific response concerning Table 10.3.

The Commission finds that the present value costs for each of the four alternative capacity expansion plans is information generally recognized as confidential or proprietary when submitted as part of an IRP. The Commission finds that disclosure of the present value costs, which include projected fuel costs, fixed and variable generating costs, carrying costs of new generation, and costs and revenues for economy energy purchases and sales, would permit an unfair commercial advantage to Big Rivers' competitors. The present value costs on Table 10.3 fall within the exclusion from disclosure requirements enumerated in 61.878(1)(c)(1), and the material should remain confidential for a period of five years subject to 807 KAR 5:001, Section 13(10)(b).

H. Revenue and Rate Projections

Big Rivers seeks confidential treatment for its revenue and rate projections on Table 11.1.⁵³ Big Rivers' petition includes a general discussion regarding "internal strategic planning information and related materials,"⁵⁴ but it does not specifically

⁵² Big Rivers' 2014 IRP, Table 10.3, p. 109.

⁵³ *Id.*, Table 11.1, p. 112.

⁵⁴ Petition of Big Rivers for Confidential Treatment, p. 8.

identify or discuss Table 11.1.” KIUC does not provide a specific response concerning Table 11.1.

Although Big Rivers’ petition lacks a specific discussion of Table 11.1, the Commission recognizes that the information contained therein “is a general estimate that makes several broad assumptions in estimating Member revenues through 2028.”⁵⁵ The Commission finds that revenue and rate projections submitted as part of an IRP are generally recognized as confidential or proprietary.⁵⁶ The Commission finds that disclosure of Big Rivers’ revenue and rate projections would permit an unfair commercial advantage to competitors. The revenue and rate projections on Table 11.1 fall within the exclusion from disclosure requirements enumerated in 61.878(1)(c)(1), and the material should remain confidential for a period of five years subject to 807 KAR 5:001, Section 13(10)(b).

I. Projected Average Electricity Price

Big Rivers seeks confidential treatment for projections of its retail electricity prices appearing on Table 4.14.⁵⁷ Big Rivers’ petition contains a general discussion regarding “internal strategic planning information and related materials, but does not specifically identify or discuss Table 4.14.”⁵⁸ KIUC opposes the request, stating that Big Rivers engages in “overly broad redactions” through redacting “a chart listing the

⁵⁵ Big Rivers’ 2014 IRP, p. 111.

⁵⁶ See, for example, Letter from Jeff Derouen, Executive Director, Public Service Commission, to Tyson Kamuf, Counsel for Big Rivers Electric Corporation (Dec. 21, 2010) filed in Case No. 2010-00443, *2010 Integrated Resource Plan of Big Rivers Electric Corporation* (Commission grants confidential treatment to revenue and rate projections).

⁵⁷ Big Rivers’ 2014 IRP, Table 4.14, p. 50.

⁵⁸ Petition of Big Rivers for Confidential Treatment, p. 8.

average price of electricity for residential and commercial customers from 2014 through 2028.”⁵⁹ KIUC states that “the rates listed in the chart were based upon the Company’s proposal in its most recent rate case, Case No. 2013-00199,” and the information “is now stale and therefore could not permit an unfair commercial advantage to the Company’s competitors.”⁶⁰ KIUC notes that the public version of Big Rivers’ 2010 IRP includes information regarding the projected average electricity price to rural customers.⁶¹

In reply to KIUC, Big Rivers states:

Big Rivers’ projections of its rates provide insight to its competitors in the wholesale power market and to potential power purchasers about Big Rivers’ expectations regarding its costs to generate power, which, if publicly disclosed, would put Big Rivers at a competitive disadvantage when competing for wholesale power sales.⁶²

The Commission finds that Big Rivers did utilize the rates it proposed in Case No. 2013-00199 in estimating both its retail price projections in Table 4.14 and its revenue and rate projections in Table 11.1. However, Big Rivers’ use of those rates does not negate the justification for granting confidentiality to the projected information. Projections of electricity prices, revenues, and rates, when submitted as part of an IRP, are generally recognized as confidential or proprietary. The Commission finds that the public disclosure of the projected retail prices for the residential and commercial classifications in Table 4.14 would impair the confidentiality of the revenue and rate

⁵⁹ KIUC’s Motion for Leave and Response in Opposition to Petition, p. 3.

⁶⁰ *Id.*

⁶¹ *Id.*, p. 4.

⁶² Big Rivers’ Response to KIUC’s Motion for Leave to Respond and Reply to Opposition of Petition, p. 4.

projections in Table 11.1. Public disclosure of this information would permit an unfair commercial advantage to Big Rivers' competitors. The Commission's approval of rates that were lower than those proposed by Big Rivers in Case No. 2013-00199 does not, of itself, disqualify the information in Table 4.14 from confidential treatment. Disclosure of the information in Table 4.14 would allow the public to calculate Big Rivers' projected prices, revenues and rates, since the difference between the rates Big Rivers proposed in Case No. 2013-00199 and the rates the Commission's approved in that case is known.

For these reasons, the price information projections in Table 4.14 fall within the exclusion from disclosure requirements enumerated in 61.878(1)(c)(1), and the material should remain confidential for a period of five years subject to 807 KAR 5:001, Section 13(10)(b).

J. Appendix Items F, G, and H to the 2014 IRP

Big Rivers seeks confidential treatment for the entirety of Appendix F, Appendix G, and Appendix H, and the request for confidential treatment is for a period of five years.⁶³ KIUC does not provide a specific response concerning any of these Appendix items.

Appendix F is an eight-page document that includes capacity, availability, and production cost information for each generating unit at each plant. In support of confidential treatment for the entirety of Appendix F, Big Rivers states that it "consists of projected production costs, including projected fuel and other operating and

⁶³ Petition of Big Rivers for Confidential Treatment, pp. 4 and 9.

maintenance (O&M) costs, and projected generation and outage information.”⁶⁴ Big Rivers states that the Commission has granted confidential treatment to this type of information and that the “information provides insight into Big Rivers’ cost of producing power and would indicate the prices at which Big Rivers is willing to buy or sell power and production factors.”⁶⁵

The Commission finds that the fuel costs, variable O&M costs, average variable costs, and total production cost information contained in Appendix F and submitted as part of an IRP are generally recognized as confidential or proprietary. Disclosure of this information would permit an unfair commercial advantage to competitors, and this information falls within the exclusion from disclosure requirements enumerated in 61.878(1)(c)(1). Consequently, this material should remain confidential for a period of five years subject to 807 KAR 5:001, Section 13(10).

Further, the Commission finds that capacity, unplanned outage rate, maintenance requirements, availability, and generation information contained in Appendix F is not generally recognized as confidential or proprietary and that the information would not permit an unfair commercial advantage to competitors if openly disclosed. In addition, we find that the schedule title, the column headings, and the information in the three columns of the left-hand side of each page are not confidential. Thus, Big Rivers has not met its burden to show that Appendix F, in its entirety, qualifies for confidential treatment pursuant to KRS 61.878(1)(c)(1).

⁶⁴ *Id.*, p. 4.

⁶⁵ *Id.*, p. 5; *See also* pp. 7-8.

Appendix G is a one-page document containing the market energy prices by month for each year of the planning period. In support of confidential treatment for the entirety of Appendix G, Big Rivers states that it “consists of projected market capacity sales information.”⁶⁶

The Commission finds that information concerning Big Rivers’ projection of market energy prices is generally recognized as confidential or proprietary, and the public disclosure of that the information would permit an unfair commercial advantage to competitors. The market energy prices in Appendix G fall within the exclusion from disclosure requirements enumerated in 61.878(1)(c)(1) and should remain confidential for a period of five years subject to 807 KAR 5:001, Section 13(10)(b). However, Big Rivers has not met its burden to show that the title for the exhibit, the column headings, and the information contained in each row of the left-hand side column are properly classified as confidential. Thus, these parts of Appendix G are not entitled to confidential treatment pursuant to KRS 61.878(1)(c)(1).

Appendix H is contained on a CD-ROM filed as part of the 2014 IRP. It contains a one-page PDF file containing capacity price information for the planning period. The CD-ROM also includes 16 files containing the results of Strategist model runs under different scenarios. Fifteen of the files containing the Strategist information have between 19 and 22 pages, and one file containing Strategist information has 31 pages. 807 KAR 5:001, Section 13(2)(a)(3), requires the filing of “ten (10) copies of the material in paper medium with those portions obscured for which confidentiality is sought.” Big Rivers has neither filed the required ten copies of Appendix H in paper nor a motion for

⁶⁶ *Id.*, p. 4.

deviation from that filing requirement; therefore, Big Rivers' petition does not comply with this requirement.

In support of confidential treatment for the entirety of Appendix H, Big Rivers states that it "consists of model outputs including projected production costs, such as projected fuel and other O&M costs."⁶⁷ The Commission finds that Appendix H includes projected production costs such as for fuel and other O&M costs which have been found to be confidential. However, the Commission also finds that Appendix H contains other information that does not fall into the category of projected production costs. Thus, Big Rivers' request for confidential protection for the entirety of Appendix H is overly broad and does not comply with 807 KAR 5:001, Section 13, because it does not sufficiently show the specific grounds, pursuant to KRS 61.878, upon which the Commission should classify the entirety of Appendix H as confidential. Big Rivers should refile revised Appendices F, G, and H reflecting the redaction of the information determined herein to be confidential and reflecting as unredacted the information determined herein to not qualify for confidentiality. Further, Big Rivers should either file ten paper copies of Appendix H or file a motion showing good cause to support a deviation from the requirement.

K. Items not Specifically Identified or Discussed in Big Rivers' Petition

Big Rivers has also redacted from its IRP filing information contained on pages 96, 100 (Table 9.6), 103, 110, 113, and C-4 of Appendix C. Big Rivers' petition lacks any discussion or specific grounds to justify granting confidential protection to the information redacted on these pages. Since Big Rivers has not shown that these items

⁶⁷ *Id.*, p. 4.

fall within the exclusions from disclosure as enumerated in KRS 61.878, confidential treatment to these items is denied.

IT IS THEREFORE ORDERED that:

1. KIUC's Motion for Leave to Respond is granted.
2. KIUC's Response in Opposition to the Petition of Big Rivers for Confidential Treatment is accepted for filing in the record in this case.
3. Big Rivers' Petition for Confidential Treatment is granted in part and denied in part, as discussed in this Order.
4. Big Rivers' request for confidential protection for Figure 1.3 and Appendix E of the IRP is granted. The information granted confidential treatment contained in Figure 1.3 and Appendix E, including the electronic copy provided on a CD, shall not be placed in the public record nor made available for public inspection for an indefinite period of time.
5. Big Rivers' request for confidential protection for Table 4.14, Table 8.3, Table 9.4, Table 10.3, and Table 11.1 is granted. Information granted confidential treatment in Table 4.14, Table 8.3, Table 9.4, Table 10.3, and Table 11.1 shall neither be placed in the public record nor made available for public inspection for a period of five years from the entry of this Order, or until further Orders of this Commission. At the end of this period, the materials shall be placed in the public record. Big Rivers may request that the materials continue to be treated as confidential, but must demonstrate that the materials still fall within the exclusions established in KRS 61.878.
6. Big Rivers' request for confidential treatment for Appendix F is granted in part, as discussed in the findings above. Information granted confidential treatment in

Appendix F relating to fuel costs, O&M costs, average variable costs, and total production costs shall neither be placed in the public record nor made available for public inspection for a period of five years from the entry of this Order, or until further Orders of this Commission. At the end of this period, the materials shall be placed in the public record. Big Rivers may request that the materials continue to be treated as confidential, but must demonstrate that the materials still fall within the exclusions established in KRS 61.878.

7. Big Rivers' request for confidential treatment of the information contained in Appendix F relating to capacity, unplanned outage rate, maintenance requirements, availability, and generation information is denied.

8. Big Rivers' request for confidential treatment for the entirety of Appendix G is denied except for information containing market energy prices. Information granted confidential treatment in Appendix G relating to market energy prices shall not be placed in the public record nor made available for public inspection for a period of five years from the entry of this Order, or until further Orders of this Commission. At the end of this period, the materials shall be placed in the public record. Big Rivers may request that the materials continue to be treated as confidential, but must demonstrate that the materials still fall within the exclusions established in KRS 61.878.

9. Big Rivers' request for confidential treatment for the entirety of Appendix H is denied except for information containing projected production costs, such as for fuel and other O&M costs which have been found to be confidential as discussed in the findings above. Information granted confidential treatment in Appendix H relating to projected production costs such as for fuel and other O&M costs shall neither be placed

in the public record nor made available for public inspection for a period of five years from the entry of this Order, or until further Orders of this Commission. At the end of this period, the materials shall be placed in the public record. Big Rivers may request that the materials continue to be treated as confidential, but must demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878.

10. Within seven days from the date of this Order, Big Rivers shall file revised Appendices F, G, and H reflecting the redaction of the information determined herein to be confidential and reflecting as unredacted the information which has been denied confidential treatment. Further, Big Rivers shall either file ten paper copies of Appendix H or file a motion showing good cause to support a deviation from 807 KAR 5:001, Section 13(2)(a)(3).

11. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

12. Big Rivers shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

13. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials granted confidential treatment has not run, Big Rivers 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 Big Rivers is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise the Commission shall deny the request for inspection.

14. The materials denied confidential treatment shall be withheld from public inspection for 20 days from the date of this Order to allow Big Rivers to seek any remedy afforded by law.

15. The Commission shall not make material granted confidential treatment available for inspection for 20 days following an Order finding that the material no longer qualifies for confidential treatment in order to allow Big Rivers to seek a remedy afforded by law.

By the Commission

ENTERED
AUG 26 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

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