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RECEIVED

APR 16 2014

PUBLIC SERVICE
COMMISSION

Via Overnight Mail

April 15, 2014

Mr. Jeff Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

Re: Case No. 2014-00134

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of KIUC's MOTION TO AMEND THE PUBLIC VERSION OF KIUC's RESPONSE IN OPPOSITION TO PETITION FOR CONFIDENTIAL TREATMENT to be filed in the above-referenced docket.

I also enclose the original and (10) copies of the AMENDED PUBLIC VERSION of KIUC's RESPONSE IN OPPOSITION TO PETITION FOR CONFIDENTIAL TREATMENT. The originally filed version of KIUC's Response contains information that Big Rivers claims is confidential pursuant to the April 4, 2014 Petition for Confidential Treatment. Please replace the original April 11, 2014 filed public version of KIUC's Response In Opposition To Petition For Confidential Treatment with this amended public version. Please note that the attachments to the April 11, 2014 filed public version are not changed and should not be replaced. I also enclose the AMENDED CONFIDENTIAL PAGES to be filed under seal.

By copy of this letter, all parties listed on the Certificate of Service have been served. Please place these documents of file.

Very Truly Yours,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

MLKkew

Attachment

cc: Certificate of Service
Quang Nyugen, Esq.
Richard Raff, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail (when available) and by regular, U.S. mail, unless other noted, this 15th day of April, 2014 to the following:



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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF: BIG RIVERS ELECTRIC :
CORPORATION'S FILING) OF WHOLESALE CONTRACTS : Case No. 2014-00134
PURSUANT TO KRS 278.180 AND 807 KAR 5:011 §13 :

KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.'s
MOTION TO AMEND THE PUBLIC VERSION OF ITS
RESPONSE IN OPPOSITION TO PETITION FOR CONFIDENTIAL TREATMENT

On April 11, 2014, Kentucky Industrial Utility Customers, Inc. ("KIUC") filed the Public Version of its Response in Opposition to Big Rivers Electric Corporation's ("Big Rivers") Petition for Confidential Treatment. The public version filed by KIUC redacted all direct references and quotes from Big Rivers' contracts with the Nebraska municipalities. However, subsequent to KIUC's filing Big Rivers informed KIUC that it considers additional information to also be confidential and requested that KIUC move to amend the public version of its April 11, 2014 Response.

Specifically, Big Rivers claims that KIUC should not have publicly disclosed the fact that Big Rivers and the City of Wayne discussed the terms of the contracts in the newspaper and in publicly available City Council Meeting Minutes. Additionally, Big Rivers claims that statements describing the subject matter of information that was disclosed to the public, and statements describing the subject matter of information that KIUC believes is not confidential, are all confidential and should have been redacted by KIUC.

In order to comply with Big Rivers' request, KIUC moves to amend its April 11, 2014 filing by substituting an Amended Public Version of its Response in Opposition to Big Rivers' Petition for Confidential Treatment in place of the public version that is currently on file.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

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**COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY
CUSTOMERS, INC.**

April 15, 2014

APR 16 2014

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF: BIG RIVERS ELECTRIC :
CORPORATION'S FILING) OF WHOLESALE CONTRACTS : Case No. 2014-00134
PURSUANT TO KRS 278.180 AND 807 KAR 5:011 §13 :

AMENDED PUBLIC VERSION

KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.'S
RESPONSE IN OPPOSITION TO PETITION FOR CONFIDENTIAL TREATMENT
OF BIG RIVERS ELECTRIC CORPORATION

On April 4, 2014, Big Rivers Electric Corporation (“Big “Rivers”) filed a Petition seeking confidential protection of portions of three purchase power agreements (“the Contracts”) that Big Rivers entered into with municipal electric systems located in Nebraska. Pursuant to KAR 5:001 Section 13(d), Kentucky Industrial Utility Customers, Inc. (“KIUC”) files this Memorandum in Opposition to Big Rivers’ Petition, recommending that the Kentucky Public Service Commission (“Commission” or “KPSC”) deny confidential treatment of this information.

MEMORANDUM IN OPPOSITION

1. **Big Rivers And The City Of Wayne Have Publicly Disclosed The Major Terms Of The Contracts And Have Therefore Waived Their Claim To Confidential Treatment Of The Contracts.**

Information that is publicly available does not qualify for confidential treatment under the Commission’s Administrative Regulations. 807 KAR 5:001, Section 13 provides:

“(10) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment..

(b) The person who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the person who sought confidential protection, giving ten (10) days to respond. If that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed or considered to be publicly available and shall not be placed in the public record..."

The Commission recognized that information that is available to the public does not qualify for confidential protection in Case No. 2002-00018.¹ In that case, the Commission denied a Petition for Confidential Treatment because the material that the petitioner sought to be protected was already publicly available. The Commission stated:

"We find no evidence to suggest that public disclosure will create an unfair competitive advantage and deny the requested relief. None of the presentations involve transactions that are still in negotiation. Two of the presentations involve water utilities that Kentucky-American has already executed agreements to purchase and has or is currently seeking Commission approval for the purchase. In many instances, the material that the Joint Applicants seek to keep from public disclosure has already been disclosed to the public in prior Commission proceedings. Moreover, as virtually all of the presentations involve water suppliers that are public agencies subject to the Open Records Act and were made without obtaining any confidentiality agreement from the water supplier, much of the material is already available to the public" (Emphasis added).

On page 3 of its Petition in this case, Big Rivers states that the information for which it seeks confidential protection "*is not publicly available....*" This statement is not accurate with respect to the major terms of Big Rivers' Contracts with the Nebraska municipalities [REDACTED]

[REDACTED]

[REDACTED]

The key Paragraphs of the Contracts that are publicly available are detailed below:

- [REDACTED]

¹ Order (April 12, 2002).

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The parties to the Contracts may have executed a confidentiality agreement and prepared a redacted version of the Contracts, but Big Rivers and at least one of the counterparties to the Contracts, the City of Wayne, did not treat the information in the Contracts as confidential. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, the Commission should deny Big Rivers' Petition for Confidential Protection.

2. If The Major Terms Of The Contracts Are Not Afforded Confidential Treatment Due To Voluntary Public Disclosure, The Non-Major Terms Of The Contracts Should Likewise Not Be Considered Confidential.

In addition to the provisions of the contracts that are discussed above, Big Rivers seeks confidential protection for many other provisions in the Contracts that involve minor terms that are less competitively sensitive than the pricing terms that were publicly discussed. These minor terms include all of the details that are

typical of electric supply agreements, including: [REDACTED]

[REDACTED]. KIUC was not able to find instances in which these minor provisions of the Contracts were discussed publicly by Big Rivers or the Nebraska Cities. However, it is likely that these provisions were not discussed publicly because they are details that are not of great interest to the Wayne City Council and lacked the substance or import to be reported in the media. It is reasonable to assume that if Big Rivers and the City of Wayne were willing to discuss the major terms of the contract (i.e. price) publicly, then they would have also been willing to publicly discuss any of the minor terms if there was interest in these terms.

If the major terms of the Contracts are not being treated as confidential, then the minor terms of the contract should not be protected either. It is unreasonable for Big Rivers and the other parties to the Contracts to openly discuss the most important terms of the Contracts, but then insist that the Commission and intervenors protect the less significant provisions of the Contracts as confidential. Accordingly, the Commission should deny Big Rivers' Petition for Confidential Protection in its entirety.

3. Big Rivers Seeks Confidential Treatment For Terms That Are Not Competitively Sensitive.

Many of these minor provisions are also clearly not competitively sensitive, even under the broadest interpretation of KRS 61.878(1)(c)1. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

There are several other provisions of the Contracts that Big Rivers seeks to keep confidential and that contain terms that are so minor, obvious, and non-substantive that there can be no credible argument that the public disclosure of this basic information will do anything to hamper Big Rivers' competitiveness in either the wholesale power markets or the credit markets. These non-competitively sensitive provisions are paragraphs 1.47, 1.50, 1.52, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.3, 4.6, 4.9, 5.1, 7.5, and 7.6. Although Big Rivers states generally in its Petition for Confidential Treatment that the disclosure of confidential information would permit an unfair commercial advantage to Big Rivers' competitors, it fails to explain why each of these relatively minor and obvious terms would result in a competitive disadvantage.

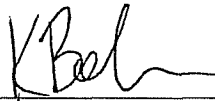
807 KAR 5:001 Section 13 states that “[a]ll material on file with the commission shall be available for examination by the public unless the material is confidential,” and that the “burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.878 and to demonstrate the time period for which the material should be considered as confidential shall be upon the moving party.”² Absent a compelling reason that these specific provisions fall within the exclusions contained in KRS 61.878, they should not be treated as confidential regardless of whether confidential treatment of the Contracts was waived by the public disclosure of their key terms. Any redaction in the Contracts should be narrowly targeted in order to protect only terms that are likely to result in actual competitive disadvantage. All other terms should be available for open examination by the public in accordance with 807 KAR 5:001, Section 13.

² 807 KAR 5:001 Section 13(c).

CONCLUSION

The public versions of Big Rivers' Contracts with the Nebraska municipalities contain numerous redactions that make them virtually unreadable to interested Big Rivers customers. However, the Commission's regulations recognize that the public has a legitimate interest in reviewing documents that could impact the electric service provided to them by regulated utilities in Kentucky. The Commission should therefore ensure that the only information withheld from Big Rivers' ratepayers and the public in general is information that is actually competitively sensitive and that has been kept confidential by Big Rivers and the counterparties to the Contracts. In this case, much of the information that Big Rivers seeks to maintain as confidential is not only publicly available elsewhere, but is also clearly not competitively sensitive. Accordingly, the Commission should deny Big Rivers' Petition for Confidential Treatment in its entirety.

Respectfully submitted,



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April 11, 2014