

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION	)	
FILING OF WHOLESALE CONTRACTS	)	CASE NO.
PURSUANT TO KRS 278.180 AND KAR	)	2014-00134
5:011 §13	)	

ORDER

On August 13, 2014, Big Rivers Electric Corporation (“Movant” or “Big Rivers”) filed a petition, pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(c), and KRS 278.160(3), requesting that the Commission grant confidential protection of portions of Movant’s Responses to Commission Staff’s (“Staff”), Kentucky Office of the Attorney General’s (“AG”), and Kentucky Industrial Utility Customers, Inc.’s (“KIUC”) respective second requests for information (“Second Request”). Movant requests that its responses to Items 4 and 7 of KIUC’s Second Request remain confidential for a period of five years and that the remainder of the designated information remains confidential for an indefinite period of time. The portions of the responses at issue in this petition include projections of financial forecasts, energy and capacity prices pertaining to the three Market Based Rate Partial and Full Requirements Agreements (collectively “PPAs”) entered into between Movant and, respectively, Northeast Nebraska Public Power District; the city of Wayne, Nebraska; and the city of Wakefield, Nebraska.

Along with the petition for confidential treatment, Movant also filed a motion for deviation from the requirement in 807 KAR 5:001, Section 13, that Movant file a

highlighted paper copy and ten redacted paper copies of material containing confidential information submitted pursuant to a petition for confidential treatment. The material at issue in the motion for deviation was provided in electronic format as an attachment to Movant's responses to Item 1 of the AG's Second Request.

In support of its petition of confidential treatment, Movant argues that the designated information would permit an unfair commercial advantage to Movant's competitors if it were publicly disclosed, thus is generally recognized as confidential, and is exempt from public disclosure pursuant to KRS 61.878(1)(c) and KRS 278.160(3). Movant further argues that public disclosure of the information sought to be protected would impair its ability to compete in the wholesale power market and its ability to successfully negotiate future PPAs.

In support of its motion for deviation, Movant argues that its responses to Item 1 of the AG's second request contain files that, if printed, would amount to thousands of pages, and thus are so voluminous that it would overburden the paper record in this matter. Movant further argues that the files are designed for electronic viewing or contain information, such as formulas, that are viewable only in electronic format. Lastly, Movant argues that the pervasive nature of the confidential information makes the production of redacted versions ineffectual and unhelpful to the Commission, the parties and the public.

Having carefully considered the petition for confidential treatment and the materials at issue, and the motion for deviation, the Commission finds that:

1. The materials contained in Appendix A to this Order for which Movant seeks confidential treatment and that are contained in Movant's responses to

Commission Staff's, AG's, and KIUC's respective Second Requests, are records that are generally recognized as confidential or proprietary, and which if openly disclosed would permit an unfair commercial advantage to competitors, and therefore meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(c), and KRS 278.160(3).

2. The materials contained in Appendix B to this Order do not meet the criteria for confidential treatment under 807 KAR 5:001, Section 13, KRS 61.878(1)(c), and KRS 278.160(3). The Commission finds that disclosure of the materials contained in Appendix B to this Order would not impose upon Movant any unfair competitive disadvantage in future negotiations involving wholesale power purchase agreements. This is particularly so given the Commission's need to be able to fully and specifically address the cost impact in its final determination of this matter, and given that Movant's members and their respective retail customers have a right to know the evidence upon which the Commission relied in determining whether the costs of the PPAs are fair, just, and reasonable. Big Rivers' request for confidential treatment should be denied for the materials contained in Appendix B to this Order.

3. Movant has established good cause to deviate from the requirements governing the filing of paper copies of confidential materials contained in Movant's responses to the AG's Second Request for Information. The Commission finds that the responses to AG's Second Request for Information, Item 1, are viewable only in electronic format and therefore Big Rivers may substitute electronic copies on DVD for the paper copies to be filed with the Commission.

IT IS THEREFORE ORDERED that:

1. Movant's motion for confidential protection is hereby granted in part and denied in part.

2. Movant's request for confidential treatment of information set forth in Appendix A to this Order is granted. Movant's responses Items 4 and 7 of KIUC's Second Request shall remain confidential for a period of five years, and the remaining information set forth in Appendix A shall remain confidential for an indefinite period of time.

3. Movant's request for confidential treatment of information set forth in Appendix B to this Order is denied.

4. Movant's motion to deviate from the filing requirements of 807 KAR 5:001 § 13 is granted.

5. The materials for which Movant's request for confidential treatment has been granted for five years shall not be placed in the public record or made available for public inspection for five years. The materials for which Movant's request for confidential treatment has been granted for an indefinite time shall not be placed in the public record or made available for public inspection for an indefinite period of time.

6. The materials for which Movant's request for confidential treatment has been denied shall not be placed in the public record or made available for inspection for 20 days from the date of this Order in order to allow Movant to seek a remedy afforded by law.

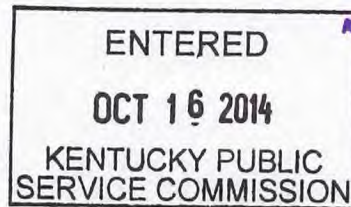
7. Use of the materials that were granted confidential treatment in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

8. Movant shall inform the Commission if the materials granted confidential protection become publicly available or no longer qualify for confidential treatment.

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

10. The Commission shall not make the materials available for inspection for 20 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Movant to seek a remedy afforded by law.

By the Commission



ATTEST:

  
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Executive Director

## APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2014-00134 OCT 16 2014

### MATERIALS FROM RESPONSES TO REQUESTS FOR INFORMATION GRANTED CONFIDENTIAL TREATMENT

1. Staff's Second Request for Information
  - a. Item 2.a.: projections of energy and capacity prices.
2. AG's Second Request for Information
  - a. Item 1: projections of energy and capacity price, cost models and financial forecasts.
3. KIUC's Second Request for Information
  - a. Item 1, Attachment 2: commercial negotiations.
  - b. Item 4.d., Attachment, Pages 2 and 3: cost models.
  - c. Item 7, Attachment: projections of energy and capacity prices.

## APPENDIX B

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2014-00134 **OCT 16 2014**

### MATERIALS FROM RESPONSES TO REQUESTS FOR INFORMATION , DENIED CONFIDENTIAL TREATMENT

1. Staff's Second Request for Information
  - a. Item 1: benefits derived from PPAs.
  - b. Item 3: whether Big Rivers plans to seek Commission approval of certain type of rate.
2. AG's Second Request for Information
  - a. Item 2.a.: potential capacity market.
  - b. Item 3.a.: terms and renewal provisions for PPAs.
  - c. Item 3.b.: capacity rights purchase provisions in PPAs.
  - d. Item 3.c.: basis for calculating price differential provisions in PPAs.
  - e. Item 4.a.: potential network resources.
  - f. Item 4.b.: parties to transmission agreements.
  - g. Item 4.c.: parties to transmission agreements.
  - h. Item 5.c.: explanation of cost models.
3. KIUC's Second Request for Information
  - a. Item 1, Attachment 1: proposed tariff schedules.
  - b. Item 4, Attachment, Page 1: spreadsheet.
  - c. Item 6.a., Attachment: presentations to Big Rivers' Board of Directors.

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