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COMMISSION

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION

3
4 In the Matter of:

5
6 SPECIAL CONTRACT FILING)
7 BY BIG RIVERS ELECTRIC) CASE NO. 2014-00134
8 CORPORATION PURSUANT TO)
9 807 KAR 5:011§13)

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11
12 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**
13 **PROTECTION**
14

15 1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky
16 Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 13, KRS
17 61.878(1)(c) and KRS 278.160(3), to grant confidential protection to portions of its response and
18 portions of the attachments to its response to the information requested at the hearing in this
19 matter. The information for which Big Rivers seeks confidential treatment is hereinafter referred
20 to as the "Confidential Information."

21 2. One (1) copy of the pages of the response and attachments containing
22 Confidential Information, with the Confidential Information underscored, highlighted with
23 transparent ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL," is being filed
24 with this petition in a separate sealed envelope marked "CONFIDENTIAL." A copy of those
25 pages, with the Confidential Information redacted, is being filed with the original and each of the
26 ten (10) copies of the response to the information request filed with this petition. See 807 KAR
27 5:001 Sections 13(2)(a)(3), 13(2)(b).

28 3. A copy of this petition with the Confidential Information redacted has been served
29 on all parties to this proceeding. See 807 KAR 5:001 Section 13(2)(c). A copy of the

1 Confidential Information has been served on all parties that have signed a confidentiality
2 agreement.

3 4. The Confidential Information is not publicly available, is not disseminated within
4 Big Rivers except to those employees and professionals with a legitimate business need to know
5 and act upon the information, and is not disseminated to others without a legitimate need to
6 know and act upon the information.

7 5. If and to the extent the Confidential Information becomes generally available to
8 the public, whether through filings required by other agencies or otherwise, Big Rivers will
9 notify the Commission in writing. See 807 KAR 5:001 Section 13(10)(b).

10 6. As discussed below, the Confidential Information is being submitted
11 confidentially pursuant to 807 KAR 5:001 Section 13(9)(a) and/or is entitled to confidential
12 protection based upon KRS 61.878(1)(c)(1). 807 KAR 5:001 Section 13(2)(a)(1).

13 **I. Information Submitted Pursuant to 807 KAR 5:001 Section 13(9)(a)**

14 7. 807 KAR 5:001 Section 13(9)(a) provides:

15 A person who files any paper that contains material that has previously been
16 deemed confidential or for which a request or motion for confidential treatment is
17 pending shall submit one (1) copy of the paper with the adjudged or alleged
18 confidential material underscored or highlighted, and ten (10) copies of the paper
19 with those portions redacted; and

20
21 1. If the confidential status of the material has been determined
22 previously, a written notice identifying the person who originally
23 submitted the material, the date on which a determination on the
24 materials confidentiality was made and, if applicable, the case
25 number in which the determination was made; or

26
27 2. If a request for confidential treatment of the material is pending,
28 a written notice identifying the person who made the request and
29 the date on which the request was submitted.
30

1 8. The MISO transmission cost figure contained in Big Rivers' response to the post-
2 hearing information request was granted confidential treatment in the Commission's November
3 21, 2014, order in this proceeding, Case No. 2014-00134, and was originally filed by Big Rivers.

4 9. The Confidential Information contained in the email attachment to the response to
5 the post-hearing information request consists of material granted confidential treatment in the
6 Commission's November 21, 2014, order in this proceeding, Case No. 2014-00134, and was
7 originally filed by Big Rivers.

8 **II. Information Protected By KRS 61.878(1)(c)(1)**

9 **A. Big Rivers' Faces Actual Competition**

10 10. KRS 61.878(1)(c)(1) protects "records confidentially disclosed to an agency or
11 required by an agency to be disclosed to it, generally recognized as confidential or proprietary,
12 which if openly disclosed would permit an unfair commercial advantage to competitors of the
13 entity that disclosed the records."

14 11. 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, the
17 best terms available, and keeping the cost of producing that power as low as possible.
18 Fundamentally, if Big Rivers' cost of producing a kilowatt hour or its business risk increases, its
19 ability to sell that kilowatt hour in competition with other utilities is adversely affected.

20 12. 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 and business risks assumed.
22 Any event that adversely affects Big Rivers' margins will adversely affect its financial results
23 and potentially impact the price it pays for credit. As was described in the proceeding before this

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

3 13. Accordingly, Big Rivers has competitors in both the power and capital markets,
4 and its Confidential Information should be protected to prevent the imposition of an unfair
5 competitive advantage.

6 **B. The Confidential Information is Generally Recognized as Confidential or**
7 **Proprietary**

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

11 15. The Confidential Information contained in the response to the post-hearing
12 information request consists of confidential proposals, confidential analyses, and projections of
13 Big Rivers' revenues and expenses, which are based on the confidential terms of the contracts
14 that are the subject of this case and the confidential negotiations between the parties to those
15 contracts. More specifically, this Confidential Information includes figures from an analysis
16 conducted by ACES and updates to those figures, including transmission costs and amounts, an
17 updated LMP basis differential figure, and a change in the Base Case margins determined by
18 ACES. The Commission granted confidential treatment to the confidential terms of the ACES
19 analysis, including transmission costs, LMP basis differential, and Base Case margins,² and the
20 updated figures are confidential for the same reasons.

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.

² See order dated November 21, 2014, in this case.

1 16. The Confidential Information contained in the Wood Mackenzie Pricing Data
2 attachment to the response to the post-hearing information request consists of power market
3 price projections relied on by Big Rivers and is proprietary information provided to Big Rivers
4 by Wood Mackenzie. Public disclosure of this information would provide insight into the prices
5 at which Big Rivers is willing to buy or sell power. The information is also indicative of the
6 market conditions Big Rivers expects to encounter and its ability to compete with competitors.
7 The Commission has previously granted confidential treatment to similar information. *See order*
8 *dated September 30, 2014, in this case; In the Matter of: Application of Big Rivers Electric*
9 *Corporation for a General Adjustment in Rates, Order, P.S.C. Case No. 2012-00535 (April 25,*
10 *2013); In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment*
11 *in Rates, Order, P.S.C. Case No. 2012-00535 (August 14, 2013); In the Matter of: Application of*
12 *Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for*
13 *Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of*
14 *Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, Letter,*
15 *P.S.C. Case No. 2012-00063 (August 15, 2012).*

16 17. As such, the Confidential Information is generally recognized as confidential and
17 proprietary.

18 **C. Disclosure of the Confidential Information Would Permit an Unfair Commercial**
19 **Advantage to Big Rivers’ Competitors**

20 18. Disclosure of the Confidential Information would permit an unfair commercial
21 advantage to Big Rivers’ competitors. As discussed above, Big Rivers faces actual competition
22 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
23 competitive injury if the Confidential Information was publicly disclosed.

1 19. In PSC Case No. 2003-00054, the Commission granted confidential protection for
2 bids submitted to Union Light Heat & Power (“ULH&P”). ULH&P’s argued, and the
3 Commission implicitly accepted, that the bidding contractors would not want their bid
4 information publicly disclosed, and that disclosure would reduce the contractor pool available to
5 ULH&P, which would drive up ULH&P’s costs, hurting its ability to compete with other gas
6 suppliers. Order dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat
7 and Power Company for Confidential Treatment*, PSC Case No. 2003-00054. Similarly, in *Hoy
8 v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found that without
9 protection for confidential information provided to a public agency, “companies would be
10 reluctant to apply for investment tax credits for fear the confidentiality of financial information
11 would be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769
12 (Ky. 1995).

13 20. In Big Rivers’ case, Big Rivers is currently in negotiations with potential
14 counterparties for other purchase power agreements (“PPAs”) and expects to engage in
15 negotiations with other counterparties in the future. If confidential treatment of the confidential
16 terms, analyses, and negotiations related to the PPAs is denied, potential counterparties would
17 know that such information related to them could be publicly disclosed, which could reveal
18 information to their competitors about their competitiveness. Because many companies would
19 be reluctant to have such information disclosed, public disclosure of the Confidential
20 Information would likely reduce the pool of counterparties willing to negotiate with Big Rivers,
21 reducing Big Rivers’ ability to sell power and impairing its ability to compete in the wholesale
22 power and credit markets.

1 be used to Big Rivers' competitive disadvantage for the reasons stated above. 807 KAR 5:001
2 Section 13(2)(a)(2).

3 **IV. Conclusion**

4 26. Based on the foregoing, the Confidential Information is entitled to confidential
5 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due
6 process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v.*
7 *Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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1 WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect
2 as confidential the Confidential Information.

3 On this the 20th day of January, 2015.

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Certificate of Service

I certify that a true and accurate copy of the foregoing was or will be served by regular
mail, by Federal Express, or by hand delivery upon the persons listed on the accompanying
service list, on or before the date the foregoing is filed with the Kentucky Public Service
Commission.

On this the 20th day of January, 2015,



Counsel for Big Rivers Electric Corporation