

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC )      CASE NO.  
CORPORATION FOR A DECLARATORY ORDER )      2016-00278

ORDER

On October 10, 2016, Big Rivers Electric Corporation ("Big Rivers") filed a petition, pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection to portions of its responses to Commission Staff's Second Request for Information ("Staff's Second Request") and to its responses to the Second Request for Information from the city of Henderson, Kentucky, and Henderson Utility Commission d/b/a Henderson Municipal Power & Light ("Henderson's Second Request").

The designated materials for which confidential protection is requested are more specifically described as the following:

- The attachment to Big Rivers' response to Staff's Second Request, Item 1, which is an invoice submitted by Big Rivers to the city of Henderson for sales to Big Rivers and the related payment obligation due the city of Henderson. Big Rivers requests that the designated material contained in its response to Staff's Second Request, Item 1, be held confidential for an indefinite period.
- The attachment to Big Rivers' response to Staff's Second Request, Item 3, which contains journal entries that reveal detailed usage and price information for the city of Henderson, and variable production costs of the Station Two generating plant

("Station Two"). Big Rivers requests that the designated material contained in its response to Staff's Second Request, Item 3, be held confidential for an indefinite period of time.

- Big Rivers' response to Henderson's Second Request, Item 9, Attachment 1, which contains cost estimates to run Station Two over Labor Day weekend in 2016, and Attachment 2, which contains estimated savings from market purchase of energy versus Station Two generation. Attachments 1 and 2 reveal detailed actual and projected amounts and prices for energy purchased and sold by Big Rivers or that Big Rivers declined to purchase, the variable production costs of Station Two, and the amount of energy produced by Station Two. Big Rivers requests that the designated materials contained in its response to Henderson's Second Request, Item 9, Attachments 1 and 2, be held confidential for an indefinite period of time.

- Big Rivers' response to Henderson's Second Request, Item 15, Attachment, Page 4 of 5, which contains detailed information regarding revenue associated with sales of Big Rivers' allocated capacity of Station Two into the Midcontinent Independent Systems Operator, Inc. market. Big Rivers requests that the designated material contained in its response to Henderson's Second Request, Item 15, Attachment, Page 4 of 5, be held confidential for a period of five years.

- The attachment to Big Rivers' response to Henderson's Second Request, Item 20, which reveals detailed actual and projected usage and financial information related to variable production costs and the amount of energy produced by Station Two. Big Rivers requests that the designated material contained in its response to

Henderson's Second Request, Item 20, be held confidential for an indefinite period of time.

- The attachment to Big Rivers' response to Henderson's Second Request, Item 25, which is an Indemnification Agreement that was filed in Case No. 2007-00455<sup>1</sup> that was granted confidential treatment by letter dated August 31, 2009, for an indefinite period of time. The designated material contains specific financial details agreed to by the parties to the Indemnification Agreement. Big Rivers requests that the designated material contained in its response to Henderson's Second Request, Item 25, continue to be held confidential for an indefinite period.

In support of its petition requesting confidential treatment for its responses to Staff's Second Request, Items 1 and 3, and to Henderson's Second Request, Items 9, 15, and 20, Big Rivers states that the designated materials are generally recognized as confidential under KRS 61.878(1)(c)(1) because the designated materials provide insight into energy that Big Rivers will have available, the prices at which Big Rivers is willing to buy or sell power, and Big Rivers' cost of producing power, which indicates the prices at which Big Rivers is willing to buy or sell power. Big Rivers contends that public disclosure of its responses to Staff's Second Request, Items 1 and 3, and to Henderson's Second Request, Items 9, 15, and 20, would provide Big Rivers' competition with an unfair commercial advantage.

In further support of its petition requesting confidential treatment for its responses to Staff's Second Request, Items 1 and 3, and to Henderson's Second Request, Items 9 and 20, Big Rivers states that public disclosure of the designated materials would be an

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<sup>1</sup> Case No. 2007-00455, *Approval to Unwind Lease and Power Purchase Transactions and to Issue Evidences of Indebtedness* (Ky. PSC Aug. 31, 2009).

unwarranted invasion of privacy, and that the designated materials thus are generally recognized as confidential under KRS 61.878(1)(a), which protects against public disclosure of information of a personal nature that would constitute an unwarranted invasion of personal privacy.

Also in support of its petition requesting confidential treatment, Big Rivers states that, in a previous case, the Commission granted confidential protection to the same Indemnification Agreement that was filed in Big Rivers' response to Henderson's Second Request, Item 25. Previously, the Commission deemed that the Indemnification Agreement should be granted confidential protection for an indefinite period on the basis that public disclosure would permit an unfair commercial advantage to competitors. For the same reason as for the Commission's previous determination, Big Rivers contends that its response to Henderson's Section Request, Item 25, should continue to be granted confidential protection pursuant to 807 KAR 5:001, Section 13(9)(a).

Having carefully considered the petition and the materials at issue, the Commission finds that the designated materials contained in Big Rivers' responses to Staff's Second Request, Items 1 and 3, and to Henderson's Second Request, Items 9, 15, 20, and 25, are records that are generally recognized as confidential or proprietary, and therefore meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c), KRS 61.878(1)(a)(1), and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Big Rivers' petition for confidential protection for designated materials in its responses to Staff's Second Request, Items 1 and 3, and Henderson's Second Request, Items 9, 15, 20, and 25, is granted.

2. The materials set forth in Big Rivers' responses to Staff's Second Request, Items 1 and 3, and Henderson's Second Request, Items 9, 20, and 25, shall not be placed in the public record or made available for public inspection for an indefinite period of time, or until further Orders of this Commission.

3. The materials set forth in Big Rivers' response to Henderson's Second Request, Item 15, shall not be placed in the public record or made available for public inspection for a period of five years, or until further Orders of this Commission

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

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

6. 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, then 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 materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

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

By the Commission

ENTERED  
FEB 20 2017  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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