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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

APR 21 2016

PUBLIC SERVICE
COMMISSION

In the Matter of:

JOINT APPLICATION OF KENERGY)
CORP. AND BIG RIVERS ELECTRIC) Case No. 2016-00117
CORPORATION FOR APPROVAL)
OF CONTRACTS)

JOINT PETITION FOR CONFIDENTIAL PROTECTION

1. Big Rivers Electric Corporation (“Big Rivers”) and Aleris Rolled Products, Inc. (“Aleris”) (together, the “Joint Petitioners”) hereby jointly petition the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential protection to certain information that will be presented at the April 21, 2016, informal conference in this matter. The information for which the Joint Petitioners seek confidential treatment is hereinafter referred to as the “Confidential Information.” The Confidential Information consists of information relating to the increase in load at the Aleris Lewisport facility under the Amended and Restated Agreement for Retail Electric Service between Kenergy Corp. and Aleris filed with the application in this matter.

2. One (1) copy of the pages from the document presented at the April 21 informal conference containing Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this petition. Ten copies of the document, with the Confidential Information redacted, are also being filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3).

1 3. One (1) copy of this petition and one (1) copy of the document with the
2 Confidential Information redacted have been served on all parties to this proceeding. 807 KAR
3 5:001 Section 13(2)(b).

4 4. If and to the extent the Confidential Information becomes generally available to
5 the public, whether through filings required by other agencies or otherwise, the Joint Petitioners
6 will notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
7 13(10)(b).

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

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

13 6. 807 KAR 5:001 Section 13(9)(a) provides, in pertinent part:

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

19
20 ...

21
22 2. If a request for confidential treatment of the material is pending,
23 a written notice identifying the person who made the request and
24 the date on which the request was submitted.

25
26 7. The Confidential Information is the same information that Big Rivers and Aleris
27 filed under a joint petition for confidential with the application in this proceeding on March 24,
28 2016. That petition for confidential treatment is pending.

1 8. The Confidential Information is also an update of information contained in a
2 schedule that Big Rivers filed pursuant to a petition for confidential treatment on October 15,
3 2014 in Case No. 2014-00166. Big Rivers filed that schedule in response to Item 7 of the
4 Attorney General’s Second Request for Information in Case No. 2014-00166, and that petition
5 for confidential treatment is also pending.

6 9. 807 KAR 5:001 Section 13(4) provides, “Pending action by the [C]ommission on
7 a motion for confidential treatment or by its executive director on a request for confidential
8 treatment, the material specifically identified *shall* be accorded confidential treatment”
9 (emphasis added). As such, the Confidential Information is entitled to confidential treatment
10 while the petitions for confidential treatment Big Rivers filed in this case and in Case No. 2014-
11 00166 remain pending.

12 **II. Information entitled to confidential protection based upon KRS 61.878(1)(a)**

13 10. KRS 61.878(1)(a) protects “[p]ublic records containing information of a personal
14 nature where the public disclosure thereof would constitute a clearly unwarranted invasion of
15 personal privacy.” The Confidential Information is also entitled to confidential treatment under
16 KRS 61.878(1)(a) because it consists of projections of an individual retail customer’s demand
17 requirements and related payment obligations. As explained in more detail in Section III below,
18 the customer, Aleris, considers this information highly confidential and believes that public
19 disclosure of this information will cause it substantial competitive harm. Because public
20 disclosure of the Confidential Information would constitute an unwarranted invasion of this
21 customer’s privacy, this Confidential Information should be granted confidential treatment. *See*
22 *Ky. Op. Atty. Gen. 96-ORD-176 (August 20, 1996) (holding Kroger Company’s utility bills*
23 *exempt from disclosure under KRS 61.878(1)(a)); In the Matter of: Application of Kentucky*

1 *Utilities Company for an Adjustment of its Electric Rates*, Order, P.S.C. Case No. 2012-00221
2 (July 25, 2013) (holding customer names, account numbers, and usage information exempt from
3 disclosure under KRS 61.878(1)(a)).

4 **III. Information entitled to confidential protection based upon KRS 61.878(1)(c)(1)**

5 11. As discussed below, the Confidential Information is also entitled to confidential
6 protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to
7 an agency or required by an agency to be disclosed to it, generally recognized as confidential or
8 proprietary, which if openly disclosed would permit an unfair commercial advantage to
9 competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1); 807 KAR 5:001
10 Section 13(2)(a)(1). Subsection A below explains that Aleris and Big Rivers operate in
11 competitive environments; Subection B below shows that the Confidential Information is
12 generally recognized as confidential or proprietary; and Subection C below demonstrates that
13 public disclosure of the Confidential Information would permit an unfair commercial advantage
14 to competitors of Aleris and Big Rivers. As such, the Commission should grant confidential
15 treatment to the Confidential Information.

16 **A. Aleris and Big Rivers Face Actual Competition**

17
18 12. Aleris is a privately-held, global leader in aluminum rolled products, with global
19 headquarters in Cleveland, Ohio. Aleris owns and operates an aluminum rolling mill in
20 Lewisport, Kentucky, which has been in operation since 1964. The Lewisport mill operates in
21 highly competitive, cost sensitive, and increasingly global market to provide rolled aluminum
22 sheet to key industries in Kentucky and the United States including Distribution, Transportation,
23 Automotive, Building and Construction and Specialty Products. Although Aleris maintains a
24 positive outlook, competition in the U.S. flat-rolled aluminum industry has grown significantly

1 due to the introduction of foreign competitors that benefit from lower cost structures and rich
2 government incentives on power, tax adjustments, and other subsidies.

3 13. Aleris is making its largest investments in the company's history to build twin
4 Continuous Annealing Line with Pre-Treatment ("CALP") lines. This investment, and its related
5 timing, will allow Aleris to be one of the first few companies to market in the United States with
6 a state of the art auto body sheet production process. It is imperative for Aleris's success in this
7 endeavor, and in the marketplace more generally, that the timing and extent of its ramp up in
8 production be kept confidential. Otherwise, as explained further below, Aleris's direct
9 competitors could gain insight into the most sensitive competitive information, including Aleris's
10 capacity, pricing and customers.

11 14. Big Rivers competes in the wholesale power market to sell energy excess to its
12 members' needs. This includes short-term bilateral energy markets, day-ahead and real-time
13 energy and ancillary services markets, the annual capacity market, and forward bilateral long-
14 term wholesale agreements with utilities and industrial customers. Big Rivers' ability to
15 successfully compete in these wholesale power markets is dependent upon a combination of its
16 ability to: 1) obtain the maximum price for the power it sells and the best contract terms, and 2)
17 keep its cost of production as low as possible. Fundamentally, if Big Rivers' cost of producing a
18 kilowatt hour or its business risk increases, its ability to sell that kilowatt hour in competition
19 with other utilities is adversely affected.

20 15. Big Rivers also competes for reasonably-priced credit in the credit markets, and
21 its ability to compete is directly impacted by the financial results it obtains and the business risks
22 it assumes. Any event that adversely affects Big Rivers' financial results or increases its
23 business risks may adversely affect the price it pays for credit. A competitor armed with Big

1 Rivers' proprietary and confidential information will be able to increase Big Rivers' costs or
2 decrease Big Rivers' revenues, which could in turn affect Big Rivers' apparent creditworthiness.
3 Impediments to Big Rivers' obtaining the best contract terms could likewise affect its apparent
4 creditworthiness. A utility the size of Big Rivers that operates generation and transmission
5 facilities will always have periodic cash and borrowing requirements for both anticipated and
6 unanticipated needs. Big Rivers expects to be in the credit markets on a regular basis in the
7 future, and it is imperative that Big Rivers improve and maintain its credit profile.

8 16. Accordingly, Aleris has competitors in the aluminum market, Big Rivers has
9 competitors in the wholesale power and capital markets, and the Confidential Information should
10 be afforded confidential treatment to prevent the imposition of an unfair competitive advantage
11 to those competitors.

12 **B. The Confidential Information is Generally Recognized as Confidential or**
13 **Proprietary**
14

15 17. The Confidential Information for which the Joint Petitioners seek confidential
16 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under
17 Kentucky law.

18 18. The Confidential Information is not publicly available, is not disseminated within
19 the Joint Petitioners' organizations except to those employees and professionals with a legitimate
20 business need to know and act upon the information, and is not disseminated to others without a
21 legitimate need to know and act upon the information.

22 19. The Confidential Information reveals the dates and the extent to which Aleris
23 plans to ramp up its production. Aleris has taken great precaution to safeguard all technical and
24 timing information related to this expansion project. The only people that have access to this
25 information are those who are already bound by confidentiality agreements with

1 Aleris. Information about a company’s detailed inner workings is generally recognized as
2 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907
3 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such
4 information concerning the inner workings of a corporation is ‘generally recognized as
5 confidential or proprietary’”). Moreover, KRS 278.160(3) specifically recognizes that terms of a
6 special contract are not required to be publicly disclosed if such terms are entitled to protection
7 under KRS 61.878(1)(c)(1), and the Commission has previously granted confidential treatment
8 to similar information. *See, e.g., In the Matter of: Big Rivers Electric Corporation Filing of*
9 *Wholesale Contracts Pursuant to KRS 278.180 and 807 KAR 5:011 Section 13*, Order, P.S.C.
10 Case No. 2014-00134 (September 10, 2014) (granting confidential treatment to confidential
11 contract terms); *In the Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts*
12 *Pursuant to KRS 278.180 and 807 KAR 5:011 Section 13*, Order, P.S.C. Case No. 2014-00134
13 (October 9, 2014) (granting confidential treatment to confidential contract terms).

14 20. The Confidential Information also implicates Aleris’s contractual obligations to
15 keep the identities of its customers confidential. If the dates and extent of Aleris’s ramp up of
16 production were to become public and combined with otherwise publicly-available information,
17 Aleris competitors might be able to discover the identities of Aleris customers. Aleris has
18 contractual confidentiality agreements with its customers that prevent it from revealing their
19 identities. Aleris has safeguarded the identities of its customers, which should be protected from
20 indirect disclosure here.

21 21. Based on the foregoing, the Confidential Information is generally recognized as
22 confidential or proprietary under Kentucky law.

23

1 **C. Disclosure of the Confidential Information Would Permit an Unfair**
2 **Commercial Advantage to Competitors of Aleris and Big Rivers**

3
4 22. Disclosure of the Confidential Information would permit an unfair commercial
5 advantage to competitors of Aleris and Big Rivers. As discussed above, Aleris faces actual
6 competition in the aluminum market, and Big Rivers faces actual competition in the wholesale
7 power and credit markets. It is likely that both Aleris and Big Rivers would suffer competitive
8 injury if the Confidential Information was publicly disclosed.

9 23. Aleris, as explained above, is making its largest investments in the company's
10 history to build twin CALP lines. This investment, and its related timing, will allow Aleris to be
11 one of the first few companies to market in the United States with a state of the art auto body
12 sheet production process. Should the timing and extent of Aleris's ramp up of production not be
13 protected from disclosure, an Aleris competitor could gain access to that information. An Aleris
14 competitor could then combine the Confidential Information with otherwise publicly-available
15 information to estimate Aleris's capacity and pricing capabilities at specific points in time. And
16 competitors could use the information to try to identify and solicit confidential Aleris customers.
17 Thus, any disclosure of the timing and extent of the Aleris ramp up strategy to competitors could
18 result in competitors beating Aleris to market and seeking to coopt Aleris customers, thus greatly
19 reducing Aleris's return on its investment, potentially damaging critical customer relationships,
20 and causing Aleris substantial competitive harm.

21 24. Public disclosure of the Confidential Information would also cause competitive
22 harm to Big Rivers. In P.S.C. Case No. 2003-00054, the Commission granted confidential
23 protection to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P's argued, and
24 the Commission implicitly accepted, that the bidding contractors would not want their bid
25 information publicly disclosed, and that disclosure would reduce the contractor pool available to

1 ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with other gas
2 suppliers. *In the Matter of: Application of the Union Light, Heat and Power Company for*
3 *Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003). Similarly, in *Hoy*
4 *v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found that without
5 protection for confidential information provided to a public agency, "companies would be
6 reluctant to apply for investment tax credits for fear the confidentiality of financial information
7 would be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769
8 (Ky. 1995). In the present case, Aleris considers the Confidential Information highly
9 confidential. If Big Rivers is unable to obtain confidential treatment for the contract terms a
10 power contract counterparty, Aleris in this case, considers confidential, potential counterparties
11 dealing with Big Rivers on future transactions would know that such information related to them
12 could be publicly disclosed, which could reveal information to their competitors about their
13 competitiveness. Because many companies would be reluctant to have such information
14 disclosed, public disclosure of the Confidential Information would likely reduce the pool of
15 counterparties willing to deal with Big Rivers, reducing Big Rivers' ability to sell power and
16 impairing its ability to compete in the wholesale power and credit markets. Aleris had choices
17 about where it would make its CALP project investment. If it had thought that extremely
18 confidential project information that could endanger the ultimate competitiveness of the
19 company would be publicly disclosed in a proceeding before the Commission, that fact would
20 have had major significance in its decision about where the project would be constructed.

21 25. Accordingly, the public disclosure of the Confidential Information would provide
22 competitors of Aleris and Big Rivers with an unfair commercial advantage.

23

1 **IV. Time Period**

2 26. The Joint Petitioners request that the Confidential Information remain confidential
3 in perpetuity because it reveals private customer data. If the Commission disagrees that that
4 information is entitled to confidential treatment pursuant to KRS 61.878(1)(a), the Joint
5 Petitioners request that that information remain confidential for a period of ten (10) years from
6 the date of this petition, which will provide sufficient time for the information to become
7 sufficiently outdated so as to no longer cause a risk of competitive harm to Aleris and Big
8 Rivers. 807 KAR 5:001 Section 13(2)(a)(2).

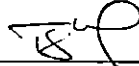
9 **V. Conclusion**

10 27. Based on the foregoing, the Confidential Information is entitled to confidential
11 protection. If the Commission disagrees that either Big Rivers or Aleris is entitled to
12 confidential protection, due process requires the Commission to hold an evidentiary hearing. *See*
13 *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

14 WHEREFORE, the Joint Petitioners respectfully request that the Commission classify
15 and protect as confidential the Confidential Information.
16

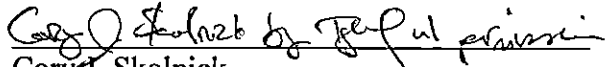
1 On this the 21st day of April, 2016.

2 Respectfully submitted,

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5 _____
6 James M. Miller
7 Tyson Kamuf
8 SULLIVAN, MOUNTJOY, STAINBACK
9 & MILLER, P.S.C.
10 100 St. Ann Street
11 P. O. Box 727
12 Owensboro, Kentucky 42302-0727
13 Phone: (270) 926-4000
14 Facsimile: (270) 683-6694
15 jmiller@smsmlaw.com
16 tkamuf@smsmlaw.com

17 Counsel for Big Rivers Electric Corporation


18
19
20 

21 _____
22 Cory J. Skolnick
23 FROST BROWN TODD, LLC
24 400 West Market Street, 32nd Floor
25 Louisville, KY 40202
26 (502) 589-5400
27 (502) 581-1087 (fax)
28 cskolnick@fbtlaw.com

29 Counsel for Aleris Rolled Products, Inc.

30
31
32 **Certificate of Service**

33
34 This is to certify that a true and accurate copy of the foregoing will be served by hand
35 delivery on the 21st day of April, 2016, upon Hon. Kent Chandler, Assistant Attorney General;
36 Hon. Michael L. Kurtz, counsel for Kentucky Industrial Utility Customers, Inc.; and Hon. J.
37 Christopher Hopgood, counsel for Kenergy Corp.

38
39
40 

41 _____
Counsel for Big Rivers Electric Corporation

Aleris EDR: Input Assumptions

| | A | B | C | D | E | F | G | H | I |
|----|------------------|----------------------|----------------------|----------------------|----------------------|----------------------|------------------|------------------------|---------------------|
| | | Metered Phase Demand | Metered Phase Demand | Metered Phase Demand | Metered Phase Demand | Metered Phase Demand | Max Phase Demand | Cumul Max Phase Demand | Max Contract Demand |
| | <u>Source</u> | <u>kW</u> | <u>kW</u> | <u>kW</u> | <u>kW</u> | <u>kW</u> | <u>kW</u> | <u>kW</u> | <u>kW</u> |
| 1 | Base + Other | | | | | | | | |
| 2 | Phase I | | | | | | | | |
| 3 | Phase II | | | | | | | | |
| 4 | Phase III | | | | | | | | |
| 5 | Phase IV | | | | | | | | |
| 6 | Other Metered kW | | | | | | | | |
| 7 | Total | | | | | | | | |
| 8 | All Phases | | | | | | | | |
| 9 | | | | | | | | | |
| 10 | | | | | | | | | |
| 11 | | Credit Period | Credit Period | | Full Rate Term | Full Rate Term | | | |
| 12 | | <u>Start</u> | <u>End</u> | | <u>Start</u> | <u>End</u> | | | |
| 13 | <u>Phase</u> | | | | | | | | |
| 14 | | | | | | | | | |
| 15 | Phase I | | | | | | | | |
| 16 | Phase II | | | | | | | | |
| 17 | Phase III | | | | | | | | |
| 18 | Phase IV | | | | | | | | |

Aleris EDR: Demand (kW) Model

| | A | B | C | D | E | F | G | H | I | J | K | L | | | |
|----|-------------------------------------|-----------------------|------------------------|-------------------------|--------|--------------------------|-------------------------|----|--------|----|--------|----|--------|-------|--------|
| 1 | Timing | | | | | | | | | | | | | | |
| 2 | | Phase I Credit Period | | | | Phase I Full Rate Term | | | | | | | | | |
| 3 | | | Phase II Credit Period | | | Phase II Full Rate Term | | | | | | | | | |
| 4 | | | | Phase III Credit Period | | Phase III Full Rate Term | | | | | | | | TOTAL | |
| 5 | | | | Phase IV Credit Period | | | Phase IV Full Rate Term | | | | | | | | |
| 6 | Number of Months | | | | | | | | | | | | | | |
| 7 | Month/Year Start-End | | | | | | | | | | | | | | |
| 8 | | | | | | | | | | | | | | | |
| 9 | | | | | | | | | | | | | | | |
| 10 | Maximum Contract Demand (kW) | | | | | | | | | | | | | | |
| 11 | | | | | | | | | | | | | | | |
| 12 | Base and Phase Demands (kW) | | | | | | | | | | | | | | |
| 13 | Base | | | | | | | | | | | | | | |
| 14 | Phase I | | | | | | | | | | | | | | |
| 15 | Phase II | | | | | | | | | | | | | | |
| 16 | Phase III | | | | | | | | | | | | | | |
| 17 | Phase IV | | | | | | | | | | | | | | |
| 18 | Other Metered kW | | | | | | | | | | | | | | |
| 19 | Incremental to Base | | | | | | | | | | | | | | |
| 20 | Total Metered kW | | | | | | | | | | | | | | |
| 21 | | | | | | | | | | | | | | | |
| 22 | Minimum Contract Demand (kW) | | | | | | | | | | | | | | |
| 23 | (1) 60% of Maximum Contract Demand | | | | | | | | | | | | | | |
| 24 | (2) Sum of Phase Demands | | | | | | | | | | | | | | |
| 25 | A. Base Demand | | | | | | | | | | | | | | |
| 26 | B. Portion of Phase I increment | | | | | | | | | | | | | | |
| 27 | C. Portion of Phase II increment | | | | | | | | | | | | | | |
| 28 | D. Portion of Phase III increment | | | | | | | | | | | | | | |
| 29 | E. Portion of Phase IV increment | | | | | | | | | | | | | | |
| 30 | Total | | | | | | | | | | | | | | |
| 31 | >> Greater of (1) or (2) is | | | | | | | | | | | | | | |
| 32 | Minimum Contract Demand (kW) | | | | | | | | | | | | | | |
| 33 | | | | | | | | | | | | | | | |
| 34 | Summary | | | | | | | | | | | | | | |
| 35 | Maximum Contract Demand (kW) | | | | | | | | | | | | | | |
| 36 | Base and Phase Demands (kW) | | | | | | | | | | | | | | |
| 37 | Minimum Contract Demand (kW) | | | | | | | | | | | | | | |
| 38 | | | | | | | | | | | | | | | |
| 39 | Demand Charges | | | | | | | | | | | | | | |
| 40 | LIC Demand Charge (per kW) | \$ | 10.715 | \$ | 10.715 | \$ | 10.715 | \$ | 10.715 | \$ | 10.715 | \$ | 10.715 | \$ | 10.715 |
| 41 | LIC Demand EDR Credit (90%) | \$ | 9.644 | \$ | 9.644 | \$ | 9.644 | \$ | 9.644 | \$ | 9.644 | \$ | 9.644 | \$ | 9.644 |
| 42 | | | | | | | | | | | | | | | |
| 43 | EDR Credit | | | | | | | | | | | | | | |
| 44 | Phase I | | | | | | | | | | | | | | |
| 45 | Phase II | | | | | | | | | | | | | | |
| 46 | Phase III | | | | | | | | | | | | | | |
| 47 | Phase IV | | | | | | | | | | | | | | |
| 48 | Total | | | | | | | | | | | | | | |