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AN EXAMINATION OF THE APPLICATION OF)	
THE FUEL ADJUSTMENT CLAUSE OF BIG)	CASE NO.
RIVERS ELECTRIC CORPORATION FROM)	2016-00235
NOVEMBER 1, 2015 THROUGH APRIL 30, 2016	j	

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL PROTECTION

13(2)(b).

- 1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions 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 contained in Big Rivers' responses
- to Items 5 and 24 of the information requested in the Appendix to the Commission's August 12,
- 20 2016, order in this matter (the "Confidential Information").
- 21 2. The Confidential Information consists of information about Big Rivers' ongoing 22 off-system sales (Item 5) and information about the current heat rates and efficiency of Big 23 Rivers' generating units (Item 24).
 - 3. One (1) copy of the pages 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. A copy of those pages, with the Confidential Information redacted, or a sheet noting that the entirety of the pages have been redacted, is being filed with the original and each of the ten (10) copies of Big Rivers' responses to the information requests filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3),

- 4. Please note that certain personal information has been redacted from the attachment to Big Rivers' response to Item 6 pursuant to 807 KAR 5:001 Section 4(10), which relates to privacy protection for filings.
- 5. There are no other parties to this proceeding on which to serve a copy of this petition. 807 KAR 5:001 Section 13(2)(c).
- 6. The Confidential Information is not publicly available, is not disseminated within

 Big Rivers except to those employees and professionals with a legitimate business need to know

 and act upon the information, and is not disseminated to others without a legitimate need to

 know and act upon the information.
 - 7. If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Big Rivers will notify the Commission and have its confidential status removed. 807 KAR 5:001 Section 13(10)(a).

8. As discussed below, the Confidential Information is entitled to confidential protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1).

I. Big Rivers Faces Actual Competition

9. Big Rivers competes in the wholesale power market to sell energy excess to its members' needs. Big Rivers' ability to successfully compete in the wholesale power market is dependent upon a combination of its ability to get the maximum price for the power sold, and

1 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers' cost

2 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with

3 other utilities is adversely affected. As is well documented in multiple proceedings before this

4 Commission, Big Rivers' margins are derived almost exclusively from its off-system sales.

5 10. Big Rivers also competes for reasonably priced credit in the credit markets, and

its ability to compete is directly impacted by its financial results. Any event that adversely

affects Big Rivers' margins will adversely affect its financial results and potentially impact the

price it pays for credit. As was described in the proceeding before this Commission in the Big

Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis

10 in the future.¹

II. The Confidential Information is Generally Recognized as Confidential or Proprietary

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- 11. The Confidential Information for which Big Rivers seeks confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law.
- 12. The Confidential Information in the response to Item 5 reveals future off-system sales. The information in the response to Item 24 provides the current heat rates and efficiency of Big Rivers' generating units, which provide insight into Big Rivers' production costs.
- 13. Public disclosure of the Confidential Information will give Big Rivers' suppliers, buyers, and competitors insight into Big Rivers' cost of producing power, and into when Big Rivers will have power available to sell into the market or when Big Rivers needs power, and the amount of power Big Rivers has to sell or will need.

¹ See Order dated March 6, 2009, in 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.

1	14. Information about a company's detailed inner workings is generally recognized a			
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, the Commission has previously granted confidential			
6	treatment to similar information. See, e.g., In the Matter of: Application of Louisville Gas and			
7	Electric Company for an Adjustment of Its Electric and Gas Rates, Order, P.S.C. Case No. 2014			
8	00372 (January 14, 2016) (granting confidential treatment to generator heat rates for an			
9	indefinite period of time); letters from the Commission dated July 28, 2011, and December 20,			
10	2011, in In the Matter of: Application of Big Rivers Electric Corporation for a General			
11	Adjustment in Rates, PSC Case No. 2011-00036 (granting confidential treatment to multi-year			
12	forecast, including production cost information); two letters from the Commission dated			
13	December 11, 2012, in In the Matter of: Application of Big Rivers Electric Corporation for			
14	Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended			
15	Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and			
16	Necessity, and for Authority to Establish a Regulatory Account, PSC Case No. 2012-00063			
17	(granting confidential treatment to Big Rivers' off-system sales information).			
18 19 20	III. Disclosure of the Confidential Information Would Permit an Unfair Commercial Advantage to Big Rivers' Competitors			
21	15. Disclosure of the Confidential Information would permit an unfair commercial			
22	advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition			
23	in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer			
24	competitive injury if that Confidential Information was publicly disclosed.			

- 1 16. The Confidential Information includes information about Big Rivers' production 2 costs and future off-system sales. If that information is publicly disclosed, potential power 3 suppliers and buyers would have insight into the prices at which Big Rivers is willing to buy and 4 sell at and could manipulate the bidding process, leading to higher prices or lower revenues for 5 Big Rivers and impairing its ability to compete in the wholesale power and credit markets. In 6 PSC Case No. 2003-00054, the Commission granted confidential protection to bids submitted to 7 Union Light, Heat & Power ("ULH&P"). ULH&P argued, and the Commission implicitly 8 accepted, that if the bids it received were publicly disclosed, contractors on future work could 9 use the bids as a benchmark, which would likely lead to the submission of higher bids. Order 10 dated August 4, 2003, in In the Matter of: Application of the Union Light, Heat and Power 11 Company for Confidential Treatment, PSC Case No. 2003-00054. The Commission also 12 implicitly accepted ULH&P's further argument that the higher bids would lessen ULH&P's 13 ability to compete with other gas suppliers. Id. Similarly, potential fuel and power suppliers 14 manipulating Big Rivers' bidding process would lead to higher costs or lower revenues to Big 15 Rivers and would place it at an unfair competitive disadvantage in the wholesale power market and credit markets. 16
 - 17. Potential market power purchasers could use the information related to Big Rivers' future off-system sales to know when and to the extent Big Rivers is long on power and could use that information to manipulate their bids, leading to lower revenues to Big Rivers and placing it at an unfair competitive disadvantage in the credit markets.

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18. Additionally, public disclosure of the heat rates, efficiency information, and information about Big Rivers' wholesale power needs would give the power producers and marketers with which Big Rivers competes in the wholesale power market insight into Big

1 Rivers' cost of producing power and need for power and energy during the periods covered by

2 the information. Knowledge of this information would give those power producers and

3 marketers an unfair competitive advantage because they could use that information to potentially

4 underbid Big Rivers in wholesale transactions. It would also give potential suppliers to Big

Rivers a competitive advantage because they will be able to manipulate the price of power bid to

Big Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and

impairing Big Rivers' ability to compete in the wholesale power and credit markets.

8 IV. Time Period

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19. Big Rivers requests that the Confidential Information in its response to Item 24 remain confidential indefinitely because until Big Rivers' heat rates and generator efficiency change significantly, public disclosure of such information could be used to Big Rivers' competitive disadvantage for the reasons stated above. Big Rivers requests that the Confidential Information contained in the response to Item 5 remain confidential for a period of two (2) years from the date of this petition, which will allow sufficient time for public disclosure of the information to no longer pose a competitive risk to Big Rivers. 807 KAR 5:001 Section 13(2)(a)(2).

V. Conclusion

- 20. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v. Kentucky Water Service Co.*, Inc., 642 S.W.2d 591 (Ky. App. 1982).
- WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect as confidential the Confidential Information.

1	On this the 25 th day of August, 2016.	
2		Respectfully submitted,
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