

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

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5 In the Matter of:

PUBLIC SERVICE
COMMISSION

6
7 APPLICATION OF BIG RIVERS ELECTRIC)
8 CORPORATION FOR AN ORDER DECLARING THE)
9 CONSTRUCTION OF SEVEN SOLAR POWER)
10 FACILITIES TO BE ORDINARY EXTENSIONS OF)
11 EXISTING SYSTEMS IN THE USUAL COURSE OF)
12 BUSINESS)

CASE NO.
2016-00409

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14
15 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**
16 **PROTECTION**

17
18 1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the Kentucky
19 Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13 and KRS
20 61.878, to grant confidential protection to certain information contained in the attachment to Big
21 Rivers’ response to Item 10(b) of the Commission Staff’s Initial Request for Information. The
22 information for which Big Rivers seeks confidential protection is hereinafter referred to as the
23 “Confidential Information.”

24 2. The Confidential Information consists of information about bids from vendors to
25 construct the solar facilities that are the subject of this proceeding.

26 3. One (1) copy of the pages containing Confidential Information, with the
27 Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise
28 marked “CONFIDENTIAL,” is being filed with this petition. A copy of those pages, with the
29 Confidential Information redacted, or a sheet noting that the entirety of the pages have been
30 redacted, is being filed with the original and each of the ten (10) copies of Big Rivers’ responses
31 to the information requests filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3).

1 4. There are no other parties to this proceeding on which to serve a copy of this
2 petition. 807 KAR 5:001 Section 13(2)(b).

3 5. 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 6. 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 and have its confidential status removed. 807 KAR 5:001 Section
10 13(10)(b).

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

17 **I. Big Rivers Faces Actual Competition**

18 8. Big Rivers competes in the wholesale power market to sell energy excess to its
19 members’ needs. Big Rivers’ ability to successfully compete in the wholesale power market is
20 dependent upon a combination of its ability to get the maximum price for the power sold, and
21 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers’ cost
22 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with

1 other utilities is adversely affected. As is well documented in multiple proceedings before this
2 Commission, Big Rivers' margins are derived almost exclusively from its off-system sales.

3 9. Big Rivers also competes for reasonably priced credit in the credit markets, and
4 its ability to compete is directly impacted by its financial results. Any event that adversely
5 affects Big Rivers' margins will adversely affect its financial results and potentially impact the
6 price it pays for credit. As was described in the proceeding before this Commission in the Big
7 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis
8 in the future.¹

9 **II. The Confidential Information is Generally Recognized as Confidential or**
10 **Proprietary**
11

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

15 11. The Confidential Information consists of the three bids Big Rivers received from
16 vendors for the construction of solar power facilities and the names of the two vendors who were
17 not selected. The Commission has often found that similar information relating to competitive
18 bidding is generally recognized as confidential and proprietary. *See, e.g.,* Order dated August 4,
19 2003, in *In the Matter of: Application of the Union Light, Heat and Power Company for*
20 *Confidential Treatment*, PSC Case No. 2003-00054 (finding that bids submitted to a utility were
21 confidential); letter from the Commission dated October 23, 2009, granting confidential
22 protection to East Kentucky Power Cooperative, Inc.'s bid information in PSC Case No. 2009-
23 00286; letter from the Commission dated May 10, 2010, granting confidential treatment to bid

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 information in PSC Case No. 2009-00510. Thus, the Confidential Information is generally
2 recognized as confidential or proprietary.

3 **III. Disclosure of the Confidential Information Would Permit an Unfair**
4 **Commercial Advantage to Big Rivers' Competitors**
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6 12. Disclosure of the Confidential Information would permit an unfair commercial
7 advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition
8 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
9 competitive injury if that Confidential Information was publicly disclosed.

10 13. In PSC Case No. 2003-00054, the Commission granted confidential protection to
11 bids submitted to Union Light, Heat & Power ("ULH&P"). The Commission implicitly accepted
12 ULH&P's argument that the bidding contractors would not want their bid information publicly
13 disclosed, and that disclosure would reduce the contractor pool available to ULH&P, which
14 would drive up ULH&P's costs, hurting its ability to compete with other gas suppliers. *See*
15 *Order dated August 4, 2003, in In the Matter of: Application of the Union Light, Heat and Power*
16 *Company for Confidential Treatment*, PSC Case No. 2003-00054. Similarly, in *Hoy v. Kentucky*
17 *Indus. Revitalization Authority*, the Kentucky Supreme Court found that without protection for
18 confidential information provided to a public agency, "companies would be reluctant to apply for
19 investment tax credits for fear the confidentiality of financial information would be
20 compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769 (Ky.
21 1995).

22 14. In Big Rivers' case, if confidential treatment of the bid information is denied,
23 potential bidders would know that their bids would be publicly disclosed, which could reveal
24 information to their competitors about their competitiveness. Because many companies would
25 be reluctant to have such information disclosed, public disclosure of Big Rivers' bid tabulation

1 sheets would likely suppress the competitive bidding process and reduce the pool of bidders
2 willing to bid on other Big Rivers projects or to supply Big Rivers with fuel or other
3 commodities, driving up Big Rivers' costs (which could then drive up the cost of credit to Big
4 Rivers) and impairing its ability to compete in the wholesale power market.

5 **IV. Time Period**

6 15. Big Rivers requests that the Confidential Information remain confidential
7 indefinitely for the reasons stated above. 807 KAR 5:001 Section 13(2)(a)(2).

8 **V. Conclusion**

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

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

15 On this the 30th day of January, 2017.

16 Respectfully submitted,

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