

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

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC )  
CORPORATION FOR APPROVAL TO ) CASE NO.  
ISSUE EVIDENCES OF INDEBTEDNESS ) 2017-00281

**PETITION FOR CONFIDENTIAL PROTECTION**

1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the Public Service Commission of Kentucky (“Commission”), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential protection to certain information being filed with Big Rivers’ responses to the Commission Staff’s First Request for Information. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “Confidential Information.” The Confidential Information includes portions of Big Rivers’ response to Item 7 and the attachments to Big Rivers’ response to Item 10 of the Commission Staff’s First Request for Information (“PSC 1-7” and “PSC 1-10,” respectively).

2. The Confidential Information in the response to PSC 1-7 consists of indicative interest rates provided confidentially to Big Rivers by the National Rural Utilities Cooperative Finance Corporation (“CFC”). The Confidential Information in the attachments to the response to PSC 1-10 consists of transmission system reliability studies.

3. One (1) copy of the pages that contain Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this petition. The entirety of the attachments to the response to PSC 1-10 are confidential and have been redacted completely from the response. Ten copies of the pages from the response to PSC 1-7 that contain Confidential Information, with

1 the Confidential Information redacted, are also being filed with this petition. 807 KAR 5:001  
2 Sections 13(2)(a)(3).

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

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

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

13 **I. Information entitled to confidential treatment under KRS**  
14 **61.878(1)(m)(1)**

15 7. The Confidential Information contained in the attachments to Big Rivers’  
16 response to PSC 1-10 is entitled to confidential protection based upon KRS 61.878(1)(m)(1),  
17 which protects “[p]ublic records the disclosure of which would have a reasonable likelihood of  
18 threatening the public safety by exposing a vulnerability in preventing protecting against,  
19 mitigating, or responding to a terrorist act. . . .”

20 8. The attachments to Big Rivers’ response to Item 10 are Critical Energy/Electric  
21 Infrastructure Information (“CEII”). The attachments consist of two transmission system  
22 reliability studies: Big Rivers’ 2012 Transmission System Construction Work Plan and a 2015  
23 amendment to that plan. These documents identify needed improvements on the Big Rivers  
24 transmission system required to continue satisfactory and reliable service to Big Rivers’ member

1 systems and thus reveal potential vulnerabilities were those improvements to be lost. As  
2 disclosure of this information would provide the public with information about areas of  
3 vulnerability on the Big Rivers transmission system, this information should be granted  
4 confidential treatment.

5 **II. Information entitled to confidential treatment under KRS**  
6 **61.878(1)(c)(1)**

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

18 **A. Big Rivers Faces Actual Competition**  
19

20 10. Big Rivers competes in the wholesale power market to sell energy excess to its  
21 members’ needs. This includes short-term bilateral energy markets, day-ahead and real-time  
22 energy and ancillary services markets, the annual capacity market, and forward bilateral long-  
23 term wholesale agreements with utilities and industrial customers. Big Rivers’ ability to  
24 successfully compete in these wholesale power markets is dependent upon a combination of its  
25 ability to: 1) obtain the maximum price for the power it sells and the best contract terms, and 2)

1 keep its cost of production as low as possible. Fundamentally, if Big Rivers’ cost of producing a  
2 kilowatt hour or its business risk increases, its ability to sell that kilowatt hour in competition  
3 with other utilities is adversely affected.

4 11. Big Rivers also competes for reasonably-priced credit in the credit markets, and  
5 its ability to compete is directly impacted by the financial results it obtains and the business risks  
6 it assumes. Any event that adversely affects Big Rivers’ financial results or increases its  
7 business risks may adversely affect the price it pays for credit. A competitor armed with Big  
8 Rivers’ proprietary and confidential information will be able to increase Big Rivers’ costs or  
9 decrease Big Rivers’ revenues, which could in turn affect Big Rivers’ apparent creditworthiness.  
10 Impediments to Big Rivers’ obtaining the best contract terms could likewise affect its apparent  
11 creditworthiness. A utility the size of Big Rivers that operates generation and transmission  
12 facilities will always have periodic cash and borrowing requirements for both anticipated and  
13 unanticipated needs. Big Rivers expects to be in the credit markets on a regular basis in the  
14 future, and it is imperative that Big Rivers improve and maintain its credit profile.

15 12. Accordingly, Big Rivers faces competition in the wholesale power and capital  
16 markets, and the Confidential Information should be afforded confidential treatment to prevent  
17 the imposition of an unfair competitive advantage to those competitors.

18 **B. The Confidential Information is Generally Recognized as Confidential or**  
19 **Proprietary**  
20

21 13. The Confidential Information for which Big Rivers seeks confidential treatment  
22 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky  
23 law. CFC considers this information proprietary and confidential and has not given Big Rivers  
24 permission to publicly release the information.

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

5           15.     Based on the foregoing, the Confidential Information is generally recognized as  
6 confidential or proprietary under Kentucky law.

7                   **C. Disclosure of the Confidential Information Would Permit an Unfair**  
8                   **Commercial Advantage to Big Rivers' Competitors**  
9

10          16.     Disclosure of the Confidential Information would permit an unfair commercial  
11 advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition  
12 in the wholesale power and credit markets. It is likely that Big Rivers would suffer competitive  
13 injury if the Confidential Information was publicly disclosed.

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

1           18.     In Big Rivers' case, CFC has not given Big Rivers permission to release CFC's  
2 confidential and proprietary information publicly, and CFC does not want the information it  
3 provided to Big Rivers on a confidential basis to be publicly disclosed. Lenders such as CFC, as  
4 well as suppliers other services, rely on the confidentiality of their information, and if they  
5 believed that the Commission would deny confidential treatment for the confidential information  
6 they provide to Big Rivers, it is likely that fewer suppliers would offer their services to Big  
7 Rivers. As such, public disclosure of the Confidential Information would likely reduce the pool  
8 of suppliers willing to enter into agreements with Big Rivers, resulting in increased prices for  
9 Big Rivers and impairing its ability to compete in the wholesale power and credit markets.

10           19.     Accordingly, the public disclosure of the Confidential Information for which Big  
11 Rivers seeks confidential treatment under KRS 61.878(1)(c)(1) would provide competitors of  
12 Big Rivers with an unfair commercial advantage.

13   **III.    Time Period**

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

16   **IV.    Conclusion**

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

21           WHEREFORE, Big Rivers respectfully request that the Commission classify and protect  
22 as confidential the Confidential Information.

1 On this the 25<sup>th</sup> day of August, 2017.

2 Respectfully submitted,

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