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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

A REVIEW OF THE ADEQUACY OF)	
KENTUCKY'S GENERATION CAPACITY)	ADMINISTRATIVE
AND TRANSMISSION SYSTEM)	CASE NO. 387

PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL PROTECTION

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 portions of its response to Item 1 of the Commission Staff's supplemental request for information filed with this petition. The information contained in the response to Item 1 that Big Rivers seeks to protect as confidential is information related to how Big Rivers determines its reserve margin targets and is part of its resource adequacy strategy. The information Big Rivers seeks to protect as confidential is hereinafter referred to as the "Confidential Information."

2. One (1) sealed copy of the response to Item 1 with the Confidential Information highlighted with transparent ink is filed with this petition. Ten (10) copies of the response to Item 1 with the Confidential Information redacted are also filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3) and 13(2)(b).

3. There are no other parties who are entitled to be served with a copy of the petition or a copy of the redacted response.

4. 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

1 and act upon the information, and is not disseminated to others without a legitimate need to
2 know and act upon the information.

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

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

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

14 7. Big Rivers, as a participant in the credit markets and the wholesale power
15 markets, faces economic competition from other entities.

16 8. Big Rivers competes in the wholesale power market to sell energy it produces in
17 excess of its Members' needs. Big Rivers' ability to successfully compete in the wholesale
18 power market is dependent upon a combination of its ability to negotiate the maximum price for
19 the power sold and its ability to keep its cost of production as low as possible. If Big Rivers'
20 cost of producing a kilowatt-hour of energy increases, its ability to sell that kilowatt-hour in
21 competition with other utilities is adversely affected.

22 9. Big Rivers also competes for reasonably priced credit in the credit markets, and
23 its ability to compete is directly impacted by its financial results. Any event that adversely

1 affects Big Rivers' margins will adversely affect its financial results and potentially impact the
2 price it pays for credit. As was described in the proceeding before this Commission in the Big
3 Rivers Unwind Transaction, Big Rivers expects to be in the credit markets on a regular basis in
4 the future.¹

5 10. As is evidenced by these economic pressures, Big Rivers has "competitors" as is
6 contemplated under the statute and faces actual competition from other market participants.

7 **II. The Confidential Information is Generally Recognized as Confidential or**
8 **Proprietary.**
9

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

13 12. The Confidential Information reveals details about how Big Rivers determines its
14 reserve margin targets as part of its resource adequacy strategy, which provides insight into when
15 Big Rivers will have capacity and/or energy available to sell into the market and when Big
16 Rivers will need additional capacity and/or energy to meet its native load. The Commission has
17 previously granted confidential treatment to similar information. *See, e.g., In the Matter of:*
18 *Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C.
19 Case No. 2012-00535 (April 25, 2013); P.S.C. Administrative Case No. 387, Letter (July 20,
20 2010).

21 13. Additionally, public disclosure of the Confidential Information would reveal Big
22 Rivers' fundamental financial data and projections, and information related to Big Rivers'
23 resource adequacy strategy. This type of information bears upon a company's detailed inner

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 workings and is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky*
2 *Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in
3 finance to recognize that such information concerning the inner workings of a corporation is
4 ‘generally recognized as confidential or proprietary’”). The Commission has previously granted
5 confidential treatment to this type of information. *See, e.g., In the Matter of: Application of Big*
6 *Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C. Case No. 2012-
7 00535 (April 25, 2013) (granting confidential treatment to Big Rivers’ load forecast); *In the*
8 *Matter of: An Examination of the Application of the Fuel Adjustment Clause of East Kentucky*
9 *Power Cooperative, Inc. From November 1, 2011 Through April 30, 2012*, Order, P.S.C. Case
10 No. 2012-00319 (February 21, 2013).

11 14. Accordingly, the information for which Big Rivers seeks confidential treatment is
12 recognized as confidential or proprietary under Kentucky law and is entitled to confidential
13 protection as further discussed below.

14 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**
15 **Advantage to Big Rivers’ Competitors.**
16

17 15. Disclosure of the Confidential Information would permit an unfair commercial
18 advantage to Big Rivers’ competitors. As discussed above, Big Rivers faces actual competition
19 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
20 competitive injury if that Confidential Information was publicly disclosed, and the information
21 should therefore be subject to confidential treatment.

22 16. If the Confidential Information is publicly disclosed, potential market power
23 purchasers could use the information to gain insight into when Big Rivers will have capacity
24 and/or energy to sell into the wholesale market and could use that information to manipulate

1 their bids, leading to lower revenues to Big Rivers and placing it at an unfair competitive
2 disadvantage in the credit markets.

3 17. Public disclosure of the Confidential Information would give the power producers
4 and marketers with which Big Rivers competes in the wholesale power market insight into Big
5 Rivers' availability or need for power and energy. Knowledge of this information would give
6 those power producers and marketers an unfair competitive advantage because they could use
7 that information to potentially underbid Big Rivers in wholesale transactions. It would also give
8 potential suppliers to Big Rivers a competitive advantage because they will be able to manipulate
9 the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big
10 Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit
11 markets.

12 18. Finally, the Commission has consistently recognized that internal strategic
13 planning information and related materials are entitled to confidential treatment, as these
14 documents typically relate to the company's economic status and business strategies. *See, e.g.,*
15 *Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky.
16 1995) (unfair commercial advantage arises simply from "the ability to ascertain the economic
17 status of the entities without the hurdles systemically associated with the acquisition of such
18 information about privately owned organizations"); *In the Matter of: The Joint Application of*
19 *Duke Energy Corp., Cinergy Corp., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc.,*
20 *Diamond Acquisition Corp., and Progress Energy, Inc., for Approval of the Indirect Transfer of*
21 *Control of Duke Energy Kentucky, Inc.*, P.S.C Case No. 2011-00124 (Dec. 5, 2011); *In the*
22 *Matter of: The Joint Petition of Kentucky-American Water Co., Thames Water Aqua Holdings*
23 *GmbH, RWE Aktiengesellschaft, Thames Water Aqua U.S. Holdings, Inc., and Am. Water Works*

1 *Co., Inc. for Approval of a Change in Control of Kentucky-American Water Co., P.S.C. Case No.*
2 *2006-00197 (Aug. 29, 2006).*

3 19. Accordingly, the public disclosure of the information that Big Rivers seeks to
4 protect would provide Big Rivers' competitors with an unfair commercial advantage.

5 **IV. Time Period**

6 20. Big Rivers requests that the Confidential Information remain confidential for a
7 period of five (5) years from the date of this petition, which should allow sufficient time for the
8 projected data to become historical and sufficiently outdated that it could not be used to
9 determine similar confidential information at that time or to competitively disadvantage Big
10 Rivers. 807 KAR 5:001 Section 13(2)(a)(2).

11 **V. Conclusion**


12 21. Based on the foregoing, the Confidential Information is entitled to confidential
13 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due
14 process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Comm'n v.*
15 *Kentucky Water Serv. Co., Inc., 642 S.W.2d 591 (Ky. App. 1982).*

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

18

1 On this the 29th day of May, 2014.

2 Respectfully submitted,

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