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March 31, 2020

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PUBLIC SERVICE
COMMISSION

VIA *ELECTRONIC MAIL: PSCED@ky.gov*

Hon. Kent A. Chandler
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts, PSC Case No. 2016-00117*

Dear Mr. Chandler:

Pursuant to the Public Service Commission's ("Commission") recent Emergency Orders,¹ Big Rivers Electric Corporation ("Big Rivers") is filing the following documents via electronic mail sent to PSCED@ky.gov:

- (a) this cover letter;
- (b) the public version of Big Rivers' annual report required by the Commission's June 30, 2016, Order in the above-referenced matter, with certain confidential information redacted;
- (c) a Petition for Confidential Treatment for the confidential information in the report; and
- (d) a file containing the pages from the report that contain confidential information with the confidential information highlighted.

¹ *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, Case No. 2020-00085, Orders (March 16, 2020 and March 24, 2020)

Hon. Kent A. Chandler
March 31, 2020
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Big Rivers will provide the requisite hardcopies of the above documents to the Commission within thirty (30) days of the Governor lifting the state of emergency.

Please feel free to contact me should you have any questions regarding this filing.

Sincerely yours,



Tyson Kamuf
Corporate Attorney
tyson.kamuf@bigrivers.com

cc: Service List (via electronic mail only)

BIG RIVERS ELECTRIC CORPORATION

**JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS
CASE NO. 2016-00117**

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1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
3
4

5 In the Matter of:

6
7 JOINT APPLICATION OF KENERGY)
8 CORP. AND BIG RIVERS ELECTRIC) Case No. 2016-00117
9 CORPORATION FOR APPROVAL)
10 OF CONTRACTS)
11

12
13 **PETITION FOR CONFIDENTIAL PROTECTION**
14

15 1. Big Rivers Electric Corporation (“*Big Rivers*”) hereby petitions the
16 Kentucky Public Service Commission (the “*Commission*”), pursuant to 807 KAR 5:001
17 Section 13 and KRS 61.878, to grant confidential protection to certain information
18 contained in the annual report being filed by Big Rivers with this Petition and as
19 required by the Commission’s June 30, 2016 Order in the above-captioned matter.

20 2. The information for which Big Rivers seeks confidential treatment is
21 hereinafter referred to as the “*Confidential Information*.” The Confidential
22 Information consists of proprietary, business-sensitive, or otherwise private
23 information relating to the increase in load from the ramp-up project at the
24 Lewisport, Hancock County, Kentucky facility of Aleris Rolled Products, Inc.
25 (“Aleris”) under the Amended and Restated Agreement for Retail Electric Service
26 between Kenergy Corp. and Aleris, which was the subject of this 2016 proceeding.

27 3. Pursuant to the Commission’s Emergency Orders *In the Matter of:*
28 *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, Case No.
29 2020-00085 (March 16, 2020 and March 24, 2020), Big Rivers is filing with this

1 Petition, via electronic mail sent to PSCED@ky.gov, (a) a public version of the report,
2 with the Confidential Information redacted; and (b) the pages from the report that
3 contain Confidential Information, with the Confidential Information highlighted.

4 4. Pursuant to 807 KAR 5:001 Section 13(2)(b) and the Emergency Orders,
5 one (1) copy of this Petition and one (1) copy of the redacted pages containing the
6 Confidential Information have been served on all parties to this proceeding by
7 electronic mail.

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

12 6. Pursuant to 807 KAR 5:001 Section 13(2)(a)(1), as discussed *infra*, the
13 Confidential Information is entitled to confidential protection and is being submitted
14 confidentially under the purview of KRS 61.878(1)(a) and KRS 61.878(1)(c)(1).

15 **I. The Confidential Information is Entitled to Confidential**
16 **Protection under KRS 61.878(1)(a)**

17 7. KRS 61.878(1)(a) explicitly grants confidential protection to “[p]ublic
18 records containing information of a personal nature where the public disclosure
19 thereof would constitute a clearly unwarranted invasion of personal privacy.” Here,
20 Aleris is recently underwent a multi-phase expansion at its facility located in
21 Lewisport, Hancock County, Kentucky, and the Confidential Information reveals
22 proprietary, business-sensitive, and otherwise private information, including its load
23 under the expansion project and the cost it pays for power.

1 8. As a point of reference and consistency, Big Rivers sought, and was
2 granted, confidential treatment for similar information in its March 24, 2016 and
3 April 21, 2016 Petitions for Confidential Treatment filed in this case; and, in
4 conjunction with its prior annual reports related to this matter, Big Rivers sought,
5 and was granted, confidential treatment for analogous information in 2017, 2018, and
6 2019.

7 9. As explained in more detail in Section II(B) *infra*, Aleris is a retail
8 customer on the Big Rivers system and considers this information highly confidential
9 such that public disclosure would cause it substantial competitive harm. Because
10 public disclosure of the Confidential Information would constitute an unwarranted
11 invasion of this customer’s privacy, this Confidential Information should be granted
12 confidential treatment. *See* Ky. Op. Atty. Gen. 96-ORD-176 (August 20, 1996)
13 (holding Kroger Company’s utility bills exempt from disclosure under KRS
14 61.878(1)(a)); *see also In the Matter of: Application of Kentucky Utilities Company for*
15 *an Adjustment of its Electric Rates*, Order, P.S.C. Case No. 2012-00221 (July 25, 2013)
16 (holding customer names, account numbers, and usage information exempt from
17 disclosure under KRS 61.878(1)(a)).

18 **II. The Confidential Information is Further Entitled to**
19 **Confidential Protection under KRS 61.878(1)(c)(1)**

20 10. The Confidential Information is also entitled to confidential protection
21 based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to an
22 agency or required by an agency to be disclosed to it, generally recognized as
23 confidential or proprietary, which if openly disclosed would permit an unfair

1 commercial advantage to competitors of the entity that disclosed the records.” See
2 807 KAR 5:001 Section 13(2)(a)(1). In support for this ground of granting confidential
3 protection, Subsection A *infra* describes how Big Rivers operates in competitive
4 environments; Subsection B *infra* explains that the Confidential Information is
5 generally recognized as confidential or proprietary; and Subsection C *infra*
6 demonstrates that public disclosure of the Confidential Information would permit an
7 unfair commercial advantage to Big Rivers’ competitors.

8 **A. *Big Rivers faces actual competition.***
9

10 11. Big Rivers’ must successfully compete in the wholesale power market in
11 order to sell excess energy to meet its members’ needs, including competition in: term
12 bilateral energy markets, day-ahead and real-time energy and ancillary services
13 markets, the annual capacity market, and forward bilateral long-term wholesale
14 agreements with utilities and industrial customers. Big Rivers’ ability to successfully
15 compete in these wholesale power markets is dependent upon an effective
16 combination of: (a) obtaining the maximum price and the best contract terms for the
17 power it sells; and (b), keeping its cost of production as low as possible.
18 Fundamentally, if Big Rivers’ cost of producing a kilowatt hour or its business risks
19 increase, then its ability to sell the same kilowatt hour in competition with other
20 utilities is adversely affected.

21 12. Moreover, a utility the size of Big Rivers that operates generation and
22 transmission facilities will always have periodic cash and borrowing requirements for
23 both anticipated and unanticipated needs, which requires Big Rivers to compete for

1 reasonably-priced credit in the credit markets. Big Rivers' credit is directly impacted
2 by the financial results it obtains and the business risks it assumes, and any event
3 that adversely affects Big Rivers' financial results or increases its business risks may
4 adversely affect the price it pays for credit. Thus, a competitor armed with Big Rivers'
5 proprietary and confidential information would be able to increase Big Rivers' costs
6 or decrease Big Rivers' revenues, which could in turn affect Big Rivers' apparent
7 creditworthiness. Likewise, any impediments to Big Rivers' ability to obtain the best
8 contract terms could affect its apparent creditworthiness. Since Big Rivers is
9 currently in the credit market and expects to be in the market on a regular basis in
10 the future, it is imperative that Big Rivers improve and maintain its credit profile,
11 which involves the protection of the Confidential Information.

12 13. Accordingly, Big Rivers faces competition in the wholesale power and
13 credit markets such that the Confidential Information should be afforded confidential
14 treatment to prevent the imposition of an unfair competitive advantage to its
15 competitors.

16 ***B. The Confidential Information is generally recognized as***
17 ***confidential or proprietary.***

18
19 14. The Confidential Information for which Big Rivers seeks confidential
20 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or
21 proprietary under Kentucky law.

22 15. Aleris is a privately-held, global leader in aluminum rolled products,
23 and has owned and operated an aluminum rolling mill in Lewisport, Hancock
24 County, Kentucky since 1964. The Lewisport mill operates in a highly competitive,

1 cost sensitive, and increasingly global market to provide rolled aluminum sheet to
2 key industries in Kentucky and throughout the United States, including:
3 Distribution, Transportation, Automotive, Building and Construction and Specialty
4 Products. Although Aleris maintains a positive outlook, its domestic competition in
5 the flat-rolled aluminum industry has increased significantly due to the introduction
6 of foreign competitors that benefit from lower cost structures and rich government
7 incentives on power, tax adjustments, and other subsidies.

8 16. Aleris' expansion that was the subject of this case was the largest
9 investment in its company's history and involved the construction of twin Continuous
10 Annealing Line with Pre-Treatment ("CALP") lines, which will allow Aleris to be one
11 of the first companies in the United States with a state of the art auto body sheet
12 production process.

13 17. It is clear that the Confidential Information relates to the inner
14 workings of Aleris' organization. The Confidential Information is not publicly
15 available, nor is such information known or disseminated within the Aleris or Big
16 Rivers organizations except to those employees and professionals with a legitimate
17 business need to know and act upon the information. Under Kentucky law, it is well-
18 recognized that information about a company's detailed inner workings, such as the
19 Confidential Information, is generally recognized as confidential or proprietary. *See,*
20 *e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995)
21 ("[i]t does not take a degree in finance to recognize that such information concerning

1 the inner workings of a corporation is ‘generally recognized as confidential or
2 proprietary.’”).

3 18. Moreover, KRS 278.160(3) directly recognizes that the terms of a special
4 contract are not required to be publicly disclosed if such terms are entitled to
5 protection under KRS 61.878(1)(c)(1). The Commission has previously granted
6 confidential treatment to similar information applying this principle. *See, e.g., In the*
7 *Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to*
8 *KRS 278.180 and 807 KAR 5:011 Section 13*, Order, P.S.C. Case No. 2014-00134
9 (September 10, 2014) (granting confidential treatment to confidential contract
10 terms); *see also, e.g., In the Matter of: Big Rivers Electric Corporation Filing of*
11 *Wholesale Contracts Pursuant to KRS 278.180 and 807 KAR 5:011 Section 13*, Order,
12 P.S.C. Case No. 2014-00134 (October 9, 2014) (granting confidential treatment to
13 confidential contract terms).

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

16 **C. *Disclosure of the Confidential Information would permit***
17 ***an unfair commercial advantage to Big Rivers’***
18 ***competitors.***

19
20 20. Disclosure of the Confidential Information would permit an unfair
21 commercial advantage to Big Rivers’ competitors. As discussed *supra*, Big Rivers
22 faces actual competition in the wholesale power and credit markets, so it reasonably
23 follows that Big Rivers would suffer competitive injury if the Confidential
24 Information were publicly disclosed.

1 21. Applying analogous considerations, in P.S.C. Case No. 2003-00054, the
2 Commission granted confidential protection to bids submitted to Union Light, Heat
3 & Power (“*ULH&P*”) due to the unfair advantage such information would provide to
4 competitors. There, *ULH&P*’s argued, and the Commission implicitly accepted, that
5 the bidding contractors would not want their bid information publicly disclosed, and
6 that such disclosure would reduce the contractor pool available to *ULH&P*, which
7 would then drive up *ULH&P*’s costs and impede its ability to compete with other gas
8 suppliers. *In the Matter of: Application of the Union Light, Heat and Power Company*
9 *for Confidential Treatment*, Order (August 4, 2003). Similarly, in *Hoy v. Kentucky*
10 *Indus. Revitalization Authority*, the Kentucky Supreme Court found that without
11 protection for confidential information provided to a public agency, “companies would
12 be reluctant to apply for investment tax credits for fear the confidentiality of financial
13 information would be compromised.” 907 S.W.2d 766, 769 (Ky. 1995).

14 22. Here, Aleris undoubtedly considers the Confidential Information highly
15 confidential. If Big Rivers is unable to obtain confidential treatment for information
16 that its counterparty (Aleris in this case) considers confidential, then potential future
17 counterparties dealing with Big Rivers would inevitably worry that their competitive
18 information could also be at risk of public disclosure. Because many companies would
19 be reluctant to have such information disclosed, public disclosure of the Confidential
20 Information would likely reduce the pool of counterparties willing to deal with Big
21 Rivers, thereby reducing Big Rivers’ ability to sell power and impairing its ability to
22 compete in the wholesale power and credit markets.

ORIGINAL



Your Touchstone Energy® Cooperative 

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

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

**Annual Reports per Ordering Paragraph Nos. 2 and 4 of
Commission's Order dated June 30, 2016**

FILED: March 31, 2020

ORIGINAL

BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS
CASE NO. 2016-00117

Response to Ordering Paragraph No. 2 of Commission's Order
dated June 30, 2016

March 31, 2020

1 **Ordering Paragraph No. 2)** *By March 31 of each year, Big Rivers shall file*
2 *an annual report with the Commission detailing, for the prior calendar year,*
3 *revenues received from Aleris and the marginal costs associated with serving*
4 *Aleris throughout the term of the proposed contracts.*

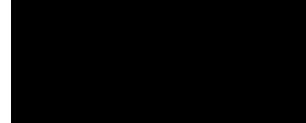
5

6 **Response)** Please see the attached REDACTED report. The "CONFIDENTIAL"
7 version thereof is filed with a Petition for Confidential Treatment.

**Big Rivers Electric Corporation
Annual Report Pursuant to
Ordering Paragraph No. 2, Commission Order
dated June 30, 2016 in Case No. 2016-00117**

For the period ending December 31, 2019

Revenues under EDR Contract
Associated Variable Costs (Marginal Costs)
Gross Margin for EDR Contract



BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS
CASE NO. 2016-00117

**Response to Ordering Paragraph No. 4 of Commission's Order
dated June 30, 2016**

March 31, 2020

1 **Ordering Paragraph No. 4)** *So long as it is providing wholesale service to*
2 *one of its distribution cooperatives with an active EDR contract, Big Rivers*
3 *shall file by March 31 of each year an annual report with the Commission*
4 *providing, for the prior calendar year, the information shown in the*
5 *Appendix to this Order.*

6

7 **Response)** Please see the attached REDACTED report. The "CONFIDENTIAL"
8 version thereof is filed with a Petition for Confidential Treatment.

**Economic Development Rate Contract Report Pursuant to
 Ordering Paragraph No. 4, Commission Order dated June 30,
 2016 in Case No. 2016-00117**

Utility: Big Rivers Electric Corporation

Year: 2019

	<u>Reporting Period</u>		<u>Cumulative</u>
1) Number of EDR Contracts			
Total:	<u>1</u>		<u>1</u>
Existing Customers:	<u>1</u>		<u>1</u>
New Customers:			
2) Number of Jobs Created			
Total:	<u>-</u>		<u>61</u>
Existing Customers:	<u>-</u>		<u>61</u>
New Customers:			
3) Amount of Capital Investment			
Total:			
Existing Customers:			
New Customers:	<u>N/A</u>		<u>N/A</u>
4)			
(A) DEMAND:			
Total:		kW	
Existing Customers:		kW	
New Customers:	<u>N/A</u>	kW	<u>N/A</u>
(B) ENERGY/CONSUMPTION:			
Total:		kWh	
Existing Customers:		kWh	
New Customers:	<u>N/A</u>	kWh	<u>N/A</u>