

MAR 29 2018

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY PUBLIC SERVICE
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In the Matter of:

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

PETITION 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 certain information contained in the annual report Big Rivers is filing with this petition as required by the Commission’s June 30, 2016, order in this matter.

2. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “Confidential Information.” The Confidential Information consists of information relating to the increase in load at the Lewisport facility of Aleris Rolled Products, Inc. (“Aleris”) under the Amended and Restated Agreement for Retail Electric Service between Kenergy Corp. and Aleris that was the subject of this proceeding.

3. One (1) copy of the pages from the report 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. Ten copies of those pages, with the Confidential Information redacted, are also being filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3).

1 customer’s privacy, this Confidential Information should be granted confidential treatment. *See*
2 Ky. Op. Atty. Gen. 96-ORD-176 (August 20, 1996) (holding Kroger Company’s utility bills
3 exempt from disclosure under KRS 61.878(1)(a)); *In the Matter of: Application of Kentucky*
4 *Utilities Company for an Adjustment of its Electric Rates*, Order, P.S.C. Case No. 2012-00221
5 (July 25, 2013) (holding customer names, account numbers, and usage information exempt from
6 disclosure under KRS 61.878(1)(a)).

7 **II. The Confidential Information is also entitled to confidential**
8 **protection based upon KRS 61.878(1)(c)(1)**

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

20 **A. Big Rivers Faces Actual Competition**
21

22 10. Big Rivers competes in the wholesale power market to sell energy excess to its
23 members’ needs. This includes short-term bilateral energy markets, day-ahead and real-time
24 energy and ancillary services markets, the annual capacity market, and forward bilateral long-
25 term wholesale agreements with utilities and industrial customers. Big Rivers’ ability to

1 successfully compete in these wholesale power markets is dependent upon a combination of its
2 ability to: 1) obtain the maximum price for the power it sells and the best contract terms, and 2)
3 keep its cost of production as low as possible. Fundamentally, if Big Rivers' cost of producing a
4 kilowatt hour or its business risk increases, its ability to sell that kilowatt hour in competition
5 with other utilities is adversely affected.

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

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

20 **B. The Confidential Information is Generally Recognized as Confidential or**
21 **Proprietary**
22

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

1 14. Aleris is a privately-held, global leader in aluminum rolled products, with global
2 headquarters in Cleveland, Ohio. Aleris owns and operates an aluminum rolling mill in
3 Lewisport, Kentucky, which has been in operation since 1964. The Lewisport mill operates in a
4 highly competitive, cost sensitive, and increasingly global market to provide rolled aluminum
5 sheet to key industries in Kentucky and the United States including Distribution, Transportation,
6 Automotive, Building and Construction and Specialty Products. Although Aleris maintains a
7 positive outlook, competition in the U.S. flat-rolled aluminum industry has grown significantly
8 due to the introduction of foreign competitors that benefit from lower cost structures and rich
9 government incentives on power, tax adjustments, and other subsidies.

10 15. Aleris is making its largest investments in the company's history to build twin
11 Continuous Annealing Line with Pre-Treatment ("CALP") lines. This investment, and its related
12 timing, will allow Aleris to be one of the first few companies to market in the United States with
13 a state of the art auto body sheet production process. It is imperative for Aleris's success in this
14 endeavor, and in the marketplace more generally, that the timing and extent of its ramp up in
15 production be kept confidential. Otherwise, as explained further below, Aleris's direct
16 competitors could gain insight into the most sensitive competitive information, including Aleris's
17 capacity, pricing and customers.

18 16. As noted above, the Confidential Information reveals the timing and the extent to
19 which Aleris plans to ramp up its production. Aleris has taken great precaution to safeguard all
20 technical and timing information related to this expansion project. The only people that have
21 access to this information are those who are already bound by confidentiality agreements with
22 Aleris. Information about a company's detailed inner workings is generally recognized as
23 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907

1 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such
2 information concerning the inner workings of a corporation is ‘generally recognized as
3 confidential or proprietary’”). Moreover, KRS 278.160(3) specifically recognizes that terms of a
4 special contract are not required to be publicly disclosed if such terms are entitled to protection
5 under KRS 61.878(1)(c)(1), and the Commission has previously granted confidential treatment
6 to similar information. *See, e.g., In the Matter of: Big Rivers Electric Corporation Filing of*
7 *Wholesale Contracts Pursuant to KRS 278.180 and 807 KAR 5:011 Section 13, Order, P.S.C.*
8 *Case No. 2014-00134 (September 10, 2014) (granting confidential treatment to confidential*
9 *contract terms); In the Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts*
10 *Pursuant to KRS 278.180 and 807 KAR 5:011 Section 13, Order, P.S.C. Case No. 2014-00134*
11 *(October 9, 2014) (granting confidential treatment to confidential contract terms).*

12 17. The Confidential Information also implicates Aleris’s contractual obligations to
13 keep the identities of its customers confidential. If the dates and extent of Aleris’s ramp up of
14 production were to become public and combined with otherwise publicly-available information,
15 Aleris competitors might be able to discover the identities of Aleris customers. Aleris has
16 contractual confidentiality agreements with its customers that prevent it from revealing their
17 identities. Aleris has safeguarded the identities of its customers, which should be protected from
18 indirect disclosure here.

19 18. The Confidential Information is not publicly available, is not disseminated within
20 the Aleris or Big Rivers organizations except to those employees and professionals with a
21 legitimate business need to know and act upon the information, and is not disseminated to others
22 without a legitimate need to know and act upon the information.

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

3 **C. Disclosure of the Confidential Information Would Permit an Unfair**
4 **Commercial Advantage to Big Rivers' Competitors**

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6 20. 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 and credit markets. It is likely that Big Rivers would suffer competitive
9 injury if the Confidential Information was publicly disclosed.

10 21. Public disclosure of the Confidential Information would cause competitive harm
11 to Big Rivers. In P.S.C. Case No. 2003-00054, the Commission granted confidential protection
12 to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P's argued, and the
13 Commission implicitly accepted, that the bidding contractors would not want their bid
14 information publicly disclosed, and that disclosure would reduce the contractor pool available to
15 ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with other gas
16 suppliers. *In the Matter of: Application of the Union Light, Heat and Power Company for*
17 *Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003). Similarly, in *Hoy*
18 *v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found that without
19 protection for confidential information provided to a public agency, "companies would be
20 reluctant to apply for investment tax credits for fear the confidentiality of financial information
21 would be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769
22 (Ky. 1995). In the present case, Aleris considers the Confidential Information highly
23 confidential. If Big Rivers is unable to obtain confidential treatment for the contract terms a
24 power contract counterparty, Aleris in this case, considers confidential, potential counterparties
25 dealing with Big Rivers on future transactions would know that such information related to them

1 could be publicly disclosed, which could reveal information to their competitors about their
2 competitiveness. Because many companies would be reluctant to have such information
3 disclosed, public disclosure of the Confidential Information would likely reduce the pool of
4 counterparties willing to deal with Big Rivers, reducing Big Rivers' ability to sell power and
5 impairing its ability to compete in the wholesale power and credit markets. Aleris had choices
6 about where it would make its CALP project investment. If it had thought that extremely
7 confidential project information that could endanger the ultimate competitiveness of the
8 company would be publicly disclosed in a proceeding before the Commission, that fact would
9 have had major significance in its decision about where the project would be constructed.

10 22. Accordingly, the public disclosure of the Confidential Information would provide
11 competitors of Big Rivers with an unfair commercial advantage.

1 **III. Time Period**

2 23. Big Rivers requests that the Confidential Information remain confidential in
3 perpetuity because it reveals private customer data. If the Commission disagrees that that
4 information is entitled to confidential treatment pursuant to KRS 61.878(1)(a), Big Rivers
5 requests that that information remain confidential for a period of ten (10) years from March 24,
6 2016, which is the same time period for which Big Rivers sought confidential treatment for
7 information contained in its application in this matter that is similar to the Confidential
8 Information. This time period should provide sufficient time for the information to become
9 sufficiently outdated so as to no longer cause a risk of competitive harm to Aleris and Big
10 Rivers. 807 KAR 5:001 Section 13(2)(a)(2).

11 **IV. Conclusion**

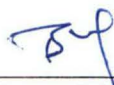
12 24. Based on the foregoing, the Confidential Information is entitled to confidential
13 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due
14 process requires the Commission to hold an evidentiary hearing. *See Utility Regulatory Com'n v.*
15 *Kentucky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

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

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On this the 28th day of March, 2018.

Respectfully submitted,



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