

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

AN EXAMINATION OF THE APPLICATION )  
OF THE FUEL ADJUSTMENT CLAUSE OF )  
BIG RIVERS ELECTRIC CORPORATION ) CASE NO. 2009-00510  
FROM JULY 17, 2009 THROUGH )  
OCTOBER 31, 2009 )

**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 7 and KRS 61.878(1)(c), to grant confidential protection to its response to Item 4 of the information requested at the March 23, 2010, hearing in this matter. The information Big Rivers seeks to protect (the "Confidential Information") is an explanation of why certain bids from fuel suppliers were not accepted.

2. One (1) sealed copy of the response to Item 4 with the Confidential Information highlighted is filed with this Petition. Ten (10) copies of the response, with the Confidential Information redacted, are filed with this Petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).

3. There are currently no other parties to this proceeding on which copies of this Petition and the redacted response can be served. Big Rivers will provide a copy of these documents to any person who is granted full intervention by the Commission in this proceeding and who signs a confidentiality agreement. 807 KAR 5:001 Section 7(2)(c).

4. If and to the extent that the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Big Rivers will

notify the Commission and have its confidential status removed. 807 KAR 5:001 Section 7(9)(a).

5. As discussed below, the Confidential Information is entitled to confidential protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1).

### **I. Big Rivers’ Faces Actual Competition**

6. Big Rivers competes in the wholesale power market to sell energy excess to its Members’ needs. Big Rivers’ ability to successfully compete in the wholesale power market is dependent upon a combination of its ability to get the maximum price for the power sold, and keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers’ cost of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with other utilities is adversely affected. As is well-documented in multiple proceedings before this Commission, Big Rivers’ margins are derived almost exclusively from its off-system sales.

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

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<sup>1</sup> See Order dated March 6, 2009, *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.

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

8. The Confidential Information is the type of information that is generally recognized as confidential or proprietary under Kentucky law. The Confidential Information is Big Rivers' explanation of why it did not accept certain bids supplied by fuel suppliers, and it gives insight into the internal, confidential bid selection methodology that Big Rivers uses.

9. The Confidential Information is precisely the sort of information meant to be protected by KRS 61.878(1)(c)(1), and the Commission and Kentucky courts have often found that information such as bidding information is generally recognized as confidential and proprietary. *See, e.g.,* Order dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054 (finding that bids submitted to a utility were confidential).

10. Moreover, the Commission has granted confidential protection to this type of information when provided by other utilities in cases involving a review of their fuel adjustment clauses. *See, e.g.,* letter from the Commission dated October 23, 2009, granting confidential protections to East Kentucky Power Cooperative, Inc.'s bid tabulation summary and related information in Case No. 2009-00286; letter from the Commission dated December 11, 2009, granting confidential protection to Kentucky Utilities Company's coal bid analysis procedure in Case No. 2009-00287.

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

know and act upon the information. As such, the Confidential Information is generally recognized as confidential and proprietary.

**III. DISCLOSURE OF THE CONFIDENTIAL INFORMATION WOULD PERMIT AN UNFAIR COMMERCIAL ADVANTAGE TO BIG RIVERS' COMPETITORS**

12. Disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition in the wholesale power market and the credit market. It is likely that Big Rivers would suffer competitive injury if the Confidential Information is publicly disclosed. In PSC Case No. 2003-00054, the Commission granted confidential protection for bids submitted to Union Light Heat & Power ("ULH&P"). ULH&P's argued, and the Commission implicitly accepted, that the bidding contractors would not want their bid information publicly disclosed, and that disclosure would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with other gas suppliers. Order dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054.

13. In Big Rivers' case, if confidential treatment is denied to the Confidential Information, potential bidders would know that information about their bids would be publicly disclosed, which could reveal information to their competitors about their competitiveness. Because many companies would be reluctant to have such information disclosed, public disclosure of the Confidential Information would likely suppress the competitive bidding process and reduce the pool of bidders willing to bid to supply Big Rivers' fuel needs, driving up Big Rivers' fuel costs and impairing its ability to compete in the wholesale power market.

14. Also, the Confidential Information reveals the procedure and strategies Big Rivers follows and the factors and inputs it considers in evaluating bids for fuel supply. If the Confidential Information is publicly disclosed, potential bidders could manipulate the bid solicitations process to the detriment of Big Rivers and its members by tailoring bids to correspond to and comport with Big Rivers' bidding criteria and process. This manipulation of the bidding process would raise Big Rivers' cost of power production and place it at an unfair competitive disadvantage in the wholesale power market.

**IV. THE CONFIDENTIAL INFORMATION IS ENTITLED TO CONFIDENTIAL PROTECTION**

15. Based on the foregoing, the Confidential Information is entitled to confidential protection.

**V. THE COMMISSION IS REQUIRED TO HOLD AN EVIDENTIARY HEARING**

16. The Confidential Information should be given confidential protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect as confidential the Confidential Information filed with this petition.

On this the 1<sup>st</sup> day of April, 2010.

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