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BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION)	
OF THE FUEL ADJUSTMENT CLAUSE OF)	
BIG RIVERS ELECTRIC CORPORATION)	CASE NO. 2010-00495
FROM JULY 17, 2009 THROUGH)	
OCTOBER 31, 2010)	

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 two exhibits contained in Big Rivers' responses to the information requested in Appendix B to the Commission's January 26, 2011, Order in this matter. The information Big Rivers seeks to protect as confidential is (i) an exhibit to Big Rivers' response to Item 9 of the information requests containing Big Rivers' planned maintenance schedule for the years 2011 and 2012 (the "Planned Maintenance Schedule") and (ii) an exhibit to Big Rivers' response to Item 24b of the information requests containing a fuel contract solicitation bid tabulation sheet (the "Bid Tabulation Sheet").

2. Big Rivers seeks confidential treatment of the entirety of both exhibits (the "Confidential Information"). One (1) sealed copy of the Confidential Information printed on yellow paper (since the entirety of each exhibit is confidential) is attached to this Petition. A page indicating that the entirety of each exhibit has been redacted is attached to each of the ten (10) copies of Big Rivers' responses to Items 9 and 24b filed with this Petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).

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 case, Big Rivers expects to be in the credit markets on a regular basis
4 in the future.¹

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

7 8. The two exhibits that make up the Confidential Information (the Planned
8 Maintenance Schedule and the Bid Tabulation Sheet) contain the type of information that is
9 generally recognized as confidential or proprietary under Kentucky law.

10 9. The Planned Maintenance Schedule contains Big Rivers' planned maintenance
11 schedule for 2011 and 2012. Disclosure of that information will allow Big Rivers' suppliers and
12 competitors to know Big Rivers' future maintenance plans and will give them insight into Big
13 Rivers' wholesale power needs. Information about a company's detailed inner workings is
14 generally recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus.*
15 *Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance
16 to recognize that such information concerning the inner workings of a corporation is 'generally
17 recognized as confidential or proprietary'"). The Commission previously granted confidential
18 treatment to this type of information. *See, e.g.,* letter from the Commission dated July 20, 2010,
19 in Administrative Case No. 387 (granting confidential treatment to a list of future scheduled
20 outages that Big Rivers filed as part of the supplement to its annual report).

¹ 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.

1 10. The Bid Tabulation Sheet contains confidential bids supplied by fuel suppliers
2 and Big Rivers' ranking of those bids, and it gives insight into the internal, confidential bid
3 selection methodology that Big Rivers uses. The Commission has often found that similar
4 information relating to competitive bidding is generally recognized as confidential and
5 proprietary. *See, e.g.*, Order dated August 4, 2003, in *In the Matter of: Application of the Union*
6 *Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054
7 (finding that bids submitted to a utility were confidential). In fact, the Commission has granted
8 confidential protection to the same type of information that is presented in the bid tabulation
9 sheet when provided by other utilities in cases involving a review of their fuel adjustment
10 clauses. *See, e.g.*, letter from the Commission dated October 23, 2009, granting confidential
11 protection to East Kentucky Power Cooperative, Inc.'s bid tabulation sheet and related
12 information in Case No. 2009-00286; letter from the Commission dated December 11, 2009,
13 granting confidential protection to Kentucky Utilities Company's coal bid analysis procedure in
14 Case No. 2009-00287. The Commission has also granted confidential protection to the bid
15 tabulation sheets that Big Rivers filed in previous reviews of its fuel adjustment clause. *See*
16 letter from the Commission dated May 10, 2010, in Case No. 2009-00510; letter from the
17 Commission dated September 22, 2010, in Case No. 2010-00269.

18 11. The Confidential Information is not publicly available, is not disseminated within
19 Big Rivers except to those employees and professionals with a legitimate business need to know
20 and act upon the information, and is not disseminated to others without a legitimate need to
21 know and act upon the information. As such, the Confidential Information is generally
22 recognized as confidential and proprietary.

1 would be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769
2 (Ky. 1995).

3 13. In Big Rivers' case, with respect to the Bid Tabulation Sheet, if confidential
4 treatment is denied, potential bidders would know that their bids would be publicly disclosed,
5 which could reveal information to their competitors about their competitiveness. Because many
6 companies would be reluctant to have such information disclosed, public disclosure of Big
7 Rivers' bid tabulation sheet would likely suppress the competitive bidding process and reduce
8 the pool of bidders willing to bid to supply Big Rivers' fuel needs, driving up Big Rivers' fuel
9 costs (which could then drive up the cost of credit to Big Rivers) and impairing its ability to
10 compete in the wholesale power market.

11 14. Also, the information contained in the bid tabulation sheet reveals the procedure
12 and strategies Big Rivers follows and the factors and inputs it considers in evaluating bids for
13 fuel supply. If the document is publicly disclosed, potential bidders could manipulate the bid
14 solicitation process to the detriment of Big Rivers and its members by tailoring bids to
15 correspond to and comport with Big Rivers' bidding criteria and process. In PSC Case No.
16 2003-00054, the Commission granted confidential protection to bids submitted to ULH&P. In
17 addition to the other arguments discussed above, ULH&P argued, and the Commission implicitly
18 accepted, that if the bids it received were publicly disclosed, contractors on future work could
19 use the bids as a benchmark, which would likely lead to the submission of higher bids. Order
20 dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat and Power*
21 *Company for Confidential Treatment*, PSC Case No. 2003-00054. The Commission also
22 implicitly accepted ULH&P's further argument that the higher bids would lessen ULH&P's
23 ability to compete with other gas suppliers. *Id.* Similarly, potential bidders manipulating Big

1 Rivers' bidding process would lead to higher fuel costs to Big Rivers and would place it at an
2 unfair competitive disadvantage in the wholesale power market.

3 15. Additionally, the power producers and marketers with which Big Rivers competes
4 could use the information to determine Big Rivers' power production costs and could use those
5 figures to potentially underbid Big Rivers in wholesale transactions, which would further
6 constitute an unfair competitive disadvantage to Big Rivers.

7 16. With respect to the Planned Maintenance Schedule, public disclosure of that
8 document would allow Big Rivers' competitors to know when Big Rivers' generating plants will
9 be down for maintenance and thus know a crucial input into Big Rivers' generating costs and
10 need for power and energy during those periods. With that information, potential suppliers to
11 Big Rivers will be able to manipulate the price of power bid to Big Rivers in order to maximize
12 their revenues, thereby driving up Big Rivers' costs and impairing Big Rivers' ability to compete
13 in the wholesale power and credit markets.

14 17. Additionally, Big Rivers' competitors in the wholesale power market could use
15 the information from the Planned Maintenance Schedule to potentially underbid Big Rivers to
16 Big Rivers' competitive disadvantage in competing for wholesale sales, and prospective
17 purchasers of Big Rivers' power supply in the wholesale market could use the information to
18 manipulate the bidding process to the detriment of Big Rivers, impairing Big Rivers' ability to
19 get the best price for its off-system sales during its scheduled outages.

20 **IV. The Confidential Information is Entitled to Confidential Protection**

21 18. Based on the foregoing, the Confidential Information is entitled to confidential
22 protection.

23 **V. The Commission is Required to Hold an Evidentiary Hearing**

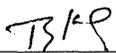
1 19. The Confidential Information should be given confidential protection. If the
2 Commission disagrees that Big Rivers is entitled to confidential protection, due process requires
3 the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v. Kentucky Water*
4 *Service Co., Inc.*, 642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

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

7 On this the 10th day of February, 2011.

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