

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION	)	
OF THE FUEL ADJUSTMENT CLAUSE OF	)	CASE NO.
BIG RIVERS ELECTRIC CORPORATION	)	2016-00006
FROM MAY 1, 2015 THROUGH OCTOBER	)	
31, 2015	)	

ORDER

Big Rivers Electric Corporation (“Big Rivers”) has filed three petitions with the Commission, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1), for confidential treatment of certain information submitted to the Commission as part of this proceeding. The Commission will address each request in turn.

Big Rivers’ February 19, 2016 petition

On February 19, 2016, Big Rivers filed a petition requesting confidential treatment of information contained in its Responses to Item Nos. 18 and 24 of the information requested in the Appendix to the Commission’s Order dated February 5, 2016, in this matter. Big Rivers describes the information as pertaining to its ability to offer generation into the wholesale power market (Item No. 18); and as information about the current heat rates of Big Rivers’ generating units (Item No. 24). As grounds for its request, Big Rivers states that it faces competition in the wholesale power market to sell energy excess to its members’ needs, and that its ability to successfully compete in the wholesale power market depends upon its ability to get the maximum price for power sold, while keeping the cost of producing that power as low as possible. Big

Rivers further asserts that its ability to compete in the credit market is directly impacted by its financial results.

KRS 61.878(1)(c) exempts from public disclosure confidential information which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records. In support of its petition, Big Rivers asserts that disclosure of the information contained in its Responses to Items Nos. 18 and 24 would permit an unfair advantage to its competitors and that Big Rivers would suffer competitive injury as a result. Specifically, Big Rivers argues that potential market power purchasers could use the information related to Big Rivers' ability to offer generation into the wholesale power market to manipulate their bids, leading to lower revenues for Big Rivers and placing it at an unfair advantage in the credit markets. Thus, Big Rivers asserts that the disclosure of the information at issue would permit an unfair commercial advantage to its competitors.

Having carefully considered the motion and the materials at issue, the Commission finds that confidential treatment shall be granted with respect to Item No. 18 as requested, since that information is critical to Big Rivers' effective execution of business decisions and strategy, the disclosure of that information would have a reasonable likelihood of permitting an unfair commercial advantage to competitors of Big Rivers, and information of this nature is generally recognized as confidential or proprietary under Kentucky law.<sup>1</sup> The Commission therefore grants confidential

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<sup>1</sup> See, e.g., Case No. 2003-00054, *Application of the Union Light, Heat and Power Company for Confidential Treatment*, (Ky. PSC Aug. 4, 2003), Order; Case No. 2009-00510, *An Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from July 17, 2009 through October 31, 2009*, letter from Jeff Derouen, Executive Director, Kentucky Public Service Commission, dated May 10, 2010.

protection to the information contained in Big Rivers' Responses to Item No. 18 for an indefinite period of time.

However, the Commission denies confidential protection to the information contained in Big Rivers' Response to Item No. 24. The information concerning the heat rates for individual units is already filed publicly by Big Rivers in its Integrated Resource Plan ("IRP") and in its monthly fuel adjustment clause ("FAC") back-up report and thus does not merit confidential protection in this case.

Big Rivers' March 11, 2016 petition

On March 11, 2016, Big Rivers filed a petition seeking confidential treatment for information contained in its Responses and/or Attachments to the Commission Staff's Second Request for Information ("Staff's Second Request"), Item No. 1. Big Rivers describes the confidential information as a cost/benefit analysis of the charter of barges and tugboat services by Big Rivers as opposed to contracting with an inland marine carrier.

In support of its petition, Big Rivers states that it competes in the wholesale power market to sell energy in excess of its members' needs, and that its ability to successfully compete in that market depends on its ability to obtain the maximum price for the power it sells; negotiate the best contract terms; and keep its cost of production as low as possible. If its cost of producing a kilowatt hour or its business risk increases, Big Rivers states that its ability to sell that kilowatt hour in competition with other utilities would be adversely affected. Big Rivers further states that it competes for reasonably priced credit in the credit market, and that its ability to compete in that market is directly impacted by the financial results it obtains and the business risks it assumes. Big

Rivers points out that the Commission has granted confidential treatment for similar bid data in Big Rivers' FAC reviews.<sup>2</sup>

Having carefully considered the motion and the materials at issue, the Commission finds that Big Rivers' Responses to Staff's Second Request, Item No. 1, should be granted confidential treatment for an indefinite period of time. The disclosure of the information contained therein would have a reasonable likelihood of permitting an unfair commercial advantage to competitors of Big Rivers. Furthermore, the information constitutes confidential information critical to Big Rivers' effective execution of business decisions and strategy and is information that is generally recognized as confidential or proprietary.

#### Big Rivers' March 28, 2016 petition

On March 28, 2016, Big Rivers filed a petition requesting confidential treatment for information contained in its Responses and/or Attachments to the Commission's Third Request for Information, Appendix Item Nos. 2, 4, and 5 ("PSC 3-2, PSC 3-4, and PSC 3-5," respectively). Big Rivers states that the information contained in the attachment to its Response to PSC 3-2 is information for which that Big Rivers previously filed for confidential protection, contained in its Response to the Commission's Order dated February 5, 2016, Appendix Item No. 24, discussed above. Upon review, the Commission finds that the information contained in the attachment to Big Rivers' Response to PSC 3-2 shall not be afforded confidential treatment for the same reasons the Commission denied confidential treatment of Big Rivers' Response to the Commission's Order dated February 5, 2016, Appendix Item No. 24.

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<sup>2</sup> See, e.g., Case No. 2012-00555, *An Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2010 through October 31, 2012*, (Ky. PSC May 15, 2013) Order.

With respect to the information contained in its Response to PSC 3-5, Big Rivers asserts that information is the same information contained in its Response to Staff's Second Request, Item 1.b., for which it has already sought confidential protection. Since the Commission granted confidential protection to that information, as discussed above, the Commission finds that Big Rivers' Response to PSC 3-5 should likewise be afforded confidential protection for the same reasons and for an indefinite period of time.

With regards to the information contained in its Response to PSC 3-4, Big Rivers argues that the information contains its internal fuel-bid selection methodology, which is the type of information relating to competitive bidding that the Commission has generally recognized to be confidential and proprietary, as in Case No. 2003-00054 discussed above. Big Rivers asserts that the Commission has granted confidential protection to the same type of bid selection methodology and bid analysis information when provided by other utilities.<sup>3</sup> Big Rivers points out that the Commission has also granted confidential protection to this type of bid analysis information that Big Rivers filed in previous review of its FACs.<sup>4</sup> Upon review, the Commission finds that the

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<sup>3</sup> See, e.g., Case No. 2009-00286, *An Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2008 through April 30, 2009*, letter from Roger R. Cowden, from Frost Brown Todd LLC to Jeff Derouen, Executive Director, Kentucky Public Service Commission, dated Oct. 23, 2009; Case No. 2009-00287, *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2008 through April 30, 2009*, letter from Jeff Derouen, Executive Director, Kentucky Public Service Commission, to Allison Sturgeon, E.O.N. US, dated Dec. 11, 2009.

<sup>4</sup> See, e.g., Case No. 2009-00510, *An Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from July 17, 2009 through October 31, 2009*, letter from Jeff Derouen, Executive Director, Kentucky Public Service Commission, to James M. Miller, Big Rivers Electric Corporation, dated May 10, 2010; Case No. 2010-00269, *An Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2009 through April 30, 2010*, letter from Jeff Derouen, Executive Director, Kentucky Public Service Commission, to James M. Miller, Big Rivers Electric Corporation, dated Sept. 22, 2010.

disclosure of the information contained in Big Rivers' Response to PSC 3-4 would have a reasonable likelihood of permitting an unfair commercial advantage to competitors of Big Rivers. In addition, the information constitutes confidential information critical to Big Rivers' effective execution of business decisions and strategy and is information that is generally recognized as confidential or proprietary.

IT IS THEREFORE ORDERED that:

1. Big Rivers' Petition for Confidential Treatment of its Responses to the Appendix to the Commission's Order dated February 5, 2016, Item No. 18, is granted.

2. Big Rivers' Petition for Confidential Treatment of its Responses to the Appendix to the Commission's Order dated February 5, 2016, Item No. 24, and Big Rivers' Responses to PSC 3-2 is denied.

3. Big Rivers' Petition for Confidential Treatment of its Responses to Staff's Second Request, Item 1, and its Responses to PSC 3-5 is granted.

4. Big Rivers' Petition for Confidential Treatment of its Responses to PSC 3-4 is granted.

5. The materials for which Big Rivers has been granted confidential treatment should not be placed in the public record or be made available for public inspection for an indefinite period of time, or until further Order of this Commission.

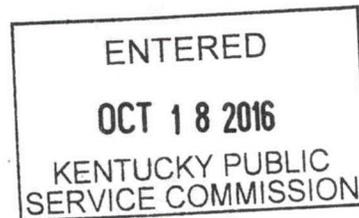
6. Use of the materials in question in this proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

7. Big Rivers shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

8. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order, then Big Rivers shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Big Rivers is unable to make such demonstration, the requested materials shall be made available for inspection.

9. The Commission shall not make the requested materials available for inspection for 20 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Big Rivers to seek a remedy afforded by law.

By the Commission



ATTEST:

  
Executive Director

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