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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

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

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 13 and KRS 61.878, to grant confidential protection to portions of Big Rivers’ response and/or attachment(s) for the response Item 1 of the Commission Staff’s Second Request for Information. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “Confidential Information.”

2. One (1) copy of the pages containing Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this petition. An original and ten (10) copies of those pages with the Confidential Information redacted, or a sheet noting that the entirety of the pages have been redacted, are being filed with this petition. 807 KAR 5:001 Section 13(2)(a)(3).

3. There are no other parties to this proceeding on which to serve a copy of this petition. 807 KAR 5:001 Section 13(2)(b).

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

1 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
2 13(10)(b).

3 5. As discussed below, the Confidential Information is entitled to confidential
4 protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to
5 an agency or required by an agency to be disclosed to it, generally recognized as confidential or
6 proprietary, which if openly disclosed would permit an unfair commercial advantage to
7 competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1); 807 KAR 5:001
8 Section 13(2)(a)(1). Subsection I below explains that Big Rivers operates in a competitive
9 environment; Subsection II below shows that the Confidential Information is generally
10 recognized as confidential or proprietary; and Subsection III below demonstrates that public
11 disclosure of the Confidential Information would permit an unfair commercial advantage to Big
12 Rivers’ competitors. As such, the Commission should granted confidential treatment to the
13 Confidential Information.

14 **I. Big Rivers Faces Actual Competition**

15 6. Big Rivers competes in the wholesale power market to sell energy excess to its
16 members’ needs. This includes short-term bilateral energy markets, day-ahead and real-time
17 energy and ancillary services markets, the annual capacity market, and forward bilateral long-
18 term wholesale agreements with utilities and industrial customers. Big Rivers’ ability to
19 successfully compete in these wholesale power markets is dependent upon a combination of its
20 ability to: 1) obtain the maximum price for the power it sells, 2) negotiate the best contract terms,
21 and 3) keep its cost of production as low as possible. Fundamentally, if Big Rivers’ cost of
22 producing a kilowatt hour or its business risk increases, its ability to sell that kilowatt hour in
23 competition with other utilities is adversely affected.

1 2003, in *In the Matter of: Application of the Union Light, Heat and Power Company for*
2 *Confidential Treatment*, P.S.C. Case No. 2003-00054 (finding that bids submitted to a utility
3 were confidential); and letter from the Commission dated May 10, 2010, in P.S.C. Case No.
4 2009-00510 (bids submitted to Big Rivers held confidential).

5 12. The Confidential Information is not publicly available, is not disseminated within
6 Big Rivers except to those employees and professionals with a legitimate business need to know
7 and act upon the information, and is not disseminated to others without a legitimate need to
8 know and act upon the information.

9 13. Thus, the Confidential Information is generally recognized as confidential or
10 proprietary.

11 **III. Disclosure of the Confidential Information Would Permit an Unfair**
12 **Commercial Advantage to Big Rivers' Competitors**
13

14 14. Disclosure of the Confidential Information would permit an unfair commercial
15 advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition
16 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
17 competitive injury if that Confidential Information was publicly disclosed.

18 15. Public disclosure of the Confidential Information would reveal confidential bid
19 data from potential suppliers to Big Rivers. In P.S.C. Case No. 2003-00054, the Commission
20 granted confidential protection to bids submitted to Union Light, Heat & Power ("ULH&P").
21 ULH&P argued, and the Commission implicitly accepted, that the bidding contractors would not
22 want their bid information publicly disclosed, and that disclosure would reduce the contractor
23 pool available to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete
24 with other gas suppliers. Order dated August 4, 2003, in *In the Matter of: Application of the*
25 *Union Light, Heat and Power Company for Confidential Treatment*, P.S.C. Case No. 2003-

1 00054. Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme
2 Court found that without protection for confidential information provided to a public agency,
3 “companies would be reluctant to apply for investment tax credits for fear the confidentiality of
4 financial information would be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*,
5 907 S.W.2d 766, 769 (Ky. 1995). In the present case, if the confidential bid-related information,
6 and the analysis thereof regarding the chartering (leasing) of barges and tugboat services, was
7 publicly disclosed, potential counterparties dealing with Big Rivers on future transactions would
8 know that such information related to them could be publicly disclosed, which could reveal
9 information to their competitors about their competitiveness. Because many companies would
10 be reluctant to have such competitive information disclosed, public disclosure of the Confidential
11 Information would likely reduce the pool of counterparties willing to negotiate with Big Rivers
12 for future barge or tugboat services, driving up Big Rivers’ costs and, consequently, reducing its
13 ability to sell power and impairing its ability to compete in the wholesale power and credit
14 markets.

15 16. Accordingly, the public disclosure of the Confidential Information would provide
16 Big Rivers’ competitors with an unfair commercial advantage.

17 **IV. Time Period**

18 17. Big Rivers requests that the Confidential Information remain confidential
19 indefinitely because of the nature of the bid information as explained above. 807 KAR 5:001
20 Section 13(2)(a)(2). The Commission has granted confidential treatment indefinitely for similar
21 bid data in Big Rivers’ fuel adjustment clause reviews. *See, e.g.*, Order dated May 15, 2013, in
22 P.S.C. Case No. 2012-00555.

23


1 **V. Conclusion**

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

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

8 On this the 10th day of March, 2016.

9 Respectfully submitted,

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