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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

MAR 28 2016
PUBLIC SERVICE
COMMISSION

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’ responses and/or attachment(s) for the responses to Items 2, 4, and 5 of the Commission Staff’s Third Request for Information (“PSC 3-2,” “PSC 3-4,” and “PSC 3-5,” respectively). 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 being submitted
4 confidentially pursuant to 807 KAR 5:001 Section 13(9)(a) and/or is entitled to confidential
5 protection based upon KRS 61.878(1)(c)(1). 807 KAR 5:001 Section 13(2)(a)(1).

6 **I. INFORMATION SUBMITTED PURSUANT TO 807 KAR 5:001**
7 **SECTION 13(9)(A)**

8 6. 807 KAR 5:001 Section 13(9)(a) provides, in pertinent part:

9 A person who files any paper that contains material that has previously been
10 deemed confidential or for which a request or motion for confidential treatment is
11 pending shall submit one (1) copy of the paper with the adjudged or alleged
12 confidential material underscored or highlighted, and ten (10) copies of the paper
13 with those portions redacted; and

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15 ...

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17 2. If a request for confidential treatment of the material is pending,
18 a written notice identifying the person who made the request and
19 the date on which the request was submitted.

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21 7. The Confidential Information contained in the attachment to Big Rivers' response
22 to PSC 3-2 is information that Big Rivers filed under a petition for confidential treatment on
23 February 19, 2016, in response to Item 24 of the Commission Staff's First Request for
24 Information in this proceeding. The Confidential Information contained in the attachment to Big
25 Rivers' response to PSC 3-5 is information that Big Rivers filed under a petition for confidential
26 treatment on March 11, 2016, in response to Item 1.b of the Commission Staff's Second Request
27 for Information in this proceeding. The February 19 and March 11 petitions are still pending.

28 8. 807 KAR 5:001 Section 13(4) provides, "Pending action by the [C]ommission on
29 a motion for confidential treatment or by its executive director on a request for confidential
30 treatment, the material specifically identified *shall* be accorded confidential treatment"

1 (emphasis added). As such, the Confidential Information contained in the attachment to Big
2 Rivers' response to PSC 3-2 and in Big Rivers' response to PSC 3-5 is entitled to confidential
3 treatment while Big Rivers' February 19 and March 11 petitions for confidential treatment
4 remain pending.

5 **II. INFORMATION ENTITLED TO CONFIDENTIAL PROTECTION**
6 **BASED UPON KRS 61.878(1)(C)(1)**

7 9. As discussed below, all of the Confidential Information, including the
8 Confidential Information in the attachment to Big Rivers' response to PSC 3-2 and in Big
9 Rivers' response to PSC 3-5, is entitled to confidential protection based upon KRS
10 61.878(1)(c)(1), which protects "records confidentially disclosed to an agency or required by an
11 agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly
12 disclosed would permit an unfair commercial advantage to competitors of the entity that
13 disclosed the records." KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1). Subsection A
14 below explains that Big Rivers operates in a competitive environment; Subsection B below
15 shows that the Confidential Information is generally recognized as confidential or proprietary;
16 and Subsection C below demonstrates that public disclosure of the Confidential Information
17 would permit an unfair commercial advantage to Big Rivers' competitors. As such, the
18 Commission should granted confidential treatment to the Confidential Information.

19 **A. Big Rivers Faces Actual Competition**

20 10. Big Rivers competes in the wholesale power market to sell energy excess to its
21 members' needs. This includes short-term bilateral energy markets, day-ahead and real-time
22 energy and ancillary services markets, the annual capacity market, and forward bilateral long-
23 term wholesale agreements with utilities and industrial customers. Big Rivers' ability to
24 successfully compete in these wholesale power markets is dependent upon a combination of its

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

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

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

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

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

1 14. The Confidential Information contained in the attachment to Big Rivers’ response
2 to PSC 3-2 consists of confidential information about the performance heat rates of Big Rivers’
3 Wilson generating station and other information that could be used to calculate the confidential
4 heat rate information. Please note that, as explained in Big Rivers’ response to PSC 3-2, the
5 attachment to that response includes both “accounting heat rates” and “performance heat rates.”
6 The performance heat rates reveal Big Rivers’ cost of producing power and are highly
7 confidential. This information is generally recognized as confidential or proprietary for the
8 reasons stated in Big Rivers’ February 19 petition for confidential treatment, and has been
9 recognized by the Commission as such. *See, e.g., In the Matter of: Application of Kentucky*
10 *Power Company for (1) a Certificate of Public Convenience and Necessity Authorizing the*
11 *Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating*
12 *Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of*
13 *Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3)*
14 *Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to*
15 *Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals*
16 *and Relief*, Order, P.S.C. Case No. 2012-00578 (October 22, 2013) (granting confidential
17 treatment to historical generator heat rates); *In the Matter of: Application of Big Rivers Electric*
18 *Corporation for Approval to Issue Evidences of Indebtedness*, Letter, P.S.C. Case No. 2012-
19 00119 (July 9, 2012) (granting confidential treatment to historical generator heat rates).

20 15. The Confidential Information contained in Big Rivers’ response to PSC 3-5
21 contains the identity of bidders who bid on a Big Rivers solicitation for barging services. This
22 information is generally recognized as confidential or proprietary for the reasons stated in Big
23 Rivers’ March 11 petition for confidential treatment, and has been recognized by the

1 Commission as such. *See, e.g., In the Matter of: Application of Kentucky Power Company for*
2 *(1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company*
3 *of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets;*
4 *(2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in*
5 *Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4)*
6 *Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air*
7 *Act and Related Requirements; and (5) All Other Required Approvals and Relief, Order, P.S.C.*
8 Case No. 2012-00578 (November 26, 2013) (granting confidential treatment to bidder
9 identification information).

10 16. The Confidential Information contained in Big Rivers' response to PSC 3-4
11 contains a detailed explanation of Big Rivers' internal, confidential fuel bid selection
12 methodology, which is the type of information relating to competitive bidding that the
13 Commission has often found to be generally recognized as confidential and proprietary. *See,*
14 *e.g., In the Matter of: Application of the Union Light, Heat and Power Company for Confidential*
15 *Treatment, Order, P.S.C. Case No. 2003-00054 (August 4, 2003) (finding that bid information*
16 *was confidential). In fact, the Commission has granted confidential protection to the same type*
17 *of bid selection methodology and bid analysis information when provided by other utilities. See,*
18 *e.g., In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of East*
19 *Kentucky Power Cooperative, Inc. from November 1, 2008 through April 30, 2009, Letter, P.S.C.*
20 Case No. 2009-00286 (October 23, 2009) (granting confidential treatment to bid evaluation
21 procedures); *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause*
22 *of Kentucky Utilities Company from November 1, 2008 through April 30, 2009, Letter, P.S.C.*
23 Case No. 2009-00287 (December 11, 2009) (granting confidential treatment to bid analysis

1 procedure used for evaluating bids for coal supply). The Commission has also granted
2 confidential protection to this type of bid analysis information that Big Rivers filed in previous
3 reviews of its fuel adjustment clause. *See, e.g., In the Matter of: An Examination of the*
4 *Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from July 17, 2009*
5 *through October 31, 2009*, Letter, P.S.C. Case No. 2009-00510 (May 10, 2010) (granting
6 confidential treatment to bid tabulation summary); *In the Matter of: An Examination of the*
7 *Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1,*
8 *2009 through April 30, 2010*, Letter, P.S.C. Case No. 2010-00269 (September 22, 2010)
9 (granting confidential treatment to bid tabulations including bid selection methodology).

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

14 18. Thus, the Confidential Information is generally recognized as confidential or
15 proprietary.

16 **C. Disclosure of the Confidential Information Would**
17 **Permit an Unfair Commercial Advantage to Big Rivers'**
18 **Competitors**

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

23 20. Public disclosure of the Confidential Information contained in the attachment to
24 Big Rivers' response to PSC 3-2 and in Big Rivers' response to PSC 3-5 would permit an unfair
25 commercial advantage to Big Rivers' competitors for the reasons stated in Big Rivers' February

1 19 and March 11 petitions for confidential treatment, respectively, as the Commission has
2 recognized for similar information. *See, e.g., In the Matter of: Application of Kentucky Power*
3 *Company for (1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to*
4 *the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and*
5 *Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain*
6 *Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory*
7 *Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet*
8 *Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and*
9 *Relief, Order, P.S.C. Case No. 2012-00578 (October 22, 2013) (granting confidential treatment*
10 *to historical generator heat rates); In the Matter of: Application of Kentucky Power Company for*
11 *(1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company*
12 *of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets;*
13 *(2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in*
14 *Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4)*
15 *Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air*
16 *Act and Related Requirements; and (5) All Other Required Approvals and Relief, Order, P.S.C.*
17 *Case No. 2012-00578 (November 26, 2013) (granting confidential treatment to bidder*
18 *identification information).*

19 21. Public disclosure of the Confidential Information contained Big Rivers' response
20 to PSC 3-4 would reveal Big Rivers' internal strategies and the factors and inputs it considers in
21 evaluating bids for fuel supply and in negotiating fuel contracts. In P.S.C. Case No. 2003-00054,
22 the Commission granted confidential protection to bids submitted to Union Light, Heat & Power
23 ("ULH&P"). ULH&P argued, and the Commission implicitly accepted, that if the bids it

1 received were publicly disclosed, contractors on future work could use the bids as a benchmark,
2 which would likely lead to the submission of higher bids. *In the Matter of: Application of the*
3 *Union Light, Heat and Power Company for Confidential Treatment*, Order, P.S.C. Case No.
4 2003-00054 (August 4, 2003). The Commission also implicitly accepted ULH&P's further
5 argument that the higher bids would lessen ULH&P's ability to compete with other gas
6 suppliers. *Id.* Similarly, potential fuel suppliers to Big Rivers with access to the Confidential
7 Information could manipulate the bid solicitation process, leading to higher fuel costs to Big
8 Rivers and placing it at an unfair competitive disadvantage in the wholesale power market and in
9 the credit market. Similarly, selected bidders with an unfair advantage in the negotiating process
10 would also lead to higher fuel costs to Big Rivers and would place it at an unfair competitive
11 disadvantage in the wholesale power market and in the credit market.

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

14 III. TIME PERIOD

15 23. Big Rivers requests that the Confidential Information remain confidential
16 indefinitely because of the nature of the bid information and because, until Big Rivers changes
17 its bid selection methodology or unit heat rates change significantly, the public disclosure of the
18 information could be used to Big Rivers' competitive disadvantage for the reasons stated above
19 and in Big Rivers' February 19 and March 11 petitions for confidential treatment. 807 KAR
20 5:001 Section 13(2)(a)(2). The Commission has previously granted confidential treatment
21 indefinitely for similar bid data and heat rate information. *See, e.g., In the Matter of: An*
22 *Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric*
23 *Corporation from November 1, 2010 through October 31, 2012*, Order, P.S.C. Case No. 2012-
24 00555 (May 15, 2013) (granting confidential treatment to bid data and bid analysis indefinitely);

1 *id.*, Order, P.S.C. Case No. 2012-00555 (June 17, 2014) (granting confidential treatment to bid
2 data and bid analysis indefinitely); *In the Matter of: Application of Louisville Gas and Electric*
3 *Company for an Adjustment of Its Electric and Gas Rates*, Order, P.S.C. Case No. 2014-00372
4 (January 14, 2016) (granting confidential treatment to generator heat rates for an indefinite
5 period of time); *In the Matter of: Application of Kentucky Power Company for (1) a Certificate*
6 *of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided*
7 *Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of*
8 *the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the*
9 *Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs*
10 *Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related*
11 *Requirements; and (5) All Other Required Approvals and Relief*, Order, P.S.C. Case No. 2012-
12 00578 (October 22, 2013) (granting confidential treatment to historical generator heat rates for
13 an indefinite period of time but no longer than the operating life of the Mitchell Generating
14 Station).

15 IV. CONCLUSION

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

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

22 On this the 28th day of March, 2016.

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Respectfully submitted,



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