

RECEIVED

AUG 26 2016

PUBLIC SERVICE
COMMISSION

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)	2016-00235
NOVEMBER 1, 2015 THROUGH APRIL 30, 2016)	

**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 certain information contained in Big Rivers’ responses to Items 5 and 24 of the information requested in the Appendix to the Commission’s August 12, 2016, order in this matter (the “Confidential Information”).

2. The Confidential Information consists of information about Big Rivers’ ongoing off-system sales (Item 5) and information about the current heat rates and efficiency of Big Rivers’ generating units (Item 24).

3. 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. A copy of those pages, with the Confidential Information redacted, or a sheet noting that the entirety of the pages have been redacted, is being filed with the original and each of the ten (10) copies of Big Rivers’ responses to the information requests filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

1 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers' cost
2 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with
3 other utilities is adversely affected. As is well documented in multiple proceedings before this
4 Commission, Big Rivers' margins are derived almost exclusively from its off-system sales.

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

11 **II. The Confidential Information is Generally Recognized as Confidential or**
12 **Proprietary**
13

14 11. The Confidential Information for which Big Rivers seeks confidential treatment
15 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky
16 law.

17 12. The Confidential Information in the response to Item 5 reveals future off-system
18 sales. The information in the response to Item 24 provides the current heat rates and efficiency
19 of Big Rivers' generating units, which provide insight into Big Rivers' production costs.

20 13. Public disclosure of the Confidential Information will give Big Rivers' suppliers,
21 buyers, and competitors insight into Big Rivers' cost of producing power, and into when Big
22 Rivers will have power available to sell into the market or when Big Rivers needs power, and the
23 amount of power Big Rivers has to sell or will need.

¹ See Order dated March 6, 2009, in *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 16. The Confidential Information includes information about Big Rivers' production
2 costs and future off-system sales. If that information is publicly disclosed, potential power
3 suppliers and buyers would have insight into the prices at which Big Rivers is willing to buy and
4 sell at and could manipulate the bidding process, leading to higher prices or lower revenues for
5 Big Rivers and impairing its ability to compete in the wholesale power and credit markets. In
6 PSC Case No. 2003-00054, the Commission granted confidential protection to bids submitted to
7 Union Light, Heat & Power ("ULH&P"). ULH&P argued, and the Commission implicitly
8 accepted, that if the bids it received were publicly disclosed, contractors on future work could
9 use the bids as a benchmark, which would likely lead to the submission of higher bids. Order
10 dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat and Power*
11 *Company for Confidential Treatment*, PSC Case No. 2003-00054. The Commission also
12 implicitly accepted ULH&P's further argument that the higher bids would lessen ULH&P's
13 ability to compete with other gas suppliers. *Id.* Similarly, potential fuel and power suppliers
14 manipulating Big Rivers' bidding process would lead to higher costs or lower revenues to Big
15 Rivers and would place it at an unfair competitive disadvantage in the wholesale power market
16 and credit markets.

17 17. Potential market power purchasers could use the information related to Big
18 Rivers' future off-system sales to know when and to the extent Big Rivers is long on power and
19 could use that information to manipulate their bids, leading to lower revenues to Big Rivers and
20 placing it at an unfair competitive disadvantage in the credit markets.

21 18. Additionally, public disclosure of the heat rates, efficiency information, and
22 information about Big Rivers' wholesale power needs would give the power producers and
23 marketers with which Big Rivers competes in the wholesale power market insight into Big

1 Rivers' cost of producing power and need for power and energy during the periods covered by
2 the information. Knowledge of this information would give those power producers and
3 marketers an unfair competitive advantage because they could use that information to potentially
4 underbid Big Rivers in wholesale transactions. It would also give potential suppliers to Big
5 Rivers a competitive advantage because they will be able to manipulate the price of power bid to
6 Big Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and
7 impairing Big Rivers' ability to compete in the wholesale power and credit markets.

8 **IV. Time Period**

9 19. Big Rivers requests that the Confidential Information in its response to Item 24
10 remain confidential indefinitely because until Big Rivers' heat rates and generator efficiency
11 change significantly, public disclosure of such information could be used to Big Rivers'
12 competitive disadvantage for the reasons stated above. Big Rivers requests that the Confidential
13 Information contained in the response to Item 5 remain confidential for a period of two (2) years
14 from the date of this petition, which will allow sufficient time for public disclosure of the
15 information to no longer pose a competitive risk to Big Rivers. 807 KAR 5:001 Section
16 13(2)(a)(2).

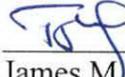
17 **V. Conclusion**

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

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

1 On this the 25th day of August, 2016.

2 Respectfully submitted,

3 

4 _____
James M. Miller

5 Tyson Kamuf

6 SULLIVAN, MOUNTJOY, STAINBACK
7 & MILLER, P.S.C.

8 100 St. Ann Street

9 P. O. Box 727

10 Owensboro, Kentucky 42302-0727

11 Phone: (270) 926-4000

12 Facsimile: (270) 683-6694

13 jmillersmsmlaw.com

14 tkamuf@smsmlaw.com

15
16 Counsel for Big Rivers Electric Corporation