

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY PUBLIC SERVICE
COMMISSION

In the Matter of:

A REVIEW OF THE ADEQUACY OF)
KENTUCKY'S GENERATION CAPACITY) ADMINISTRATIVE
AND TRANSMISSION SYSTEM) CASE NO. 387

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 its response to Item 11 and to the attachment to its response to Item 14 of the supplemental information to Big Rivers' annual Financial and Statistical Report required by the Commission's orders in Administrative Case 387. The information contained in the response to Item 11 that Big Rivers seeks to protect as confidential is a list of planned scheduled outages from 2019 through 2023. The attachment to Item 14 contains a list of planned transmission system additions from 2019-2028. The information Big Rivers seeks to protect as confidential is hereinafter referred to as the "Confidential Information."

2. One (1) sealed copy of the response to Item 11 with the Confidential Information highlighted with transparent ink is filed with this petition. Ten (10) copies of the response to Item 11 with the Confidential Information redacted are also filed with this petition. 807 KAR 5:001 Section 13(2)(a)(3).

3. The entirety of the attachment to the response to Item 14 is confidential. One (1) sealed copy of that attachment is filed with this petition. A page noting that the attachment is

1 filed under a petition for confidential treatment is attached to the response to Item 14 filed with
2 this petition. 807 KAR 5:001 Section 13(2)(a)(3)(b).

3 4. There are no other parties who are entitled to be served with a copy of the petition
4 or a copy of the redacted response. 807 KAR 5:001 Section 13(2)(b).

5 5. 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 6. If and to the extent the Confidential Information becomes generally available to
10 the public, whether through filings required by other agencies or otherwise, Big Rivers will
11 notify the Commission and have the information's confidential status removed. 807 KAR 5:001
12 Section 13(10)(b).

13 7. As discussed below, the Confidential Information is entitled to confidential
14 protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to
15 an agency or required by an agency to be disclosed to it, generally recognized as confidential or
16 proprietary, which if openly disclosed would permit an unfair commercial advantage to
17 competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1); 807 KAR 5:001
18 Section 13(2)(a)(1).

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

20 8. Big Rivers, as a participant in the credit markets and the wholesale power
21 markets, faces economic competition from other entities.

22 9. Big Rivers competes in the wholesale power market to sell energy it produces in
23 excess of its members' needs. Big Rivers' ability to successfully compete in the wholesale

1 power market is dependent upon a combination of its ability to negotiate the maximum price for
2 the power sold and its ability to keep its cost of production as low as possible. If Big Rivers'
3 cost of producing a kilowatt-hour of energy increases, its ability to sell that kilowatt-hour in
4 competition with other utilities is adversely affected.

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

11 11. As is evidenced by these economic pressures, Big Rivers faces actual competition
12 from other market participants in the wholesale power and credit markets.

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

15
16 12. The Confidential Information for which Big Rivers seeks confidential treatment
17 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky
18 law. The Confidential Information consists of a list of future scheduled outages and a list of
19 planned transmission system additions.

20 13. Public disclosure of the Confidential Information will allow Big Rivers' suppliers
21 and competitors to know Big Rivers' future maintenance plans and capital improvements.
22 Information about a company's detailed inner workings is generally recognized as confidential or
23 proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768

¹ *See 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*, Order, P.S.C. Case No. 2007-00455 (March 6, 2009), pages 27-30 and 37-39.

1 (Ky. 1995) (“It does not take a degree in finance to recognize that such information concerning
2 the inner workings of a corporation is ‘generally recognized as confidential or proprietary’”);
3 *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky.
4 1995) (unfair commercial advantage arises simply from “the ability to ascertain the economic
5 status of the entities without the hurdles systemically associated with the acquisition of such
6 information about privately owned organizations”). Moreover, the Commission previously
7 granted confidential treatment to this type of information. *See, e.g., In the Matter of: Electronic*
8 *Application of Kentucky Power Company for (1) a General Adjustment of its Rates for Electric*
9 *Service; (2) an Order Approving its 2017 Environmental Compliance Plan; (3) an Order*
10 *Approving its Tariffs and Riders’ (4) an Order Approving Accounting Practices to Establish*
11 *Regulatory Assets and Liabilities; and (5) an Order Granting all other Required Approvals and*
12 *Relief*, Order, P.S.C. Case No. 2017-00179 (June 19, 2018) (granting confidential treatment to
13 maintenance and budget information that could be used to determine scope and timing of
14 planned maintenance outages); letter from the Commission dated July 20, 2010, in
15 Administrative Case No. 387 (granting confidential treatment to a list of future scheduled
16 outages that Big Rivers filed as part of the supplement to its annual report).

17 14. Accordingly, the information for which Big Rivers seeks confidential treatment is
18 recognized as confidential or proprietary under Kentucky law and is entitled to confidential
19 protection as further discussed below.

20 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**
21 **Advantage to Big Rivers’ Competitors.**
22

23 15. Disclosure of the Confidential Information would permit an unfair commercial
24 advantage to Big Rivers’ competitors. As discussed above, Big Rivers faces actual competition
25 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer

1 competitive injury if that Confidential Information was publicly disclosed, and the information
2 should therefore be subject to confidential treatment.

3 16. If the Confidential Information is publicly disclosed, Big Rivers' competitors
4 would have insight into when Big Rivers' generation levels will drop due to maintenance and
5 thus know a crucial input into Big Rivers' need for power and energy during those periods. With
6 that information, potential suppliers to Big Rivers will be able to manipulate the price of power
7 bid to Big Rivers in order to maximize their revenues, and potential market power purchasers
8 could use the information to know when and to the extent Big Rivers is long on power and could
9 use that information to manipulate their bids, leading to lower revenues to Big Rivers. In P.S.C.
10 Case No. 2003-00054, the Commission granted confidential protection to bids submitted to
11 Union Light, Heat & Power ("ULH&P"). ULH&P argued, and the Commission implicitly
12 accepted, that if the bids it received were publicly disclosed, contractors on future work could
13 use the bids as a benchmark, which would likely lead to the submission of higher bids. *In the*
14 *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). The Commission also
16 implicitly accepted ULH&P's further argument that the higher bids would lessen ULH&P's
17 ability to compete with other gas suppliers. *Id.* Similarly, potential power suppliers or
18 purchasers manipulating Big Rivers' bidding process would lead to higher costs or lower
19 revenues to Big Rivers and would place it at an unfair competitive disadvantage in the wholesale
20 power market and credit markets. Likewise, knowledge of future capital projects would allow
21 contractors and suppliers of materials for those projects to manipulate their bids, leading to
22 higher costs to Big Rivers and placing it at an unfair competitive disadvantage in the wholesale
23 power and credit markets.

1 17. Thus, public disclosure of the Confidential Information would permit an unfair
2 competitive advantage to Big Rivers' competitors.

3 **IV. Time Period**

4 18. Big Rivers requests that the Confidential Information remain confidential until
5 January 1, 2024, at which time the scheduled outages will have passed and will no longer be
6 confidential, and the list of planned transmission projects will be sufficiently outdated so that it
7 could not be used to competitively disadvantage Big Rivers. 807 KAR 5:001 Section
8 13(2)(a)(2).

9 **V. Conclusion**

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

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

16 On this the 27th day of February, 2019.

17 Respectfully submitted,

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