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March 29, 2019

VIA FEDERAL EXPRESS

Ms. Gwen R. Pinson
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

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APR 01 2019

PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts, PSC Case No. 2016-00117*

Dear Ms. Pinson:

Enclosed for filing are an original and ten copies of: (i) Big Rivers Electric Corporation's annual report required by the Public Service Commission's June 30, 2016, order in the above-referenced matter; and (ii) a petition for confidential treatment. I certify that on this date, a copy of this letter, a copy of the report, and a copy of the petition were served on the persons shown on the attached service list by first-class mail.

Sincerely,

A handwritten signature in blue ink, appearing to read "TK", is written over a light blue circular stamp.

Tyson Kamuf
Corporate Attorney,
Big Rivers Electric Corporation
tyson.kamuf@bigrivers.com

Enclosures

cc: Service List

BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS
CASE NO. 2016-00117

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PUBLIC SERVICE
COMMISSION



Your Touchstone Energy® Cooperative 

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

JOINT APPLICATION OF KENERGY CORP. AND)	
BIG RIVERS ELECTRIC CORPORATION)	Case No.
FOR APPROVAL OF CONTRACTS)	2016-00117

**Annual Reports per Ordering Paragraph Nos. 2 and 4 of
Commission's Order dated June 30, 2016**

FILED: April 1, 2019

ORIGINAL

APR 01 2019

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

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In the Matter of:

JOINT APPLICATION OF KENERGY)
CORP. AND BIG RIVERS ELECTRIC) Case No. 2016-00117
CORPORATION FOR APPROVAL)
OF CONTRACTS)

PETITION 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 the annual report Big Rivers is filing with this petition as required by the Commission’s June 30, 2016, order in this matter.

2. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “*Confidential Information.*” The Confidential Information consists of information relating to the increase in load at the Lewisport facility of Aleris Rolled Products, Inc. (“*Aleris*”) under the Amended and Restated Agreement for Retail Electric Service between Kenergy Corp. and Aleris that was the subject of this proceeding.

3. One (1) copy of the pages from the report that contain Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed

1 with this petition. Ten copies of those pages, with the Confidential Information
2 redacted, are also being filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3).

3 4. One (1) copy of this petition and one (1) copy of the pages that contain
4 Confidential Information with the Confidential Information redacted have been
5 served on all parties to this proceeding. 807 KAR 5:001 Section 13(2)(b).

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

10 6. As discussed below, the Confidential Information is being submitted
11 confidentially pursuant to and is entitled to confidential protection based upon KRS
12 61.878(1)(a) and KRS 61.878(1)(c)(1). 807 KAR 5:001 Section 13(2)(a)(1).

13 **I. The Confidential Information is entitled to confidential**
14 **protection based upon KRS 61.878(1)(a)**

15 7. KRS 61.878(1)(a) protects “[p]ublic records containing information of a
16 personal nature where the public disclosure thereof would constitute a clearly
17 unwarranted invasion of personal privacy.” Aleris is undergoing a multi-phase
18 expansion at its Lewisport facility. The Confidential Information reveals
19 information about the timing and magnitude of the phases of expansion project. Big
20 Rivers sought confidential treatment for similar information contained in the
21 annual reports it filed in this case in 2017 and 2018. Big Rivers also sought
22 confidential treatment for similar information relating to the timing and extent of

1 the phases in the March 24, 2016, and April 21, 2016, petitions for confidential
2 treatment it filed in this case.

3 8. As explained in more detail in Section II below, Aleris, a retail
4 customer on the Big Rivers system, considers this information highly confidential
5 and believes that public disclosure of this information will cause it substantial
6 competitive harm. Because public disclosure of the Confidential Information would
7 constitute an unwarranted invasion of this customer's privacy, this Confidential
8 Information should be granted confidential treatment. See Ky. Op. Atty. Gen. 96-
9 ORD-176 (August 20, 1996) (holding Kroger Company's utility bills exempt from
10 disclosure under KRS 61.878(1)(a)); *In the Matter of: Application of Kentucky*
11 *Utilities Company for an Adjustment of its Electric Rates*, Order, P.S.C. Case No.
12 2012-00221 (July 25, 2013) (holding customer names, account numbers, and usage
13 information exempt from disclosure under KRS 61.878(1)(a)).

14 **II. The Confidential Information is also entitled to**
15 **confidential protection based upon KRS 61.878(1)(c)(1)**

16 9. As discussed below, the Confidential Information is also entitled to
17 confidential protection based upon KRS 61.878(1)(c)(1), which protects "records
18 confidentially disclosed to an agency or required by an agency to be disclosed to it,
19 generally recognized as confidential or proprietary, which if openly disclosed would
20 permit an unfair commercial advantage to competitors of the entity that disclosed
21 the records." KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1). Subsection A
22 below explains that Big Rivers operates in competitive environments; Subsection B
23 below shows that the Confidential Information is generally recognized as

1 confidential or proprietary; and Subsection C below demonstrates that public
2 disclosure of the Confidential Information would permit an unfair commercial
3 advantage to Big Rivers' competitors. As such, the Commission should grant
4 confidential treatment to the Confidential Information.

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

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

17 11. Big Rivers also competes for reasonably-priced credit in the credit
18 markets, and its ability to compete is directly impacted by the financial results it
19 obtains and the business risks it assumes. Any event that adversely affects Big
20 Rivers' financial results or increases its business risks may adversely affect the
21 price it pays for credit. A competitor armed with Big Rivers' proprietary and
22 confidential information will be able to increase Big Rivers' costs or decrease Big
23 Rivers' revenues, which could in turn affect Big Rivers' apparent creditworthiness.

1 Impediments to Big Rivers' obtaining the best contract terms could likewise affect
2 its apparent creditworthiness. A utility the size of Big Rivers that operates
3 generation and transmission facilities will always have periodic cash and borrowing
4 requirements for both anticipated and unanticipated needs. Big Rivers expects to
5 be in the credit markets on a regular basis in the future, and it is imperative that
6 Big Rivers improve and maintain its credit profile.

7 12. Accordingly, Big Rivers faces competition in the wholesale power and
8 capital markets, and the Confidential Information should be afforded confidential
9 treatment to prevent the imposition of an unfair competitive advantage to those
10 competitors.

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

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

17 14. Aleris is a privately-held, global leader in aluminum rolled products,
18 with global headquarters in Cleveland, Ohio. Aleris owns and operates an
19 aluminum rolling mill in Lewisport, Kentucky, which has been in operation since
20 1964. The Lewisport mill operates in a highly competitive, cost sensitive, and
21 increasingly global market to provide rolled aluminum sheet to key industries in
22 Kentucky and the United States including Distribution, Transportation,
23 Automotive, Building and Construction and Specialty Products. Although Aleris
24 maintains a positive outlook, competition in the U.S. flat-rolled aluminum industry

1 has grown significantly due to the introduction of foreign competitors that benefit
2 from lower cost structures and rich government incentives on power, tax
3 adjustments, and other subsidies.

4 15. Aleris is making its largest investments in the company's history to
5 build twin Continuous Annealing Line with Pre-Treatment ("CALP") lines. This
6 investment, and its related timing, will allow Aleris to be one of the first few
7 companies to market in the United States with a state of the art auto body sheet
8 production process. It is imperative for Aleris's success in this endeavor, and in the
9 marketplace more generally, that the timing and extent of its ramp up in
10 production be kept confidential. Otherwise, as explained further below, Aleris's
11 direct competitors could gain insight into the most sensitive competitive
12 information, including Aleris's capacity, pricing and customers.

13 16. As noted above, the Confidential Information reveals the timing and
14 the extent to which Aleris plans to ramp up its production. Aleris has taken great
15 precaution to safeguard all technical and timing information related to this
16 expansion project. The only people that have access to this information are those
17 who are already bound by confidentiality agreements with Aleris. Information
18 about a company's detailed inner workings is generally recognized as confidential or
19 proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d
20 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such
21 information concerning the inner workings of a corporation is 'generally recognized
22 as confidential or proprietary"). Moreover, KRS 278.160(3) specifically recognizes

1 that terms of a special contract are not required to be publicly disclosed if such
2 terms are entitled to protection under KRS 61.878(1)(c)(1), and the Commission has
3 previously granted confidential treatment to similar information. *See, e.g., In the*
4 *Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to*
5 *KRS 278.180 and 807 KAR 5:011 Section 13*, Order, P.S.C. Case No. 2014-00134
6 (September 10, 2014) (granting confidential treatment to confidential contract
7 terms); *In the Matter of: Big Rivers Electric Corporation Filing of Wholesale*
8 *Contracts Pursuant to KRS 278.180 and 807 KAR 5:011 Section 13*, Order, P.S.C.
9 Case No. 2014-00134 (October 9, 2014) (granting confidential treatment to
10 confidential contract terms).

11 17. The Confidential Information also implicates Aleris's contractual
12 obligations to keep the identities of its customers confidential. If the dates and
13 extent of Aleris's ramp up of production were to become public and combined with
14 otherwise publicly-available information, Aleris competitors might be able to
15 discover the identities of Aleris customers. Aleris has contractual confidentiality
16 agreements with its customers that prevent it from revealing their identities.
17 Aleris has safeguarded the identities of its customers, which should be protected
18 from indirect disclosure here.

19 18. The Confidential Information is not publicly available, is not
20 disseminated within the Aleris or Big Rivers organizations except to those
21 employees and professionals with a legitimate business need to know and act upon

1 the information, and is not disseminated to others without a legitimate need to
2 know and act upon the information.

3 19. Based on the foregoing, the Confidential Information is generally
4 recognized as confidential or proprietary under Kentucky law.

5 **C. Disclosure of the Confidential Information Would Permit an**
6 **Unfair Commercial Advantage to Big Rivers' Competitors**

7
8 20. Disclosure of the Confidential Information would permit an unfair
9 commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers
10 faces actual competition in the wholesale power and credit markets. It is likely that
11 Big Rivers would suffer competitive injury if the Confidential Information was
12 publicly disclosed.

13 21. Public disclosure of the Confidential Information would cause
14 competitive harm to Big Rivers. In P.S.C. Case No. 2003-00054, the Commission
15 granted confidential protection to bids submitted to Union Light, Heat & Power
16 ("ULH&P"). ULH&P's argued, and the Commission implicitly accepted, that the
17 bidding contractors would not want their bid information publicly disclosed, and
18 that disclosure would reduce the contractor pool available to ULH&P, which would
19 drive up ULH&P's costs, hurting its ability to compete with other gas suppliers. *In*
20 *the Matter of: Application of the Union Light, Heat and Power Company for*
21 *Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003).
22 Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky
23 Supreme Court found that without protection for confidential information provided
24 to a public agency, "companies would be reluctant to apply for investment tax

1 credits for fear the confidentiality of financial information would be compromised.
2 *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995). In
3 the present case, Aleris considers the Confidential Information highly confidential.
4 If Big Rivers is unable to obtain confidential treatment for the contract terms a
5 power contract counterparty, Aleris in this case, considers confidential, potential
6 counterparties dealing with Big Rivers on future transactions would know that such
7 information related to them could be publicly disclosed, which could reveal
8 information to their competitors about their competitiveness. Because many
9 companies would be reluctant to have such information disclosed, public disclosure
10 of the Confidential Information would likely reduce the pool of counterparties
11 willing to deal with Big Rivers, reducing Big Rivers' ability to sell power and
12 impairing its ability to compete in the wholesale power and credit markets. Aleris
13 had choices about where it would make its CALP project investment. If it had
14 thought that extremely confidential project information that could endanger the
15 ultimate competitiveness of the company would be publicly disclosed in a proceeding
16 before the Commission, that fact would have had major significance in its decision
17 about where the project would be constructed.

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

1 On this the 29th day of March, 2019.

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Respectfully submitted,



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BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS
CASE NO. 2016-00117

Response to Ordering Paragraph No. 2 of Commission's Order
dated June 30, 2016

April 1, 2019

1 **Ordering Paragraph No. 2)** *By March 31 of each year, Big Rivers shall file*
2 *an annual report with the Commission detailing, for the prior calendar*
3 *year, revenues received from Aleris and the marginal costs associated with*
4 *servicing Aleris throughout the term of the proposed contracts.*

5
6 **Response)** Please see the attached REDACTED report. The CONFIDENTIAL
7 version thereof is filed with a Petition for Confidential Treatment. Since March 31,
8 2019, is a Sunday, Big Rivers files the attached report on the next day that the
9 Commission's offices are open pursuant to 807 KAR 5:001 §4(7)(b).

10
11

Big Rivers Electric Corporation
Annual Report pursuant to Ordering Paragraph No. 2
Commission's Order dated June 30, 2016

For the period ending December 31, 2018:

Revenues under EDR Contract
Associated Variable Costs (Marginal Costs)
Gross Margin for EDR Contract



BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS
CASE NO. 2016-00117

Response to Ordering Paragraph No. 4 of Commission's Order
dated June 30, 2016

April 1, 2019

1 **Ordering Paragraph No. 4)** *So long as it is providing wholesale service to*
2 *one of its distribution cooperatives with an active EDR contract, Big Rivers*
3 *shall file by March 31 of each year an annual report with the Commission*
4 *providing, for the prior calendar year, the information shown in the*
5 *Appendix to this Order.*

6
7 **Response)** Please see the attached REDACTED report. The CONFIDENTIAL
8 version thereof is filed with a Petition for Confidential Treatment. Since March 31,
9 2019, is a Sunday, Big Rivers files the attached report on the next day that the
10 Commission's offices are open pursuant to 807 KAR 5:001 §4(7)(b).

11 With this filing, Big Rivers reviewed the results-to-date with the existing
12 customer. That review has led Big Rivers to provide true-ups with this report of the
13 'Jobs Created' and 'Capital Investment.'

14
15

Big Rivers Electric Corporation
Annual Economic Development Rate Contract Report
Per Ordering Paragraph No. 4 of Commission's Order dated June 30, 2016

Utility: Big Rivers Electric Corporation Year: 2018

	<u>Reporting Period</u>		<u>Cumulative</u>	
1) Number of EDR Contracts				
Total:	1		1	
Existing Customers:	1		1	
New Customers:				
2) Number of Jobs Created				
Total:	25		152	
Existing Customers:	25		152	
New Customers:				
3) Amount of Capital Investment				
Total:				
Existing Customers:				
New Customers:	N/A		N/A	
4)				
(A) DEMAND:				
Total:		kW		kW
Existing Customers:		kW		kW
New Customers:	N/A	kW	N/A	kW
(B) ENERGY/CONSUMPTION:				
Total:		kWh		kWh
Existing Customers:		kWh		kWh
New Customers:	N/A	kWh	N/A	kWh