

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
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5 In the Matter of:
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ELECTRONIC EXAMINATION OF THE)
APPLICATION OF THE FUEL)
ADJUSTMENT CLAUSE OF BIG RIVERS) Case No.
ELECTRIC CORPORATION FROM) 2019-00007
NOVEMBER 1, 2016 THROUGH OCTOBER)
31, 2018)

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9 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR**
10 **CONFIDENTIAL PROTECTION**
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12 1. Big Rivers Electric Corporation (“*Big Rivers*”) hereby petitions the
13 Public Service Commission of Kentucky (“*Commission*”), pursuant to 807 KAR 5:001
14 Section 13 and KRS 61.878, to grant confidential protection to certain information
15 contained in Big Rivers’ responses to Items 4, 12, 22, 30, 31, and 32 of the
16 information requested in Appendix B to the Commission’s February 11, 2019, order
17 in this matter (the “*Confidential Information*”).

18 2. The Confidential Information consists of information about
19 confidential fuel supply bids to Big Rivers and Big Rivers’ analysis of those bids (Big
20 Rivers’ response and the attachment to the response to Item 4); the terms of future
21 off-system sales (Big Rivers’ response to Item 12); projected fuel costs and
22 information that can readily be used to calculate Big Rivers’ projected fuel costs,
23 including projected FAC factors and projected sales volumes (Big Rivers’ response
24 and the attachment to the response to Item 22); projected fuel requirements in
25 amounts and dollars (Big Rivers’ response to Item 30); projected off-system sales

1 amounts and dollars (Big Rivers' response to Item 31); and planned outage
2 schedules (Big Rivers' response to Item 32).

3 3. One (1) copy the pages containing Confidential Information, with the
4 Confidential Information highlighted with transparent ink, printed on yellow paper,
5 or otherwise marked "CONFIDENTIAL," is being filed in hardcopy format with this
6 petition. 807 KAR 5:001 Section 13(2)(e).

7 4. Please note that certain personal information has been redacted from
8 the attachment to Big Rivers' response to Item 13 pursuant to 807 KAR 5:001
9 Section 4(10), which relates to privacy protection for filings.

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

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

20 7. Section I below explains that Big Rivers operates in competitive
21 environments in the wholesale power market and in the credit market. Section II
22 below shows that the Confidential Information is generally recognized as

1 confidential or proprietary. Section III below demonstrates that public disclosure of
2 the Confidential Information would permit an unfair commercial advantage to Big
3 Rivers' competitors.

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

5 8. As a generation and transmission cooperative, Big Rivers competes in
6 the wholesale power market. This includes not only the short-term bilateral energy
7 market, the day-ahead and real time energy and ancillary services markets, and the
8 capacity market to which Big Rivers has access by virtue of its membership in
9 Midcontinent Independent System Operator, Inc. ("*MISO*"), but also forward
10 bilateral long-term agreements and wholesale agreements with utilities and
11 industrial customers. Big Rivers' ability to successfully compete in the market is
12 dependent upon a combination of its ability to: 1) obtain the maximum price for the
13 power it sells, and 2) keep its cost of production as low as possible. Fundamentally,
14 if Big Rivers' cost of producing a unit of power increases, its ability to sell that unit
15 in competition with other utilities is adversely affected.

16 9. Big Rivers also competes for reasonably priced credit in the credit
17 markets, and its ability to compete is directly impacted by its financial results.
18 Lower revenues and any events that adversely affect Big Rivers' margins will
19 adversely affect its financial results and potentially impact the price it pays for
20 credit. A competitor armed with Big Rivers' proprietary and confidential
21 information will be able to increase Big Rivers' costs or decrease Big Rivers'
22 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A
23 utility the size of Big Rivers that operates generation and transmission facilities

1 will always have periodic cash and borrowing requirements for both anticipated and
2 unanticipated needs. Big Rivers expects to be in the credit markets on a regular
3 basis in the future, and it is imperative that Big Rivers improve and maintain its
4 credit profile.

5 10. Accordingly, Big Rivers has competitors in both the power and capital
6 markets, and its Confidential Information should be protected to prevent the
7 imposition of an unfair competitive advantage.

8 **II. The Confidential Information is Generally Recognized as**
9 **Confidential or Proprietary**

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

13 12. As noted above, the Confidential Information protected under KRS
14 61.878(1)(c)(1) consists of or reveals information about confidential fuel supply bids
15 to Big Rivers and Big Rivers' analysis of those bids, the terms of future off-system
16 sales, projected fuel costs, projected fuel requirements in amounts and dollars,
17 projected off-system sales volumes and prices, and planned maintenance schedules.

18 13. Public disclosure of confidential bid information and Big Rivers'
19 analysis of those bids, projected fuel costs and prices, and projected off-system sales
20 prices will give Big Rivers' suppliers, buyers, and competitors insight into Big
21 Rivers' view of future fuel prices and market power prices, which would indicate the
22 prices at which Big Rivers is willing to buy or sell such items. Public disclosure of
23 the terms of future off-system sales, projected fuel and off-system sales volumes,

1 and planned maintenance schedules will give Big Rivers' suppliers, buyers, and
2 competitors insight into when Big Rivers will have power available to sell into the
3 market or when Big Rivers needs power, and the amount of power Big Rivers has to
4 sell or will need.

5 14. Information about a company's detailed inner workings is generally
6 recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus.*
7 *Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree
8 in finance to recognize that such information concerning the inner workings of a
9 corporation is 'generally recognized as confidential or proprietary'"); *Marina*
10 *Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky.
11 1995) (unfair commercial advantage arises simply from "the ability to ascertain the
12 economic status of the entities without the hurdles systemically associated with the
13 acquisition of such information about privately owned organizations"). Moreover,
14 the Commission has previously granted confidential treatment to similar
15 information. *See, e.g., In the Matter of: An Examination of the Application of the*
16 *Fuel Adjustment Clause of Kentucky Power Company from November 1, 2012*
17 *through October 31, 2014*, Order, P.S.C. Case No. 2014-00450 (Jan. 24, 2019)
18 (granting confidential treatment to planned outage schedules, coal bid analysis
19 information, and forecasted fuel cost and sales data); *In the Matter of: Electronic*
20 *Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric*
21 *Corporation from November 1, 2017 through April 30, 2018*, Order, P.S.C. Case No.
22 2018-00221 (Oct. 16, 2018) (granting confidential treatment to the terms of future

1 off-system sales); *In the Matter of: Application of the Union Light, Heat and Power*
2 *Company for Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (Aug. 4,
3 2003) (finding that bids submitted to a utility were confidential). In fact, in
4 previous reviews of Big Rivers' fuel adjustment clause, the Commission has granted
5 confidential treatment to the same type of information as the Confidential
6 Information in this case. *See, e.g., In the Matter of: Electronic Examination of the*
7 *Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from*
8 *May 1, 2017 through October 31, 2017*, Order, P.S.C. Case No. 2018-00023 (May 29,
9 2018).

10 15. The Confidential Information is not publicly available, is not
11 disseminated within Big Rivers except to those employees and professionals with a
12 legitimate business need to know and act upon the information, and is not
13 disseminated to others without a legitimate need to know and act upon the
14 information. As such, the Confidential Information is generally recognized as
15 confidential and proprietary.

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

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

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

20 18. Potential market power purchasers could use the information related
21 to Big Rivers’ projected off-system sales amounts, fuel requirements, future off-
22 system sales, and planned outage schedules to know when and to the extent Big

1 Rivers is long on power and could use that information to manipulate their bids,
2 leading to lower revenues to Big Rivers and placing it at an unfair competitive
3 disadvantage in the credit markets.

4 19. Additionally, public disclosure of the fuel prices and information about
5 Big Rivers' wholesale power needs would give the power producers and marketers
6 with which Big Rivers competes in the wholesale power market insight into Big
7 Rivers' cost of producing power and need for power and energy during the periods
8 covered by the information. Knowledge of this information would give those power
9 producers and marketers an unfair competitive advantage because they could use
10 that information to potentially underbid Big Rivers in wholesale transactions.

11 20. With regard to the bid information and analysis, in P.S.C. Case No.
12 2003-00054, the Commission implicitly accepted ULH&P's argument that the
13 bidding contractors would not want their bid information publicly disclosed, and
14 that disclosure would reduce the contractor pool available to ULH&P, which would
15 drive up ULH&P's costs, hurting its ability to compete with other gas suppliers. *In*
16 *the Matter of: Application of the Union Light, Heat and Power Company for*
17 *Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (Aug. 4, 2003).
18 Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky
19 Supreme Court found that without protection for confidential information provided
20 to a public agency, "companies would be reluctant to apply for investment tax
21 credits for fear the confidentiality of financial information would be compromised.
22 *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

1 to enable it to reach a decision with regard to this matter. *See Utility Regulatory*
2 *Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

5 On this the 25th day of February, 2019.

6 Respectfully submitted,
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