

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

IN THE MATTER OF:

ELECTRONIC JOINT APPLICATION OF
LOUISVILLE GAS AND ELECTRIC
COMPANY, MEADE COUNTY RURAL)
ELECTRIC COOPERATIVE CORPORATION,)
AND BIG RIVERS ELECTRIC CORPORATION)
FOR (1) APPROVAL OF AN AGREEMENT)
MODIFYING AN EXISTING TERRITORIAL)
BOUNDARY MAP AND (2) ESTABLISHING)
MEADE COUNTY RURAL ELECTRIC)
COOPERATIVE CORPORATION AS THE)
RETAIL ELECTRIC SUPPLIER FOR NUCOR)
CORPORATION'S PROPOSED STEEL MILL)
IN BUTTERMILK FALLS INDUSTRIAL PARK)
IN MEADE COUNTY, KENTUCKY

CaseNo.2019-00370

**PETITION OF BIG RIVERS ELECTRIC CORPORATION AND MEADE
COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION FOR
CONFIDENTIAL PROTECTION**

1. Big Rivers Electric Corporation (“Big Rivers”) and Meade County Rural Electric Cooperative Corporation (“Meade County RECC”) hereby move the Kentucky Public Service Commission (“Commission”) pursuant to KRS 278.160(3), KRS 61.878(1)(c)(1), and 807 KAR 5:001 Section 13 to grant confidential protection to certain information contained in their responses and/or the attachments to their responses to the Commission Staff’s Initial Request for Information (the “Confidential Information”). The Confidential Information pertains to (i) the confidential terms of a special contract between Meade County RECC and Nucor

Corporation (“Nucor”) filed under a petition for confidential treatment in Case No. 2019-00270; (ii) projections of a single customer’s energy usage and bills; (iii) Big Rivers’ confidential projections related to its cost to serve Nucor and the interest rates it expects to pay; and (iv) the confidential terms of the settlement agreement filed under a petition for confidential treatment in this case.

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 in hardcopy format with this petition. 807 KAR 5:001 Section 13(2)(e).

3. 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 and/or Meade County RECC will notify the Commission and have its confidential status removed. 807 KAR 5:001 Section 13(10)(b).

4. As discussed below, the Confidential Information is entitled to confidential protection based upon KRS 61.878(1)(a) and/or KRS 61.878(1)(c)(1). 807 KAR 5:001 Section 13(2)(a)(1).

I. Information Protected under KRS 61.878(1)(a)

5. KRS 61.878(1)(a) protects “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

6. The Confidential Information in the response to Item 1, and much of the Confidential Information contained in the attachment to the response to Item 2,

reveal the projected energy use, and related revenues, of a single retail customer, Nucor. Publicly revealing such information would constitute a clearly unwarranted invasion of personal privacy. Moreover, the Commission has previously granted confidential treatment to similar retail customer usage information. *See, e.g., In the Matter of: Sanctuary Church v. Louisville Gas and Electric Company*, Order, P.S.C. Case No. 2018-00181 (Jan. 8, 2019) (granting confidential treatment pursuant to KRS 61.878(1)(a) for an indefinite period to a retail customer’s account and usage information); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, P.S.C. Case No. 2012-00221 (July 25, 2013) (holding customer names, account numbers, and usage information exempt from disclosure under KRS 61.878(1)(a)). As such, Big Rivers and Meade County RECC request confidential treatment for the customer’s private usage information.

II. Information Protected under KRS 61.878(1)(c)(1)

7. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1).

8. Public disclosure of the Confidential Information in the response to Item 1 would reveal the confidential terms of a special contract between Meade County RECC and Nucor. Public disclosure of the Confidential Information in the attachment to the response to Item 2 would reveal the confidential terms of the

special contract, Big Rivers' internal projections of its costs, and the confidential terms of the settlement agreement filed under a petition for confidential treatment in this case. And public disclosure of the Confidential Information in the response to Item 3 could reveal Big Rivers' internal projections of its costs (specifically, projections of the interest rates it expects to pay), as well as the confidential terms of the settlement agreement filed under a petition for confidential treatment in this case.

9. The special contract and the settlement agreement are both the product of extensive negotiations. Disclosure of the confidential terms of those agreements would discourage such negotiated agreements in the future, and would discourage future economic development prospects from locating in Kentucky in the future. In P.S.C. Case No. 2003-00054, the Commission implicitly accepted Union Light, Heat & Power's ("ULH&P") argument that the bidding contractors would not want their bid information publicly disclosed, and that disclosure would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with other gas suppliers. *In the Matter of Application of the Union Light, Heat and Power Company for Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003). Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found that without protection for confidential information provided to a public agency, "companies would be reluctant to apply for investment tax credits for fear the confidentiality of financial information

would be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

10. In the present case, many potential economic development prospects would be reluctant to have the confidential terms of contracts they negotiate with utilities in Kentucky be publicly disclosed. As such, public disclosure of the confidential terms of the special contract would likely suppress future economic development projects in Kentucky.

11. Additionally, in P.S.C. Case No. 2003-00054, ULH&P argued, and the Commission implicitly accepted, that if the bids it received were publicly disclosed, contractors on future work could use the bids as a benchmark, which would likely lead to the submission of higher bids. *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (Aug. 4, 2003). The Commission also implicitly accepted ULH&P's further argument that the higher bids would lessen ULH&P's ability to compete with other gas suppliers. *Id.* Similarly, the Commission recently granted confidential treatment to pricing information provided by Cumberland Valley Electric, Inc. ("Cumberland Valley") in P.S.C. Case No. 2018-00056. *In the Matter of: Application of Cumberland Valley Electric, Inc. for Commission Approval for a Certificate of Public Convenience and Necessity to Install an Advanced Metering Infrastructure (AMI) System Pursuant to KRS 807 KAR 5:001 and KRS 278.020*, Order, P.S.C. Case No. 2018-00056 (May 9, 2018). In that case, the Commission recognized "that the specific cost information may be used to the financial detriment

of Cumberland Valley and its ratepayers by allowing potential future vendors to bid just under the cost of its current vendor, which, in turn, would place Cumberland Valley at a competitive disadvantage.” *Id.*

12. Likewise, potential customers of Meade County RECC and Big Rivers could use the confidential terms of the Nucor contract as a benchmark to gain an unfair competitive advantage in negotiating future contracts with Meade County RECC.

13. Finally, disclosure of the confidential terms of the settlement agreement and Big Rivers’ internal cost projections would provide insight into Big Rivers’ cost of providing power, the value Big Rivers and Meade County place on providing electric service to potential economic development projects, and a benchmark for future retail and wholesale power contracts. Public disclosure of such information would put Big Rivers and/or Meade County at a competitive disadvantage when negotiating contracts with future economic development prospects or when competing to buy or sell power in the wholesale power market. As the Kentucky Supreme Court has noted, “It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’” *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995); *see also Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from “the ability to ascertain the economic status of the entities without the hurdles systemically associated with the

acquisition of such information about privately owned organizations”). Moreover, the Commission previously granted confidential treatment to this type of information. *See, e.g., In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C. Case No. 2012-0535 (April 25, 2013) (granting confidential treatment to details of sensitive commercial negotiations); *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company from November 1, 2012 through October 31, 2014*, Order, P.S.C. Case No. 2014-00450 (Jan. 24, 2019) (granting confidential treatment to forecasted cost data).

14. The Confidential Information is not publicly available, is not disseminated within Big Rivers or Meade County RECC except to those employees and professionals with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information.

III. Time Period

15. Big Rivers and Meade County RECC request that the Confidential Information remain confidential indefinitely because for so long as Big Rivers is in the wholesale power market, and Meade County RECC is negotiating with potential economic development prospects, the public disclosure of the Confidential Information could be used to their competitive disadvantage for the reasons stated above. 807 KAR 5:001 Section 13(2)(a)(2).

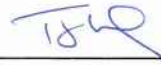
IV. Conclusion

16. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees, then the Commission should hold an evidential hearing to protect Big Rivers and Meade County RECC's due process rights and to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *See Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

WHEREFORE, Big Rivers and Meade County RECC respectfully request that the Commission classify and protect as confidential the Confidential Information.

On this the 18th day of November, 2019.

Respectfully submitted,



Tyson Kamuf
Corporate Attorney,
Big Rivers Electric Corporation
201 Third Street
P.O. Box 24
Henderson, Kentucky 42419-0024
Ph: (270)827-2561
Fax: (270)844-6417
tyson.kamuf@bigrivers.com