

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 2023 INTEGRATED RESOURCE)	Case No.
PLAN OF BIG RIVERS ELECTRIC CORPORATION)	2023-00310

**BIG RIVERS ELECTRIC CORPORATION’S
MOTION FOR PARTIAL REHEARING**

Big Rivers Electric Corporation (“*Big Rivers*” or the “*Company*”), by counsel and pursuant to KRS 278.400 and 807 KAR 5:001 Section 5, hereby moves the Commission for partial rehearing of its Order entered herein on May 20, 2024. In support of this motion, Big Rivers states as follows.

By motion filed January 5, 2024, Big Rivers requested that the Commission grant confidential protection for certain information contained within its responses to requests for information, including the Company’s response to Commission Staff’s First Request for Information, Item No. 1-8. As part of that particular response, and in an effort to fully and adequately respond to Commission Staff’s request, Big Rivers identified a commercial pricing node relevant to its contractual relationship with the Kentucky Municipal Energy Agency (“*KYMEA*”). Big Rivers sought to maintain the confidentiality of the commercial price descriptor for the delivery point consistent with the historical treatment of the term by the Commission and pursuant to KRS 61.878(1)(c)(1), which 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.” The Commission denied the Company’s request.

KRS 278.400 provides an opportunity for a party to timely ask the Commission to revisit an earlier determination and “...correct any material errors or omissions, or to correct findings that are unreasonable or unlawful.”¹ The Commission is empowered to “change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.”²

Big Rivers requests that the Commission grant rehearing with respect to its May 20th Order. The information the Commission denied confidential protection reflects proprietary commercial pricing terms that, if disclosed, would impair the Company’s ability to negotiate and maintain future commercial relationships, resulting in competitive harm. Specifically, disclosure of the relevant pricing node provides a substantial insight into the actual rates paid by KYMEA under its special contract. Allowing interested third parties access to this sensitive pricing information provides them an unfair commercial advantage and harms Big Rivers’ ability to effectively compete. Additionally, Big Rivers’ request aligns with previous Commission decisions. The Commission granted confidential treatment of this same information in connection with the 2016 filing of the special contract with KYMEA, as well as in subsequent matters, recognizing the commercially-sensitive and proprietary nature of the information.

In 2016, Big Rivers filed the special contract between the Company and KYMEA for the purchase and sale of firm capacity and energy.³ As a part of this proceeding, Big Rivers filed a motion for confidential treatment of key portions of the agreement, including information about

¹ KRS 278.400; Case No. 2022-00216, *Electronic Application of Bluegrass Water Utility Operating Company, LLC For a Certificate of Public Convenience and Necessity for the Installation of Monitoring Equipment and for a Corresponding Limited Waiver of Daily Inspection Requirements*, Order (Ky. PSC Sep. 8, 2023).

² KRS 278.400.

³ Case No. 2016-00306, *Filing of Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and the Kentucky Municipal Energy Agency* (Ky. PSC Aug. 5, 2016) (Hereinafter the “KYMEA Contract Filing”)

the pricing node that acts as the delivery point.⁴ In that motion, Big Rivers stated that the terms of the special contract were appropriate for confidential treatment because of their commercially-sensitive nature and the likelihood that Big Rivers would suffer competitive harms if those terms were disclosed.⁵ Big Rivers again filed motions seeking confidential treatment of its special contract terms on the same basis in two subsequent motions in that case.⁶ On January 2, 2019, the Commission issued an order granting Big Rivers' motions for confidential treatment to the confidential material.⁷

Now as then, Big Rivers does not publicly disclose the confidential details of its KYMEA special contract, and it has maintained confidential treatment of these details in other proceedings in order to protect the contract's pricing information.⁸ In the Commission's 2023 examination of Big Rivers' Fuel Adjustment Clause, for example, these special contract details were granted ten (10) years of confidential treatment.⁹

Consistent with the Commission's history of granting confidential treatment to the details of Big Rivers' KYMEA contracts, including the specific information at issue here, Big Rivers' requests that the Commission grant rehearing on this matter and ultimately find confidential

⁴ *KYMEA Contract Filing*, Petition of Big Rivers Electric Corporation for Confidential Protection (Ky. PSC Aug. 8, 2016).

⁵ *Id.* at 3.

⁶ *See KYMEA Contract Filing*, Petition of Big Rivers Electric Corporation for Confidential Protection at 2 (Ky. PSC Oct. 6 2016).

⁷ *KYMEA Contract Filing*, Order at 3 (Jan. 2 2019).

⁸ *See* Case No. 2023-00013, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation From November 1, 2020 through October 31, 2020*, Order at 3 (Ky. PSC Jan. 29, 2024) (“Special contracts and off-system sales information and related usage data should remain confidential because this information would disadvantage BREC with its competitors... In addition, public disclosure of this information could harm BREC in negotiating future special contracts.”).

⁹ *Id.* at 8-9.

treatment warranted for the information contained in the Company's response to Commission Staff Item No. 1-8.

For the foregoing reasons, Big Rivers respectfully requests that the Commission grant partial rehearing of the May 20th Order, grant confidential treatment to the information contained in Big Rivers' Response to Commission Staff's Item No. 1-8, and grant to Big Rivers all other relief to which it may appear entitled.

This 10th day of June, 2024.

Respectfully submitted,

/s/ Edward T. Depp

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Certification

I hereby certify that a copy of this filing has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

/s/ Edward T. Depp
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