

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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

In the Matter of:

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

**AMENDED MOTION OF BIG RIVERS ELECTRIC CORPORATION
FOR CONFIDENTIAL TREATMENT**

Big Rivers Electric Corporation (“*Big Rivers*”) hereby files this motion, amending Big Rivers’ motions for confidential treatment filed in this matter on February 21, 2024 and June 21, 2024, pursuant to the Kentucky Public Service Commission’s (“*Commission*”) Order entered in this matter on September 10, 2024 (the “*September 10 Order*”)¹, and moves the Commission, pursuant to KRS 278.400, for partial rehearing of the September 10 Order. Specifically, Big Rivers asks the Commission to grant rehearing with respect to its decision denying confidential treatment to the attachments to Big Rivers’ supplemental response to Item No. 9 of the First Request for Information of Joint Intervenors, Kentuckians for the Commonwealth and Kentucky Resource Council, (“*JI 1-9*”) and its response to Item No. 1 of the Commission Staff’s Post-Hearing Request for Information (“*PSC PH-1*”). Big Rivers incorporates, as if set forth fully herein its

¹ September 10 Order, at Ordering Paragraphs No. 2 & No. 5.

1 motions for confidential treatment filed in this matter on February 21, 2024 and
2 June 21, 2024, and further states:

3 The attachments to Big Rivers’ responses to JI 1-9 and PSC PH-1 (the
4 “*Confidential Information*” or the “Attachments”) are summaries of certain
5 responses received by Big Rivers to its 2022 All-Source Request for Proposals
6 (“*2022 RFP*”). The Attachments are in Excel format, with each cell showing
7 confidential and proprietary details of the third-party bidders’ potential future
8 generation resources, all of which were provided to Big Rivers under non-
9 disclosure agreements, including the projects’ planned technology type, maximum
10 capacity, storage capacity, location, and commercial operating date. The
11 Confidential Information also includes the third parties’ offered PPA price, tolling
12 price, and escalation percentage. As noted in the September 10 Order, the two
13 attachments are almost identical in format and information,² save that the
14 attachment to Big Rivers’ response to PSC PH-1 provides additional confidential
15 and proprietary information related to updated bids from the same third parties.

16 In denying confidential treatment for the Attachments and granting Big
17 Rivers leave to file an amended motion, the Commission found:

18 “Item 9 Joint Intervenor’s First Request for Information
19 does not set out current or potential vendors nor does it
20 distinguish between winning versus losing bids. Winning
21 bids are generally not deemed confidential, as they are

² September 10 Order, at p. 4.

1 part of the revenue requirement and are public
2 information.”³

3 The September 10 Order did not provide further grounds related to PSC PH-1,
4 but only stated “the Commission similarly finds that BREC did not meet the
5 criteria for confidential treatment in its motion.⁴ As discussed below, the Confidential
6 Information consists of confidential, proprietary and sensitive information protected from
7 public disclosure under KRS 61.878(1)(c)(1) and Commission precedents.

8 A. The Confidential Information is entitled to confidential protection based on
9 KRS 61.878(1)(c)(1).⁵

10 The Attachments are summaries of bids received by Big Rivers in response
11 to its 2022 RFP, that were selected for further evaluation (short-list bids, not
12 winning bids). Big Rivers has not executed contracts based on any bids detailed
13 in the Attachments. However, the fact that these bids were distinguished from
14 other bids provides insight into Big Rivers’ business strategies. The bid details
15 provide insight into Big Rivers’ expectations regarding its cost to produce power.
16 As such, the Confidential Information is critical to Big Rivers’ effective execution
17 of business decisions and strategies. By providing insight into Big Rivers’ cost of
18 producing power, the Confidential Information would also indicate the prices at
19 which Big Rivers is willing to buy or sell power and production factors. As the

³ September 10 Order, at p. 3.

⁴ *Id.*, at p. 4.

⁵ The September 10 Order takes no issue with whether Big Rivers faces actual competition. In fact, the Commission granted confidential treatment for Big Rivers’ response to Item 4 of the Joint Intervenors’ Post-Hearing Request, finding that the redacted information would “permit an unfair commercial advantage to competitors if disclosed.”, at p. 5 and Ordering Paragraph No. 6.

1 Kentucky Supreme Court has noted, “It does not take a degree in finance to
2 recognize that such information concerning the inner workings of a corporation is
3 ‘generally recognized as confidential or proprietary.’”

4 The Confidential Information would unfairly provide potential future
5 bidders for Big Rivers’ capacity needs (whether through capital projects or
6 agreements) with valuable information about, not only recent bids details, but
7 also Big Rivers’ evaluation of those bids. While the Attachments do not specify
8 the names of the bidders, the other detailed information regarding the bids
9 provides sufficient information for Big Rivers’ future counterparties, vendors and
10 competitors to identify the bidders. Public disclosure of the Confidential
11 Information would allow potential bidders the opportunity to unfairly adjust and
12 manipulate future bids to edge out other proposals.

13 Additionally, if the Confidential Information is publicly disclosed, other
14 companies interested in submitting bids to Big Rivers, related to generation
15 resources or any capital project, would know that such information related to
16 their business strategies, and internal analyses with respect to future proposals
17 may also be publicly disclosed. Many companies would be reluctant to have such
18 sensitive information publicly disclosed, and would be less willing to bid freely
19 with Big Rivers, if at all. In Big Rivers’ case, public disclosure of its and/or a
20 counterparty’s sensitive business strategies, internal analyses and proposals
21 contained in the Attachments would drive down the pool of counterparties willing
22 to deal with Big Rivers, driving up Big Rivers’ costs, and hurting its ability to

1 compete in the wholesale power and credit markets and to compete for economic
2 development prospects.

3 For the foregoing reasons, denial of confidential treatment for the
4 Attachments would create precisely the kind of competitive harm to Big Rivers
5 that KRS 61.878(1)(c)(1) is intended to prevent, putting Big Rivers at a
6 competitive disadvantage when competing for wholesale power sales and
7 negotiating contracts.

8 B. Additional Supportive Commission Precedents

9 The Commission has previously granted confidential treatment for winning
10 bids and information related to winning bids under KRS 61.878(1)(c)(1). In Case
11 No. 2019-00269, the Commission granted confidential treatment for “bid
12 proposals from various contractors for decommissioning work” received by Big
13 Rivers and “a purchase order from the winning bidder showing the amount paid
14 to that bidder.”⁶ The Commission found the information generally recognized as
15 confidential or proprietary and if openly disclosed would permit an unfair
16 commercial advantage to Big Rivers’ competitors. The Commission further found
17 that public disclosure of the information could result in bid manipulation, which
18 would “commercially disadvantage BREC with its competition.”⁷ In that case, Big
19 Rivers argued that disclosure of the information would result in future

⁶ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards*, Case No. 2019-00269, Order (Dec.8, 2021), at p. 2.

⁷ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards*, Case No. 2019-00269, Order (Dec.8, 2021) at p. 3. (Citing Case No. 2020-00309, *Electronic Purchased Gas Adjustment Filing of Louisville Gas and Electric Company*, Order (Aug. 20, 2021), at p. 3.

1 contractors submitting higher bids, leading to higher costs and lower revenues
2 and that disclosure would be harmful to bidders and could result in potential
3 bidders declining to submit bids.⁸ Big Rivers’ February 21, 2024 and June 21,
4 2024 motions for confidential treatment in this matter, made similar arguments
5 related to the Confidential Information. As Big Rivers regularly solicits bids in
6 connection with capital projects and power purchases, public disclosure of the
7 Confidential Information would result in the same harm that the Commission’s
8 December 8, 2021 Order in Case No. 2019-00269 sought to avoid.

9 In Case No. 2022-00341, the Commission explained its reasoning for
10 denying confidential treatment to winning bids as, “based upon principles of
11 transparency regarding the evidence that the Commission relies upon in
12 rendering its determination.”⁹ In this non-adjudicatory IRP proceedings,¹⁰ Big
13 Rivers is not seeking a Certificate of Public Convenience and Necessity or any
14 determination from the Commission. The Commission has previously recognized
15 bidding information submitted as part of a IRP proceeding as generally
16 confidential or proprietary.¹¹ In Case No. 2013-00475, the Commission granted

⁸ *Id.*, at p. 2.

⁹ *In the Matter of: Electronic Application of Delta Natural Gas Company, Inc. for Its Pipe Replacement Filing*, Case No. 2022-00341, Order (Feb. 17, 2023) (citing an order in a CPCN proceeding, *In the Matter of: Application of Salt River Electric Cooperative Corporation for an Order Issuing a Certificate of Public Convenience and Necessity Construct an Advanced Metering Infrastructure (AMI) System Pursuant to KRS 807, KAR 5:001 And KRS 278.020*, Case No. 2019-00399, Order (Feb. 20, 2020))

¹⁰ See Adm. Case No. 308, Order (Aug. 8, 1990), at p. 13; 807 KAR 5:058, Section 11.

¹¹ See, e.g., *In the Matter of: Integrated Resource Planning Report of Kentucky Power Company to the Kentucky Public Service commission*, Case No. 2013-00475, Order (July 18, 2014) (granting confidential treatment to “bids received in response to an RFP.”)

1 confidential treatment for bids received in response to a RFP which sought bids to
2 supply generation capacity under KRS 61.878(1)(c)(1).¹² The Commission found
3 that if Kentucky Power Company entered into a contract with one or more of the
4 bidders, the need for confidentiality would be “*reexamined*.”¹³

5 Additionally, in Case No. 2014-00166, Big Rivers’ 2014 IRP case, the
6 Commission distinguished information related to capital costs and O&M costs
7 submitted in “an application for authorization to construct specific projects” from
8 the same information submitted as part of an IRP, “which is a 15 year projection
9 of future events and needs based on current information.”¹⁴ The Commission
10 found when submitted as part of the IRP projected capital costs and O&M costs
11 are generally recognized as confidential or proprietary.¹⁵ Similar to projected
12 capital costs and O&M, the Confidential Information provides insight into Big
13 Rivers’ business strategies, and should be protected from public disclosure.

14

15 WHEREFORE, Big Rivers respectfully requests that the Commission grant
16 partial rehearing of the September 10 Order and grant confidential treatment for
17 the attachments to Big Rivers’ supplemental response to Item No. 9 of the First
18 Request for Information of Joint Intervenors and its response to Item No. 1 of the

¹² *In the Matter of: Integrated Resource Planning Report of Kentucky Power Company to the Kentucky Public Service Commission*, Order (July 18, 2014), at p. 2.

¹³ *Id.*

¹⁴ *In the Matter of: 2014 Integrated Resource Plan of Big Rivers Electric Corporation*, Case No. 2014-00166, Order (Aug. 26, 2014), at p. 16.

¹⁵ *Id.*

1 Commission Staff's Post-Hearing Request for Information for a period of five (5)
2 years from the date of this motion.

3 On this the 30th day of September, 2024.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Respectfully submitted,

/s/ Senthia Santana

Senthia Santana

Tyson Kamuf

Whitney Kegley

Big Rivers Electric Corporation

210 West Second Street

Owensboro, Kentucky 42301

Phone: (270) 827-2561

Facsimile: (270) 844-6417

senthia.santana@bigrivers.com

tyson.kamuf@bigrivers.com

whitney.kegley@bigrivers.com

*Counsel for Big Rivers Electric
Corporation*