

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

In the Matter of:

ELECTRONIC TARIFF FILING OF BIG RIVERS)	Case No.
ELECTRIC CORPORATION AND KENERGY)	2023-00312
CORP. TO REVISE THE LARGE INDUSTRIAL)	
CUSTOMER STANDBY SERVICE TARIFF)	

MOTION FOR CONFIDENTIAL TREATMENT

1. Big Rivers Electric Corporation (“Big Rivers”), by counsel, hereby moves the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13, KRS 61.878, and other applicable law, to grant confidential treatment to certain documents and information within its responses (filed jointly with Kenergy Corp.) to the Supplemental Requests for Information propounded herein by Domtar Paper Company, LLC (“Domtar”) and Kimberly-Clark Corporation (“Kimberly-Clark), jointly (collectively, the “Intervenors”).

2. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “Confidential Information.” The Confidential Information includes:

- a. Non-public MISO registration information describing the status of Joint Intervenors’ generators during Planning Years relevant to this proceeding, as well as confidential capacity information with respect to both Joint Intervenors’ generators. This information is included in the Joint Response to Intervenors Joint Request No. 3-3.
- b. Workbooks developed using MISO’s Module E-1 Capacity Tracking (“MECT”) tool depicting Seasonal Accredited Capacity and other information for Domtar’s generator for specific Planning Years, attached to the Joint Response to Joint Intervenor Request No. 3-3.

c. Forecasted projections of Kimberly-Clark’s total “take” (load less generation), included in the Joint Response to Joint Intervenor Request No. 3-14.

3. Pursuant to the Commission’s March 24, 2020 Order in *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085 (“Case No. 2020-00085”), Big Rivers is submitting with this motion one (1) copy of the documents containing Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” via electronic mail to PSCED@ky.gov. A copy of those pages, with the Confidential Information redacted, is being filed into public docket via the Commission’s Electronic Filing System.

4. 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 will notify the Commission in writing. *See* 807 KAR 5:001, Section 13(10)(b).

5. As discussed below, the Confidential Information is entitled to confidential treatment based upon KRS 61.878(1)(c)(1). *See* 807 KAR 5:001, Section 13(2)(a)(1).

I. Certain of the Confidential Information is Entitled to Protection from Public Disclosure by KRS 61.878(1)(c)(1)

6. 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.” Subsection A, *infra*, describes how Big Rivers operates in competitive environments in the wholesale power market and in the credit market; Subsection B, *infra*, explains that the Confidential Information is generally recognized as confidential or proprietary; and Subsection C, *infra*, demonstrates that public disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers’ competitors.

A. Big Rivers Faces Actual Competition.

7. Big Rivers must successfully compete in the wholesale power markets to sell energy it produces in excess of its members' needs. Big Rivers' ability to successfully compete in these markets is dependent upon a combination of its ability to: a) obtain the maximum price for the power it sells and secure the most favorable contract terms available, and b) keep its cost of production as low as possible. Fundamentally, if Big Rivers' cost of producing a kilowatt hour of energy increases, its ability to sell that kilowatt hour in competition with other utilities is adversely affected. Keeping Big Rivers' capacity position confidential is therefore essential to preventing its competitors from gaining a competitive advantage.

8. Big Rivers also competes for reasonably-priced credit in the credit markets, and its ability to compete is directly impacted by its financial results. Lower revenues and any events that adversely affect Big Rivers' margins will adversely affect its financial results and potentially impact the price it pays for credit. A competitor or potential counterparty armed with Big Rivers' proprietary and confidential information will be able to increase Big Rivers' costs or decrease Big Rivers' revenues, which could in turn affect Big Rivers' creditworthiness. A utility the size of Big Rivers that operates generation and transmission facilities will always have periodic cash and borrowing requirements for both anticipated and unanticipated needs. Big Rivers expects to be in the credit markets in the future, and it is imperative that Big Rivers improve and maintain its credit profile.

9. Accordingly, Big Rivers has competitors in both the wholesale power and credit markets, and its Confidential Information should be protected to prevent the imposition of an unfair competitive advantage.

B. The Confidential Information is Generally Recognized as Confidential or Proprietary.

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

11. As described above, the Confidential Information includes detailed, proprietary information pertaining to Joint Intervenors' generators, including MISO accredited capacity information, the generators impact on Big Rivers' capacity forecasts, and generator registration information which impact Big Rivers' capacity position. This Confidential Information is critical to the effective execution of Big Rivers' business decisions and strategy and, if disclosed, would allow potential counterparties and competitors to gain an advantage over Big Rivers in the course of ongoing and future negotiations. Allowing counterparties and competitors access to detailed, internal information related to the capacity requirements of its largest customers may impact Big Rivers' ability to secure the best pricing available in connection with future opportunities.

12. Additionally, the Confidential Information includes proprietary or sensitive counterparty operations and usage information that is not available to the public. Because public disclosure of the Confidential Information would constitute an unwarranted invasion of a counterparty's privacy, the Confidential Information should be granted confidential treatment. *See Ky. Op. Atty. Gen. 96-ORD-176 (August 20, 1996) (holding Kroger Company's utility bills exempt from disclosure under KRS 61.878(1)(a)); In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, Case No. 2012-00221 (Ky. P.S.C. July 25, 2013) (holding customer names, account numbers, and usage information exempt from disclosure under KRS 61.878(1)(a)).* Moreover, to ensure that future opportunities are encouraged, it is imperative that Big Rivers be able to negotiate with third parties and accept and utilize third party proprietary information without risk of public disclosure.

13. Information about a company's detailed inner workings is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("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'"); *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"). Big Rivers' information about its registration of large industrial customers and its calculations of those customers' capacity positions using MISO's MECT tool constitutes detailed information about Big Rivers' inner workings.

14. The Confidential Information is not publicly available, is not disseminated within Big Rivers 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. As such, the Confidential Information is both recognized by Big Rivers and generally recognized as confidential and proprietary.

C. Disclosure of the Confidential Information Would Result in an Unfair Commercial Advantage to Big Rivers' Competitors.

15. Disclosure of the Confidential Information could unreasonably and unnecessarily harm Big Rivers by giving interested third parties an unfair commercial advantage through insight into Big Rivers' business operations and strategies. As discussed *supra*, Big Rivers faces actual competition in both the short-and long-term wholesale power markets and in the credit markets, and the success of Big Rivers turns in large part on its ability to maximize the value of its assets. It is likely that Big Rivers' ability to compete would be adversely affected if the Confidential

Information were publicly disclosed, and Big Rivers seeks protection from such competitive injury.

16. Similarly, potential fuel and power suppliers manipulating Big Rivers' bidding process would lead to higher costs to Big Rivers and would place it at an unfair competitive disadvantage in the wholesale power and credit markets. Potential market power purchasers could likewise use the information to manipulate their bids to Big Rivers, leading to lower revenues to Big Rivers and placing it at an unfair competitive is advantage in the wholesale power and credit markets.

17. The Joint Response to Joint Intervenor request No. 3-3 contains information about MISO and Big Rivers' registration of Domtar and Kimberly-Clark's generation units, specifically whether these units have been registered as BTMG with MISO. The disclosure of this information would provide Big Rivers' competitors with information that could be exploited to Big Rivers' detriment. The Commission has previously granted confidential treatment to information pertaining to MISO registration of generation units. *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Revise the Large Industrial Customer Standby Service Tariff*, Case No. 2023-00312, Order at 3 (Ky. PSC Feb. 29, 2024). Because disclosure of registration information would "result in a competitive disadvantage to BREC in the energy markets," the Commission should, consistent with previous orders in this case, grant confidential treatment to this information pursuant to KRS 61.878(1)(c). *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Revise the Large Industrial Customer Standby Service Tariff*, Case No. 2023-00312, Order at 3 (Ky. PSC Feb. 29, 2024).

18. The attachment to the Joint Response to Intervenors' Joint Request No. 3-3 includes information about Joint Intervenor capacity positions developed using MISO's MECT tool. Additionally, the Joint Response to Intervenors' Joint Request No. 3-14 includes Kimberly-Clark's forecasted take, which is Kimberly-Clark's load requirement less the amount of power Kimberly-Clark generates on its own. The disclosure of this information would reveal information about the capacity requirements of some of Big Rivers' large industrial customers, and would give competitors insight into Big Rivers' capacity position. The Commission has previously found that the disclosure of information related to Big Rivers' capacity position would place it "at a competitive disadvantage in the energy market" and granted such information confidential treatment under KRS 61.878(c)(1). *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. for Approval of a Special Contract with Economic Development Rates with Pratt Paper, LLC*, Case No. 2023-00045, Order (Ky. PSC Feb. 23, 2023); *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Revise the Large Industrial Customer Standby Service Tariff*, Case No. 2023-00312, Order at 3 (Ky. PSC Feb. 29, 2024).

19. If disclosed, the Confidential Information would allow Big Rivers' competitors and potential counterparties to discover, and make use of, confidential information concerning Big Rivers' assets and business strategies, to the unfair competitive disadvantage of Big Rivers.

II. Certain of the Confidential Information is also Entitled to Confidential Treatment Based Upon KRS 61.878(1)(a).

20. Certain Confidential Information contained in the response and attachments in the Joint Responses to Intervenors' Joint Request No. 3-3, as well as the response to the Joint Response to Intervenors' Joint Request No. 3-14, are entitled to confidential treatment based upon KRS 61.878(1)(a), which explicitly protects "[p]ublic records containing information of a personal

nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

21. These responses and the attachment reveal the power usage of existing, individual large industrial retail customers. The Commission has previously granted confidential treatment to similar retail customer usage under the purview of KRS 61.878(1)(a). *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff*, Case No. 2021-00289, Order at 5 (Ky. PSC Mar. 3, 2022) (“Case No. 2021-00289”).

22. Specifically, portions of Big Rivers and Kenergy Corp.’s Joint Response to Joint Intervenor Request No. 3-3 and 3-14, as well as the entirety of its attachment to Request No. 3-3, contain information that, if disclosed, would provide insight into Domtar and Kimberly-Clark’s generation and capacity positioning. The information related to MISO and Big Rivers’ registration of Domtar and Kimberly-Clark’s generators would disclose information about the usage and projected needs of the Joint Intervenors. In addition, the attachment contains detailed information on generator capacity developed using MISO’s MECT tool. The Commission has previously held that “large industrial customers on BREC’s system have a right to privacy concerning their power usage and projected needs” and granted confidential treatment to capacity positioning information pursuant to KRS 61.878(1)(a). Case No. 2021-00289, Order at 5 (Ky. PSC Mar. 3, 2022); *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Revise the Large Industrial Customer Standby Service Tariff*, Case No. 2023-00312, Order at 3 (Ky. PSC Feb. 29, 2024).

23. As such, Big Rivers requests confidential treatment for this registration and capacity information.

III. Time Period.

24. Pursuant to 807 KAR 5:001 Section 13(3)(a)(2), Big Rivers requests that the Confidential Information be granted confidential treatment for a period of five (5) years from the date of this motion, which should allow sufficient time for the projected data and registration information to become historical and sufficiently outdated that it could not be used to determine similar confidential information at that time or to competitively disadvantage Big Rivers.

25. Big Rivers requests that the Confidential Information protected by KRS 61.878(1)(a), consisting of customer's MISO registration and capacity information be granted confidential treatment consistent with the Commission's March 3, 2021 Order in Case No. 2021-00289.

IV. Conclusion.

26. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees, then the Commission should hold an evidentiary hearing to protect Big Rivers' 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 Util. Reg. Comm'n v. Ky. Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

Dated this 8th day of March, 2024.

Respectfully submitted,

/s/ Edward T. Depp

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Certification

I hereby certify that a copy of this Motion for Confidential Treatment 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

Counsel to Big Rivers Electric Corporation