

**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 information contained within its concurrently filed Supplemental Testimony of Terry Wright, Jr. (the “*Testimony*”). The Testimony is being filed in support of the Settlement Agreement, Stipulation, and Recommendation entered into on December 10th, 2024, by and between Big Rivers, Kenergy Corp. (“*Kenergy*”), Domtar Paper Company, LLC (“*Domtar*”), and Kimberly-Clark Corporation (“*Kimberly-Clark*”).

2. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “Confidential Information.” The Confidential Information is the estimated refund amount that Big Rivers (through Kenergy) expects to pay to Kimberly-Clark under the Agreement, which total reflects the difference between the amount Kimberly-Clark actually paid at existing Pilot LICSS Tariff rates from and after July 1, 2024, and the amount Kimberly-Clark would have paid had the updated tariffs prescribed by the Agreement gone into effect as of July 1, 2024.

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 document 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 the document, 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.

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. 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 is the estimated refund of charges incurred by Kimberly-Clark, one of Big Rivers' largest customers, over the course of several months. This Confidential Information could be readily used to deduce sensitive information

regarding Kimberly-Clark's energy and capacity needs, operational activities, and financial outlays. This information should not become public simply because Kimberly-Clark was involved in and impacted by a regulatory proceeding regarding the terms by which it receives service.

12. Because public disclosure of the Confidential Information would constitute an unwarranted invasion of Kimberly-Clark's internal financial information, 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)). In the instant case, by Order entered May 9, 2024, the Commission granted Big Rivers' request for confidential treatment of similar customer information, noting, "[t]he Commission has previously held that large industrial customers on BREC's system have a right to privacy concerning their power usage and projected needs." Order, at 4 (Ky. P.S.C. May 9, 2024) (*citing* Case No. 2021-00289, *Electronic Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff* (Ky. PSC Mar. 3, 2022)). The same outcome is warranted here.

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 must be in a position to protect from public disclosure the specific usage and expense information of particular customers, as that information is private to both the customer and Big Rivers. Further, proceeding otherwise could have a chilling effect on opportunities within Big Rivers’ footprint, as potential end-users are understandably averse to such information being available for any competitor or vendor to view.

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’ activities and finances, as well as those of its individual customer. 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 engage with customers and maximize the value of its trusted relationships. 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. If disclosed, the Confidential Information would allow Big Rivers’ competitors and potential counterparties to discover, and make use of, confidential information to the unfair competitive disadvantage of Big Rivers.

II. Time Period.

17. 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 information to become historical and sufficiently outdated that it could not be used to cause competitive injury.

III. Conclusion.

18. 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 27th day of December, 2024.

Respectfully submitted,

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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

Counsel to Big Rivers Electric Corporation