

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
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COMMISSION

5 In the Matter of:
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7 AN EXAMINATION OF THE APPLICATION OF)
8 THE FUEL ADJUSTMENT CLAUSE OF BIG) CASE NO.
9 RIVERS ELECTRIC CORPORATION FROM) 2016-00006
10 MAY 1, 2015 THROUGH OCTOBER 31,)
11 2015)
12)
13)
14)

15 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**
16 **PROTECTION**
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18 1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the Kentucky
19 Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13 and KRS
20 61.878, to grant confidential protection to certain information contained in Big Rivers’ responses
21 to Items 18 and 24 of the information requested in the Appendix to the Commission’s February
22 5, 2016, order in this matter (the “Confidential Information”).

23 2. The Confidential Information consists of information about Big Rivers’ ability to
24 offer generation into the wholesale power market (Item 18) and information about the current
25 heat rates of Big Rivers’ generating units (Item 24).

26 3. One (1) copy of the pages containing Confidential Information, with the
27 Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise
28 marked “CONFIDENTIAL,” is being filed with this petition. A copy of those pages, with the
29 Confidential Information redacted, or a sheet noting that the entirety of the pages have been
30 redacted, is being filed with the original and each of the ten (10) copies of Big Rivers’ responses
31 to the information requests filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3),
32 13(2)(b).

1 other utilities is adversely affected. As is well documented in multiple proceedings before this
2 Commission, Big Rivers' margins are derived almost exclusively from its off-system sales.

3 9. Big Rivers also competes for reasonably priced credit in the credit markets, and
4 its ability to compete is directly impacted by its financial results. Any event that adversely
5 affects Big Rivers' margins will adversely affect its financial results and potentially impact the
6 price it pays for credit. As was described in the proceeding before this Commission in the Big
7 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis
8 in the future.¹

9 **II. The Confidential Information is Generally Recognized as Confidential or**
10 **Proprietary**

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

15 11. The Confidential Information in the response to Items 18 reveals the generation
16 levels at which Big Rivers can offer certain units into the market. The information in the
17 response to Item 24 provides the current heat rates of Big Rivers' generating units, which
18 provides insight into Big Rivers' production costs.

19 12. Public disclosure of the Confidential Information will give Big Rivers' suppliers,
20 buyers, and competitors insight into Big Rivers' cost of producing power, and into when Big
21 Rivers will have power available to sell into the market or when Big Rivers needs power, and the
22 amount of power Big Rivers has to sell or will need.

¹ See Order dated March 6, 2009, in *In the Matter of: Joint Application of Big Rivers, E.ON, LG&E Energy Marketing, Inc., and Western Kentucky Energy Corporation for Approval to Unwind Lease and Power Purchase Transactions*, PSC Case No. 2007-00455, pages 27-30 and 37-39.

1 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
2 competitive injury if that Confidential Information was publicly disclosed.

3 15. The Confidential Information includes information about Big Rivers' production
4 costs and ability to offer generation into the wholesale power market. If that information is
5 publicly disclosed, potential power suppliers and buyers would have insight into the prices at
6 which Big Rivers is willing to buy and sell at and could manipulate the bidding process, leading
7 to higher prices or lower revenues for Big Rivers and impairing its ability to compete in the
8 wholesale power and credit markets. In PSC Case No. 2003-00054, the Commission granted
9 confidential protection to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P
10 argued, and the Commission implicitly accepted, that if the bids it received were publicly
11 disclosed, contractors on future work could use the bids as a benchmark, which would likely lead
12 to the submission of higher bids. Order dated August 4, 2003, in *In the Matter of: Application of*
13 *the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-
14 00054. The Commission also implicitly accepted ULH&P's further argument that the higher
15 bids would lessen ULH&P's ability to compete with other gas suppliers. *Id.* Similarly, potential
16 fuel and power suppliers manipulating Big Rivers' bidding process would lead to higher costs or
17 lower revenues to Big Rivers and would place it at an unfair competitive disadvantage in the
18 wholesale power market and credit markets.

19 16. Potential market power purchasers could use the information related to Big
20 Rivers' ability to offer generation into the wholesale power market to know when and to the
21 extent Big Rivers is long on power and could use that information to manipulate their bids,
22 leading to lower revenues to Big Rivers and placing it at an unfair competitive disadvantage in
23 the credit markets.

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On this the 18th day of February, 2016.

Respectfully submitted,



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