In the Matter of:

Application of Big Rivers Electric Corporation for Declaratory Order

) Case No. ) 2016-00278

PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL PROTECTION

1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential protection to certain information contained in the attachments to Big Rivers' responses to Items 4 and 6 of the Commission Staff's First Request for Information ("PSC 1-4" and "PSC 1-6," respectively) and Attachment 1 to Big Rivers' response to Item 12 of the First Request for Information from the City of Henderson, Kentucky, and Henderson Utility Commission, d/b/a Henderson Municipal Power & Light ("HMPL 1-12"). The information Big Rivers seeks to protect as confidential is hereinafter referred to as the "Confidential Information."

2. One (1) copy of the paper attachment(s) with the confidential information underscored, highlighted with transparent ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL," is being filed with this petition in a separate sealed envelope marked "CONFIDENTIAL." Ten (10) copies of the pages containing Confidential Information, with the Confidential Information redacted, or a sheet noting the entirety of the attachment has been redacted, are being filed with this petition. See 807 KAR 5:001 Sections 13(2)(a)(3).

3. One (1) copy of the electronic attachment(s) containing Confidential Information is contained on the confidential electronic media that accompanies this petition. The confidential attachment to Big Rivers' response to HMPL 1-12 is an Excel spreadsheet. Because the
Confidential Information is inextricably intertwined with non-confidential information in the electronic spreadsheet attachment, Big Rivers cannot redact only the Confidential Information from the electronic spreadsheet attachment without making other cells in the spreadsheet unusable or breaking the formulas contained therein, and so, the entirety of that attachment must be made confidential. As such, the entirety of the confidential attachment to HMPL 1-12 has been redacted from the original and each of the ten (10) copies of the responses to the information requests filed with this petition. See 807 KAR 5:001 Sections 13(2)(a)(3). A motion for deviation from the requirement that Big Rivers file a paper copy of the confidential electronic attachment accompanies this petition.

4. A copy of this petition with the Confidential Information redacted has been served on all parties to this proceeding. 807 KAR 5:001 Section 13(2)(b).

5. 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 and have its confidential status removed. 807 KAR 5:001 Section 13(10)(b).

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

I. **Information Protected by KRS 61.878(1)(a)**

7. KRS 61.878(1)(a) protects “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” The attachments to Big Rivers’ response to PSC 1-6 consist of invoices Big Rivers sent to the City of Henderson and reveal detailed hourly usage and related payment...
obligations. Because public disclosure of this Confidential Information would constitute an
unwarranted invasion of privacy, this Confidential Information should be granted confidential
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, Order, P.S.C. Case No.
2012-00221 (July 25, 2013) (holding customer names, account numbers, and usage information
exempt from disclosure under KRS 61.878(1)(a)).

II. Information Protected by KRS 61.878(1)(c)(1)

8. 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.” KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1).
Section A below explains that Big Rivers operates in competitive environments in the wholesale
power market and in the credit market. Section B below shows that the Confidential Information
is generally recognized as confidential or proprietary. Section C below demonstrates that public
disclosure of the Confidential Information would permit an unfair commercial advantage to Big
Rivers’ competitors.

A. Big Rivers’ Faces Actual Competition

9. As a generation and transmission cooperative, Big Rivers competes in the
wholesale power market. This includes not only the short-term bilateral energy market, the day-
ahead and real time energy and ancillary services markets, and the capacity market to which Big
Rivers has access by virtue of its membership in Midcontinent Independent System Operator,
Inc. (“MISO”), but also forward bilateral long-term agreements and wholesale agreements with
utilities and industrial customers. Big Rivers’ ability to successfully compete in the market is
dependent upon a combination of its ability to: 1) obtain the maximum price for the power it
sells, and 2) keep its cost of production as low as possible. Fundamentally, if Big Rivers’ cost of
producing a unit of power increases, its ability to sell that unit in competition with other utilities
is adversely affected.

10. 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 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’ apparent 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 on a regular basis in the future, and it is imperative that Big Rivers
improve and maintain its credit profile.

11. Accordingly, Big Rivers has competitors in both the power and capital 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

12. 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.
The Confidential Information contained in the attachment to Big Rivers' response to PSC 1-4 reveals recent detail of energy purchased and sold by Big Rivers, market prices and revenues from the sale of that energy, the variable cost of producing that energy, and other information which could be used to readily calculate the Confidential Information.

The Confidential Information contained in the attachments to Big Rivers' response to PSC 1-6 includes recent hourly generation detail from generating units operated by Big Rivers, hourly detail of energy purchased by Big Rivers, hourly energy market prices, and other information which could be used to readily calculate the Confidential Information.

The Confidential Information contained in the attachment to Big Rivers' response to HMPL1-12 reveals recent (2015 and 2016) hourly generation detail from generating units operated by Big Rivers, hourly detail of energy purchased and sold by Big Rivers, hourly market prices and revenues from the sale of that energy, the hourly variable cost of producing that energy, and other information which could be used to readily calculate the Confidential Information.

Such information provides significant insight into the energy that Big Rivers will have available on an hourly basis, the prices at which Big Rivers is willing to buy or sell power, and Big Rivers' cost of producing power on an hourly basis, which would further indicate the prices at which Big Rivers is willing to buy or sell power. The Commission has previously granted confidential treatment to similar recent information. See, e.g., In the Matter of: 2014 Integrated Resource Plan of Big Rivers Electric Corporation, Order, P.S.C. Case No. 2014-00166 (August 26, 2014); In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates, Order, P.S.C. Case No. 2012-00535 (April 25, 2013); In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates, Order,

17. 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 generally recognized as confidential and proprietary.

C. Public Disclosure of the Confidential Information Would Permit an Unfair Commercial Advantage to Big Rivers’ Competitors

18. Public disclosure of the Confidential Information would grant Big Rivers’ competitors an unfair commercial advantage. As discussed above in Section A, Big Rivers faces actual competition in both the short- and long-term wholesale power markets and in the credit markets. It is likely that Big Rivers’ ability to compete in these markets would be adversely affected if the Confidential Information was publicly disclosed, and Big Rivers seeks protection from such competitive injury.

19. The Confidential Information consists of commercially sensitive information such as the energy available to Big Rivers on an hourly basis from Station Two in 2015 and 2016; Big Rivers’ 2015 and 2016 variable production costs for the Station Two units; and market sales prices achieved by Big Rivers in 2015 and 2016 on an hourly basis. This recent information can
be used to readily determine or estimate the current energy available to Big Rivers, Big Rivers’
current cost of producing power, and the prices at which Big Rivers is currently willing to buy or
sell power.

20. If such information is publicly disclosed, market participants would have insight
into the prices at which Big Rivers is willing to buy and sell power and could manipulate the
bidding process, impairing Big Rivers’ ability to generate power at competitive rates or to sell
power at competitive rates in the wholesale power markets. Furthermore, any competitive
pressure that adversely affects Big Rivers’ revenue and margins could make the company appear
less creditworthy and thus impair its ability to compete in the credit markets. These effects were
recognized in P.S.C. Case No. 2003-00054, in which the Commission granted confidential
treatment to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P argued, and
the Commission implicitly accepted, that if the bids it received were publicly disclosed,
contractors on future work could use the bids as a benchmark, which would likely lead to the
submission of higher bids. In the Matter of: Application of the Union Light, Heat and Power
The Commission also implicitly accepted ULH&P’s further argument that the higher bids would
lessen ULH&P’s ability to compete with other gas suppliers. Id. Similarly, potential power
suppliers manipulating Big Rivers’ bidding process would lead to higher costs or lower revenues
to Big Rivers and would place it at an unfair competitive disadvantage in the wholesale power
market and credit markets.

21. Additionally, public disclosure of the variable cost information and information
about the amounts of energy generated, purchased, and sold would give the power producers and
marketers with which Big Rivers competes in the wholesale power market insight into Big
1 Rivers’ cost of producing power and the amount of energy available to Big Rivers. Knowledge
2 of this information would give those power producers and marketers an unfair competitive
3 advantage because they could use that information to potentially underbid Big Rivers in
4 wholesale transactions. It would also give potential suppliers to Big Rivers a competitive
5 advantage because they will be able to manipulate the price of power bid to Big Rivers in order
6 to maximize their revenues, thereby driving up Big Rivers’ costs and impairing Big Rivers’
7 ability to compete in the wholesale power and credit markets.
8 22. Finally, potential market power purchasers could use the information related to
9 the amounts of energy available to Big Rivers to know when Big Rivers will have excess power
10 to sell into the wholesale market and could use that information to manipulate their bids, leading
11 to lower revenues to Big Rivers and placing it at an unfair competitive disadvantage in the credit
12 markets.
13 23. Accordingly, the public disclosure of the information that Big Rivers seeks to
14 protect would provide Big Rivers’ competitors with an unfair commercial advantage.
15 III. Time Period
16 24. Big Rivers requests that the Confidential Information protected by KRS
17 61.878(1)(a) remain confidential indefinitely for the reasons stated in Part I, above. Big Rivers
18 requests that the rest of the Confidential Information remain confidential for a period of five (5)
19 years from the date of this petition, which should allow sufficient time for the data to become
20 sufficiently outdated that it could not be used to determine similar confidential information at
21 that time or to competitively disadvantage Big Rivers. See 807 KAR 5:001 Section 13(2)(a)(2).
IV. Conclusion

25. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due process requires the Commission to hold an evidentiary hearing. See Utility Regulatory Com'n v. Kentucky Water Service 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.

On this the 9th day of September, 2016.

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