

May 23, 2012

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Via Federal Express

Jeff DeRouen
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

RECEIVED

MAY 24 2012

PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account,*
P.S.C. Case No. 2012-00063

Dear Mr. DeRouen:

Enclosed on behalf of Big Rivers Electric Corporation ("Big Rivers") is a CD containing a number of planning models prepared for Big Rivers by ACES Power Marketing. The planning models include input and output files, input assumptions, and supported documents. The CD is being filed under a petition for confidential treatment. An original and ten copies of the petition for confidential treatment are also enclosed. The CD is being provided in response to a letter from counsel for intervenor Kentucky Industrial Utility Customers, Inc. to counsel for Big Rivers dated May 11, 2012, requesting this information. A copy of this letter and a copy of the petition have been served on each person on the attached service list. A copy of the CD is also being provided to each party pursuant to the confidentiality agreements each party has signed. Please call if you have any questions.

Sincerely,



Tyson Kamuf

TAK/ej
Enclosures

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

3 RECEIVED

4
5 In the Matter of:

MAY 24 2012

6
7 Application of Big Rivers Electric Corporation)
8 for Approval of its 2012 Environmental)
9 Compliance Plan, for Approval of its Amended)
10 Environmental Cost Recovery Surcharge Tariff,)
11 for Certificates of Public Convenience and)
12 Necessity, and for Authority to Establish a)
13 Regulatory Account)

PUBLIC SERVICE
COMMISSION

Case No. 2012-00063

14
15
16 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**
17 **PROTECTION**
18

19 1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky
20 Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 7 and KRS
21 61.878, to grant confidential protection to documents Big Rivers is filing in response to a letter
22 dated May 11, 2012, from counsel for Intervenor Kentucky Industrial Utility Customers, Inc.
23 ("KIUC"), to counsel for Big Rivers. The information Big Rivers is filing with this petition (the
24 "Confidential Information") in response to the KIUC letter is a number of planning models
25 performed for Big Rivers by ACES Power Marketing. Big Rivers anticipates filing additional
26 information in response to the KIUC letter at a later date.

27 2. One (1) copy of Confidential Information is being filed electronically on a CD
28 marked confidential, which is attached to this petition. Big Rivers is also filing ten (10) copies
29 of this petition with the Confidential Information redacted (*i.e.*, without the CD). 807 KAR
30 5:001 Sections 7(2)(a)(2), 7(2)(b).

31 3. A copy of this petition with the Confidential Information redacted has been served
32 on all parties to this proceeding. 807 KAR 5:001 Section 7(2)(c). Big Rivers is also providing a

1 copy of the Confidential Information to all parties, as they have all signed a confidentiality
2 agreement.

3 4. The Confidential Information is not publicly available, is not disseminated within
4 Big Rivers except to those employees and professionals with a legitimate business need to know
5 and act upon the information, and is not disseminated to others without a legitimate need to
6 know and act upon the information.

7 5. If and to the extent the Confidential Information becomes generally available to
8 the public, whether through filings required by other agencies or otherwise, Big Rivers will
9 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
10 7(9)(a).

11 6. As discussed below, the Confidential Information is entitled to confidential
12 protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to
13 an agency or required by an agency to be disclosed to it, generally recognized as confidential or
14 proprietary, which if openly disclosed would permit an unfair commercial advantage to
15 competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1).

16 **I. Big Rivers Faces Actual Competition**

17 7. Big Rivers competes in the wholesale power market to sell energy excess to its
18 members’ needs. Big Rivers’ ability to successfully compete in the wholesale power market is
19 dependent upon a combination of its ability to get the maximum price for the power sold, and
20 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers’ cost
21 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with
22 other utilities is adversely affected. As is well documented in multiple proceedings before this
23 Commission, Big Rivers’ margins are derived almost exclusively from its off-system sales.

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

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

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

13 10. The Confidential Information consists of planning models, which include detailed
14 information relating to Big Rivers’ current and future cost of producing power; projections that
15 Big Rivers relies upon relating to fuel prices, power market prices, and allowance prices and
16 needs; and lists of future scheduled outages.

17 11. Public disclosure of the models would reveal Big Rivers’ planned future outages
18 and forecasted production costs, off-system sales prices, and related information. Knowledge of
19 such projected data would give Big Rivers’ suppliers and competitors an unfair competitive
20 advantage. Public disclosure of the Confidential Information will allow Big Rivers’ suppliers
21 and competitors to know Big Rivers’ future maintenance plans, it will give them insight into Big
22 Rivers’ wholesale power needs, and it will give Big Rivers’ suppliers, buyers, and competitors
23 insight into Big Rivers’ cost of producing power and into Big Rivers’ view of future prices for

¹ See Order dated March 6, 2009, *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 fuel prices, market power prices, and allowance prices, which would indicate the prices at which
2 Big Rivers is willing to buy or sell such items.

3 12. Information about a company’s detailed inner workings is generally recognized as
4 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907
5 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such
6 information concerning the inner workings of a corporation is ‘generally recognized as
7 confidential or proprietary’”). Moreover, the Commission has previously granted confidential
8 treatment to similar information. *See, e.g.,* letters from the Commission dated July 28, 2011, and
9 December 20, 2011, in *In the Matter of: Application of Big Rivers Electric Corporation for a*
10 *General Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to
11 multi-year forecast); letter from the Commission dated December 21, 2010, in *In the Matter of:*
12 *The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, PSC Case No. 2010-
13 00443 (granting confidential treatment to fuel cost projections, revenue projections, market price
14 projections, financial model outputs, etc.); letter from the Commission dated July 20, 2010, in
15 Administrative Case No. 387 (granting confidential treatment to a list of future scheduled
16 outages that Big Rivers filed as part of the supplement to its annual report).

17 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**
18 **Advantage to Big Rivers’ Competitors**
19

20 13. Disclosure of the Confidential Information would permit an unfair commercial
21 advantage to Big Rivers’ competitors. As discussed above, Big Rivers faces actual competition
22 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
23 competitive injury if that Confidential Information was publicly disclosed.

24 14. The Confidential Information includes material such as Big Rivers’ projections of
25 fuel costs and power prices. If that information is publicly disclosed, potential fuel and power

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

14 15. Additionally, public disclosure of the Confidential Information would give the
15 power producers and marketers with which Big Rivers competes in the wholesale power market
16 insight into Big Rivers’ cost of producing power and insight into when Big Rivers’ generating
17 plants will be down for maintenance and thus Big Rivers’ need for power and energy during
18 those periods. Knowledge of this information would give those power producers and marketers
19 an unfair competitive advantage because they could use that information to potentially underbid
20 Big Rivers in wholesale transactions. It would also give potential suppliers to Big Rivers a
21 competitive advantage because they will be able to manipulate the price of power bid to Big
22 Rivers in order to maximize their revenues, thereby driving up Big Rivers’ costs and impairing
23 Big Rivers’ ability to compete in the wholesale power and credit markets.

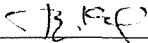
24

1 **IV. Conclusion**

2 16. Based on the foregoing, the Confidential Information is entitled to confidential
3 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due
4 process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v.*
5 *Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

8 On this the 23rd day of May, 2012.

9
10 
11 _____
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