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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY APR 23 2012

PUBLIC SERVICE
COMMISSION

In the Matter of:

Application of Big Rivers Electric Corporation)
for Approval to Issue Evidences of Indebtedness) Case No. 2012-00119

**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 7 and KRS 61.878, to grant confidential protection to documents attached to its responses to Items 1, 2, and 3 of Kentucky Industrial Utility Customers, Inc.'s First Set of Data Requests to Big Rivers Electric Corporation ("KIUC 1-1," "KIUC 1-2," and "KIUC 1-3," respectively). The portions of the documents that Big Rivers seeks to protect as confidential are hereinafter referred to as the "Confidential Information."

2. Certain of the documents containing Confidential Information are being provided electronically, while the rest are being provided in hard copy. One (1) sealed copy of the paper documents containing Confidential Information with the Confidential Information either printed on yellow paper or highlighted with transparent ink is attached to this petition. The electronic documents containing Confidential Information are contained on a CD marked confidential, which is attached to this petition. A copy of the documents with the Confidential Information (including the CD) redacted is attached to the original and each of the ten (10) copies of the responses to KIUC 1-1, KIUC 1-2, and KIUC 1-3 filed with this petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(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 8. 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 9. 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 10. The Confidential Information consists of budgets, multi-year financial forecast
16 models, and PowerPoint presentations relating to the budgets and models. Public disclosure of
17 the budgets, models, and PowerPoint presentations would reveal Big Rivers' forecasted rates,
18 variable production costs, off-system sales prices, fuel costs, and outage schedules. The
19 Confidential Information also includes recent production cost and generating unit heat rate
20 information. Knowledge of such projected and recent data would give Big Rivers' suppliers and
21 competitors an unfair competitive advantage. Public disclosure of this information would give
22 Big Rivers' suppliers, buyers, and competitors insight into Big Rivers' cost of producing power
23 and into Big Rivers' view of future prices for fuel prices and market power prices, which would

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 indicate the prices at which Big Rivers is willing to buy or sell such items. Also, disclosure of
2 the outage schedules will allow Big Rivers' suppliers and competitors to know Big Rivers' future
3 maintenance plans and purchases and will give them insight into Big Rivers' wholesale power
4 needs.

5 11. The Commission has previously granted confidential treatment to similar
6 information. *See, e.g.*, letters from the Commission dated July 28, 2011, and December 20,
7 2011, in *In the Matter of: Application of Big Rivers Electric Corporation for a General*
8 *Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to multi-year
9 financial forecast); letter from the Commission dated December 21, 2010, in *In the Matter of:*
10 *The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, PSC Case No. 2010-
11 00443 (granting confidential treatment to fuel cost projections, revenue projections, market price
12 projections, financial model outputs, etc.); letter from the Commission dated July 20, 2010, in
13 Administrative Case No. 387 (granting confidential treatment to a list of future scheduled
14 outages that Big Rivers filed as part of the supplement to its annual report).

15 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**
16 **Advantage to Big Rivers' Competitors**
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18 12. Disclosure of the Confidential Information would permit an unfair commercial
19 advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition
20 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
21 competitive injury if that Confidential Information was publicly disclosed.

22 13. The Confidential Information includes material such as Big Rivers' projections of
23 fuel costs and power prices. If that information is publicly disclosed, potential fuel and power
24 suppliers would have insight into the prices Big Rivers is willing to pay and could manipulate the
25 bidding process, leading to higher prices for Big Rivers and impairing its ability to compete in

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

11 14. Public disclosure of the Confidential Information would also allow power
12 suppliers to know when Big Rivers' generating plants will be down for maintenance and thus
13 have insight into Big Rivers' need for power and energy during those periods. With that
14 information, potential suppliers to Big Rivers will be able to manipulate the price of power bid to
15 Big Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and
16 impairing Big Rivers' ability to compete in the wholesale power and credit markets

17 15. Additionally, public disclosure of the Confidential Information would give the
18 power producers and marketers with which Big Rivers competes in the wholesale power market
19 insight into Big Rivers' cost of producing power, which would give them an unfair competitive
20 advantage because they could use that information to potentially underbid Big Rivers in
21 wholesale transactions.

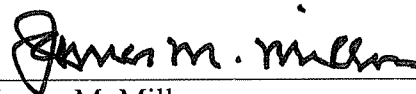
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1 **IV. Conclusion**

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 April, 2012.

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