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1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY  
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5 In the Matter of:

6  
7 Application of Big Rivers Electric )  
8 Corporation for a General ) Case No. 2013-00199  
9 Adjustment in Rates )  
10

11  
12 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**  
13 **PROTECTION**  
14

15 1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the Kentucky  
16 Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13 and KRS  
17 61.878, to grant confidential protection to certain information Big Rivers is filing with its  
18 application in this matter (“Application”). The information Big Rivers seeks to protect as  
19 confidential is hereinafter referred to as the “Confidential Information.”

20 2. The Confidential Information consists of the following:

- 21 a. the attachments or portions of the attachments to Tabs 16, 22, 24, 26, 27, 28, 46,  
22 52, and 54 of the Application;
- 23 b. portions of the Direct Testimony of Robert W. Berry, which is Tab 63 to the  
24 Application, portions of Exhibit Berry-1, and Exhibit Berry-2;
- 25 c. portions of Exhibits Warren-2 and Warren-3 to the Direct Testimony of  
26 Christopher A. Warren, which is Tab 69 to the Application; and
- 27 d. portions of Exhibits Wolfram-3 and Wolfram-4 to the Direct Testimony of John  
28 Wolfram, which is Tab 70 to the Application.

29 3. One (1) copy of the pages containing Confidential Information, with the  
30 Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise

1 marked "CONFIDENTIAL," is being filed with this petition. A copy of the pages containing  
2 Confidential Information, with the Confidential Information redacted, is being filed with the  
3 original and each of the ten (10) copies of Big Rivers' Application filed with this petition. 807  
4 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

5 4. A copy of this petition with the Confidential Information redacted has been served  
6 on all parties to this proceeding. 807 KAR 5:001 Section 13(2)(c). A copy of the Confidential  
7 Information has been served on all parties that have signed a confidentiality agreement.

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

12 6. If and to the extent the Confidential Information becomes generally available to  
13 the public, whether through filings required by other agencies or otherwise, Big Rivers will  
14 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section  
15 13(10)(a).

16 7. As discussed below, the Confidential Information is entitled to confidential  
17 protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to  
18 an agency or required by an agency to be disclosed to it, generally recognized as confidential or  
19 proprietary, which if openly disclosed would permit an unfair commercial advantage to  
20 competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1); 807 KAR 5:001  
21 Section 13(2)(a)(1).



1 schedules; projected revenues associated with Big Rivers' rights across the Tennessee Valley  
2 Authority ("TVA") transmission system; and projected off-system sales revenues, volumes, and  
3 prices. The Confidential Information also consists of totals and similar information (in lines  
4 such as the Operating Margins lines), which would not otherwise be confidential; however, if  
5 that information was publicly disclosed, it could readily be used to calculate or back in to  
6 Confidential Information in the same document.

7 12. Public disclosure of the information relating to projected generation levels and  
8 planned outage schedules would help Big Rivers' suppliers, buyers, and competitors to  
9 determine when Big Rivers will have power available to sell into the market or when Big Rivers  
10 needs power, and the amount of power Big Rivers has to sell.

11 13. Public disclosure of the projected O&M costs; projected off-system sales prices  
12 and revenues; and projected transmission revenues will give Big Rivers' suppliers, buyers, and  
13 competitors insight into Big Rivers' cost of producing power, Big Rivers' view of future fuel  
14 prices and market power prices, and Big Rivers' view of the value of its transmission rights,  
15 which would indicate the prices at which Big Rivers is willing to buy or sell such items.

16 14. Information about a company's detailed inner workings is generally recognized as  
17 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907  
18 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such  
19 information concerning the inner workings of a corporation is 'generally recognized as  
20 confidential or proprietary'"). Moreover, the Commission has previously granted confidential  
21 treatment to similar information. *See, e.g.,* letters from the Commission dated July 28, 2011, and  
22 December 20, 2011, in *In the Matter of: Application of Big Rivers Electric Corporation for a*  
23 *General Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to

1 multi-year forecast); letter from the Commission dated December 21, 2010, in *In the Matter of:*  
2 *The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, PSC Case No. 2010-  
3 00443 (granting confidential treatment to fuel cost projections, revenue projections, market price  
4 projections, financial model outputs, *etc.*); letter from the Commission dated July 20, 2010, in  
5 Administrative Case No. 387 (granting confidential treatment to a list of future scheduled  
6 outages, which can give competitors insight into Big Rivers' wholesale power needs); two letters  
7 from the Commission dated December 11, 2012, in *In the Matter of: Application of Big Rivers*  
8 *Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of*  
9 *its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public*  
10 *Convenience and Necessity, and for Authority to Establish a Regulatory Account*, PSC Case No.  
11 2012-00063 (granting confidential treatment to Big Rivers' O&M expenses, off-system sales and  
12 revenues, and information such as "Total Sales" and "Electric Energy Revenues" where the basis  
13 for Big Rivers' claim of confidentiality was that such information could be used with other, non-  
14 confidential information in the attachment to determine other confidential information, such as  
15 projected off-system sales revenues).

16 **III. Disclosure of the Confidential Information Would Permit an Unfair**  
17 **Commercial Advantage to Big Rivers' Competitors**

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

23 16. Public Disclosure of Big Rivers' projections of O&M costs, market power prices,  
24 and revenues from transmission rights would give potential fuel and power suppliers and buyers  
25 of fuel, power, and transmission rights insight into the prices at which Big Rivers is willing to

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

14 17. Additionally, public disclosure of the fuel prices, other variable cost information,  
15 and information about Big Rivers' generation levels and wholesale power needs would give the  
16 power producers and marketers with which Big Rivers competes in the wholesale power market  
17 insight into Big Rivers' cost of producing power, and availability of power to sell or need for  
18 power during the periods covered by the information. Knowledge of this information would give  
19 those power producers and marketers an unfair competitive advantage because they could use  
20 that information to potentially underbid Big Rivers in wholesale transactions. It would also give  
21 potential suppliers to Big Rivers a competitive advantage because they will be able to manipulate  
22 the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big

1 Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit  
2 markets.

3 **IV. Time Period**

4 18. Big Rivers requests that the Confidential Information remain confidential for a  
5 period of five (5) years from the date of this petition, which should allow sufficient time for the  
6 Confidential Information to become sufficiently outdated that it could not be used to determine  
7 similar confidential information at that time. 807 KAR 5:001 Section 13(2)(a)(2).

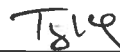
8 **V. Conclusion**

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

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

15 On this the 28<sup>th</sup> day of June, 2013.

16 Respectfully submitted,  
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Counsel for Big Rivers Electric Corporation

**Certificate of Service**

I certify that a true and accurate copy of the foregoing was served by Federal Express, by hand delivery, or by first class mail, postage prepaid upon the persons listed on the service list that accompanies this petition, on this the 28<sup>th</sup> day of June, 2013.

  
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Tyson Kamuf