

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED

SEP 30 2013

PUBLIC SERVICE
COMMISSION

In the Matter of:

Application of Big Rivers Electric)
Corporation for a General) Case No. 2013-00199
Adjustment In Rates)

**PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL
TREATMENT**

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 treatment to certain information Big Rivers is filing with its responses to the Kentucky Office of the Attorney General’s (“AG”), Kentucky Industrial Utility Customers, Inc.’s (“KIUC”), and Ben Taylor and the Sierra Club’s (the “Sierra Club” or “SC”) second sets of data requests, and the Commission Staff’s (“PSC”) third set of data requests. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information includes:

- a. portions of the responses and/or attachments for the responses to Items 2, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 28, 29, 31, 32, 34, 35, 36, 37, 43, 47, 53, 54, 57, 58, 59, 67, 74, 81 and 83 of the AG’s Supplemental Data Requests (“AG 2-2,” “AG 2-7,” “AG 2-8,” “AG 2-9,” “AG 2-13,” “AG 2-14,” “AG 2-15,” “AG 2-16,” “AG 2-17,” “AG 2-18,” “AG 2-19,” “AG 2-20,” “AG 2-28,” “AG 2-29,” “AG 2-31,” “AG 2-32,” “AG 2-34,” “AG 2-35,” “AG 2-36,” “AG 2-37,” “AG 2-43,” “AG 2-

1 47,” “AG 2-53,” “AG 2-54,” “AG 2-57,” “AG 2-58,” “AG 2-59,” “AG 2-67,”
2 “AG 2-74,” “AG 2-81,” and “AG 2-83,” respectively);

3 b. portions of the responses and/or attachments for the responses to Items 1, 3, 4, 9,
4 10, 11, 15, 17, 18, 20, 23, 25, 26, 36, 37, 42, 43 and 48 of KIUC’s Second Set of
5 Data Requests (“KIUC 2-1,” “KIUC 2-3,” “KIUC 2-4,” “KIUC 2-9,” “KIUC 2-
6 10,” “KIUC 2-11,” “KIUC 2-15,” “KIUC 2-17,” “KIUC 2-18,” “KIUC 2-20,”
7 “KIUC 2-23,” “KIUC 2-25,” “KIUC 2-26,” “KIUC 2-36,” “KIUC 2-37,” “KIUC
8 2-42,” “KIUC 2-43,” “KIUC 2-48,” respectively);

9 c. portions of the responses and/or attachments for the responses to Items 7, 9, 10,
10 11, 15, 23, 25, 26, 29, 30, 31 and 32 of Ben Taylor and the Sierra Club’s
11 Supplemental Requests for Information (“SC 2-7,” “SC 2-9,” “SC 2-10,” “SC 2-
12 11,” “SC 2-15,” “SC 2-23,” “SC 2-25,” “SC 2-26,” “SC 2-29,” “SC 2-30,” “SC 2-
13 31,” and “SC 2-32” respectively); and

14 d. portions of the responses and/or attachments for the responses to Items 5, 8, and 9
15 of the Commission Staff’s Third Request for Information (“PSC 3-5,” “PSC 3-8,”
16 and “PSC 3-9,” respectively).

17 3. One (1) copy of the paper attachments with the confidential information
18 underscored, highlighted with transparent ink, printed on yellow paper, or otherwise marked
19 “CONFIDENTIAL,” is being filed with this petition in a separate sealed envelope marked
20 “CONFIDENTIAL.” A copy of those pages, with the Confidential Information redacted, is
21 being filed with the original and each of the ten (10) copies of the responses to the data requests
22 filed with this petition. *See* 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

1 4. One (1) copy of the electronic attachments containing Confidential Information is
2 contained in the confidential electronic files that accompany this petition. In some instances, the
3 Confidential Information is inextricably intertwined with non-confidential information in the
4 electronic spreadsheet attachments in response to certain requests. Big Rivers cannot redact only
5 the Confidential Information from the electronic spreadsheet attachments without making other
6 cells in the spreadsheets unusable or breaking the formulas contained therein, and so, the entirety
7 of those attachments must be made confidential. Likewise, there are other instances where the
8 pervasive nature of the confidential information would make public versions ineffectual and
9 unhelpful to the Commission, the parties, or the public. As such, the entirety of these
10 confidential files have been redacted from the original and each of the ten (10) copies of the
11 responses to the data requests filed with this petition. *See* 807 KAR 5:001 Sections 13(2)(a)(3),
12 13(2)(b). A motion for deviation from the requirement that Big Rivers file paper copies of those
13 electronic attachments accompanies the responses.

14 5. Additionally, the bodies of certain requests contain information identified by the
15 respective requesting party as confidential. This Confidential Information was provided by Big
16 Rivers in response to prior data requests in this proceeding, subject to a petition for confidential
17 treatment. As discussed below, this information is entitled to confidential treatment during the
18 pendency of the petition. *See* 807 KAR 5:001 Section 13(4).

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

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

5 8. If and to the extent the Confidential Information becomes generally available to
6 the public, whether through filings required by other agencies or otherwise, Big Rivers will
7 notify the Commission in writing. *See* 807 KAR 5:001 Section 13(10)(b).

8 9. As discussed below, the Confidential Information is entitled to confidential
9 treatment based upon 807 KAR 5:001 Section 13(4), KRS 61.878(1)(m), or KRS
10 61.878(1)(c)(1). *See* 807 KAR 5:001 Section 13(2)(a)(1).

11 **I. Information Exempted from Public Disclosure by 807 KAR 5:001 Section 13(4)**

12 10. 807 KAR 5:001 Section 13(4) provides that material for which confidential
13 treatment was requested “shall be accorded confidential treatment” pending action on the
14 petition. Pursuant to 807 KAR 5:001 (9)(a), the parties included material in their data requests
15 that is subject to Big Rivers’ September 3rd Petition for Confidential Treatment in this
16 proceeding. This petition is still pending before the Commission.

17 11. AG 2-13, AG 2-14, AG 2-15, AG 2-16, AG 2-17, AG 2-18, AG 2-19, and AG 2-
18 20 include Confidential Information contained in Big Rivers’ attachment for the response to AG
19 1-53.

20 12. AG 2-28 and AG 2-31 include Confidential Information contained in Big Rivers’
21 attachment for the response to AG 1-76.

22 13. AG 2-32, AG 2-34, AG 2-35, and AG 2-36 include Confidential Information
23 contained in Big Rivers’ response to PSC 2-15.

- 1 14. AG 2-37 includes Confidential Information contained in Big Rivers' response and
2 the attachment for the response to AG 1-285.
- 3 15. AG 2-43 includes Confidential Information contained in Big Rivers' attachment
4 for the response to AG 1-53.
- 5 16. AG 2-47 includes Confidential Information contained in Big Rivers' response to
6 AG 1-47.
- 7 17. AG 2-53 includes Confidential Information contained in Big Rivers' response to
8 PSC 2-15.
- 9 18. KIUC 2-4 includes Confidential Information contained in Big Rivers' attachments
10 for the response to PSC 2-57.
- 11 19. KIUC 2-11 includes Confidential Information contained in Big Rivers'
12 attachment for the response to KIUC 1-13.
- 13 20. KIUC 2-37 includes Confidential Information contained in Big Rivers' response
14 to PSC 2-16.
- 15 21. SC 2-7, SC 2-9, and SC 2-10 include Confidential Information contained in Big
16 Rivers' attachments for the response to PSC 2-14.
- 17 22. SC 2-11 includes Confidential Information contained in Big Rivers' response to
18 SC 1-27.
- 19 23. SC 2-15 includes Confidential Information contained in Big Rivers' attachments
20 for the response to AG 1-139.
- 21 24. SC 2-23, SC 2-25, SC 2-26, SC 2-29, SC 2-30, SC 2-31, and SC 2-32 include
22 Confidential Information contained in Big Rivers' response to PSC 2-16.

1 25. Please see Big Rivers' September 3rd Petition for Confidential Treatment for
2 detailed explanations of the grounds originally cited on which the Confidential Information is
3 entitled to protection. As this petition is still pending before the Commission, the information is
4 entitled to confidential treatment pursuant to 807 KAR 5:001 Section 13(4).

5 **II. Information Exempted from Public Disclosure by KRS 61.878(1)(m)**

6 26. KRS 61.878(1)(m)(1) protects “[p]ublic records the disclosure of which would
7 have a reasonable likelihood of threatening the public safety by exposing a vulnerability in
8 preventing, protecting against, mitigating, or responding to a terrorist act. . . .”

9 27. The Confidential Information attached to the response to AG 2-2 includes critical
10 energy infrastructure information regarding the reliability of Big Rivers' transmission system.

11 28. As disclosure of this information would provide the public with an explanation of
12 the vulnerabilities in Big Rivers' transmission system, this information should be granted
13 confidential treatment.

14 **III. Information Exempted from Public Disclosure by KRS 61.878(1)(c)(1)**

15 **A. Big Rivers Faces Actual Competition.**

16 29. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an agency or
17 required by an agency to be disclosed to it, generally recognized as confidential or proprietary,
18 which if openly disclosed would permit an unfair commercial advantage to competitors of the
19 entity that disclosed the records.”

20 30. As a generation and transmission cooperative, Big Rivers competes in the
21 wholesale power market to sell energy that it produces in excess to its members' needs. This
22 includes not only the over-the-counter day-ahead and over-the-counter hourly markets to which
23 Big Rivers has access by virtue of its membership in Midcontinent Independent System

1 Operator, Inc. (“MISO”), but also for forward bilateral long-term agreements and wholesale
2 agreements with utilities and industrial customers. The completion of Phase 2 of Big Rivers’
3 transmission upgrades as well as the completion of a 345 kV interconnection with Vectren will
4 enhance Big Rivers’ ability to export power off-system. Big Rivers’ ability to successfully
5 compete in the market is dependent upon a combination of its ability to: 1) obtain the maximum
6 price for the power it sells; and 2) keep its cost of production as low as possible. Fundamentally,
7 if Big Rivers’ cost of producing a unit of power increases, its ability to sell that unit in
8 competition with other utilities is adversely affected.

9 31. Big Rivers also competes for reasonably priced credit in the credit markets, and
10 its ability to compete is directly impacted by its financial results. Lower revenues and any events
11 that adversely affect Big Rivers’ margins will adversely affect its financial results and potentially
12 impact the price it pays for credit. A competitor armed with Big Rivers’ proprietary and
13 confidential information will be able to increase Big Rivers’ costs or decrease Big Rivers’
14 revenues, which could in turn affect Big Rivers’ apparent creditworthiness. A utility the size of
15 Big Rivers that operates generation and transmission facilities will always have periodic cash
16 and borrowing requirements for both anticipated and unanticipated needs. Big Rivers expects to
17 be in the credit markets on a regular basis in the future, and it is imperative that Big Rivers
18 improve and maintain its credit profile.

19 32. Accordingly, Big Rivers has competitors in both the power and capital markets,
20 and its Confidential Information should be protected to prevent the imposition of an unfair
21 competitive advantage.

B. The Confidential Information is Generally Recognized as Confidential or Proprietary.

1
2
3
4 33. The Confidential Information for which Big Rivers seeks confidential treatment
5 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky
6 law.

7 34. The Confidential Information contained in the response to AG 2-7 includes
8 projected capital expenditures.

9 35. The Confidential Information contained in the response to AG 2-8 includes
10 projected fixed departmental expenses and capital costs.

11 36. The Confidential Information in the response and the attachment for the response
12 to AG 2-9 includes projected outages, fixed departmental expenses, operating and maintenance
13 (“O&M”) costs, and capital expenditures.

14 37. The Confidential Information attached to the responses to AG 2-13, AG 2-15, AG
15 2-16, and AG 2-17 includes presentations to the Big Rivers Board of Directors.

16 38. The Confidential Information attached to the response to AG 2-20 includes
17 minutes from a meeting of Big Rivers’ Board of Directors.

18 39. The Confidential Information attached to the responses to AG 2-28 and 2-29
19 includes projected O&M expenses, off-system sales revenues and margins, and purchased power
20 costs.

21 40. The Confidential Information attached to the response to AG 2-31 includes
22 projections of O&M costs and off-system sales margins related to the lay-up of Wilson and
23 Coleman stations.

24 41. The Confidential Information contained in the response to AG 2-43 includes
25 presentations to Big Rivers’ Board of Directors.

1 42. The Confidential Information contained in the response to AG 2-53 includes
2 information regarding the potential sale or lease of generating assets.

3 43. The Confidential Information contained in the response to AG 2-54 includes
4 planned capital expenditures.

5 44. The Confidential Information attached to the response to AG 2-57 includes
6 projected coal price forecasts that are the proprietary and confidential information of Big Rivers’
7 consultants.

8 45. The Confidential Information contained in the response to AG 2-58 includes
9 projected capital expenditures and outputs from Big Rivers’ Financial Model.

10 46. The Confidential Information attached to the response to AG 2-59 includes
11 projected O&M expenses and capital costs.

12 47. The Confidential Information attached to the response to AG 2-67 includes
13 projected capital expenditures.

14 48. The Confidential Information contained in the response to AG 2-74 includes data
15 from a proprietary and confidential Towers and Watson study.

16 49. The Confidential Information attached to the response to AG 2-81 includes
17 projected O&M expenses.

18 50. The Confidential Information attached to the response to AG 2-83 is a proprietary
19 and confidential load forecast provided by GDS Associates.

20 51. The Confidential Information attached to the response to KIUC 2-1 consists of
21 production cost model runs.

22 52. The Confidential Information attached to the response KIUC 2-3 includes
23 projections of purchased power prices and volumes.

1 53. The Confidential Information contained in the response to KIUC 2-4 includes
2 inputs to Big Rivers' production cost model.

3 54. The Confidential Information attached to the response to KIUC 2-9 includes
4 power price forecasts that are the confidential and proprietary work product of ACES.

5 55. The Confidential Information contained in the response to KIUC 2-10 includes
6 projected O&M costs.

7 56. The Confidential Information attached to the response to KIUC 2-15 includes
8 projected fixed departmental expenses.

9 57. The Confidential Information attached to the responses to KIUC 2-17 and KIUC
10 2-18 includes Big Rivers' planned outage schedule.

11 58. The Confidential Information attached to the response to KIUC 2-20 includes
12 projected fuel and other O&M expenses, capital expenditures, and purchased power prices.

13 59. The Confidential Information attached to the responses to KIUC 2-23 includes
14 planned capital expenditures.

15 60. The Confidential Information attached to the response to KIUC 2-25 includes
16 projected fixed departmental expenses.

17 61. The Confidential Information attached to the response KIUC 2-26 includes
18 planned capital expenditures.

19 62. The Confidential Information contained in the responses to KIUC 2-36 and KIUC
20 2-37 includes details of confidential negotiation for forward bilateral power supply agreements.

21 63. The Confidential Information attached to the response to KIUC 2-42 includes
22 planned capital expenditures.

1 64. The Confidential Information contained in the response to KIUC 2-43 includes
2 planned outages and maintenance expenses.

3 65. The Confidential Information contained in the response to KIUC 2-48 includes
4 minutes from meetings of Big Rivers' Board of Directors.

5 66. The Confidential Information contained in the response to SC 2-7 includes
6 information regarding projected energy prices.

7 67. The Confidential Information contained in the responses to SC 2-25, SC 2-26, SC
8 2-29, SC 2-30, SC 2-31, and SC 2-32 includes details regarding negotiations for the potential
9 sale or lease of generating assets.

10 68. The Confidential Information contained in the response to PSC 3-5 includes cost
11 savings related to the lay-up of the Coleman Station. The Commission granted confidential
12 treatment to this information in Case No. 2012-00535.

13 69. The Confidential Information attached to the response to PSC 3-8 includes
14 projected off-system sales prices, volumes, and margins.

15 70. The Confidential Information contained in the response and the attachment for the
16 response to PSC 3-9 includes projected off-system sales prices, volumes, and margins.

17 71. Public disclosure of the Confidential Information would reveal detailed
18 information relating to Big Rivers' projected variable O&M costs for production factors such as
19 fuel, reagent, disposal, and emission allowances; projected margins; and projected off-system
20 sales price, volume, and revenue. This information provides insight into Big Rivers' cost of
21 producing power and would indicate the prices at which Big Rivers is willing to buy or sell
22 power and production factors. The information is also indicative of the market conditions Big
23 Rivers expects to encounter and its ability to compete with competitors. The Commission has

1 previously granted confidential treatment to similar information. *See, e.g., In the Matter of:*
2 *Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C.
3 Case No. 2012-00535 (April 25, 2013) (the “April 25 Confidentiality Order”); *In the Matter of:*
4 *Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C.
5 Case No. 2012-00535 (August 14, 2013) (the “August 14 Confidentiality Order”); *In the Matter*
6 *of: Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental*
7 *Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff,*
8 *for Certificates of Public Convenience and Necessity, and for Authority to Establish a*
9 *Regulatory Account*, Letter, P.S.C. Case No. 2012-00063 (August 15, 2012).

10 72. Public disclosure of information relating to Big Rivers’ projected capital
11 expenditures and planned outages would reveal when Big Rivers will have excess power
12 available to sell into the market, or when Big Rivers’ generation levels will drop due to
13 maintenance and construction and will have to resort to purchased power to meet its native load.
14 The Commission has previously granted confidential treatment to similar information. *See, e.g.,*
15 *April 25 Confidentiality Order*, P.S.C. Case No. 2012-00535; P.S.C. Administrative Case No.
16 387, Letter (July 20, 2010).

17 73. Information related to sensitive negotiations between Big Rivers and other entities
18 and the proprietary information supplied to Big Rivers by its consultants and industry groups of
19 which it is a member illuminates Big Rivers’ long-term business strategy and is generally subject
20 to confidentiality agreements among the various parties involved. Additionally, Big Rivers
21 expends considerable resources to obtain this information, and Big Rivers would be
22 disadvantaged if its competitors were able to obtain free access through public disclosure. The
23 Commission has previously granted confidential treatment to similar information. *See, e.g.,*

1 April 25 Confidentiality Order, P.S.C. Case No. 2012-00535 (granting confidential treatment to
2 models and industry data provided by Big Rivers' consultants and to details of sensitive
3 commercial negotiations).

4 74. Finally, public disclosure of the Confidential Information would reveal details of
5 meetings of Big Rivers' Board of Directors, Big Rivers' fundamental financial data and
6 projections, and current and forecasted load. This type of information bears upon a company's
7 detailed inner workings and is generally recognized as confidential or proprietary. *See, e.g., Hoy*
8 *v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a
9 degree in finance to recognize that such information concerning the inner workings of a
10 corporation is 'generally recognized as confidential or proprietary'"). The confidential nature of
11 these communications is essential to fully-informed corporate governance as the directors must
12 be able to conduct open and frank discussions if they are to discharge their responsibilities to Big
13 Rivers and its members. Additionally, the Commission has previously granted confidential
14 treatment to this type of information. *See, e.g., April 25 Confidentiality Order, P.S.C. Case No.*
15 *2012-00535 (granting confidential treatment to minutes of the Big Rivers Board of Directors,*
16 *Big Rivers' Financial Model, and Big Rivers' load forecast); In the Matter of: An Examination of*
17 *the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. From*
18 *November 1, 2011 Through April 30, 2012, Order, P.S.C. Case No. 2012-00319 (February 21,*
19 *2013).*

20 **C. Disclosure of the Confidential Information Would Result in an Unfair Commercial**
21 **Advantage to Big Rivers' Competitors.**
22

23 75. Disclosure of the Confidential Information would grant Big Rivers' competitors
24 an unfair commercial advantage. As discussed above in Section III.A., Big Rivers faces actual
25 competition in both the short- and long-term wholesale power markets and in the credit markets.

1 Big Rivers' ability to compete in these markets would be adversely affected if the Confidential
2 Information were publicly disclosed, and Big Rivers seeks protection from such competitive
3 injury.

4 76. The Confidential Information includes material such as Big Rivers' projections of
5 fuel costs and power prices. If that information is publicly disclosed, market participants would
6 have insight into the prices at which Big Rivers is willing to buy and sell fuel and could
7 manipulate the bidding process, impairing its ability to generate power at competitive rates and
8 thus to compete in the wholesale power markets. Furthermore, any competitive pressure that
9 adversely affects Big Rivers' revenue and margins could make the company appear less
10 creditworthy, thereby impairing its ability to compete in the credit markets. These effects were
11 recognized in P.S.C. Case No. 2003-00054, in which the Commission granted confidential
12 treatment to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P argued, and
13 the Commission implicitly accepted, that if the bids it received were publicly disclosed,
14 contractors in the future could use the bids as a benchmark, which would likely lead to the
15 submission of higher bids. *In the Matter of: Application of the Union Light, Heat and Power*
16 *Company for Confidential Treatment*, Order, PSC Case No. 2003-00054 (August 4, 2003);
17 *accord An Examination of the Application of the Fuel Adjustment Clause of East Kentucky*
18 *Power Cooperative, Inc. From May 1, 2007 Through October 31, 2007*, Letter, P.S.C. Case No.
19 2007-00523 (February 27, 2008). The Commission also implicitly accepted ULH&P's further
20 argument that the higher bids would lessen ULH&P's ability to compete with other gas
21 suppliers. *Id.* Similarly, potential fuel and power suppliers manipulating Big Rivers' bidding
22 process would lead to higher costs or lower revenues to Big Rivers and would place it at an
23 unfair competitive disadvantage in the wholesale power market and credit markets.

1 77. Potential market power purchasers could use the information related to Big
2 Rivers' projected off-system sales and revenues, generation levels, generator availability,
3 planned outages, and future planning to know when Big Rivers will have excess power to sell
4 into the wholesale market and could use that information to manipulate their bids, leading to
5 lower revenues to Big Rivers. This would place Big Rivers at an unfair competitive
6 disadvantage in the credit markets.

7 78. Public disclosure of the prices of fuel, reagent, disposal, emission allowance, and
8 other variable cost information, and information about Big Rivers' wholesale power needs would
9 give the power producers and marketers with which Big Rivers competes in the wholesale power
10 market insight into Big Rivers' cost of producing power and need for power and energy during
11 the periods covered by the information. Knowledge of this information would give those power
12 producers and marketers an unfair competitive advantage because they could use that
13 information to potentially underbid Big Rivers in wholesale transactions. It would also give
14 potential suppliers to Big Rivers a competitive advantage because they will be able to manipulate
15 the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big
16 Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit
17 markets.

18 79. Finally, the Commission has consistently recognized that board minutes, internal
19 strategic planning information, and related materials are entitled to confidential treatment, as
20 these documents typically relate to the company's economic status and business strategies. *See,*
21 *e.g., Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319
22 (Ky. 1995) (unfair commercial advantage arises simply from "the ability to ascertain the
23 economic status of the entities without the hurdles systemically associated with the acquisition of

1 such information about privately owned organizations”); *In the Matter of: The Joint Application*
2 *of Duke Energy Corp., Cinergy Corp., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc.,*
3 *Diamond Acquisition Corp., and Progress Energy, Inc., for Approval of the Indirect Transfer of*
4 *Control of Duke Energy Kentucky, Inc.*, P.S.C Case No. 2011-00124 (Dec. 5, 2011); *In the*
5 *Matter of: The Joint Petition of Kentucky-American Water Co., Thames Water Aqua Holdings*
6 *GmbH, RWE Aktiengesellschaft, Thames Water Aqua U.S. Holdings, Inc., and Am. Water Works*
7 *Co., Inc. for Approval of a Change in Control of Kentucky-American Water Co.*, P.S.C. Case No.
8 2006-00197 (Aug. 29, 2006) (holding that reports from the joint applicants’ financial advisors
9 and all board of director minutes and information is confidential because competitors could use it
10 to gain unfair competitive advantage).

11 80. Accordingly, the public disclosure of the information that Big Rivers seeks to
12 protect would provide Big Rivers’ competitors with an unfair commercial advantage.

13 **IV. Time Period**

14 81. Pursuant to 807 KAR 5:001 Section 13(2)(a)(2), Big Rivers requests that the
15 Confidential Information be afforded confidential period for the time periods explained below.

16 82. Big Rivers requests that the Confidential Information protected by 807 KAR
17 5:001 Section 13(4) remain confidential through the pendency of the September 3rd Petition for
18 Confidential Treatment and thereafter, if Big Rivers receives a favorable ruling on the petition,
19 for the time periods specified in the petition.

20 83. Big Rivers requests that the Confidential Information protected by KRS
21 61.878(1)(m) remain confidential indefinitely because as long as the transmission system
22 remains in place, the information should be confidential for the reasons stated above.

1 84. Finally, Big Rivers requests that the Confidential Information protected by KRS
2 61.878 (1)(c)(1) remain confidential for a period of five (5) years from the date of this petition,
3 which should allow sufficient time for the projected data to become historical and sufficiently
4 outdated that it could not be used to determine similar confidential information at that time or to
5 competitively disadvantage Big Rivers.

6 **V. Conclusion**

7 85. Based on the foregoing, the Confidential Information is entitled to confidential
8 treatment pursuant to 807 KAR 5:001 Section 13 and KRS 61.878. If the Commission disagrees
9 that Big Rivers' Confidential Information is entitled to confidential treatment, due process
10 requires the Commission to hold an evidentiary hearing. *Utility Regulatory Comm'n v. Kentucky*
11 *Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

12 WHEREFORE, Big Rivers respectfully requests that the Commission grant this petition
13 and classify and treat as confidential the Confidential Information.

14 On this the 30th day of September, 2013.

15 Respectfully submitted,

16
17
18 

19 _____
20 James M. Miller
21 Tyson Kamuf
22 SULLIVAN, MOUNTJOY, STAINBACK
23 & MILLER, P.S.C.
24 100 St. Ann Street
25 P. O. Box 727
26 Owensboro, Kentucky 42302-0727
27 Phone: (270) 926-4000
28 Facsimile: (270) 683-6694
29 jmillersmsmlaw.com
30 tkamuf@smsmlaw.com

31
32 Edward T. Depp


DINSMORE & SHOHL LLP
101 South Fifth Street
Suite 2500
Louisville, KY 40202
Phone: (502) 540-2347
Facsimile: (502) 585-2207
tip.depp@dinsmore.com

Counsel for Big Rivers Electric Corporation

Certificate of Service

I certify that a true and accurate copy of the foregoing was or will be served by Federal Express or by hand delivery upon the persons listed on the attached service list, on or before the date this petition is filed with the Kentucky Public Service Commission.

On this the 30th day of September, 2013,



Tyson Kamuf