

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

THE 2014 INTEGRATED RESOURCE PLAN OF) CASE NO. 2014-00166
BIG RIVERS ELECTRIC CORPORATION)

**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 Commission Staff’s, the Office of the Attorney General’s (“AG”), and Ben Taylor and the Sierra Club’s (together, “Sierra Club”) Initial Requests for Information. 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 19, 24, and 28 of the Commission Staff’s Initial Requests for Information (“PSC 1-19,” “PSC 1-24,” and “PSC 1-28,” respectively);
- b. portions of the responses and/or attachments for the responses to Items 1, 6, 7, 11, 17, 18, 19, 21, 22, 28, and 29 of the AG’s Initial Requests for Information (“AG 1-1,” “AG 1-6,” “AG 1-7,” “AG 1-11,” “AG 1-17,” “AG 1-18,” “AG 1-19,” “AG 1-21,” “AG 1-22,” “AG 1-28,” and “AG 1-29,” respectively); and
- c. portions of the responses and/or attachments for the responses to Items 6, 7, 15, 21, 23, 25, 26, 27, 28, 30, 31, 32, and 38 of Sierra Club’s Initial Requests for

1 Information (“SC 1-6,” “SC 1-7,” “SC 1-15,” “SC 1-21,” “SC 1-23,” “SC 1-25,”
2 “SC 1-26,” “SC 1-27,” “SC 1-28,” “SC 1-30,” “SC 1-31,” “SC 1-32,” and “SC 1-
3 38,” respectively).

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

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

1 5. AG 1-6, AG 1-11, AG 1-17, and AG 1-19 request workpapers in electronic
2 format. Big Rivers is producing multiple files in response to each of these questions. Some of
3 the files being produced in response to these questions contain no Confidential Information, and
4 they are being provided on the accompanying PUBLIC CD. Other files do contain Confidential
5 Information and are being provided on the accompanying CONFIDENTIAL flash drive. The
6 confidential files are Excel spreadsheets that contain links to the public files. To ensure that the
7 confidential files function properly, Big Rivers has duplicated the public files for AG 1-6, AG 1-
8 11, AG 1-17, and AG 1-19 on the CONFIDENTIAL flash drive.

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

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

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

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

1 **I. Information Protected by 807 KAR 5:001 Section 13(4)**

2 1. 807 KAR 5:001 Section 13(4) provides, “Pending action by the [C]ommission on a
3 motion for confidential treatment or by its executive director on a request for confidential
4 treatment, the material specifically identified *shall be* accorded confidential treatment”
5 (emphasis added). The Confidential Information attached to the response to SC 1-7 includes a
6 summary and copies of contracts Big Rivers has entered into with certain Nebraska entities. Big
7 Rivers filed these contracts and the summary of the contracts on April 4, 2014, in Case No.
8 2014-00134 pursuant to a petition for confidential treatment, which is still pending.

9 **II. Information Protected By KRS 61.878(1)(c)(1)**

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

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

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

1 Rivers' cost of producing a unit of power increases, its ability to sell that unit in competition with
2 other utilities is adversely affected.

3 4. 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. Lower revenues and any events
5 that adversely affect Big Rivers' margins will adversely affect its financial results and potentially
6 impact the price it pays for credit. A competitor armed with Big Rivers' proprietary and
7 confidential information will be able to increase Big Rivers' costs or decrease Big Rivers'
8 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A utility the size of
9 Big Rivers that operates generation and transmission facilities will always have periodic cash
10 and borrowing requirements for both anticipated and unanticipated needs. Big Rivers expects to
11 be in the credit markets on a regular basis in the future, and it is imperative that Big Rivers
12 improve and maintain its credit profile.

13 5. Accordingly, Big Rivers has competitors in both the power and capital markets,
14 and its Confidential Information should be protected to prevent the imposition of an unfair
15 competitive advantage.

16 **B. The Confidential Information is Generally Recognized as Confidential**
17 **or Proprietary**
18

19 6. The Confidential Information for which Big Rivers seeks confidential treatment
20 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky
21 law.

22 7. The Confidential Information attached to the response to PSC 1-19 includes
23 projections of electric rates, market energy prices, and fuel costs.

24 8. The Confidential Information attached to the response to PSC 1-24 includes a
25 schedule of planned outages.

1 9. The Confidential Information attached to the response to PSC 1-28 includes
2 projections of operating and maintenance (“O&M”) costs and market capacity prices.

3 10. The Confidential Information contained in the response to AG 1-1 includes
4 confidential information related to recent forward power and capacity sales.

5 11. The Confidential Information attached to the response to AG 1-6 contains
6 financial model runs, which include projected fuel and other O&M costs, projected capital costs,
7 projected costs and prices for market power and capacity sales and purchases.

8 12. The Confidential Information attached to the response to AG 1-7 are production
9 cost modeling runs, which include projected market energy sales, purchases, and prices;
10 projected O&M and capital costs; and scheduled outages.

11 13. The Confidential Information attached to the response to AG 1-11 includes
12 projections of electric rates.

13 14. The Confidential Information attached to the response to AG 1-17 contains: (i)
14 electronic versions of Tables 4.14, 8.3, 9.4, 10.3, and 11.1 of Big Rivers’ IRP, which were
15 granted confidential treatment by order dated August 26, 2014, in this case, Case No. 2014-
16 00166; and (ii) related workpapers used to develop those tables, which include projections of
17 electric rates, capital expenditures, O&M costs, and revenues.

18 15. The Confidential Information contained in the response to AG 1-18 includes
19 projections of market energy and capacity prices.

20 16. The Confidential Information attached to the response to AG 1-19 includes
21 projections of electric rates.

22 17. The Confidential Information contained in the response to AG 1-21 includes
23 budgeted capital costs.

1 18. The Confidential Information contained in the response to AG 1-22 includes
2 budgeted capital costs.

3 19. The Confidential Information attached to the response to AG 1-28 includes the
4 electronic version of Appendix F filed with Big Rivers' IRP, which was granted confidential
5 treatment by order dated August 26, 2014, in this case, Case No. 2014-00166.

6 20. The Confidential Information attached to the response to AG 1-29 includes
7 projected market energy prices and the electronic version of Appendix G filed with Big Rivers'
8 IRP, which was granted confidential treatment by order dated August 26, 2014, in this case, Case
9 No. 2014-00166.

10 21. The Confidential Information attached to the response to SC 1-6 includes
11 confidential forward power sales confirmations.

12 22. The Confidential Information attached to the response to SC 1-15 includes
13 projections of market capacity prices and revenues and projected net present values for market
14 capacity revenues.

15 23. The Confidential Information contained in the response to SC 1-21 includes
16 projected O&M costs.

17 24. The Confidential Information attached to the response to SC 1-23 includes
18 projected heat rates and CO2 emissions.

19 25. The Confidential Information attached to the response to SC 1-25 contains
20 production cost model runs, which include projected market energy sales, purchases, and prices;
21 projected O&M and capital costs; and scheduled outages.

1 26. The Confidential Information contained in the response to SC 1-26 contains
2 values taken from Table 10.3 of Big Rivers' IRP, which was granted confidential treatment by
3 order dated August 26, 2014, in this case, Case No. 2014-00166.

4 27. The Confidential Information contained in the response and the attachment to the
5 response to SC 1-27 includes projections of natural gas price projections.

6 28. The Confidential Information attached to the response to SC 1-28 includes
7 projections of coal prices.

8 29. The Confidential Information attached to the response to SC 1-30 contains the
9 workpapers used to develop Table 11.1 of Big Rivers' IRP, and includes projected revenues and
10 electric rates and financial model runs, which include projected fuel and other O&M costs,
11 projected capital costs, projected costs and prices for market power and capacity sales and
12 purchases.

13 30. The Confidential Information contained in the response to SC 1-31 includes the
14 inflation factors Big Rivers applied in developing the confidential costs in Appendix G to the
15 IRP, which was granted confidential treatment by order dated August 26, 2014, in this case, Case
16 No. 2014-00166.

17 31. The Confidential Information contained in the response and the attachment to the
18 response to SC 1-32 includes market capacity price projections.

19 32. The Confidential Information attached to the response to SC 1-38 includes
20 projections for market energy prices.

21 33. Public disclosure of the Confidential Information would reveal detailed
22 information relating to Big Rivers' projected O&M costs for production factors such as fuel;
23 projected heat rates and emissions, which give insight into Big Rivers production costs; projected

1 rates and revenues; and projected market energy and capacity prices. This information provides
2 insight into Big Rivers' cost of producing power and would indicate the prices at which Big
3 Rivers is willing to buy or sell power and production factors. The information is also indicative
4 of the market conditions Big Rivers expects to encounter and its ability to compete with
5 competitors. The Commission has previously granted confidential treatment to similar
6 information. *See, e.g., In the Matter of: 2014 Integrated Resource Plan of Big Rivers Electric*
7 *Corporation, Order, P.S.C. Case No. 2014-00166 (August 26, 2014) (granting confidential*
8 *treatment to projected O&M costs, rates, revenues, capital costs, and market prices); In the*
9 *Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates,*
10 *Order, P.S.C. Case No. 2012-00535 (April 25, 2013); In the Matter of: Application of Big Rivers*
11 *Electric Corporation for a General Adjustment in Rates, Order, P.S.C. Case No. 2012-00535*
12 *(August 14, 2013); In the Matter of: Application of Big Rivers Electric Corporation for Approval*
13 *of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost*
14 *Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for*
15 *Authority to Establish a Regulatory Account, Letter, P.S.C. Case No. 2012-00063 (August 15,*
16 *2012).*

17 34. Public disclosure of information relating to Big Rivers' projected capital
18 expenditures and planned outages would reveal when Big Rivers will have excess power
19 available to sell into the market, or when Big Rivers' generation levels will drop due to
20 maintenance and construction and will have to resort to purchased power to meet its native load.
21 The Commission has previously granted confidential treatment to similar information. *See, e.g.,*
22 *In the Matter of: 2014 Integrated Resource Plan of Big Rivers Electric Corporation, Order,*
23 *P.S.C. Case No. 2014-00166 (August 26, 2014) (granting confidential treatment to projected*

1 O&M costs, rates, revenues, capital costs, and market prices); *In the Matter of: Application of*
2 *Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C. Case No.
3 2012-00535 (April 25, 2013); P.S.C. Administrative Case No. 387, Letter (July 20, 2010).

4 35. Information related to forward power sales, sensitive negotiations between Big
5 Rivers and other entities, and the proprietary information supplied to Big Rivers by its
6 consultants and industry groups of which it is a member (such as fuel cost projections)
7 illuminates Big Rivers' long-term business strategy and is generally subject to confidentiality
8 agreements among the various parties involved. The Commission has previously granted
9 confidential treatment to similar information. *See, e.g., In the Matter of: Application of Big*
10 *Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C. Case No. 2012-
11 00535 (April 25, 2013) (granting confidential treatment to models and industry data provided by
12 Big Rivers' consultants and to details of sensitive commercial negotiations between Big Rivers,
13 Alcan Primary Products Corporation, and Century Aluminum of Kentucky General Partnership
14 which were subject to a confidentiality agreement among the parties).

15 36. Finally, public disclosure of the Confidential Information would reveal Big
16 Rivers' fundamental financial data and projections. Information such as this which bears upon a
17 company's detailed inner workings is generally recognized as confidential or proprietary. *See,*
18 *e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does
19 not take a degree in finance to recognize that such information concerning the inner workings of
20 a corporation is 'generally recognized as confidential or proprietary'"). Additionally, the
21 Commission has previously granted confidential treatment to this type of information. *See, e.g.,*
22 *In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in*
23 *Rates*, Order, P.S.C. Case No. 2012-00535 (April 25, 2013) (granting confidential treatment to

1 minutes of the Big Rivers Board of Directors and Internal Risk Management Committee, Big
2 Rivers' Financial Model, and Big Rivers' load forecast); *In the Matter of: An Examination of the*
3 *Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. From*
4 *November 1, 2011 Through April 30, 2012*, Order, P.S.C. Case No. 2012-00319 (February 21,
5 2013).

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

8
9 37. Disclosure of the Confidential Information would grant Big Rivers' competitors
10 an unfair commercial advantage. As discussed above in Section II. A, Big Rivers faces actual
11 competition in both the short- and long-term wholesale power markets and in the credit markets.
12 It is likely that Big Rivers' ability to compete in these markets would be adversely affected if the
13 Confidential Information were publicly disclosed, and Big Rivers seeks protection from such
14 competitive injury.

15 38. The Confidential Information includes material such as Big Rivers' projections of
16 fuel, power, capacity prices, rates, and revenues, and information about the terms of forward
17 power sales. If that information is publicly disclosed, market participants would have insight
18 into the prices at which Big Rivers is willing to buy and sell fuel, power, and capacity, and could
19 manipulate the bidding process, impairing its ability to generate power at competitive rates and
20 thus to compete in the wholesale power markets. Furthermore, any competitive pressure that
21 adversely affects Big Rivers' revenue and margins could make the company appear less
22 creditworthy and thus impair its ability to compete in the credit markets. These effects were
23 recognized in P.S.C. Case No. 2003-00054, in which the Commission granted confidential
24 treatment to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P argued, and
25 the Commission implicitly accepted, that if the bids it received were publicly disclosed,

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

9 39. Potential market power purchasers could use the information related to Big
10 Rivers' projected off-system sales and planned outages to know when Big Rivers will have
11 excess power to sell into the wholesale market and could use that information to manipulate their
12 bids, leading to lower revenues to Big Rivers and placing it at an unfair competitive disadvantage
13 in the credit markets.

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

1 41. Finally, public disclosure of the identity of counterparties with which Big Rivers
2 has entered into forward power sales would impair Big Rivers' ability to compete for other sales
3 in the future. If confidential treatment is denied, potential counterparties would know that that
4 information would be publicly disclosed, which could reveal information to their competitors
5 about their need for power and about their competitiveness. Because many companies would be
6 reluctant to have such information disclosed, public disclosure of the forward power sales
7 information would likely reduce the pool of counterparties willing to negotiate with Big Rivers,
8 reducing Big Rivers' ability to sell power and impairing its ability to compete in the wholesale
9 power and credit markets.

10 42. Accordingly, the public disclosure of the information that Big Rivers seeks to
11 protect would provide Big Rivers' competitors with an unfair commercial advantage.

12 **III. Time Period**

13 43. Big Rivers requests that the Confidential Information contained in the contracts
14 and summary of contracts filed in response to SC 1-7 remain confidential indefinitely for the
15 reasons stated in Big Rivers' April 4, 2014, petition for confidential treatment in Case No. 2014-
16 00134. Big Rivers requests that the rest of the Confidential Information remain confidential for a
17 period of five (5) years from the date of this petition, which should allow sufficient time for the
18 projected data to become historical and sufficiently outdated that it could not be used to
19 determine similar confidential information at that time or to competitively disadvantage Big
20 Rivers. *See* 807 KAR 5:001 Section 13(2)(a)(2).

21 **IV. Conclusion**

22 44. Based on the foregoing, the Confidential Information is entitled to confidential
23 treatment pursuant to 807 KAR 5:001 Section 13 and KRS 61.878. If the Commission disagrees

1 that Big Rivers' Confidential Information is entitled to confidential treatment, due process
2 requires the Commission to hold an evidentiary hearing. *Utility Regulatory Comm'n v. Kentucky*
3 *Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

6 On this the 9th day of September, 2014.

7 Respectfully submitted,

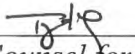
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25
26 **Certificate of Service**

27 I certify that a true and accurate copy of the foregoing was or will be served by regular
28 mail, by Federal Express, or by hand delivery upon the persons listed on the accompanying
29 service list, on or before the date the foregoing is filed with the Kentucky Public Service
30 Commission.
31

32
33 On this the 9th day of September, 2014,

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36 
37 _____
Counsel for Big Rivers Electric Corporation