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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

APR 25 2013

PUBLIC SERVICE
COMMISSION

In the Matter of:

A REVIEW OF THE ADEQUACY OF)
KENTUCKY'S GENERATION CAPACITY) ADMINISTRATIVE
AND TRANSMISSION SYSTEM) CASE NO. 387

**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 13 and KRS 61.878, to grant confidential protection to part of its response to Item 11 of the supplemental information to Big Rivers' annual Financial and Statistical Report required by the Commission's orders in Administrative Case 387. The information contained in the response to Item 11 that Big Rivers seeks to protect as confidential is a list of scheduled outages from 2013 through 2017 and related information (the "Confidential Information").

2. One (1) sealed copy of the response to Item 11 with the Confidential Information highlighted with transparent ink and ten (10) copies of the response with the Confidential Information redacted are filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3) and 13(2)(b).

3. There are no other parties who are entitled to be served with a copy of the petition or a copy of the redacted response.

4. The Confidential Information is not publicly available, is not disseminated within Big Rivers except to those employees and professionals with a legitimate business need to know

1 and act upon the information, and is not disseminated to others without a legitimate need to
2 know and act upon the information.

3 5. If and to the extent the Confidential Information becomes generally available to
4 the public, whether through filings required by other agencies or otherwise, Big Rivers will
5 notify the Commission and have the information's confidential status removed. 807 KAR 5:001
6 Section 13(10)(b).

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

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

14 7. Big Rivers, as a participant in the credit markets and the wholesale power
15 markets, faces economic competition from other entities.

16 8. Big Rivers competes in the wholesale power market to sell energy it produces in
17 excess of its members' needs. Big Rivers' ability to successfully compete in the wholesale
18 power market is dependent upon a combination of its ability to negotiate the maximum price for
19 the power sold and its ability to keep its cost of production as low as possible. If Big Rivers'
20 cost of producing a kilowatt-hour of energy increases, its ability to sell that kilowatt-hour in
21 competition with other utilities is adversely affected.

22 9. Big Rivers also competes for reasonably priced credit in the credit markets, and
23 its ability to compete is directly impacted by its financial results. Any event that adversely

1 affects Big Rivers' margins will adversely affect its financial results and potentially impact the
2 price it pays for credit. As was described in the proceeding before this Commission in the Big
3 Rivers Unwind Transaction, Big Rivers expects to be in the credit markets on a regular basis in
4 the future.¹

5 10. As is evidenced by these economic pressures, Big Rivers has "competitors" as is
6 contemplated under the statute and faces actual competition from other market participants.

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

10 11. 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. The Confidential Information contains a list of scheduled outages from 2013 through 2017
13 and related information.

14 12. Public disclosure of the Confidential Information will allow Big Rivers' suppliers
15 and competitors to know Big Rivers' future maintenance plans and will give them insight into
16 Big Rivers' wholesale power needs. Information about a company's detailed inner workings is
17 generally recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus.*
18 *Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance
19 to recognize that such information concerning the inner workings of a corporation is 'generally
20 recognized as confidential or proprietary'"); *Marina Management Servs. v. Cabinet for Tourism,*
21 *Dep't of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply
22 from "the ability to ascertain the economic status of the entities without the hurdles systemically
23 associated with the acquisition of such information about privately owned organizations").

¹ See Order dated March 6, 2009, in *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 Moreover, the Commission previously granted confidential treatment to this type of information.
2 *See, e.g.*, letter from the Commission dated July 20, 2010, in Administrative Case No. 387
3 (granting confidential treatment to a list of future scheduled outages that Big Rivers filed as part
4 of the supplement to its annual report).

5 13. Accordingly, the information for which Big Rivers seeks confidential treatment is
6 recognized as confidential or proprietary under Kentucky law and is entitled to confidential
7 protection as further discussed below.

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

10
11 14. Disclosure of the Confidential Information would permit an unfair commercial
12 advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition
13 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
14 competitive injury if that Confidential Information was publicly disclosed, and the information
15 should therefore be subject to confidential treatment.

16 15. If the Confidential Information is publicly disclosed, Big Rivers' competitors
17 would have insight into when Big Rivers' generating plants will be down for maintenance and
18 thus know a crucial input into Big Rivers' generating costs and need for power and energy
19 during those periods. With that information, potential suppliers to Big Rivers will be able to
20 manipulate the price of power bid to Big Rivers in order to maximize their revenues, thereby
21 driving up Big Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power
22 and credit markets. Additionally, Big Rivers' competitors in the wholesale power market could
23 use the information to potentially underbid Big Rivers to Big Rivers' competitive disadvantage
24 in competing for wholesale sales.

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IV. Time Period


16. Big Rivers requests that the Confidential Information remain confidential until January 1, 2018, at which time the scheduled outages will have passed and will no longer be confidential. 807 KAR 5:001 Section 13(2)(a)(2).

V. Conclusion

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

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

On this the 25th day of April, 2013.

Respectfully submitted,


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BIG RIVERS ELECTRIC CORPORATION

**SUPPLEMENTAL INFORMATION PROVIDED WITH
BIG RIVERS' ANNUAL FINANCIAL AND STATISTICAL REPORT
PURSUANT TO ADMINISTRATIVE CASE NO. 387**

**Response to Commission Staff's Information Request
as set forth in
Appendix G of the Commission's Order dated December 20, 2001**

April 25, 2013

Item 11) *A list that identifies scheduled out or retirements of generating capacity during the current year and the following four years.*

Response) There are no retirements of generating capacity anticipated through 2017; however, [REDACTED]

[REDACTED]. The planned maintenance outage schedule for 2013 through 2017 is being provided pursuant to a Petition for Confidential Protection. The schedule is regularly modified based on actual operating conditions, forced outages, changes in the schedule required to meet environmental regulation compliance, fluctuation in wholesale prices, and other unforeseen events that may affect unit reliability or generation capacity. The scheduled outages for all units are listed below:

Wilson Unit 1

2013
2014
2015
2016
2017



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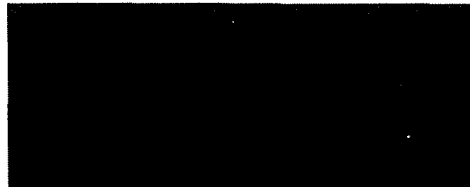
Green Unit 1

2013
2014
2015
2016
2017



Green Unit 2

2013
2014
2015
2016
2017



HMP&L Unit 1

2013
2014
2015
2016
2017



HMP&L Unit 2

2013
2014
2015
2016
2017



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Coleman Unit 1

2013
2014
2015
2016
2017



Coleman Unit 2

2013
2014
2015
2016
2017



Coleman Unit 3

2013
2014
2015
2016
2017



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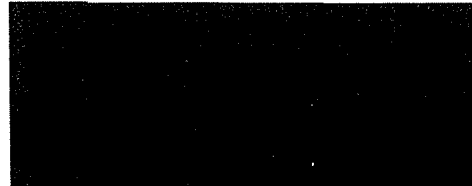
Reid Unit 1

2013
2014
2015
2016
2017



Reid Combustion Turbine

2013
2014
2015
2016
2017



Respondent) Lawrence V. Baronowsky