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March 18, 2011

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MAR 18 2011

PUBLIC SERVICE COMMISSION

Mr. Jeff DeRouen
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from July 17, 2009, through October 31, 2010, Case No. 2010-00495

Dear Mr. DeRouen:

Enclosed for filing on behalf of Big Rivers Electric Corporation is an updated exhibit to its Response to Item 9 of the information requested in the Commission's January 26, 2011, Order in this matter. The updated exhibit is being filed pursuant to a petition for confidential treatment. An original and ten copies of the petition are enclosed. Since Big Rivers is seeking confidential protection for the entire exhibit, one sealed copy of the exhibit printed on yellow paper is also enclosed, and a sheet noting that the entire exhibit has been redacted is attached to the original and each of the ten copies of the petition. As no other parties have intervened in this matter, the petition is not being served on any other party.

Sincerely,

TSEP

Tyson Kamuf

TAK/h Enclosures

cc: Albert Yockey

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#### **BIG RIVERS ELECTRIC CORPORATION**

# AN EXAMINATION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF BIG RIVERS ELECTRIC CORPORATION FROM JULY 17, 2009 THROUGH OCTOBER 31, 2010 CASE NO. 2010-00495

<u>Updated</u> Response to the Commission Staff's Data Request dated January 26, 2011

March 18, 2011

Item 9) Provide the planned maintenance schedule for each of Big Rivers' generating units for the years 2011 and 2012.

Response) Since the initial outage schedule was submitted in February this year Big Rivers has moved the 2011 Wilson Unit outage from September to March and reduced the scope and duration by one week. That week was added to Wilson's 2012 outage which caused a schedule shift to the other spring outages. Also the Coleman Unit 1 outage in 2012 was moved from June to September and the Coleman Unit 3 outage in 2012 was reduced in scope and shortened by seventeen days. Please see the attached revised schedule for the information requested on the planned maintenance schedule for Big Rivers' generating units for the years 2011 and 2012.

Witness) Lawrence V. Baronowsky

### **BIG RIVERS ELECTRIC CORPORATION**

# AN EXAMINATION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF BIG RIVERS ELECTRIC CORPORATION FROM JULY 17, 2009 THROUGH OCTOBER 31, 2010 CASE NO. 2010-00495

Updated Response to the Commission Staff's Data Request dated January 26, 2011

March 18, 2011

Item 9 – Attachment

The entire attachment has been redacted and filed under a Petition for Confidential Treatment

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1 2	COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION MAR 1 8 2011
3 4 5	In the Matter of:  PUBLIC SERVICE COMMISSION
6 7 8 9 10	AN EXAMINATION OF THE APPLICATION ) OF THE FUEL ADJUSTMENT CLAUSE OF ) BIG RIVERS ELECTRIC CORPORATION ) CASE NO. 2010-00495 FROM JULY 17, 2009 THROUGH ) OCTOBER 31, 2010 )
11 12 13	PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL PROTECTION
13 14 15	Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky
16	Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 7 and KRS
	•
17	61.878(1)(c), to grant confidential protection to the updated exhibit to Big Rivers' response to
18	Item 9 of the information requested in Appendix B to the Commission's January 26, 2011, Order
19	in this matter. The information Big Rivers seeks to protect as confidential is a revised version of
20	an exhibit containing Big Rivers' planned maintenance schedule for the years 2011 and 2012
21	(the "Planned Maintenance Schedule").
22	2. Big Rivers seeks confidential treatment of the entirety of the exhibit (the
23	"Confidential Information"). One (1) sealed copy of the Confidential Information printed on
24	yellow paper (since the entirety of the exhibit is confidential) and an original and ten (10) copies
25	of a page indicating that the entirety of the exhibit has been redacted are filed with this petition.
26	807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).
27	3. There are currently no other parties to this proceeding on which copies of this
28	petition and the redacted exhibit can be served. Big Rivers will provide a copy of these
29	documents to any person who is granted full intervention by the Commission in this proceeding
30	and who signs a confidentiality agreement. 807 KAR 5:001 Section 7(2)(c).

4. If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Big Rivers will notify the Commission and have its confidential status removed. 807 KAR 5:001 Section 7(9)(a).

5. As discussed below, the Confidential Information is entitled to confidential protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1).

## I. Big Rivers' Faces Actual Competition

- 6. Big Rivers competes in the wholesale power market to sell energy excess to its members' needs. Big Rivers' ability to successfully compete in the wholesale power market is dependent upon a combination of its ability to get the maximum price for the power sold, and keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers' cost of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with other utilities is adversely affected. As is well-documented in multiple proceedings before this Commission, Big Rivers' margins are derived almost exclusively from its off-system sales.
- 7. Big Rivers also competes for reasonably-priced credit in the credit markets, and its ability to compete is directly impacted by its financial results. Any event that adversely affects Big Rivers' margins will adversely affect its financial results and potentially impact the price it pays for credit. As was described in the proceeding before this Commission in the Big

1 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis

2 in the future.<sup>1</sup>

# II. The Confidential Information is Generally Recognized as Confidential or

4 Proprietary

5 8. The Planned Maintenance Schedule contains the type of information that is 6 generally recognized as confidential or proprietary under Kentucky law.

9. The Planned Maintenance Schedule contains Big Rivers' planned maintenance schedule for 2011 and 2012. Disclosure of that information will allow Big Rivers' suppliers and competitors to know Big Rivers' future maintenance plans and will give them insight into Big Rivers' wholesale power needs. Information about a company's detailed inner workings is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is 'generally recognized as confidential or proprietary'"). The Commission previously granted confidential treatment to this type of information. *See, e.g.,* letter from the Commission dated July 20, 2010, in Administrative Case No. 387 (granting confidential treatment to a list of future scheduled outages that Big Rivers filed as part of the supplement to its annual report).

10. Additionally, the Commission granted confidential treatment to an earlier version of the Planned Maintenance Schedule that was filed as an exhibit to the original response to Item 9 on February 14, 2011.

<sup>&</sup>lt;sup>1</sup> 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.

11. 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 and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information. As such, the Confidential Information is generally recognized as confidential and proprietary.

# III. Disclosure of the Confidential Information Would Permit an Unfair Commercial

# Advantage to Big Rivers' Competitors

- 12. Disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer competitive injury if the Confidential Information was publicly disclosed.
- 13. Public disclosure of the Planned Maintenance Schedule would allow Big Rivers' competitors to know when Big Rivers' generating plants will be down for maintenance and thus know a crucial input into Big Rivers' generating costs and need for power and energy during those periods. With that information, potential suppliers to Big Rivers will be able to manipulate the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit markets.
- 14. Additionally, Big Rivers' competitors in the wholesale power market could use the information from the Planned Maintenance Schedule to potentially underbid Big Rivers to Big Rivers' competitive disadvantage in competing for wholesale sales, and prospective purchasers of Big Rivers' power supply in the wholesale market could use the information to

1 manipulate the bidding process to the detriment of Big Rivers, impairing Big Rivers' ability to 2 get the best price for its off-system sales during its scheduled outages. 3 IV. The Confidential Information is Entitled to Confidential Protection 15. 4 Based on the foregoing, the Confidential Information is entitled to confidential 5 protection. 6 The Commission is Required to Hold an Evidentiary Hearing 7 19. The Confidential Information should be given confidential protection. If the 8 Commission disagrees that Big Rivers is entitled to confidential protection, due process requires 9 the Commission to hold an evidentiary hearing. Utility Regulatory Com'n v. Kentucky Water 10 Service Co., Inc., 642 S.W.2d 591 (Ky. App. 1982). 11 WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect as confidential the Confidential Information. 12 On this the 18th day of March, 2011. 13 14 James M. Miller 15 16 17 Tyson Kamuf Sullivan, Mountjoy, Stainback 18 19 & Miller, P.S.C. 20 100 St. Ann Street, P.O. Box 727 21 Owensboro, Kentucky 42302-0727 22 (270) 926-4000 23 24 COUNSEL FOR BIG RIVERS 25 **ELECTRIC CORPORATION**