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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

APR 15 2011

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)
CORPORATION FOR A GENERAL) CASE NO. 2011-00036
ADJUSTMENT IN RATES)

**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 7 and KRS 61.878, to grant confidential protection to portions of its responses to Item 16 of the Second Information Request of Commission Staff to Big Rivers Electric Corporation ("Commission's Staff's Second Information Request"); Items 19 and 35 of the Attorney General's Initial Data Requests ("AG's Initial Data Requests"); and Items 43-46, 65, 112, 121, 129, and 132 of Kentucky Industrial Utility Customers, Inc.'s First Set of Data Requests to Big Rivers Electric Corporation ("KIUC's First Set of Data Requests"). The portions of those responses Big Rivers seeks to protect as confidential is hereinafter referred to as the "Confidential Information."

2. One (1) sealed copy of the above-named responses with the Confidential Information highlighted with transparent ink is attached to this petition. A copy of the responses with the Confidential Information redacted is attached to the original and each of the ten (10) copies of Big Rivers' responses to the data requests filed with this petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).

3. A copy of this petition and a copy of the redacted responses have been served on all parties to this proceeding. 807 KAR 5:001 Section 7(2)(c). Big Rivers has provided a copy of the unredacted responses to the parties who have signed a confidentiality agreement, and Big

1 Rivers will provide a copy of the unredacted responses to any other party who signs a
2 confidentiality agreement.

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

7 5. If and to the extent the Confidential Information becomes generally available to
8 the public, whether through filings required by other agencies or otherwise, Big Rivers will
9 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
10 7(9)(a).

11 6. The Confidential Information falls into two categories: information protected by
12 KRS 61.878(1)(c)(1) and information protected by KRS 61.878(1)(a). For the reasons stated
13 below, both categories of Confidential Information are entitled to confidential treatment.

14 **I. Information Protected by KRS 61.878(1)(c)(1)**

15 7. Big Rivers seeks confidential treatment under KRS 61.878(1)(c)(1) for its
16 responses to Item 16 of the Commission’s Staff’s Second Information Request (“PSC 2-16”) and
17 Items 43-46, 65, 112, 129, and 132 of KIUC’s First Set of Data Requests (“KIUC 1-43,” “KIUC
18 1-44,” “KIUC 1-45,” “KIUC 1-46,” “KIUC 1-65,” “KIUC 1-112,” “KIUC 1-129,” and “KIUC
19 1-132,” respectively). KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an
20 agency or required by an agency to be disclosed to it, generally recognized as confidential or
21 proprietary, which if openly disclosed would permit an unfair commercial advantage to
22 competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1). As explained below,
23 Big Rivers faces actual competition, the Confidential Information in those responses is generally

1 recognized as confidential or proprietary, disclosure of that Confidential Information would
2 permit an unfair commercial advantage to Big Rivers' competitors, and therefore, that
3 Confidential Information is entitled to confidential treatment.

4 A. Big Rivers' Faces Actual Competition

5 8. Big Rivers competes in the wholesale power market to sell energy excess to its
6 members' needs. Big Rivers' ability to successfully compete in the wholesale power market is
7 dependent upon a combination of its ability to get the maximum price for the power sold, and
8 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers' cost
9 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with
10 other utilities is adversely affected. As is well-documented in multiple proceedings before this
11 Commission, Big Rivers' margins are derived almost exclusively from its off-system sales.

12 9. Big Rivers also competes for reasonably-priced credit in the credit markets, and
13 its ability to compete is directly impacted by its financial results. Any event that adversely
14 affects Big Rivers' margins will adversely affect its financial results and potentially impact the
15 price it pays for credit. As was described in the proceeding before this Commission in the Big
16 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis
17 in the future.¹

18

¹ 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.

1 B. The Confidential Information for which Big Rivers Seeks Confidential Treatment under
2 KRS 61.878(1)(c)(1) is Generally Recognized as Confidential or Proprietary

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

6 11. **PSC 2-16.** Big Rivers' response to PSC 2-16 contains detailed information
7 about Big Rivers' future planned maintenance outages, including schedules, work to be
8 performed, and materials to be purchased. Disclosure of that information will allow Big Rivers'
9 suppliers and competitors to know Big Rivers' future maintenance plans and purchases and will
10 give them insight into Big Rivers' wholesale power needs. The Commission previously granted
11 confidential treatment to this type of information. *See, e.g.*, letter from the Commission dated
12 July 20, 2010, in Administrative Case No. 387 (granting confidential treatment to a list of future
13 scheduled outages that Big Rivers filed as part of the supplement to its annual report).²

14 12. **KIUC 1-43.** Big Rivers' response to KIUC 1-43 contains its most recent multi-
15 year financial forecast model. Public disclosure of this model would reveal Big Rivers' forecast
16 of costs and rates, and which would give Big Rivers' suppliers, buyers, and competitors an unfair
17 competitive advantage. For example, power suppliers could use Big Rivers' forecasts of power
18 prices to determine the prices at which Big Rivers is willing to buy power. The Commission has
19 previously granted confidential treatment to similar information. *See, e.g.*, letter dated December
20 21, 2010, in *In the Matter of: The 2010 Integrated Resource Plan of Big Rivers Electric*

² A copy of the July 20, 2010, letter in Administrative Case No. 387 granting confidential treatment and the relevant petition for confidential treatment are attached hereto as Exhibits A and B, respectively.

1 *Corporation*, PSC Case No. 2010-00443 (granting confidential treatment to fuel cost projects,
2 revenue projects, market price projections, financial model outputs, etc.).³

3 13. **KIUC 1-44, KIUC 1-45, and KIUC 1-46.** Big Rivers' response to KIUC 1-44,
4 KIUC 1-45, and KIUC 1-46 contain financial statement budgets, expense budgets, and
5 construction budgets. Public disclosure of this information would give Big Rivers' suppliers,
6 buyers, and competitors insight into Big Rivers' cost of producing power and into Big Rivers'
7 view of future prices for construction material, fuel prices, and market power prices, which
8 would indicate the prices at which Big Rivers is willing to buy or sell such items. The
9 Commission has previously granted confidential treatment to similar information. *See, e.g., id.*
10 (granting confidential treatment to resource plans, fuel cost projects, revenue projects, market
11 price projections, financial model outputs, etc.).

12 14. **KIUC 1-65.** Big Rivers' response to KIUC 1-65 contains its projections of
13 monthly MISO prices. Public disclosure of this information would allow Big Rivers' suppliers,
14 buyers, and competitors to know Big Rivers' view of forward prices and would be indicative of
15 prices at which Big Rivers is willing to buy or sell power. The Commission has previously
16 granted confidential treatment to similar information. *See, e.g., id.* (granting confidential
17 treatment to market price projections).

18 15. **KIUC 1-112.** Big Rivers' response to KIUC 1-112 contains year-to-date off-
19 system sales and prices. Public disclosure of this information would allow Big Rivers' suppliers
20 and competitors to gain insight into the prices at which Big Rivers is willing to sell power on
21 specific days and hours.

³ A copy of the December 21, 2010, letter in Case No. 2010-00443 granting confidential treatment and the relevant petition for confidential treatment are attached hereto as Exhibits C and D, respectively.

1 16. **KIUC 1-129.** Big Rivers’ response to KIUC 1-129 contains projections as to fuel
2 costs. Public disclosure of this information would allow Big Rivers’ suppliers and competitors
3 to know Big Rivers’ view of forward prices and would be indicative of prices at which Big
4 Rivers is willing to purchase fuel. Public disclosure would also give suppliers, purchasers, and
5 competitors in the wholesale power market information about a key input into Big Rivers’ costs
6 of generation. The Commission has previously granted confidential treatment to similar
7 information. *See, e.g., id.* (granting confidential treatment to fuel cost projections).

8 17. **KIUC 1-132.** Big Rivers’ response to KIUC 1-132 contains monthly billing and
9 settlement invoices received by Big Rivers from the Midwest ISO. Public disclosure of this
10 information would allow suppliers, purchasers, and competitors in the wholesale power market
11 to calculate Big Rivers’ generation offer curves and the prices at which Big Rivers is willing to
12 purchase power.

13 C. Disclosure of the Confidential Information for which Big Rivers Seeks Confidential
14 Treatment under KRS 61.878(1)(c)(1) Would Permit an Unfair Commercial Advantage to Big
15 Rivers’ Competitors

16 18. Disclosure of the Confidential Information for which Big Rivers seeks
17 confidential treatment under KRS 61.878(1)(c)(1) would permit an unfair commercial advantage
18 to Big Rivers’ competitors. As discussed above, Big Rivers faces actual competition in the
19 wholesale power market and in the credit market. It is likely that Big Rivers would suffer
20 competitive injury if that Confidential Information was publicly disclosed.

21 19. If the Confidential Information relating to Big Rivers’ financial forecast and
22 budget projections for construction materials, fuel cost projections, and power price projections
23 is publicly disclosed, potential material, fuel, and power suppliers would have insight into the

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

14 20. Likewise, public disclosure of recent prices at which Big Rivers purchased or sold
15 power (from the off-system sales spreadsheet or the MISO invoices) would give potential sellers
16 or purchasers of power insight into the prices at which Big Rivers is willing to purchase or sell
17 power, which they could use as a benchmark to manipulate the bidding process, increasing Big
18 Rivers' costs or reducing Big Rivers' margins from off-system sales and injuring its ability to
19 compete in the wholesale power and credit markets.

20 21. Public disclosure of the Confidential Information relating to Big Rivers' cost of
21 producing power, including its budgets, financial forecast, and fuel cost projections, would give
22 the power producers and marketers with which Big Rivers competes and unfair competitive

1 advantage because they could use the information to determine Big Rivers' power production
2 costs and could use those figures to potentially underbid Big Rivers in wholesale transactions.

3 22. With respect to the financial forecast, budgets, and Big Rivers' planned
4 maintenance activities, public disclosure of that information would allow Big Rivers'
5 competitors to know when Big Rivers' generating plants will be down for maintenance and thus
6 know a crucial input into Big Rivers' generating costs and need for power and energy during
7 those periods. With that information, potential suppliers to Big Rivers will be able to manipulate
8 the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big
9 Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit
10 markets.

11 **II. Information Protected by KRS 61.878(1)(a)**

12 23. Big Rivers seeks confidential treatment of its response to Items 19 and 35 of the
13 AG's Initial Data Requests ("AG 1-19" and "AG 1-35," respectively) and of its response to Item
14 121 of KIUC's First Set of Data Requests ("KIUC 1-121") under KRS 61.878(1)(a), which
15 protects "[p]ublic records containing information of a personal nature where the public
16 disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." KRS
17 61.878(1)(a). 807 KAR 5:001 Section 7(2)(a)(1).

18 24. **AG 1-19, AG 1-35, and KIUC 1-121.** Big Rivers' responses to AG 1-19 and AG
19 1-35 contain compensation and related information associated with one specific individual (Big
20 Rivers' President and Chief Executive Officer ("CEO"). Big Rivers' response to KIUC 1-121
21 contains compensation and related information associated with a few specific individuals (Big
22 Rivers' executive officers and direct reports to the CEO). This Commission has explained that
23 KRS 61.878(1)(a) "is intended to protect from public disclosure any information contained in

1 public records that reveals the details of an individual's private life when the individual's privacy
2 interest in the information outweighs the public interest in the information.” Order dated April
3 30, 1997, in *In the Matter of: Application of Louisville Gas and Electric Company for an Order*
4 *Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in*
5 *Connection Therewith*, Case No. 89-374, at 1-2.

6 25. The Confidential Information contained in Big Rivers’ responses to AG 1-19, AG
7 1-35, and KIUC 1-121 is the compensation and related information of individual officers of Big
8 Rivers. The Kentucky Court of Appeals has stated that “information such as...wage rate...[is]
9 generally accepted by society as [a] detail[] in which an individual has at least some expectation
10 of privacy” and that “few things in our society are deemed of a more intimate nature than one's
11 income. This information is commonly treated circumspectly.” *Zink v. Dept. of Workers’*
12 *Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994). Moreover, this Commission has
13 applied KRS 61.878(1)(a) to protect salary information when the information is tied to individual
14 employees, stating that “the right of each individual employee within a job classification to
15 protect [salary] information as private outweighs the public interest in the information. Thus, the
16 salary paid to each individual within a classification is entitled to protection from public
17 disclosure.” Order dated April 30, 1997, in *In the Matter of: Application of Louisville Gas and*
18 *Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry*
19 *Out Certain Transactions in Connection Therewith*, Case No. 89-374, at 2; *see also* Letter dated
20 December 1, 2003, in PSC Case Nos. 2003-00334 and 2003-00335 (granting confidential
21 protection to the compensation information of certain employees). Thus, the public disclosure of
22 the compensation-related Confidential Information would constitute a clearly unwarranted
23 invasion of personal privacy.

1 26. In Case No. 89-374, the Commission granted confidential protection to the
2 individually identified compensation information of employees of Louisville Gas and Electric
3 Company (“LG&E”), but in doing so, the Commission noted:

4 As a public utility, compensation paid by LG&E to its employees is subject to
5 scrutiny not only by this Commission but also by its customers....Therefore,
6 information on file with the Commission regarding the salaries paid generally
7 within each employee classification should be available for customers to
8 determine whether those salaries are reasonable. However, the right of each
9 individual employee within a job classification to protect [salary] information as
10 private outweighs the public interest in the information.
11

12 Order dated April 30, 1997, in *In the Matter of: Application of Louisville Gas and Electric*
13 *Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out*
14 *Certain Transactions in Connection Therewith*, Case No. 89-374, at 2.

15 27. In the present case, since the Confidential Information contained in Big Rivers’
16 responses to AG 1-19 and AG 1-35 relates to the compensation information of a specific
17 individual, Big Rivers is not able to publicly disclose the compensation information by
18 classification or other means without allowing the individual associated with the compensation
19 information to be readily identified. Similarly, although Big Rivers has used numbers in lieu of
20 names of individuals in its response to KIUC 1-121, given that the limited number of officers,
21 even an unskilled researcher would be able to approximate the compensation information of the
22 individual employees. Thus, Big Rivers is not able to publicly disclose the compensation
23 information in its response to KIUC 1-121 by classification or other means without revealing the
24 approximate compensation of the individuals. Nevertheless, there is no legitimate public interest
25 in public disclosure of the Confidential Information because Big Rivers has only three customers
26 – its three distribution cooperative members. Each distribution cooperative has two members of
27 its board of directors on the Big Rivers board of directors, and those directors are already aware

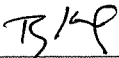
1 of the Confidential Information contained in the responses to AG 1-19, AG 1-35, and KIUC 1-
2 121. Moreover, as Big Rivers has already provided the Confidential Information to the other
3 parties to this proceeding (the AG and KIUC) and to Commission Staff, no public purpose is
4 served by public disclosure of the Confidential Information, and the privacy interest of the
5 individual employees in their compensation information clearly outweighs any public interest in
6 the public disclosure of the information.

7 **III. Conclusion**

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

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

14 On this the 14th day of April, 2011.

15 
16 _____
17 James M. Miller
18 Tyson Kamuf
19 Sullivan, Mountjoy, Stainback & Miller, P.S.C.
20 100 St. Ann Street, P.O. Box 727
21 Owensboro, Kentucky 42302-0727
22 (270) 926-4000

23 and

24
25 Douglas L. Beresford
26 Hogan Lovells US LLP
27 Columbia Square, 555 Thirteenth Street, NW
28 Washington, DC 20004
29 (202) 637-5819

30
31 COUNSEL FOR BIG RIVERS
32 ELECTRIC CORPORATION



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

July 20, 2010

Sullivan, Mountjoy, Stainback
& Miller, P.S.C.
Attention: Tyson Kamuf
100 St. Ann Street
P.O. Box 727
Owensboro, Kentucky 42302-0727

Re: Big Rivers Electric Corporation
Petition for Confidential Protection received 4/30/10
PSC Reference #: Admin. Case No. 387

Dear Mr. Kamuf:

The Public Service Commission has received the Petition for Confidential Protection you filed on April 30, 2010 on behalf of Big Rivers Electric Corporation, ("Big Rivers"), to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.878. The information you seek to have treated as confidential is identified as being contained in Big Rivers' Response to Item 11 of the supplement to its annual report. The information is more particularly described as a list of scheduled outages from 2010 through 2014, disclosure of which would allow competitors to manipulate power bids by having knowledge of when the generating plants would be down for maintenance.

Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise Big Rivers' competitive position in the industry, which would result in an unfair commercial advantage to its competitors.

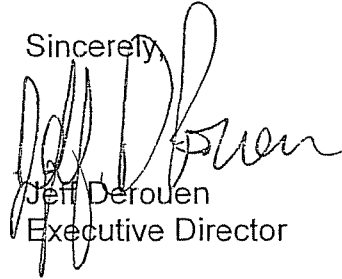
Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information requested to be held confidential is of a proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to Big Rivers' competitors. Therefore, the information requested to be treated as confidential **meets the criteria for confidential protection** and will be

Mr. Kamuf
July 20, 2010
Page 2

maintained as a nonpublic part of the Commission's file in this case. The procedure for usage of confidential materials during formal proceedings may be found at Section 7(8) of 807 KAR 5:001.

If the information becomes publicly available or no longer warrants confidential treatment, Big Rivers Electric Corporation is required by Section 8(9)(a) of 807 KAR 5:001 to inform the Commission so that the information may be placed in the public record.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen". The signature is fluid and cursive, with a large initial "J" and "D".

Jeff Derouen
Executive Director

kg/

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE 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 7 and KRS 61.878(1)(c), to grant confidential protection to part of its response to Item 11 of the supplement to its annual report filed with this petition. The information contained in the response to Item 11 that Big Rivers seeks to protect is a list of scheduled outages from 2010 through 2014 (the "Confidential Information").

2. One (1) sealed copy of the response to Item 11 with the Confidential Information highlighted and ten (10) copies of the response with the Confidential Information redacted are filed with this Petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).

3. A copy of this petition and a copy of the redacted response have been served on all parties. 807 KAR 5:001 Section 7(2)(c).

4. If and to the extent that 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).

Exhibit B

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).

6. Big Rivers competes in the wholesale power market to sell energy excess to its Members’ needs, and public disclosure of the Confidential Information will give an unfair commercial advantage to Big Rivers’ competitors and will impair Big Rivers’ ability to compete in the wholesale power market.

7. The Confidential Information is the type of information that is generally recognized as confidential or proprietary under Kentucky law. The Confidential Information is a list of Big Rivers’ scheduled outages from 2010 through 2014. Public disclosure of the Confidential Information 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 causing higher prices for Big Rivers, its members, and the members’ retail customers, and giving a commercial advantage to Big Rivers’ competitors.

8. Public disclosure of the Confidential Information will also enable prospective purchasers of Big Rivers’ power supply in the wholesale market to manipulate the bidding process to the detriment of Big Rivers, impairing Big Rivers’ ability to get the best price for its off-system sales during its scheduled outages.

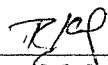
9. Additionally, the Commission has granted confidential protection to this type of information when provided by other utilities. *See, e.g.*, letter from the Commission dated June 9, 2008, in this proceeding, granting confidential protections to Kentucky Utilities Company's response to Item 11 in its supplement to its 2008 annual report..

10. 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.

11. 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 Com'n v. Kentucky Water Service 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 filed with this petition.

On this the 29th day of April, 2010.



James M. Miller
Tyson Kamuf
Sullivan, Mountjoy, Stainback
& Miller, P.S.C.
100 St. Ann Street
P.O. Box 727
Owensboro, Kentucky 42302-0727
(270) 926-4000

COUNSEL FOR BIG RIVERS
ELECTRIC CORPORATION



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

December 21, 2010

Sullivan, Mountjoy, Stainback & Miller
Attention: Tyson Kamuf
100 St. Ann Street
P.O. Box 727
Owensboro, Kentucky 42302-0727

Re: Big Rivers Electric Corporation
Petition for Confidential Protection received 11-15-10
PSC Reference: Case No. 2010-00443

Dear Mr. Kamuf:

The Public Service Commission has received the Petition for Confidential Protection you filed on November 15, 2010 on behalf of Big Rivers Electric Corporation ("Big Rivers"), to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.878. The information you seek to have treated as confidential is identified as being contained in Big Rivers' Integrated Resource Plan. The information is more particularly described as a CD containing confidential information and a redacted copy, each containing Appendices D-M; 3 transmission system maps; and Items 1 through 24. Items are described as containing infrastructure materials.

Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise Big Rivers' competitive position in the industry, which would result in an unfair commercial advantage to its competitors, and also the public disclosure of infrastructure information would present a security risk to the company and to the public.

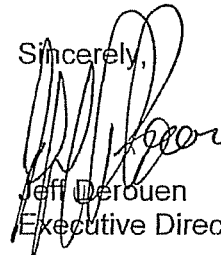
Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information requested to be held confidential is of a proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to Big Rivers' competitors, and present an unwarranted security risk to the company and the public.

Mr. Kamuf
December 21, 2010
Page 2

Therefore, the information requested to be treated as confidential **meets the criteria for confidential protection** and will be maintained as a nonpublic part of the Commission's file in this case. The procedure for usage of confidential materials during formal proceedings may be found at Section 7(8) of 807 KAR 5:001.

If the information becomes publicly available or no longer warrants confidential treatment, Big Rivers Electric Corporation is required by Section 8(9)(a) of 807 KAR 5:001 to inform the Commission so that the information may be placed in the public record.

Sincerely,



Jeff Derouen
Executive Director

kg/

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION PUBLIC SERVICE COMMISSION

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In the Matter of:

THE 2010 INTEGRATED RESOURCE PLAN OF) CASE NO. _____
BIG RIVERS ELECTRIC CORPORATION)

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 7 and KRS 61.878(1)(c), (m), to grant confidential protection to certain information (the "Confidential Information") contained in its 2010 Integrated Resource Plan ("IRP") filed with this petition. The IRP is filed pursuant to 807 KAR 5:058 to provide the Commission with information including Big Rivers' historical and projected demand, resource, and financial data, and other operating performance and system information, in addition to the facts, assumptions, and conclusions on which the plan is based and the actions that the plan proposes. 807 KAR 5:058 Section 1(2). In support of this petition, Big Rivers states as follows:

2. One sealed (1) copy of the IRP containing the Confidential Information, with the Confidential Information either highlighted or contained on a CD marked confidential, and ten (10) copies of the IRP with the Confidential Information redacted, are filed with this petition. Because Appendices D-M are being redacted in their entirety and are only being provided on a CD and only for the confidential version of the IRP, the CD is marked confidential to identify the Confidential Information. For the redacted version of the IRP, a sheet for each appendix noting that the entire appendix has been filed under a petition for confidential treatment has been added to the redacted version of the IRP. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).

3. One (1) additional, unbound copy of the redacted version of the IRP is also filed

1 with this petition to assure compliance with the requirements of 807 KAR 5:058 Section 1(3).

2 4. This is to certify that a copy of this Petition and a copy of the redacted IRP have
3 been served on all parties to this proceeding. 807 KAR 5:001 Section 7(2)(c).

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

8 6. The Confidential Information comes within the following two categories:

9 A. Information protected by KRS 61.878(1)(m). This includes the three
10 transmission system maps located on page 5-3 (Figure 5.3), page 8-6 (Figure 8.1), and Appendix
11 M.

12 B. Information protected by KRS 61.878(1)(c). This includes the three
13 transmission system maps described above, as well as the following:

Item	Location	Description
1	p. 8-2	Description of base case resource assessment. Three sentences at end of second paragraph.
2	p. 8-3	Table 8.1 Optimal Expansion Plans
3	p. 8-5	Table 8.3 Fuel Cost Projections
4	p. 8-17	Table 8.15 Avoided Energy Costs
5	p. 8-20	Table 8.18 Base Case Resource Assessment Results – Capacity Requirements
6	p. 8-21	Table 8.19 Base Case Resource Assessment Results – Energy Requirements (MWH)
7	p. 8-22	Table 8.20 Energy Generation by Fuel Type
8	p. 8-23	Description of base case resource plan. Two sentences at end of subsection (d).
9	p. 8-28	Description of base case resource plan. One sentence at end of subsection (g).
10	p. 9-1	Information on resource additions and fuel costs. Next to last bullet in subsection (3)
11	p. 9-2	Table 9.1 Revenue and Rate Projections
12	Appendix B, p 29	Table 5.1 Avoided Energy Costs

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13	Appendix B, Appendix 1	General Modeling Assumptions & Avoided Costs table – Electric Energy, Seasonal Avoided Energy in Nominal \$
14	Appendix D	Base Case model run output
15	Appendix E	High Fuel Case model run output
16	Appendix F	High Load Case model run output
17	Appendix G	RPS (Renewable Portfolio Standard) Case model run output
18	Appendix H	Environmental Compliance model run output
19	Appendix I	MISO Case model run output
20	Appendix J	Carbon Allowance Cost model run output
21	Appendix K	Generation Unit data including Fuel Cost
22	Appendix L	Market Price Projections
23	Executive Summary, p. ii	Description of base case resource plan. Four sentences at conclusion of bullet four.
24	Executive Summary, p. iv	Table ES 1 Optimal Expansion Plan

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7. As discussed below, the Confidential Information is entitled to confidential protection based upon KRS 61.878(1)(m) or KRS 61.878(1)(c)(1).

I. Information protected by KRS 61.878(1)(m)

8. KRS 61.878(1)(m) protects the disclosure of information “which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to: . . . f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems.” The three transmission system maps filed with the IRP could be used to analyze vulnerable locations in Big Rivers’ transmission system, which is a public utility critical system, and which could therefore threaten public safety.

II. Information protected by KRS 61.878(1)(c)

9. KRS 61.878(1)(c)(1) 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

1 entity that disclosed the records.” KRS 61.878(1)(c)(1). Because Big Rivers faces actual
2 competition, the Confidential Information is generally recognized as confidential or proprietary,
3 and the disclosure of the Confidential Information would permit an unfair commercial advantage
4 to Big Rivers’ competitors, the Confidential Information is entitled to confidential protection.

5 A. Big Rivers’ Faces Actual Competition

6 10. Big Rivers competes in the wholesale power market to sell energy excess to its
7 members’ needs. Big Rivers’ ability to successfully compete in the wholesale power market is
8 dependent upon a combination of its ability to get the maximum price for the power sold, and
9 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers’ cost
10 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with
11 other utilities is adversely affected. As is well-documented in multiple proceedings before this
12 Commission, Big Rivers’ margins are derived almost exclusively from its off-system sales.

13 11. Big Rivers also competes for reasonably-priced credit in the credit markets, and
14 its ability to compete is directly impacted by its financial results. Any event that adversely
15 affects Big Rivers’ margins will adversely affect its financial results and potentially impact the
16 price it pays for credit. As was described in the proceeding before this Commission in the Big
17 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis
18 in the future.¹

19 B. The Confidential Information is Generally Recognized as Confidential or Proprietary,
20 and Disclosure of the Confidential Information Would Permit an Unfair Commercial Advantage
21 to Big Rivers’ Competitors

¹ 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.

1 12. The Confidential Information is the type of information that is generally
2 recognized as confidential or proprietary under Kentucky law.

3 13. Item 1 (description of base case resource assessment), Item 2 (Optimal Expansion
4 Plan table), Item 7 (Energy Generation by Fuel Type table), Item 8 (description of base case
5 resource plan), Item 9 (description of base case resource plan), Item 10 (information on resource
6 additions and fuel costs), Item 23 (description of base case resource plan), and Item 24 (Optimal
7 Expansion Plan table) reveal, or can be used to determine, planned generation additions, the
8 public disclosure of which may increase acquisition costs to Big Rivers and make it more
9 difficult for Big Rivers to compete in wholesale power markets.

10 14. Item 3 (Fuel Cost Projections table) reveals fuel cost projections and Item 21
11 (generation unit data) contains sensitive data relating to Big Rivers' generating units, including
12 fuel costs. Such information, if publicly disclosed, would give Big Rivers' competitors in the
13 wholesale power market information they can use in bulk power bids and it would give fuel
14 bidders information they can use in negotiating fuel contracts to Big Rivers' competitive
15 disadvantage, leading to increased costs to Big Rivers and a diminished ability to compete in the
16 wholesale power and credit markets.

17 15. Item 4 (Avoided Energy Costs table), Item 5 (Base Case Resource Assessment
18 Results – Capacity Requirements table), Item 6 (Base Case Resource Assessment Results –
19 Energy Requirements), Item 11 (Revenue and Rate Projections table), Item 12 (Avoided Energy
20 Costs table), Item 13 (containing avoided costs projections), and Item 22 (market price
21 projections) all provide competitors information they can use in bulk power bids to Big Rivers'
22 detriment. By having access to this information, bulk power bidders to Big Rivers could

1 manipulate the bidding process leading to high costs to Big Rivers and a diminished ability to
2 compete in the wholesale power and credit markets.

3 16. Item 14 (base case model run output), Item 15 (high fuel case model run output),
4 Item 16 (high load case model run output), Item 17 (RPS case model run output), Item 18
5 (environmental compliance model run output), Item 19 (MISO case model run output), and Item
6 20 (carbon allowance cost model run output) are model run outputs that contain sensitive fuel
7 cost projections, O&M cost projections, heat rate curves, and other information that can be used
8 to determine Big Rivers' cost to produce power. Big Rivers' competitors in the wholesale power
9 market can use this information to underbid Big Rivers. Fuel suppliers could also use this
10 information to manipulate the bidding process, leading to higher costs to Big Rivers and a
11 diminished ability to compete in the wholesale power and credit markets.

12 17. The Confidential Information is not publicly available, is not disseminated within
13 Big Rivers except to those employees and professionals with a legitimate business need to know
14 and act upon the information, and is not disseminated to others without a legitimate need to
15 know and act upon the information. As such, the Confidential Information is generally
16 recognized as confidential and proprietary.

17 18. Disclosure of the Confidential Information would permit an unfair commercial
18 advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition
19 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
20 competitive injury if the Confidential Information was publicly disclosed. The Confidential
21 Information reveals highly sensitive information about Big Rivers' historical and projected
22 demand, resource, and financial data, and other operating performance and system information,

1 in addition to the facts, assumptions, and conclusions on which the plan is based and the actions
2 that the plan proposes.

3 19. If the Confidential Information is publicly disclosed, potential bulk power supply
4 bidders and fuel supply bidders could manipulate the bid solicitation process injuring the ability
5 of Big Rivers to buy power at the most competitive prices and leading to higher fuel costs to Big
6 Rivers, both of which place Big Rivers at an unfair competitive disadvantage.

7 20. Additionally, the power producers and marketers with which Big Rivers competes
8 could use the Confidential Information relating to historical and future costs and revenue
9 requirements to potentially underbid Big Rivers in wholesale transactions, which would further
10 constitute an unfair competitive disadvantage to Big Rivers.

11 C. The Confidential Information is Entitled to Confidential Protection

12 21. Based on the foregoing, the Confidential Information is entitled to confidential
13 protection.


14 III. The Commission is Required to Hold an Evidentiary Hearing

15 22. The Confidential Information should be given confidential protection. If the
16 Commission disagrees that Big Rivers is entitled to confidential protection, due process requires
17 the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v. Kentucky Water*
18 *Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

21 On this the 15th day of November, 2010.

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James M. Miller
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Sullivan, Mountjoy, Stainback
& Miller, P.S.C.
100 St. Ann Street
P.O. Box 727
Owensboro, Kentucky 42302-0727
(270) 926-4000

COUNSEL FOR BIG RIVERS
ELECTRIC CORPORATION