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PUBLIC SERVICE  
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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION	)	
OF THE FUEL ADJUSTMENT CLAUSE OF	)	
BIG RIVERS ELECTRIC CORPORATION	)	CASE NO. 2012-00323
FROM NOVEMBER 1, 2011 THROUGH	)	
APRIL 30, 2012	)	

**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 two fuel contract solicitation bid tabulation sheet (the "Confidential Information") filed as exhibits to Big Rivers' response to Items 19b and 20b of the requests for information contained in the Appendix to the Commission's August 22, 2012, Order in this matter.

2. Big Rivers seeks confidential treatment of the entirety of both bid tabulation sheets. One (1) sealed copy of each bid tabulation sheet printed on yellow paper is attached to this petition. A page indicating that the bid tabulation sheets are being filed under seal is attached to the original and each of the ten (10) copies of Big Rivers' responses to Items 19b and 20b filed with this petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).

3. There are currently no other parties to this proceeding on which copies of this petition can be served. Big Rivers will provide a copy of the exhibits to any person who is granted full intervention by the Commission in this proceeding and who signs a confidentiality agreement. 807 KAR 5:001 Section 7(2)(c).



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>

3 **II. The Confidential Information is Generally Recognized as Confidential or**  
4 **Proprietary**

5 8. The Confidential Information (two bid tabulation sheets) contains confidential  
6 bids supplied by fuel suppliers and Big Rivers' ranking of those bids, and it gives insight into the  
7 internal, confidential bid selection methodology that Big Rivers uses. The Commission has often  
8 found that similar information relating to competitive bidding is generally recognized as  
9 confidential and proprietary. *See, e.g.*, Order dated August 4, 2003, in *In the Matter of:*  
10 *Application of the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case  
11 No. 2003-00054 (finding that bids submitted to a utility were confidential). In fact, the  
12 Commission has granted confidential protection to the same type of information that is presented  
13 in the bid tabulation sheets when provided by other utilities in cases involving a review of their  
14 fuel adjustment clauses. *See, e.g.*, letter from the Commission dated October 23, 2009, granting  
15 confidential protection to East Kentucky Power Cooperative, Inc.'s bid tabulation sheet and  
16 related information in Case No. 2009-00286; letter from the Commission dated December 11,  
17 2009, granting confidential protection to Kentucky Utilities Company's coal bid analysis  
18 procedure in Case No. 2009-00287. The Commission has also granted confidential protection to  
19 the bid tabulation sheets that Big Rivers filed in previous reviews of its fuel adjustment clause.  
20 *See, e.g.*, letter from the Commission dated May 10, 2010, in Case No. 2009-00510; letter from  
21 the Commission dated September 22, 2010, in Case No. 2010-00269.

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<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.

1           9.       The Confidential Information is not publicly available, is not disseminated within  
2 Big Rivers except to those employees and professionals with a legitimate business need to know  
3 and act upon the information, and is not disseminated to others without a legitimate need to  
4 know and act upon the information. As such, the Confidential Information is generally  
5 recognized as confidential and proprietary.

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

7                               **Advantage to Big Rivers' Competitors**

8           10.       Disclosure of the Confidential Information would permit an unfair commercial  
9 advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition  
10 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer  
11 competitive injury if the Confidential Information was publicly disclosed. In PSC Case No.  
12 2003-00054, the Commission granted confidential protection for bids submitted to Union Light  
13 Heat & Power ("ULH&P"). ULH&P's argued, and the Commission implicitly accepted, that the  
14 bidding contractors would not want their bid information publicly disclosed, and that disclosure  
15 would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs,  
16 hurting its ability to compete with other gas suppliers. Order dated August 4, 2003, in *In the*  
17 *Matter of: Application of the Union Light, Heat and Power Company for Confidential*  
18 *Treatment*, PSC Case No. 2003-00054. Similarly, in *Hoy v. Kentucky Indus. Revitalization*  
19 *Authority*, the Kentucky Supreme Court found that without protection for confidential  
20 information provided to a public agency, "companies would be reluctant to apply for investment  
21 tax credits for fear the confidentiality of financial information would be compromised. *Hoy v.*  
22 *Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

1           11.     In Big Rivers' case, if confidential treatment of the bid tabulation sheets is denied,  
2 potential bidders would know that their bids would be publicly disclosed, which could reveal  
3 information to their competitors about their competitiveness. Because many companies would  
4 be reluctant to have such information disclosed, public disclosure of Big Rivers' bid tabulation  
5 sheets would likely suppress the competitive bidding process and reduce the pool of bidders  
6 willing to bid to supply Big Rivers' fuel needs, driving up Big Rivers' fuel costs (which could  
7 then drive up the cost of credit to Big Rivers) and impairing its ability to compete in the  
8 wholesale power market.

9           12.     Also, the information contained in the bid tabulation sheets reveals the procedure  
10 and strategies Big Rivers follows and the factors and inputs it considers in evaluating bids for  
11 fuel supply. If the documents are publicly disclosed, potential bidders could manipulate the bid  
12 solicitation process to the detriment of Big Rivers and its members by tailoring bids to  
13 correspond to and comport with Big Rivers' bidding criteria and process. In PSC Case No.  
14 2003-00054, the Commission granted confidential protection to bids submitted to ULH&P. In  
15 addition to the other arguments discussed above, ULH&P argued, and the Commission implicitly  
16 accepted, that if the bids it received were publicly disclosed, contractors on future work could  
17 use the bids as a benchmark, which would likely lead to the submission of higher bids. Order  
18 dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat and Power*  
19 *Company for Confidential Treatment*, PSC Case No. 2003-00054. The Commission also  
20 implicitly accepted ULH&P's further argument that the higher bids would lessen ULH&P's  
21 ability to compete with other gas suppliers. *Id.* Similarly, potential bidders manipulating Big  
22 Rivers' bidding process would lead to higher fuel costs to Big Rivers and would place it at an  
23 unfair competitive disadvantage in the wholesale power market.

