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COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION		SEP 1-1 2012	
In the Matter of:	COMMINISSION	PUBLIC SERVICE COMMISSION	
AN EXAMINATION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF BIG RIVERS ELECTRIC CORPORATION FROM NOVEMBER 1, 2011 THROUGH APRIL 30, 2012))) CASE NC))	0. 2012-00323	
PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL			
PROTECTION			

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15 1. Big Rivers Electric Corporation ("<u>Big Rivers</u>") hereby petitions the Kentucky 16 Public Service Commission ("<u>Commission</u>"), pursuant to 807 KAR 5:001 Section 7 and KRS 17 61.878(1)(c), to grant confidential protection to two fuel contract solicitation bid tabulation sheet 18 (the "Confidential Information") filed as exhibits to Big Rivers' response to Items 19b and 20b 19 of the requests for information contained in the Appendix to the Commission's August 22, 2012, 20 Order in this matter.

2. Big Rivers seeks confidential treatment of the entirety of both bid tabulation 22 sheets. One (1) sealed copy of each bid tabulation sheet printed on yellow paper is attached to 23 this petition. A page indicating that the bid tabulation sheets are being filed under seal is 24 attached to the original and each of the ten (10) copies of Big Rivers' responses to Items 19b and 25 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). 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 5. As discussed below, the Confidential Information is entitled to confidential 6 protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to 7 an agency or required by an agency to be disclosed to it, generally recognized as confidential or 8 proprietary, which if openly disclosed would permit an unfair commercial advantage to 9 competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1).

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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.

18 7. Big Rivers also competes for reasonably-priced credit in the credit markets, and 19 its ability to compete is directly impacted by its financial results. Any event that adversely 20 affects Big Rivers' margins will adversely affect its financial results and potentially impact the 21 price it pays for credit. As was described in the proceeding before this Commission in the Big

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

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II.

Proprietary

The Confidential Information is Generally Recognized as Confidential or

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 internal, confidential bid selection methodology that Big Rivers uses. The Commission has often 7 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. See, e.g., letter from the Commission dated May 10, 2010, in Case No. 2009-00510; letter from 20 the Commission dated September 22, 2010, in Case No. 2010-00269. 21

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.

9. 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.

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III.

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Advantage to Big Rivers' Competitors

Disclosure of the Confidential Information Would Permit an Unfair Commercial

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 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer 10 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 Heat & Power ("ULH&P"). ULH&P's argued, and the Commission implicitly accepted, that the 13 14 bidding contractors would not want their bid information publicly disclosed, and that disclosure would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs, 15 16 hurting its ability to compete with other gas suppliers. Order dated August 4, 2003, in In the Matter of: Application of the Union Light, Heat and Power Company for Confidential 17 Treatment, PSC Case No. 2003-00054. Similarly, in Hoy v. Kentucky Indus. Revitalization 18 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 solicitation process to the detriment of Big Rivers and its members by tailoring bids to 12 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 addition to the other arguments discussed above, ULH&P argued, and the Commission implicitly 15 accepted, that if the bids it received were publicly disclosed, contractors on future work could 16 use the bids as a benchmark, which would likely lead to the submission of higher bids. Order 17 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.

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IV. The Confidential Information is Entitled to Confidential Protection

2 13. Based on the foregoing, the Confidential Information is entitled to confidential3 protection.

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V. The Commission is Required to Hold an Evidentiary Hearing

5 14. The Confidential Information should be given confidential protection. If the 6 Commission disagrees that Big Rivers is entitled to confidential protection, due process requires 7 the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v. Kentucky Water* 8 *Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

9 WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect

- 10 as confidential the Confidential Information.
- 11 On this the 10^{th} day of September, 2012.

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