

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

RECEIVED

3 FEB 28 2013

4
5 In the Matter of:

PUBLIC SERVICE
COMMISSION

6
7 Application of Big Rivers Electric)
8 Corporation for a General) Case No. 2012-00535
9 Adjustment in Rates)

10
11
12 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**
13 **PROTECTION**
14

15 1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the
16 Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR
17 5:001 Section 13 and KRS 61.878, to grant confidential protection to certain
18 information Big Rivers is filing with its responses to Kentucky Industrial Utility
19 Customers, Inc.’s (“KIUC’s”) and the Office of the Attorney General’s (“AG’s”),
20 Initial Requests for Information, and the Commission’s (“PSC’s”) Second
21 Requests for Information. The information Big Rivers seeks to protect as
22 confidential is hereinafter referred to as the “Confidential Information.”

23 2. The Confidential Information includes:

- 24 a. portions of the responses and/or attachments to the responses to
25 Items 1, 2, 3, 6, 7, 13, 36(f), 38, 39, and 42 of KIUC’s First Request
26 for Information (“KIUC 1-1,” “KIUC 1-2,” “KIUC 1-3,” “KIUC 1-6,”
27 “KIUC 1-7,” “KIUC 1-13,” “KIUC 1-36(f),” “KIUC 1-38,” “KIUC 1-39”
28 and “KIUC-1-42 respectively);
- 29 b. portions of the responses and/or attachments to the responses to
30 Items 7, 10, 17, 18, 25(g), 31, 34, 38, 39, 46, 50, 60, 62, 88, 89,

1 93, 94, 96, 97, 100, 101, 102, 103, 104, 105, 107, 109, 115, 116,
2 118, 119, 121, 131, 143, 150, 152, 154, 165, 166, 167, 171, 172,
3 186, 190, 212, 231, 233, 236, 239, 246(o), 249, 267, 275, an 278
4 of the AG’s Initial Request for Information (“AG 1-7,” “AG 1-10,”
5 “AG 1-17,” “AG 1-18,” “AG 1-25(g),” “AG 1-31,” “AG 1-34,” “AG 1-
6 38,” “AG 1-39,” “AG 1-46,” “AG 1-50,” “AG 1-60,” “AG 1-62,” “AG 1-
7 80,” “AG 1-85,” “AG 1-88,” “AG 1-89,” “AG 1-93,” “AG 1-94,” “AG 1-
8 96,” “AG 1-97,” “AG 1-100,” “AG 1-101,” “AG 1-102,” “AG 1-103,”
9 “AG 1-104,” “AG 1-105,” “AG 1-107,” “AG 1-109,” “AG 1-115,” “AG
10 1-116,” “AG 1-118,” “AG 1-119,” “AG 1-120,” “AG 1-121,” “AG 1-
11 131,” “AG 1-143,” “AG 1-150,” “AG 1-152,” “AG 1-154,” “AG 1-
12 156,” “AG 1-165,” “AG 1-166,” “AG 1-167,” “AG 1-171,” “AG 1-
13 172,” “AG 1-186,” “AG 1-190,” “AG 1-212,” “AG 1-228,” “AG 1-
14 231,” “AG 1-233,” “AG 1-236,” “AG 1-239,” “AG 1-246(o),” “AG 1-
15 249,” “AG 1-267,” “AG 1-275,” “AG 1-278,” respectively);

16 c. portions of the responses and/or attachments to the responses to
17 Items 4, 6, 9, 15, 18, 21, 23, 26, 34, 36, 37, and 39 of the
18 Commission’s Second Request for Information (“PSC 2-4,” “PSC 2-
19 6,” “PSC 2-9,” “PSC 2-15,” “PSC 2-18,” “PSC 2-21,” “PSC 2-23,”
20 “PSC 2-26,” “PSC 2-34,” “PSC 2-36,” “PSC 2-37,” and “PSC 2-39,”
21 respectively).

22 3. Two (2) copies of the hardcopy pages containing Confidential
23 Information, with the Confidential Information highlighted with transparent

1 ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL," is being
2 filed with this petition. A copy of those pages, with the Confidential
3 Information redacted, is being filed with the original and each of the ten (10)
4 copies of the responses to the information requests filed with this petition. 807
5 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

6 4. One (1) copy of the electronic attachments containing Confidential
7 Information is contained on the CD marked "CONFIDENTIAL" that
8 accompanies this petition. Because the Confidential Information is inextricably
9 intertwined with non-confidential information in the electronic spreadsheet
10 attachments in response to certain requests, Big Rivers cannot redact only the
11 Confidential Information from the electronic spreadsheet attachments without
12 making other cells in the spreadsheets unusable, and so, the entirety of the
13 attachments must be made confidential. As such, the entirety of the
14 confidential CDs has been redacted from the original and each of the ten (10)
15 copies of the responses to the information requests filed with this petition. 807
16 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b). A motion for deviation from the
17 requirement that Big Rivers file paper copies of the attachments accompanies
18 this petition.

19 5. A copy of this petition with the Confidential Information redacted
20 has been served on all parties to this proceeding. 807 KAR 5:001 Section
21 13(2)(c). A copy of the Confidential Information has been served on all parties
22 that have signed a confidentiality agreement with the exception of two of the
23 attachments to PSC 2-18, which are being provided only to the Commission.

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

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

10 8. As discussed below, the Confidential Information is entitled to
11 confidential protection based upon KRS 61.878(1)(m) or KRS 61.878(1)(c)(1),
12 KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1).

13 **I. Information Protected by KRS 61.878(1)(m)**

14 9. KRS 68.878(1)(c)(1) protects “[p]ublic records the disclosure of
15 which would have a reasonable likelihood of threatening the public safety by
16 exposing a vulnerability in preventing protecting against, mitigating, or
17 responding to a terrorist act. . . .”

18 10. The Confidential Information contained in the attachments to the
19 response to KIUC 1-36(f) includes proprietary information regarding Big Rivers’
20 system reliability.

21 11. The Confidential Information contained in the attachments to the
22 response to AG 1-121 includes Big Rivers’ system mapping information.

23 **II. Information Protected By KRS 61.878(1)(c)(1)**

1 **A. Big Rivers Faces Actual Competition**

2 12. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an
3 agency or required by an agency to be disclosed to it, generally recognized as
4 confidential or proprietary, which if openly disclosed would permit an unfair
5 commercial advantage to competitors of the entity that disclosed the records.”

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

15 14. Big Rivers also competes for reasonably priced credit in the credit
16 markets, and its ability to compete is directly impacted by its financial results.
17 Any event that adversely affects Big Rivers’ margins will adversely affect its
18 financial results and potentially impact the price it pays for credit. As was
19 described in the proceeding before this Commission in the Big Rivers Unwind
20 Transaction, P.S.C. Case No. 2011-00036, Big Rivers expects to be in the credit
21 markets on a regular basis in the future.¹

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 **B. The Confidential Information is Generally Recognized as**
2 **Confidential or Proprietary**

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

7 16. The Confidential Information contained on pages 213 and 252 of
8 the attachments to the response to KIUC 1-1 includes information regarding
9 planned outages.

10 17. The Confidential Information contained in the attachments to the
11 responses to KIUC 1-2 and 1-3 includes communications relating to terms of a
12 loan Big Rivers is actively negotiating with National Rural Utilities Cooperative
13 Finance Corporation (“CFC”), as well as negotiations with respect to its
14 revolving credit agreement with CoBank ACB (“CoBank”).

15 18. The Confidential Information contained in the attachments to the
16 response to KIUC 1-6 includes internal communications with its Members
17 regarding ongoing negotiations of a sensitive nature.

18 19. The Confidential Information contained in the attachments to the
19 response to KIUC 1-7 includes communications related to continuing
20 negotiations that are subject to a confidentiality agreement for sale of excess
21 capacity.

22 20. The Confidential Information contained in the response
23 attachments to the response to KIUC 1-13 includes Big Rivers’ budgets,
24 financial forecasts, and other documents, which contain Confidential
25 Information including detailed financial information including projected

1 operating and maintenance (“O&M”) expenses, including fuel costs and
2 information relating to generation levels. The Information also includes off-
3 system sales volumes, revenues, and prices, and information obtained during
4 confidential negotiations with other market participants or potential creditors.

5 21. The Confidential Information contained in the attachments to the
6 response to KIUC 1-38 includes data related to off-system sales requirements.

7 22. The Confidential Information contained in the response to KIUC 1-
8 39 includes production cost model outputs.

9 23. The Confidential Information contained in the attachments to the
10 response to KIUC 1-42 includes production cost model non-fuel O&M
11 forecasts.

12 24. The Confidential Information contained in the attachments to the
13 response to AG 1-7 includes Big Rivers’ budgets, financial forecasts, and other
14 documents, which contain Confidential Information detailing Big Rivers’
15 projected O&M expenses, including fuel costs, information relating to
16 generation levels and off-system sales volumes, revenues, and prices, and
17 similar information in the Unwind Transaction that is the subject of PSC Case
18 No. 2007-00455.

19 25. The Confidential Information contained in the attachments to the
20 response to AG 1-10 includes financial presentations to ratings agencies.

21 26. The Confidential Information contained in the attachments to the
22 response to AG 1-17 consists of current and future budgets and financial
23 modeling including O&M expenses.

1 27. The Confidential Information contained in the attachments to the
2 response to AG 1-18 includes data regarding Big Rivers' off-system sales
3 revenues.

4 28. The Confidential Information contained in the attachments to the
5 response to AG 1-25(g) includes minutes of Big Rivers' internal risk
6 management committee meetings from January 2012 through January 2013.

7 29. The Confidential Information contained in the attachments to the
8 response to AG 1-31 includes variable production costs analyses.

9 30. The Confidential Information contained in the attachments to the
10 response to AG 1-34 includes O&M data and internal financial documents,
11 including Big Rivers' general ledger.

12 31. The Confidential Information contained in the attachments for the
13 response to AG 1-38 includes Board meeting minutes from 2010-present and
14 other documents considered at the Board meetings from 2010-present.

15 32. The Confidential Information contained in the attachments for the
16 response to AG 1-39 and includes information relating to internal management
17 reports and strategic planning.

18 33. The Confidential Information contained in the attachments to the
19 response to AG 1-46 includes documents detailing Big Rivers' O&M expenses,
20 budget and sales variances, production costs, and sales revenues and margins.

21 34. The Confidential Information contained in the attachments to the
22 response to AG 1-50 includes future planned outage information.

1 35. The Confidential Information contained in the attachments to the
2 response for AG 1-60 includes details regarding negotiations between Big
3 Rivers, Century Aluminum and Alcan.

4 36. The Confidential Information contained in the attachments to the
5 response to AG 1-62 includes off-system sales information.

6 37. The Confidential Information contained in the attachments to the
7 response to AG 1-85 includes confidential production-related metrics and/or
8 modeling.

9 38. The Confidential Information contained in the attachments to the
10 response to AG 1-88 includes planned outage and risk assessment
11 information.

12 39. The Confidential Information contained in the attachments to the
13 response to AG 1-89 includes information related to Big Rivers' Load
14 Concentration Analysis and Mitigation Plan.

15 40. The Confidential Information contained in the attachments to the
16 response to AG 1-93 includes MISO transmission forecasts.

17 41. The Confidential Information contained in the attachments to the
18 response to AG 1-94 includes a spreadsheet containing MISO charges for its
19 sale of excess capacity.

20 42. The Confidential Information contained in the response
21 attachments to the response to AG 1-96 includes TVA transmission revenue
22 information.

1 43. The Confidential Information contained in the attachments to the
2 response to AG 1-97 includes confidential production-related metrics and/or
3 modeling.

4 44. The Confidential Information contained in the response to the
5 response to AG 1-100 includes future planned outage information.

6 45. The Confidential Information contained in the response to AG 1-
7 101 includes future planned outage information.

8 46. The Confidential Information contained in the attachments AG 1-
9 102 includes projected expense and outage information.

10 47. The Confidential Information contained in the attachments to the
11 response to AG 1-103 includes details about Big Rivers' Load Concentration
12 Analysis and Mitigation Plan.

13 48. The Confidential Information contained in the attachments to the
14 response to AG 1-104 includes information on future capital construction
15 projects.

16 49. The Confidential Information contained in the attachments to the
17 response to AG 1-105 includes information on future capital construction
18 projects.

19 50. The Confidential Information contained in the response to AG 1-
20 107 includes MISO forecast data.

21 51. The Confidential Information contained in the response to AG 1-
22 109 includes details about Big Rivers' energy emergency alert event
23 information.

1 52. The Confidential Information contained in the attachments to the
2 response to AG 1-115 includes Big Rivers' engineering budget and financial
3 plans.

4 53. The Confidential Information contained in the responses to AG 1-
5 116 and AG 1-118 includes details about Big Rivers' Load Concentration
6 Analysis and Mitigation Plan.

7 54. The Confidential Information contained in the attachments to the
8 response to AG 1-119 includes engineering planning and forecasting.

9 55. The Confidential Information contained in the response to AG 1-
10 120 includes details about Big Rivers' Load Concentration Analysis and
11 Mitigation Plan.

12 56. The Confidential Information contained in the attachments to the
13 response to AG 1-131 includes current and future budgets and financial
14 models, including O&M expenses.

15 57. The Confidential Information contained in the attachments to the
16 response to AG 1-143 includes projected outage information.

17 58. The Confidential Information contained in the attachments to the
18 response to AG 1-150 includes information on emissions projections.

19 59. The Confidential Information contained in the attachments to the
20 response to AG 1-152 includes financial forecasts and O&M cost information.

21 60. The Confidential Information contained in the attachments to the
22 response to AG 1-154 includes Big Rivers' budget and financial planning
23 information.

1 61. The Confidential Information contained in the attachments to the
2 response to AG 1-156 includes its rural and industrial power cost data from
3 2010-2012.

4 62. The Confidential Information contained in the attachments to the
5 response to AG 1-165 includes documents which contain information detailing
6 Big Rivers' O&M expenses, budget and sales variances, production costs, and
7 sales revenues and margins.

8 63. The Confidential Information contained in the attachments to the
9 response to AG 1-166 includes off-system sales data.

10 64. The Confidential Information contained in the attachments to the
11 response to AG 1-167 includes financial models presented to Big Rivers' Board
12 of Directors.

13 65. The Confidential Information contained in the attachments to the
14 responses to AG 1-171 and AG 1-172 includes information relating to
15 confidential negotiations between Big Rivers, Century, and Alcan.

16 66. The Confidential Information contained in the attachments to the
17 response to AG 1-186 includes documents which contain information detailing
18 Big Rivers' O&M expenses, operating budgets, and other proprietary financial
19 data.

20 67. The Confidential Information contained in the attachments to the
21 response to AG 1-190 includes budget planning and forecasts.

1 68. The Confidential Information contained in the attachments to the
2 response to AG 1-212 includes information that includes the confidential
3 lockbox agreement with the USDA’s Rural Utility Service.

4 69. The Confidential Information contained in the response to AG 1-
5 228 includes proprietary MISO market forecasts inputs.

6 70. The Confidential Information contained in the attachments to the
7 response to AG 1-231 includes Midwest Independent System Operator market
8 forecast input information.

9 71. The Confidential Information contained in the attachments to the
10 response to AG 1-233 includes load forecasts an input file to the load forecast
11 model.

12 72. The Confidential Information contained in the attachments to the
13 response to AG 1-236 includes production cost model runs.

14 73. The Confidential Information contained in the first attachment to
15 the response to AG 1-239 includes the 2013-2016 capital plan.

16 74. The Confidential Information contained in the attachments to the
17 response to AG 1-246(o) includes information about Big Rivers’ forecasted
18 costs.

19 75. The Confidential Information contained in the attachment to the
20 response to AG 1-249 includes budget forecasts and financial plans.

21 76. The Confidential Information contained in the attachments to the
22 response to AG 1-267 includes descriptions of the inputs as well as the inputs
23 for Big Rivers’ budget forecasting model.

1 77. The Confidential Information contained in the response to AG 1-
2 275 includes information about planned outages.

3 78. The Confidential Information contained in the response to AG 1-
4 278 includes information about planned outages.

5 79. The Confidential Information contained in the attachments to the
6 response to PSC 2-4 includes documents which contain information detailing
7 Big Rivers' O&M expenses and operating budget data.

8 80. The Confidential Information contained in the response to PSC 2-6
9 includes O&M expenses related to Big Rivers' Wilson plant.

10 81. The Confidential Information contained in the attachments to the
11 response to PSC 2-9 includes off-system sales data.

12 82. The Confidential Information contained in the attachments to the
13 response to PSC 2-15 includes planned outage and deferred maintenance
14 schedules.

15 83. The Confidential Information contained in the attachments and
16 response to PSC 2-18 includes communications related to proposals and
17 negotiations for sale of excess capacity or other assets that are subject to one
18 or more confidentiality agreements, documents relating to those proposals and
19 negotiations, and financial valuation analyses prepared on behalf of Big Rivers.

20 84. The Confidential Information contained in the attachments to the
21 response to PSC 2-21 includes production cost, variable cost, and capital cost
22 information.

1 85. The Confidential Information contained in the attachments to the
2 response to PSC 2-23 includes fixed transmission expenses and Big Rivers’
3 three-year construction plan.

4 86. The Confidential Information contained in the attachments to the
5 response to PSC 2-26 includes O&M costs and other budget information.

6 87. The Confidential Information contained in the response to PSC 2-
7 34 includes data relating to Big Rivers’ production costs.

8 88. The Confidential Information contained in the attachments to the
9 response to PSC 2-36 includes recent and projected off-system sales prices,
10 schedules and budgets for future planned outages, detailed information about
11 projected O&M expenses, and projected revenues associated with Big Rivers’
12 rights across the TVA transmission system.

13 89. The Confidential Information contained in the attachments to the
14 response to PSC 2-37 includes recent and projected off-system sales prices,
15 schedules and budgets for future planned outages, detailed information about
16 projected O&M expenses, and projected revenues associated with Big Rivers’
17 right to transmit across the TVA transmission system.

18 90. The Confidential Information contained in the attachments to the
19 response to PSC 2-39 includes information relating to O&M costs.

20 91. Public disclosure of the Confidential Information would reveal
21 detailed information relating to Big Rivers’ recent and projected cost of
22 producing power (including projected fuel and other O&M costs); recent and
23 projected off-system sales volumes and prices; recent purchased power

1 volumes and prices; and Big Rivers' future need for power or availability of
2 excess power to sell into the market. Knowledge of such data will give Big
3 Rivers' suppliers and competitors an unfair competitive advantage.

4 92. Public disclosure of the Confidential Information during the
5 pending negotiations with CFC will impair Big Rivers' ability to negotiate with
6 CoBank and other potential letters, leading to less favorable terms and higher
7 prices to Big Rivers. In addition, public disclosure of Confidential Information
8 relating to negotiations with Century and others subject to common interest/
9 confidentiality agreements will impair Big Rivers' ability to remain competitive
10 in the wholesale power market because competitors can use these previous
11 confidential negotiations to impact future negotiations with either Big Rivers or
12 Big Rivers' suppliers, customers, or creditors, leading to an unfair competitive
13 advantage.

14 93. Public disclosure of the information relating to generation levels
15 and planned outage schedules would help Big Rivers' suppliers, buyers, and
16 competitors to determine when Big Rivers will have power available to sell into
17 the market or when Big Rivers needs power, and the amount of power Big
18 Rivers has to sell.

19 94. Public disclosure of the projected O&M costs and fuel costs, recent
20 purchased power amounts and costs, and recent and projected off-system sales
21 prices and revenues will give Big Rivers' suppliers, buyers, and competitors
22 insight into Big Rivers' cost of producing power, and Big Rivers' view of future

1 fuel prices and market power prices, which would indicate the prices at which
2 Big Rivers is willing to buy or sell such items.

3 95. Information about a company's detailed inner workings is generally
4 recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus.*
5 *Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a
6 degree in finance to recognize that such information concerning the inner
7 workings of a corporation is 'generally recognized as confidential or
8 proprietary"); *Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks*,
9 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply
10 from "the ability to ascertain the economic status of the entities without the
11 hurdles systemically associated with the acquisition of such information about
12 privately owned organizations").

13 96. Moreover, the Commission has previously granted confidential
14 treatment to similar information. *See, e.g.*, letters from the Commission dated
15 July 28, 2011, and December 20, 2011, in *In the Matter of: Application of Big*
16 *Rivers Electric Corporation for a General Adjustment in Rates*, PSC Case No.
17 2011-00036 (granting confidential treatment to multi-year forecast); *Application*
18 *of Big Rivers Electric Corporation for Approval of Its Environmental Compliance*
19 *Plan*, P.S.C. Case No.2012-00063 (granting confidential treatment to the
20 mitigation plan in the ECP Case); letter from the Commission dated December
21 21, 2010, in *In the Matter of: The 2010 Integrated Resource Plan of Big Rivers*
22 *Electric Corporation*, P.S.C. Case No. 2010-00443 (granting confidential
23 treatment to fuel cost projections, revenue projections, market price

1 projections, financial model outputs, etc.); letter from the Commission dated
2 July 20, 2010, in Administrative Case No. 387 (granting confidential treatment
3 to a list of future scheduled outages, which can give competitors insight into
4 Big Rivers' wholesale power needs); two letters from the Commission dated
5 December 11, 2012, in *In the Matter of: Application of Big Rivers Electric*
6 *Corporation for Approval of its 2012 Environmental Compliance Plan, for*
7 *Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for*
8 *Certificates of Public Convenience and Necessity, and for Authority to Establish a*
9 *Regulatory Account*, P.S.C. Case No. 2012-00063 (granting confidential
10 treatment to Big Rivers' O&M expenses, and off-system sales and revenues).

11 **C. Disclosure of the Confidential Information Would Permit**
12 **an Unfair Commercial Advantage to Big Rivers'**
13 **Competitors**
14

15 97. Disclosure of the Confidential Information would permit an unfair
16 commercial advantage to Big Rivers' competitors. As discussed above, Big
17 Rivers faces actual competition in the wholesale power market and in the credit
18 market. It is likely that Big Rivers would suffer competitive injury if that
19 Confidential Information was publicly disclosed.

20 98. The Confidential Information includes material such as Big Rivers'
21 projections of fuel costs and power prices. If that information is publicly
22 disclosed, market participants would have insight into the prices Big Rivers is
23 willing to buy and sell fuel at and could manipulate the bidding process,
24 leading to higher prices or lower revenues for Big Rivers and impairing its
25 ability to compete in the wholesale power and credit markets. In PSC Case No.

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

14 99. Potential market power purchasers could use the information
15 related to Big Rivers’ projected off-system sales and revenues, generation levels,
16 generator availability, planned outages, and future planning to know when Big
17 Rivers is long on power and could use that information to manipulate their
18 bids, leading to lower revenues to Big Rivers and placing it at an unfair
19 competitive disadvantage in the credit markets.

20 100. Additionally, public disclosure of the fuel prices, other variable cost
21 information, and information about Big Rivers’ wholesale power needs would
22 give the power producers and marketers with which Big Rivers competes in the
23 wholesale power market insight into Big Rivers’ cost of producing power and

1 need for power and energy during the periods covered by the information.
2 Knowledge of this information would give those power producers and marketers
3 an unfair competitive advantage because they could use that information to
4 potentially underbid Big Rivers in wholesale transactions. It would also give
5 potential suppliers to Big Rivers a competitive advantage because they will be
6 able to manipulate the price of power bid to Big Rivers in order to maximize
7 their revenues, thereby driving up Big Rivers' costs and impairing Big Rivers'
8 ability to compete in the wholesale power and credit markets.

9 101. Moreover, the Commission has consistently recognized that board
10 minutes, internal strategic planning information, and related materials are
11 entitled to confidential treatment, as these documents typically relate to the
12 company's economic status and business strategies. *See, e.g., In the Matter of:*
13 *The Joint Application of Duke Energy Corp., Cinergy Corp., Duke Energy Ohio,*
14 *Inc., Duke Energy Kentucky, Inc., Diamond Acquisition Corp., and Progress*
15 *Energy, Inc., for Approval of the Indirect Transfer of Control of Duke Energy*
16 *Kentucky, Inc., P.S.C Case No. 2011-00124 (Dec. 5, 2011); In the Matter of: The*
17 *Joint Petition of Kentucky-American Water Co., Thames Water Aqua Holdings*
18 *GmbH, RWE Aktiengesellschaft, Thames Water Aqua U.S. Holdings, Inc., and*
19 *Am. Water Works Co., Inc. for Approval of a Change in Control of Kentucky-*
20 *American Water Co., P.S.C. Case No. 2006-00197 (Aug. 29, 2006) (holding that*
21 *reports from the joint applicants' financial advisors and all board of director*
22 *minutes and information is confidential because competitors could use it to*

1 gain unfair competitive advantage). Accordingly, this information should be
2 granted confidential treatment.

3 **III. Time Period**

4 102. Big Rivers requests that the Confidential Information protected by
5 KRS 61.878(1)(m) remain confidential indefinitely because as long as the
6 transmission remains in place, the information should be confidential for the
7 reasons stated above. The rest of the confidential information remain
8 confidential for a period of five (5) years from the date of this petition, which
9 should allow sufficient time for the projected data to become historical and
10 sufficiently outdated that it could not be used to determine similar confidential
11 information at that time. 807 KAR 5:001 Section 13(2)(a)(2).

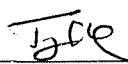
12 **IV. Conclusion**

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

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

20 On this the 28th day of February, 2013.

21 Respectfully submitted,

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24 _____
25 James M. Miller
26 Tyson Kamuf

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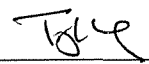
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Counsel for Big Rivers Electric
Corporation

Certificate of Service

I certify that a true and accurate copy of the foregoing was or will be served by Federal Express or by hand delivery upon the persons listed on the attached service list, on the date this petition is filed with the Kentucky Public Service Commission or the following day.

On this the 28th day of February,
2013,



Tyson Kamuf