1 2 3	COMMONWEALTH OF KENTUCKY BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION RECEIVED		
4 5 6	In the Matter of: FEB 2 1 2014		
7 8 9	Application of Big Rivers Electric) Corporation for a General) Case No. 2012-00535 Adjustment in Rates)		
11 12	PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL		
13 14	TREATMENT		
15	1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky		
16	Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 13 and KRS		
17	61.878, to grant confidential treatment to certain information Big Rivers is filing with its		
18	responses to the Joint Intervenors' Supplemental Rehearing Request for Information. The		
19	information for which Big Rivers seeks confidential treatment is hereinafter referred to as the		
20	"Confidential Information."		
21	2. The Confidential Information includes portions of the responses and/or		
22	attachments to Items 1, 4, 6, 7, and 8 of the Joint Intervenors' Supplemental Rehearing Request		
23	for Information ("JI Rehearing 2-1," "JI Rehearing 2-4," "JI Rehearing 2-6," "JI Rehearing 2-7,"		
24	and "JI Rehearing 2-8," respectively).		
25	3. One (1) copy of the paper attachments with the confidential information		
26	underscored, highlighted with transparent ink, printed on yellow paper, or otherwise marked		
27	"CONFIDENTIAL," is being filed with this petition in a separate sealed envelope marked		
28	"CONFIDENTIAL." A copy of those pages, with the Confidential Information redacted, is		
29	being filed with the original and each of the ten (10) copies of the responses to the data requests		
30	filed with this petition. See 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).		

- 1 4. Additionally, certain requests contain information identified by the Joint
- 2 Intervenors as confidential. This Confidential Information was provided by Big Rivers in
- 3 response to prior data requests in this proceeding, subject to a petition for confidential treatment.
- 4 As discussed below, this information is entitled to confidential treatment during the pendency of
- 5 the petition. See 807 KAR 5:001 Section 13(4).
- 6 5. A copy of this petition with the Confidential Information redacted has been served
- 7 on all parties to this proceeding. See 807 KAR 5:001 Section 13(2)(c). A copy of the
- 8 Confidential Information has been served on all parties that have signed a confidentiality
- 9 agreement.

20

- 10 6. 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
- 12 and act upon the information, and is not disseminated to others without a legitimate need to
- 13 know and act upon the information.
- 7. If and to the extent the Confidential Information becomes generally available to
- 15 the public, whether through filings required by other agencies or otherwise, Big Rivers will
- notify the Commission in writing. See 807 KAR 5:001 Section 13(10)(b).
- 17 8. As discussed below, the Confidential Information is entitled to confidential
- 18 treatment based upon 807 KAR 5:001 Section 13(4), KRS 61.878(1)(a), or KRS 61.878(1)(c)(1).
- 19 See 807 KAR 5:001 Section 13(2)(a)(1).

I. Information Exempted from Public Disclosure by 807 KAR 5:001 Section 13(4)

- 9. 807 KAR 5:001 Section 13(4) provides that material for which confidential
- 22 treatment was requested "shall be accorded confidential treatment" pending action on the
- 23 petition. Pursuant to 807 KAR 5:001 (9)(a), the Joint Intervenors included material in their data

- 1 requests that is subject to Big Rivers' January 28, 2014 Petition for Confidential Treatment in 2 this proceeding. This petition is still pending before the Commission.
- 3 10. JI Rehearing 2-6, JI Rehearing 2-7, and JI Rehearing 2-8 include Confidential 4 Information contained in Big Rivers' attachment for the response to JI Rehearing 1-1(a).

5

6

8

9

16

17

18

19

20

21

22

23

Please see Big Rivers' January 28, 2014 Petition for Confidential Treatment for I1. detailed explanations of the grounds originally cited on which the Confidential Information is entitled to protection. As this petition is still pending before the Commission, the information is 7 entitled to confidential treatment pursuant to 807 KAR 5:001 Section 13(4).

Information Exempted from Public Disclosure by KRS 61.878(1)(a) II.

- 12. KRS 61,878(1)(a) protects "records containing information of a personal nature 10 11 where the public disclosure thereof would constitute a clearly unwarranted invasion of personal 12 privacy."
- The Confidential Information contained in the attachment to JI Rehearing 2-8 13 I3. contains information identifying specific employee positions projected to be eliminated in the 14 event of certain business developments. 15
 - 14. Information falls under the exemption set forth in KRS 61.878(1)(a) if it is of a "personal nature" and if the privacy interest in that personal information outweighs the public good in making the records publicly available. Kentucky Bd. of Examiners of Psychologists v. Courier-Journal, 826 S.W.2d 324, 327 (Ky. 1992). Here, the information contains extremely sensitive employment details that identify which specific positions in a private company are likely to be eliminated in the event of certain business developments. Furthermore, third parties could use the Confidential Information to identify specific employees likely to have their positions terminated – information not available even to those employees or anyone else except a

few select members of senior management. Consequently, the information is of a highly personal nature, and because the details relate to private, not public, employees there is little to no public interest in making these details publicly available. For these reasons, the public disclosure of this information would constitute a clearly unwarranted invasion of personal privacy.

III. Information Exempted from Public Disclosure by KRS 61.878(1)(c)(1)

A. Big Rivers Faces Actual Competition.

- 15. 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 entity that disclosed the records."
- 16. As a generation and transmission cooperative, Big Rivers competes in the wholesale power market to sell energy that it produces in excess to its members' needs. This includes not only the over-the-counter day-ahead and over-the-counter hourly markets to which Big Rivers has access by virtue of its membership in Midcontinent Independent System Operator, Inc. ("MISO"), but also for forward bilateral long-term agreements and wholesale agreements with utilities and industrial customers. The completion of Phase 2 of Big Rivers' transmission upgrades as well as the completion of a 345 kV interconnection with Vectren will enhance Big Rivers' ability to export power off-system. Big Rivers' ability to successfully compete in the market is dependent upon a combination of its ability to: 1) obtain the maximum price for the power it sells; and 2) keep its cost of production as low as possible. Fundamentally, if Big Rivers' cost of producing a unit of power increases, its ability to sell that unit in competition with other utilities is adversely affected.

17. Big Rivers also competes for reasonably priced credit in the credit markets, and its ability to compete is directly impacted by its financial results. Lower revenues and any events that adversely affect Big Rivers' margins will adversely affect its financial results and potentially impact the price it pays for credit. A competitor armed with Big Rivers' proprietary and confidential information will be able to increase Big Rivers' costs or decrease Big Rivers' revenues, which could in turn affect Big Rivers' apparent creditworthiness. A utility the size of Big Rivers that operates generation and transmission facilities will always have periodic cash and borrowing requirements for both anticipated and unanticipated needs. Big Rivers expects to be in the credit markets on a regular basis in the future, and it is imperative that Big Rivers improve and maintain its credit profile.

18. Accordingly, Big Rivers has competitors in both the power and capital markets, and its Confidential Information should be protected to prevent the imposition of an unfair competitive advantage.

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

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

- 20. The Confidential Information contained in the attachment to J1 Rehearing 2-1 includes projected fixed departmental expenses.
- 22 21. The Confidential Information contained in the attachment to JI Rehearing 2-4
 23 includes projected capital expenditures.

22. The Confidential Information contained in the attachment to JI Rehearing 2-8 contains information relating to specific employee positions projected to be eliminated in the event of certain business developments.

- 23. Public disclosure of information relating to Big Rivers' projected capital expenditures would reveal when Big Rivers will have excess power available to sell into the market, or when Big Rivers' generation levels will drop due to maintenance and construction and will have to resort to purchased power to meet its native load. The Commission has previously granted confidential treatment to similar information. See, e.g., In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates, Order, P.S.C. Case No. 2012-00535 (April 25, 2013); P.S.C. Administrative Case No. 387, Letter (July 20, 2010).
- 24. Public disclosure of the projected fixed departmental expenses would provide insight into Big Rivers' cost of producing power and would indicate the prices at which Big Rivers is willing to buy or sell power and production factors. The Commission has previously granted confidential treatment to similar information. See, e.g.. In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates, Order, P.S.C. Case No. 2013-00199 (November 25, 2013) (granting confidential treatment to projected fixed departmental expense information contained in Big Rivers' responses to AG 1-105, AG 1-106, and PSC 2-19); In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates, Order, P.S.C. Case No. 2012-00535 (August 14,2013); In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, Letter, P.S.C. Case No. 2012-00063 (August 15, 2012).

25. Finally, public disclosure of the Confidential Information would reveal details of Big Rivers' fundamental financial data and projections, as well as sensitive plans regarding projected employee terminations. This type of information bears upon a company's detailed inner workings and is generally recognized as confidential or proprietary. See, e.g., Hoy v. Kentucky Indus. Revitalization Authority, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is 'generally recognized as confidential or proprietary'").

injury.

C. Disclosure of the Confidential Information Would Result in an Unfair Commercial Advantage to Big Rivers' Competitors.

12 an unfair commercial advantage. As discussed above in Section III.A, Big Rivers faces actual competition in both the short- and long-term wholesale power markets and in the credit markets.

- Big Rivers' ability to compete in these markets would be adversely affected if the Confidential Information were publicly disclosed, and Big Rivers seeks protection from such competitive
 - 27. If the Confidential Information is publicly disclosed, market participants would have insight into the prices at which Big Rivers is willing to buy and sell power and could manipulate the bidding process, impairing its ability to generate power at competitive rates and thus to compete in the wholesale power markets. Furthermore, any competitive pressure that adversely affects Big Rivers' revenue and margins could make the company appear less creditworthy and thus impair its ability to compete in the credit markets.
 - 28. Potential market power purchasers could use the information related to Big Rivers' future planning to know when Big Rivers will have excess power to sell into the wholesale market and could use that information to manipulate their bids, leading to lower

revenues to Big Rivers. This would place Big Rivers at an unfair competitive disadvantage in the credit markets.

- 29. Publication of the Confidential Information regarding which positions would be terminated in the event the Coleman Station is idled could cause serious competitive repercussions, including unplanned employee departures and the potential "poaching" of employees by Big Rivers' competitors. These repercussions would result in an unfair commercial advantage for Big Rivers' competitors because it would reduce Big Rivers' ability to properly allocate its staff and because the departure of employees could negatively impact Big Rivers' operational and administrative efforts.
 - 30. Finally, the Commission has consistently recognized that internal strategic planning information and related materials are entitled to confidential treatment, as these documents typically relate to the company's economic status and business strategies. See, e.g., Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from "the ability to ascertain the economic status of the entities without the hurdles systemically associated with the acquisition of such information about privately owned organizations").
- 17 31. Accordingly, the public disclosure of the information that Big Rivers seeks to 18 protect would provide Big Rivers' competitors with an unfair commercial advantage.

IV. Time Period

32. Pursuant to 807 KAR 5:001 Section 13(2)(a)(2), Big Rivers requests that the Confidential Information be afforded confidential treatment for the time periods explained below.

- 33. Big Rivers requests that the Confidential Information protected by 807 KAR
 5:001 Section I3(4) remain confidential through the pendency of the January 28, 2014 Petition
 for Confidential Treatment and thereafter, if Big Rivers receives a favorable ruling on the
 - 34. Finally, Big Rivers requests that the Confidential Information protected by KRS 61.878 (I)(a) and 61.878 (I)(c)(I) remain confidential for a period of five (5) years from the date of this petition, which should allow sufficient time for the projected data to become historical and sufficiently outdated that it could not be used to determine similar confidential information at that time or to competitively disadvantage Big Rivers.

10 V. Conclusion

petition, for the time periods specified in the petition.

- 35. Based on the foregoing, the Confidential Information is entitled to confidential treatment pursuant to 807 KAR 5:001 Section 13 and KRS 61.878. If the Commission disagrees that Big Rivers' Confidential Information is entitled to confidential treatment, due process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Comm'n v. Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).
- WHEREFORE, Big Rivers respectfully requests that the Commission grant this petition and classify and treat as confidential the Confidential Information.

1	On this the 20 th day of February, 2014.	
2		Respectfully submitted,
2 3 4		
4		
5		<u> </u>
6		James M. Miller
7		Tyson Kamuf
8		SULLIVAN, MOUNTJOY, STAINBACK
9		& MILLER, P.S.C.
10		I00 St. Ann Street
I 1		P. O. Box 727
12		Owensboro, Kentucky 42302-0727
13		Phone: (270) 926-4000
14		Facsimile: (270) 683-6694
15		jmiller@smsmlaw.com
16		tkamuf@smsmlaw.com
17		
18		
19		Edward T. Depp
20		DINSMORE & SHOHL LLP
21		101 South Fifth Street
22		Suite 2500
23		Louisville, KY 40202
24		Phone: (502) 540-2347
25		Facsimile: (502) 585-2207
26		tip.depp@dinsmore.com
27		
28		
29		Counsel for Big Rivers Electric Corporation
30		