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PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Application of Big Rivers Electric )  
Corporation for a General ) Case No. 2013-00199  
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 13 and KRS 61.878, to grant confidential protection to certain information Big Rivers is filing with its updated response to Item 1 of the Commission Staff’s Third Request for Information. The information Big Rivers seeks to protect as confidential is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information consists of the following:
- a. portions of both the hardcopy and electronic versions of Exhibits Warren-2.1 and Warren-3.1; and
  - b. portions of both the hardcopy and electronic versions of Exhibits Wolfram-3.1 and Wolfram-4.1.

3. One (1) copy of the hardcopy pages containing Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this petition. A copy of the hardcopy pages containing Confidential Information, with the Confidential Information redacted, is being filed

1 with the original and each of the ten (10) copies of Big Rivers' data request responses filed with  
2 this petition. 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

3 4. The confidential version of the exhibits is contained on the CD marked  
4 "CONFIDENTIAL" filed with this petition. Because the Confidential Information is intertwined  
5 with non-confidential information in the electronic spreadsheets on the confidential CD, Big  
6 Rivers cannot redact only the Confidential Information from those electronic spreadsheet  
7 attachments without making other cells in the spreadsheets unusable, and so, the entirety of the  
8 electronic version of the exhibits must be confidential. As such, the entirety of the confidential  
9 CD has been redacted from the original and each of the ten (10) copies of Big Rivers' responses  
10 to the information requests filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3),  
11 13(2)(b).

12 5. A copy of this petition with the Confidential Information redacted has been served  
13 on all parties to this proceeding. 807 KAR 5:001 Section 13(2)(c). A copy of the Confidential  
14 Information has been served on all parties that have signed a confidentiality agreement.

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

19 7. If and to the extent the Confidential Information becomes generally available to  
20 the public, whether through filings required by other agencies or otherwise, Big Rivers will  
21 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section  
22 13(10)(a).



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

4           12.     The Confidential Information consists of projected information from Big Rivers’  
5 financial model, forecasts, cost of service study, statements of operations, income statements,  
6 and similar documents. The Confidential Information reveals Big Rivers’ projected fuel and  
7 other operating and maintenance (“O&M”) expenses; projected generation levels; and projected  
8 off-system sales revenues, volumes, and prices. The Confidential Information also consists of  
9 totals and similar information (in lines such as the Operating Margins lines), which would not  
10 otherwise be confidential; however, if that information was publicly disclosed, it could readily be  
11 used to calculate or back in to Confidential Information in the same document.

12           13.     Public disclosure of the information relating to projected generation levels would  
13 help Big Rivers’ suppliers, buyers, and competitors to determine when Big Rivers will have  
14 power available to sell into the market or when Big Rivers needs power, and the amount of  
15 power Big Rivers has to sell.

16           14.     Public disclosure of the projected fuel and other O&M costs, and projected off-  
17 system sales prices and revenues will give Big Rivers’ suppliers, buyers, and competitors insight  
18 into Big Rivers’ cost of producing power, and Big Rivers’ view of future fuel and other  
19 commodity prices and market power prices, which would indicate the prices at which Big Rivers  
20 is willing to buy or sell such items.

21           15.     Information about a company’s detailed inner workings is generally recognized as  
22 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907  
23 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such

1 information concerning the inner workings of a corporation is ‘generally recognized as  
2 confidential or proprietary’”). Moreover, the Commission has previously granted confidential  
3 treatment to similar information. *See, e.g.*, letters from the Commission dated July 28, 2011, and  
4 December 20, 2011, in *In the Matter of: Application of Big Rivers Electric Corporation for a*  
5 *General Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to  
6 multi-year forecast); letter from the Commission dated December 21, 2010, in *In the Matter of:*  
7 *The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, PSC Case No. 2010-  
8 00443 (granting confidential treatment to fuel cost projections, revenue projections, market price  
9 projections, financial model outputs, *etc.*); letter from the Commission dated July 20, 2010, in  
10 Administrative Case No. 387 (granting confidential treatment to a list of future scheduled  
11 outages, which can give competitors insight into Big Rivers’ wholesale power needs); two letters  
12 from the Commission dated December 11, 2012, in *In the Matter of: Application of Big Rivers*  
13 *Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of*  
14 *its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public*  
15 *Convenience and Necessity, and for Authority to Establish a Regulatory Account*, PSC Case No.  
16 2012-00063 (granting confidential treatment to Big Rivers’ O&M expenses, off-system sales and  
17 revenues, and information such as “Total Sales” and “Electric Energy Revenues” where the basis  
18 for Big Rivers’ claim of confidentiality was that such information could be used with other, non-  
19 confidential information in the attachment to determine other confidential information, such as  
20 projected off-system sales revenues).

21 **III. Disclosure of the Confidential Information Would Permit an Unfair**  
22 **Commercial Advantage to Big Rivers’ Competitors**  
23

24 16. Disclosure of the Confidential Information would permit an unfair commercial  
25 advantage to Big Rivers’ competitors. As discussed above, Big Rivers faces actual competition

1 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer  
2 competitive injury if that Confidential Information was publicly disclosed.

3 17. Public Disclosure of Big Rivers' projections of fuel and other commodity costs,  
4 market power prices, and revenues from transmission rights would give potential suppliers and  
5 buyers of such items insight into the prices at which Big Rivers is willing to buy and sell those  
6 items. Those suppliers and buyers could then manipulate the bidding process, leading to higher  
7 prices or lower revenues for Big Rivers and impair Big Rivers' ability to compete in the  
8 wholesale power and credit markets. In PSC Case No. 2003-00054, the Commission granted  
9 confidential protection to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P  
10 argued, and the Commission implicitly accepted, that if the bids it received were publicly  
11 disclosed, contractors on future work could use the bids as a benchmark, which would likely lead  
12 to the submission of higher bids. Order dated August 4, 2003, in *In the Matter of: Application of*  
13 *the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-  
14 00054. The Commission also implicitly accepted ULH&P's further argument that the higher  
15 bids would lessen ULH&P's ability to compete with other gas suppliers. *Id.* Similarly, potential  
16 suppliers and buyers manipulating Big Rivers' bidding process would lead to higher costs or  
17 lower revenues to Big Rivers and would place it at an unfair competitive disadvantage in the  
18 wholesale power market and credit markets.

19 18. Additionally, public disclosure of the fuel prices, other variable cost information,  
20 and information about Big Rivers' generation levels and wholesale power needs would give the  
21 power producers and marketers with which Big Rivers competes in the wholesale power market  
22 insight into Big Rivers' cost of producing power, and availability of power to sell or need for  
23 power during the periods covered by the information. Knowledge of this information would give

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

7 **IV. Time Period**

8 19. Big Rivers requests that the Confidential Information remain confidential for a  
9 period of five (5) years from the date of this petition, which should allow sufficient time for the  
10 Confidential Information to become sufficiently outdated that it could not be used to determine  
11 similar confidential information at that time. 807 KAR 5:001 Section 13(2)(a)(2).


12 **V. Conclusion**

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

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

19 On this the 11<sup>th</sup> day of November, 2013.

20 Respectfully submitted,

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23 \_\_\_\_\_  
24 James M. Miller  
25 Tyson Kamuf  
26 SULLIVAN, MOUNTJOY, STAINBACK  
27 & MILLER, P.S.C.

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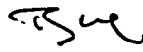
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Counsel for Big Rivers Electric Corporation

**Certificate of Service**

I certify that a true and accurate copy of the foregoing was served by Federal Express or by first class mail, postage prepaid upon the persons listed on the service list that accompanies this petition, on or before the 11<sup>th</sup> day of November, 2013.

  
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Tyson Kamuf