

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
3
4

5 In the Matter of:

6
7 Application of Big Rivers Electric)
8 Corporation for a General) Case No. 2013-00199
9 Adjustment in Rates)

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COMMISSION

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

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 protection to certain information Big Rivers is filing with its
18 rebuttal testimony. The information Big Rivers seeks to protect as confidential is hereinafter
19 referred to as the “Confidential Information.”

20 2. The Confidential Information consists of the following:

- 21 a. portions of Exhibit Berry Rebuttal-1;
22 b. portions of both the hardcopy and electronic versions of Exhibits Warren-2.2 and
23 Warren-3.2; and
24 c. portions of both the hardcopy and electronic versions of Exhibits Wolfram-3.2
25 and Wolfram-4.2.

26 3. One (1) copy of the hardcopy pages containing Confidential Information, with the
27 Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise
28 marked “CONFIDENTIAL,” is being filed with this petition. A copy of the hardcopy pages
29 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' rebuttal testimony filed with this
2 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' rebuttal
10 testimony filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

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

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

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

22 8. As discussed below, the Confidential Information is entitled to confidential
23 protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to

1 an agency or required by an agency to be disclosed to it, generally recognized as confidential or
2 proprietary, which if openly disclosed would permit an unfair commercial advantage to
3 competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1); 807 KAR 5:001
4 Section 13(2)(a)(1).

5 **I. Big Rivers Faces Actual Competition**

6 9. Big Rivers competes in the wholesale power market to sell energy excess to its
7 members’ needs. Big Rivers’ ability to successfully compete in the wholesale power market is
8 dependent upon a combination of its ability to get the maximum price for the power sold, and
9 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers’ cost
10 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with
11 other utilities is adversely affected.

12 10. Big Rivers also competes for reasonably priced credit in the credit markets, and
13 its ability to compete is directly impacted by its financial results. Any event that adversely
14 affects Big Rivers’ margins will adversely affect its financial results and potentially impact the
15 price it pays for credit. As was described in the proceeding before this Commission in the Big
16 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis
17 in the future.¹

18 **II. The Confidential Information is Generally Recognized as Confidential or**
19 **Proprietary**

20
21 11. The Confidential Information for which Big Rivers seeks confidential treatment
22 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky
23 law.

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

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

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

19 15. Information about a company’s detailed inner workings is generally recognized as
20 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907
21 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such
22 information concerning the inner workings of a corporation is ‘generally recognized as
23 confidential or proprietary’”). Moreover, the Commission has previously granted confidential

1 treatment to similar information. *See, e.g.*, letters from the Commission dated July 28, 2011, and
2 December 20, 2011, in *In the Matter of: Application of Big Rivers Electric Corporation for a*
3 *General Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to
4 multi-year forecast); letter from the Commission dated December 21, 2010, in *In the Matter of:*
5 *The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, PSC Case No. 2010-
6 00443 (granting confidential treatment to fuel cost projections, revenue projections, market price
7 projections, financial model outputs, *etc.*); letter from the Commission dated July 20, 2010, in
8 Administrative Case No. 387 (granting confidential treatment to a list of future scheduled
9 outages, which can give competitors insight into Big Rivers' wholesale power needs); two letters
10 from the Commission dated December 11, 2012, in *In the Matter of: Application of Big Rivers*
11 *Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of*
12 *its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public*
13 *Convenience and Necessity, and for Authority to Establish a Regulatory Account*, PSC Case No.
14 2012-00063 (granting confidential treatment to Big Rivers' O&M expenses, off-system sales and
15 revenues, and information such as "Total Sales" and "Electric Energy Revenues" where the basis
16 for Big Rivers' claim of confidentiality was that such information could be used with other, non-
17 confidential information in the attachment to determine other confidential information, such as
18 projected off-system sales revenues). In fact, the Confidential Information in Exhibit Berry
19 Rebuttal-1 was granted confidential treatment in Case No. 2012-00535, and the Commission
20 granted confidential treatment to a previous version of the Confidential Information in the other
21 exhibits that was filed with Big River's application in this matter.

22 **III. Disclosure of the Confidential Information Would Permit an Unfair**
23 **Commercial Advantage to Big Rivers' Competitors**
24

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

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

21 18. Additionally, public disclosure of the fuel prices, other variable cost information,
22 and information about Big Rivers' generation levels and wholesale power needs would give the
23 power producers and marketers with which Big Rivers competes in the wholesale power market

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

9 **IV. Time Period**

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

14 **V. Conclusion**

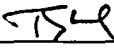
15 20. Based on the foregoing, the Confidential Information is entitled to confidential
16 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due
17 process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v.*
18 *Kentucky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

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

21 On this the 16th day of December, 2013.

22

Respectfully submitted,



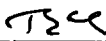
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Certificate of Service

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 date this petition is filed with the Commission.



Counsel for Big Rivers Electric Corporation