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2 COMMONWEALTH OF KENTUCKY  
3 BEFORE THE PUBLIC SERVICE COMMISSION

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JUL 25 2014

PUBLIC SERVICE  
COMMISSION

4 In the Matter of:

5  
6 SPECIAL CONTRACT FILING )  
7 BY BIG RIVERS ELECTRIC ) CASE NO. 2014-00134  
8 CORPORATION PURSUANT TO )  
9 807 KAR 5:011 §13 )

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11  
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(1)(c), to grant confidential protection to two attachments Big Rivers is filing with its  
18 updated response to Item 2 of Kentucky Industrial Utility Customers, Inc.’s (“KIUC”) Initial  
19 Requests for Information (“KIUC 1-2”). The information for which Big Rivers seeks  
20 confidential treatment consists of projections of energy and capacity prices and is hereinafter  
21 referred to as the “Confidential Information.”

22 2. One (1) copy of the paper attachments with the confidential information  
23 underscored, highlighted with transparent ink, printed on yellow paper, or otherwise marked  
24 “CONFIDENTIAL,” is being filed with this petition in a separate sealed envelope marked  
25 “CONFIDENTIAL.” A sheet noting that the attachments are confidential in their entirety is  
26 being filed with the original and each of the ten (10) copies of the response to the information  
27 request filed with this petition. See 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

28 3. A copy of this petition with the Confidential Information redacted has been served  
29 on all parties to this proceeding. See 807 KAR 5:001 Section 13(2)(c). A copy of the

1 Confidential Information has been served on all parties that have signed a confidentiality  
2 agreement.

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

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

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

12 **I. Big Rivers' Faces Actual Competition**

13 7. KRS 61.878(1)(c)(1) protects "records confidentially disclosed to an agency or  
14 required by an agency to be disclosed to it, generally recognized as confidential or proprietary,  
15 which if openly disclosed would permit an unfair commercial advantage to competitors of the  
16 entity that disclosed the records."

17 8. Big Rivers competes in the wholesale power market to sell energy excess to its  
18 Members' needs. Big Rivers' ability to successfully compete in the wholesale power market is  
19 dependent upon a combination of its ability to get the maximum price for the power sold, the  
20 best terms available, and keeping the cost of producing that power as low as possible.  
21 Fundamentally, if Big Rivers' cost of producing a kilowatt hour or its business risk increases, its  
22 ability to sell that kilowatt hour in competition with other utilities is adversely affected.

1 9. Big Rivers also competes for reasonably-priced credit in the credit markets, and  
2 its ability to compete is directly impacted by its financial results and business risks assumed.  
3 Any event that adversely affects Big Rivers' margins will adversely affect its financial results  
4 and potentially impact the price it pays for credit. As was described in the proceeding before this  
5 Commission in the Big Rivers unwind transaction case, Big Rivers expects to be in the credit  
6 markets on a regular basis in the future.<sup>1</sup>

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

10 **II. The Confidential Information is Generally Recognized as Confidential or**  
11 **Proprietary**

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

15 12. The Confidential Information consists of projections of energy and capacity prices  
16 upon which Big Rivers relies.

17 13. Public disclosure of the Confidential Information would provide insight into the  
18 prices at which Big Rivers is willing to buy or sell power and capacity. The information is also  
19 indicative of the market conditions Big Rivers expects to encounter and its ability to compete  
20 with competitors. The Commission has previously granted confidential treatment to similar  
21 information. *See, e.g., In the Matter of: Application of Big Rivers Electric Corporation for a*

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<sup>1</sup> 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.

1 *General Adjustment in Rates*, Order, P.S.C. Case No. 2012-00535 (April 25, 2013); *In the Matter*  
2 *of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order,  
3 P.S.C. Case No. 2012-00535 (August 14, 2013); *In the Matter of: Application of Big Rivers*  
4 *Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of*  
5 *its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public*  
6 *Convenience and Necessity, and for Authority to Establish a Regulatory Account*, Letter, P.S.C.  
7 Case No. 2012-00063 (August 15, 2012).

8 14. As such, the Confidential Information is generally recognized as confidential and  
9 proprietary.

10 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**  
11 **Advantage to Big Rivers' Competitors**

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

16 16. Public disclosure of the Confidential Information would give the power producers  
17 and marketers with which Big Rivers competes in the wholesale power and capacity markets  
18 insight into Big Rivers' view of future power and capacity prices. Knowledge of this  
19 information would give those power producers and marketers an unfair competitive advantage  
20 because they could use that information to potentially underbid Big Rivers in wholesale  
21 transactions.

22 17. Public disclosure of the Confidential Information would also give potential  
23 suppliers of power and capacity to Big Rivers and potential buyers of power and capacity from

1 Big Rivers a competitive advantage because they will be able to manipulate their bids based on  
2 Big Rivers' view of future power and capacity prices in order to maximize their revenues,  
3 thereby driving up Big Rivers' costs or lowering its revenues and impairing its ability to compete  
4 in the wholesale power and credit markets.

5 18. Accordingly, the public disclosure of the information that Big Rivers seeks to  
6 protect would provide Big Rivers' competitors with an unfair commercial advantage.

#### 7 **IV. Time Period**

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

#### 13 **V. Conclusion**

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

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

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1 On this the 24<sup>th</sup> day of July, 2014.

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16 Counsel for Big Rivers Electric Corporation  
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19 **Certificate of Service**

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21 I certify that a true and accurate copy of the foregoing was or will be served by regular  
22 mail, by Federal Express, or by hand delivery upon the persons listed on the accompanying  
23 service list, on or before the date the foregoing is filed with the Kentucky Public Service  
24 Commission.  
25

26 On this the 24<sup>th</sup> day of July, 2014,  
27

28 TKM  
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30 *Counsel for Big Rivers Electric Corporation*