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

In the Matter of:

THE 2014 INTEGRATED RESOURCE PLAN OF ) CASE NO. 2014-00166  
BIG RIVERS ELECTRIC CORPORATION )

**PETITION OF BIG RIVERS ELECTRIC COPORATION  
FOR CONFIDENTIAL TREATMENT**

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 treatment to certain information Big Rivers is filing with its responses to the Commission Staff’s, the Office of the Attorney General’s (“AG”), Kentucky Industrial Utility Customers, Inc.’s (“KIUC”), and Ben Taylor and the Sierra Club’s (together “Sierra Club”) Supplemental Requests for Information. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information includes:

- a. portions of the responses and/or attachments for the responses to Item 4 of the Commission Staff’s Supplemental Requests for Information (“PSC 2-4”);
- b. portions of the responses and/or attachments for the responses to Items 2, 4, 7, and 9 of the AG’s Supplemental Requests for Information (“AG 2-2,” “AG 2-4,” “AG 2-7,” and “AG 2-9,” respectively);

- 1 c. portions of the responses and/or attachments for the responses to  
2 Items 2 and 3 of the KIUC’s Supplemental Requests for  
3 Information (“KIUC 1-2” and “KICU 1-3,” respectively); and  
4 d. portions of the responses and/or attachments for the responses to  
5 Items 5, 8, 10, 13, and 14 of the Sierra Club’s Supplemental  
6 Requests for Information (“SC 2-5,” “SC 2-8,” “SC 2-10,” “SC 2-  
7 13,” and “SC 2-14,” respectively).

8 3. One (1) copy of the pages of the paper responses and attachments  
9 containing Confidential Information with the Confidential Information underscored,  
10 highlighted with transparent ink, printed on yellow paper, or otherwise marked  
11 “CONFIDENTIAL,” is being filed with this petition in a separate, sealed envelope  
12 marked, “CONFIDENTIAL.” A copy of those pages, with the Confidential Information  
13 redacted, is being filed with the original and each of the ten (10) copies of the responses  
14 to the information requests filed with this petition. *See* 807 KAR 5:001 Sections  
15 13(2)(a)(3), 13(2)(b).

16 4. One (1) copy of the electronic attachments containing Confidential  
17 Information is contained in the confidential electronic files that accompany this petition.  
18 In these instances, the Confidential Information is inextricably intertwined with non-  
19 confidential information in the electronic spreadsheet attachments in response to certain  
20 requests. Big Rivers cannot redact only the Confidential Information from the electronic  
21 spreadsheet attachments without making other cells in the spreadsheets unusable or  
22 breaking the formulas contained therein, and so, the entirety of those attachments must be  
23 made confidential. Likewise, the pervasive nature of the Confidential Information would

1 make public versions ineffectual and unhelpful to the Commission, the parties, and the  
2 public. As such, the entirety of these confidential files has been redacted from the  
3 original and each of the ten (10) copies of the responses to the information requests filed  
4 with this petition. *See* 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b). A motion for  
5 deviation from the requirement that Big Rivers file redacted and/or paper copies of these  
6 electronic attachments accompanies this petition.

7         5. With respect to the paper attachments produced in response to SC 2-5(c-  
8 d), the entirety of those paper attachments is confidential, and the creation and production  
9 of public versions would be ineffectual and unhelpful to the Commission, the parties, and  
10 the public. As such, these confidential paper attachments have been redacted from the  
11 original and each of the ten (10) copies of the responses to the information requests filed  
12 with this petition. *See* 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b). A motion for  
13 deviation from the requirement that Big Rivers file paper copies of these entirely  
14 confidential paper attachments accompanies this petition.

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

19         7. The Confidential Information is not publicly available, is not disseminated  
20 within Big Rivers, except to those employees and professionals with a legitimate business  
21 need to know and act upon the information, and is not disseminated to others without a  
22 legitimate need to know and act upon the information.

1           8.       If, and to the extent the Confidential Information becomes generally  
2 available to the public, whether through filings required by other agencies or otherwise,  
3 Big Rivers will notify the Commission in writing. *See* 807 KAR 5:001 Section  
4 13(10)(b).

5           9.       As discussed below, the Confidential Information is entitled to  
6 confidential treatment based upon 807 KAR 5:001 Sections 13(4) and 13(9)(a) and/or  
7 KRS 61.878(1)(c)(1). *See* 807 KAR 5:001 Section 13(2)(a)(1).

8 **I.       Information Protected by 807 KAR 5:001 Sections 13(4) and 13(9)(a)**  
9

10           10.       807 KAR 5:001 Section 13(4) provides, “Pending action by the  
11 Commission on a motion for confidential treatment or by its executive director on a  
12 request for confidential treatment, the material specifically identified *shall be* accorded  
13 confidential treatment. *Id.* (emphasis added).

14           11.       807 KAR 5:001 Section 13(9)(a) further provides:

15                   A person who files any paper that contains material that has  
16 previously been deemed confidential or for which a request  
17 or motion for confidential treatment is pending shall submit  
18 one (1) copy of the paper with the adjudged or alleged  
19 confidential material underscored or highlighted, and ten  
20 (10) copies of the paper with those portions redacted; and

- 21                   1.       If the confidential status of the material has been  
22 determined previously, a written notice identifying  
23 the person who originally submitted the material,  
24 the date on which a determination on the materials’  
25 confidentiality was made and, if applicable, the case  
26 number in which the determination was made; or
- 27                   2.       If a request for confidential treatment of the  
28 material is pending, a written notice identifying the  
29 person who made the request and the date on which  
30 the request was submitted.

31  
32           12.       The Confidential Information attached to the response to AG 2-4 includes  
33 copies of confidential responses to data requests AG 2-35 and AG 2-36 in Case No.

1 2013-00199. Big Rivers filed these previous data request responses on September 30,  
 2 2013, pursuant to a petition for confidential treatment, which remains pending in Case  
 3 No. 2013-00199.<sup>1</sup> The information contained in those responses is of the same type as  
 4 the information provided in response to PSC 2-15 in that case: information regarding  
 5 confidential negotiations for the sale of generating assets. On November 25, 2013, the  
 6 Commission granted confidential treatment to the data provided in response to PSC 2-15  
 7 in Case No. 2013-00199.<sup>2</sup>

8 13. The Confidential Information attached to the response to AG 2-9 includes  
 9 copies of Big Rivers' confidential responses to data requests previously issued in Cases  
 10 No. 2012-00535 and 2013-00199. The table below indicates which attachments pertain  
 11 to which previous case, along with a statement of when confidential treatment was  
 12 granted or when the pending petition for confidential treatment was filed in that case.

<b>ATTACHMENTS TO AG 2-9 IN CASE NO. 2014-00166</b>			
<b>ATTACHED RESPONSE (Previous Case)</b>	<b>PREVIOUS CASE NUMBER</b>	<b>PAPER OR ELECTRONIC ATTACHMENT (This Case)</b>	<b>CONFIDEN. STATUS</b>
PSC 2-18	2012-00535	Paper	Granted (4-25-13 Order) <sup>3</sup>
PSC 2-14	2013-00199	Paper	Granted (11-25-13 Order) <sup>4</sup>
PSC 2-16	2013-00199	Paper	Granted (11-25-13 Order) <sup>5</sup>

<sup>1</sup> Big Rivers sought confidential treatment for the responses to AG 2-35 and AG 2-36 (Case No. 2013-00199) for a period of five (5) years.

<sup>2</sup> The Commission granted confidential treatment for the PSC 2-15 data (Case No. 2013-00199) for a period of five (5) years.

<sup>3</sup> The Commission granted confidential treatment for the PSC 2-18 data (Case No. 2013-00535) for a period of five (5) years.

<sup>4</sup> The Commission granted confidential treatment for the PSC 2-14 data (Case No. 2013-00199) for a period of five (5) years.

AG 2-9	2013-00199	Paper	Pending (9-30-13 Petition) <sup>6</sup>
PHDR 15 Update	2013-00199	Paper	Pending (8-8-14 Petition) <sup>7</sup>
PSC 2-14	2013-00199	Electronic	Granted (11-25-13 Order) <sup>8</sup>
KIUC 2-15	2013-00199	Electronic	Pending (9-30-13 Petition) <sup>9</sup>

1

2           Because the public versions of these attachments (if any) are already included in  
3 the record of the corresponding cases where they were originally produced, Big Rivers  
4 has not reproduced public versions of these attachments here, and it has sought a  
5 deviation from any such requirement pursuant to the motion for deviation filed  
6 simultaneously with this petition for confidential treatment.

7           14.     The Confidential Information attached to the response to SC 2-5(c)  
8 consists of a confidential document produced in response to PSC 1-1(f) in Case No.  
9 2014-00134. By its Order entered October 9, 2014, the Commission granted confidential  
10 treatment to that document.

11           15.     The Confidential Information attached as the sole paper attachment for the  
12 response to SC 2-5(d) consists of a confidential document produced in response to PSC  
13 1-3 in Case No. 2014-00134. Big Rivers is uncertain whether the Commission's October  
14 9, 2014, Order in that matter intended to grant or deny confidential treatment with respect

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<sup>5</sup> The Commission granted confidential treatment for the PSC 2-16 data (Case No. 2013-00199) for a period of five (5) years.

<sup>6</sup> Big Rivers sought confidential treatment for the response to AG 2-9 (Case No. 2013-00199) for a period of five (5) years.

<sup>7</sup> Big Rivers sought confidential treatment for the updated response to PHDR 15 (Case No. 2013-00199) for a period of five (5) years.

<sup>8</sup> The Commission granted confidential treatment for the PSC 2-14 data (Case No. 2013-00199) for a period of five (5) years.

<sup>9</sup> Big Rivers sought confidential treatment for the response to KIUC 2-15 (Case No. 2013-00199) for a period of five (5) years.

1 to that particular document. Consequently, Big Rivers has produced this document  
2 confidentially pending clarification of the Commission’s intent.

3 **II. Information Protected By KRS 61.878(1)(a)**

4 16. KRS 61.878(1)(a) protects “[p]ublic records containing information of a  
5 personal nature where the public disclosure thereof would constitute a clearly  
6 unwarranted invasion of personal privacy.”

7 17. The Confidential Information contained in Big Rivers’ responses to PSC  
8 2-4 and AG 2-7 consists of detailed energy usage information related to individual  
9 customers. Because public disclosure of the Confidential Information would constitute  
10 an unwarranted invasion of these customers’ privacy, this Confidential Information  
11 should be granted confidential treatment.

12 **III. Information Protected by KRS 61.878(1)(c)(1)**

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

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

18 19. As a generation and transmission cooperative, Big Rivers competes in the  
19 wholesale power market. This includes not only the short-term bilateral energy market,  
20 the day-ahead and real time energy and ancillary services markets, and the annual  
21 capacity market to which Big Rivers has access by virtue of its membership in  
22 Midcontinent Independent System Operator, Inc. (“MISO”), but also forward bilateral  
23 long-term agreements and wholesale agreements with utilities and industrial customers.

1 Big Rivers' ability to successfully compete in the market is dependent upon a  
2 combination of its ability to: (i) obtain the maximum price for the power it sells; and (ii)  
3 keep its cost of production as low as possible. Fundamentally, if Big Rivers' cost of  
4 producing a unit of power increases, its ability to sell that unit in competition with other  
5 utilities is adversely affected.

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

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

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

22 22. The Confidential Information for which Big Rivers seeks confidential  
23 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or  
24 proprietary under Kentucky law.  
25



1           23.     The Confidential Information attached to the response to AG 2-2 includes  
2 financial model runs, which includes projected fuel and other O&M costs, projected  
3 capital costs, projected costs and prices for market power and capacity sales and  
4 purchases, including Big Rivers' production cost model, which was produced  
5 confidentially in response to AG 1-7. (Consequently, a portion of this data is further  
6 subject to protection under 807 KAR 5:001 Sections 13(4) and 13(9)(a) insofar as the  
7 Commission has not yet ruled on Big Rivers' September 10, 2014 petition for  
8 confidential treatment with respect to AG 1-7 in this matter.)

9           24.     The Confidential Information contained in the response to KIUC 1-2  
10 includes confidential information related to recent forward power and capacity sales.

11           25.     The Confidential Information attached to the response to KIUC 1-3  
12 consists of a presentation to Big Rivers' Board of Directors that includes confidential  
13 information related to recent forward power and capacity sales, as well as related  
14 financial projections.

15           26.     The Confidential Information attached to the response to SC 2-5 includes  
16 pricing forecasts, modeling and financial projections, and strategic analysis performed by  
17 Big Rivers and/or its consultants in the context of confidential negotiations with  
18 counterparties to the special contracts filed in Case No. 2014-00134. (As discussed  
19 above, the attachment to SC 2-5(c) was previously granted confidential treatment in that  
20 case; similarly, Big Rivers has produced the paper attachment to SC 2-5(d) confidentially  
21 pending clarification regarding the Commission's ruling with respect to confidentiality of  
22 this same attachment in that case.)

1           27.     The Confidential Information contained in the response to SC 2-8 includes  
2 information identifying projected variable operating costs.

3           28.     The Confidential Information contained in the response to SC 2-10  
4 includes information identifying projected variable operating costs and projected  
5 operational metrics.

6           29.     The Confidential Information contained in the response to SC 2-13  
7 includes information identifying projected fuel characteristics (i.e., production costs) and  
8 pricing forecasts.

9           30.     The Confidential Information contained in the response to SC 2-14  
10 includes information identifying projected variable operating costs.

11          31.     Public disclosure of the Confidential Information would reveal detailed  
12 information relating to Big Rivers' projected O&M costs for production factors such as  
13 fuel; projected heat rates and emissions, which give insight into Big Rivers production  
14 costs; projected rates and revenues; and projected market energy and capacity prices.  
15 This information provides insight into Big Rivers' cost of producing power and would  
16 indicate the prices at which Big Rivers is willing to buy or sell power and production  
17 factors. The information is also indicative of the market conditions Big Rivers expects to  
18 encounter and its ability to compete with competitors. The Commission has previously  
19 granted confidential treatment to similar information. *See, e.g., In the Matter of: 2014*  
20 *Integrated Resource Plan of Big Rivers Electric Corporation*, Order, P.S.C. Case No.  
21 2014-00166 (August 26, 2014) (granting confidential treatment to projected O&M costs,  
22 rates, revenues, capital costs, and market prices); *In the Matter of Big Rivers Electric*  
23 *Corporation Filing of Wholesale Contracts Pursuant to KRS 278.100 and KAR 5:011 §*

1 13, Order, P.S.C. Case No. 2014-00134 (October 9, 2014) (granting confidential  
2 treatment to projections of energy and capacity prices, allocations of costs, cost models  
3 and financial forecasts, projections of capital expenditures, projections of capital  
4 expenditures, projections of revenue and expenses, and commercial negotiations); *In the*  
5 *Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in*  
6 *Rates*, Order, P.S.C. Case No. 2012-00535 (April 25, 2013); *In the Matter of:*  
7 *Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order,  
8 P.S.C. Case No. 2012-00535 (August 14, 2013); *In the Matter of: Application of Big*  
9 *Rivers Electric Corporation for Approval of Its 2012 Environmental Compliance Plan,*  
10 *for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for*  
11 *Certificates of Public Convenience and Necessity, and for Authority to Establish a*  
12 *Regulatory Account*, Letter, P.S.C. Case No. 2012-00063 (August 15, 2012).

13 32. Public disclosure of information relating to Big Rivers' projected capital  
14 expenditures and planned outages would reveal when Big Rivers will have excess power  
15 available to sell into the market, or when Big Rivers' generation levels will drop due to  
16 maintenance and construction, thereby forcing it to resort to purchased power to meet its  
17 native load. The Commission has previously granted confidential treatment to similar  
18 information. *See, e.g., In the Matter of: 2014 Integrated Resource Plan of Big Rivers*  
19 *Electric Corporation*, Order, P.S.C. Case No. 2014-00166 (August 26, 2014) (granting  
20 confidential treatment to projected O&M costs, rates, revenues, capital costs, and market  
21 prices); *In the Matter of Big Rivers Electric Corporation Filing of Wholesale Contracts*  
22 *Pursuant to KRS 278.100 and KAR 5:011 § 13*, Order, P.S.C. Case No. 2014-00134  
23 (October 9, 2014) (granting confidential treatment to projections of energy and capacity

1 prices, allocations of costs, cost models and financial forecasts, projections of capital  
2 expenditures, projections of capital expenditures, projections of revenue and expenses,  
3 and commercial negotiations); *In the Matter of: Application of Big Rivers Electric*  
4 *Corporation for a General Adjustment in Rates*, Order, P.S.C. Case No. 2012-00535  
5 (April 25, 2013); P.S.C. Administrative Case No. 387, Letter (July 20, 2010).

6 33. Information related to forward power sales, sensitive negotiations between  
7 Big Rivers and other entities, and the proprietary information supplied to Big Rivers by  
8 its consultants and industry groups of which it is a member (such as fuel cost projections)  
9 illuminates Big Rivers' long-term business strategy and is generally subject to  
10 confidentiality agreements among the various parties involved. The Commission has  
11 previously granted confidential treatment to similar information. *See, e.g., In the Matter*  
12 *of Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to KRS*  
13 *278.100 and KAR 5:011 § 13*, Order, P.S.C. Case No. 2014-00134 (October 9, 2014)  
14 (granting confidential treatment to an independent consultant's strategic analysis with  
15 respect to certain power purchase agreements); *In the Matter of Application of Big Rivers*  
16 *Electric Corporation for a General Adjustment in Rates*, Order, P.S.C. Case No. 2012-  
17 00535 (April 25, 2013) (granting confidential treatment to models and industry data  
18 provided by Big Rivers' consultants, as well as to details of sensitive commercial  
19 negotiations between Big Rivers, Alcan Primary Products Corporation, and Century  
20 Aluminum of Kentucky General Partnership which were subject to a confidentiality  
21 agreement among the parties).

22 34. Finally, public disclosure of the Confidential Information would reveal  
23 Big Rivers' fundamental financial data and projections. Information such as this, which

1 bears upon a company's detailed inner-workings, is generally recognized as confidential  
2 or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907  
3 S.W.2d766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such  
4 information concerning the inner workings of a corporation is 'generally recognized as  
5 confidential or proprietary'"). Additionally, the Commission has previously granted  
6 confidential treatment to this type of information. *See, e.g., In the Matter of Big Rivers*  
7 *Electric Corporation Filing of Wholesale Contracts Pursuant to KRS 278.100 and KAR*  
8 *5:011 § 13*, Order, P.S.C. Case No. 2014-00134 (October 9, 2014) (granting confidential  
9 treatment to cost models and financial forecasts, projections of capital expenditures, and  
10 projections of revenue and expenses); *In the Matter of Application of Big Rivers Electric*  
11 *Corporation for a General Adjustment in Rates*, Order, P.S.C. Case No. 2012-00535  
12 (April 25, 2013) (granting confidential treatment to minutes of the Big Rivers Board of  
13 Directors and Internal Risk Management Committee, Big Rivers' Financial Model, and  
14 Big Rivers' load forecast); *In the Matter of: An Examination of the Application of the*  
15 *Fuel Adjustment Clause of East Kentucky Power cooperative, Inc. from November 1,*  
16 *2011 through April 30, 2012*, Order, P.S.C. Case No. 2012-00319 (February 21, 2013).

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

19  
20 35. Disclosure of the Confidential Information would grant Big Rivers'  
21 competitors an unfair commercial advantage. As discussed above in Section III.A., Big  
22 Rivers faces actual competition in both the short- and long-term wholesale power markets  
23 and in the credit markets. It is likely that Big Rivers' ability to compete in these markets  
24 would be adversely affected if the Confidential Information were publicly disclosed, and  
25 Big Rivers seeks protection from such competitive injury.

1           36.     The Confidential Information includes material such as Big Rivers’  
2 projections regarding fuel costs, power, capacity prices, rates, and revenues, and  
3 information about the terms of forward power sales. If that information is publicly  
4 disclosed, market participants would have insight into the prices at which Big Rivers is  
5 willing to buy and sell fuel, power, and capacity, and they could manipulate the bidding  
6 process, impairing Big Rivers’ ability to generate power at competitive rates and, thus, to  
7 compete in the wholesale power markets. Furthermore, any competitive pressure that  
8 adversely affects Big Rivers’ revenue and margins could make the company appear less  
9 creditworthy and thus impair its ability to compete in the credit markets. These effects  
10 were recognized in P.S.C. Case No. 2003-00054, in which the Commission granted  
11 confidential treatment to bids submitted to Union Light, Heat & Power (“ULH&P”).  
12 ULH&P argues, and the Commission implicitly accepted, that if the bids it received were  
13 publicly disclosed, contractors on future work could use the bids as a benchmark, which  
14 would likely lead to the submission of higher bids. *In the Matter of: Application of the*  
15 *Union Light, Heat and Power Company for Confidential Treatment*, Order, P.S.C. Case  
16 No. 2003-00054 (August 4, 2003). The Commission also implicitly accepted ULH&P’s  
17 further argument that the higher bids would lessen ULH&P’s ability to compete with  
18 other gas suppliers. *Id.* Similarly, potential fuel, power, and capacity suppliers  
19 manipulating Big Rivers’ bidding process would lead to higher costs or lower revenues to  
20 Big Rivers and would place it at an unfair competitive disadvantage in the wholesale  
21 power market and credit markets.

22           37.     Potential market power purchasers could use the information related to  
23 Big Rivers’ projected off-system sales and planned outages to know when Big Rivers

1 will have excess power to sell into the wholesale market and could use that information  
2 to manipulate their bids, leading to lower revenues to Big Rivers and placing it at an  
3 unfair competitive disadvantage in the credit markets.

4 38. Additionally, public disclosure of fuel price projections, other variable  
5 cost information, rates, and revenues would give the power producers and markets with  
6 which Big Rivers competes in the wholesale power market insight into Big Rivers' cost  
7 of producing power and need for power and energy during the periods covered by the  
8 information. Knowledge of this information would give those power producers and  
9 marketers an unfair competitive advantage because they could use that information to  
10 potentially underbid Big Rivers in wholesale transactions. It would also give potential  
11 suppliers to Big Rivers a competitive advantage because they will be able to manipulate  
12 the price of power bid to Big Rivers in order to maximize their revenues, thereby driving  
13 up Big Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power  
14 and credit markets.

15 39. Finally, public disclosure of the identity of counterparties with which Big  
16 Rivers has entered into forward power sales (as well as the terms of those transactions)  
17 would impair Big Rivers' ability to compete for other sales in the future. If confidential  
18 treatment were denied, potential counterparties would know that that information would  
19 be publicly disclosed, which could reveal information to their competitors about their  
20 need for power and about their competitiveness. Because many companies would be  
21 reluctant to have such information disclosed, public disclosure of the forward power sales  
22 information would likely reduce the pool of counterparties willing to negotiate with Big

1 Rivers, reducing Big Rivers' ability to sell power and impairing its ability to compete in  
2 the wholesale power and credit markets.

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

6 **IV. Time Period**

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

10 42. Big Rivers requests that the Confidential Information protected by 807  
11 KAR 5:001 Sections 13(4) and 13(9)(a) remain confidential through the longer of: (i) the  
12 pendency of any applicable, unresolved petition for confidential treatment, as identified  
13 above; or (ii) the time period(s) allowed in any final rulings on the applicable petition(s)  
14 for confidential treatment.

15 43. Big Rivers requests that the Confidential Information contained in the  
16 responses and/or attachments to PSC 2-4 and AG 2-7, which are protected by KRS  
17 61.878(1)(a), remain confidential in perpetuity, because it reveals private customer data.

18 44. Big Rivers requests that the Confidential Information contained in the  
19 responses and/or attachments to AG 2-2, KIUC 1-2, KIUC 1-3, SC 2-5(b), SC 2-8, SC 2-  
20 10, SC 2-13, and SC 2-14 remain confidential for a period of five (5) years from the date  
21 of this petition, which should allow sufficient time for the projected data to become  
22 historical and sufficiently outdated that it could not be used to determine similar  
23 confidential information at that time or to competitively disadvantage Big Rivers.



1           45.     Big Rivers requests that the Confidential Information contained in the  
2 paper and electronic attachments to SC 2-5(c-d) remain confidential in perpetuity because  
3 so long as Big Rivers is in the wholesale power market, the public disclosure of the  
4 confidential terms, discussions, and strategic analyses related to the contracts under  
5 consideration in Case No. 2014-00134 could be used to Big Rivers' competitive  
6 disadvantage for the reasons stated above.<sup>10</sup>

7     **V.     Conclusion**

8           46.     Based on the foregoing, the Confidential Information is entitled to  
9 confidential treatment pursuant to 807 KAR 5:001 Section 13 and KRS 61.878. If the  
10 Commission disagrees that Big Rivers' Confidential Information is entitled to  
11 confidential treatment, due process requires the Commission to hold an evidentiary  
12 hearing. *Utility Regulatory Comm'n v. Ky. Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky.  
13 App. 1982).

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<sup>10</sup> Big Rivers notes that the confidential status of the paper attachments to SC 2-5(c-d) were addressed in an October 9, 2014 order of the Commission in Case No. 2014-00134, where these same attachments were produced subject to a petition for confidential treatment. As noted above, the paper attachment to SC 2-5(c) was produced in response to PSC 1-1(f) in Case No. 2014-00134, and it was granted confidential treatment indefinitely. Big Rivers is, at this time, uncertain how the Commission intended to treat the paper attachment to SC 2-5(d) here – produced in response to PSC 1-3 in Case No. 2014-00134 – and given its substantive similarity to the document produced in response to SC 2-5(c), Big Rivers seeks confidential treatment in perpetuity for this document in this matter. Finally, the electronic attachment to SC 2-5(d) in this case contains data and strategic analysis similar to that contained in the paper attachments to SC 2-5(c-d); consequently, Big Rivers seeks confidential treatment in perpetuity for this document, as well.

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WHEREFORE, Big Rivers respectfully requests that the Commission grant this petition and classify and treat as confidential the Confidential Information.

On this the 14<sup>th</sup> day of October, 2014.

Respectfully submitted,



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**Certificate of Service**

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

On this the 14<sup>th</sup> day of October, 2014,



*Counsel for Big Rivers Electric Corporation*