

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

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4 In the Matter of:

5
6 THE 2014 INTEGRATED RESOURCE PLAN OF) CASE NO. 2014-00166
7 BIG RIVERS ELECTRIC CORPORATION)

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9
10 **PETITION OF BIG RIVERS ELECTRIC COPORATION**
11 **FOR CONFIDENTIAL TREATMENT**
12

13 1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the
14 Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001
15 Section 13 and KRS 61.878, to grant confidential treatment to portions of its response
16 and an attachment to its response to the comments filed by the Office of the Attorney
17 General and Sierra Club. The information for which Big Rivers seeks confidential
18 treatment is hereinafter referred to as the “Confidential Information.”

19 2. One (1) copy of the pages of the paper responses and attachments
20 containing Confidential Information with the Confidential Information underscored,
21 highlighted with transparent ink, printed on yellow paper, or otherwise marked
22 “CONFIDENTIAL,” is being filed with this petition in a separate, sealed envelope
23 marked, “CONFIDENTIAL.” A copy of those pages, with the Confidential Information
24 redacted, is being filed with the original and each of the ten (10) copies of the response
25 filed with this petition. *See* 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

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

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

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

9 6. As discussed below, the Confidential Information is entitled to
10 confidential treatment based upon KRS 61.878(1)(c)(1), which protects “records
11 confidentially disclosed to an agency or required by an agency to be disclosed to it,
12 generally recognized as confidential or proprietary, which if openly disclosed would
13 permit an unfair commercial advantage to competitors of the entity that disclosed the
14 records.” KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1).

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

16 7. As a generation and transmission cooperative, Big Rivers competes in the
17 wholesale power market. This includes not only the short-term bilateral energy market,
18 the day-ahead and real time energy and ancillary services markets, and the annual
19 capacity market to which Big Rivers has access by virtue of its membership in
20 Midcontinent Independent System Operator, Inc. (“MISO”), but also forward bilateral
21 long-term agreements and wholesale agreements with utilities and industrial customers.
22 Big Rivers’ ability to successfully compete in the market is dependent upon a
23 combination of its ability to: (i) obtain the maximum price for the power it sells; and (ii)

1 keep its cost of production as low as possible. Fundamentally, if Big Rivers' cost of
2 producing a unit of power increases, its ability to sell that unit in competition with other
3 utilities is adversely affected.

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

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

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

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

1 11. The Confidential Information consists of (i) fuel cost projections from a
2 third party upon which Big Rivers' relies in developing fuel forecasts for its day-to-day
3 planning, and (ii) descriptions of those fuel cost projections.

4 12. Public disclosure of the Confidential Information would reveal detailed
5 information relating to Big Rivers' cost of producing power, and would provide insight
6 into the prices at which Big Rivers is willing to buy or sell power and fuel. The
7 Commission has previously granted confidential treatment to similar information. In its
8 August 26, 2014, order in this case, for example, the Commission held:

9 The Commission finds that fuel cost projections are indicative of the cost
10 to produce power and are generally recognized as confidential or
11 proprietary. The Commission further finds that Big Rivers' fuel cost
12 projections would permit an unfair commercial advantage to competitors
13 if openly disclosed. Big Rivers has met its burden to show that fuel cost
14 projections fall within the exclusion from disclosure requirements
15 enumerated in 61.878(1)(c)(1), and Big Rivers' fuel cost projections
16 should remain confidential for a period of five years subject to 807 KAR
17 5:001, Section 13(10)(b).¹
18

19 13. Additionally, the fuel costs projections, including the entirety of the
20 attachment, are proprietary information supplied to Big Rivers by a third party, and Big
21 Rivers does not have permission from the third party to release the information. If Big
22 Rivers' is unable to protect the confidentiality of such information, suppliers of such
23 forecasts would be unwilling to provide them to Big Rivers in the future. The
24 Commission has previously granted confidential treatment to similar information. *See,*
25 *e.g., In the Matter of Application of Big Rivers Electric Corporation for a General*
26 *Adjustment in Rates*, Order, P.S.C. Case No. 2012-00535 (April 25, 2013) (granting
27 confidential treatment to industry data provided by Big Rivers' consultants).

¹ *In the Matter of: 2014 Integrated Resource Plan of Big Rivers Electric Corporation*, Order, P.S.C. Case No. 2014-00166 (August 26, 2014), at p. 14.

1 14. Thus, the Confidential Information is generally recognized as confidential
2 and proprietary.

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

5
6 15. Disclosure of the Confidential Information would grant Big Rivers'
7 competitors an unfair commercial advantage. As discussed above, Big Rivers faces
8 actual competition in both the short- and long-term wholesale power markets and in the
9 credit markets. It is likely that Big Rivers' ability to compete in these markets would be
10 adversely affected if the Confidential Information were publicly disclosed, and Big
11 Rivers seeks protection from such competitive injury.

12 16. The Confidential Information includes fuel cost projections that Big
13 Rivers relies upon in developing its fuel forecasts. If that information is publicly
14 disclosed, market participants would have insight into the prices at which Big Rivers is
15 willing to buy and sell fuel, and they could manipulate the bidding process, impairing Big
16 Rivers' ability to generate power at competitive rates and thus, to compete in the
17 wholesale power markets. Furthermore, any competitive pressure that adversely affects
18 Big Rivers' revenue and margins could make the company appear less creditworthy and
19 thus impair its ability to compete in the credit markets. These effects were recognized in
20 P.S.C. Case No. 2003-00054, in which the Commission granted confidential treatment to
21 bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P argued, and the
22 Commission implicitly accepted, that if the bids it received were publicly disclosed,
23 contractors on future work could use the bids as a benchmark, which would likely lead to
24 the submission of higher bids. *In the Matter of: Application of the Union Light, Heat*
25 *and Power Company for Confidential Treatment*, Order, P.S.C. Case No. 2003-00054

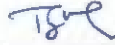
1 (August 4, 2003). The Commission also implicitly accepted ULH&P's further argument
2 that the higher bids would lessen ULH&P's ability to compete with other gas suppliers.
3 *Id.* Similarly, potential fuel suppliers manipulating Big Rivers' bidding process would
4 lead to higher costs or lower revenues to Big Rivers and would place it at an unfair
5 competitive disadvantage in the wholesale power market and credit market.

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

15 18. Finally, if Big Rivers is unable to protect the confidentiality of proprietary
16 forecasts provided by third parties, potential suppliers of forecasts would know that their
17 information would be publicly disclosed, which would impair their ability to sell such
18 forecasts to others. Because many such suppliers would be reluctant to have such
19 information disclosed, public disclosure of the forecasts would limit Big Rivers' access to
20 these valuable planning tools, which would impair its ability to compete in the wholesale
21 power and credit markets.

1 On this the 17th day of December, 2014.

2 Respectfully submitted,

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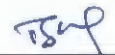
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19 *Counsel for Big Rivers Electric Corporation*

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23 **Certificate of Service**

24
25 I certify that a true and accurate copy of the foregoing was or will be served by
26 first class mail upon the persons listed on the accompanying service list, on or before the
27 date the foregoing is filed with the Kentucky Public Service Commission.

28
29 On this the 17th day of December, 2014,

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Counsel for Big Rivers Electric Corporation