BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY       FEB 19 20%         In the Matter of:       PUBLIC SERVICE COMMISSION         AN EXAMINATION OF THE APPLICATION OF ) THE FUEL ADJUSTMENT CLAUSE OF BIG       CASE NO.         RIVERS ELECTRIC CORPORATION FROM       2016-00006         MAY 1, 2015 THROUGH OCTOBER 31, 2015       2016-00006         Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky         PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL PROTECTION         1       Dig 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 contained in Big Rivers' responses         to Items 18 and 24 of the information requested in the Appendix to the Commission's February         5, 2016, order in this matter (the "Confidential Information about Big Rivers' ability to         offer generation into the wholesale power market (Item 18) and information about the current         heat rates of Big Rivers' generating units (Item 24).         3.       One (1) copy of the pages containing Confidential Information, with the         Confidential Information highlighted with transparent ink, printed on yellow pages, with the         Confidential Information redacted, or a sheet noting that the entirety of the pages have been         redacted, is being filed with the original and e	1	COMMONWEALTH OF KENTUCKY	RECEIVED	
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32 13(2)(b).	32	13(2)(b).		

4. There are no other parties to this proceeding on which to serve a copy of this
 petition. 807 KAR 5:001 Section 13(2)(c).

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

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

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

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## I. Big Rivers Faces Actual Competition

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

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other utilities is adversely affected. As is well documented in multiple proceedings before this
 Commission, Big Rivers' margins are derived almost exclusively from its off-system sales.

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- 9. Big Rivers also competes for reasonably priced credit in the credit markets, and its ability to compete is directly impacted by its financial results. Any event that adversely affects Big Rivers' margins will adversely affect its financial results and potentially impact the price it pays for credit. As was described in the proceeding before this Commission in the Big Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis in the future.<sup>1</sup>
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## II. The Confidential Information is Generally Recognized as Confidential or Proprietary

12 10. 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 11. The Confidential Information in the response to Items 18 reveals the generation 16 levels at which Big Rivers can offer certain units into the market. The information in the 17 response to Item 24 provides the current heat rates of Big Rivers' generating units, which 18 provides insight into Big Rivers' production costs.

## 19 12. Public disclosure of the Confidential Information will give Big Rivers' suppliers, 20 buyers, and competitors insight into Big Rivers' cost of producing power, and into when Big 21 Rivers will have power available to sell into the market or when Big Rivers needs power, and the 22 amount of power Big Rivers has to sell or will need.

<sup>&</sup>lt;sup>1</sup> 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	13. Information about a company's detailed inner workings is generally recognized as		
2	confidential or proprietary. See, e.g., Hoy v. Kentucky Indus. Revitalization Authority, 907		
3	S.W.2d 766, 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"). Moreover, the Commission has previously granted confidential		
6	treatment to similar information. See, e.g., letters from the Commission dated July 28, 2011, and		
7	December 20, 2011, in In the Matter of: Application of Big Rivers Electric Corporation for a		
8	General Adjustment in Rates, PSC Case No. 2011-00036 (granting confidential treatment to		
9	multi-year forecast, including production cost information); letter from the Commission dated		
10	December 21, 2010, in In the Matter of: The 2010 Integrated Resource Plan of Big Rivers		
11	Electric Corporation, PSC Case No. 2010-00443 (granting confidential treatment to financial		
12	model outputs, etc., including production cost information); letter from the Commission dated		
13	July 20, 2010, in Administrative Case No. 387 (granting confidential treatment to a list of future		
14	scheduled outages, which can give competitors insight into Big Rivers' wholesale power needs);		
15	two letters from the Commission dated December 11, 2012, in In the Matter of: Application of		
16	Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for		
17	Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of		
18	Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, PSC		
19	Case No. 2012-00063 (granting confidential treatment to Big Rivers' off-system sales		
20	information).		
21 22 23	III. Disclosure of the Confidential Information Would Permit an Unfair Commercial Advantage to Big Rivers' Competitors		
23 24	14. Disclosure of the Confidential Information would permit an unfair commercial		
25	advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition		

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

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

19 16. Potential market power purchasers could use the information related to Big 20 Rivers' ability to offer generation into the wholesale power market to know when and to the 21 extent Big Rivers is long on power and could use that information to manipulate their bids, 22 leading to lower revenues to Big Rivers and placing it at an unfair competitive disadvantage in 23 the credit markets.

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1 17. Additionally, public disclosure of the heat rates and information about Big Rivers' 2 wholesale power needs would give the power producers and marketers with which Big Rivers 3 competes in the wholesale power market insight into Big Rivers' cost of producing power and 4 need for power and energy during the periods covered by the information. Knowledge of this 5 information would give those power producers and marketers an unfair competitive advantage 6 because they could use that information to potentially underbid Big Rivers in wholesale 7 transactions. It would also give potential suppliers to Big Rivers a competitive advantage 8 because they will be able to manipulate the price of power bid to Big Rivers in order to 9 maximize their revenues, thereby driving up Big Rivers' costs and impairing Big Rivers' ability 10 to compete in the wholesale power and credit markets. 11 IV. **Time Period** 12 18. Big Rivers requests that the Confidential Information remain confidential 13 indefinitely because so long as Big Rivers is competing in the wholesale power market, public disclosure of its ability to offer generating into the market or its unit heat rates could be used to 14 15 Big Rivers' competitive disadvantage for the reasons stated above. 807 KAR 5:001 Section 16 13(2)(a)(2). 17 V. Conclusion 18 19. Based on the foregoing, the Confidential Information is entitled to confidential 19 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due 20 process requires the Commission to hold an evidentiary hearing. Utility Regulatory Com'n v. 21 Kentucky Water Service Co., Inc., 642 S.W.2d 591 (Ky. App. 1982). 22 WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect 23 as confidential the Confidential Information.

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On this the 18<sup>th</sup> day of February, 2016. 1 2 Respectfully submitted, 3 4 James M. Miller 5 Tyson Kamuf 6 SULLIVAN, MOUNTJOY, STAINBACK 7 & MILLER, P.S.C. 8 100 St. Ann Street 9 P. O. Box 727 10 Owensboro, Kentucky 42302-0727 11 Phone: (270) 926-4000 12 Facsimile: (270) 683-6694 13 jmiller@smsmlaw.com 14 tkamuf@smsmlaw.com 15 16 Counsel for Big Rivers Electric Corporation