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

4 In the Matter of:

Application of Big Rivers Electric Corporation for ) Case No.  
Declaratory Order ) 2016- 00278

5  
6 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**  
7 **PROTECTION**  
8

9 1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky  
10 Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 13 and KRS  
11 61.878(1)(c), to grant confidential protection to portions of the Direct Testimony of Robert W.  
12 Berry, which is attached as Exhibit 10 to the application in this matter, and the attachments to  
13 that testimony. The information Big Rivers seeks to protect as confidential is hereinafter  
14 referred to as the "Confidential Information."

15 2. One (1) sealed copy of the pages containing Confidential Information, with the  
16 Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise  
17 marked "CONFIDENTIAL," is being filed with this petition. Ten (10) copies of the pages  
18 containing Confidential Information, with the Confidential Information redacted, are also being  
19 filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3).

20 3. There are currently no other parties to this proceeding on which copies of this  
21 petition must be served. 807 KAR 5:001 Section 13(2)(b).

22 4. If and to the extent the Confidential Information becomes generally available to  
23 the public, whether through filings required by other agencies or otherwise, Big Rivers will  
24 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section  
25 13(10)(b).

1           5.       As discussed below, the Confidential Information is entitled to confidential  
2 protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to  
3 an agency or required by an agency to be disclosed to it, generally recognized as confidential or  
4 proprietary, which if openly disclosed would permit an unfair commercial advantage to  
5 competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1); 807 KAR 5:001  
6 Section 13(2)(a)(1). Section I below explains that Big Rivers operates in competitive  
7 environments in the wholesale power market and in the credit market. Section II below shows  
8 that the Confidential Information is generally recognized as confidential or proprietary. Section  
9 III below demonstrates that public disclosure of the Confidential Information would permit an  
10 unfair commercial advantage to Big Rivers’ competitors. Section IV below describes the length  
11 of time Big Rivers is seeking confidential treatment for the Confidential Information.

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

13           6.       As a generation and transmission cooperative, Big Rivers competes in the  
14 wholesale power market. This includes not only the short-term bilateral energy market, the day-  
15 ahead and real time energy and ancillary services markets, and the capacity market to which Big  
16 Rivers has access by virtue of its membership in Midcontinent Independent System Operator,  
17 Inc. (“MISO”), but also forward bilateral long-term agreements and wholesale agreements with  
18 utilities and industrial customers. Big Rivers’ ability to successfully compete in the market is  
19 dependent upon a combination of its ability to: 1) obtain the maximum price for the power it  
20 sells, and 2) keep its cost of production as low as possible. Fundamentally, if Big Rivers’ cost of  
21 producing a unit of power increases, its ability to sell that unit in competition with other utilities  
22 is adversely affected.



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

8 11. The Confidential Information is not publicly available, is not disseminated within  
9 Big Rivers except to those employees and professionals with a legitimate business need to know  
10 and act upon the information, and is not disseminated to others without a legitimate need to  
11 know and act upon the information. As such, the Confidential Information is generally  
12 recognized as confidential and proprietary.

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

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

21 13. The Confidential Information consists of or can be used to determine Big Rivers'  
22 January 2016 through May 2016 variable production costs for the Station Two units, and this

1 recent variable production cost information can be used to readily determine or estimate Big  
2 Rivers' current cost of producing power.

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

20 15. Additionally, public disclosure of the Confidential Information would give the  
21 power producers and marketers with which Big Rivers competes in the wholesale power market  
22 insight into Big Rivers' cost of producing power. Knowledge of this information would give  
23 those power producers and marketers an unfair competitive advantage because they could use

1 that information to potentially underbid Big Rivers in wholesale transactions. It would also give  
2 potential suppliers to Big Rivers a competitive advantage because they will be able to manipulate  
3 the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big  
4 Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit  
5 markets.

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

#### 8 **IV. Time Period**

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

#### 14 **V. Conclusion**

15 18. 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. *See 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.

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On this the 28<sup>th</sup> day of July, 2016.

  
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