# RECEIVED

| 1 2              | COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION MAY 1 1 2011                                 |  |  |
|------------------|--|--|--|
| 3<br>4<br>5      | In the Matter of:  PUBLIC SERVICE COMMISSION   |  |  |
| 6<br>7<br>8<br>9 | APPLICATION OF BIG RIVERS ELECTRIC ) CORPORATION FOR A GENERAL ) CASE NO. 2011-00036 ADJUSTMENT IN RATES ) |  |  |
| 10<br>11         | PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL PROTECTION                                    |  |  |
| 12<br>13         | 1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky                            |  |  |
| 14               | Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 7 and KRS                      |  |  |
| 15               | 61.878(1)(c), to grant confidential protection to the attachments to its updated responses to Items        |  |  |
| 16               | 112 ("KIUC 1-112") and 132 ("KIUC 1-132") of Kentucky Industrial Utility Customers, Inc.'s                 |  |  |
| 17               | First Set of Data Requests to Big Rivers Electric Corporation ("KIUC's First Set of Data                   |  |  |
| 18               | Requests"). The information in the attachments that Big Rivers seeks to protect as confidential is         |  |  |
| 19               | hereinafter referred to as the "Confidential Information."   |  |  |
| 20               | 2. The attachments to KIUC 1-112 and KIUC 1-132 are contained on a CD marked                               |  |  |
| 21               | confidential. One (1) sealed copy of the updated responses to KIUC 1-112 and KIUC 1-132 and                |  |  |
| 22               | the CD is attached to this petition. A copy of the responses without the CD is attached to the             |  |  |
| 23               | original and each of the ten (10) copies of Big Rivers' updated data request responses filed with          |  |  |
| 24               | this petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).   |  |  |
| 25               | 3. A copy of this petition and a copy of the responses without the CD have been                            |  |  |
| 26               | served on all parties to this proceeding. 807 KAR 5:001 Section 7(2)(c). Big Rivers has                    |  |  |
| 27               | provided a copy of the CD to the parties who have signed a confidentiality agreement, and Big              |  |  |
| 28               | Rivers will provide a copy of the CD to any other party who signs a confidentiality agreement.             |  |  |

- 1 4. The Confidential Information is not publicly available, is not disseminated within
- 2 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
- 4 know and act upon the information.
- 5. If and to the extent the Confidential Information becomes generally available to
- 6 the public, whether through filings required by other agencies or otherwise, Big Rivers will
- 7 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
- 8 7(9)(a).

14

- 9 6. 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
- 12 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).

#### I. Big Rivers Faces Actual Competition

- 15 7. 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
- 18 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
- 20 other utilities is adversely affected. As is well-documented in multiple proceedings before this
- 21 Commission, Big Rivers' margins are derived almost exclusively from its off-system sales.
- 8. Big Rivers also competes for reasonably-priced credit in the credit markets, and
- 23 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
- 2 price it pays for credit. As was described in the proceeding before this Commission in the Big
- 3 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis
- 4 in the future.<sup>1</sup>

### II. The Confidential Information is Generally Recognized as Confidential or

#### 6 Proprietary

- 7 9. The Confidential Information for which Big Rivers seeks confidential treatment
- 8 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky
- 9 law.

5

- 10 10. **KIUC 1-112.** The attachment to Big Rivers' updated response to KIUC 1-112
- 11 contains off-system sales and prices that Big Rivers has realized in 2011. Big Rivers considers
- 12 this information confidential because public disclosure of the information would allow Big
- Rivers' suppliers and competitors to gain insight into the prices at which Big Rivers is willing to
- sell power on specific days and hours.
- 15 11. **KIUC 1-132.** The attachment to Big Rivers' updated response to KIUC 1-132
- 16 contains monthly billing and settlement invoices received by Big Rivers from the Midwest ISO.
- 17 Big Rivers considers this information confidential because public disclosure of the information
- would allow suppliers, purchasers, and competitors in the wholesale power market to calculate
- 19 Big Rivers' generation offer curves and the prices at which Big Rivers is willing to purchase
- 20 power.

21

<sup>&</sup>lt;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.

#### III. Disclosure of the Confidential Information Would Permit an Unfair Commercial

## Advantage to Big Rivers' Competitors

1

2

7

8

9

10

11

12

13

14

15

16

17

- 12. Disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
- 6 competitive injury if that Confidential Information was publicly disclosed.
  - 13. The Confidential Information consists of an attachment showing realized off-system sales and prices and an attachment containing invoices from the Midwest ISO. These attachments reveal recent prices at which Big Rivers purchased or sold power. If the Confidential Information is publicly disclosed, potential suppliers or purchasers of power would have insight into the prices at which Big Rivers is willing to buy or sell power, which they could use as a benchmark to manipulate the bidding process, increasing Big Rivers' costs or reducing Big Rivers' margins from off-system sales, and impairing Big Rivers' ability to compete in the wholesale power and credit markets. Additionally, Big Rivers' competitors in the wholesale power market would have insight into the prices at which Big Rivers is willing to sell power and would have an unfair competitive disadvantage.

## IV. The Confidential Information is Entitled to Confidential Protection

- 18 14. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).
- WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect as confidential the Confidential Information.

| 1   | On this the 10 h day of May, 2011. |  |
|-----|------------------------------------|--|
| 2   | • ,                                |  |
| 2 3 |                                    | $\sim$ 10                                      |
| 4   |                                    | 754  |
| 5   |                                    | James M. Miller                                |
| 6   |                                    | Tyson Kamuf                                    |
| 7   |                                    | Sullivan, Mountjoy, Stainback & Miller, P.S.C. |
| 8   |                                    | 100 St. Ann Street, P.O. Box 727               |
| 9   |                                    | Owensboro, Kentucky 42302-0727                 |
| 10  |                                    | (270) 926-4000                                 |
| 11  |                                    |  |
| 12  |                                    | and  |
| 13  |                                    |  |
| 14  |                                    | Douglas L. Beresford                           |
| 15  |                                    | Hogan Lovells US LLP                           |
| 16  |                                    | Columbia Square                                |
| 17  |                                    | 555 Thirteenth Street, NW                      |
| 18  |                                    | Washington, DC 20004                           |
| 19  |                                    | (202) 637-5819                                 |
| 20  |                                    | (,,  |
| 21  |                                    | COUNSEL FOR BIG RIVERS                         |
| 22  |                                    | ELECTRIC CORPORATION                           |