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June 3, 2011

**Federal Express**

Jeff DeRouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

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JUN 06 2011

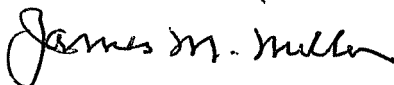
PUBLIC SERVICE  
COMMISSION

Re: In the Matter of: Notice and Application of Big Rivers  
Electric Corporation for a General Adjustment in Rates,  
PSC Case No. 2011-00036

Dear Mr. DeRouen:

Enclosed for filing are an original and ten (10) copies of Big Rivers Electric Corporation's first revision to Big Rivers' response to Item 43 of Kentucky Industrial Utility Customers, Inc.'s First Set of Data Requests to Big Rivers Electric Corporation ("KIUC 1-43"). The attachment for the updated response is contained on a CD, which is being filed under a petition for confidential protection. Also enclosed are an original and ten (10) copies of the petition. One (1) sealed copy of the CD is attached to the petition. I certify that a copy of this letter, a copy of the petition, and a copy of the updated response to KIUC 1-43 without the CD have been served on each party of record. A copy of the CD containing the information for which confidential treatment is sought has been served on each party that has signed a confidentiality agreement with Big Rivers.

Sincerely yours,



James M. Miller

JMM/ej  
Enclosures

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PSC CASE NO. 2011-00036

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**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR A GENERAL ADJUSTMENT IN RATES  
CASE NO. 2011-00036**

**VERIFICATION**

I, Mark A. Hite, verify, state, and affirm that I prepared or supervised the preparation of my data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

  
\_\_\_\_\_  
Mark A. Hite

COMMONWEALTH OF KENTUCKY     )  
COUNTY OF HENDERSON         )

SUBSCRIBED AND SWORN TO before me by Mark A. Hite on this the 2<sup>nd</sup> day of June, 2011.

  
\_\_\_\_\_  
Notary Public, Ky. State at Large  
My Commission Expires 1-12-13

**BIG RIVERS ELECTRIC CORPORATION**  
**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION**  
**FOR A GENERAL ADJUSTMENT IN RATES**  
**CASE NO. 2011-00036**

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PUBLIC SERVICE  
COMMISSION

**Revision No. 1 to Response to the Kentucky Industrial Utility Customers'  
Initial Request for Information dated April 1, 2011**

**June 3, 2011**

1 **Item 43)** *Please provide a copy of the Company's most recent multi-year financial*  
2 *forecast model in electronic format with formulas intact. Provide all assumptions and a*  
3 *copy of all source documents relied on to populate the model with assumptions and data.*

4  
5 **Response)** Big Rivers files this revision to its original response to Item 43 of the KIUC  
6 Initial Request for Information to correct an error in the multi-year financial forecast by which  
7 the benefits to Big Rivers of prepaying the RUS Series A Note with the \$35 million Transition  
8 Reserve were applied in a manner that was inappropriate under Section 4.7.5(f) of the smelter  
9 wholesale agreements. A copy of Section 4.7.5 of the smelter wholesale agreements, taken from  
10 the wholesale agreement related to Alcan, is Attachment 1 to this Item 43 (First Revision).

11 Big Rivers' revised multi-year (2011-2014) financial forecast model is provided, in  
12 Excel format and pursuant to a Petition for Confidential Treatment, on the CD accompanying  
13 this response. The Contract TIER and Conventional TIER calculations, which can be found on  
14 the "Stmts RUS" sheet, print lines 262 through 290, have been updated. More specifically, the  
15 Contract TIER has been calculated to "carve out" the effects on Big Rivers' margins of the April  
16 1, 2011, use of the \$35 million Transition Reserve to prepay the RUS Series A Note. This  
17 results in the smelter TIER Adjustment Charge increasing in 2013 from \$2.44 per MWh to \$2.79  
18 per MWh, as shown on print line 70 thereof.

19

**Case No. 2011-00036**  
**Revised Response to Item KIUC 1-43**  
**Witness: Mark A. Hite**  
**Page 1 of 2**

**BIG RIVERS ELECTRIC CORPORATION**  
**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION**  
**FOR A GENERAL ADJUSTMENT IN RATES**  
**CASE NO. 2011-00036**

**Revision No. 1 to Response to the Kentucky Industrial Utility Customers'  
Initial Request for Information dated April 1, 2011**

**June 3, 2011**

**1 Witness) Mark A. Hite**

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WHOLESALE ELECTRIC SERVICE AGREEMENT  
(ALCAN)

Dated as of July 1, 2009,

by and between

BIG RIVERS ELECTRIC CORPORATION

and

KENERGY CORP.

---

amount of Back-Up Energy resulting from deemed interruption of Scheduled Interruptible Energy pursuant to Section 2.3.2(a)(iii), and (z) the amount of Back-Up Energy resulting from the non-delivery of Market Energy purchased by a Third Party Supplier, then the charge for the excess amount of Back-Up Energy shall be the product of (i) the excess amount of Back-Up Energy, and (ii) the greater of (A) \$250 per MWh and (B) the price set forth in Section 4.4.1(b)(ii).

Sample calculations of the Back-Up Energy Charge are set forth in Exhibit A.

4.4.2 If during any Hour Big Rivers provides Back-Up Energy to Kenergy for resale to Alcan and "Back-Up Energy" (as defined in the Century Wholesale Agreement) to Kenergy for resale to Century, then the provisions of Section 4.4.1 shall apply to a proportional number of MW of Back-Up Energy for resale to each of Alcan and Century.

4.5 Charge for Transmission Services and Ancillary Services. For any Billing Month, the charge for transmission services and ancillary services (the "Transmission Charge") shall be the sum of the charges, calculated in accordance with the OATT, for Transmission Services for (a) Base Monthly Energy that are unbundled from the Large Industrial Rate, if any; and (b) Supplemental Energy.

4.6 Excess Reactive Demand Charge. For any Billing Month, the "Excess Reactive Demand Charge", if any, shall be the product of \$0.1433 and the amount, expressed in kilovars, of the difference, if positive, between:

(a) the maximum metered reactive demand of Alcan during the Billing Month, and

(b) an amount of kilovars equal to the sum of:

(i) the product of (A) 0.4843, and (B) the maximum hourly demand during a Billing Month, denominated in kilowatts, associated with Base Monthly Energy, Interruptible Energy, Market Energy, "Market Energy" under the Alcan Retail Agreement that is purchased by Kenergy from Third Party Suppliers for resale to Alcan, and Back-Up Energy provided by Big Rivers to Kenergy for resale to Alcan, but less the amount of such Interruptible Energy, Market Energy or Back-Up Energy that was purchased by Big Rivers from Third Parties, and

(ii) 54,114.

4.7 TIER Adjustment Charge.

4.7.1 The "TIER Adjustment Charge" shall be, for any Fiscal Year, the amount that is the product of the Applicable Percentage and the TIER Adjustment if, and only if, such TIER Adjustment is a positive amount; *provided, however*, that in no case will the TIER Adjustment Charge for any Fiscal Year exceed the amount that is the product of the Base Fixed Energy and the maximum additional charge per MWh set forth below for the applicable Fiscal Year:

<u>Fiscal Years</u>	<u>Maximum Additional Charge</u>
2008-2011	\$1.95 per MWh
2012-2014	\$2.95 per MWh
2015-2017	\$3.55 per MWh
2018-2020	\$4.15 per MWh
2021-2023	\$4.75 per MWh

If the TIER Adjustment shall be negative, there will be an Excess TIER Amount and no TIER Adjustment Charge.

4.7.2 Prior to each Fiscal Year, Big Rivers shall estimate both the TIER Adjustment and, if the TIER Adjustment is positive, the TIER Adjustment Charge based on the Budget for such Fiscal Year. Big Rivers shall collect such estimated amount from Kenergy in equal monthly installments as part of the Monthly Charge for each Billing Month during the applicable Fiscal Year.

4.7.3 Within 45 days following the end of the first, second and third fiscal quarters of each Fiscal Year beginning with the first fiscal quarter after the first anniversary of this Agreement, Big Rivers shall again estimate the TIER Adjustment and the corresponding amount of the TIER Adjustment Charge based on a comparison of the Budget and year-to-date results of operations, and shall calculate a modified amount to be collected from, or refunded as a credit to, the Monthly Charge to Kenergy with respect to service to Alcan during the remaining portion of the Fiscal Year, including any amounts necessary to address any estimated under- or over-collection of the TIER Adjustment Charge from Kenergy with respect to service to Alcan as compared to the Budget during the remainder of the Fiscal Year. Big Rivers shall collect or credit such modified amount from Kenergy pursuant to this Agreement in equal monthly installments as part of the Monthly Charge for the remaining Billing Months of the subject Fiscal Year.

4.7.4 As soon as reasonably practicable but no later than 120 days after the end of each Fiscal Year, Big Rivers shall calculate the TIER Adjustment and TIER Adjustment Charge for such Fiscal Year. The TIER Adjustment Charge for such Fiscal Year shall be compared to the aggregate amounts paid by Kenergy in respect of the estimated TIER Adjustment Charge for such Fiscal Year, and the difference between such amounts shall be included as a charge or credit, as applicable, in the Monthly Charges for the fourth Billing Month of the next Fiscal Year.

4.7.5 The "TIER Adjustment" shall be the amount of incremental revenue, whether positive or negative, calculated with respect to each Fiscal Year after determination of Net Margins for such Fiscal Year (excluding amounts payable by Kenergy with respect to or relating to the revenue that results from the TIER Adjustment Charge and the "TIER Adjustment Charge" as defined in the Century Wholesale Agreement), that is necessary for Big Rivers to receive in order to achieve a TIER of 1.24 for such Fiscal Year; *provided, however*, that if the Service Period commences or terminates on a date other than the first or last day of a Fiscal Year and to give effect to this Section 4.7.5, the TIER Adjustment will be calculated on an Hourly basis only with respect to the partial period of the first, second or final Fiscal Year of the Service



Period, as applicable. The determination of the TIER Adjustment shall be subject to the following:

(a) It shall be assumed that: Big Rivers shall have generated additional revenue from service to the Members for resale to the Non-Smelter Ratepayers as if Big Rivers had increased the Non-Smelter Member Rates by a weighted average of 2.00% in 2010, another 2.50% in 2018 and another 4.00% in 2021 if and to the extent Big Rivers had not prior to or during the year of the calculation increased the Non-Smelter Member Rates by at least such amounts. The revenues from any roll-in of the costs associated with costs recovered under the FAC, the Environmental Surcharge Rider or the Regulatory Account that are incorporated into base rates comprising a portion of the Non-Smelter Member Rates will not constitute an increase in the Non-Smelter Member Rates for purposes of this clause (a), and the revenues attributable to any such roll-in will be excluded in calculating the percentage of any increases in the Non-Smelter Member Rates. The expiration or termination of Big Rivers' Member Discount Adjustment Rider shall be deemed to be an increase in the Non-Smelter Member Rates for purposes of this clause (a), without regard to whether such expiration or termination occurs prior to, on or after the Effective Date.

(b) It shall be assumed that: If a Member provides electric service to a New Ratepayer with a Firm demand in excess of 15 MW, such Member shall have paid to Big Rivers for wholesale Energy purchased and resold to the New Ratepayer at a price equal to the greater of: (i) the amount paid for such service and (ii) an amount calculated for the same period equal to (A) a rate, expressed in dollars per MWh, resulting from the application of the Large Industrial Rate to a load with the New Ratepayer's load factor, plus \$0.25 per MWh, *plus* (B) the sum of the FAC Factor, the Environmental Surcharge Factor, and the Non-FAC Purchased Power Adjustment Factor (each calculated on a per MWh basis), *plus* (C) the Surcharge (the Surcharge being calculated on an amount per MWh based on Base Fixed Energy for such Fiscal Year) set forth in Section 4.11, *plus* (D) amounts corresponding to the amount per MWh paid by Kenergy during the same period for the TIER Adjustment Charge. If a Member provides electric service to a New Ratepayer with a Firm demand of 15 MW or less, such Member shall have paid to Big Rivers for wholesale Energy purchased and resold to the New Ratepayer at a price equal to the sum of: (i) the Large Industrial Rate, and (ii) the sum of the FAC Factor, the Environmental Surcharge Factor, and the Non-FAC Purchased Power Adjustment Factor (each calculated on a per MWh basis). For purpose of this clause (b), the revenues produced by any surcharge with respect to a New Ratepayer similar to the Surcharge or the "Surcharge" under the Century Retail Agreement will be assumed to accrue solely to the benefit of the Non-Smelter Ratepayers except to the extent such surcharge is paid by or imputed to a New Ratepayer pursuant to subclause (A) of this clause (b). The assumptions contained in this clause (b) shall not apply with respect to a New Ratepayer that first interconnects with Big Rivers' transmission system during the last three Fiscal Years of the Service Period or following notice of termination of this Agreement or the Century Retail Agreement.

(c) It shall be assumed that: Big Rivers' interest expense shall have been reduced by the product of (i) Big Rivers' average effective interest rate for borrowed money for the prior Fiscal Year, and (ii) the aggregate amount of any patronage capital retired by Big Rivers to its Members during the Service Period (other than any distribution from the Rural Economic Reserve, the Economic Reserve or the Transition Reserve or relating to the Surcharge

or the "Surcharge" under the Century Wholesale Agreement), from and after the date of such retirement.

(d) It shall be assumed that: Interest on construction work-in-progress relating to the construction of new electric generating facilities or transmission facilities shall have been capitalized by Big Rivers if it has the right to elect to do so or it is obligated to capitalize such interest under Accounting Principles unless a Governmental Authority has approved the inclusion of such interest expenses in Big Rivers' revenue requirements for rate-making purposes or otherwise approved a surcharge for collecting such interest expenses.

(e) If Big Rivers acquires or constructs non-peaking electric generating facilities alone or with others ("New Facilities"), Big Rivers' interest expenses shall not include the interest imputed on the debt relating to the New Facilities ("Imputed Interest"); *provided, however*, that if a Governmental Authority has approved the inclusion of such generating facilities in Big Rivers' revenue requirements for rate-making purposes or otherwise approved a surcharge to provide for the recovery of the costs of such New Facilities, then actual interest expense with respect to such New Facilities shall be included in the TIER calculation to the extent recovery is permitted; *provided, further*, that this clause (e) may not cause the TIER Adjustment to become negative. For purposes of determining Imputed Interest, it shall be assumed that the New Facilities were financed 80% with debt and 20% with equity. Imputed Interest shall equal the product of (i) the weighted average interest rate on Big Rivers' debt for the Fiscal Year, and (ii) the amount of debt equal to 80% of the capital invested in the New Facilities.

(f) It shall be assumed that: The Rural Economic Reserve, the Economic Reserve and the Transition Reserve shall not generate any revenue or tax liability and the application of funds from the Rural Economic Reserve, the Economic Reserve or the Transition Reserve shall not result in any change in the Net Margins of Big Rivers.

(g) It shall be assumed that: Big Rivers shall have made no payment for damages or indemnification to or for the benefit of a Smelter with respect to the provision of Electric Services or "Electric Services" as defined in the Century Wholesale Agreement.

(h) It shall be assumed that: Big Rivers shall have paid no criminal penalties with respect to its acts or omissions other than criminal penalties that a Governmental Authority has approved the inclusion of in Big Rivers' revenue requirements for rate-making purposes or otherwise approved a surcharge for collecting such penalties.

(i) It shall be assumed that: Big Rivers shall have received no proceeds from the sale of Energy to the wholesale market pursuant to Section 4.13.3 or the corresponding section of the Century Wholesale Agreement.

(j) It shall be assumed that: Big Rivers shall have incurred no expenses that are impermissible for inclusion in rates of electric generation and transmission cooperative utilities subject to the jurisdiction of the KPSC for rate-making purposes (currently including advertising expenses, branding expenses, charitable contributions and lobbying

expenses) or specifically disallowed for rate making purposes by a Governmental Authority; *provided, however*, that denial by a Governmental Authority of expense recovery through the FAC or the Environmental Surcharge Rider shall not constitute an expense that is impermissible for inclusion in rates if the nature of such expense is recoverable in base rates.

(k) It shall be assumed that: There are no revenues and expenses associated with non-regulated businesses of Big Rivers.

(l) It shall be assumed that: No interest is paid pursuant either to Section 5.3 or Section 5.4 or pursuant to the corresponding sections of the Century Wholesale Agreement.

(m) It shall be assumed that: No amounts have been or are payable with respect to Excess Reactive Demand Charges or with respect to "Excess Reactive Demand Charges" under the Century Wholesale Agreement.

(n) It shall be assumed that: No administrative fee shall have been received by Big Rivers as a result of any Surplus Sales, Undeliverable Energy Sales or Potline Reduction Sales or sales of Energy pursuant to the corresponding sections of the Century Wholesale Agreement.

(o) Additional costs related to a change in Big Rivers' depreciation rates may not be included in the calculation of the TIER Adjustment unless such change has been approved, consented to or accepted by the KPSC or, if the KPSC no longer has jurisdiction over Big Rivers, by the RUS or any other Governmental Authority having jurisdiction over such change, if any.

(p) It shall be assumed that: The amortization of any Restructuring Amount is zero.

4.7.6 Any proceeds received or transaction costs paid by Big Rivers as part of or in connection with the consummation of the Unwind Transaction shall be disregarded for purposes of computing the TIER Adjustment Charge for the Fiscal Year in which the Unwind Transaction occurs.

#### 4.8 Adjustable Charges.

4.8.1 The "FAC Charge" shall be the product of the FAC Factor (expressed in dollars per MWh) and Base Monthly Energy.

4.8.2 The "Non-FAC Purchased Power Adjustment Charge" shall be the product of the Non-FAC Purchased Power Adjustment Factor (expressed in dollars per MWh) and Base Monthly Energy.

4.8.3 The "Environmental Surcharge" shall be the product of the Monthly Environmental Surcharge Factor (expressed in dollars per MWh) and Base Monthly Energy.

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 06 2011

3  
4 In the Matter of:

5  
6 APPLICATION OF BIG RIVERS ELECTRIC )  
7 CORPORATION FOR A GENERAL )  
8 ADJUSTMENT IN RATES )

PUBLIC SERVICE  
COMMISSION  
CASE NO. 2011-00036

9  
10 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**  
11 **PROTECTION**  
12

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, to grant confidential protection to the electronic attachment to its updated response to  
16 Item 43 of Kentucky Industrial Utility Customers, Inc.'s First Set of Data Requests to Big Rivers  
17 Electric Corporation ("KIUC 1-43"). The electronic attachment is a revision of the multi-year  
18 financial forecast model that Big Rivers' filed on April 15, 2011, with its original response to  
19 KIUC 1-43. Big Rivers also filed a petition for confidential treatment for the original model,  
20 which is still pending.

21 2. The electronic attachment to the updated response to KIUC 1-43 is contained on a  
22 CD and is hereinafter referred to as the "Confidential Information." One (1) sealed copy of the  
23 CD is attached to this petition. An original and ten (10) copies of Big Rivers' updated response  
24 to KIUC 1-43 without the CD are also filed with this petition. 807 KAR 5:001 Sections  
25 7(2)(a)(2), 7(2)(b).

26 3. A copy of this petition and a copy of the updated response to KIUC 1-43 without  
27 the CD have been served on all parties to this proceeding. 807 KAR 5:001 Section 7(2)(c). Big  
28 Rivers has also provided a copy of the CD to the parties who have signed a confidentiality

1 agreement, and Big Rivers will provide a copy of the CD to any other party who signs a  
2 confidentiality agreement.

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

7 5. If and to the extent the Confidential Information becomes generally available to  
8 the public, whether through filings required by other agencies or otherwise, Big Rivers will  
9 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section  
10 7(9)(a).

11 6. As discussed below, the Confidential Information is entitled to confidential  
12 protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to  
13 an agency or required by an agency to be disclosed to it, generally recognized as confidential or  
14 proprietary, which if openly disclosed would permit an unfair commercial advantage to  
15 competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1).

#### 16 **I. Big Rivers’ Faces Actual Competition**

17 7. Big Rivers competes in the wholesale power market to sell energy excess to its  
18 members’ needs. Big Rivers’ ability to successfully compete in the wholesale power market is  
19 dependent upon a combination of its ability to get the maximum price for the power sold, and  
20 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers’ cost  
21 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with  
22 other utilities is adversely affected. As is well documented in multiple proceedings before this  
23 Commission, Big Rivers’ margins are derived almost exclusively from its off-system sales.

1           8.           Big Rivers also competes for reasonably priced credit in the credit markets, and  
2 its ability to compete is directly impacted by its financial results. Any event that adversely  
3 affects Big Rivers' margins will adversely affect its financial results and potentially impact the  
4 price it pays for credit. As was described in the proceeding before this Commission in the Big  
5 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis  
6 in the future.<sup>1</sup>

7                           **II. The Confidential Information is Generally Recognized as Confidential or**  
8   **Proprietary**

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

12          10.          The Confidential Information is a revision of the multi-year financial forecast  
13 model filed with Big Rivers' original response to KIUC 1-43. Public disclosure of this model  
14 would reveal Big Rivers' forecast of costs and rates, which would give Big Rivers' suppliers and  
15 competitors an unfair competitive advantage. For example, power suppliers could use Big  
16 Rivers' forecasts of power prices to determine the prices at which Big Rivers is willing to buy  
17 power. The Commission has previously granted confidential treatment to similar information.  
18 *See, e.g.,* letter dated December 21, 2010, in *In the Matter of: The 2010 Integrated Resource*  
19 *Plan of Big Rivers Electric Corporation*, PSC Case No. 2010-00443 (granting confidential  
20 treatment to fuel cost projections, revenue projections, market price projections, financial model  
21 outputs, etc.). In fact, the Commission granted confidential treatment to similar information in

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<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.

1 this proceeding. *See* letter dated May 25, 2011, granting confidential treatment to Big Rivers’  
2 forecasts of power market prices).

3  
4 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**  
5 **Advantage to Big Rivers’ Competitors**

6 11. Disclosure of the Confidential Information would permit an unfair commercial  
7 advantage to Big Rivers’ competitors. As discussed above, Big Rivers faces actual competition  
8 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer  
9 competitive injury if that Confidential Information was publicly disclosed.

10 12. The Confidential Information includes material such as Big Rivers’ projections of  
11 fuel costs and power prices. If that information is publicly disclosed, potential fuel and power  
12 suppliers would have insight into the prices Big Rivers is willing to pay and could manipulate the  
13 bidding process, leading to higher prices for Big Rivers and impairing its ability to compete in  
14 the wholesale power and credit markets. In PSC Case No. 2003-00054, the Commission granted  
15 confidential protection to bids submitted to ULH&P. In addition to the other arguments  
16 discussed above, ULH&P argued, and the Commission implicitly accepted, that if the bids it  
17 received were publicly disclosed, contractors on future work could use the bids as a benchmark,  
18 which would likely lead to the submission of higher bids. Order dated August 4, 2003, in *In the*  
19 *Matter of: Application of the Union Light, Heat and Power Company for Confidential*  
20 *Treatment*, PSC Case No. 2003-00054. The Commission also implicitly accepted ULH&P’s  
21 further argument that the higher bids would lessen ULH&P’s ability to compete with other gas  
22 suppliers. *Id.* Similarly, potential fuel and power suppliers manipulating Big Rivers’ bidding

1 process would lead to higher costs to Big Rivers and would place it at an unfair competitive  
2 disadvantage in the wholesale power market and credit markets.

3 13. Public disclosure of the Confidential Information would also allow power  
4 suppliers to know when Big Rivers' generating plants will be down for maintenance and thus  
5 have insight into Big Rivers' need for power and energy during those periods. With that  
6 information, potential suppliers to Big Rivers will be able to manipulate the price of power bid to  
7 Big Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and  
8 impairing Big Rivers' ability to compete in the wholesale power and credit markets

9 14. Additionally, public disclosure of the Confidential Information would give the  
10 power producers and marketers with which Big Rivers competes in the wholesale power market  
11 insight into Big Rivers' cost of producing power, which would give them an unfair competitive  
12 advantage because they could use that information to potentially underbid Big Rivers in  
13 wholesale transactions.

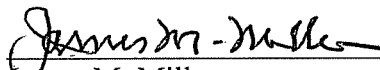
#### 14 IV. Conclusion

15 15. 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. *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.



1 On this the 3<sup>rd</sup> day of June, 2011.

2  
3 

4 James M. Miller  
5 Tyson Kamuf  
6 Sullivan, Mountjoy, Stainback & Miller, P.S.C.  
7 100 St. Ann Street, P.O. Box 727  
8 Owensboro, Kentucky 42302-0727  
9 (270) 926-4000

10  
11 and

12  
13 Douglas L. Beresford  
14 Hogan Lovells US LLP  
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