

May 29, 2012

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PUBLIC SERVICE
COMMISSION

Via Federal Express

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Executive Director
Public Service Commission
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Mark W. Starnes
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Re: *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, P.S.C. Case No. 2012-00063*

Dear Mr. DeRouen:

Enclosed on behalf of Big Rivers Electric Corporation ("Big Rivers") is a CD containing models and work sheets from Sargent & Lundy. The CD is being filed under a petition for confidential treatment. An original and ten copies of the petition for confidential treatment are also enclosed. The CD is being provided in response to a letter from counsel for intervenor Kentucky Industrial Utility Customers, Inc. to counsel for Big Rivers dated May 11, 2012, requesting this information. A copy of this letter and a copy of the petition have been served on each person on the attached service list. A copy of the CD is also being provided to each party pursuant to the confidentiality agreements each party has signed. Please call if you have any questions.

Sincerely,



Tyson Kamuf

TAK/ej
Enclosures

cc: Mark A. Bailey
Albert Yockey
Bob Berry
Adam Landry
William DePriest
Todd Hanssen
Jill A. Liska, Esq.

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PSC Case No. 2012-00063

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

3 RECEIVED

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5 In the Matter of: MAY 30 2012

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7 Application of Big Rivers Electric Corporation)
8 for Approval of its 2012 Environmental)
9 Compliance Plan, for Approval of its Amended)
10 Environmental Cost Recovery Surcharge Tariff,)
11 for Certificates of Public Convenience and)
12 Necessity, and for Authority to Establish a)
13 Regulatory Account)

14
15
16 Case No. 2012-00063

PUBLIC SERVICE
COMMISSION

17 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**
18 **PROTECTION**

19 1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky
20 Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 7 and KRS
21 61.878, to grant confidential protection to documents Big Rivers is filing in response to a letter
22 dated May 11, 2012, from counsel for Intervenor Kentucky Industrial Utility Customers, Inc.
23 ("KIUC"), to counsel for Big Rivers. The information Big Rivers is filing with this petition (the
24 "Confidential Information") in response to the KIUC letter is a CD from Sargent & Lundy, LLC
25 ("S&L"), containing S&L's models and worksheets used in generating the capital and operation
26 and maintenance cost estimates used in the environmental compliance study S&L prepared for
27 Big Rivers.

28 2. One (1) copy of Confidential Information is being filed electronically on a CD
29 marked confidential, which is attached to this petition. Big Rivers is also filing ten (10) copies
30 of this petition with the Confidential Information redacted (*i.e.*, without the CD). 807 KAR
31 5:001 Sections 7(2)(a)(2), 7(2)(b).

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

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

9 **II. The Confidential Information is Generally Recognized as Confidential or**
10 **Proprietary**
11

12 9. 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 10. S&L considers the information proprietary and confidential. S&L does not
16 typically provide this proprietary information even to its own clients, as S&L does not want the
17 information disclosed publicly, or otherwise. It has only given Big Rivers permission to file the
18 CD in this proceeding if Big Rivers does so under a petition for confidential treatment, and Big
19 Rivers can only share the CD with other parties subject to confidentiality agreements.

20 11. Additionally, the CD contains a detailed budgetary proposal from a third party for
21 the design and supply of the Wet Flue Gas Desulfurization ("WFGD") project at Big Rivers'
22 D.B. Wilson station. The contractor considers this information confidential and has not given
23 Big Rivers permission to publicly release the information.

¹ 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 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**
2 **Advantage to Big Rivers' Competitors**
3

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

8 13. The Confidential Information includes information supplied to Big Rivers by
9 suppliers who consider the information confidential and who have not given Big Rivers
10 permission to publicly reveal the information. In Case No. 2003-00054, the Commission granted
11 confidential protection for bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P
12 argued, and the Commission implicitly accepted, that the bidding contractors would not want
13 their bid information publicly disclosed, and that disclosure would reduce the contractor pool
14 available to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with
15 other gas suppliers. Order dated August 4, 2003, in *In the Matter of: Application of the Union*
16 *Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054.
17 Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court
18 found that without protection for confidential information provided to a public agency,
19 "companies would be reluctant to apply for investment tax credits for fear the confidentiality of
20 financial information would be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*,
21 Ky., 907 S.W.2d 766, 769 (1995).

22 14. In Big Rivers' case, these suppliers do not want the information they provided to
23 Big Rivers on a confidential basis to be publicly disclosed. Suppliers such as these rely on the
24 confidentiality of their information, and if they believed that the Commission would deny
25 confidential treatment for the confidential information they provide to Big Rivers, it is likely that

1 fewer suppliers would offer their services to Big Rivers. As such, public disclosure of the
2 Confidential Information would likely reduce the pool of suppliers willing to enter into
3 agreements with Big Rivers, resulting in increased prices for Big Rivers and impairing its ability
4 to compete in the wholesale power and credit markets.

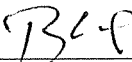
5 **IV. Conclusion**

6 15. Based on the foregoing, the Confidential Information is entitled to confidential
7 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due
8 process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v.*
9 *Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

10 WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect
11 as confidential the Confidential Information.

12 On this the 29th day of May, 2012.

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