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June 1, 2012

**Via Federal Express**

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

RECEIVED

JUN 04 2012

PUBLIC SERVICE  
COMMISSION

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 for Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, PSC Case No. 2012-00063*

Dear Mr. DeRouen:

Enclosed on behalf of Big Rivers Electric Corporation ("Big Rivers") is a CD containing model-related information from ACES Power Marketing. 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. Copies of the CD are also being provided to each party pursuant to the confidentiality agreements each party has signed. Please note that the information on this CD is not reflected in requests for information that Big Rivers filed today. Please call if you have questions.

Sincerely,



Tyson Kamuf

TAK/ej

cc: Mark A. Bailey  
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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 RECEIVED

3  
4  
5 JUN 04 2012

6 In the Matter of:

PUBLIC SERVICE  
COMMISSION

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 )

Case No. 2012-00063

14  
15  
16 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**  
17 **PROTECTION**

18  
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 forward market power price shape  
25 and load shape data from ACES Power Marketing ("ACES").

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

30 3. A copy of this petition with the Confidential Information redacted has been served  
31 on all parties to this proceeding. 807 KAR 5:001 Section 7(2)(c). Big Rivers is also providing a

1 copy of the Confidential Information to all parties, as they have all signed a confidentiality  
2 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

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

13           10.           The Confidential Information consists of projected power price shape and load  
14 shape data ACES used in its planning models for Big Rivers. The price shape data is proprietary  
15 information of ACES, and ACES has not given Big Rivers permission to publicly release the  
16 data.

17           11.           The load shape data provides detailed and projected information about Big  
18 Rivers' load, which can help competitors determine the amount of power Big Rivers will have  
19 available to sell into the market or help them determine times when Big Rivers needs power.  
20 Information about a company's detailed inner workings is generally recognized as confidential or  
21 proprietary. See, e.g., *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768  
22 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning  
23 the inner workings of a corporation is 'generally recognized as confidential or proprietary'").

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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 Moreover, the Commission has previously granted confidential treatment to other projected  
2 information that would reveal Big Rivers' need for power. *See, e.g.*, letter from the Commission  
3 dated July 20, 2010, in Administrative Case No. 387 (granting confidential treatment to a list of  
4 future scheduled outages that Big Rivers filed as part of the supplement to its annual report).

5 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**  
6 **Advantage to Big Rivers' Competitors**  
7

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

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

23 14. In Big Rivers' case, ACES has not given Big Rivers permission to release the  
24 price shape data publicly, and ACES does not want the information it provided to Big Rivers on  
25 a confidential basis to be publicly disclosed. Suppliers such as ACES rely on the confidentiality

1 their information, and if they believed that the Commission would deny confidential treatment  
2 for the confidential information they provide to Big Rivers, it is likely that fewer suppliers would  
3 offer their services to Big Rivers. As such, public disclosure of the Confidential Information  
4 would likely reduce the pool of suppliers willing to enter into agreements with Big Rivers,  
5 resulting in increased prices for Big Rivers and impairing its ability to compete in the wholesale  
6 power and credit markets.

7 15. Public disclosure of the future load shape data could give the power producers  
8 and marketers with which Big Rivers competes in the wholesale power market insight into Big  
9 Rivers' future need for power and energy during the periods covered by the information.  
10 Knowledge of this information could give those power producers and marketers an unfair  
11 competitive advantage because they could use that information to potentially underbid Big  
12 Rivers in wholesale transactions. It could also give potential suppliers to Big Rivers a  
13 competitive advantage because they will be able to manipulate the price of power bid to Big  
14 Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and impairing  
15 Big Rivers' ability to compete in the wholesale power and credit markets.

16 **IV. Conclusion**

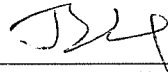
17 16. Based on the foregoing, the Confidential Information is entitled to confidential  
18 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due  
19 process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v.*  
20 *Kentucky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

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

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On this the 1<sup>st</sup> day of June, 2012.



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