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June 13, 2012

Via Federal Express

Jeff DeRouen
Executive Director
Public Service Commission
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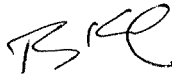
PUBLIC SERVICE
COMMISSION

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 of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, P.S.C. Case No. 2012-00063*

Dear Mr. DeRouen:

Enclosed for filing on behalf of Big Rivers Electric Corporation ("Big Rivers") are an original and ten copies of a Petition for Confidential Treatment for the electronic files contained on the flash drive that is also enclosed. These files supersede all of the electronic files Big Rivers filed on CDs April 26, 2012, May 24, 2012, May 29, 2012, May 30, 2012, June 1, 2012, and June 8, 2012, except for the CDs Big Rivers filed June 1, 2012, with its responses to the Commission Staff's and the Intervenors' initial requests for information. A copy of this letter and a copy of the petition have been served on each of the persons on the attached service list.

Sincerely,



Tyson Kamuf

TAK/ej
Enclosures

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1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
3
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5 In the Matter of:

PUBLIC SERVICE
COMMISSION

6
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

Case No. 2012-00063

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 the electronic files Big Rivers is filing with this
22 petition (the "Confidential Information"). These files supersede all of the electronic files Big
23 Rivers filed on CDs April 26, 2012, May 24, 2012, May 29, 2012, May 30, 2012, June 1, 2012,
24 and June 8, 2012, except for the CDs Big Rivers filed June 1, 2012, with its responses to the
25 Commission Staff's and the intervenors' initial requests for information.

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

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 models, worksheets, and other model-
14 related information, including input data and assumptions and output data, for the models run by
15 Big Rivers, PACE Global ("PACE"), ACES Power Marketing ("ACES"), and Sargent & Lundy
16 ("S&L"). Public Disclosure of the Confidential Information would reveal detailed information
17 relating to Big Rivers' current and future cost of producing power; forecasts that Big Rivers uses
18 and relies on relating to fuel prices, power market prices, allowance prices, variable production
19 costs, and related information; price and load shape data from ACES; and lists of future
20 scheduled outages.

21 11. Knowledge of such data would give Big Rivers' suppliers and competitors an
22 unfair competitive advantage. Public disclosure of the Confidential Information will allow Big
23 Rivers' suppliers and competitors to know Big Rivers' future maintenance plans, it will give

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 them insight into Big Rivers’ wholesale power needs, and it will give Big Rivers’ suppliers,
2 buyers, and competitors insight into Big Rivers’ cost of producing power and into Big Rivers’
3 view of future prices for fuel prices, market power prices, and allowance prices, which would
4 indicate the prices at which Big Rivers is willing to buy or sell such items. The load shape data
5 provides detailed and projected information about Big Rivers’ load, which can help competitors
6 determine the amount of power Big Rivers will have available to sell into the market or help
7 them determine times when Big Rivers needs power.

8 12. Information about a company’s detailed inner workings is generally recognized as
9 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907
10 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such
11 information concerning the inner workings of a corporation is ‘generally recognized as
12 confidential or proprietary’”). Moreover, the Commission has previously granted confidential
13 treatment to similar information. *See, e.g.,* letters from the Commission dated July 28, 2011, and
14 December 20, 2011, in *In the Matter of: Application of Big Rivers Electric Corporation for a*
15 *General Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to
16 multi-year forecast); letter from the Commission dated December 21, 2010, in *In the Matter of:*
17 *The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, PSC Case No. 2010-
18 00443 (granting confidential treatment to fuel cost projections, revenue projections, market price
19 projections, financial model outputs, etc.); letter from the Commission dated July 20, 2010, in
20 Administrative Case No. 387 (granting confidential treatment to a list of future scheduled
21 outages that Big Rivers filed as part of the supplement to its annual report).

1 13. In addition to the above, PACE, ACES, and S&L consider the information they
2 provided Big Rivers to be confidential, and they have not given Big Rivers permission to
3 publicly release the information.

4 14. Also, the Confidential Information contains a detailed budgetary proposal from a
5 third party for the design and supply of the Wet Flue Gas Desulfurization (“WFGD”) project at
6 Big Rivers’ D.B. Wilson station. The contractor considers this information confidential and has
7 not given Big Rivers permission to publicly release the information.

8 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**
9 **Advantage to Big Rivers’ Competitors**
10

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

15 16. The Confidential Information includes material such as Big Rivers’ projections of
16 fuel costs and power prices. If that information is publicly disclosed, potential fuel and power
17 suppliers would have insight into the prices Big Rivers is willing to pay and could manipulate the
18 bidding process, leading to higher prices for Big Rivers and impairing its ability to compete in
19 the wholesale power and credit markets. In PSC Case No. 2003-00054, the Commission granted
20 confidential protection to bids submitted to Union Light, Heat & Power (“ULH&P”). ULH&P
21 argued, and the Commission implicitly accepted, that if the bids it received were publicly
22 disclosed, contractors on future work could use the bids as a benchmark, which would likely lead
23 to the submission of higher bids. Order dated August 4, 2003, in *In the Matter of: Application of*
24 *the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-
25 00054. The Commission also implicitly accepted ULH&P’s further argument that the higher

1 bids would lessen ULH&P's ability to compete with other gas suppliers. *Id.* Similarly, potential
2 fuel and power suppliers manipulating Big Rivers' bidding process would lead to higher costs to
3 Big Rivers and would place it at an unfair competitive disadvantage in the wholesale power
4 market and credit markets.

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

16 18. The Confidential Information also includes information supplied to Big Rivers by
17 suppliers, including PACE, ACES, S&L, and the third party contractor for the WFGD project,
18 who consider the information confidential and who have not given Big Rivers permission to
19 publicly reveal the information. In Case No. 2003-00054, the Commission granted confidential
20 protection for bids submitted to ULH&P. ULH&P argued, and the Commission implicitly
21 accepted, that the bidding contractors would not want their bid information publicly disclosed,
22 and that disclosure would reduce the contractor pool available to ULH&P, which would drive up
23 ULH&P's costs, hurting its ability to compete with other gas suppliers. Order dated August 4,

1 2003, in *In the Matter of: Application of the Union Light, Heat and Power Company for*
2 *Confidential Treatment*, PSC Case No. 2003-00054. Similarly, in *Hoy v. Kentucky Indus.*
3 *Revitalization Authority*, the Kentucky Supreme Court found that without protection for
4 confidential information provided to a public agency, “companies would be reluctant to apply for
5 investment tax credits for fear the confidentiality of financial information would be
6 compromised. *Hoy*, 907 S.W.2d at 769.

7 19. In Big Rivers’ case, these suppliers have not given Big Rivers permission to
8 publicly release the information they provided to Big Rivers on a confidential basis. Suppliers
9 such as these rely on the confidentiality of their information, and if they believed that the
10 Commission would deny confidential treatment for the confidential information they provide to
11 Big Rivers, it is likely that fewer suppliers would offer their services to Big Rivers. As such,
12 public disclosure of the Confidential Information would likely reduce the pool of suppliers
13 willing to enter into agreements with Big Rivers, resulting in increased prices for Big Rivers and
14 impairing its ability to compete in the wholesale power and credit markets.

15 **IV. Conclusion**

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

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

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On this the 13th day of June, 2012.



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