

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

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JUN 15 2012

PUBLIC SERVICE  
COMMISSION

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5 In the Matter of:

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

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 portions of an attachment to Big Rivers' updated  
22 response to Item 43 of Kentucky Industrial Utility Customers, Inc.'s First Set of Data Requests  
23 ("KIUC 43"), which Big Rivers is filing with this petition. The portions of the attachment that  
24 Big Rivers seeks to protect as confidential are hereinafter referred to as the "Confidential  
25 Information."

26 2. One (1) copy of the pages of the attachment containing the Confidential  
27 Information with the Confidential Information highlighted in orange is attached to this petition,  
28 and a copy of the attachment with the Confidential Information redacted is attached to the  
29 original and each of the ten (10) copies of Big Rivers' updated response to KIUC 43. 807 KAR  
30 5:001 Sections 7(2)(a)(2), 7(2)(b).

31 3. A copy of this petition and a copy of the attachment to KIUC 43 with the  
32 Confidential Information redacted have been served on all parties to this proceeding. 807 KAR

1 5:001 Section 7(2)(c). Big Rivers is also providing a copy of the Confidential Information to all  
2 parties, as they have all signed a 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           12.           The Confidential Information on page 4 of the attachment includes actual and/or  
2 projected Electric Energy Revenues, Total Operating Revenues, Operating Expense – Excluding  
3 Fuel, Operating Expense Fuel, Maintenance Expense, and Total Expenses. The Electric Energy  
4 Revenues can be used with other, non-confidential information in the attachment to determine  
5 the projected off-system sales revenues that appear on page 9 and that are confidential. The  
6 Total Operating Revenues can be used with other, non-confidential information on page 4 to  
7 calculate Electric Energy Revenues. Total Expenses can be used with other, non-confidential  
8 information on page 4 to calculate Total Operating Revenues. The actual and projected  
9 operation and maintenance (“O&M”) expenses shown on the Operating Expense – Excluding  
10 Fuel, Operating Expense Fuel, and Maintenance Expense lines are confidential because public  
11 disclosure of that information would reveal Big Rivers’ current and future variable production  
12 costs.

13           13.           Thus, the Confidential Information is confidential because it either shows or can  
14 be used to calculate (i) Big Rivers’ projected off-system sales volumes or revenues, (ii) the price  
15 per MWh that Big Rivers’ projects for its off-system sales, or (iii) Big Rivers’ current or  
16 projected cost of producing power. Knowledge of such data would give Big Rivers’ suppliers  
17 and competitors an unfair competitive advantage. Public disclosure of the Confidential  
18 Information can help Big Rivers’ suppliers and competitors determine the amount of power Big  
19 Rivers will have available to sell into the market or help them determine times when Big Rivers  
20 needs power, and it will give Big Rivers’ suppliers, buyers, and competitors insight into Big  
21 Rivers’ cost of producing power and into Big Rivers’ view of future market power prices, which  
22 would indicate the prices at which Big Rivers is willing to buy or sell power. Information about  
23 a company’s detailed inner workings is generally recognized as confidential or proprietary. *See,*

1 e.g., *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“It does  
2 not take a degree in finance to recognize that such information concerning the inner workings of  
3 a corporation is ‘generally recognized as confidential or proprietary’”). Moreover, the  
4 Commission has previously granted confidential treatment to similar information. See, e.g.,  
5 letters from the Commission dated July 28, 2011, and December 20, 2011, in *In the Matter of:*  
6 *Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, PSC Case No.  
7 2011-00036 (granting confidential treatment to multi-year forecast); letter from the Commission  
8 dated December 21, 2010, in *In the Matter of: The 2010 Integrated Resource Plan of Big Rivers*  
9 *Electric Corporation*, PSC Case No. 2010-00443 (granting confidential treatment to revenue  
10 projections and market price projections, etc.); letter from the Commission dated July 20, 2010,  
11 in Administrative Case No. 387 (granting confidential treatment to a list of future scheduled  
12 outages, which gives competitors insight into Big Rivers’ wholesale power needs).

13 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**  
14 **Advantage to Big Rivers’ Competitors**  
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16 14. Disclosure of the Confidential Information would permit an unfair commercial  
17 advantage to Big Rivers’ competitors. As discussed above, Big Rivers faces actual competition  
18 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer  
19 competitive injury if that Confidential Information was publicly disclosed.

20 15. The Confidential Information includes Big Rivers’ projections of power prices  
21 and volumes and revenues from off-system sales, which give insight into Big Rivers’ projections  
22 of power prices. If that information is publicly disclosed, potential power suppliers would have  
23 insight into the prices Big Rivers is willing to pay and could manipulate the bidding process,  
24 leading to higher prices for Big Rivers and impairing its ability to compete in the wholesale  
25 power and credit markets. In PSC Case No. 2003-00054, the Commission granted confidential

1 protection to bids submitted to Union Light, Heat & Power (“ULH&P”). ULH&P argued, and  
2 the Commission implicitly accepted, that if the bids it received were publicly disclosed,  
3 contractors on future work could use the bids as a benchmark, which would likely lead to the  
4 submission of higher bids. Order dated August 4, 2003, in *In the Matter of: Application of the*  
5 *Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054.  
6 The Commission also implicitly accepted ULH&P’s further argument that the higher bids would  
7 lessen ULH&P’s ability to compete with other gas suppliers. *Id.* Similarly, potential power  
8 suppliers manipulating Big Rivers’ bidding process would lead to higher costs to Big Rivers and  
9 would place it at an unfair competitive disadvantage in the wholesale power market and credit  
10 markets.

11 16. Public disclosure of the actual and projected O&M expenses and the projected  
12 off-system sales volumes would give the power producers and marketers with which Big Rivers  
13 competes in the wholesale power market insight into Big Rivers’ cost of producing power and  
14 availability or need for power and energy during the periods covered by the information.  
15 Knowledge of this information would give those power producers and marketers an unfair  
16 competitive advantage because they could use that information to potentially underbid Big  
17 Rivers in wholesale transactions. It would also give potential suppliers to Big Rivers a  
18 competitive advantage because they will be able to manipulate the price of power bid to Big  
19 Rivers in order to maximize their revenues, thereby driving up Big Rivers’ costs and impairing  
20 Big Rivers’ ability to compete in the wholesale power and credit markets.

#### 21 **IV. Conclusion**

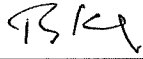
22 17. Based on the foregoing, the Confidential Information is entitled to confidential  
23 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due

1 process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v.*  
2 *Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

5 On this the 14<sup>th</sup> day of June, 2012.

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