

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

RECEIVED

JUL 06 2012

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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 )

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 certain information Big Rivers is filing with its  
22 responses to the second set of information requests from the Commission Staff, the Attorney  
23 General, Kentucky Industrial Utility Customers, Inc. ("KIUC"), and Sierra Club. The  
24 information Big Rivers seeks to protect as confidential is hereinafter referred to as the  
25 "Confidential Information."

26 2. The Confidential Information consists of:

- 27 a. An electronic attachment to Big Rivers' response to Item 6 of the  
28 Commission Staff's second request for information ("PSC 2-6").  
29 b. Portions of an attachment to Big Rivers' response to Item 3 of KIUC's  
30 second request for information ("KIUC 2-3").  
31 c. An electronic attachment to Big Rivers' response to Item 6 of KIUC's  
32 second request for information ("KIUC 2-6").

- 1 d. Portions of an attachment to Big Rivers’ response to Item 11a of KIUC’s  
2 second request for information (“KIUC 2-11a”).
- 3 e. A hardcopy attachment to Big Rivers’ response to Item 11b of KIUC’s  
4 second request for information (“KIUC 2-11b”).
- 5 f. An electronic attachment to Big Rivers’ response to each of Item 20a and  
6 Item 20c of KIUC’s second request for information (“KIUC 2-20a” and  
7 “KIUC2-20c,” respectively).
- 8 g. A hardcopy attachment to Big Rivers’ response to Item 26b of KIUC’s  
9 second request for information (“KIUC 2-26b”).
- 10 h. A hardcopy attachment to Big Rivers’ response to Item 26e of KIUC’s  
11 second request for information (“KIUC 2-26e”).
- 12 i. Portions of Big Rivers’ response to Item 27a of KIUC’s second request for  
13 information (“KIUC 2-27a”).
- 14 j. Portions of Big Rivers’ response to Item 28b of KIUC’s second request for  
15 information “KIUC 2-28b”).
- 16 k. Two electronic attachments to Big Rivers’ response to Item 35 of KIUC’s  
17 second request for information (“KIUC 2-35”).
- 18 l. A hardcopy attachment to Big Rivers’ response to Item 41a of KIUC’s  
19 second request for information (“KIUC 2-41a”).
- 20 m. A hardcopy attachment to Big Rivers’ response to Item 44b of KIUC’s  
21 second request for information (“KIUC 2-44b”).
- 22 n. An electronic attachment to Big Rivers’ response to Item 44g of KIUC’s  
23 second request for information (“KIUC 2-44g”).

- 1 o. A hardcopy attachment to Big Rivers’ response to Item 46 of KIUC’s  
2 second request for information (“KIUC 2-46”).
- 3 p. A hardcopy attachment to Big Rivers’ response to Item 52b of KIUC’s  
4 second request for information (“KIUC 2-52b”).
- 5 q. An electronic attachment to Big Rivers’ response to Item 60d of KIUC’s  
6 second request for information (“KIUC 2-60d”).
- 7 r. A hardcopy attachment to Big Rivers’ response to Item 71c of KIUC’s  
8 second request for information (“KIUC 2-71c”).
- 9 s. A hardcopy attachment to Big Rivers’ response to each of Item 1a, Item  
10 1b, Item 1c, Item 1d, and Item 1e of Sierra Club’s second request for  
11 information (“SC 2-1a” “SC 2-1b,” “SC 2-1c,” “SC 2-1d,” “SC 2-1e,”  
12 respectively).
- 13 t. An electronic attachment to Big Rivers’ response to Item 5a-g of the  
14 Sierra Club’s second request for information (“SC 2-5a-g”).
- 15 u. Electronic attachments to Big Rivers’ response to Item 9e of the Sierra  
16 Club’s second request for information (“SC 2-9e”).
- 17 v. An electronic attachment to Big Rivers’ response to Item 27c.ii of Sierra  
18 Club’s second request for information (“SC 2-27c.ii”).
- 19 w. Three hardcopy attachments to Big Rivers’ response to Item 31 of Sierra  
20 Club’s second request for information (“SC 2-31”).
- 21 x. Portions of Big Rivers’ response to Item 48 of Sierra Club’s second  
22 request for information (“SC 2-48”).
- 23 y. A hardcopy attachment to Big Rivers’ response to SC 2-48a.

1           3.           One (1) copy of Big Rivers' response to SC 2-48a, hardcopies of the pages of  
2   KIUC 2-3 and KIUC 2-11a that contain Confidential Information, and the hardcopy attachments  
3   referenced above, with the Confidential Information highlighted with transparent ink, printed on  
4   yellow paper, or otherwise marked 'CONFIDENTIAL,' is being filed with this petition. One (1)  
5   copy of the electronic attachments referenced above is being filed on the USB drive that is  
6   marked confidential and filed with this petition.

7           4.           A copy of Big Rivers' responses to KIUC 27a, KIUC 28a, and SC 2-48 with the  
8   Confidential Information redacted and a copy of Big Rivers' responses to the other requests for  
9   information, with the confidential attachments redacted, are being filed with the original and  
10  each of the ten (10) copies of Big Rivers' responses to the information requests filed with this  
11  petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).

12          5.           A copy of this petition with the Confidential Information redacted has been served  
13  on all parties to this proceeding. 807 KAR 5:001 Section 7(2)(c). Big Rivers is also providing a  
14  copy of the Confidential Information to all parties, as they have all signed a confidentiality  
15  agreement.

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

20          7.           If and to the extent the Confidential Information becomes generally available to  
21  the public, whether through filings required by other agencies or otherwise, Big Rivers will  
22  notify the Commission and have its confidential status removed. 807 KAR 5:001 Section  
23  7(9)(a).





1           16.           The attachment to Big Rivers’ response to KIUC 2-11b is a task order containing  
2 APM’s terms, rates, and approach for the services APM provided, all of which are proprietary  
3 business practices that APM does not want shared with its competitors. APM has not given Big  
4 Rivers permission to publicly release the information.

5           17.           The attachments to Big Rivers’ response to KIUC 2-20a and KIUC 2-20c are  
6 comparisons of forward energy prices.

7           18.           The attachment to Big Rivers’ response to KIUC 2-26b and the Confidential  
8 Information in Big Rivers’ responses to KIUC 2-27a and KIUC 2-28b contain proprietary  
9 information about Pace’s modeling process. Pace has not given Big Rivers permission to  
10 publicly release the information.

11          19.           The attachment to Big Rivers’ response to KIUC 2-26e is a chart containing  
12 Pace’s coal price projections. Pace has not given Big Rivers permission to publicly release the  
13 information.

14          20.           The attachments to Big Rivers’ response to KIUC 2-35 are two files containing  
15 forward price and load data extracted from APM’s confidential database.

16          21.           The attachment to Big Rivers’ response to KIUC 2-41a is a chart from Pace  
17 relating to projected coal retirements in MISO that Pace used to develop its price forecasts. Pace  
18 has not given Big Rivers permission to publicly release the information.

19          22.           The attachment to Big Rivers’ response to KIUC 2-44b is a Load Concentration  
20 Analysis and Mitigation Plan (“Load Concentration Analysis”). A previous version of this  
21 document was filed under a petition for confidential treatment on June 1, 2012. This document  
22 reveals detailed information related to Big Rivers’ plans in the event of a smelter closure and  
23 includes rankings of the options, along with inputs, input assumptions, and outputs of models

1 under several scenarios. This detailed information could be used by utilities that compete with  
2 Big Rivers to attract new loads to their service areas.

3 23. The attachment to Big Rivers' response to KIUC 2-44g is a number of emails  
4 containing financial forecasts, detailed information about Big Rivers' cost of producing power,  
5 projected allowance, fuel, and power prices, and drafts of the Load Concentration Analysis.

6 24. The attachment to Big Rivers' response to KIUC 2-46 is chart that show Big  
7 Rivers' recent O&M expenses.

8 25. The attachment to Big Rivers' response to KIUC 2-52b is shows Big Rivers'  
9 variable generating costs for certain of its generating units.

10 26. The attachment to Big Rivers' response to KIUC 2-60d is supporting information  
11 for the Load Concentration Analysis and is confidential for the same reasons as the Load  
12 Concentration Analysis.

13 27. The attachment to Big Rivers' response to KIUC 2-71c is a chart from Pace  
14 showing projected energy price correlations.

15 28. The attachments to Big Rivers' response to SC 2-1a, SC 2-1b, SC 2-1c, SC 2-1d,  
16 and SC 2-1e are five tables showing Big Rivers' generating costs, including variable and fixed  
17 O&M expenses.

18 29. The attachment to Big Rivers' response to SC 2-5a-g is a spreadsheet showing  
19 Big Rivers' projected heat rates, equivalent forced outage rating, and unit availability, which  
20 gives Big Rivers' competitors insight into Big Rivers generator availability and thus Big Rivers  
21 future need for power or availability of excess power to sell into the market.

22 30. The attachments to Big Rivers' response to SC 2-9e contain projected variable  
23 costs, including for fuel and allowances, and projected sales. The attachments are Excel files,



1 and the entirety of the files is being filed on the CONFIDENTIAL USB drive because the  
2 question asks for electronic files.

3 31. The electronic attachment to Big Rivers' response to SC 2-27c.ii contains  
4 workpapers and modeling files prepared by GDS Associates ("GDS") and used in the  
5 preparation of Big Rivers' load forecast. GDS has not given Big Rivers permission to publicly  
6 release this information because GDS would be competitively harmed if its competitors had  
7 access to the proprietary work and information contained in the files.

8 32. The attachments to Big Rivers' response to SC 2-31 contain vendor proposals to  
9 develop specifications for a request for proposal for the Wilson FGD project. These proposals  
10 contain the vendors prices, terms, rates, and approach to the project, all of which the vendors  
11 deem confidential and proprietary. The vendors have not given Big Rivers permission to  
12 publicly release the proposals.

13 33. The Confidential Information contained in Big Rivers' response to SC 2-48 is a  
14 proprietary description of Pace's modeling process. Pace has not given Big Rivers permission to  
15 publicly release the information.

16 34. The attachment to Big Rivers' response to SC 2-48a is a chart showing forward  
17 coal prices and analysis of forward coal prices from Pace. Pace has not given Big Rivers  
18 permission to publicly release the information.

19 35. Public Disclosure of the Confidential Information would reveal detailed  
20 information relating to Big Rivers' current and future cost of producing power; Big Rivers'  
21 forecasts relating to power market prices, fuel prices, allowance prices; and related information;  
22 and Big Rivers' future need for power or availability of excess power to sell into the market.

1           36.           Knowledge of such projected data would give Big Rivers’ suppliers and  
2 competitors an unfair competitive advantage. Public disclosure of this information would help  
3 Big Rivers’ suppliers, buyers, and competitors to determine when and Big Rivers will have  
4 power available to sell into the market or when Big Rivers needs power, and the amount of  
5 power Big Rivers has to sell. Public disclosure of the Confidential Information will also give  
6 Big Rivers’ suppliers, buyers, and competitors insight into Big Rivers’ cost of producing power  
7 and Big Rivers’ view of future prices for fuel prices, market power prices, and allowance prices,  
8 which would indicate the prices at which Big Rivers is willing to buy or sell such items.

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

23



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

12           41.           Additionally, APM, Pace, Sargent & Lundy, GDS, and the vendors for the  
13 specifications for the Wilson FGD project consider the information they provided to Big Rivers  
14 to be confidential and proprietary. In Case No. 2003-00054, the Commission granted  
15 confidential protection for bids submitted to ULH&P. ULH&P argued, and the Commission  
16 implicitly accepted, that the bidding contractors would not want their bid information publicly  
17 disclosed, and that disclosure would reduce the contractor pool available to ULH&P, which  
18 would drive up ULH&P's costs, hurting its ability to compete with other gas suppliers. Order  
19 dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat and Power*  
20 *Company for Confidential Treatment*, PSC Case No. 2003-00054. Similarly, in *Hoy v. Kentucky*  
21 *Indus. Revitalization Authority*, the Kentucky Supreme Court found that without protection for  
22 confidential information provided to a public agency, "companies would be reluctant to apply for

1 investment tax credits for fear the confidentiality of financial information would be  
2 compromised. *Hoy*, Ky., 907 S.W.2d at 769.

3 42. In Big Rivers' case, APM, Pace, Sargent & Lundy, GDS, and the other vendors  
4 have not given Big Rivers permission to release their information publicly, and they do not want  
5 the information they provided to Big Rivers on a confidential basis to be publicly disclosed.  
6 Suppliers such as these rely on the confidentiality of their information, and if they believed that  
7 the Commission would deny confidential treatment for the confidential information they provide  
8 to Big Rivers, it is likely that fewer suppliers would offer their services to Big Rivers. As such,  
9 public disclosure of the Confidential Information would likely reduce the pool of suppliers  
10 willing to enter into agreements with Big Rivers, resulting in increased prices for Big Rivers and  
11 impairing its ability to compete in the wholesale power and credit markets.

#### 12 **IV. Conclusion**

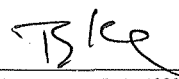
13 43. Based on the foregoing, the Confidential Information is entitled to confidential  
14 protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due  
15 process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v.*  
16 *Kentucky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

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

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On this the 6<sup>th</sup> day of July, 2012.



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