			RECEIVED MAR 1 1 2016
1 2		COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY	
3 4 5	In the Motton		PUBLIC SERVICE COMMISSION
5 6	In the Matter	01:	
7 8 9 10	THE I RIVE	XAMINATION OF THE APPLICATION OF)FUEL ADJUSTMENT CLAUSE OF BIG)CASE NO.RS ELECTRIC CORPORATION FROM)2016-000061, 2015 THROUGH OCTOBER 31,)	
11 12 13 14	2015)	
15 16 17	<u>PETITIO</u>	N OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDEN PROTECTION	TIAL
18	1.	Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kent	tucky
19	Public Servic	e Commission ("Commission"), pursuant to 807 KAR 5:001 Section 13 ar	nd KRS
20	61.878, to gra	nt confidential protection to portions of Big Rivers' response and/or attack	ument(s)
21	for the respon	se Item 1 of the Commission Staff's Second Request for Information. The	8
22	information f	or which Big Rivers seeks confidential treatment is hereinafter referred to	as the
23	"Confidential	Information."	
24	2.	One (1) copy of the pages containing Confidential Information, with the	
25	Confidential]	information highlighted with transparent ink, printed on yellow paper, or o	therwise
26	marked "CON	NFIDENTIAL," is being filed with this petition. An original and ten (10) of	copies of
27	those pages w	ith the Confidential Information redacted, or a sheet noting that the entired	y of the
28	pages have be	een redacted, are being filed with this petition. 807 KAR 5:001 Section 13	(2)(a)(3).
29	3.	There are no other parties to this proceeding on which to serve a copy of	this
30	petition. 807	KAR 5:001 Section 13(2)(b).	
31	4.	If and to the extent the Confidential Information becomes generally avail	able to
32	the public, wh	nether through filings required by other agencies or otherwise, Big Rivers	will

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notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
13(10)(b).

3 5. As discussed below, the Confidential Information is entitled to confidential 4 protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to 5 an agency or required by an agency to be disclosed to it, generally recognized as confidential or 6 proprietary, which if openly disclosed would permit an unfair commercial advantage to 7 competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1); 807 KAR 5:001 8 Section 13(2)(a)(1). Subsection I below explains that Big Rivers operates in a competitive 9 environment; Subsection II below shows that the Confidential Information is generally 10 recognized as confidential or proprietary; and Subsection III below demonstrates that public disclosure of the Confidential Information would permit an unfair commercial advantage to Big 11 12 Rivers' competitors. As such, the Commission should granted confidential treatment to the 13 Confidential Information.

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I. Big Rivers Faces Actual Competition

15 6. Big Rivers competes in the wholesale power market to sell energy excess to its 16 members' needs. This includes short-term bilateral energy markets, day-ahead and real-time 17 energy and ancillary services markets, the annual capacity market, and forward bilateral long-18 term wholesale agreements with utilities and industrial customers. Big Rivers' ability to 19 successfully compete in these wholesale power markets is dependent upon a combination of its 20 ability to: 1) obtain the maximum price for the power it sells, 2) negotiate the best contract terms. 21 and 3) keep its cost of production as low as possible. Fundamentally, if Big Rivers' cost of 22 producing a kilowatt hour or its business risk increases, its ability to sell that kilowatt hour in 23 competition with other utilities is adversely affected.

1	7. Big Rivers also competes for reasonably-priced credit in the credit markets, and
2	its ability to compete is directly impacted by the financial results it obtains and the business risks
3	it assumes. Any event that adversely affects Big Rivers' financial results or increases its
4	business risks may adversely affect the price it pays for credit. A competitor armed with Big
5	Rivers' proprietary and confidential information will be able to increase Big Rivers' costs or
6	decrease Big Rivers' revenues, which could in turn affect Big Rivers' apparent creditworthiness.
7	Impediments to Big Rivers' obtaining the best contract terms could likewise affect its apparent
8	creditworthiness. A utility the size of Big Rivers that operates generation and transmission
9	facilities will always have periodic cash and borrowing requirements for both anticipated and
10	unanticipated needs. Big Rivers expects to be in the credit markets on a regular basis in the
11	future, and it is imperative that Big Rivers improve and maintain its credit profile.
12	8. Accordingly, Big Rivers has competitors in the wholesale power and capital
13	markets, and the Confidential Information should be afforded confidential treatment to prevent
14	the imposition of an unfair competitive advantage to those competitors.
15 16 17	II. The Confidential Information is Generally Recognized as Confidential or Proprietary
18	9. The Confidential Information for which Big Rivers seeks confidential treatment
19	under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky
20	law.
21	10. The Confidential Information consists of a cost/benefit analysis relating to the
22	charter of barges and tugboat(s) services by Big Rivers versus contracting with an inland marine
23	carrier, which reveals confidential bid data Big Rivers received from potential suppliers.
24	11. The Commission has often found that similar information relating to competitive
25	bidding is generally recognized as confidential and proprietary. See, e.g., Order dated August 4,

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1	2003, in In the Matter of: Application of the Union Light, Heat and Power Company for
2	Confidential Treatment, P.S.C. Case No. 2003-00054 (finding that bids submitted to a utility
3	were confidential); and letter from the Commission dated May 10, 2010, in P.S.C. Case No.
4	2009-00510 (bids submitted to Big Rivers held confidential).
5	12. The Confidential Information is not publicly available, is not disseminated within
6	Big Rivers except to those employees and professionals with a legitimate business need to know
7	and act upon the information, and is not disseminated to others without a legitimate need to
8	know and act upon the information.
9	13. Thus, the Confidential Information is generally recognized as confidential or
10	proprietary.
11 12	III. Disclosure of the Confidential Information Would Permit an Unfair Commercial Advantage to Big Rivers' Competitors
13 14	14. Disclosure of the Confidential Information would permit an unfair commercial
15	advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition
16	in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
17	competitive injury if that Confidential Information was publicly disclosed.
18	15. Public disclosure of the Confidential Information would reveal confidential bid
19	data from potential suppliers to Big Rivers. In P.S.C. Case No. 2003-00054, the Commission
20	granted confidential protection to bids submitted to Union Light, Heat & Power ("ULH&P").
21	ULH&P argued, and the Commission implicitly accepted, that the bidding contractors would not
22	want their bid information publicly disclosed, and that disclosure would reduce the contractor
23	pool available to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete
24	with other gas suppliers. Order dated August 4, 2003, in In the Matter of: Application of the
25	Union Light, Heat and Power Company for Confidential Treatment, P.S.C. Case No. 2003-

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1	00054. Similarly, in Hoy v. Kentucky Indus. Revitalization Authority, the Kentucky Supreme	
2	Court found that without protection for confidential information provided to a public agency,	
3	"companies would be reluctant to apply for investment tax credits for fear the confidentiality of	
4	financial information would be compromised. Hoy v. Kentucky Indus. Revitalization Authority,	
5	907 S.W.2d 766, 769 (Ky. 1995). In the present case, if the confidential bid-related information,	
6	and the analysis thereof regarding the chartering (leasing) of barges and tugboat services, was	
7	publicly disclosed, potential counterparties dealing with Big Rivers on future transactions would	
8	know that such information related to them could be publicly disclosed, which could reveal	
9	information to their competitors about their competitiveness. Because many companies would	
10	be reluctant to have such competitive information disclosed, public disclosure of the Confidential	
11	Information would likely reduce the pool of counterparties willing to negotiate with Big Rivers	
12	for future barge or tugboat services, driving up Big Rivers' costs and, consequently, reducing its	
13	ability to sell power and impairing its ability to compete in the wholesale power and credit	
14	markets.	
15	16. Accordingly, the public disclosure of the Confidential Information would provide	
16	Big Rivers' competitors with an unfair commercial advantage.	
17	IV. Time Period	
18	17. Big Rivers requests that the Confidential Information remain confidential	
19	indefinitely because of the nature of the bid information as explained above. 807 KAR 5:001	
20	Section 13(2)(a)(2). The Commission has granted confidential treatment indefinitely for similar	
21	bid data in Big Rivers' fuel adjustment clause reviews. See, e.g., Order dated May 15, 2013, in	
22	P.S.C. Case No. 2012-00555.	
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1	V. Conclusion
2	18. Based on the foregoing, the Confidential Information is entitled to confidential
3	protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due
4	process requires the Commission to hold an evidentiary hearing. Utility Regulatory Com'n v.
5	Kentucky Water Service Co., Inc., 642 S.W.2d 591 (Ky. App. 1982).
6	WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect
7	as confidential the Confidential Information.
8	On this the 10 th day of March, 2016.
9	Respectfully submitted,
10 11 12 13 14 15 16 17 18 19 20 21 22	James M. Miller Tyson Kamuf SULLIVAN, MOUNTJOY, STAINBACK & MILLER, P.S.C. 100 St. Ann Street P. O. Box 727 Owensboro, Kentucky 42302-0727 Phone: (270) 926-4000 Facsimile: (270) 683-6694 jmiller@smsmlaw.com tkamuf@smsmlaw.com
23	Counsel for Big Rivers Electric Corporation

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