

COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

THE 2017 INTEGRATED RESOURCE PLAN OF ) CASE NO. 2017-00384  
BIG RIVERS ELECTRIC CORPORATION )

**PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL  
TREATMENT**

1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential treatment to certain information contained in Big Rivers' 2017 Integrated Resource Plan ("IRP") filed with this petition. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the "Confidential Information." The Confidential Information primarily consists of transmission system maps; planned capital projects; projections of fuel and other operating and maintenance costs, rates, and energy and capacity prices; and related information.

2. One (1) copy of the pages containing Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL," is being filed with this petition. A copy of those pages, with the Confidential Information redacted, or a sheet noting that the entirety of the pages have been redacted, is being filed with the original and each of the ten (10) copies of the IRP filed with this petition. 807 KAR 5:001 Section 13(2)(a)(3).

3. A copy of this petition and a copy of the IRP with the Confidential Information redacted have been served on all parties to this proceeding. 807 KAR 5:001 Section 13(2)(b).

1           4.       If and to the extent the Confidential Information becomes generally available to  
2 the public, whether through filings required by other agencies or otherwise, Big Rivers will  
3 notify the Commission in writing. *See* 807 KAR 5:001 Section 13(10)(b).

4           5.       As discussed below, the Confidential Information is entitled to confidential  
5 treatment based upon KRS 61.878(1)(m) or KRS 61.878(1)(c)(1). *See* 807 KAR 5:001 Section  
6 13(2)(a)(1).

7           **I.       Information Exempted from Public Disclosure by KRS 61.878(1)(m)**

8           6.       KRS 61.878(1)(m)(1) protects “[p]ublic records the disclosure of which would  
9 have a reasonable likelihood of threatening the public safety by exposing a vulnerability in  
10 preventing protecting against, mitigating, or responding to a terrorist act. . . .”

11          7.       Figure 1.3 and Appendix E are transmission system maps, which could be used to  
12 analyze vulnerable locations in Big Rivers’ transmission system, which is a public utility critical  
13 system, and which could therefore threaten public safety. As disclosure of this information  
14 would provide the public with a tool to analyze the vulnerabilities in Big Rivers’ transmission  
15 system, this information should be granted confidential treatment. The Commission granted  
16 confidential treatment on these grounds to similar maps contained in Big Rivers 2014 IRP. *See*  
17 *In the Matter of: 2014 Integrated Resource Plan of Big Rivers Electric Corporation*, Order,  
18 P.S.C. Case No. 2014-00166 (August 26, 2014) (the “2014 IRP Confidentiality Order”).

19          **II.       Information Exempted from Public Disclosure by 807 KAR 5:001 Section 13(4)**

20          8.       On October 21, 2016, Big Rivers filed a special contract with the Commission,  
21 along with a petition for confidential treatment. *See* TFS 2016-00584. The Confidential  
22 Information contained in Section 4.2.6 of Big Rivers’ 2017 IRP and in Section 3.2.7 of the 2017

1 Load Forecast (which is in Appendix A to the IRP) consists of a confidential term of that special  
2 contract. The petition for confidential treatment is pending. 807 KAR 5:001 Section 13(9)(a).

3 9. 807 KAR 5:001 Section 13(4) provides, “Pending action by the [C]ommission on  
4 a motion for confidential treatment or by its executive director on a request for confidential  
5 treatment, the material specifically identified shall be accorded confidential treatment.” As such,  
6 the Confidential Information in Section 4.2.6 of the 2017 IRP and Section 3.2.7 of the 2017 Load  
7 Forecast should be afforded confidential treatment while the petition is pending.

8 **III. Information Exempted from Public Disclosure by KRS 61.878(1)(c)(1)**

9 10. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an agency or  
10 required by an agency to be disclosed to it, generally recognized as confidential or proprietary,  
11 which if openly disclosed would permit an unfair commercial advantage to competitors of the  
12 entity that disclosed the records.” Section A below explains that Big Rivers operates in  
13 competitive environments in the wholesale power market and in the credit market. Section B  
14 below shows that the Confidential Information is generally recognized as confidential or  
15 proprietary. Section C below demonstrates that public disclosure of the Confidential Information  
16 would permit an unfair commercial advantage to Big Rivers’ competitors.

17 **A. Big Rivers Faces Actual Competition.**

18 11. As a generation and transmission cooperative, Big Rivers competes in the  
19 wholesale power market. This includes not only the short-term bilateral energy market, the day-  
20 ahead and real time energy and ancillary services markets, and the capacity market to which Big  
21 Rivers has access by virtue of its membership in Midcontinent Independent System Operator,  
22 Inc. (“MISO”), but also forward bilateral long-term agreements and wholesale agreements with  
23 utilities and industrial customers. Big Rivers’ ability to successfully compete in the market is

1 dependent upon a combination of its ability to: 1) obtain the maximum price for the power it  
2 sells, and 2) keep its cost of production as low as possible. Fundamentally, if Big Rivers' cost of  
3 producing a unit of power increases, its ability to sell that unit in competition with other utilities  
4 is adversely affected.

5 12. Big Rivers also competes for reasonably priced credit in the credit markets, and  
6 its ability to compete is directly impacted by its financial results. Lower revenues and any events  
7 that adversely affect Big Rivers' margins will adversely affect its financial results and potentially  
8 impact the price it pays for credit. A competitor armed with Big Rivers' proprietary and  
9 confidential information will be able to increase Big Rivers' costs or decrease Big Rivers'  
10 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A utility the size of  
11 Big Rivers that operates generation and transmission facilities will always have periodic cash  
12 and borrowing requirements for both anticipated and unanticipated needs. Big Rivers expects to  
13 be in the credit markets on a regular basis in the future, and it is imperative that Big Rivers  
14 improve and maintain its credit profile.

15 13. Accordingly, Big Rivers has competitors in both the power and capital markets,  
16 and its Confidential Information should be protected to prevent the imposition of an unfair  
17 competitive advantage.

18 **B. The Confidential Information is Generally Recognized as Confidential or**  
19 **Proprietary**

20 14. The Confidential Information for which Big Rivers seeks confidential treatment  
21 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky  
22 law.

23 15. The Confidential Information in Sections 1.5 and 4.1 of the IRP; in Table 7.23 of  
24 the IRP; in Sections 1.5, 3.2.2, 3.6, 4.2, and 4.3 of the 2015 Load Forecast (which is in Appendix

1 A to the IRP); and in Sections 1.5, 4.2, and 4.3 of the 2017 Load Forecast (which is also in  
2 Appendix A to the IRP) consists of Big Rivers' projected rates and information related to or that  
3 reveals Big Rivers' projected rates.

4 16. The Confidential Information in Section 4.2.6 of the IRP and in Section 3.2.7 of  
5 the 2017 Load Forecast consists of a confidential term of a special contract. KRS 278.160  
6 specifically recognizes that terms of a special contract are not required to be publicly disclosed if  
7 such terms are entitled to protection under KRS 61.878(1)(c)(1). KRS 278.160(3).

8 17. The Confidential Information in Section 6.6.4 and Table 6.5 consists of  
9 recommended environmental compliance projects and the related projected costs.

10 18. The Confidential Information in Table 7.2 consists of projected operation and  
11 maintenance ("O&M") costs, projected compliance costs for environmental projects, projected  
12 costs for natural gas delivery, and projected costs for retiring units.

13 19. The Confidential Information in Table 7.3 consists of projected rates to Big  
14 Rivers, including transmission, of SEPA power, which reveals Big Rivers' projected costs of  
15 such power.

16 20. The Confidential Information in Sections 7.2.1, 7.3, and 10.1; Figures 7.2, 7.3,  
17 7.4, 7.8, 7.9, and 7.10; Tables 7.6, 7.7, and 7.10; and Appendix G consists of projected  
18 production, coal, natural gas, energy, capacity, and/or natural gas prices and related descriptions  
19 of those price projections, including the inflation rate utilized in developing certain of the  
20 projections. The coal and energy price projections are obtained from third parties, those  
21 projections and proprietary products of those third parties, and Big Rivers does not have the  
22 authority to publicly disclose those projections. Appendix G also contains confidential and  
23 proprietary energy and fuel price forecast reports from ACES and JDEnergy, which reveal those

1 companies' proprietary forecasts and forecast methodologies, which Big Rivers does not have  
2 the authority to release publicly, and which are confidential in their entirety.

3 21. The Confidential Information in Tables 7.11 and 7.22 and in Appendix H and the  
4 confidential discount rate in Section 7.3 reveals the inputs and net present value ("NPV") results  
5 of Big Rivers' production cost model runs and related information, including projected energy  
6 and capacity costs, projected fuel, emission allowance, and other O&M costs, projected costs of  
7 construction projects, and projected retirement costs.

8 22. The Confidential Information in Table 8.2 consists of planned transmission  
9 system additions.

10 23. The Confidential Information contained in Appendix F consists of the projected  
11 production costs of each of Big Rivers' owned or operated generating units, including projected  
12 fuel, emission allowance, and other O&M costs, projected capital costs, and projected heat rates  
13 and equivalent availability factors ("EAFs"), which provide insight into Big Rivers' cost of  
14 producing power. The inflation rate, projected emission tons, and planned outage hours are  
15 confidential because they can be used to easily calculate other confidential information,  
16 including projected emission allowance costs and other production costs.

17 24. The Confidential Information in Appendix D of the DSM Potential Study, which  
18 is attached as Appendix B to the IRP, consists of confidential model inputs, including inflation  
19 rate, discount rate, projected rates, and projected fuel, energy, and capacity costs. Public  
20 disclosure of the inflation and discount rates utilized and relied upon by Big Rivers would  
21 provide competitors valuable insight into Big Rivers' projections of other modeling inputs and  
22 outputs, such as energy and fuel cost.

1           25.     Public disclosure of the Confidential Information would reveal detailed  
2 information relating to Big Rivers' projected production costs for production factors such as fuel  
3 and other O&M costs, Big Rivers' projected rates to its Members, Big Rivers' projection of  
4 energy and capacity market prices, and outputs of Big Rivers' production cost model runs. This  
5 information provides insight into Big Rivers' cost of producing power and would indicate the  
6 prices at which Big Rivers is willing to buy or sell power, coal, natural gas, and other  
7 commodities. The information is also indicative of the market conditions Big Rivers expects to  
8 encounter and its ability to compete with competitors. The Commission has previously granted  
9 confidential treatment to similar information. *See, e.g., 2014 IRP Confidentiality Order*  
10 (granting confidential treatment to fuel cost projections, power price projections, projected  
11 environmental compliance-related capital and O&M costs, NPV results of production cost model  
12 runs, and rate projections); *In the Matter of: Application of Big Rivers Electric Corporation for a*  
13 *General Adjustment in Rates*, Order, P.S.C. Case No. 2012-00535 (April 25, 2013); *In the Matter*  
14 *of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order,  
15 P.S.C. Case No. 2012-00535 (August 14, 2013); *In the Matter of: An Examination of the*  
16 *Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. From*  
17 *November 1, 2011 Through April 30, 2012*, Order, P.S.C. Case No. 2012-00319 (February 21,  
18 2013).

19           26.     Public disclosure of the Confidential Information would also reveal Big Rivers'  
20 projected costs related to environmental compliance projects and projects to retire generating  
21 units, which would provide contractors and suppliers insight into the prices Big Rivers is willing  
22 to pay for such projects. The Commission has previously granted confidential treatment to

1 similar information. *See, e.g.*, 2014 IRP Confidentiality Order (granting confidential treatment  
2 to projected environmental compliance-related costs).

3         27. Public disclosure of the projects discussed in Section 6.6.4 and listed in Tables 6.5  
4 and 8.2 will allow Big Rivers' suppliers and competitors to know Big Rivers' future  
5 environmental compliance capital projects and transmission system improvements. Information  
6 about a company's detailed inner workings is generally recognized as confidential or proprietary.  
7 *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It  
8 does not take a degree in finance to recognize that such information concerning the inner  
9 workings of a corporation is 'generally recognized as confidential or proprietary'"); *Marina*  
10 *Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky. 1995)  
11 (unfair commercial advantage arises simply from "the ability to ascertain the economic status of  
12 the entities without the hurdles systemically associated with the acquisition of such information  
13 about privately owned organizations"). Moreover, the Commission previously granted  
14 confidential treatment to this type of information. *See, e.g.*, Letter, P.S.C. Administrative Case  
15 No. 387 (July 20, 2010) (granting confidential treatment to a list of future scheduled outages that  
16 Big Rivers filed as part of the supplement to its annual report); *In the Matter of: Application of*  
17 *Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C. Case No.  
18 2012-00535 (April 25, 2013) (granting confidential treatment to a list of future construction  
19 projects).

20         28. The Confidential Information is not publicly available, is not disseminated within  
21 Big Rivers except to those employees and professionals with a legitimate business need to know  
22 and act upon the information, and is not disseminated to others without a legitimate need to



1 know and act upon the information. As such, the Confidential Information is generally  
2 recognized as confidential and proprietary.

3 **C. Disclosure of the Confidential Information Would Result in an Unfair Commercial**  
4 **Advantage to Big Rivers' Competitors.**

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

9 30. The Confidential Information includes material such as Big Rivers' projections of  
10 fuel, emission allowance, and power market prices and costs. If that information is publicly  
11 disclosed, market participants would have insight into the prices at which Big Rivers is willing to  
12 buy fuel and buy and sell emission allowances and power and could manipulate the bidding  
13 process, impairing Big Rivers' ability to generate power at competitive rates and thus to compete  
14 in the wholesale power markets. Furthermore, any competitive pressure that adversely affects  
15 Big Rivers' revenue and margins could make the company appear less creditworthy and thus  
16 impair its ability to compete in the credit market. These effects were recognized in P.S.C. Case  
17 No. 2003-00054, in which the Commission granted confidential treatment to bids submitted to  
18 Union Light, Heat & Power ("ULH&P"). ULH&P argued, and the Commission implicitly  
19 accepted, that if the bids it received were publicly disclosed, contractors in the future could use  
20 the bids as a benchmark, which would likely lead to the submission of higher bids. *In the Matter*  
21 *of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, Order,  
22 P.S.C. Case No. 2003-00054 (August 4, 2003); *see also In the Matter of: An Examination of the*  
23 *Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May*  
24 *1, 2007 through October 31, 2007*, Letter, P.S.C. Case No. 2007-00523 (February 27, 2008).

1 The Commission also implicitly accepted ULH&P's further argument that the higher bids would  
2 lessen ULH&P's ability to compete with other gas suppliers. *In the Matter of: Application of the*  
3 *Union Light, Heat and Power Company for Confidential Treatment*, Order, P.S.C. Case No.  
4 2003-00054 (August 4, 2003).

5 31. Similarly, potential fuel, emission allowance, and power suppliers manipulating  
6 Big Rivers' bidding process would lead to higher costs to Big Rivers and would place it at an  
7 unfair competitive disadvantage in the wholesale power and credit markets. Potential market  
8 power purchasers could likewise use the information to manipulate their bids to Big Rivers,  
9 leading to lower revenues to Big Rivers and placing it at an unfair competitive disadvantage in  
10 the wholesale power and credit markets.

11 32. Public disclosure of Big Rivers' projections of its production costs (including  
12 projected heat rates and EAFs, which provide insight into Big Rivers' cost of producing power)  
13 and power market prices would give the power producers and marketers with which Big Rivers  
14 competes in the wholesale power market insight into Big Rivers' cost of producing power and  
15 view of energy and capacity prices. Knowledge of this information would give those power  
16 producers and marketers an unfair competitive advantage because they could use that  
17 information to potentially underbid Big Rivers in wholesale transactions.

18 33. Public disclosure of Big Rivers' planned environmental compliance projects and  
19 related cost projections, transmission system additions, projected capital costs, and projected  
20 costs associated with retiring generating units would provide contractors and suppliers insight  
21 into the prices Big Rivers is willing to pay for such projects, which they could use to manipulate  
22 their bids, driving up Big Rivers' costs and placing it at an unfair competitive disadvantage in the  
23 wholesale power and credit markets.

1           34.     Public disclosure of the confidential terms of special contracts and third party  
2     proprietary information would also cause competitive harm to Big Rivers. In P.S.C. Case No.  
3     2003-00054, the Commission additionally implicitly accepted ULH&P's argument that the  
4     bidding contractors would not want their bid information publicly disclosed, and that disclosure  
5     would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs,  
6     hurting its ability to compete with other gas suppliers. *In the Matter of: Application of the Union*  
7     *Light, Heat and Power Company for Confidential Treatment*, Order, P.S.C. Case No. 2003-  
8     00054 (August 4, 2003). Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the  
9     Kentucky Supreme Court found that without protection for confidential information provided to  
10    a public agency, "companies would be reluctant to apply for investment tax credits for fear the  
11    confidentiality of financial information would be compromised. *Hoy v. Kentucky Indus.*  
12    *Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

13           35.     In Big Rivers' case, Big Rivers is currently in negotiations with potential  
14    counterparties for purchase power agreements and expects to engage in negotiations with other  
15    counterparties in the future. If confidential treatment of the confidential terms of the special  
16    contract in Section 4.2.6 of the IRP is denied, potential counterparties would know that the  
17    confidential terms of their contracts could be publicly disclosed, which could reveal information  
18    to their competitors about their competitiveness. Because many companies would be reluctant to  
19    have such information disclosed, public disclosure of the Confidential Information would likely  
20    reduce the pool of counterparties willing to negotiate with Big Rivers, reducing Big Rivers'  
21    ability to sell power and impairing its ability to compete in the wholesale power and credit  
22    markets.

1           36.     Third party companies that provide their proprietary and confidential fuel and  
2     power market price projections to Big Rivers would also not want their proprietary information  
3     publicly disclosed. Public disclosure of that information would limit the number of third parties  
4     willing to provide such information to Big Rivers, which would prevent Big Rivers from having  
5     access to valuable tools upon which it relies in negotiating power sales and determining whether  
6     to engage in wholesale market transactions. Not having access to such tools would impair Big  
7     Rivers' ability to compete in the wholesale power market.

8           37.     Accordingly, the public disclosure of the information that Big Rivers seeks to  
9     protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers' competitors with an unfair  
10    commercial advantage.

#### 11                               IV.       Time Period

12           38.     Pursuant to 807 KAR 5:001 Section 13(2)(a)(2), Big Rivers requests that the  
13    Confidential Information be afforded confidential treatment for the time periods explained  
14    below.

15           39.     Big Rivers requests that the Confidential Information protected by KRS  
16    61.878(1)(m) remain confidential indefinitely because as long as the transmission system  
17    remains in place, the information should be confidential for the reasons stated above.

18           40.     Big Rivers requests that the Confidential Information in Section 4.2.6 of the IRP  
19    and in Section 3.2.7 of the 2017 Load Forecast, which is the confidential special contract term,  
20    remain confidential indefinitely for the reasons stated above.

21           41.     Big Rivers requests that the Confidential Information protected by KRS 61.878  
22    (1)(c)(1), except for the confidential special contract term, remain confidential for a period of  
23    five (5) years from the date of this petition, which should allow sufficient time for the projected

1 data to become historical and sufficiently outdated that it could not be used to determine similar  
2 confidential information at that time or to competitively disadvantage Big Rivers.

3 **V. Conclusion**

4 42. Based on the foregoing, the Confidential Information is entitled to confidential  
5 treatment pursuant to 807 KAR 5:001 Section 13 and KRS 61.878. If the Commission disagrees  
6 that Big Rivers' Confidential Information is entitled to confidential treatment, due process  
7 requires the Commission to hold an evidentiary hearing. *See Utility Regulatory Comm'n v.*  
8 *Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

9 WHEREFORE, Big Rivers respectfully requests that the Commission grant this petition  
10 and classify and treat as confidential the Confidential Information.

11 On this the 20<sup>th</sup> day of September, 2017.  
12

1 Respectfully submitted,  
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