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1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION

3 In the matter of:

NOTICE OF TERMINATION OF)
CONTRACTS AND APPLICATION OF BIG)
RIVERS ELECTRIC CORPORATION FOR A) Case No.
DECLARATORY ORDER AND FOR) 2018-00146
AUTHORITY TO ESTABLISH A)
REGULATORY ASSET)

4 **PETITION FOR CONFIDENTIAL TREATMENT**

5 1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the
6 Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001
7 Section 13 and KRS 61.878, to grant confidential protection to the confidential
8 information contained in Big Rivers’ responses and/or attachments to Big Rivers’
9 responses to Items 3, 9, and 17 of the Commission Staff’s Initial Request for
10 Information (“PSC 1-3,” “PSC 1-9,” and “PSC 1-17,” respectively); Item 1 of the
11 Attorney General’s Initial Request for Information (“AG 1-1”); and Items 4, 5, 6 and
12 9 of Kentucky Industrial Utility Customers, Inc.’s Initial Request for Information
13 (“KIUC 1-4,” “KIUC 1-5,” “KIUC 1-6,” and “KIUC 1-9,” respectively). The
14 information Big Rivers seeks to protect as confidential consists of Big Rivers’ long-
15 term financial forecast and financial model; projections of power market prices, coal
16 and other fuel prices, other fixed and variable operation and maintenance (“O&M”)
17 costs, capital project costs, decommissioning costs, and rates; information relating
18 to projected energy and capacity sales; information such as totals, margins, TIER,
19 projections of capital, debt, and equity, equity requirement projections (which are

1 based on projected margins), and cash balances that can be used in combination
2 with other information to calculate the other Confidential Information; and
3 internal, strategic planning documents. The information Big Rivers seeks to protect
4 as confidential is hereinafter referred to as the “Confidential Information.”

5 2. One (1) sealed copy of the paper pages containing Confidential
6 Information, with the Confidential Information highlighted with transparent ink,
7 printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed
8 with this petition. Ten (10) copies of those pages with the Confidential Information
9 redacted are also being filed with this petition. 807 KAR 5:001 Section 13(2)(a)(3).

10 3. The attachment for Big Rivers’ response to KIUC 1-6 is Big Rivers’
11 long-term financial forecast and financial model, which Big Rivers is providing
12 electronically as requested, on the CONFIDENTIAL CD filed with this petition.
13 The long-term financial forecast and model file is a key internal strategic planning
14 document, and as such, the entirety of this file is confidential. Additionally, the
15 information in the file is inextricably intertwined, and Big Rivers is unable to redact
16 only some of the information from the electronic spreadsheet file without making
17 other cells in the spreadsheet unusable or breaking the formulas contained therein.
18 The accompanying motion for deviation seeks a deviation from the requirement that
19 Big Rivers file paper confidential and redacted copies of the electronic file.

20 4. A copy of this petition and a copy of the redacted pages have been
21 served on all parties. 807 KAR 5:001 Section 13(2)(b)

1 5. If and to the extent the Confidential Information becomes generally
2 available to the public, whether through filings required by other agencies or
3 otherwise, Big Rivers will notify the Commission and have the information's
4 confidential status removed. 807 KAR 5:001 Section 13(10)(b).

5 6. As discussed below, the Confidential Information is entitled to
6 confidential protection based upon KRS 61.878(1)(c)(1), which protects "records
7 confidentially disclosed to an agency or required by an agency to be disclosed to it,
8 generally recognized as confidential or proprietary, which if openly disclosed would
9 permit an unfair commercial advantage to competitors of the entity that disclosed
10 the records." KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1).

11 **I. Big Rivers Faces Actual Competition.**

12 7. As a generation and transmission cooperative, Big Rivers competes in
13 the wholesale power market. This includes not only the short-term bilateral energy
14 market, the day-ahead and real-time energy and ancillary services markets, and the
15 capacity market to which Big Rivers has access by virtue of its membership in
16 Midcontinent Independent System Operator, Inc. ("MISO"), but also forward
17 bilateral long-term agreements and wholesale agreements with utilities and
18 industrial customers. Big Rivers' ability to successfully compete in the market is
19 dependent upon a combination of its ability to: (i) obtain the maximum price for the
20 power it sells, and (ii) keep its cost of production as low as possible. Fundamentally,
21 if Big Rivers' cost of producing a unit of power increases, its ability to sell that unit
22 in competition with other utilities is adversely affected.

1 are entitled to confidential treatment, as these documents typically relate to the
2 company's economic status and business strategies. The Confidential Information
3 in Big Rivers' responses to PSC 1-3, PSC 1-9, AG 1-1, KIUC 1-4, KIUC 1-5, and
4 KIUC 1-9, and the attachments to Big Rivers' responses to PSC 1-9 and KIUC 1-6
5 provides insight into Big Rivers' cost of producing power; the prices at which Big
6 Rivers is willing to buy or sell power, fuel, and other items; and the amounts Big
7 Rivers is willing to pay for capital projects. The information is also indicative of the
8 market conditions Big Rivers expects to encounter and its ability to compete with
9 competitors.

10 12. Information such as this which bears upon a company's detailed inner
11 workings is generally recognized as confidential or proprietary. *See, e.g., Hoy v.*
12 *Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does
13 not take a degree in finance to recognize that such information concerning the inner
14 workings of a corporation is 'generally recognized as confidential or proprietary'");
15 *Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318,
16 319 (Ky. 1995) (unfair commercial advantage arises simply from "the ability to
17 ascertain the economic status of the entities without the hurdles systemically
18 associated with the acquisition of such information about privately owned
19 organizations"). Additionally, the Commission has previously granted confidential
20 treatment to similar information. *See, e.g., In the Matter of: An Examination of the*
21 *Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc.*
22 *From November 1, 2011 Through April 30, 2012*, Order, P.S.C. Case No. 2012-00319

1 (February 21, 2013); *In the Matter of: Application of Big Rivers Electric Corporation*
2 *for a General Adjustment in Rates*, Order, P.S.C. Case No. 2012-00535 (April 25,
3 2013); *In the Matter of: Application of Big Rivers Electric Corporation for a General*
4 *Adjustment in Rates*, Order, P.S.C. Case No. 2012-00535 (August 14, 2013); *In the*
5 *Matter of: Application of Big Rivers Electric Corporation for Approval of its 2012*
6 *Environmental Compliance Plan, for Approval of its Amended Environmental Cost*
7 *Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and*
8 *for Authority to Establish a Regulatory Account*, Letter, P.S.C. Case No. 2012-00063
9 (August 15, 2012); P.S.C. Administrative Case No. 387, Letter (July 20, 2010).

10 13. The Confidential Information is not publicly available, is not
11 disseminated within Big Rivers except to those employees and professionals with a
12 legitimate business need to know and act upon the information, and is not
13 disseminated to others without a legitimate need to know and act upon the
14 information.

15 14. Accordingly, the information for which Big Rivers seeks confidential
16 treatment is recognized as confidential or proprietary under Kentucky law and is
17 entitled to confidential protection as further discussed below.

18 **III. Disclosure of the Confidential Information Would Permit an Unfair**
19 **Commercial Advantage to Big Rivers' Competitors.**

20
21 15. Disclosure of the Confidential Information would permit an unfair
22 commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers
23 faces actual competition in the wholesale power market and in the credit market. It
24 is likely that Big Rivers would suffer competitive injury if that Confidential

1 Information was publicly disclosed, and the information should therefore be subject
2 to confidential treatment.

3 16. The Confidential Information includes material such as Big Rivers'
4 projections of fuel and power prices, capital project costs, energy and capacity sales
5 and revenues, and other information revealing Big Rivers' costs of producing power.
6 If that information is publicly disclosed, market participants would have insight
7 into the prices at which Big Rivers is willing to buy and sell fuel and power, and the
8 amount Big Rivers is willing to pay for capital projects, and those market
9 participants could manipulate the bidding process when selling to or buying from
10 Big Rivers, increasing Big Rivers' costs or reducing its revenues. Increased costs
11 would impair Big Rivers' ability to generate power at competitive rates and thus to
12 compete in the wholesale power markets. Furthermore, any competitive pressure
13 that adversely affects Big Rivers' revenue and margins could make the company
14 appear less creditworthy and thus impair its ability to compete in the credit
15 markets. These effects were recognized in P.S.C. Case No. 2003-00054, in which the
16 Commission granted confidential treatment to bids submitted to Union Light, Heat
17 & Power ("ULH&P"). ULH&P argued, and the Commission implicitly accepted,
18 that if the bids it received were publicly disclosed, contractors on future work could
19 use the bids as a benchmark, which would likely lead to the submission of higher
20 bids. *In the Matter of: Application of the Union Light, Heat and Power Company for*
21 *Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003). The

1 Commission also implicitly accepted ULH&P's further argument that the higher
2 bids would lessen ULH&P's ability to compete with other gas suppliers. *Id.*

3 17. Similarly, the Commission recently granted confidential treatment to
4 pricing information provided by Cumberland Valley Electric, Inc. ("Cumberland
5 Valley") in P.S.C. Case No. 2018-00056. *In the Matter of: Application of*
6 *Cumberland Valley Electric, Inc. for Commission Approval for a Certificate of Public*
7 *Convenience and Necessity to Install an Advanced Metering Infrastructure (AMI)*
8 *System Pursuant to KRS 807 KAR 5:001 and KRS 278.020*, Order, P.S.C. Case No.
9 2018-00056 (May 9, 2018). In that case, the Commission recognized "that the
10 specific cost information may be used to the financial detriment of Cumberland
11 Valley and its ratepayers by allowing potential future vendors to bid just under the
12 cost of its current vendor, which, in turn, would place Cumberland Valley at a
13 competitive disadvantage." *Id.*

14 18. The same competitive harm that the Commission recognized in P.S.C.
15 Case Nos. 2003-00054 and 2018-00056 would befall Big Rivers if the Confidential
16 Information in this case were publicly disclosed. Public disclosure of the
17 Confidential Information would provide potential purchasers of fuel, power, or other
18 items from Big Rivers; potential sellers of fuel, power, or other items to Big Rivers;
19 and other providers competing against Big Rivers for purchases or sales of fuel,
20 power, or other items with insight into the prices and the terms under which Big
21 Rivers is willing to buy and sell. These market participants could use this
22 information as a benchmark, leading to higher costs, lower revenues, or less

1 favorable terms to Big Rivers, hurting Big Rivers' ability to compete in the
2 wholesale power and credit markets.

3 19. Thus, public disclosure of the Confidential Information would permit
4 an unfair competitive advantage to Big Rivers' competitors.

5 **IV. Time Period**

6 20. Big Rivers requests that the Confidential Information remain
7 confidential for a period of five years from the date of this petition, at which time
8 the Confidential Information will be sufficiently outdated so that it could not be
9 used to competitively disadvantage Big Rivers. 807 KAR 5:001 Section 13(2)(a)(2).

10 **V. Conclusion**

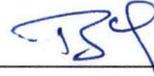
11 21. Based on the foregoing, the Confidential Information is entitled to
12 confidential protection. If the Commission disagrees that Big Rivers is entitled to
13 confidential protection, due process requires the Commission to hold an evidentiary
14 hearing. *See Utility Regulatory Comm'n v. Kentucky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

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

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1 On this the 5th day of July, 2018.
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3

4 Respectfully submitted,
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