

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION )  
OF THE FUEL ADJUSTMENT CLAUSE OF )  
BIG RIVERS ELECTRIC CORPORATION )  
FROM MAY 1, 2011 THROUGH )  
OCTOBER 31, 2011 )

CASE NO. 2011-00487

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

1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 7 and KRS 61.878(1)(c), to grant confidential protection to part of its response to Item 2 of the information requested by Commission Staff at the March 9, 2012, hearing in this matter. The information contained in the response to Item 2 that Big Rivers seeks to protect as confidential is a list of future scheduled outages (the "Confidential Information").

2. One (1) sealed copy of the response to Item 2 with the Confidential Information highlighted and ten (10) copies of the response with the Confidential Information redacted are filed with this petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).

3. There are no other parties who are entitled to be served with a copy of the petition or a copy of the redacted response.

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

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

6. As discussed below, the Confidential Information is entitled to confidential protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1).

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

7. Big Rivers competes in the wholesale power market to sell energy excess to its members’ needs. Big Rivers’ ability to successfully compete in the wholesale power market is dependent upon a combination of its ability to get the maximum price for the power sold, and keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers’ cost of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with other utilities is adversely affected. As is well-documented in multiple proceedings before this Commission, Big Rivers’ margins are derived almost exclusively from its off-system sales.

8. Big Rivers also competes for reasonably-priced credit in the credit markets, and its ability to compete is directly impacted by its financial results. Any event that adversely affects Big Rivers’ margins will adversely affect its financial results and potentially impact the price it pays for credit. As was described in the proceeding before this Commission in the Big

Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis in the future.<sup>1</sup>

## **II. The Confidential Information is Generally Recognized as Confidential or Proprietary**

9. The Confidential Information for which Big Rivers seeks confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law. The Confidential Information contains a list of the future scheduled outages at each Big Rivers generating unit and the projected duration of each of those outages.

10. Public disclosure of the Confidential Information will allow Big Rivers' suppliers and competitors to know Big Rivers' future maintenance plans and will give them insight into Big Rivers' wholesale power needs. Information about a company's detailed inner workings is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is 'generally recognized as confidential or proprietary'"). The Commission previously granted confidential treatment to this type of information. *See, e.g.,* letter from the Commission dated July 20, 2010, in Administrative Case No. 387 (granting confidential treatment to a list of future scheduled outages that Big Rivers filed as part of the supplement to its annual report).

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

11. Public disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual

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<sup>1</sup> See Order dated March 6, 2009, *In the Matter of: Joint Application of Big Rivers, E.ON, LG&E Energy Marketing, Inc., and Western Kentucky Energy Corporation for Approval to Unwind Lease and Power Purchase Transactions*, PSC Case No. 2007-00455, pages 27-30 and 37-39.

competition in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer competitive injury if that Confidential Information was publicly disclosed.

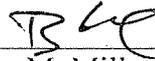
12. If the Confidential Information is publicly disclosed, Big Rivers' competitors would have insight into when Big Rivers' generating plants will be down for maintenance and thus know a crucial input into Big Rivers' generating costs and need for power and energy during those periods. With that information, potential suppliers to Big Rivers will be able to manipulate the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit markets. Additionally, Big Rivers' competitors in the wholesale power market could use the information to potentially underbid Big Rivers to Big Rivers' competitive disadvantage in competing for wholesale sales.

#### **IV. The Confidential Information is Entitled to Confidential Protection**

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

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

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



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James M. Miller  
Tyson Kamuf  
Sullivan, Mountjoy, Stainback & Miller, P.S.C.  
100 St. Ann Street  
P.O. Box 727  
Owensboro, Kentucky 42302-0727  
(270) 926-4000

COUNSEL FOR BIG RIVERS  
ELECTRIC CORPORATION