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May 25, 2012

Via Federal Express

Jeff DeRouen
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

RECEIVED

MAY 29 2012

PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates for Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, PSC Case No. 2012-00063*

Dear Mr. DeRouen:

Enclosed on behalf of Big Rivers Electric Corporation ("Big Rivers") are two CDs containing model-related information from Big Rivers and PACE Global. The CDs are being filed under a petition for confidential treatment. An original and ten copies of the petition for confidential treatment are also enclosed. The CDs are being provided in response to a letter from counsel for intervenor Kentucky Industrial Utility Customers, Inc. to counsel for Big Rivers dated May 11, 2012, requesting this information. A copy of this letter and a copy of the petition have been served on each person on the attached service list. Copies of the CDs are also being provided to each party pursuant to the confidentiality agreements each party has signed. Please call if you have questions.

Sincerely,



Tyson Kamuf

TAK/ej

cc: Mark A. Bailey
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PSC Case No. 2012-00063

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

RECEIVED

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4
5 In the Matter of:

MAY 29 2012

PUBLIC SERVICE
COMMISSION

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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 documents Big Rivers is filing in response to a letter
22 dated May 11, 2012, from counsel for Intervenor Kentucky Industrial Utility Customers, Inc.
23 ("KIUC"), to counsel for Big Rivers. The information Big Rivers is filing with this petition (the
24 "Confidential Information") in response to the KIUC letter is contained on two CDs: (i) a CD
25 containing financial model financial forecast models and budget information from Big Rivers
26 and (ii) model inputs and outputs from PACE Global ("PACE"). Big Rivers has already
27 provided other information in response to the KIUC letter, and Big Rivers anticipates filing
28 additional information in response to the KIUC letter at a later date.

29 2. One (1) copy of Confidential Information is being filed electronically on two CDs
30 marked confidential, which are attached to this petition. Big Rivers is also filing ten (10) copies
31 of this petition with the Confidential Information redacted (*i.e.*, without the CDs). 807 KAR
32 5:001 Sections 7(2)(a)(2), 7(2)(b).

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

5 4. 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 5. If and to the extent the Confidential Information becomes generally available to
10 the public, whether through filings required by other agencies or otherwise, Big Rivers will
11 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
12 7(9)(a).

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

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

19 7. Big Rivers competes in the wholesale power market to sell energy excess to its
20 members’ needs. Big Rivers’ ability to successfully compete in the wholesale power market is
21 dependent upon a combination of its ability to get the maximum price for the power sold, and
22 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers’ cost
23 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with

1 other utilities is adversely affected. As is well documented in multiple proceedings before this
2 Commission, Big Rivers' margins are derived almost exclusively from its off-system sales.

3 8. Big Rivers also competes for reasonably priced credit in the credit markets, and
4 its ability to compete is directly impacted by its financial results. Any event that adversely
5 affects Big Rivers' margins will adversely affect its financial results and potentially impact the
6 price it pays for credit. As was described in the proceeding before this Commission in the Big
7 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis
8 in the future.¹

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

11
12 9. The Confidential Information for which Big Rivers seeks confidential treatment
13 under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky
14 law.

15 10. The Confidential Information consists of financial forecast models and budget
16 information from Big Rivers, and model inputs and outputs from PACE for Big Rivers. Public
17 disclosure of the Confidential Information would reveal forecasts that Big Rivers uses and relies
18 on relating to fuel prices, power market prices, allowance prices, rates, variable production costs,
19 and related information. Knowledge of such projected data would give Big Rivers' suppliers and
20 competitors an unfair competitive advantage. Public disclosure of this information would give
21 Big Rivers' suppliers, buyers, and competitors insight into Big Rivers' cost of producing power
22 and into Big Rivers' view of future prices for fuel prices, market power prices, and allowance
23 prices, which would indicate the prices at which Big Rivers is willing to buy or sell such items.

¹ 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.

1 11. The Commission has previously granted confidential treatment to similar
2 information. *See, e.g.*, letters from the Commission dated July 28, 2011, and December 20,
3 2011, in *In the Matter of: Application of Big Rivers Electric Corporation for a General*
4 *Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to multi-year
5 financial forecast); letter from the Commission dated December 21, 2010, in *In the Matter of:*
6 *The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, PSC Case No. 2010-
7 00443 (granting confidential treatment to fuel cost projections, revenue projections, market price
8 projections, financial model outputs, etc.).

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

11
12 12. Disclosure of the Confidential Information would permit an unfair commercial
13 advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition
14 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer
15 competitive injury if that Confidential Information was publicly disclosed.

16 13. The Confidential Information includes material such as Big Rivers' projections of
17 fuel costs and power prices. If that information is publicly disclosed, potential fuel and power
18 suppliers would have insight into the prices Big Rivers is willing to pay and could manipulate the
19 bidding process, leading to higher prices for Big Rivers and impairing its ability to compete in
20 the wholesale power and credit markets. In PSC Case No. 2003-00054, the Commission granted
21 confidential protection to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P
22 argued, and the Commission implicitly accepted, that if the bids it received were publicly
23 disclosed, contractors on future work could use the bids as a benchmark, which would likely lead
24 to the submission of higher bids. Order dated August 4, 2003, in *In the Matter of: Application of*
25 *the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-

1 00054. The 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.* Similarly, potential
3 fuel and power suppliers manipulating Big Rivers' bidding process would lead to higher costs to
4 Big Rivers and would place it at an unfair competitive disadvantage in the wholesale power
5 market and credit markets.


6 14. Additionally, public disclosure of the Confidential Information would give the
7 power producers and marketers with which Big Rivers competes in the wholesale power market
8 insight into Big Rivers' cost of producing power, which would give them an unfair competitive
9 advantage because they could use that information to potentially underbid Big Rivers in
10 wholesale transactions.

11 **IV. Conclusion**

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

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

18 On this the 25th day of May, 2012.

19 
20 _____
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