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June 20, 2012

Via Federal Express

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

RECEIVED

JUN 21 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 of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, P.S.C. Case No. 2012-00063*

Dear Mr. DeRouen:

Enclosed for filing on behalf of Big Rivers Electric Corporation ("Big Rivers") are an original and ten copies of a Petition for Confidential Treatment for the electronic files contained on the flash drive that is also enclosed. The flash drive contains files that Big Rivers inadvertently omitted from its June 1, 2012, response to Item 26b of the Public Service Commission Staff's First Request for Information. A copy of this letter and a copy of the petition have been served on each of the persons on the attached service list.

Sincerely,



Tyson Kamuf

TAK/ej
Enclosures

cc: Mark A. Bailey
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1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY RECEIVED

3
4 JUN 21 2012

5 In the Matter of:

PUBLIC SERVICE
COMMISSION

6 Application of Big Rivers Electric Corporation)
7 for Approval of its 2012 Environmental)
8 Compliance Plan, for Approval of its Amended)
9 Environmental Cost Recovery Surcharge Tariff,)
10 for Certificates of Public Convenience and)
11 Necessity, and for Authority to Establish a)
12 Regulatory Account)
13

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 the electronic files Big Rivers is filing with this
22 petition (the "Confidential Information"). The Confidential Information consists of financial
23 forecast models run by Big Rivers and that Big Rivers inadvertently omitted from its June 1,
24 2012, response to Item 26b of the Commission Staff's First Request for Information.

25 2. One (1) copy of Confidential Information is being filed electronically on the flash
26 drive attached to this petition. Big Rivers is also filing ten (10) copies of this petition with the
27 Confidential Information redacted (*i.e.*, without the flash drive). 807 KAR 5:001 Sections
28 7(2)(a)(2), 7(2)(b).

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

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

5 5. If and to the extent the Confidential Information becomes generally available to
6 the public, whether through filings required by other agencies or otherwise, Big Rivers will
7 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
8 7(9)(a).

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

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

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

22 8. Big Rivers also competes for reasonably priced credit in the credit markets, and
23 its ability to compete is directly impacted by its financial results. Any event that adversely

1 affects Big Rivers' margins will adversely affect its financial results and potentially impact the
2 price it pays for credit. As was described in the proceeding before this Commission in the Big
3 Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis
4 in the future.¹

5 **II. The Confidential Information is Generally Recognized as Confidential or**
6 **Proprietary**
7

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

11 10. The Confidential Information consists of a number of financial forecast models
12 run by Big Rivers. Public Disclosure of the Confidential Information would reveal detailed
13 information relating to Big Rivers' current and future cost of producing power; Big Rivers'
14 forecasts relating to off-system sales and purchases, fuel prices, allowance prices; and related
15 information.

16 11. Knowledge of such projected data would give Big Rivers' suppliers and
17 competitors an unfair competitive advantage. Public disclosure of this information would help
18 Big Rivers' suppliers, buyers, and competitors to determine the amount of power Big Rivers will
19 have available to sell into the market or help them determine times when Big Rivers needs
20 power. Public disclosure of the Confidential Information will also give Big Rivers' suppliers,
21 buyers, and competitors insight into Big Rivers' cost of producing power and Big Rivers' view
22 of future prices for fuel prices, market power prices, and allowance prices, which would indicate
23 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 12. Information about a company’s detailed inner workings is generally recognized as
2 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907
3 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such
4 information concerning the inner workings of a corporation is ‘generally recognized as
5 confidential or proprietary’”). Moreover, the Commission has previously granted confidential
6 treatment to similar information. *See, e.g.,* letters from the Commission dated July 28, 2011, and
7 December 20, 2011, *in In the Matter of: Application of Big Rivers Electric Corporation for a*
8 *General Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to
9 multi-year forecast); letter from the Commission dated December 21, 2010, *in In the Matter of:*
10 *The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, PSC Case No. 2010-
11 00443 (granting confidential treatment to fuel cost projections, revenue projections, market price
12 projections, financial model outputs, etc.); letter from the Commission dated July 20, 2010, *in*
13 *Administrative Case No. 387* (granting confidential treatment to a list of future scheduled
14 outages, which can give competitors insight into Big Rivers’ wholesale power needs).

15 **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**
16 **Advantage to Big Rivers’ Competitors**
17

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

22 14. The Confidential Information includes material such as Big Rivers’ projections of
23 fuel costs and power prices. If that information is publicly disclosed, potential fuel and power
24 suppliers would have insight into the prices Big Rivers is willing to pay and could manipulate the
25 bidding process, leading to higher prices for Big Rivers and impairing its ability to compete in

1 the wholesale power and credit markets. In PSC Case No. 2003-00054, the Commission granted
2 confidential protection to bids submitted to Union Light, Heat & Power (“ULH&P”). ULH&P
3 argued, and the Commission implicitly accepted, that if the bids it received were publicly
4 disclosed, contractors on future work could use the bids as a benchmark, which would likely lead
5 to the submission of higher bids. Order dated August 4, 2003, in *In the Matter of: Application of*
6 *the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-
7 00054. The Commission also implicitly accepted ULH&P’s further argument that the higher
8 bids would lessen ULH&P’s ability to compete with other gas suppliers. *Id.* Similarly, potential
9 fuel and power suppliers manipulating Big Rivers’ bidding process would lead to higher costs to
10 Big Rivers and would place it at an unfair competitive disadvantage in the wholesale power
11 market and credit markets.

12 15. Public disclosure of the Confidential Information, including the fuel prices,
13 allowance prices, other variable cost information, and information about Big Rivers’ wholesale
14 power needs would give the power producers and marketers with which Big Rivers competes in
15 the wholesale power market insight into Big Rivers’ cost of producing power and need for power
16 and energy during the periods covered by the information. Knowledge of this information would
17 give those power producers and marketers an unfair competitive advantage because they could
18 use that information to potentially underbid Big Rivers in wholesale transactions. It would also
19 give potential suppliers to Big Rivers a competitive advantage because they will be able to
20 manipulate the price of power bid to Big Rivers in order to maximize their revenues, thereby
21 driving up Big Rivers’ costs and impairing Big Rivers’ ability to compete in the wholesale power
22 and credit markets.

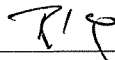
23

1 IV. Conclusion

2 16. 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 20th day of June, 2012.

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10 
11 _____
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