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MAR 11 2013

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Tyson A. Kamuf

Mark W. Starnes

C. Ellsworth Mountjoy

\*Also Licensed in Indiana

March 8, 2013

**Federal Express**

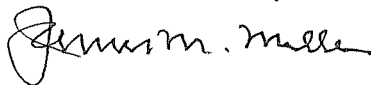
Jeff DeRouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

Re: *In the Matter of: The Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*,  
PSC Case No. 2012-00492

Dear Mr. DeRouen:

Enclosed for filing on behalf of Big Rivers Electric Corporation ("Big Rivers") are an original and ten copies of Big Rivers' supplemental responses to Big Rivers' responses to the information requests made to Big Rivers at the hearing in this matter on February 28, 2013. Hearing Item 4 is supplemented to correct a typographical error. Also enclosed is a petition seeking confidential treatment for certain portions of the attachment to Big Rivers' supplemental response to Hearing Item 2. I certify that on this date a copy of this cover letter and responses were served on each of the persons on the attached service list by prepaid overnight courier service.

Sincerely yours,



James M. Miller

JMM/ej  
Enclosures

cc: Billie J. Richert

Telephone (270) 926-4000  
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**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR APPROVAL TO ISSUE EVIDENCES OF INDEBTEDNESS  
CASE NO. 2012-00492**

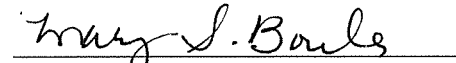
**VERIFICATION**

I, Billie J. Richert, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

  
\_\_\_\_\_  
Billie J. Richert

COMMONWEALTH OF KENTUCKY     )  
COUNTY OF HENDERSON         )

SUBSCRIBED AND SWORN TO before me by Billie J. Richert on this the 17<sup>th</sup> day of  
March, 2013.

  
\_\_\_\_\_  
Notary Public, Ky. State at Large  
My Commission Expires August 8, 2016

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR APPROVAL TO ISSUE EVIDENCES OF INDEBTEDNESS  
CASE NO. 2012-00492**

**Supplemental Response to Data Requests from Hearing  
on February 28, 2013**

**March 8, 2013**

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*Item 2) File a copy of the corrective plan that Big Rivers is preparing and will provide to the rural utilities Service ("RUS") pursuant to the terms of the RUS Loan Contract.*

**Response)**

Please see the attached document, portions of which have been redacted and filed under a petition for confidential treatment.

**Witness) Billie J. Richert**

## Jim Miller

---

**From:** Billie Richert <Billie.Richert@bigrivers.com>  
**Sent:** Tuesday, March 05, 2013 5:55 PM  
**To:** Victor.Vu@wdc.usda.gov  
**Cc:** Jim Miller; Mark Bailey; Bob Berry  
**Subject:** Big Rivers Electric Corporation - Corrective Plan to Achieve Two Credit Ratings of Investment Grade  
**Attachments:** RUS Corrective Plan to Achieve Two Credit Ratings of Investment Grade.docx; CONFIDENTIAL APPENDIX A.docx; CONFIDENTIAL APPENDIX B.docx

Victor,

Please find attached Big Rivers Electric Corporation's (Big Rivers) Corrective Plan to Achieve Two Credit Ratings of Investment Grade. The submission of this Plan is pursuant to Section 4.23 (c) of the Amended and Consolidated Loan Contract dated as of July 16, 2009, between Big Rivers Electric Corporation and United States of America acting by and through the Administrator of the Rural Utilities Service (RUS). Within thirty (30) days of the date (February 6, 2013) on which Big Rivers fails to maintain two Credit Ratings of Investment Grade, Big Rivers in consultation with the RUS shall provide a written plan satisfactory to the RUS setting forth the actions that shall be taken that are reasonably expected to achieve two Credit Ratings of Investment Grade. This document is submitted by Big Rivers to the RUS as a proposed written plan that is expected to be satisfactory to the RUS as is required under Section 4.23 (c).

Victor, please note there are two Appendices to the Plan, both of which are marked as confidential and are to be treated as such. We look forward to our visit on Tuesday, March 19, 2013, to review this Plan with you. In the meantime, please don't hesitate to contact me if there are any questions.

Regards,

*Billie Richert, CPA, COTP*

VP Accounting, Rates and CFO  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42420

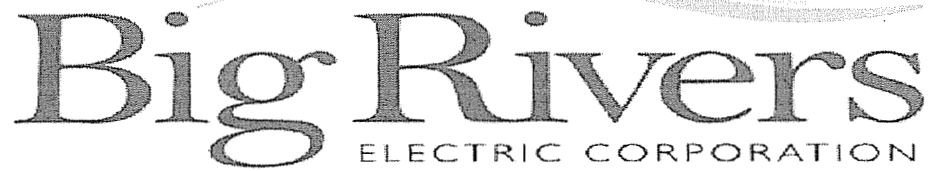
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Your Touchstone Energy® Cooperative 

# Corrective Plan to Achieve Two Credit Ratings of Investment Grade

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**March 7, 2013**

[Please note that Appendices A and B to this document contain **CONFIDENTIAL COMMERCIAL BUSINESS INFORMATION** relating to details of ongoing negotiations of credit documents and potential business transactions, the public disclosure of which would be highly prejudicial and damaging to Big Rivers Electric Corporation's commercial business interests.]

**Big Rivers Electric Corporation**  
**Corrective Plan to Achieve Two Credit Ratings of Investment Grade**  
**March 7, 2013**

**Contractual Covenant: Maintenance of Two Credit Ratings of Investment Grade**

If Big Rivers fails to maintain two Credit Ratings of Investment Grade per Section 4.23 – Maintenance of Credit Ratings of the Amended and Consolidated Loan Contract dated as of July 16, 2009 (the Agreement) between Big Rivers Electric Corporation (Big Rivers) and United States of America acting by and through the Administrator of the Rural Utilities Service (RUS), Big Rivers must notify RUS in writing to that effect within five (5) days after becoming aware of such failure.

Big Rivers became aware of this failure to maintain two Credit Ratings of Investment Grade when Fitch Ratings downgraded its rating from BBB- to BB on February 6, 2013. Standard & Poor's previously downgraded Big Rivers from BBB- to BB- on February 4, 2013. Big Rivers notified RUS in writing on February 7, 2013 pursuant to Section 4.23 (b) of the Agreement.

In addition, pursuant to Section 4.23 (c) of the Agreement, within thirty (30) days of the date on which Big Rivers fails to maintain two Credit Ratings of Investment Grade, Big Rivers in consultation with the RUS shall provide a written plan satisfactory to the RUS setting forth the actions that shall be taken that are reasonably expected to achieve two Credit Ratings of Investment Grade. This document is submitted by Big Rivers to the RUS as a proposed written plan that is expected to be satisfactory to the RUS as is required under Section 4.23 (c).

**Background**

On August 20, 2012, Century Aluminum Company (Century) gave its one year contract termination notice to Kenergy Corp. and Big Rivers Electric Corporation. This notice indicated Century is ceasing all smelter operations at their Hawesville, Kentucky facility on August 20, 2013. Century is the source of approximately thirty-six (36%) of Big Rivers' wholesale revenues or approximately \$205 million for the twelve months ending December 31, 2012.

On January 31, 2013, Alcan Primary Products Corporation (Alcan) gave its one year contract termination notice to Kenergy Corp. and Big Rivers. This notice indicated Alcan is ceasing all smelter operations at their Sebree smelter located in Robards, Kentucky on January 31, 2014. Alcan is the source of approximately twenty-eight (28%) of Big Rivers' wholesale revenues or approximately \$155 million for the twelve months ending December 31, 2012.

As a result of Big Rivers receiving Alcan's notice of termination, all three rating agencies, Fitch Ratings (on February 6, 2013), Standard & Poor's (on February 4, 2013) and Moody's Investors Service (on February 6, 2013), downgraded the credit ratings on Big Rivers' \$83.3 million County of Ohio, KY's Pollution Control Refunding Revenue Bonds, Series 2010A. In addition, Standard & Poor's downgraded its long term rating on Big Rivers. All three bond ratings are now below investment grade as shown in the following table:

**Big Rivers Electric Corporation**  
**Corrective Plan to Achieve Two Credit Ratings of Investment Grade**  
**March 7, 2013**

**Big Rivers' Current Credit Ratings**

Moody's	S&P	Fitch	
Aaa	AAA	AAA	Investment Grade
Aa1	AA+	AA+	
Aa2	AA	AA	
Aa3	AA-	AA-	
A1	A+	A+	
A2	A	A	
A3	A-	A-	
Baa1	BBB+	BBB+	
Baa2	BBB	BBB	
Baa3	BBB-	BBB-	
Ba1	BB+	BB+	Non-Investment Grade
Ba2	BB	BB	
Ba3	BB-	BB-	
B1	B+	B+	
B2	B	B	
B3	B-	B-	

= Big Rivers' credit ratings as of 2/6/2013



**Big Rivers Electric Corporation  
Corrective Plan to Achieve Two Credit Ratings of Investment Grade  
March 7, 2013**

**Rating Agencies' Focus**

Rating agencies focus on three areas of Big Rivers' business when issuing ratings on Big Rivers' \$83.8m County of Ohio, Kentucky, Pollution Control Refunding Revenue Bonds. Primarily these three areas are:

- 1) Access to and maintenance of liquidity
- 2) Replacement load for Big Rivers' two largest customers who have given notice of termination, and
- 3) Increased Big Rivers' activity in off-system sales market

As part of Big Rivers' corrective plan to achieve two investment grade credit ratings Big Rivers' addresses each of these areas in this document.

**Access to and Maintain Liquidity**

**Lines of Credit**

Big Rivers has two \$50 million lines of credit, one with CoBank, ACB, expiring July 2017, and the other with National Rural Utilities Cooperative Finance Corporation (CFC) that expires July 2014.

**CFC Line of Credit**

Under the current arrangement, the CFC line of credit will become unavailable to Big Rivers on August 20, 2013 upon the termination of a smelter wholesale agreement and this event is an Event of Default under Section 6.01 M of that facility.

Big Rivers and CFC have completed negotiations on a Term Sheet for the CFC line of credit with the major modifications that are listed on the attached **CONFIDENTIAL** Appendix A.

**CoBank Line of Credit**

Presently, Big Rivers is unable to make the representations and warranties necessary to draw on the CoBank line of credit as a result of Kenergy receiving the Notice of Termination from Century. Upon the termination of the Century retail agreement which occurs on August 20, 2013, there is an Event of Default which terminates CoBank's commitment to lend and accelerates payments. A default under this agreement can cause a default under the CoBank Secured Loan Agreement.

Big Rivers intends to restart negotiations with CoBank to attempt to restructure this line later in March 2013.

**Big Rivers Electric Corporation**  
**Corrective Plan to Achieve Two Credit Ratings of Investment Grade**  
**March 7, 2013**

**Environmental Compliance Plan for Mercury and Air Toxics Standards (MATS) Financing**

Big Rivers plans to submit an application to RUS to obtain long-term financing for its MATS Environmental Compliance Plan. In the interim, Big Rivers will obtain short-term financing from the National Rural Utilities Cooperative Finance Corporation (CFC). This short-term or bridge financing will be in the form of a \$60 million senior secured three-year credit facility. Big Rivers has received a Term Sheet from CFC which reflects the terms and conditions Big Rivers has negotiated with CFC. As requested by RUS, we are submitting a copy to RUS of this Term Sheet.

Big Rivers is updating its RUS application for long-term financing to reflect results of a revised load forecast based upon both Century and Alcan going to market and no longer buying their power from Big Rivers.

CFC requires submission of the RUS application prior to finalizing the short-term MATS financing. As such, Big Rivers is planning to submit its application to RUS by mid-April and file a financing application with the PSC for the CFC interim financing shortly thereafter.

**Rate Case 2012-00535 – Century**

On January 15, 2013, Big Rivers filed a general rate case with the PSC as a result of Century's contract termination, continued depressed off system sales margins, increased depreciation expense, and other costs not fully recovered in the 2011 general rate case. The total annual revenue deficiency, \$74,476,120, is calculated as the annual incremental revenue needed to permit Big Rivers to achieve a 1.24 TIER during the fully forecasted test year (September 2013 – August 2014) while also achieving Margin for Interest Ratio (MFIR) of 1.10 in calendar year 2013. This total annual revenue deficiency represents a 21% wholesale revenue increase; 29% for the rurals; 18% for the large industrials; and 16% for the remaining smelter, Alcan. These rate increases would go into effect August 20, 2013.

**Big Rivers Electric Corporation  
Corrective Plan to Achieve Two Credit Ratings of Investment Grade  
March 7, 2013**

**Rate Case 2013-XXXXX – Alcan**

Big Rivers has begun plans to file another general rate case in late June 2013 to address the annual revenue deficiency resulting from Alcan’s contract termination. These rate increases would go into effect January 31, 2014.

**\$58.8 Million PCB Financing Case 2012-00492**

On January 13, 2013, Big Rivers amended its application in the \$58.8 million PCB financing case. The reason for amending this application is to seek PSC approval to repurpose the \$60 million borrowed for capital expenditures from CoBank in 2012 to pay-off the \$58.8 million pollution control bonds due June 1, 2013, and to use the \$35 million Transition Reserve to pay for capital expenditures. Although it was Big Rivers’ original intent to refund these bonds, it was determined market receptivity was minimal due to the uncertainty surrounding Big Rivers and the results of the two smelters giving notices of termination. By paying off these bonds, Big Rivers will realize an annual net cost savings of approximately \$3.4 million in interest expense and issuance costs. The amendment filed in this financing case is intended also to preserve the capability of Big Rivers to issue, in part, tax-exempt pollution control bonds sometime in the future.

A hearing was held in Frankfort, Kentucky on February 28<sup>th</sup>, 2013. No briefs are being filed. Big Rivers is hopeful that the PSC will issue an order by March 31, 2013.

**Replacement Load and Addressing Reliance on Off-System Sales**

**Load Concentration Mitigation Plan Activities Update**

The **CONFIDENTIAL** Big Rivers Load Concentration Mitigation Plan Activities Update is attached as **CONFIDENTIAL** Appendix B.

**Big Rivers Electric Corporation**  
**Corrective Plan to Achieve Two Credit Ratings of Investment Grade**  
**March 7, 2013**

**SUMMARY**

Big Rivers is confident it can regain two investment grade ratings with the rate relief from the PSC along with the successful implementation of its Load Concentration Mitigation Plan and following the pay down of the \$58.8 million PCB issue due June 1, 2013. Big Rivers' believes completion of the entire process will most likely take three to four years. Big Rivers financial metrics are good; it continues to meet all of the financial debt covenants associated with both long-term and short-term debt; and our projections for the 2013 – 2016 timeframe reflect ongoing compliance. We are ready to work closely with the RUS in developing a corrective plan which is acceptable to the RUS and to ensure Big Rivers achieves two credit ratings of investment grade within a reasonable period of time.

**Big Rivers Electric Corporation  
Corrective Plan to Achieve Two Credit Ratings of  
Investment Grade  
March 7, 2013**

***CONFIDENTIAL APPENDIX A***

The principal terms on the term sheet to amend the CFC revolving line of credit agreement are:

1) The line of credit will become secured under the indenture.

2) The maturity date will be extended to July 16, 2017.

3) [REDACTED]  
[REDACTED].

4) [REDACTED]  
[REDACTED]

5) [REDACTED]  
[REDACTED].

*Confidential Appendix B is being filed  
under a petition for confidential treatment*

**BIG RIVERS ELECTRIC CORPORATION**

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION  
FOR APPROVAL TO ISSUE EVIDENCES OF INDEBTEDNESS  
CASE NO. 2012-00492**

**Supplemental Response to Data Requests from Hearing  
on February 28, 2013**

**March 8, 2013**

*Item 4) Provide the balance from the \$60,000,000 designated for ordinary capital expenditures from the CoBank secured loan remaining after capital expenditures in February of 2013.*

**Response)**

If the assumption is made that all capital expenditures since August of ~~2012~~2013 reduce the \$60,000,000, the balance after February 28, 2013, is \$38,328,265.

**Witness) Billie J. Richert**

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PUBLIC SERVICE  
COMMISSION

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY  
3  
4

5 In the Matter of:

6  
7 Application of Big Rivers Electric )  
8 Corporation for Approval to Issue ) Case No. 2012-00492  
9 Evidences of Indebtedness )  
10

11  
12 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR**  
13 **CONFIDENTIAL PROTECTION**  
14

15 1. Big Rivers Electric Corporation ("*Big Rivers*") hereby petitions the  
16 Kentucky Public Service Commission ("*Commission*"), pursuant to 807 KAR 5:001  
17 Section 13 and KRS 61.878, to grant confidential protection to certain information  
18 Big Rivers is filing with its supplemental response to Item 2 of the information  
19 requests made at the February 28, 2013, hearing in this matter ("*Hearing Item 2*").  
20 The information Big Rivers seeks to protect as confidential is hereinafter referred to  
21 as the "*Confidential Information*."

22 2. The Confidential Information consists of a portions of an attachment to  
23 Big Rivers' supplemental response to Hearing Item 2. One (1) copy of the  
24 Confidential Information, with the Confidential Information highlighted with  
25 transparent ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL,"  
26 is being filed with this petition. An original and ten (10) copies of Big Rivers'  
27 response to Hearing Item 2 with the Confidential Information in the attachments  
28 redacted are also being filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3),  
29 13(2)(b).



1           3.     A copy of this petition with the Confidential Information redacted has  
2 been served on all parties to this proceeding. 807 KAR 5:001 Section 13(2)(c). A  
3 copy of the Confidential Information has been served on all parties that have signed  
4 a confidentiality agreement.

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

10          5.     If and to the extent the Confidential Information becomes generally  
11 available to the public, whether through filings required by other agencies or  
12 otherwise, Big Rivers will notify the Commission and have its confidential status  
13 removed. 807 KAR 5:001 Section 13(10)(a).

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

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

21          7.     Big Rivers competes in the wholesale power market to sell energy  
22 excess to its members’ needs. Big Rivers’ ability to successfully compete in the

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

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

14           **II.    The Confidential Information is Generally Recognized as**  
15                               **Confidential or Proprietary**  
16

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

20           10.      The Confidential Information is contained in the Appendices A and B  
21 to Big Rivers' *Corrective Plan to Achieve Two Credit Ratings of Investment Grade*  
22 that is attached to Big Rivers' supplemental response to Hearing Item 2. The

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<sup>1</sup> See Order dated March 6, 2009, in *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 Confidential Information contained in Appendix A consists of the terms of a loan  
2 Big Rivers is actively negotiating with National Rural Utilities Cooperative Finance  
3 Corporation (“CFC”), which has already been produced in this case and is subject to  
4 a pending petition for confidential treatment. The Confidential Information  
5 contained in Appendix B consists of details of Big Rivers’ ongoing activities to  
6 mitigate the loss of the smelter load and details of proposals and negotiations that  
7 are subject to one or more confidentiality agreements.

8 11. In addition to the CFC negotiations, Big Rivers is also currently in  
9 negotiations with respect to its revolving credit agreement with CoBank ACB  
10 (“CoBank”). Public disclosure of terms under negotiation with CFC could impair  
11 Big Rivers’ negotiating position with CoBank and would give CoBank a competitive  
12 advantage. It will also give a competitive advantage to other potential lenders to  
13 Big Rivers. Similarly, public disclosure of Big Rivers’ mitigation efforts and  
14 negotiations will impair Big Rivers’ ability to negotiate with other potential parties  
15 interested in Big Rivers’ excess capacity or energy, and would give those other  
16 potential parties an unfair competitive advantage.

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

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

1 Information during the pending negotiations will impair Big Rivers' ability to  
2 negotiate with CoBank, other potential lenders, and other potential parties  
3 interested in Big Rivers' excess capacity or energy, leading to less favorable terms  
4 and higher prices to Big Rivers.

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

#### 18 IV. Time Period

19 14. Big Rivers requests that the Confidential Information remain  
20 confidential for a period of five (5) years from the date of this petition, which should  
21 allow sufficient time for the negotiations to conclude or become outdated. 807 KAR  
22 5:001 Section 13(2)(a)(2).

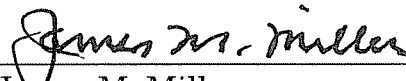
1 V. Conclusion

2 15. Based on the foregoing, the Confidential Information is entitled to  
3 confidential protection. If the Commission disagrees that Big Rivers is entitled to  
4 confidential protection, due process requires the Commission to hold an evidentiary  
5 hearing. *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d  
6 591 (Ky. App. 1982).

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

9 On this the 8<sup>th</sup> day of March, 2013.

10 Respectfully submitted,

11  
12  
13 

14 \_\_\_\_\_  
15 James M. Miller  
16 Tyson Kamuf  
17 SULLIVAN, MOUNTJOY,  
18 STAINBACK & MILLER, P.S.C.  
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26 Counsel for Big Rivers Electric  
27 Corporation