

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

3 RECEIVED

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5 In the Matter of:

JAN 15 2013

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7 Application of Big Rivers Electric)
8 Corporation for a General)
9 Adjustment in Rates)

PUBLIC SERVICE
COMMISSION
Case No. 2012-00535

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12 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR**
13 **CONFIDENTIAL PROTECTION**
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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 7 and KRS 61.878, to grant confidential protection to certain information Big
18 Rivers is filing with its application in this matter (“Application”). The information
19 Big Rivers seeks to protect as confidential is hereinafter referred to as the
20 “Confidential Information.”

21 2. The Confidential Information consists of:

- 22 a. The attachments to Tabs 25, 29, and 30;
- 23 b. Portions of the attachments to Tabs 20, 27, 31, 38, 49, 55 and 57 to the
24 Application;
- 25 c. Portions of the Direct Testimony of Robert W. Berry, which is Tab 66 to
26 the Application, and portions of Exhibits Berry-1, Berry-2, Berry-3, and
27 Berry-4 to the Direct Testimony of Robert W. Berry;
- 28 d. Portions of the Direct Testimony of Ted J. Kelly, which is Tab 71 to the
29 Application;

1 e. Exhibits Siewert-2 and Siewert-3 to the Direct Testimony of Travis A.
2 Siewert, which is Tab 72 to the Application; and

3 f. Portions of Exhibits Wolfram-3 and Wolfram-4 to the Direct Testimony
4 of John Wolfram, which is Tab 73 to the Application.

5 3. One (1) copy of the pages containing Confidential Information, with the
6 Confidential Information highlighted with transparent ink, printed on yellow paper,
7 or otherwise marked "CONFIDENTIAL," is being filed with this petition. A copy of
8 the pages containing Confidential Information, with the Confidential Information
9 redacted, are being filed with the original and each of the ten (10) copies of Big
10 Rivers' Application filed with this petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).

11 4. A copy of this petition with the Confidential Information redacted has
12 been served on all parties to this proceeding. 807 KAR 5:001 Section 7(2)(c).

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

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

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

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

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

16 9. Big Rivers also competes for reasonably priced credit in the credit
17 markets, and its ability to compete is directly impacted by its financial results. Any
18 event that adversely affects Big Rivers’ margins will adversely affect its financial
19 results and potentially impact the price it pays for credit. As was described in the

1 proceeding before this Commission in the Big Rivers unwind transaction case, Big
2 Rivers expects to be in the credit markets on a regular basis in the future.¹

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

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

9 11. The attachments to Tabs 20, 27, 31, 49, 55, and 57, and Exhibit Siewert-
10 3 contain Big Rivers' future/projected budgets, statements of operations, and income
11 statements. The Confidential Information contained in those attachments reveals
12 Big Rivers' projected operating and maintenance ("O&M") expenses (in lines such as
13 the Operations and the Maintenance lines) and recent and projected generation
14 levels. Those attachments also contain totals and similar information (in lines such
15 as the Electric Energy Revenues and the Operating Margins lines), which would not
16 otherwise be confidential; however, if that information was publicly disclosed, it could
17 readily be used to calculate or back in to Confidential Information in the same
18 document.

19 12. The attachments to Tabs 25, 29, and 30 contain detailed future capital
20 construction budgets and schedules, which reveal information such as the costs Big
21 Rivers projects for certain items or projects and schedules for future planned outages.

¹ 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 13. The attachments to Tab 38 contain monthly financial reports, and
2 Exhibit Siewert-2 contains the Big Rivers Financial Model. The Confidential
3 Information contained in these documents includes the same Confidential
4 Information that is contained in Big Rivers’ budgets discussed in Paragraph 11,
5 above, as well as Confidential Information relating to other recent and projected
6 variable operations expenses, including fuel costs; to recent and projected off-system
7 sales volumes, revenues, and prices; and to recent and projected .

8 14. The Confidential Information contained in the Direct Testimony of
9 Robert W. Berry, Exhibit Berry-1, Exhibit Berry-2, Exhibit Berry-3, and Exhibit
10 Berry-4 is recent and projected off-system sales prices, schedules and budgets for
11 future planned outages, detailed information about projected O&M expenses, and
12 projected revenues associated with Big Rivers’ rights across the Tennessee Valley
13 Authority (“TVA”) transmission system.

14 15. The Confidential Information contained in the Direct Testimony of Ted
15 J. Kelly are the heat rates associated with Big Rivers’ generating units, which would
16 give Big Rivers’ competitors insight into generator availability.

17 16. Exhibit Wolfram-3 and Exhibit Wolfram-4 contains the same type of
18 Confidential Information discussed in Paragraph 13, above, including projected O&M
19 expenses and off-system sales revenues.

20 **III. Disclosure of the Confidential Information Would Permit an**
21 **Unfair Commercial Advantage to Big Rivers’ Competitors**
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23 17. Public Disclosure of the Confidential Information would reveal detailed
24 information relating to Big Rivers’ recent and projected cost of producing power

1 (including projected fuel and other O&M costs); recent and projected off-system sales
2 volumes and prices; Big Rivers' projected revenue associated with its TVA
3 transmission rights; and Big Rivers' future need for power or availability of excess
4 power to sell into the market. Knowledge of such data will give Big Rivers' suppliers
5 and competitors an unfair competitive advantage.

6 18. Public disclosure of the information relating to recent and projected
7 generation levels, generator availability, and planned outage schedules would help
8 Big Rivers' suppliers, buyers, and competitors to determine when Big Rivers will
9 have power available to sell into the market or when Big Rivers needs power, and the
10 amount of power Big Rivers has to sell.

11 19. Public disclosure of the recent and projected O&M costs and fuel costs
12 and recent and projected off-system sales prices and revenues will give Big Rivers'
13 suppliers, buyers, and competitors insight into Big Rivers' cost of producing power,
14 Big Rivers' view of future fuel prices and market power prices, and Big Rivers' view of
15 the value of its TVA transmission rights, which would indicate the prices at which
16 Big Rivers is willing to buy or sell such items.

17 20. Information about a company's detailed inner workings is generally
18 recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus.*
19 *Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in
20 finance to recognize that such information concerning the inner workings of a
21 corporation is 'generally recognized as confidential or proprietary'"). Moreover, the
22 Commission has previously granted confidential treatment to similar information.

1 See, e.g., letters from the Commission dated July 28, 2011, and December 20, 2011, in
2 *In the Matter of: Application of Big Rivers Electric Corporation for a General*
3 *Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to
4 multi-year forecast); letter from the Commission dated December 21, 2010, in *In the*
5 *Matter of: The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, PSC
6 Case No. 2010-00443 (granting confidential treatment to fuel cost projections,
7 revenue projections, market price projections, financial model outputs, etc.); letter
8 from the Commission dated July 20, 2010, in Administrative Case No. 387 (granting
9 confidential treatment to a list of future scheduled outages, which can give
10 competitors insight into Big Rivers' wholesale power needs); two letters from the
11 Commission dated December 11, 2012, in *In the Matter of: Application of Big Rivers*
12 *Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for*
13 *Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for*
14 *Certificates of Public Convenience and Necessity, and for Authority to Establish a*
15 *Regulatory Account*, PSC Case No. 2012-00063 (granting confidential treatment to
16 Big Rivers' heat rates, O&M expenses, off-system sales and revenues, and
17 information such as "Total Sales" and "Electric Energy Revenues" where the basis for
18 Big Rivers' claim of confidentiality was that such information could be used with
19 other, non-confidential information in the attachment to determine other confidential
20 information, such as projected off-system sales revenues).

21 **IV. Disclosure of the Confidential Information Would Permit an**
22 **Unfair Commercial Advantage to Big Rivers' Competitors**
23

1 21. Disclosure of the Confidential Information would permit an unfair
2 commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers
3 faces actual competition in the wholesale power market and in the credit market. It
4 is likely that Big Rivers would suffer competitive injury if that Confidential
5 Information was publicly disclosed.

6 22. The Confidential Information includes material such as Big Rivers'
7 projections of fuel costs, power prices, and the value of its TVA transmission rights.
8 If that information is publicly disclosed, potential fuel and power suppliers and
9 buyers of fuel, power, and transmission rights would have insight into the prices Big
10 Rivers is willing to buy and sell those items at and could manipulate the bidding
11 process, leading to higher prices or lower revenues for Big Rivers and impairing its
12 ability to compete in the wholesale power and credit markets. In PSC Case No. 2003-
13 00054, the Commission granted confidential protection to bids submitted to Union
14 Light, Heat & Power ("ULH&P"). ULH&P argued, and the Commission implicitly
15 accepted, that if the bids it received were publicly disclosed, contractors on future
16 work could use the bids as a benchmark, which would likely lead to the submission of
17 higher bids. Order dated August 4, 2003, in *In the Matter of: Application of the Union*
18 *Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-
19 00054. The Commission also implicitly accepted ULH&P's further argument that the
20 higher bids would lessen ULH&P's ability to compete with other gas suppliers. *Id.*
21 Similarly, potential fuel and power suppliers manipulating Big Rivers' bidding
22 process would lead to higher costs or lower revenues to Big Rivers and would place it

1 at an unfair competitive disadvantage in the wholesale power market and credit
2 markets.

3 23. Potential market power purchasers could use the information related to
4 Big Rivers' projected off-system sales and revenues, generation levels, generator
5 availability, and planned outages to know when Big Rivers is long on power and could
6 use that information to manipulate their bids, leading to lower revenues to Big Rivers
7 and placing it at an unfair competitive disadvantage in the credit markets.

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

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
V. Conclusion

25. 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 15th day of January, 2013.

Respectfully submitted,



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