

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

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5 In the Matter of:

6
7 Application of Big Rivers Electric)
8 Corporation for a General) Case No. 2012-00535
9 Adjustment in Rates)

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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 responses to the Commission Staff’s First Request for
19 Information. The information Big Rivers seeks to protect as confidential is
20 hereinafter referred to as the “Confidential Information.”

21 2. The Confidential Information consists of:

22 a. portions of the hardcopy attachments to Big Rivers’ responses to Items
23 13, 17, and 42 of the Commission Staff’s First Request for Information
24 (“PSC 1-13,” “PSC 1-17,” and “PSC 1-42,” respectively); and

25 b. portions of certain of the electronic attachments to Big Rivers’ response
26 to Item 57 of the Commission Staff’s First Request for Information
27 (“PSC 1-57”) and the entirety of other electronic attachments to Big
28 Rivers’ responses to PSC 1-57.

1 3. One (1) copy of the hardcopy pages containing Confidential
2 Information (*i.e.*, the confidential pages from the responses to PSC 1-13, PSC 1-17,
3 and PSC 1-42), with the Confidential Information highlighted with transparent ink,
4 printed on yellow paper, or otherwise marked "CONFIDENTIAL," is being filed
5 with this petition. A copy of those pages, with the Confidential Information
6 redacted, is being filed with the original and each of the ten (10) copies of Big
7 Rivers' responses to the information requests filed with this petition. 807 KAR
8 5:001 Sections 13(2)(a)(3), 13(2)(b).

9 4. One (1) copy of the electronic attachments containing Confidential
10 Information (*i.e.*, the electronic attachments to PSC 1-57) is contained on the CD
11 marked "CONFIDENTIAL" that accompanies this petition. Because the
12 Confidential Information is intertwined with non-confidential information in the
13 electronic spreadsheet attachments to PSC 1-57, Big Rivers cannot redact only the
14 Confidential Information from the electronic spreadsheet attachments without
15 making other cells in the spreadsheets unusable, and so, the entirety of the
16 attachments to PSC 1-57 must be confidential. As such, the entirety of the
17 confidential CDs has been redacted from the original and each of the ten (10) copies
18 of Big Rivers' responses to the information requests filed with this petition. 807
19 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b). A motion for deviation from the
20 requirement that Big Rivers file paper copies of the attachments to its response to
21 PSC 1-57 accompanies this petition.

1 5. 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 6. 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 7. 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 8. 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 9. 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 10. 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.¹

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

17 11. 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 12. The Confidential Information contained in the attachments to Big
21 Rivers' responses to PSC 1-13 and PSC 1-17 consists of detailed information about
22 planned and uncompleted construction projects, including budgeted costs for each

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 project and schedules for the projects. The Confidential Information contained in
2 the attachments to Big Rivers' response to PSC 1-42 consists of recent purchased
3 power amounts and values. PSC 1-57 consists of Big Rivers' budgets, financial
4 forecasts, and other documents, which contain Confidential Information detailing
5 Big Rivers' projected operating and maintenance ("O&M") expenses, including fuel
6 costs, information relating to generation levels and off-system sales volumes,
7 revenues, and prices, and similar information.

8 13. Public Disclosure of the Confidential Information would reveal detailed
9 information relating to Big Rivers' recent and projected cost of producing power
10 (including projected fuel and other O&M costs); recent and projected off-system
11 sales volumes and prices; recent purchased power volumes and prices; and Big
12 Rivers' future need for power or availability of excess power to sell into the market.
13 Knowledge of such data will give Big Rivers' suppliers and competitors an unfair
14 competitive advantage.

15 14. Public disclosure of the information relating to generation levels and
16 planned outage schedules would help Big Rivers' suppliers, buyers, and competitors
17 to determine when Big Rivers will have power available to sell into the market or
18 when Big Rivers needs power, and the amount of power Big Rivers has to sell.

19 15. Public disclosure of the recent and projected O&M costs and fuel costs,
20 recent purchased power amounts and costs, and recent and projected off-system
21 sales prices and revenues will give Big Rivers' suppliers, buyers, and competitors
22 insight into Big Rivers' cost of producing power, and Big Rivers' view of future fuel

1 prices and market power prices, which would indicate the prices at which Big
2 Rivers is willing to buy or sell such items.

3 16. Information about a company's detailed inner workings is generally
4 recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus.*
5 *Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree
6 in finance to recognize that such information concerning the inner workings of a
7 corporation is 'generally recognized as confidential or proprietary'"). Moreover, the
8 Commission has previously granted confidential treatment to similar information.
9 *See, e.g.,* letters from the Commission dated July 28, 2011, and December 20, 2011,
10 in *In the Matter of: Application of Big Rivers Electric Corporation for a General*
11 *Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to
12 multi-year forecast); letter from the Commission dated December 21, 2010, in *In the*
13 *Matter of: The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*,
14 PSC Case No. 2010-00443 (granting confidential treatment to fuel cost projections,
15 revenue projections, market price projections, financial model outputs, *etc.*); letter
16 from the Commission dated July 20, 2010, in Administrative Case No. 387 (granting
17 confidential treatment to a list of future scheduled outages, which can give
18 competitors insight into Big Rivers' wholesale power needs); two letters from the
19 Commission dated December 11, 2012, in *In the Matter of: Application of Big Rivers*
20 *Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for*
21 *Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for*
22 *Certificates of Public Convenience and Necessity, and for Authority to Establish a*

1 *Regulatory Account*, PSC Case No. 2012-00063 (granting confidential treatment to
2 Big Rivers' O&M expenses, and off-system sales and revenues).

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

5
6 17. Disclosure of the Confidential Information would permit an unfair
7 commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers
8 faces actual competition in the wholesale power market and in the credit market. It
9 is likely that Big Rivers would suffer competitive injury if that Confidential
10 Information was publicly disclosed.

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

1 ULH&P's ability to compete with other gas suppliers. *Id.* Similarly, potential fuel
2 and power suppliers manipulating Big Rivers' bidding process would lead to higher
3 costs or lower revenues to Big Rivers and would place it at an unfair competitive
4 disadvantage in the wholesale power market and credit markets.

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

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

1 **IV. Time Period**

2 21. Big Rivers requests that the Confidential Information remain
3 confidential for a period of five (5) years from the date of this petition, which should
4 allow sufficient time for the projected data to become historical and sufficiently
5 outdated that it could not be used to determine similar confidential information at
6 that time. 807 KAR 5:001 Section 13(2)(a)(2).

7 **V. Conclusion**

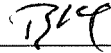
8 22. Based on the foregoing, the Confidential Information is entitled to
9 confidential protection. If the Commission disagrees that Big Rivers is entitled to
10 confidential protection, due process requires the Commission to hold an evidentiary
11 hearing. *Utility Regulatory Com'n v. Kentucky Water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

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

15 On this the 28th day of January, 2013.

16

Respectfully submitted,



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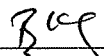
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Counsel for Big Rivers Electric
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Certificate of Service

I certify that a true and accurate copy of the foregoing was or will be served by Federal Express or by hand delivery upon the persons listed on the service list filed with this petition, on the date this petition is filed with the Kentucky Public Service Commission or the following day.

On this the 28th day of January, 2013,



Tyson Kamuf