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PUBLIC SERVICE  
COMMISSION

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

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4  
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 )

10  
11  
12 **PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL**  
13 **PROTECTION**  
14

15 1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the Kentucky  
16 Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13 and KRS  
17 61.878, to grant confidential protection to certain information Big Rivers is filing with its revised  
18 responses to Items 2, 3, 4, 5, and 8 of Ben Taylor and Sierra Club’s Supplemental Requests for  
19 Information (the “Sierra Club Supplemental Requests”). The information Big Rivers seeks to  
20 protect as confidential is hereinafter referred to as the “Confidential Information.”

21 2. The Confidential Information consists of electronic spreadsheet attachments  
22 containing projected information in the financial and production cost model files contained on  
23 the CONFIDENTIAL CD being filed with this petition.

24 3. One (1) copy of CD, which is marked “CONFIDENTIAL,” is being filed with  
25 this petition. Because the Confidential Information is inextricably intertwined with non-  
26 confidential information in the electronic spreadsheet attachments in response to the Sierra Club  
27 Supplemental Requests, Big Rivers cannot redact only the Confidential Information from the  
28 electronic spreadsheet attachments without making other cells in the spreadsheets unusable, and  
29 so, the entirety of the attachments must be made confidential. As such, the entirety of the  
30 confidential CD has been redacted from the original and each of the ten (10) copies of the

1 responses to the information requests filed with this petition. 807 KAR 5:001 Sections  
2 13(2)(a)(3), 13(2)(b). A motion for deviation from the requirement that Big Rivers file paper  
3 copies of the attachments accompanies this petition.

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

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

11 6. If and to the extent the Confidential Information becomes generally available to  
12 the public, whether through filings required by other agencies or otherwise, Big Rivers will  
13 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section  
14 13(10)(a).

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

#### 21 I. Big Rivers Faces Actual Competition

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

1 dependent upon a combination of its ability to get the maximum price for the power sold, and  
2 keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers' cost  
3 of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with  
4 other utilities is adversely affected.

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

11 **II. The Confidential Information is Generally Recognized as Confidential or**  
12 **Proprietary**  
13

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

17 11. The Confidential Information consists of projected information from Big Rivers'  
18 financial model and production cost model runs. The Confidential Information reveals Big  
19 Rivers' projected fuel and other operating and maintenance ("O&M") expenses, and projected  
20 off-system sales revenues, volumes, and prices.

21 12. Public disclosure of the Confidential Information will give Big Rivers' suppliers,  
22 buyers, and competitors insight into Big Rivers' cost of producing power, and Big Rivers' view

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

3 13. Information about a company’s detailed inner workings is generally recognized as  
4 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907  
5 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such  
6 information concerning the inner workings of a corporation is ‘generally recognized as  
7 confidential or proprietary’”). Moreover, the Commission has previously granted confidential  
8 treatment to similar information. *See, e.g.*, letters from the Commission dated July 28, 2011, and  
9 December 20, 2011, in *In the Matter of: Application of Big Rivers Electric Corporation for a*  
10 *General Adjustment in Rates*, PSC Case No. 2011-00036 (granting confidential treatment to  
11 multi-year forecast); letter from the Commission dated December 21, 2010, in *In the Matter of:*  
12 *The 2010 Integrated Resource Plan of Big Rivers Electric Corporation*, PSC Case No. 2010-  
13 00443 (granting confidential treatment to fuel cost projections, revenue projections, market price  
14 projections, financial model outputs, *etc.*); two letters from the Commission dated December 11,  
15 2012, in *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its*  
16 *2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost*  
17 *Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for*  
18 *Authority to Establish a Regulatory Account*, PSC Case No. 2012-00063 (granting confidential  
19 treatment to Big Rivers’ O&M expenses, and off-system sales and revenues).

20 **III. Disclosure of the Confidential Information Would Permit an Unfair**  
21 **Commercial Advantage to Big Rivers’ Competitors**  
22

23 14. Disclosure of the Confidential Information would permit an unfair commercial  
24 advantage to Big Rivers’ competitors. As discussed above, Big Rivers faces actual competition

1 in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer  
2 competitive injury if that Confidential Information was publicly disclosed.

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

19 16. Additionally, public disclosure of the fuel prices, other variable cost information,  
20 and production cost modeling would give the power producers and marketers with which Big  
21 Rivers competes in the wholesale power market insight into Big Rivers' cost of producing  
22 power, and availability of power to sell or need for power during the periods covered by the  
23 information. Knowledge of this information would give those power producers and marketers an

1 unfair competitive advantage because they could use that information to potentially underbid Big  
2 Rivers in wholesale transactions. It would also give potential suppliers to Big Rivers a  
3 competitive advantage because they will be able to manipulate the price of power bid to Big  
4 Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and impairing  
5 Big Rivers' ability to compete in the wholesale power and credit markets.

6 **IV. Time Period**

7 17. Big Rivers requests that the Confidential Information remain confidential for a  
8 period of five (5) years from the date of this petition, which should allow sufficient time for the  
9 Confidential Information to become sufficiently outdated that it could not be used to determine  
10 similar confidential information at that time. 807 KAR 5:001 Section 13(2)(a)(2).

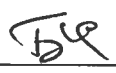
11 **V. Conclusion**

12 18. 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 21<sup>st</sup> day of June, 2013.

19 Respectfully submitted,

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Counsel for Big Rivers Electric Corporation

**Certificate of Service**

I certify that a true and accurate copy of the foregoing was served by Federal Express or by first class mail, postage prepaid upon the persons listed on the service list that accompanies this petition, on this the 21<sup>st</sup> day of June, 2013.

  
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Tyson Kamuf