

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

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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 CONFIDENTIAL**  
13 **TREATMENT**  
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 treatment to certain information Big Rivers is filing with its  
18 responses to the Joint Intervenors' Supplemental Rehearing Request for Information. The  
19 information for which Big Rivers seeks confidential treatment is hereinafter referred to as the  
20 "Confidential Information."

21 2. The Confidential Information includes portions of the responses and/or  
22 attachments to Items 1, 4, 6, 7, and 8 of the Joint Intervenors' Supplemental Rehearing Request  
23 for Information ("JI Rehearing 2-1," "JI Rehearing 2-4," "JI Rehearing 2-6," "JI Rehearing 2-7,"  
24 and "JI Rehearing 2-8," respectively).

25 3. One (1) copy of the paper attachments with the confidential information  
26 underscored, highlighted with transparent ink, printed on yellow paper, or otherwise marked  
27 "CONFIDENTIAL," is being filed with this petition in a separate sealed envelope marked  
28 "CONFIDENTIAL." A copy of those pages, with the Confidential Information redacted, is  
29 being filed with the original and each of the ten (10) copies of the responses to the data requests  
30 filed with this petition. See 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

1           4.     Additionally, certain requests contain information identified by the Joint  
2     Intervenors as confidential. This Confidential Information was provided by Big Rivers in  
3     response to prior data requests in this proceeding, subject to a petition for confidential treatment.  
4     As discussed below, this information is entitled to confidential treatment during the pendency of  
5     the petition. *See* 807 KAR 5:001 Section 13(4).

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

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

14          7.     If and to the extent the Confidential Information becomes generally available to  
15     the public, whether through filings required by other agencies or otherwise, Big Rivers will  
16     notify the Commission in writing. *See* 807 KAR 5:001 Section 13(10)(b).

17          8.     As discussed below, the Confidential Information is entitled to confidential  
18     treatment based upon 807 KAR 5:001 Section 13(4), KRS 61.878(1)(a), or KRS 61.878(1)(c)(1).  
19     *See* 807 KAR 5:001 Section 13(2)(a)(1).

20         **I. Information Exempted from Public Disclosure by 807 KAR 5:001 Section 13(4)**

21          9.     807 KAR 5:001 Section 13(4) provides that material for which confidential  
22     treatment was requested “shall be accorded confidential treatment” pending action on the  
23     petition. Pursuant to 807 KAR 5:001 (9)(a), the Joint Intervenors included material in their data

1 requests that is subject to Big Rivers' January 28, 2014 Petition for Confidential Treatment in  
2 this proceeding. This petition is still pending before the Commission.

3 10. JI Rehearing 2-6, JI Rehearing 2-7, and JI Rehearing 2-8 include Confidential  
4 Information contained in Big Rivers' attachment for the response to JI Rehearing 1-1(a).

5 11. Please see Big Rivers' January 28, 2014 Petition for Confidential Treatment for  
6 detailed explanations of the grounds originally cited on which the Confidential Information is  
7 entitled to protection. As this petition is still pending before the Commission, the information is  
8 entitled to confidential treatment pursuant to 807 KAR 5:001 Section 13(4).

9 **II. Information Exempted from Public Disclosure by KRS 61.878(1)(a)**

10 12. KRS 61.878(1)(a) protects "records containing information of a personal nature  
11 where the public disclosure thereof would constitute a clearly unwarranted invasion of personal  
12 privacy."

13 13. The Confidential Information contained in the attachment to JI Rehearing 2-8  
14 contains information identifying specific employee positions projected to be eliminated in the  
15 event of certain business developments.

16 14. Information falls under the exemption set forth in KRS 61.878(1)(a) if it is of a  
17 "personal nature" and if the privacy interest in that personal information outweighs the public  
18 good in making the records publicly available. *Kentucky Bd. of Examiners of Psychologists v.*  
19 *Courier-Journal*, 826 S.W.2d 324, 327 (Ky. 1992). Here, the information contains extremely  
20 sensitive employment details that identify which specific positions in a private company are  
21 likely to be eliminated in the event of certain business developments. Furthermore, third parties  
22 could use the Confidential Information to identify specific employees likely to have their  
23 positions terminated – information not available even to those employees or anyone else except a

1 few select members of senior management. Consequently, the information is of a highly  
2 personal nature, and because the details relate to private, not public, employees there is little to  
3 no public interest in making these details publicly available. For these reasons, the public  
4 disclosure of this information would constitute a clearly unwarranted invasion of personal  
5 privacy.

6 **III. Information Exempted from Public Disclosure by KRS 61.878(1)(c)(1)**

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

8 15. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an agency or  
9 required by an agency to be disclosed to it, generally recognized as confidential or proprietary,  
10 which if openly disclosed would permit an unfair commercial advantage to competitors of the  
11 entity that disclosed the records.”

12 16. As a generation and transmission cooperative, Big Rivers competes in the  
13 wholesale power market to sell energy that it produces in excess to its members’ needs. This  
14 includes not only the over-the-counter day-ahead and over-the-counter hourly markets to which  
15 Big Rivers has access by virtue of its membership in Midcontinent Independent System  
16 Operator, Inc. (“MISO”), but also for forward bilateral long-term agreements and wholesale  
17 agreements with utilities and industrial customers. The completion of Phase 2 of Big Rivers’  
18 transmission upgrades as well as the completion of a 345 kV interconnection with Vectren will  
19 enhance Big Rivers’ ability to export power off-system. Big Rivers’ ability to successfully  
20 compete in the market is dependent upon a combination of its ability to: 1) obtain the maximum  
21 price for the power it sells; and 2) keep its cost of production as low as possible. Fundamentally,  
22 if Big Rivers’ cost of producing a unit of power increases, its ability to sell that unit in  
23 competition with other utilities is adversely affected.



1           22.    The Confidential Information contained in the attachment to JI Rehearing 2-8  
2 contains information relating to specific employee positions projected to be eliminated in the  
3 event of certain business developments.

4           23.    Public disclosure of information relating to Big Rivers' projected capital  
5 expenditures would reveal when Big Rivers will have excess power available to sell into the  
6 market, or when Big Rivers' generation levels will drop due to maintenance and construction and  
7 will have to resort to purchased power to meet its native load. The Commission has previously  
8 granted confidential treatment to similar information. *See, e.g., In the Matter of: Application of*  
9 *Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C. Case No.  
10 2012-00535 (April 25, 2013); P.S.C. Administrative Case No. 387, Letter (July 20, 2010).

11          24.    Public disclosure of the projected fixed departmental expenses would provide  
12 insight into Big Rivers' cost of producing power and would indicate the prices at which Big  
13 Rivers is willing to buy or sell power and production factors. The Commission has previously  
14 granted confidential treatment to similar information. *See, e.g., In the Matter of: Application of*  
15 *Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C. Case No.  
16 2013-00199 (November 25, 2013) (granting confidential treatment to projected fixed  
17 departmental expense information contained in Big Rivers' responses to AG 1-105, AG 1-106,  
18 and PSC 2-19); *In the Matter of: Application of Big Rivers Electric Corporation for a General*  
19 *Adjustment in Rates*, Order, P.S.C. Case No. 2012-00535 (August 14, 2013); *In the Matter of:*  
20 *Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental*  
21 *Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff*  
22 *for Certificates of Public Convenience and Necessity, and for Authority to Establish a*  
23 *Regulatory Account*, Letter, P.S.C. Case No. 2012-00063 (August 15, 2012).



1 revenues to Big Rivers. This would place Big Rivers at an unfair competitive disadvantage in  
2 the credit markets.

3 29. Publication of the Confidential Information regarding which positions would be  
4 terminated in the event the Coleman Station is idled could cause serious competitive  
5 repercussions, including unplanned employee departures and the potential “poaching” of  
6 employees by Big Rivers’ competitors. These repercussions would result in an unfair  
7 commercial advantage for Big Rivers’ competitors because it would reduce Big Rivers’ ability to  
8 properly allocate its staff and because the departure of employees could negatively impact Big  
9 Rivers’ operational and administrative efforts.

10 30. Finally, the Commission has consistently recognized that internal strategic  
11 planning information and related materials are entitled to confidential treatment, as these  
12 documents typically relate to the company’s economic status and business strategies. *See, e.g.,*  
13 *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky.  
14 1995) (unfair commercial advantage arises simply from “the ability to ascertain the economic  
15 status of the entities without the hurdles systemically associated with the acquisition of such  
16 information about privately owned organizations”).

17 31. Accordingly, the public disclosure of the information that Big Rivers seeks to  
18 protect would provide Big Rivers’ competitors with an unfair commercial advantage.

19 **IV. Time Period**

20 32. Pursuant to 807 KAR 5:001 Section 13(2)(a)(2), Big Rivers requests that the  
21 Confidential Information be afforded confidential treatment for the time periods explained  
22 below.





1 On this the 20<sup>th</sup> day of February, 2014.

2 Respectfully submitted,

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