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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 a General ) Case No. 2013-00199  
9 Adjustment In Rates )  
10

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 Kentucky Office of the Attorney General’s (“AG”), Kentucky Industrial Utility  
19 Customers, Inc.’s (“KIUC”), and Ben Taylor and the Sierra Club’s (the “Sierra Club” or “SC”)  
20 Initial Requests for Information, and the Commission Staff’s (“PSC”) Second Requests for  
21 Information. The information for which Big Rivers seeks confidential treatment is hereinafter  
22 referred to as the “Confidential Information.”

23 2. The Confidential Information includes:

- 24 a. portions of the responses and/or attachments for the responses to Items 5, 41, 45,  
25 52, 53, 57, 73, 76, 86, 95, 98, 101, 102, 105, 106, 108, 121, 125, 126, 127, 129,  
26 139, 141, 146, 154, 158, 163, 164, 196, 202, 226, 227, 237, 245, 265, 279, 285,  
27 287, and 292 of the AG’s Initial Request for Information (“AG 1-5,” “AG 1-41,”  
28 “AG 1-45,” “AG 1-52,” “AG 1-53,” “AG 1-57,” “AG 1-73,” “AG 1-76,” “AG 1-  
29 86,” “AG 1-95,” “AG 1-98,” “AG 1-101,” “AG 1-102,” “AG 1-105,” “AG 1-  
30 106,” “AG 1-108,” “AG 1-121,” “AG 1-125,” “AG 1-126,” “AG 1-127,” “AG 1-

1 129,” “AG 1-139,” “AG 1-141,” “AG 1-146,” “AG 1-154,” “AG 1-158,” “AG 1-  
2 163,” “AG 1-164,” “AG 1-196,” “AG 1-202,” “AG 1-226,” “AG 1-227,” “AG 1-  
3 237,” “AG 1-245,” “AG 1-265,” AG 1-279,” “AG 1-285,” “AG 1-287,” and “AG  
4 1-292,” respectively);

5 b. portions of the responses and/or attachments for the responses to Items 8, 12, 13,  
6 14, 21, 22, 29, 39, 40, 42, 43, 61, and 67 of KIUC’s First Request for Information  
7 (“KIUC 1-8,” “KIUC 1-12,” “KIUC 1-13,” “KIUC 1-14,” “KIUC 1-21,” “KIUC  
8 1-22,” “KIUC 1-29,” “KIUC 1-39,” “KIUC 1-40,” “KIUC 1-42,” “KIUC 1-43,”  
9 “KIUC 1-61,” and “KIUC 1-67,” respectively);

10 c. portions of the responses and/or attachments for the responses to Items 20, 25,  
11 and 26 of Ben Taylor and the Sierra Club’s Initial Requests for Information (“SC  
12 1-20,” “SC 1-25,” and “SC 1-26” respectively); and

13 d. portions of the responses and/or attachments for the responses to Items 14, 15, 16,  
14 19, 22, 30, 33, and 34 of the Commission’s Second Request for Information  
15 (“PSC 2-14,” “PSC 2-15,” “PSC 2-16,” “PSC 2-19,” “PSC 2-22,” “PSC 2-30,”  
16 “PSC 2-33,” and “PSC 2-34,” respectively).

17 3. One (1) copy of the paper attachments with the confidential information  
18 underscored, highlighted with transparent ink, printed on yellow paper, or otherwise marked  
19 “CONFIDENTIAL,” is being filed with this petition in a separate sealed envelope marked  
20 “CONFIDENTIAL.” A copy of those pages, with the Confidential Information redacted, is  
21 being filed with the original and each of the ten (10) copies of the responses to the information  
22 requests filed with this petition. *See* 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

1           4.       One (1) copy of the electronic attachments containing Confidential Information is  
2 contained in the confidential electronic files that accompany this petition. In some instances, the  
3 Confidential Information is inextricably intertwined with non-confidential information in the  
4 electronic spreadsheet attachments in response to certain requests. Big Rivers cannot redact only  
5 the Confidential Information from the electronic spreadsheet attachments without making other  
6 cells in the spreadsheets unusable or breaking the formulas contained therein, and so, the entirety  
7 of those attachments must be made confidential. Likewise, there are other instances where the  
8 pervasive nature of the confidential information would make public versions ineffectual and  
9 unhelpful to the Commission. As such, the entirety of these confidential files have been redacted  
10 from the original and each of the ten (10) copies of the responses to the information requests  
11 filed with this petition. *See* 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b). A motion for  
12 deviation from the requirement that Big Rivers file paper copies of those electronic attachments  
13 accompanies this petition.

14           5.       Additionally, certain requests contain information identified by the requesting  
15 party as confidential. While Big Rivers' responses to these items may not be subject to this  
16 Petition for Confidential Treatment, Big Rivers is filing public and confidential versions of those  
17 items to reflect the treatment indicated in the requests themselves.

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

22           7.       The Confidential Information is not publicly available, is not disseminated within  
23 Big Rivers except to those employees and professionals with a legitimate business need to know

1 and act upon the information, and is not disseminated to others without a legitimate need to  
2 know and act upon the information.

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

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

9 **I. Information Protected by KRS 61.878(1)(m)**

10 10. KRS 61.878(1)(m)(1) protects “[p]ublic records the disclosure of which would  
11 have a reasonable likelihood of threatening the public safety by exposing a vulnerability in  
12 preventing protecting against, mitigating, or responding to a terrorist act. . . .”

13 11. The Confidential Information attached to the response to AG 1-108 includes  
14 critical energy infrastructure information regarding the reliability of Big Rivers’ transmission  
15 system.

16 12. The Confidential Information attached to the response to AG 1-121 includes  
17 studies regarding the reliability of Big Rivers’ transmission system and the regional transmission  
18 system.

19 13. The Confidential Information attached to the response to AG 1-129 includes a  
20 detailed map of Big Rivers’ transmission system.

21 14. As disclosure of this information would provide the public with detailed  
22 schematics of the local and regional transmission system as well as an explanation of their  
23 vulnerabilities, this information should be granted confidential treatment.

1 **II. Information Protected By KRS 61.878(1)(c)(1)**

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

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

7 16. As a generation and transmission cooperative, Big Rivers competes in the  
8 wholesale power market to sell energy that it produces in excess to its members’ needs. This  
9 includes not only the over-the-counter day-ahead and over-the-counter hourly markets to which  
10 Big Rivers has access by virtue of its membership in Midcontinent Independent System  
11 Operator, Inc. (“MISO”), but also for direct, bilateral long-term agreements. Big Rivers’ ability  
12 to successfully compete in these markets is dependent upon a combination of its ability to: 1)  
13 obtain the maximum price for the power it sells, and 2) keep its cost of production as low as  
14 possible. Fundamentally, if Big Rivers’ cost of producing a unit of power increases, its ability to  
15 sell that unit in competition with other utilities is adversely affected.

16 17. Big Rivers also competes for reasonably priced credit in the credit markets, and  
17 its ability to compete is directly impacted by its financial results. Lower revenues and any events  
18 that adversely affect Big Rivers’ margins will adversely affect its financial results and potentially  
19 impact the price it pays for credit. A competitor armed with Big Rivers’ proprietary and  
20 confidential information will be able to increase Big Rivers’ costs or decrease Big Rivers’  
21 revenues, which could in turn affect Big Rivers’ creditworthiness. A utility the size of Big  
22 Rivers that operates generation and transmission facilities will always have periodic cash and  
23 borrowing requirements for both anticipated and unanticipated needs. Big Rivers expects to be

1 in the credit markets on a regular basis in the future, and it is imperative that Big Rivers improve  
2 and maintain its credit profile.

3 18. Accordingly, Big Rivers has competitors in both the power and capital markets,  
4 and its Confidential Information should be protected to prevent the imposition of an unfair  
5 competitive advantage.

6 **B. The Confidential Information is Generally Recognized as Confidential**  
7 **or Proprietary**  
8

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

12 20. The Confidential Information attached to the response to AG 1-5 includes data  
13 regarding planned outages, projected off-system sales volumes and revenue, projected margins,  
14 and projected O&M (“O&M”) expenses.

15 21. The Confidential Information attached to the response to AG 1-41 includes  
16 communications protected by one or more confidentiality agreements, commercially sensitive  
17 negotiations between Alcan and Big Rivers regarding the supply of electric power to the Sebree  
18 smelter, planned outages, and a confidential proposal presented by ACES for short-term electric  
19 supply call options.

20 22. The Confidential Information attached to the response to AG 1-45 includes O&M  
21 costs.

22 23. The Confidential Information attached to the response to AG 1-52 includes  
23 minutes of Big Rivers’ Internal Risk Management Committee meetings.

24 24. The Confidential Information attached to the response to AG 1-53 includes  
25 minutes from meetings of the Big Rivers Board of Directors.

- 1           25.    The Confidential Information contained in the response to AG 1-57 includes  
2 details regarding the possible sale of generating assets.
- 3           26.    The Confidential Information attached to the response to AG 1-73 includes a run  
4 of Big Rivers' Financial Model which contains, among other information, data regarding off-  
5 system sales, O&M costs, margins, and capital expenditures.
- 6           27.    The Confidential Information attached to the response to AG 1-76 includes  
7 variable O&M cost information.
- 8           28.    The Confidential Information attached to the response to AG 1-86 includes  
9 projections of off-system sales, O&M costs, and margins.
- 10          29.    The Confidential Information contained in the response to AG 1-95 includes  
11 projected electric energy prices and sales revenues.
- 12          30.    The Confidential Information contained in attachments for the response to AG 1-  
13 98 consists of production cost model runs.
- 14          31.    The Confidential Information attached to the response to AG 1-101 consists of  
15 Big Rivers' planned outage schedule.
- 16          32.    The Confidential Information attached to the response to AG 1-102 consists of  
17 Big Rivers' projected capital expenditures.
- 18          33.    The Confidential Information contained in the response to AG 1-105 includes  
19 data regarding projected off-system sales volumes and fixed departmental expenses.
- 20          34.    The Confidential Information contained in the response to AG 1-106 includes  
21 data regarding projected off-system sales volumes and fixed departmental expenses.
- 22          35.    The Confidential Information attached to the response to AG 1-125 includes  
23 information regarding off-system sales.

- 1           36.    The Confidential Information attached to the response to AG 1-126 consists of  
2 confidential bilateral agreements between Big Rivers and ACES Power Marketing.
- 3           37.    The Confidential Information attached to the response to AG 1-127 includes  
4 projected capital expenditures.
- 5           38.    The Confidential Information attached to the response to AG 1-139 includes  
6 inputs to and runs of Big Rivers' load forecast, which is the proprietary and confidential work  
7 product of GDS Associates.
- 8           39.    The Confidential Information attached to the response to AG 1-141 includes  
9 individual customer usage data.
- 10          40.    The Confidential Information attached to the response to AG 1-146 includes  
11 inputs to and runs of Big Rivers' load forecast.
- 12          41.    The Confidential Information attached to the response to AG 1-154 includes  
13 projected O&M costs.
- 14          42.    The Confidential Information attached to the response to AG 1-158 includes the  
15 outputs of Big Rivers' financial model.
- 16          43.    The Confidential Information attached to the response to AG 1-163 includes  
17 inputs to and runs of Big Rivers' load forecast.
- 18          44.    The Confidential Information attached to the response to AG 1-164 includes  
19 inputs to and runs of Big Rivers' load forecast.
- 20          45.    The Confidential Information attached to the response to AG 1-196 includes  
21 projected O&M expenses.
- 22          46.    The Confidential Information attached to the response to AG 1-202 includes  
23 projected O&M expenses.



1           47.    The Confidential Information attached to the response to AG 1-226 includes a run  
2 of Big Rivers' load forecast.

3           48.    The Confidential Information attached to the response to AG 1-227 contains  
4 inputs to Big Rivers' Financial Model.

5           49.    The Confidential Information attached to the response to AG 1-237 includes  
6 sensitive internal financial documents, including Big Rivers' general ledger.

7           50.    The Confidential Information attached to the response to AG 1-245 include  
8 proprietary and confidential compensation studies provided by Towers Watson and the National  
9 Rural Electric Cooperative Association.

10          51.    The Confidential Information attached to the response to AG 1-265 includes  
11 internal financial documents, including Big Rivers' general ledger.

12          52.    The Confidential Information attached to the response to AG 1-279 includes  
13 projected O&Ms expenses.

14          53.    The Confidential Information attached to the response to AG 1-285 consists of a  
15 confidential proposal presented by GDS Associates.

16          54.    The Confidential Information attached to the response to AG 1-287 includes  
17 projections of off-system sales, O&M costs, and margins.

18          55.    The Confidential Information attached to the response to AG 1-292 includes  
19 planned capital expenditures and plant additions.

20          56.    The Confidential Information contained in the response to KIUC 1-8 includes  
21 details regarding the possible sale of generating assets.

22          57.    The Confidential Information attached to the response to KIUC 1-12 includes data  
23 regarding projected fuel purchase volume and costs.

1           58.    The Confidential Information attached to the response to KIUC 1-13 includes  
2 projections of market prices of power.

3           59.    The Confidential Information contained in the response to KIUC 1-14 includes  
4 projected off-system sales prices, volumes, and revenue.

5           60.    The Confidential Information attached to the response to KIUC 1-21 includes  
6 projected O&M costs.

7           61.    The Confidential Information attached to the response to KIUC 1-22 includes  
8 projected O&M costs.

9           62.    The Confidential Information attached to the response to KIUC 1-29 includes  
10 planned capital expenditures.

11          63.    The Confidential Information contained in the response to KIUC 1-39 and the  
12 accompanying attachments includes proprietary generating plant performance benchmarking  
13 data, which data is the proprietary and confidential work product of Navigant Consulting.

14          64.    The Confidential Information attached to the response to KIUC 1-40 includes Big  
15 Rivers' planned outage schedule.

16          65.    The Confidential Information contained in the response to KIUC 1-42 and the  
17 accompanying attachment includes planned capital expenditures.

18          66.    The Confidential Information attached to the response to KIUC 1-43 includes  
19 projected variable O&M costs, including the costs of fuel, reagent, and disposal.

20          67.    The Confidential Information attached to the response to KIUC 1-61 includes  
21 projected variable O&M costs, including the cost of emission allowances.

22          68.    The Confidential Information contained in the response and the attachment for the  
23 response to KIUC 1-67 includes projected O&M cost information.

1           69.    The Confidential Information contained in the responses to SC 1-20 and SC 1-25  
2 is the proprietary and confidential work product of GDS Associates.

3           70.    The Confidential Information attached to the response to SC 1-26 include  
4 projected capital expenditures and information regarding the possible sale of generating assets.

5           71.    The Confidential Information attached to the response to PSC 2-14 contains  
6 power price forecasts, variable O&M costs, and off-system sales.

7           72.    The Confidential Information contained in the response to PSC 2-15 contains  
8 information regarding confidential negotiations for the sale of generating assets.

9           73.    The Confidential Information contained in the response to PSC 2-16 contains  
10 details regarding negotiations for off-system sales and a possible sale of generating assets.

11          74.    The Confidential Information attached to the response to PSC 2-19 contains  
12 information regarding projections for capital expenditures, purchased power, variable O&M  
13 costs, off-system sales, outages, fixed departmental expenses, and electric energy revenues.

14          75.    The Confidential Information contained in the response to PSC 2-22 contains  
15 information regarding projections for off-system sales, variable O&M costs, capital  
16 expenditures, and margins.

17          76.    The Confidential Information contained in the response to PSC 2-30 contains  
18 projections for production costs.

19          77.    The Confidential Information attached to the response to PSC 2-33 contains  
20 projections for O&M costs.

21          78.    The Confidential Information attached to the response to PSC 2-34 contains  
22 projected market metrics regarding off-system sales.

1           79.     Public disclosure of the Confidential Information would reveal detailed  
2 information relating to Big Rivers’ projected variable O&M costs for production factors such as  
3 fuel, reagent, disposal, and emission allowances; projected margins; and projected off-system  
4 sales price, volume, and revenue. This information provides insight into Big Rivers’ cost of  
5 producing power and would indicate the prices at which Big Rivers is willing to buy or sell  
6 power and production factors. The information is also indicative of the market conditions Big  
7 Rivers expects to encounter and its ability to compete with competitors. The Commission has  
8 previously granted confidential treatment to similar information. *See, e.g., In the Matter of:*  
9 *Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C.  
10 Case No. 2012-00535 (April 25, 2013) (the “April 25 Confidentiality Order”); *In the Matter of:*  
11 *Application of Big Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C.  
12 Case No. 2012-00535 (August 14, 2013) (the “August 14 Confidentiality Order”); *In the Matter*  
13 *of: Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental*  
14 *Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff,*  
15 *for Certificates of Public Convenience and Necessity, and for Authority to Establish a*  
16 *Regulatory Account*, Letter, P.S.C. Case No. 2012-00063 (August 15, 2012).

17           80.     Public disclosure of information relating to Big Rivers’ projected capital  
18 expenditures and planned outages would reveal when Big Rivers will have excess power  
19 available to sell into the market, or when Big Rivers’ generation levels will drop due to  
20 maintenance and construction and will have to resort to purchased power to meet its native load.  
21 The Commission has previously granted confidential treatment to similar information. *See, e.g.,*  
22 *April 25 Confidentiality Order*, P.S.C. Case No. 2012-00535; P.S.C. Administrative Case No.  
23 387, Letter (July 20, 2010).

1           81.     Information related to sensitive negotiations between Big Rivers and other entities  
2     and the proprietary information supplied to Big Rivers by its consultants and industry groups of  
3     which it is a member illuminates Big Rivers' long-term business strategy and is generally subject  
4     to confidentiality agreements among the various parties involved. The Commission has  
5     previously granted confidential treatment to similar information. *See, e.g.*, April 25  
6     Confidentiality Order, P.S.C. Case No. 2012-00535 (granting confidential treatment to models  
7     and industry data provided by Big Rivers' consultants and to details of sensitive commercial  
8     negotiations between Big Rivers, Alcan Primary Products Corporation, and Century Aluminum  
9     of Kentucky General Partnership which were subject to a confidentiality agreement among the  
10    parties).

11           82.     Finally, public disclosure of the Confidential Information would reveal details of  
12    meetings of the Board of Directors and Internal Risk Management Committee, Big Rivers'  
13    fundamental financial data and projections, and current and projected demand. Information such  
14    as this which bears upon a company's detailed inner workings is generally recognized as  
15    confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907  
16    S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such  
17    information concerning the inner workings of a corporation is 'generally recognized as  
18    confidential or proprietary'"). Additionally, the Commission has previously granted confidential  
19    treatment to this type of information. *See, e.g.*, April 25 Confidentiality Order, P.S.C. Case No.  
20    2012-00535 (granting confidential treatment to minutes of the Big Rivers Board of Directors and  
21    Internal Risk Management Committee, Big Rivers' Financial Model, and Big Rivers' load  
22    forecast); *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of*

1 *East Kentucky Power Cooperative, Inc. From November 1, 2011 Through April 30, 2012*, Order,  
2 P.S.C. Case No. 2012-00319 (February 21, 2013).

3 **C. Disclosure of the Confidential Information Would Result in an Unfair**  
4 **Commercial Advantage to Big Rivers' Competitors**

5  
6 83. Disclosure of the Confidential Information would grant Big Rivers' competitors  
7 an unfair commercial advantage. As discussed above in Section II. A, Big Rivers faces actual  
8 competition in both the short- and long-term wholesale power markets and in the credit markets.  
9 It is likely that Big Rivers' ability to compete in these markets would be adversely affected if the  
10 Confidential Information were publicly disclosed, and Big Rivers seeks protection from such  
11 competitive injury.

12 84. The Confidential Information includes material such as Big Rivers' projections of  
13 fuel and emissions costs and power prices. If that information is publicly disclosed, market  
14 participants would have insight into the prices at which Big Rivers is willing to buy and sell fuel  
15 and could manipulate the bidding process, impairing its ability to generate power at competitive  
16 rates and thus to compete in the wholesale power markets. Furthermore, any competitive  
17 pressure that adversely affects Big Rivers' revenue and margins could make the company appear  
18 less creditworthy and thus impair its ability to compete in the credit markets. These effects were  
19 recognized in P.S.C. Case No. 2003-00054, in which the Commission granted confidential  
20 treatment to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P argued, and  
21 the Commission implicitly accepted, that if the bids it received were publicly disclosed,  
22 contractors on future work could use the bids as a benchmark, which would likely lead to the  
23 submission of higher bids. *In the Matter of: Application of the Union Light, Heat and Power*  
24 *Company for Confidential Treatment*, Order, PSC Case No. 2003-00054 (August 4, 2003). The  
25 Commission also implicitly accepted ULH&P's further argument that the higher bids would

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

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

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

22 87. Finally, the Commission has consistently recognized that board minutes, internal  
23 strategic planning information, and related materials are entitled to confidential treatment, as

1 these documents typically relate to the company’s economic status and business strategies. *See,*  
2 *e.g., Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319  
3 (Ky. 1995) (unfair commercial advantage arises simply from “the ability to ascertain the  
4 economic status of the entities without the hurdles systemically associated with the acquisition of  
5 such information about privately owned organizations”); *In the Matter of: The Joint Application*  
6 *of Duke Energy Corp., Cinergy Corp., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc.,*  
7 *Diamond Acquisition Corp., and Progress Energy, Inc., for Approval of the Indirect Transfer of*  
8 *Control of Duke Energy Kentucky, Inc.*, P.S.C Case No. 2011-00124 (Dec. 5, 2011); *In the*  
9 *Matter of: The Joint Petition of Kentucky-American Water Co., Thames Water Aqua Holdings*  
10 *GmbH, RWE Aktiengesellschaft, Thames Water Aqua U.S. Holdings, Inc., and Am. Water Works*  
11 *Co., Inc. for Approval of a Change in Control of Kentucky-American Water Co.*, P.S.C. Case No.  
12 2006-00197 (Aug. 29, 2006) (holding that reports from the joint applicants’ financial advisors  
13 and all board of director minutes and information is confidential because competitors could use it  
14 to gain unfair competitive advantage).

15 88. Accordingly, the public disclosure of the information that Big Rivers seeks to  
16 protect would provide Big Rivers’ competitors with an unfair commercial advantage.

### 17 III. Time Period

18 89. Big Rivers requests that the Confidential Information protected by KRS  
19 61.878(1)(m) remain confidential indefinitely because as long as the transmission system  
20 remains in place, the information should be confidential for the reasons stated above. Big Rivers  
21 requests that the rest of the Confidential Information remain confidential for a period of five (5)  
22 years from the date of this petition, which should allow sufficient time for the projected data to  
23 become historical and sufficiently outdated that it could not be used to determine similar



1 confidential information at that time or to competitively disadvantage Big Rivers. See 807 KAR  
2 5:001 Section 13(2)(a)(2).

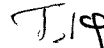
3 **IV. Conclusion**

4 90. Based on the foregoing, the Confidential Information is entitled to confidential  
5 treatment pursuant to 807 KAR 5:001 Section 13 and KRS 61.878. If the Commission disagrees  
6 that Big Rivers' Confidential Information is entitled to confidential treatment, due process  
7 requires the Commission to hold an evidentiary hearing. *Utility Regulatory Comm'n v. Kentucky*  
8 *Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

9 WHEREFORE, Big Rivers respectfully requests that the Commission grant this petition  
10 and classify and treat as confidential the Confidential Information.

11 On this the 3<sup>rd</sup> day of September, 2013.

12 Respectfully submitted,

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14  
15 

16 \_\_\_\_\_  
17 James M. Miller  
18 Tyson Kamuf  
19 SULLIVAN, MOUNTJOY, STAINBACK  
20 & MILLER, P.S.C.  
21 100 St. Ann Street  
22 P. O. Box 727  
23 Owensboro, Kentucky 42302-0727  
24 Phone: (270) 926-4000  
25 Facsimile: (270) 683-6694  
26 jmiller@smsmlaw.com  
27 tkamuf@smsmlaw.com

28  
29 Edward T. Depp  
30 DINSMORE & SHOHL LLP  
31 101 South Fifth Street  
32 Suite 2500  
33 Louisville, KY 40202  
34 Phone: (502) 540-2347  
35 Facsimile: (502) 585-2207

*Counsel for Big Rivers Electric Corporation*

**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 attached service list, on the date this petition is filed with the Kentucky Public Service Commission or the following day.

On this the      day of September,

Tyson Kamuf