In the Matter of:

Application of Big Rivers Electric Corporation for Declaratory Order

PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL PROTECTION

1. Big Rivers Electric Corporation ("Big Rivers") hereby petitions the Kentucky Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878(1)(c), to grant confidential protection to portions of the Direct Testimony of Robert W. Berry, which is attached as Exhibit 10 to the application in this matter, and the attachments to that testimony. The information Big Rivers seeks to protect as confidential is hereinafter referred to as the "Confidential Information."

2. One (1) sealed copy of the pages containing Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL," is being filed with this petition. Ten (10) copies of the pages containing Confidential Information, with the Confidential Information redacted, are also being filed with this petition. 807 KAR 5:001 Sections 13(2)(a)(3).

3. There are currently no other parties to this proceeding on which copies of this petition must be served. 807 KAR 5:001 Section 13(2)(b).

4. If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Big Rivers will notify the Commission and have its confidential status removed. 807 KAR 5:001 Section 13(10)(b).
As discussed below, the Confidential Information is entitled to confidential protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(c)(1); 807 KAR 5:001

Section 13(2)(a)(1). Section I below explains that Big Rivers operates in competitive environments in the wholesale power market and in the credit market. Section II below shows that the Confidential Information is generally recognized as confidential or proprietary. Section III below demonstrates that public disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers’ competitors. Section IV below describes the length of time Big Rivers is seeking confidential treatment for the Confidential Information.

I. Big Rivers’ Faces Actual Competition

As a generation and transmission cooperative, Big Rivers competes in the wholesale power market. This includes not only the short-term bilateral energy market, the day-ahead and real time energy and ancillary services markets, and the capacity market to which Big Rivers has access by virtue of its membership in Midcontinent Independent System Operator, Inc. (“MISO”), but also forward bilateral long-term agreements and wholesale agreements with utilities and industrial customers. Big Rivers’ ability to successfully compete in the market is dependent upon a combination of its ability to: 1) obtain the maximum price for the power it sells, and 2) keep its cost of production as low as possible. Fundamentally, if Big Rivers’ cost of producing a unit of power increases, its ability to sell that unit in competition with other utilities is adversely affected.
7. Big Rivers also competes for reasonably priced credit in the credit markets, and its ability to compete is directly impacted by its financial results. Lower revenues and any events that adversely affect Big Rivers' margins will adversely affect its financial results and potentially impact the price it pays for credit. A competitor armed with Big Rivers' proprietary and confidential information will be able to increase Big Rivers' costs or decrease Big Rivers' revenues, which could in turn affect Big Rivers' apparent creditworthiness. A utility the size of Big Rivers that operates generation and transmission facilities will always have periodic cash and borrowing requirements for both anticipated and unanticipated needs. Big Rivers expects to be in the credit markets on a regular basis in the future, and it is imperative that Big Rivers improve and maintain its credit profile.

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

II. The Confidential Information is Generally Recognized as Confidential or Proprietary

9. The Confidential Information is generally recognized as confidential or proprietary under Kentucky law.

10. The Confidential Information consists of (i) variable production cost information for the Station Two generating plant operated by Big Rivers, and (ii) totals from which the variable production cost information could be readily calculated. This information provides insight into Big Rivers' cost of producing power and would indicate the prices at which Big Rivers is willing to buy or sell power. The Commission has previously granted confidential treatment to similar information. See, e.g., *In the Matter of: Application of Big Rivers Electric*

11. The Confidential Information is not publicly available, is not disseminated within Big Rivers except to those employees and professionals with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information. As such, the Confidential Information is generally recognized as confidential and proprietary.

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

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

13. The Confidential Information consists of or can be used to determine Big Rivers' January 2016 through May 2016 variable production costs for the Station Two units, and this
recent variable production cost information can be used to readily determine or estimate Big
Rivers' current cost of producing power.

14. If Big Rivers' production cost information is publicly disclosed, market
participants would have insight into the prices at which Big Rivers is willing to buy and sell
power and could manipulate the bidding process, impairing Big Rivers' ability to generate power
at competitive rates or to sell power at competitive rates in the wholesale power markets.
Furthermore, any competitive pressure that adversely affects Big Rivers' revenue and margins
could make the company appear less creditworthy and thus impair its ability to compete in the
credit markets. These effects were recognized in P.S.C. Case No. 2003-00054, in which the
Commission granted confidential treatment to bids submitted to Union Light, Heat & Power
(“ULH&P”). ULH&P argued, and the Commission implicitly accepted, that if the bids it
received were publicly disclosed, contractors on future work could use the bids as a benchmark,
which would likely lead to the submission of higher bids. In the Matter of: Application of the
Union Light, Heat and Power Company for Confidential Treatment, Order, P.S.C. Case No.
2003-00054 (August 4, 2003). The Commission also implicitly accepted ULH&P’s further
argument that the higher bids would lessen ULH&P’s ability to compete with other gas
suppliers. Id. Similarly, potential power suppliers manipulating Big Rivers’ bidding process
would lead to higher costs or lower revenues to Big Rivers and would place it at an unfair
competitive disadvantage in the wholesale power market and credit markets.

15. Additionally, public disclosure of the Confidential Information would give the
power producers and marketers with which Big Rivers competes in the wholesale power market
insight into Big Rivers’ cost of producing power. Knowledge of this information would give
those power producers and marketers an unfair competitive advantage because they could use
that information to potentially underbid Big Rivers in wholesale transactions. It would also give
potential suppliers to Big Rivers a competitive advantage because they will be able to manipulate
the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big
Rivers’ costs and impairing Big Rivers’ ability to compete in the wholesale power and credit
markets.

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

IV. Time Period

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

V. Conclusion

18. 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. See 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 28th day of July, 2016.

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