

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY  
3  
4

RECEIVED

AUG 08 2014

PUBLIC SERVICE  
COMMISSION

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 **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(1)(c), to grant confidential protection to an attachment Big Rivers is filing with its  
18 updated response to Item 15 of the requests for information from the January 2014 hearing in this  
19 matter. The information for which Big Rivers seeks confidential treatment consists of cost  
20 projections for potential environmental compliance projects and is hereinafter referred to as the  
21 “Confidential Information.”

22 2. One (1) copy of the pages of the attachment to the updated response to Item 15  
23 that contain Confidential Information with the Confidential Information underscored, highlighted  
24 with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being  
25 filed with this petition in a separate sealed envelope marked “CONFIDENTIAL.” A copy of  
26 those pages, with the Confidential Information redacted, is being filed with the original and each  
27 of the ten (10) copies of the updated response to Item 15 filed with this petition. See 807 KAR  
28 5:001 Sections 13(2)(a)(3), 13(2)(b).

29 3. A copy of the attachment with the Confidential Information redacted has been  
30 served on all parties to this proceeding. See 807 KAR 5:001 Section 13(2)(c). A copy of the

1 Confidential Information has been served on all parties that have signed a confidentiality  
2 agreement.

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

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

10 6. As discussed below, the Confidential Information is entitled to confidential  
11 protection based upon KRS 61.878(1)(c)(1). 807 KAR 5:001 Section 13(2)(a)(1).

12 **I. Big Rivers' Faces Actual Competition**

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

17 8. Big Rivers competes in the wholesale power market to sell energy excess to its  
18 Members' needs. Big Rivers' ability to successfully compete in the wholesale power market is  
19 dependent upon a combination of its ability to get the maximum price for the power sold, the  
20 best terms available, and keeping the cost of producing that power as low as possible.  
21 Fundamentally, if Big Rivers' cost of producing a kilowatt hour or its business risk increases, its  
22 ability to sell that kilowatt hour in competition with other utilities is adversely affected.

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

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

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

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

15           12.       The Confidential Information consists of cost projections of potential  
16 environmental compliance projects. Public disclosure of the Confidential Information would  
17 give potential suppliers to Big Rivers insight into Big Rivers' view of the cost of the  
18 environmental compliance projects, which would allow them to manipulate the bidding process  
19 when bidding to supply such projects to Big Rivers, leading to higher costs to Big Rivers. As  
20 such, this type of information is generally recognized as confidential and proprietary.

---

<sup>1</sup> See Order dated March 6, 2009, *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     **III. Disclosure of the Confidential Information Would Permit an Unfair Commercial**  
2                             **Advantage to Big Rivers' Competitors**

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

7             14. In PSC Case No. 2003-00054, the Commission granted confidential protection for  
8 bids submitted to Union Light Heat & Power ("ULH&P"). ULH&P argued, and the  
9 Commission implicitly accepted, that if the bids it received were publicly disclosed, contractors  
10 on future work could use the bids as a benchmark, which would likely lead to the submission of  
11 higher bids. Order dated August 4, 2003, in *In the Matter of: Application of the Union Light,*  
12 *Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054. The  
13 Commission also implicitly accepted ULH&P's further argument that the higher bids would  
14 lessen ULH&P's ability to compete with other gas suppliers. *Id.* Similarly, public disclosure of  
15 the Confidential Information in the present case would allow potential suppliers to use such  
16 information as a benchmark for negotiations, leading to less favorable prices for the projects for  
17 Big Rivers and placing Big Rivers at an unfair competitive disadvantage in the wholesale power  
18 and credit markets.

19             15. Accordingly, the public disclosure of the information that Big Rivers seeks to  
20 protect would provide Big Rivers' competitors with an unfair commercial advantage.

21                             **IV. Time Period**

22             16. Big Rivers requests that the Confidential Information remain confidential for a  
23 period of five (5) years from the date of this petition, which should allow sufficient time for the


1 projected data to become historical and sufficiently outdated that it could not be used to  
2 determine similar confidential information at that time or to competitively disadvantage Big  
3 Rivers. 807 KAR 5:001 Section 13(2)(a)(2).

4 **V. Conclusion**

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

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

11 On this the 7<sup>th</sup> day of August, 2014.

12  
13   
14 \_\_\_\_\_  
15 James M. Miller  
16 Tyson Kamuf  
17 SULLIVAN, MOUNTJOY, STAINBACK  
18 & MILLER, P.S.C.  
19 100 St. Ann Street  
20 P. O. Box 727  
21 Owensboro, Kentucky 42302-0727  
22 Phone: (270) 926-4000  
23 Facsimile: (270) 683-6694  
24 jmillersmsmlaw.com  
25 tkamuf@smsmlaw.com

26 Edward T. Depp  
27 Dinsmore & Shohl LLP  
28 101 South Fifth Street  
29 Suite 2500  
30 Louisville, KY 40202  
31 Phone: (502) 540-2347  
32 Facsimile: (502) 585-2207  
33 tip.depp@dinsmore.com

34  
35 Counsel for Big Rivers Electric Corporation

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

**Certificate of Service**

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

On this the 7<sup>th</sup> day of August, 2014,

  
\_\_\_\_\_  
*Counsel for Big Rivers Electric Corporation*