

August 12, 2025

VIA ELECTRONIC FILING

Ms. Linda C. Bridwell
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: In the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff – Case No. 2019-00365

Request for Continued Confidential Treatment

Dear Ms. Bridwell:

On behalf of itself and its Member-Owner, Meade County Rural Electric Cooperative Corporation (“Meade County RECC”), Big Rivers Electric Corporation (“Big Rivers”), respectfully submits this response to the Commission’s letter dated July 23, 2025. Big Rivers opposes the disclosure of certain confidential information previously granted confidential treatment by the Kentucky Public Service Commission (the “Commission”) for an indefinite period in this matter.¹

The confidential information at issue (the “Confidential Information”) consists of:

1. Negotiated Contract Terms:

Specific provisions of the Retail Agreement for electric service between Meade County RECC and Nucor Corporation (“Nucor”) dated September 9, 2019, and the associated letter agreement between Big Rivers and Meade County RECC dated September 18, 2019, effectuating the terms of the Retail Agreement (collectively, the “Nucor Contracts”). These contracts were filed with the Joint Application filed on October 17, 2019, and later through the

¹ See the Commission Orders dated January 22, 2020, January 27, 2020, January 28, 2020, March 12, 2020, and September 30, 2020, in the above referenced matter.

Commission's electronic Tariff Filing System on September 9, 2020.² The negotiated contract terms appear in the Joint Application and responses to the following Commission's Staff's information requests:

- Initial Requests: Items 2, 3, 7, 10 and 13 (PSC 1-2, 1-3, 1-7, 1-10, 1-13)³
- Second Request: Items 1 and 2 (PSC 2-1, 2-2)⁴
- Third Request: Items and items 2 and 3 (PSC 3-2, 3-3)⁵

2. Internal Evaluations and Market Analyses:

Big Rivers' proprietary evaluation of the Nucor Contracts, including energy and capacity positions and need, hedging strategies, Nucor rate and cost benefit analyses, and third-party reports and projections (e.g., ACES and S&P Global Market Intelligence), contained in the responses to PSC 1-2, 1-4, 3-2 and 3-3.

3. Economic Development Discussions:

Information relating to negotiations with economic development prospects, contained in the responses to PSC 1-5 and 1-13.

4. Special Contract Pricing Terms:

Information related to confidential price terms of special contracts with entities in Nebraska, the Kentucky Municipal Energy Agency ("Ky-MEA") and others found in the responses to PSC 1-2, 1-8 and 3-3.

Basis for Continued Confidential Treatment

The Commission previously granted confidential treatment to the above, based on Big Rivers' motions for confidential treatment filed on October 18, 2019, December

² See TFS2020-00431.

³ Responses to the Commission Staff's Initial Request for Information dated November 22, 2019 (Dec. 11, 2019).

⁴ Responses to the Commission Staff's Second Request for Information dated December 20, 2019 (Jan. 10, 2020).

⁵ Responses to the Commission Staff's Third Request for Information dated August 11, 2020 (Aug. 13, 2020).

11, 2019, January 10, 2020,⁶ and August 13, 2020. The Commission found the Confidential Information to be “generally recognized as confidential or proprietary” under KAR 5:001 Section 13 and KRS 61.878(1)(c)(1).⁷

Big Rivers operates in competitive wholesale power and credit markets. Its ability to remain competitive depends on its ability to: 1) obtain the maximum price for the power it sells, and 2) keep its cost of production or purchase as low as possible. Fundamentally, if Big Rivers’ cost of producing or purchasing a unit of power increases, its ability to sell that unit in competition with other utilities is adversely affected. Further, 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 pricing, cost structures, or strategic analyses would have a significant advantage, enabling them to undercut Big Rivers or manipulate future contract negotiations.

Public disclosure would similarly jeopardize Big Rivers’ economic development efforts. Big Rivers competes for economic development opportunities both within the Commonwealth and throughout the nation. The ability to negotiate competitive electric pricing structures with companies interested in expanding in Kentucky is fundamental to the success of Big Rivers’ economic development efforts as well as growth of the Commonwealth. If the confidential treatment of confidential contract terms is denied, then other companies interested in buying or selling power in Kentucky would know that the confidential terms of their future contracts, plans, or bids may also be publicly disclosed. Many companies would be reluctant to have such confidential and proprietary information disclosed because public disclosure would, for example, allow their competitors to know how they offer and price their projects. This would create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent.

Big Rivers competes not only in 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 the Midcontinent Independent System Operator, Inc. (“MISO”) system, but also forward bilateral long-term agreements and wholesale agreements with utilities and industrial customers. Disclosure of the Confidential Information will provide insight into Big Rivers’ cost of producing power and indicate the prices at and terms on which it is willing to sell and purchase power. Potential buyers of power from, or sellers of

⁶ Two motions were filed on January 10, 2020.

⁷ See the Jan. 22, 2020 Order at p. 3; Jan. 27, 2020 Order at p. 3; Jan. 28, 2020 Order at p. 2, Mar. 12, 2020 Order at p. 2; and Sept. 30, 2020 Order at p. 2.

power to, Big Rivers could thus use the Confidential Information as a benchmark in negotiating the terms of a transaction.

The Commission recognized this type of harm in multiple proceedings including:

- *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, P.S.C. Case No. 2003-00054, Order (Aug. 4, 2003), where the Commission acknowledged the risk of lower contractor bids from public disclosures of prior bids.
- *In the Matter of: Application of Cumberland Valley Electric, Inc. for Commission Approval for a Certificate of Public Convenience and Necessity to Install an Advanced Metering Infrastructure (AMI) System Pursuant to KRS 807 KAR 5:001 and KRS 278.020*, P.S.C. Case No. 2018-00056, Order (May 9, 2018), where the Commission found “that the specific cost information may be used to the financial detriment of Cumberland Valley and its ratepayers by allowing potential future vendors to bid just under the cost of its current vendor, which, in turn, would place Cumberland Valley at a competitive disadvantage.”

Releasing internal analyses, contract terms, or strategic data would expose Big Rivers to manipulation in negotiations or bidding scenarios, inflating costs or depressing revenues, and adversely impacting creditworthiness. As held in., *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) and *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995), such detailed internal information is properly considered confidential and proprietary. Public disclosure of the Confidential Information would defeat the statutory protection intended by KRS 61.878(1)(c)(1).

Publicly Disclosed Information

While most of the Confidential Information remains protected, one contract term relating to the second phase of the Nucor rate structure has become publicly available through:

- The Commission’s Intra-Agency Memorandum (November 12, 2024, filed December 6, 2024, in Case No. 2024-00149)⁸

⁸ *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 2023 through October 31, 2023*, Case No. 2024-

- Big Rivers' response to the Commission Staff's Third Request for Information (February 28, 2025, in Case No. 2024-00141)⁹
- Testimony presented during the June 4, 2025, Commission hearing in both Case No. 2024-00141 and Case No. 2024-00149.

Accordingly, Big Rivers is electronically filing the public revised versions of the following documents with this disclosed information unredacted:

- Page 6 of the Application filed October 18, 2019,
- Page 5 of the Direct Testimony of Robert W. Berry,
- Exhibit C to the September 9, 2019 Retail Agreement (filed as Exhibit Berry-2 and filed September 9, 2020 in TFS2020-00431),
- Joint Response to Staff Request No. 2 (First Request, filed December 11, 2019), and
- Joint Response to Staff Request No. 2 (Third Request, filed August 13, 2020).

Pursuant to the Commission's Orders in Case No. 2020-00085, Big Rivers will file the Confidential Information with the Commission via email to PSCED@ky.gov, with a copy of this request.

Conclusion and Request

The remaining Confidential Information is still not publicly available, is not disseminated within Big Rivers or Meade County RECC 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 and is entitled to the continued confidential protection.

00149. (The memorandum disclosed the following information: "*Per the NUCOR contract, NUCOR is charged no surcharges, including the FAC surcharge, until 2031 when NUCOR is subject to a 'regular' utility tariff.*")

⁹ *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2022 through April 30, 2023*, Case No. 2024-00141, Responses to the Commission Staff's Third Request for Information (Feb. 28. 2025).

For the reasons set forth above, Big Rivers and Meade County RECC respectfully request that the Commission:

1. Continue to grant confidential treatment of all remaining Confidential Information; or
2. In the alternative hold an evidential hearing to preserve Big Rivers' due process rights and supply the Commission with a complete record to enable it to reach a decision regarding this matter. See *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W. 2d 591 (Ky. App. 1982).

This letter constitutes the Read1st document required by 807 KAR 5:001 Section 8(5). The Commission has excused no parties to this proceeding from its electronic filing procedures.

Please feel free to contact me should you have any questions regarding this filing.

Sincerely yours,

/s/ Senthia Santana

Senthia Santana
Associate Attorney
senthia.santana@bigrivers.com