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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

3 *In the Matter of:*

**ELECTRONIC JOINT APPLICATION OF)
LOUISVILLE GAS AND ELECTRIC COMPANY,)
MEADE COUNTY RURAL ELECTRIC)
COOPERATIVE CORPORATION, AND BIG RIVERS)
ELECTRIC CORPORATION FOR (1) APPROVAL OF)
AN AGREEMENT MODIFYING AN EXISTING)
TERRITORIAL BOUNDARY MAP AND (2))
ESTABLISHING MEADE COUNTY RURAL)
ELECTRIC COOPERATIVE CORPORATION AS)
THE RETAIL ELECTRIC SUPPLIER FOR NUCOR)
CORPORATION’S PROPOSED STEEL MILL IN)
BUTTERMILK FALLS INDUSTRIAL PARK IN)
MEADE COUNTY, KENTUCKY)**

**Case No.
2019-00370**

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5 **PETITION OF BIG RIVERS ELECTRIC CORPORATION AND MEADE**
6 **COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION FOR**
7 **CONFIDENTIAL PROTECTION**

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9 1. Big Rivers Electric Corporation (“Big Rivers”) and Meade County
10 Rural Electric Cooperative Corporation (“Meade County RECC”) hereby move the
11 Kentucky Public Service Commission (“Commission”) pursuant to KRS 278.160(3),
12 KRS 61.878(1)(c)(1), and 807 KAR 5:001 Section 13 to grant confidential protection
13 to certain information contained in their responses and/or the attachments to their
14 responses to the Commission Staff’s Second Request for Information (the
15 “Confidential Information”). The Confidential Information pertains to (i) the
16 confidential terms of a special contract between Meade County RECC and Nucor
17 Corporation (“Nucor”) filed under a petition for confidential treatment in Case No.

1 2019-00270; (ii) projections of a single customer's energy usage and bills; (iii) Big
2 Rivers' confidential projections related to its cost and strategies to serve Nucor; and
3 (iv) the confidential terms of the settlement agreement filed under a petition for
4 confidential treatment in this case.

5 2. Except for the confidential workpapers that the Staff asked be
6 provided in Excel spreadsheet form in Item 1 of the Commission Staff's Second
7 Request for Information ("PSC 2-1"), one (1) copy of the pages containing
8 Confidential Information, with the Confidential Information highlighted with
9 transparent ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL,"
10 is being filed in hardcopy format with this petition. 807 KAR 5:001 Section 13(2)(e).
11 One copy of the electronic workpapers is provided on the CONFIDENTIAL
12 electronic media accompanying this petition.

13 3. If and to the extent the Confidential Information becomes generally
14 available to the public, whether through filings required by other agencies or
15 otherwise, Big Rivers and/or Meade County RECC will notify the Commission and
16 have its confidential status removed. 807 KAR 5:001 Section 13(10)(b).

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

1 **I. Information Protected under KRS 61.878(1)(a)**

2 5. KRS 61.878(1)(a) protects “[p]ublic records containing information of a
3 *personal nature where the public disclosure thereof would constitute a clearly*
4 *unwarranted invasion of personal privacy.*”

5 6. Some of the Confidential Information in the response to PSC 2-1
6 reveals the projected energy use, and related revenues, of a single retail customer,
7 Nucor. Publicly revealing such information would constitute a clearly unwarranted
8 invasion of personal privacy. Moreover, the Commission has previously granted
9 confidential treatment to similar retail customer usage information. *See, e.g., In the*
10 *Matter of: Sanctuary Church v. Louisville Gas and Electric Company*, Order, P.S.C.
11 Case No. 2018-00181 (Jan. 8, 2019) (granting confidential treatment pursuant to
12 KRS 61.878(1)(a) for an indefinite period to a retail customer’s account and usage
13 information); *In the Matter of: Application of Kentucky Utilities Company for an*
14 *Adjustment of its Electric Rates*, Order, P.S.C. Case No. 2012-00221 (July 25, 2013)
15 (holding customer names, account numbers, and usage information exempt from
16 disclosure under KRS 61.878(1)(a)). As such, Big Rivers and Meade County RECC
17 request confidential treatment for the customer’s private usage information.

18 **II. Information Protected under KRS 61.878(1)(c)(1)**

19 7. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an
20 agency or required by an agency to be disclosed to it, generally recognized as
21 confidential or proprietary, which if openly disclosed would permit an unfair

1 commercial advantage to competitors of the entity that disclosed the records.” KRS
2 61.878(1)(c)(1).

3 8. Public disclosure of the Confidential Information in the responses to
4 Items 1 and 4 and the attachments to the response to Item 1 would reveal the
5 confidential terms of a special contract between Meade County RECC and Nucor,
6 Big Rivers’ internal projections of its costs and strategies to serve Nucor, and the
7 confidential terms of the settlement agreement filed under a petition for
8 confidential treatment in this case.

9 9. The special contract and the settlement agreement are both the product
10 of extensive negotiations. Disclosure of the confidential terms of those agreements
11 would discourage such negotiated agreements in the future, and would discourage
12 future economic development prospects from locating in Kentucky in the future. In
13 P.S.C. Case No. 2003-00054, the Commission implicitly accepted Union Light, Heat
14 & Power’s (“ULH&P”) argument that the bidding contractors would not want their
15 bid information publicly disclosed, and that disclosure would reduce the contractor
16 pool available to ULH&P, which would drive up ULH&P’s costs, hurting its ability to
17 compete with other gas suppliers. *In the Matter of Application of the Union Light,*
18 *Heat and Power Company for Confidential Treatment*, Order, P.S.C. Case No. 2003-
19 00054 (August 4, 2003). Similarly, in *Hoy v. Kentucky Indus. Revitalization*
20 *Authority*, the Kentucky Supreme Court found that without protection for
21 confidential information provided to a public agency, “companies would be reluctant
22 to apply for investment tax credits for fear the confidentiality of financial information

1 would be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d
2 766, 769 (Ky. 1995).

3 10. In the present case, many potential economic development prospects
4 would be reluctant to have the confidential terms of contracts they negotiate with
5 utilities in Kentucky be publicly disclosed. As such, public disclosure of the
6 confidential terms of the special contract would likely suppress future economic
7 development projects in Kentucky.

8 11. Additionally, in P.S.C. Case No. 2003-00054, ULH&P argued, and the
9 Commission implicitly accepted, that if the bids it received were publicly disclosed,
10 contractors on future work could use the bids as a benchmark, which would likely
11 lead to the submission of higher bids. *In the Matter of: Application of the Union*
12 *Light, Heat and Power Company for Confidential Treatment*, Order, P.S.C. Case No.
13 2003-00054 (Aug. 4, 2003). The Commission also implicitly accepted ULH&P's
14 further argument that the higher bids would lessen ULH&P's ability to compete
15 with other gas suppliers. *Id.* Similarly, the Commission recently granted
16 confidential treatment to pricing information provided by Cumberland Valley
17 Electric, Inc. ("Cumberland Valley") in P.S.C. Case No. 2018-00056. *In the Matter*
18 *of: Application of Cumberland Valley Electric, Inc. for Commission Approval for a*
19 *Certificate of Public Convenience and Necessity to Install an Advanced Metering*
20 *Infrastructure (AMI) System Pursuant to KRS 807 KAR 5:001 and KRS 278.020,*
21 Order, P.S.C. Case No. 2018-00056 (May 9, 2018). In that case, the Commission
22 recognized "*that the specific cost information may be used to the financial detriment*

1 of Cumberland Valley and its ratepayers by allowing potential future vendors to bid
2 just under the cost of its current vendor, which, in turn, would place Cumberland
3 Valley at a competitive disadvantage.” *Id.*

4 12. Likewise, potential customers of Meade County RECC and Big Rivers
5 could use the confidential terms of the Nucor contract as a benchmark to gain an
6 unfair competitive advantage in negotiating future contracts with Meade County
7 RECC.

8 13. Finally, disclosure of the confidential terms of the settlement
9 agreement and Big Rivers’ internal cost projections and strategies would provide
10 insight into Big Rivers’ cost of providing power, need and availability of power, the
11 value Big Rivers and Meade County place on providing electric service to potential
12 economic development projects, and a benchmark for future retail and wholesale
13 power contracts. Public disclosure of such information would put Big Rivers and/or
14 Meade County at a competitive disadvantage when negotiating contracts with
15 future economic development prospects or when competing to buy or sell power in
16 the wholesale power market. As the Kentucky Supreme Court has noted, “*It does*
17 *not take a degree in finance to recognize that such information concerning the inner*
18 *workings of a corporation is ‘generally recognized as confidential or proprietary.’”*
19 *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995);
20 *see also Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906
21 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from “the
22 ability to ascertain the economic status of the entities without the hurdles

1 systemically associated with the acquisition of such information about privately
2 owned organizations”). Moreover, the Commission previously granted confidential
3 treatment to this type of information. *See, e.g., In the Matter of: Application of Big*
4 *Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C. Case
5 No. 2012-0535 (April 25, 2013) (granting confidential treatment to details of
6 sensitive commercial negotiations); *In the Matter of: An Examination of the*
7 *Application of the Fuel Adjustment Clause of Kentucky Power Company from*
8 *November 1, 2012 through October 31, 2014*, Order, P.S.C. Case No. 2014-00450
9 (Jan. 24, 2019) (granting confidential treatment to forecasted cost data).

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

15 III. Time Period

16 15. Big Rivers and Meade County RECC request that the Confidential
17 Information remain confidential indefinitely because for so long as Big Rivers is in
18 the wholesale power market, and Meade County RECC is negotiating with potential
19 economic development prospects, the public disclosure of the Confidential
20 Information could be used to their competitive disadvantage for the reasons stated
21 above. 807 KAR 5:001 Section 13(2)(a)(2).

1 **IV. Conclusion**

2 16. Based on the foregoing, the Confidential Information is entitled to
3 confidential protection. If the Commission disagrees, then the Commission should
4 hold an evidential hearing to protect Big Rivers and Meade County RECC's due
5 process rights and to supply the Commission with a complete record to enable it to
6 reach a decision with regard to this matter. *See Utility Regulatory Com'n v. Kentucky*
7 *Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

8 WHEREFORE, Big Rivers and Meade County RECC respectfully request that
9 the Commission classify and protect as confidential the Confidential Information.

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1 On this the 30th day of December, 2019.

2 Respectfully submitted,

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