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

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)
APPLICATION OF THE FUEL ADJUSTMENT CLAUSE) Case No.
OF BIG RIVERS ELECTRIC CORPORATION) 2021-00058
FROM NOVEMBER 1, 2018 THROUGH OCTOBER 31, 2020)

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**MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR
CONFIDENTIAL TREATMENT**

12 1. Big Rivers Electric Corporation (“*Big Rivers*”) hereby moves the
13 Public Service Commission of Kentucky (the “*Commission*”), pursuant to 807
14 KAR 5:001 Section 13 and KRS 61.878 to grant confidential treatment to certain
15 information contained in Big Rivers’ response to the Commission Staff’s Post-
16 Hearing Request for Information filed with this motion (the “*Confidential*
17 *Information*”). The Confidential Information consists of information related to
18 Big Rivers’ net position hedges in 2022,¹ which inferably include the timing of
19 planned maintenance outages for its generating units in 2022.

20 2. Pursuant to the Commission’s March 24, 2020, Order in *In the*
21 *Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-*
22 *19*, Case No. 2020-00085 (“*Case No. 2020-00085*”), one (1) copy of the Confidential
23 Information highlighted with transparent ink, printed on yellow paper, or
24 otherwise marked “CONFIDENTIAL,” is being filed with this motion by electronic

¹ Dates, volumes, and prices.

1 mail or posting on a secure file share site. A copy of those pages, with the
2 Confidential Information redacted, is being electronically filed with Big Rivers’
3 Response accompanying this motion.

4 3. A copy of this motion with the Confidential Information redacted has
5 been served on all parties to this proceeding through the use of electronic filing.
6 See 807 KAR 5:001 Section 13(b).

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

11 5. As discussed below, the Confidential Information is entitled to
12 confidential treatment pursuant to KRS 61.878(1)(c)(1). See 807 KAR 5:001
13 Section 13(2)(a)(1).

14 I. **Certain Confidential Information Exempt from Public**
15 **Disclosure under KRS 61.878(1)(c)(1)**

16 6. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an
17 agency or required by an agency to be disclosed to it, generally recognized as
18 confidential or proprietary, which if openly disclosed would permit an unfair
19 commercial advantage to competitors of the entity that disclosed the records.”
20 Section A below explains that Big Rivers operates in competitive environments in
21 the wholesale power market and in the credit market. Section B below shows
22 that the Confidential Information is generally recognized as confidential or
23 proprietary. Section C below demonstrates that public disclosure of the

1 Confidential Information would permit an unfair commercial advantage to Big
2 Rivers' competitors.

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A. Big Rivers Faces Actual Competition

5 7. Big Rivers competes in the wholesale power markets to sell energy
6 it produces in excess of its Members' needs. This includes not only the short-term
7 bilateral energy market, the day-ahead and real time energy and ancillary
8 services markets, and the capacity market to which Big Rivers has access by
9 virtue of its membership in Midcontinent Independent System Operator, Inc.
10 ("*MISO*"), but also forward bilateral long-term agreements and wholesale
11 agreements with utilities and industrial customers. Big Rivers' ability to
12 successfully compete in the wholesale power markets is dependent upon a
13 combination of its ability to negotiate the maximum price for the power sold and
14 its ability to keep its cost of production as low as possible. If Big Rivers' cost of
15 producing a kilowatt-hour of energy increases, its competitive position against
16 other power producers is adversely affected.

17 8. Big Rivers also competes for reasonably priced credit in the credit
18 markets, and its ability to compete for such credit is directly impacted by its
19 financial status. Lower revenues and events that adversely affect Big Rivers'
20 margins will adversely affect its financial results and potentially impact the price
21 it pays for credit. For instance, a competitor armed with Big Rivers' proprietary
22 and confidential information will be able to increase Big Rivers' costs or decrease

1 because it had been filed with a state agency. 907 S.W.2d 766, 4 (Ky. 1995). The
2 Court applied the plain meaning rule to KRS 61.878(1)(c)(1), and reasoned: “[i]t
3 does not take a degree in finance to recognize that such information concerning
4 the inner workings of a corporation is ‘generally recognized as confidential or
5 proprietary.’” *Id.* at 768. Similarly, in *Marina Management Services, Inc. v.*
6 *Commonwealth Cabinet for Tourism*, the Court held: “[t]hese are records of
7 privately owned marina operators, disclosure of which would unfairly advantage
8 competing operators. The most obvious disadvantage may be the ability to
9 ascertain the economic status of the entities without the hurdles systematically
10 associated with acquisition of such information about privately owned
11 organizations.” 906 S.W.2d 318, 319 (Ky. 1995)

12 12. In this proceeding, the potential public disclosure of the Confidential
13 Information could give Big Rivers’ suppliers and competitors insight into Big
14 Rivers’ “inner workings.” For instance, the Confidential Information could be
15 used to determine when Big Rivers needs power, as well as the prices at which it
16 is willing to purchase power.

17 13. In sum, the Confidential Information is not publicly available, is not
18 disseminated within Big Rivers except to those employees and professionals with
19 a legitimate business need to know and act upon the information, and is not
20 disseminated to others without a legitimate need to know and act upon the
21 information. As such, the Confidential Information details the “inner workings”
22 of Big Rivers’ and is generally recognized as confidential and proprietary.

1 **C. Disclosure of the Confidential Information Would Permit an**
2 **Unfair Commercial Advantage to Big Rivers’ Competitors**

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

8 15. Given the nature of the Confidential Information, its disclosure
9 would provide other market participants and competitors insight into the timing
10 of Big Rivers’ power needs and the prices at which it is willing to buy power. In
11 turn, the Confidential Information could be used to manipulate the bidding
12 process, leading to higher costs and/or lower revenues for Big Rivers, thereby
13 impairing its ability to compete in the wholesale power markets. Furthermore,
14 any competitive pressure that adversely affects Big Rivers’ revenue and/or
15 margins could make Big Rivers appear less creditworthy and impair its ability to
16 compete in the credit market.

17 16. Big Rivers’ motion for confidential treatment of similar confidential
18 information is pending in this matter.² Therefore Confidential Information should be
19 afforded confidential treatment for the reasons stated in that motion and pursuant to 807 KAR
20 5:001 Section 13(4), which provides, “Pending action by the commission on a motion for

² See *In the Matter of: An Electronic Examination of The Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation From November 1, 2018 Through October 31, 2020*, P.S.C., Case No. 2021-00058, Motion of Big Rivers for Confidential Treatment, (Mar. 22, 2021) (seeking confidential treatment of information including projected energy purchases through 2022 and the planned maintenance outages for each of Big Rivers’ generating units for years 2021 and 2022).

1 confidential treatment or by its executive director on a request for confidential treatment, the
2 material specifically identified shall be accorded confidential treatment.”

3 17. Accordingly, the public disclosure of the information that Big Rivers
4 seeks to protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers’
5 competitors with an unfair commercial advantage.

6 **II. Time Period**

7 18. Big Rivers requests that the Confidential Information remain
8 confidential for a period of five (5) years from the date of this motion, which will
9 allow sufficient time for the information to become sufficiently outdated to no
10 longer pose a competitive risk to Big Rivers. *See* 807 KAR 5:001 Section
11 13(2)(a)(2).

12 **V. Conclusion**

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

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

3 On this the 25th day of May, 2021.

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Respectfully submitted,

/s/ Tyson Kamuf

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