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

In the Matter of:

ELECTRONIC APPLICATION OF)	
BIG RIVERS ELECTRIC CORPORATION)	
FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY)	Case No.
AUTHORIZING CONSTRUCTION OF A NEW)	2022-00433
TRANSMISSION OPERATIONS CENTER AND)	
AN ORDER AUTHORIZING BIG RIVERS TO)	
DISPOSE OF PROPERTY)	

MOTION FOR CONFIDENTIAL TREATMENT

1. Big Rivers Electric Corporation (“Big Rivers”), by counsel, hereby moves the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13, KRS 61.878, and other applicable law, to grant confidential treatment to certain information within its Application and accompanying Exhibits filed contemporaneously herewith in the above-styled matter.

2. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “Confidential Information.” The Confidential Information includes:

- a. Detailed descriptions of the location, design, and composition of critical energy infrastructure (“CEI”), specifically with respect to Big Rivers’ existing and proposed facilities utilized in connection with energy transmission, control, and engineering (found in the Application, Exhibit C (Plans and Specifications), Exhibit D (Testimony of Robert W.

1 Berry), Exhibit E (Testimony of Talina R. Mathews), and Exhibit F
2 (Testimony of Tim Masa); and

3 b. Current and projected book values, appraised values, and projected
4 sales values of Big Rivers' existing Energy Transmission & Substation
5 facility ("ET&S Facility") and its outgoing headquarters facility (found
6 in Exhibit D (Testimony of Robert W. Berry) and Exhibit E (Testimony
7 of Talina R. Mathews).

8 3. Pursuant to the Commission's March 24, 2020 Order in *In the Matter of:*
9 *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No.
10 2020-00085 ("Case No. 2020-00085"), Big Rivers is submitting with this motion one
11 (1) copy of the documents containing Confidential Information highlighted with
12 transparent ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL,"
13 via electronic mail to PSCED@ky.gov. A copy of those pages, with the Confidential
14 Information redacted, is being filed into public docket via the Commission's Electronic
15 Filing System.

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

20 5. As discussed below, the Confidential Information is entitled to
21 confidential treatment based upon KRS 61.878(1)(c)(1) and KRS 8 61.878(1)(m). *See*
22 807 KAR 5:001, Section 13(2)(a)(1).

1 6. Further, much of the Confidential Information is similar to or pertains
2 to confidential information for which the Commission previously granted confidential
3 treatment in earlier proceedings. *See In the Matter of: Electronic Application of Big*
4 *Rivers Electric Corporation for a Certificate of Convenience and Necessity Authorizing*
5 *Construction of a New Headquarters Facility and an Order Authorizing Big Rivers to*
6 *Sell its Existing Headquarters Facility*, Case No. 2021-00314, Order (Ky. P.S.C. Sept.
7 27, 2022) (the “September 27, 2022 Order”) (granting confidentiality to substantially
8 the same property-valuation information and CEI information as at issue herein).

9 **I. Certain of the Confidential Information is Entitled to Protection**
10 **from Public Disclosure by KRS 61.878(1)(c)(1)**

11 7. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an
12 agency or required by an agency to be disclosed to it, generally recognized as
13 confidential or proprietary, which if openly disclosed would permit an unfair
14 commercial advantage to competitors of the entity that disclosed the records.”
15 Subsection A *infra* describes how Big Rivers operates in competitive environments in
16 the wholesale power market and in the credit market; Subsection B *infra* explains
17 that the Confidential Information is generally recognized as confidential or
18 proprietary; and Subsection C *infra* demonstrates that public disclosure of the
19 Confidential Information would permit an unfair commercial advantage to Big
20 Rivers’ competitors.

21 **A. Big Rivers Faces Actual Competition**

22 8. Big Rivers must successfully compete in the wholesale power markets
23 to sell energy it produces in excess of its members’ needs. Big Rivers’ ability to

1 successfully compete in these markets is dependent upon a combination of its ability
2 to: a) obtain the maximum price for the power it sells and secure the most favorable
3 contract terms available, and b) keep its cost of production as low as possible.
4 Fundamentally, if Big Rivers' cost of producing a kilowatt hour of energy increases,
5 its ability to sell that kilowatt hour in competition with other utilities is adversely
6 affected.

7 9. Big Rivers also competes for reasonably-priced credit in the credit
8 markets, and its ability to compete is directly impacted by its financial results. Lower
9 revenues and any events that adversely affect Big Rivers' margins will adversely
10 affect its financial results and potentially impact the price it pays for credit. A
11 competitor or potential counterparty armed with Big Rivers' proprietary and
12 confidential information will be able to increase Big Rivers' costs or decrease Big
13 Rivers' revenues, which could in turn affect Big Rivers' creditworthiness. A utility the
14 size of Big Rivers that operates generation and transmission facilities will always
15 have periodic cash and borrowing requirements for both anticipated and
16 unanticipated needs. Big Rivers expects to be in the credit markets in the future, and
17 it is imperative that Big Rivers improve and maintain its credit profile.

18 10. Accordingly, Big Rivers has competitors in both the wholesale power and
19 credit markets, and its Confidential Information should be protected to prevent the
20 imposition of an unfair competitive advantage.

1 **B. The Confidential Information is Generally Recognized as**
2 **Confidential or Proprietary.**

3
4 11. The Confidential Information for which Big Rivers seeks confidential
5 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or
6 proprietary under Kentucky law.

7 12. As described above, the Confidential Information includes detailed,
8 proprietary information pertaining to the existing and projected values of discrete
9 Big Rivers assets, specifically its outgoing headquarters facility and existing ET&S
10 Facility. This Confidential Information is critical to the effective execution of Big
11 Rivers' business decisions and strategy and, if disclosed, would allow potential
12 counterparties and competitors to gain an advantage over Big Rivers in the course of
13 ongoing and future negotiations, potentially affecting the ultimate purchase price
14 obtained by Big Rivers for the sale of its assets.

15 13. Under Kentucky law, it is well-recognized that information about a
16 company's inner workings, such as the Confidential Information here, is generally
17 recognized as confidential or proprietary. *See, e.g., Hoy v. Ky. Indus. Revitalization*
18 *Auth.*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to
19 recognize that such information concerning the inner workings of a corporation is
20 'generally recognized as confidential or proprietary.'"); *Marina Management Servs. v.*
21 *Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318 (Ky. 1995). Additionally, the
22 Commission has previously granted confidential treatment to essentially the same
23 information. *See, e.g.,* the September 27, 2022 Order, at p. 8 ("The appraisal reports
24 and estimated current value of BREC's existing headquarters properties and related

1 information shall not be placed in the public record or made available for public
2 inspection until such time as the...transactions for all of BREC's existing
3 headquarters properties have closed or until further Order of this Commission.”).

4 14. The Confidential Information is not publicly available, is not
5 disseminated within Big Rivers except to those employees and professionals with a
6 legitimate business need to know and act upon the information, and is not
7 disseminated to others without a legitimate need to know and act upon the
8 information. As such, the Confidential Information is both recognized by Big Rivers
9 and generally recognized as confidential and proprietary.

10 **C. Disclosure of the Confidential Information Would Result in an**
11 **Unfair Commercial Advantage to Big Rivers' Competitors.**
12

13 15. Disclosure of the Confidential Information could unreasonably and
14 unnecessarily harm Big Rivers by giving interested third parties, and particularly
15 potential counterparties in real estate sales transactions, an unfair commercial
16 advantage through insight into Big Rivers' business operations and financial
17 strategies. As discussed *supra*, Big Rivers faces actual competition in both the short-
18 and long-term wholesale power markets and in the credit markets, and the success
19 of Big Rivers turns in large part on its ability to maximize the value of its assets. It
20 is likely that Big Rivers' ability to compete would be adversely affected if the
21 Confidential Information were publicly disclosed, and Big Rivers seeks protection
22 from such competitive injury.

23 16. The Commission has consistently recognized that internal strategic
24 financial planning information, projected sales information, and related materials

1 are entitled to confidential treatment, as these documents typically relate to the
2 company’s economic status and business strategies. *See, e.g.*, the September 27, 2022
3 Order; *see also Marina Management Servs., supra*, 906 S.W.2d at 319 (Ky. 1995)
4 (unfair commercial advantage arises simply from “the ability to ascertain the
5 economic status of the entities without the hurdles systemically associated with the
6 acquisition of such information about privately owned organizations”); *In the Matter*
7 *of: The Joint Application of Duke Energy Corp., Cinergy Corp., Duke Energy Ohio,*
8 *Inc., Duke Energy Kentucky, Inc., Diamond Acquisition Corp., and Progress Energy*
9 *Inc., for Approval of the Indirect Transfer of Control of Duke Energy Kentucky, Inc.*,
10 Case No. 2011-00124, Order (Ky. P.S.C. Dec. 5, 2011).

11 17. If disclosed, certain of the Confidential Information would allow Big
12 Rivers’ competitors and potential counterparties to discover, and make use of,
13 confidential information concerning Big Rivers’ assets and business strategies, to the
14 unfair competitive disadvantage of Big Rivers.

15 **II. Certain of the Confidential Information is Entitled to Protection**
16 **from Public Disclosure by KRS 61.878(1)(m)**

17 18. Certain of the Confidential Information is entitled to confidential
18 treatment based upon KRS 61.878(1)(m)(1), which protects “[p]ublic records the
19 disclosure of which would have a reasonable likelihood of threatening the public
20 safety by exposing a vulnerability in preventing protecting against, mitigating, or
21 responding to a terrorist act. . . .”

22 19. The Confidential Information contains detailed information that
23 describes the current and planned location, layout, and configuration of critical

1 energy infrastructure. If publically disclosed, this Confidential Information could be
2 utilized to commit or further a terrorist act, including the intimidation or coercion of
3 all or part of the civilian population and the disruption of public utility and other
4 critical systems. The public release of such Confidential Information has a reasonable
5 likelihood of threatening the public safety, particularly because it reflect detailed,
6 precise, and highly technical information about the configuration and operations of
7 valuable infrastructure on which many individuals and businesses rely. Pursuant to
8 KRS 61.878(1)(m), the Confidential Information should be exempt from public
9 disclosure.

10 22. The Commission granted confidential treatment on these grounds for an
11 indefinite period to maps showing critical transmission infrastructures contained in
12 Big Rivers' 2014 IRP and 2017 IRP. *See In the Mater of: 2014 Integrated Resource*
13 *Plan of Big Rivers Electric Corporation*, P.S.C. Case No. 2014-00166, Order (Ky.
14 P.S.C. August 26, 2014); *In the Matter of 2017 Integrated Resource Plan of Big Rivers*
15 *Electric Corporation*, P.S.C. Case No. 2017-00384, Order (Ky. P.S.C. April 25, 2019).
16 Likewise, the Commission has granted confidential treatment of a detailed map of
17 Big Rivers' transmission system and a detailed diagram showing the system's
18 components. *See In the Matter of: Application of Big Rivers Electric Corporation for a*
19 *Certificate of Public Convenience and Necessity to Construct Two 161 KV*
20 *Transmission Lines in Hancock County, Kentucky*, P.S.C. Case No. 2015-00051, Order
21 (Ky. P.S.C. January 15, 2016); *see also In The Matter of: Application of Big Rivers*
22 *Electric Corporation for Approval of Its 2020 Environmental Compliance Plan*,

1 *Authority To Recover Costs Through A revised Environmental surcharge and Tariff,*
2 *the Issuance of a Certificate of Public Convenience and Necessity For Certain Projects,*
3 *and Appropriate Accounting and Other Relief,* P.S.C. Case No. 2019-00435, Order
4 (Ky. P.S.C. August 6, 2020) (granting confidential treatment to maps and drawings
5 of critical infrastructure). More recently, the Commission granted confidential
6 protection to information of a substantially-identical nature in Big Rivers' recent case
7 involving its new headquarters facility. *See* the September 27, 2022 Order, at p. 8
8 ("The location, structure, and other sensitive information regarding BREC's energy
9 control room shall not be placed in the public record or made available for public
10 inspection for an indefinite period or until further Order of this Commission.").

11 **III. Time Period**

12 20. Pursuant to 807 KAR 5:001 Section 13(3)(a)(2), Big Rivers requests that
13 the Confidential Information be granted confidential treatment for the time periods
14 detailed below.

15 21. Big Rivers requests that the Confidential Information consisting of the
16 current and projected book values, appraised values, and projected values of Big
17 Rivers' outgoing headquarters properties and existing ET&S Facility remain
18 confidential until such time as the real estate transactions related to these properties
19 close or five (5) years from the date of the Motion has elapsed (thereby allowing the
20 information to become sufficiently stale as to no longer warrant confidential
21 treatment), whichever should first occur.

1 22. Big Rivers requests that the Confidential Information protected by KRS
2 61.878(1)(m) remain confidential indefinitely because as long as the critical energy
3 infrastructure remains in place, the information should be confidential for the
4 reasons stated above.

5 **IV. Conclusion**

6 23. Based on the foregoing, the Confidential Information is entitled to
7 confidential protection. If the Commission disagrees, then the Commission should
8 hold an evidentiary hearing to protect Big Rivers' due process rights and to supply
9 the Commission with a complete record to enable it to reach a decision with regard to
10 this matter. *See Util. Reg. Comm'n v. Ky. Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky.
11 App. 1982).

12
13 WHEREFORE, Big Rivers respectfully requests that the Commission classify
14 and protect as confidential the Confidential Information.

1 Dated this 24th day of January, 2023.

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3 Respectfully submitted,

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27 **Certification**

28 I hereby certify that a copy of this Motion for Confidential Treatment has been
29 served electronically on all parties of record through the use of the Commission's
30 electronic filing system, and there are currently no parties that the Commission has
31 excused from participation by electronic means. Pursuant to the Commission's July
32 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been
33 transmitted to the Commission.

34
35 /s/Edward T. Depp
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