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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) 2023-00013
FROM NOVEMBER 1, 2020 THROUGH OCTOBER 31, 2022)

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

12 1. Big Rivers Electric Corporation (“*Big Rivers*” or the “*Company*”)
13 hereby moves the Public Service Commission of Kentucky (the “*Commission*”),
14 pursuant to 807 KAR 5:001 Section 13 and KRS 61.878 to grant confidential
15 treatment to certain information contained in Big Rivers’ response to the
16 Commission Staff’s (“*Staff*”)Post-Hearing Information Request dated January 11,
17 2024, being filed contemporaneously with this motion, (the “*Confidential*
18 *Information*”).

19 2. The Confidential Information is contained in Big Rivers’ response to
20 Item 2 of Staff’s Post-Hearing Request. It consists of Big Rivers’ projected hours
21 of operation and hours available for each of its generation units used in fuel
22 requirement projections, specifically the hours represented in the confidential
23 forecasted natural gas and fuel oil requirements provided in Big Rivers’ response
24 to Item 32 of Staff’s First Request for Information (“*PSC 1-32*”) in this matter. A

1 motion for confidential treatment of the projected fuel requirements in Big Rivers’
2 response to PSC 1-32 is pending.¹

3 3. Pursuant to the Commission’s orders in *In the Matter of Electronic*
4 *Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-
5 00085 (“*Case No. 2020-00085*”), one (1) copy of the Confidential Information
6 highlighted with transparent ink, printed on yellow paper, or otherwise marked
7 “CONFIDENTIAL,” is being filed with this motion by electronic mail to
8 PSCED@ky.gov . A copy of those pages, with the Confidential Information
9 redacted, is being electronically filed with Big Rivers’ Responses accompanying
10 this motion. *See* 807 KAR 5:001 Section 13(2)(a)(3)(b).

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

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

18 6. As discussed *infra*, the Confidential Information is entitled to
19 confidential protection and is being submitted confidentially under the purview of
20 under KRS 61.878(1)(c)(1). *See* 807 KAR 5:001 Section 13(2)(a)(1).

21

¹ *See* Big Rivers Electric Corporation’s Motion for Confidential Treatment, filed September 22, 2023.

1 **I. The Confidential Information is entitled to confidential**
2 **treatment based upon KRS 61.878(1)(c)(1)**

3 7. The Confidential Information is entitled to confidential treatment
4 under KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to an
5 agency or required by an agency to be disclosed to it, generally recognized as
6 confidential or proprietary, which if openly disclosed would permit an unfair
7 commercial advantage to competitors of the entity that disclosed the records.” *See*
8 807 KAR 5:001 Section 13(3)(a)(1). In support for this ground of granting
9 confidential treatment, Subsection A *infra* describes how Big Rivers operates in
10 competitive environments; Subsection Section B *infra* explains that the
11 Confidential Information is generally recognized as confidential or proprietary;
12 and Subsection C *infra* demonstrates that public disclosure of the Confidential
13 Information would permit an unfair commercial advantage to Big Rivers’
14 competitors. As such, the Commission should grant confidential treatment to the
15 Confidential Information.

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

17 8. Big Rivers must successfully compete in the wholesale power
18 market in order to sell excess energy to meet its members’ needs, including
19 competition in: term bilateral energy markets, day-ahead and real-time energy
20 and ancillary services markets, the annual capacity market, and forward bilateral
21 long-term wholesale agreements with utilities and industrial customers. Big
22 Rivers’ ability to successfully compete in these wholesale power markets is
23 dependent upon a combination of a) obtaining the maximum price for power it

1 sells and the best contract terms, and b) keeping its cost of production as low as
2 possible. Fundamentally, if Big Rivers' cost of producing a kilowatt hour of
3 energy increases, its ability to sell that kilowatt hour in competition with other
4 utilities is adversely affected.

5 9. Big Rivers also competes for reasonably-priced credit in the credit
6 markets, and its ability to compete for such credit is directly impacted by the
7 financial results it obtains and the business risks it assumes. Any event that
8 adversely affects Big Rivers' financial results or increases its business risks may
9 adversely affect the price it pays for credit. A competitor armed with Big Rivers'
10 proprietary and confidential information will be able to increase Big Rivers' costs
11 or decrease Big Rivers' revenues, which could in turn affect Big Rivers' apparent
12 creditworthiness. Impediments to Big Rivers' obtaining the best contract terms
13 could likewise affect its apparent creditworthiness. A utility the size of Big Rivers
14 that operates generation and transmission facilities will always have periodic
15 cash and borrowing requirements for both anticipated and unanticipated needs.
16 Big Rivers expects to be in the credit markets on a regular basis in the future, and
17 it is imperative that Big Rivers improves and maintains its credit profile.

18 10. Finally, the ability to negotiate the most advantageous power
19 purchase agreements and then offer competitive prices to Big Rivers' Members,
20 companies interested in expanding in Kentucky, and potential new Members is
21 fundamental to Big Rivers' continued success.

1 11. Accordingly, Big Rivers faces competition in the wholesale power and
2 capital markets, and the Confidential Information should be afforded confidential
3 treatment to prevent the imposition of an unfair competitive advantage to those
4 competitors.

5 **B. *The Confidential Information is Generally Recognized as***
6 ***Confidential or Proprietary***

7 12. The Confidential Information for which Big Rivers seeks confidential
8 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or
9 proprietary under Kentucky law. As noted above, the Confidential Information
10 consists of Big Rivers’ projected hours of operation and hours available for each of
11 its generation units used in fuel requirement projections.

12 13. The Confidential Information is precisely the sort of information
13 meant to be protected by KRS 61.878(1)(c)(1).

14 14. Kentucky courts have held that information about a company’s
15 detailed inner workings is generally recognized as confidential or proprietary.
16 *See, e.g., Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766,
17 768 (Ky. 1995) (“[i]t does not take a degree in finance to recognize that such
18 information concerning the inner workings of a corporation is ‘generally
19 recognized as confidential or proprietary’”).

20 15. In this proceeding, the potential public disclosure of the Confidential
21 Information could give other market participants, Big Rivers’ suppliers, buyers,
22 and competitors insight into Big Rivers’ “inner workings.” For instance, the
23 Confidential Information could be used to determine when Big Rivers will have

1 power available to sell into the market or when Big Rivers needs power and the
2 amount of power Big Rivers has to sell or will need.

3 16. Notably, the Commission has granted confidential treatment for a
4 period of ten (10) years for information similar to the Confidential Information.
5 *See In the Matter of: Electronic Examination of the Application of the Fuel*
6 *Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2014 through*
7 *October 31, 2016*, Order, P.S. C. Case No. 2017-00005 (August 16, 2017); *In the*
8 *Matter of: Electronic Examination of the Application of the Fuel Adjustment*
9 *Clause of Duke Energy Kentucky, Inc. from November 1, 2016 through October 31,*
10 *2018*, Order, P.S.C. Case No. 2019-00006 (January 8, 2020) (both granting
11 confidential treatment for projected total kilowatt hours used to calculate base
12 fuel costs). Further, the Commission has previously granted confidential
13 treatment for a period of five years for information relating to Big Rivers’
14 projected unit generation and availability. *See In the Matter of: Application of*
15 *Big Rivers Electric Corporation for Termination of Contracts and Declaratory*
16 *Order for Authority to Establish a Regulatory Asset*, Order, P.S.C. Case No. 2018-
17 00146 (September 17, 2019).

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

1 of Big Rivers' and is generally recognized as confidential and proprietary under
2 Kentucky law.

3 **C. *Disclosure of the Confidential Information Would Permit an***
4 ***Unfair Commercial Advantage to Big Rivers' Competitors***

5 18. Disclosure of the Confidential Information would permit an unfair
6 commercial advantage to Big Rivers' competitors. As discussed *supra*, Big Rivers
7 faces actual competition in the wholesale power and credit markets. It is likely
8 that Big Rivers' ability to compete in these markets would be adversely affected if
9 the Confidential Information were publicly disclosed, and Big Rivers seeks
10 protection from such competitive injury.

11 19. Given the nature of the Confidential Information, its disclosure
12 would provide other market participants, suppliers, buyers, and competitors
13 insight into the extent and timing of Big Rivers' energy and/or capacity needs. In
14 turn, the Confidential Information could be used to manipulate the bidding
15 process, leading to higher costs and/or lower revenues for Big Rivers, thereby
16 impairing its ability to compete in the wholesale power markets. Furthermore,
17 any competitive pressure that adversely affects Big Rivers' revenue and/or
18 margins could make Big Rivers appear less creditworthy and impair its ability to
19 compete in the credit market.

20 20. Thus, Big Rivers' competitiveness will be adversely affected if other
21 market participants, suppliers, and buyers are given such an unfair competitive
22 advantage. Accordingly, the public disclosure of the Confidential Information
23 would provide Big Rivers' competitors with an unfair commercial advantage.

1 **II. Time Period**

2 21. Big Rivers requests that the Confidential Information remain
3 confidential for a period of five (5) years from the date of this motion, which will
4 allow sufficient time for the information to become sufficiently outdated to no
5 longer pose a competitive risk to Big Rivers. See 807 KAR 5:001 Section
6 13(2)(a)(2).

7 **III. Conclusion**

8 22. Based on the foregoing, the Confidential Information is entitled to
9 confidential protection. If the Commission disagrees that Big Rivers is entitled to
10 confidential protection, due process requires the Commission to hold an
11 evidentiary hearing. See *Utility Regulatory Comm'n v. Kentucky Water Serv. Co.,*
12 *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 25 day of January, 2024.

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Respectfully submitted,

/s/ Senthia Santana

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