

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION

3  
4 In the Matter of:  
5

ELECTRONIC TARIFF FILING OF )  
BIG RIVERS ELECTRIC )  
CORPORATION FOR APPROVAL ) Case No.  
OF PROPOSED CHANGES TO ITS ) 2023-00102  
QUALIFIED COGENERATION AND )  
SMALL POWER PRODUCTION )  
FACILITIES TARIFFS )

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8  
9 MOTION FOR CONFIDENTIAL TREATMENT  
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11 1. Big Rivers Electric Corporation (“*Big Rivers*”) hereby moves the  
12 Kentucky Public Service Commission (the “*Commission*”), pursuant to 807 KAR  
13 5:001 Section 13 and KRS 61.878, to grant confidential treatment of certain  
14 information Big Rivers is providing in its Response to the Commission Staff’s  
15 Second Request for Information, dated May 12, 2023, submitted  
16 contemporaneously herewith in the above-styled matter. The information for  
17 which Big Rivers seeks confidential treatment is hereinafter referred to as the  
18 “*Confidential Information*.”

19 2. The Confidential Information is contained in the attachment to Big  
20 Rivers’ response to Item No. 10, which shows the calculation of avoided capacity  
21 energy charges derived from the costs included for the Natural Gas Combined

1 Cycle (“NGCC”) unit cited in Big Rivers’ 2020 IRP.<sup>1</sup> The Commission found  
2 “BREC would be harmed if contractors or competitors knew what BREC is willing  
3 or expected to spend on energy, fuel, and construction” and granted confidential  
4 treatment of similar information in Big Rivers’ 2020 IRP for a period of five  
5 years.<sup>2</sup>

6 3. Pursuant to the Commission’s March 24, 2020, Order in *In the*  
7 *Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-*  
8 *19*, Case No. 3 2020-00085 (“*Case No. 2020-00085*”), one (1) copy of the  
9 Confidential Information highlighted with transparent ink, printed on yellow  
10 paper, or otherwise marked “CONFIDENTIAL,” is being filed with this motion by  
11 electronic mail.

12 4. A copy of this motion with the Confidential Information redacted has  
13 been served on all parties to this proceeding through the use of electronic filing.  
14 807 KAR 5:001, Section 13(b).

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

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<sup>1</sup> See *In the Matter of: Electronic 2020 Integrated Resource Plan of Big Rivers’ Electric Corporation*, P.S.C. Case No. 2020-00299, Application at confidential Appendix G, (filed Sept. 21, 2020).

<sup>2</sup> See *Id.* Order at page 8 and at Ordering Paragraph No. 3 (April 14, 2022) (citing *Duke Energy Kentucky* (Ky. PSC Sept. 3, 2019, Order at 2-3)

1           6.       As discussed below, the Confidential Information is entitled to  
2 confidential treatment based upon KRS 61.878(1)(c)(1). 807 KAR 5:001 Section  
3 13(2)(a)(1).

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

6           7.       The Confidential Information is entitled to confidential treatment  
7 based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to  
8 an agency or required by an agency to be disclosed to it, generally recognized as  
9 confidential or proprietary, which if openly disclosed would permit an unfair  
10 commercial advantage to competitors of the entity that disclosed the records.”  
11 807 KAR 5:001 Section 13(2)(a)(1).

12           8.       In support for this ground of granting confidential treatment,  
13 Subsection A infra describes how Big Rivers operates in competitive  
14 environments; Subsection B infra explains that the Confidential Information is  
15 generally recognized as confidential or proprietary; and Subsection C infra  
16 demonstrates that public disclosure of the Confidential Information would permit  
17 an unfair commercial advantage to Big Rivers’ competitors. As such, the  
18 Commission should grant confidential treatment of the Confidential Information.

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

20           9.       Big Rivers must successfully compete in the wholesale power market  
21 in order to sell excess energy to meet its members’ needs, including competition  
22 in: term bilateral energy markets, the day-ahead and real time energy and

1 ancillary services markets, the annual capacity market, and forward bilateral  
2 long-term wholesale agreements with utilities and industrial customers. Big  
3 Rivers' ability to successfully compete in the wholesale power market is  
4 dependent upon an effective combination of a) obtaining the maximum price for  
5 the power it sells and the best contract terms, and b) keeping its cost of  
6 production as low as possible. Fundamentally, if Big Rivers' cost of producing a  
7 kilowatt hour or its business risk increases, its ability to sell that kilowatt hour in  
8 competition with other utilities is adversely affected.

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

1           11.     Accordingly, Big Rivers faces competition in the wholesale power and  
2 credit 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***  
6                   ***as 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.

10           13.     As discussed below the Confidential Information relates to the inner  
11 workings of Big Rivers’ business. Information such as this which bears upon a  
12 company’s detailed inner workings is generally recognized as confidential or  
13 proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907  
14 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that  
15 such information concerning the inner workings of a corporation is ‘generally  
16 recognized as confidential or proprietary’”); *Marina Management Servs. v. Cabinet*  
17 *for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial  
18 advantage arises simply from “the ability to ascertain the economic status of the  
19 entities without the hurdles systemically associated with the acquisition of such  
20 information about privately owned organizations”).

21           14.     The Confidential Information is not publicly available, is not  
22 disseminated within Big Rivers except to those employees and professionals with

1 a legitimate business need to know and act upon the information, and is not  
2 disseminated to the others without a legitimate need to know and act upon the  
3 information. As such, the Confidential Information is generally recognized as  
4 confidential and proprietary.

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

7 15. Disclosure of the Confidential Information would permit an unfair  
8 commercial advantage of Big Rivers' competitors. As discussed above, Big Rivers  
9 faces actual competition in the wholesale power market and in the credit market.  
10 It is likely that Big Rivers would suffer competitive injury if that Confidential  
11 Information were publicly disclosed.

12 16. Disclosure of the public disclosure of the Confidential Information  
13 would reveal detailed information relating to Big Rivers' projected production  
14 costs. This information provides insight into Big Rivers' cost of producing power  
15 and would indicate the prices at which Big Rivers is willing to buy or sell power,  
16 natural gas, and other commodities. Further, all projected costs depend on  
17 obtaining fuel, services, and labor at reasonable prices, which cannot be obtained  
18 if contractors or competitors know Big Rivers' plans and expected expenditures.  
19 The Commission has previously granted confidential treatment to similar  
20 information. *See In the Matter of: Duke Energy Kentucky, Inc.'s Integrated*  
21 *Resource Plan*, Order, P.S.C. Case No. 2018-00195 (Sept. 3, 2019) (granting  
22 confidential treatment to "operations and management costs, projected fuel and

1 environmental compliance forecasted costs”); and *In the Matter of: Electronic 2020*  
2 *Integrated Resource Plan of Big Rivers’ Electric Corporation*, Order, P.S.C. Case  
3 No. 2020-00299 (April 14, 2022), as discussed above.

4 17. Disclosure of the Confidential Information could unreasonably and  
5 unnecessarily harm Big Rivers by giving interested third parties, potential  
6 counterparties and competitors, an unfair commercial advantage through  
7 knowledge of expected costs and insight into Big Rivers’ business operations and  
8 financial strategies.

9 18. Accordingly, the public disclosure of the Confidential Information  
10 would provide competitors of Big Rivers with an unfair commercial advantage.

## 11 **II. Time Period**

12 19. Big Rivers requests that the Confidential Information remain  
13 confidential for a period of five (5) years from the date of this motion, which  
14 should allow sufficient time for the projected data to become historical and  
15 sufficiently outdated that it could not be used to determine similar confidential  
16 information at that time or to competitively disadvantage Big Rivers. 807 KAR  
17 5:001 Section 13(2)(a)(2).

## 18 **III. Conclusion**

19 20. Based on the foregoing, the Confidential Information is entitled to  
20 confidential treatment. If the Commission disagrees, then the Commission

1 should hold an evidentiary hearing to protect to Big Rivers' due process rights  
2 and to supply the Commission with a complete record to enable it to reach a  
3 decision with regard to this matter. *See Util. Reg. Comm'n v. Ky. Water Serv. Co.,*  
4 *Inc.* 642 S.W.2d 591 (Ky. App. 1982).

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

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8 On this the 26th day of May, 2023.

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Respectfully submitted,

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*/s/ Senthia Santana*

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