

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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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 Third Request for Information, dated August 9, 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 Big Rivers’ response to
20 Item No. 2 and the attachment to its response to Item No. 6, and consists of Big
21 Rivers’ internal projections related to its capacity position and margins.

22 3. Pursuant to the Commission’s March 24, 2020, Order in *In the*
23 *Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-*

1 19, Case No. 3 2020-00085 (“*Case No. 2020-00085*”), one (1) copy of the
2 Confidential Information highlighted with transparent ink, printed on yellow
3 paper, or otherwise marked “CONFIDENTIAL,” is being filed with this motion by
4 electronic mail.

5 4. A copy of this motion with the Confidential Information redacted has
6 been served on all parties to this proceeding through the use of electronic filing.
7 807 KAR 5:001, Section 13(b).

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

12 6. As discussed below, the Confidential Information is entitled to
13 confidential treatment based upon KRS 61.878(1)(c)(1). 807 KAR 5:001 Section
14 13(2)(a)(1).

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

17 7. The Confidential Information is entitled to confidential treatment
18 based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to
19 an agency or required by an agency to be disclosed to it, generally recognized as
20 confidential or proprietary, which if openly disclosed would permit an unfair

1 commercial advantage to competitors of the entity that disclosed the records.”
2 807 KAR 5:001 Section 13(2)(a)(1).

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

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

11 9. Big Rivers must successfully compete in the wholesale power market
12 in order to sell excess energy to meet its members’ needs, including competition
13 in: term bilateral energy markets, the day-ahead and real time energy and
14 ancillary services markets, the annual capacity market, and forward bilateral
15 long-term wholesale agreements with utilities and industrial customers. Big
16 Rivers’ ability to successfully compete in the wholesale power market is
17 dependent upon an effective combination of a) obtaining the maximum price for
18 the power it sells and the best contract terms, and b) keeping its cost of
19 production as low as possible. Fundamentally, if Big Rivers’ cost of producing a
20 kilowatt hour or its business risk increases, its ability to sell that kilowatt hour in
21 competition with other utilities is adversely affected.

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

15 11. Accordingly, Big Rivers faces competition in the wholesale power and
16 credit markets, and the Confidential Information should be afforded confidential
17 treatment to prevent the imposition of an unfair competitive advantage to those
18 competitors.

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

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

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

17 14. Further, the Confidential Information is substantially similar to
18 information to which the Commission recently granted confidential treatment.
19 *See, In the Matter of: Electronic Tariff Filing of Big River Electric Corporation and*
20 *Kenergy Corp. for Approval of a Special Contract with Economic Development*
21 *Rates with Pratt Paper (KY), LLC*, P.S.C. Case No. 2023-00045, Order (Feb. 23,
22 2023) (granting confidential treatment of information in Exhibit Repsher-3,

1 “Planning Reserve Margins/Load Comparison 2023-2034”); *See also, In the Matter*
2 *of: Electronic Tariff Filing of Big Rivers Electric Corporation and Jackson*
3 *Purchase Energy Corporation for Approval and Confidential Treatment of a*
4 *Special Contract and Cost Analysis Information and a Request for Deviation from*
5 *the Commission’s September 24, 1990 Order in Administrative Case No. 327,*
6 *P.S.C. Case No. 2021-00282, Order (Oct. 14, 2021).*

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

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

15 16. Disclosure of the Confidential Information would permit an unfair
16 commercial advantage of Big Rivers’ competitors. As discussed above, Big Rivers
17 faces actual competition in the wholesale power market and in the credit market.
18 It is likely that Big Rivers would suffer competitive injury if that Confidential
19 Information were publicly disclosed.

20 17. If the Confidential Information related to Big Rivers’ projected
21 capacity position and margins is publicly disclosed, market participants would
22 have insight into the timing of Big Rivers’ capacity needs and potentially the

1 prices at which it is willing to buy and sell power. These market participants
2 could use that information to manipulate the bidding process, leading to higher
3 costs or lower revenues for Big Rivers and impairing its ability to compete in the
4 wholesale power markets. Furthermore, any competitive pressure that adversely
5 affects Big Rivers' revenue and margins could make the company appear less
6 creditworthy and thus impair its ability to compete in the credit market.

7 18. Disclosure of the Confidential Information could unreasonably and
8 unnecessarily harm Big Rivers by giving interested third parties, potential
9 counterparties and competitors, an unfair commercial advantage through
10 knowledge of Big Rivers' capacity position and insight into Big Rivers' business
11 operations and financial strategies.

12 19. Accordingly, the public disclosure of the Confidential Information
13 would provide competitors of Big Rivers with an unfair commercial advantage.

14 **II. Time Period**

15 20. Big Rivers requests that the Confidential Information remain
16 confidential for a period of ten (10) years from the date of this motion, which
17 should allow sufficient time for the projected data to become historical and
18 sufficiently outdated that it could not be used to determine similar confidential
19 information at that time or to competitively disadvantage Big Rivers. 807 KAR
20 5:001 Section 13(2)(a)(2).

1 **III. Conclusion**

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

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

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11 On this the 18th day of August, 2023.

12 Respectfully submitted,

13 /s/ *Senthia Santana*
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