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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION BY)
THE PUBLIC SERVICE COMMISSION OF)
THE ENVIRONMENTAL SURCHARGE)
MECHANISM OF BIG RIVERS)
ELECTRIC CORPORATION FOR THE)
SIX-MONTH BILLING PERIODS ENDING)
JANUARY 31, 2020, JULY 31, 2020,)
JANUARY 31, 2021, JANUARY 31, 2022,)
JULY 31, 2022, AND JANUARY 31, 2023,)
THE TWO-YEAR EXPENSE PERIODS)
ENDING JULY 31, 2021, AND JULY 31,)
2023, AND THE PASS-THROUGH)
MECHANISM OF ITS THREE MEMBER)
DISTRIBUTION COOPERATIVES)

CASE No.
2023-00373

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MOTION OF BIG RIVERS ELECTRIC CORPORATION
FOR CONFIDENTIAL TREATMENT

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1. Big Rivers Electric Corporation (“*Big Rivers*”) hereby moves the Kentucky Public Service Commission (the “*Commission*”), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential protection to certain information Big Rivers is providing within this Motion and in its response to Request No. 1 of the Commission Staff’s Second Request for Information (“*PSC 2-1*”) submitted contemporaneously herewith in the above-styled matter.

2. PSC 2-1 in part requests, “For the Wilson Dry Sorbent Injection (DSI) 2012 Plan, explain BREC’s actions from November to December that

1 resulted in the large increases in Gross Plant in Service and Accumulated
2 Depreciation categories.” In response, Big Rivers identifies and provides details
3 related to [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] The information for which
10 Big Rivers seeks confidential treatment is hereinafter referred to as the
11 “*Confidential Information.*”

12 3. Pursuant to the Commission’s Orders in *In the Matter of: Electronic*
13 *Emergency Docket Related to the Novel Coronavirus Covid-19*, Case No. 2020-
14 00085, one (1) copy of the Confidential Information highlighted with transparent
15 ink or otherwise marked “CONFIDENTIAL,” is being filed with this motion by
16 electronic mail to PSCED@ky.gov. A copy of this motion and the response to PSC
17 2-1 with the Confidential Information redacted is being electronically filed into
18 the public docket with the data request responses accompanying this motion.

19 4. A copy of this motion with the Confidential Information redacted has
20 been served on all parties to this proceeding through the use of electronic filing.
21 807 KAR 5:001, Section 13(b).

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

5 6. As discussed below, the Confidential Information is entitled to
6 confidential treatment based upon KRS 61.878(1)(c)(1). 807 KAR 5:001 Section
7 13(2)(a)(1).

8 **I. The Confidential Information is exempted from public**
9 **disclosure by KRS 61.878(1)(c)(1).**

10 7. Under the Kentucky Open Records Act, the Commission is entitled
11 to withhold from public disclosure “records confidentially disclosed to an agency
12 or required by an agency to be disclosed to it, generally recognized as confidential
13 or proprietary, which if openly disclosed would permit an unfair commercial
14 advantage to competitors of the entity that disclosed the records.” KRS
15 61.878(1)(c)(1).

16 8. The Confidential Information is entitled to confidential protection
17 based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to
18 an agency or required by an agency to be disclosed to it, generally recognized as
19 confidential or proprietary, which if openly disclosed would permit an unfair
20 commercial advantage to competitors of the entity that disclosed the records.”
21 807 KAR 5:001 Section 13(3)(a)(1). In support for this ground of granting
22 confidential protection, Subsection A *infra* describes how Big Rivers operates in

1 competitive environments; Subsection B *infra* explains that the Confidential
2 Information is generally recognized as confidential or proprietary; and Subsection
3 C *infra* demonstrates that public disclosure of the Confidential Information would
4 permit an unfair commercial advantage to Big Rivers' competitors.

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

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

17 10. Big Rivers also competes for reasonably-priced credit in the credit
18 markets, and its ability to compete is directly impacted by the financial results it
19 obtains and the business risks it assumes. Any event that adversely affects Big
20 Rivers' financial results or increases its business risks may adversely affect the
21 price it pays for credit. A competitor armed with Big Rivers' proprietary and
22 confidential information will be able to increase Big Rivers' costs or decrease Big

1 Rivers' revenues, which could in turn affect Big Rivers' apparent
2 creditworthiness. Impediments to Big Rivers' obtaining the best contract terms
3 could likewise affect its apparent creditworthiness. A utility the size of Big Rivers
4 that operates generation and transmission facilities will always have periodic
5 cash and borrowing requirements for both anticipated and unanticipated needs.
6 Big Rivers expects to be in the credit markets on a regular basis in the future, and
7 it is imperative that Big Rivers improve and maintain its credit profile.

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

12 **B. The Confidential Information is Generally Recognized**
13 **as Confidential or Proprietary.**

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

17 13. As noted above, the Confidential Information [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

1 14. Information such as this which bears upon a company’s detailed
2 inner workings is generally recognized as confidential or proprietary. *See, e.g.,*
3 *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995)
4 (“It does not take a degree in finance to recognize that such information
5 concerning the inner workings of a corporation is ‘generally recognized as
6 confidential or proprietary’”); *Marina Management Services, Inc. v.*
7 *Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995) (“These are
8 records of privately owned marina operators, disclosure of which would unfairly
9 advantage competing operators. The most obvious disadvantage may be the
10 ability to ascertain the economic status of the entities without the hurdles
11 systematically associated with acquisition of such information about privately
12 owned organizations”).

13 15. The Commission has often found that information similar to the
14 Confidential Information is generally recognized as confidential and proprietary.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 16. The Confidential Information is not publicly available, is not
11 disseminated within Big Rivers except to those employees and professionals with
12 a legitimate business need to know and act upon the information, and is not
13 disseminated to the others without a legitimate need to know and act upon the
14 information.

15 17. Based on the foregoing, the Confidential Information is generally
16 recognized as confidential or proprietary under Kentucky law.

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

19 18. Public disclosure of the Confidential Information will adversely
20 affect Big Rivers in several respects.

21 19. Disclosure of the Confidential Information would afford Big Rivers’
22 competitors an unfair commercial advantage. As discussed above, Big Rivers

1 faces actual competition in the power markets and in the credit markets. It is
2 likely that Big Rivers would suffer an economic disadvantage [REDACTED]
3 [REDACTED] and thus competitive injury if the Confidential Information
4 were publicly disclosed, and the information should therefore be subject to
5 confidential treatment.

6 20. Disclosure of the Confidential Information, [REDACTED]
7 [REDACTED]
8 [REDACTED] would cause competitive harm to Big Rivers. In P.S.C. Case No.
9 2003-00054, the Commission implicitly accepted the Union Light, Heat, and
10 Power Company's argument that the bidding contractors would not want their bid
11 information publicly disclosed, and that disclosure would reduce the contractor
12 pool available to ULH&P, which would drive up ULH&P's costs, hurting its
13 ability to compete with other gas suppliers. *In the Matter of Application of the*
14 *Union Light, Heat and Power Company for Confidential Treatment*, P.S.C. Case
15 No. 2003-00054, Order (August 4, 2003). Similarly, in *Hoy v Kentucky Indus.*
16 *Revitalization Authority*, the Kentucky Supreme Court found that without
17 protection for confidential information provided to a public agency, "companies
18 would be reluctant to apply for investment tax credits for fear the confidentiality of
19 financial information would be compromised." *Hoy v. Kentucky Indus.*
20 *Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995). [REDACTED]
21 [REDACTED]
22 [REDACTED]. Thus, public disclosure of the Confidential

1 Information could hinder [REDACTED]
2 [REDACTED].

3 21. Furthermore, if the Confidential Information were publicly disclosed,
4 Big Rivers' competitors would have insight into Big Rivers' [REDACTED]
5 [REDACTED]
6 [REDACTED] Denying confidential treatment of this information
7 could result in [REDACTED], increasing costs of operation for Big
8 Rivers and thereby impairing its ability to compete in the wholesale power
9 markets. Furthermore, any competitive pressure that adversely affects Big
10 Rivers' revenue and/or margins could make Big Rivers appear less creditworthy
11 and impair its ability to compete in the credit markets.

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

14 **II. Time Period**

15 23. Big Rivers requests that the Confidential Information remain
16 confidential indefinitely for the above discussed reasons. 807 KAR 5:001 Section
17 13(2)(a)(2).

18 **III. Conclusion**

19 24. Based on the foregoing, the Confidential Information is entitled to
20 confidential protection. If the Commission disagrees, then the Commission
21 should hold an evidentiary hearing to protect to Big Rivers' due process rights

1 and to supply the Commission with a complete record to enable it to reach a
2 decision with regard to this matter. *See Util. Reg. Comm'n v. Ky. Water Serv. Co.,*
3 *Inc.* 642 S.W.2d 591 (Ky. App. 1982).

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

7 On this the 27th day of March 2024.

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Respectfully submitted,

9

/s/ Senthia Santana

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