1 2	COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
3 4 5	In the Matter of:
6	AN ELECTRONIC EXAMINATION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF BIG RIVERS ELECTRIC CORPORATION FROM NOVEMBER 1, 2022 THROUGH APRIL 30, 2023 Case No. 2024-00141
7)
8 9 10	MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL TREATMENT
11 12	1. Big Rivers Electric Corporation ("Big Rivers") hereby moves the
13	Public Service Commission of Kentucky (the "Commission"), pursuant to 807
14	KAR 5:001 Section 13, KRS 61.878 and KRS 278.160(3) to grant confidential
15	treatment to certain information contained in Big Rivers' response to Item 1 of
16	the Commission Staff's Third Request for Information dated February 14, 2025
17	("PSC 3-1"). The information for which Big Rivers seeks confidential treatment is
18	hereinafter referred to as the "Confidential Information."
19	2. The Confidential Information consists of negotiated terms of a
20	special contract between Meade County Rural Electric Cooperative Corporation
21	("Meade") and Nucor Corporation ("Nucor") executed on September 9, 2019, which
22	Big Rivers concurred with a letter agreement with Meade signed on September
23	18, 2019.
24	3. Pursuant to the Commission's Emergency Orders in <i>In the Matter of:</i>
25	Electronic Emergency Docket Related to the Novel Coronavirus Covid-19, Case No.

- 1 2020-00085, one (1) copy of the Confidential Information highlighted in yellow or
- 2 otherwise marked "CONFIDENTIAL," is being filed with this motion via
- 3 electronic mail sent to <u>PSCED@ky.gov</u>. One (1) copy of the documents with the
- 4 Confidential Information redacted is also being electronically filed with this
- 5 request. 807 KAR 5:001 Section 13(2)(a)(3).
- 6 4. A copy of this motion with the Confidential Information redacted has
- 7 been served on all parties to this proceeding through the use of electronic filing.
- 8 807 KAR 5:001 Section 13(2)(b).
- 9 5. If and to the extent the Confidential Information becomes generally
- 10 available to the public, whether through filings required by other agencies or
- 11 otherwise, Big Rivers will notify the Commission and have its confidential status
- 12 removed. 807 KAR 5:001 Section 13(10)(b).
- 13 6. As discussed below, the Confidential Information is entitled to
- 14 confidential treatment based upon KRS 278.160(3), which shields from disclosure
- 15 "a provision of a special contract that contains rates and conditions of service not
- 16 filed in a utility's general schedule if such provision would otherwise be entitled to
- 17 be excluded from the application of KRS 61.8710 to 61.884 under the provisions of
- 18 KRS 61.878(1)(c)(1)." KRS 61.878(1)(c)(1) protects "records confidentially
- 19 disclosed to an agency or required by an agency to be disclosed to it, generally
- 20 recognized as confidential or proprietary, which if openly disclosed would permit
- 21 an unfair commercial advantage to competitors of the entity that disclosed the

- 1 records." Public disclosure of the Confidential Information would permit such a
- 2 result as discussed fully below. 807 KAR 5:001 Section 13(2)(a)(1).

3 I. The <u>Certain Confidential Information is entitled to</u> 4 confidential treatment based upon KRS 61.878(1)(c)(1)

- 5 7. The Confidential Information is entitled to confidential protection
- 6 based upon KRS 61.878(1)(c)(1). In support for this ground of granting
- 7 confidential protection, Subsection A infra describes how Big Rivers operates in
- 8 competitive environments; Subsection B infra explains that the Confidential
- 9 Information is generally recognized as confidential or proprietary; and Subsection
- 10 C infra demonstrates that public disclosure of the Confidential Information would
- 11 permit an unfair commercial advantage to Big Rivers' competitors.

12 A. Big Rivers Faces Actual Competition

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

- 1 risk increases, its ability to sell that kilowatt hour in competition with other
- 2 utilities is adversely affected.
- 3 9. Big Rivers also competes for reasonably-priced credit in the credit
- 4 markets, and its ability to compete is directly impacted by its financial results.
- 5 Lower revenues and any events that adversely affect Big Rivers' margins will
- 6 adversely affect its financial results and potentially impact the price it pays for
- 7 credit. A competitor armed with Big Rivers' proprietary and confidential
- 8 information will be able to increase Big Rivers' costs or decrease Big Rivers'
- 9 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A
- 10 utility the size of Big Rivers that operates generation and transmission facilities
- 11 will always have periodic cash and borrowing requirements for both anticipated
- 12 and unanticipated needs. Big Rivers expects to be in the credit markets on a
- 13 regular basis in the future, and it is imperative that Big Rivers improve and
- 14 maintain its credit profile.
- 15 10. Finally, Big Rivers competes for economic development opportunities
- 16 both within the Commonwealth and throughout the nation. The ability to
- 17 negotiate competitive electric pricing structures with companies interested in
- 18 expanding in Kentucky is fundamental to the success of Big Rivers' economic
- 19 development efforts.
- 20 11. Accordingly, Big Rivers faces competition in the wholesale power and
- 21 capital markets, and the Confidential Information should be afforded confidential

- 1 treatment to prevent the imposition of an unfair competitive advantage to those2 competitors.
- 3 B. The Confidential Information is Generally Recognized as
 4 Confidential or Proprietary
- 5 12. The Confidential Information for which Big Rivers seeks confidential
- 6 treatment under KRS 61.878 is generally recognized as confidential or
- 7 proprietary under Kentucky law.
- 8 13. As noted above, the Confidential Information protected under KRS
- 9 61.878(1)(c)(1) consists negotiated terms of a special contract with a large energy-
- 10 intensive, trade exposed customer. KRS 278.160(3) specifically recognizes that
- 11 rates and conditions of service set forth in a special contract are not required to be
- 12 publicly disclosed if such terms are entitled to protection under KRS
- 13 61.878(1)(c)(1).
- 14. Nucor participates in an competitive environment and disclosure of
- 15 cost or consumption information puts them at a disadvantage. This in turn "could
- 16 disadvantage BREC by discouraging companies from locating or expanding in
- 17 BREC's territory."¹
- 18 15. Big Rivers is currently in negotiations with potential counterparties
- 19 and expects to continue to engage in negotiations with counterparties for power

¹ In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation From May 1, 2021 Through October 31, 2021, P.S.C. Case No. 2022-00041, Order at 4 (Jan. 10, 2023).

- 1 sales agreements. If confidential treatment of the Confidential Information is
- 2 denied, potential counterparties would know that the confidential terms of their
- 3 contracts, agreements, and their private billing information could be publicly
- 4 disclosed, which could reveal information to their competitors about their
- 5 competitiveness. Because many companies would be reluctant to have such
- 6 information disclosed, public disclosure of the Confidential Information would
- 7 likely reduce the pool of counterparties willing to negotiate with Big Rivers,
- 8 reducing Big Rivers' ability to sell power and impairing its ability to compete in
- 9 the wholesale power and credit markets.
- 10 16. In sum, 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 others without a legitimate need to know and act upon the
- 14 information. As such, the Confidential Information details the "inner workings"
- 15 of Big Rivers' and is generally recognized as confidential and proprietary.²
- 16 C. Disclosure of the Confidential Information Would Permit 17 an Unfair Commercial Advantage to Big Rivers' Competitors
- 18 17. Disclosure of the Confidential Information that is protected under
- 19 KRS 61.878(1)(c)(1) would permit an unfair commercial advantage to Big Rivers'
- 20 competitors. As discussed above, Big Rivers faces actual competition in the
- 21 wholesale power market and in the credit markets, and it is likely that Big Rivers

² See, e.g. Hoy v. Kentucky Indus. Revitalization Authority, 907 S.W.2d 766, 768.

- 1 would suffer competitive injury if the Confidential Information were publicly
- 2 disclosed.
- 3 18. Given the nature of the Confidential Information, its disclosure
- 4 would harm Big Rivers in negotiating future special contracts and could result in
- 5 higher costs and/or lower revenues for Big Rivers, thereby impairing its ability to
- 6 compete in the wholesale power markets. Furthermore, any competitive pressure
- 7 that adversely affects Big Rivers' revenue and/or margins could make Big Rivers
- 8 appear less creditworthy and impair its ability to compete in the credit markets.
- 9 19. Accordingly, public disclosure of the information that Big Rivers
- 10 seeks to protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers'
- 11 competitors with an unfair commercial advantage.

12 II. <u>Time Period</u>

- 13 20. Big Rivers requests that the Confidential Information remain
- 14 confidential indefinitely because for so long as Big Rivers is in the wholesale
- 15 power market, the public disclosure of the confidential terms of the special
- 16 contract could be used to Big Rivers' competitive disadvantages for the reasons
- 17 stated above. <u>807 KAR 5:001 Section 13(2)(a)(2)</u>.

18 III. Conclusion

- 19 21. Based on the foregoing, the Confidential Information is entitled to
- 20 confidential treatment, pursuant to 807 KAR 5:001 Section 13; and KRS 61.878.
- 21 If the Commission disagrees that Big Rivers' Confidential Information is entitled

1 to confidential treatment, due process requires the Commission to hold an 2 evidentiary hearing. See Utility Regulatory Comm'n v. Kentucky Water Serv. Co., 3 Inc., 642 S.W.2d 591 (Ky. App. 1982). 4 5 WHEREFORE, Big Rivers respectfully requests that the Commission continue to classify and protect as confidential the Confidential Information. On this the 28th day of February 2025. 7 8 Respectfully submitted, 9 10 /s/ Senthia Santana 11 Senthia Santana 12Tyson Kamuf 13 14 Whitney Kegley 15 Big Rivers Electric Corporation 16 710 W. Second Street Owensboro, Ky 42301 17 18 Phone: (270) 827-2561 Facsimile: (270) 844-6417 19 20 senthia.santana@bigrivers.com 21 tyson.kamuf@bigrivers.com 22whitney.kegley@bigrivers.com 23 24Counsel for Big Rivers Electric 25 Corporation