

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 PSCED@ky.gov. 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 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 those
2 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 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. Time Period**

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. 807 KAR 5:001 Section 13(2)(a)(2).

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).

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

7 On this the 28th day of February 2025.

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Respectfully submitted,

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/s/ Senthia Santana

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