

August 12, 2025

**VIA ELECTRONIC FILING**

Ms. Linda C. Bridwell  
Executive Director  
Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

*Re: In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 2023 through October 31, 2023 - Case No. 2024-00149*

***Request for Continued Confidential Treatment***

Dear Ms. Bridwell:

Big Rivers Electric Corporation (“Big Rivers”) respectfully submits this response to the Commission’s letter dated July 23, 2025, opposing the disclosure of certain confidential information recently granted confidential treatment by the Kentucky Public Service Commission (the “Commission”) for a period of ten years,<sup>1</sup> in this matter.

The confidential information at issue (the “Confidential Information”) consists of:

**1. Private Usage and Billing Data; Non-Member Sales and Purchase Information**

The private usage and other billing data of individual retail customers and information related to non-members sales and purchases, contained in Big Rivers response to Request 12 and the attachment to its response to Requests 13 of the Commission Staff’s First Request for Information (PSC 1-12 and 1-13)<sup>2</sup> Requests 5 and 6 of the Commission Staff’s Second Request for Information (PSC 2-5, PSC 2-6) identify and requests information related to

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<sup>1</sup> See the Commission Order dated March 11, 2025, in the above referenced matter.

<sup>2</sup> Response to the Commission Staff’s First Request for Information dated August 2, 2024, (Aug. 26 2024).

specific lines in the attachment to Big Rivers' response to PSC 1-13 which show the usage and other billing data of individual retail customers.<sup>3</sup> The Confidential Information in Big Rivers' responses to PSC 2-5 and PSC 2-6 identify those customers whose confidential information is shown on the specific lines. This Confidential Information used with information shown in the public version of the attachment to the response to PSC 1-13 would indirectly disclose private usage and other billing data.

## **2. Negotiated Contract Terms:**

Confidential negotiated terms of special contracts with large industrial retail customers on the Big Rivers system contained in Big Rivers' response to PSC 2-5,<sup>4</sup> and

Specific provisions of the Retail Agreement for electric service between Meade County RECC and Nucor Corporation ("Nucor") dated September 9, 2019, and the associated letter agreement between Big Rivers and Meade County RECC dated September 18, 2019, effectuating the terms of the Retail Agreement (collectively, the "Nucor Contracts"), contained in Big Rivers'

- Response to response to Request No. 22 of the Commission Staff's Initial Request for Information (PSC 1-22 )<sup>5</sup>
- Response to Request No. 5 of the Commission Staff's Second Request for Information (PSC 2-5)<sup>6</sup>

## **Basis for Continued Confidential Treatment**

The Commission previously granted confidential treatment to the Confidential Information based on Big Rivers' motions for confidential treatment filed on August 26, 2024, September 23, 2024, October 28, 2024, and November 20, 2024. The Commission found the Confidential Information to be "generally recognized as confidential or proprietary" under KAR 5:001 Section 13 and KRS 61.878(1)(c)(1).<sup>7</sup>

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<sup>3</sup> Response to the Commission Staff's Second Request for Information dated September 10, 2024 (Sept. 23, 2024).

<sup>4</sup> *Id.*

<sup>5</sup> Response to the Commission Staff's First Request for Information dated August 2, 2024, (Aug. 26 2024).

<sup>6</sup> Response to the Commission Staff's Second Request for Information dated September 10, 2024 (Sept. 23, 2024).

<sup>7</sup> See the Commission Order dated March 11, 2025, at pp. 3-6.

Big Rivers operates in competitive wholesale power and credit markets. Its ability to remain competitive depends on its ability to: 1) obtain the maximum price for the power it sells, and 2) keep its cost of production or purchase as low as possible. Fundamentally, if Big Rivers' cost of producing or purchasing a unit of power increases, its ability to sell that unit in competition with other utilities is adversely affected. Further, lower revenues and any events that adversely affect Big Rivers' margins will adversely affect its financial results and potentially impact the price it pays for credit.

Big Rivers competes not only in the short-term bilateral energy market, the day-ahead and real time energy and ancillary services markets, and the capacity market to which Big Rivers has access by virtue of its membership in the Midcontinent Independent System Operator, Inc. ("*MISO*") system, but also forward bilateral long-term agreements and wholesale agreements with utilities and industrial customers. Additionally, Big Rivers competes for economic development opportunities both within the Commonwealth and throughout the nation. Disclosure of the Confidential Information will provide insight into Big Rivers' cost of producing power and indicate the prices at and terms on which it is willing to sell and purchase power. Potential buyers of power from, or sellers of power to, Big Rivers could thus use the Confidential Information as a benchmark in negotiating the terms of a transaction. As held in., *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) and *Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky. 1995), such detailed internal information is properly considered confidential and proprietary. Releasing contract terms, off-system sales information, and non-member purchase and sales information would expose Big Rivers to manipulation in negotiations or bidding scenarios, inflating costs or depressing revenues, and adversely impacting creditworthiness. Public disclosure of the Confidential Information would defeat the statutory protection intended by KRS 61.878(1)(c)(1).

Public disclosure of the Confidential Information would similarly jeopardize Big Rivers' ability to negotiate future contracts or transactions. If the confidential treatment of confidential contract terms, sales and purchases information or private billing information is denied, then other companies interested in negotiating contracts with Big Rivers would know that the confidential terms of their future contracts, plans, or bids may also be publicly disclosed. Many companies would be reluctant to have such confidential and proprietary information disclosed because public disclosure would, for example, allow their competitors to know how they offer and price their projects. The Commission recognized this type of harm in multiple proceedings including:

- *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, P.S.C. Case No. 2003-00054, Order (Aug. 4, 2003), where the Commission acknowledged the risk of lower contractor bids from public disclosures of prior bids.
- *In the Matter of: Application of Cumberland Valley Electric, Inc. for Commission Approval for a Certificate of Public Convenience and Necessity to Install an Advanced Metering Infrastructure (AMI) System Pursuant to KRS 807 KAR 5:001 and KRS 278.020*, P.S.C. Case No. 2018-00056, Order (May 9, 2018), where the Commission found “that the specific cost information may be used to the financial detriment of Cumberland Valley and its ratepayers by allowing potential future vendors to bid just under the cost of its current vendor, which, in turn, would place Cumberland Valley at a competitive disadvantage.”

This would create precisely the kind of competitive harm KRS 61.878(1)c)(1) intends to prevent.

### **Publicly Disclosed Information**

While most of the Confidential Information remains protected, one contract term relating to the second phase of the Nucor rate structure has become publicly available through:

- The Commission’s Intra-Agency Memorandum (November 12, 2024, filed December 6, 2024, in Case No. 2024-00149)<sup>8</sup>
- Big Rivers’ response to the Commission Staff’s Third Request for Information (February 28, 2025, in Case No. 2024-00141)<sup>9</sup>
- Testimony presented during the June 4, 2025, Commission hearing in both Case No. 2024-00141 and Case No. 2024-00149.

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<sup>8</sup> *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 2023 through October 31, 2023*, Case No. 2024-00149. (The memorandum disclosed the following information: “Per the NUCOR contract, NUCOR is charged no surcharges, including the FAC surcharge, until 2031 when NUCOR is subject to a ‘regular’ utility tariff.”)

<sup>9</sup> *In the Matter of: 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, Responses to the Commission Staff’s Third Request for Information (Feb. 28. 2025).

Accordingly, Big Rivers is electronically filing revised public versions of the following documents with this information unredacted:

- Responses to Staff Requests Nos. 22 and 23 (First Request, filed August 26, 2024, Amended response to PSC 1-23 filed November 20, 2024), and
- Response to the Staff's Request No. 1 (Third Request, filed October 28, 2024).

Pursuant to the Commission's Orders in Case No. 2020-00085, Big Rivers will file the Confidential Information with the Commission via email to PSCED@ky.gov, with a copy of this request.

### **Conclusion and Request**

The remaining Confidential Information is still not publicly available, is not disseminated within Big Rivers to those employees and professionals with a legitimate business need to know and act upon the information and is not disseminated to others without a legitimate need to know and act upon the information and is entitled to the continued confidential protection.

For the reasons set forth above, Big Rivers respectfully request that the Commission:

1. Continue to grant confidential treatment of all remaining Confidential Information; or
2. In the alternative hold an evidential hearing to preserve Big Rivers' due process rights and supply the Commission with a complete record to enable it to reach a decision regarding this matter. See *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W. 2d 591 (Ky. App. 1982).

Ms. Linda C. Bridwell

August 12, 2025

Page 6

This letter constitutes the Read1st document required by 807 KAR 5:001 Section 8(5). The Commission has excused no parties to this proceeding from its electronic filing procedures.

Please feel free to contact me should you have any questions regarding this filing.

Sincerely yours,

/s/ Senthia Santana

Senthia Santana

Associate Attorney

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