

1                                   COMMONWEALTH OF KENTUCKY  
2                   BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY  
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5 *In the Matter of:*  
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AN ELECTRONIC EXAMINATION OF THE	)	
APPLICATION OF THE FUEL ADJUSTMENT	)	
CLAUSE OF BIG RIVERS ELECTRIC	)	Case No.
CORPORATION FROM MAY 1, 2023	)	2024-00149
THROUGH OCTOBER 31, 2023	)	

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9                   **MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR**  
10                   **CONFIDENTIAL TREATMENT**  
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12           1.           Big Rivers Electric Corporation (“*Big Rivers*”), by counsel, hereby  
13 moves the Public Service Commission of Kentucky ( the “*Commission*”), pursuant  
14 to 807 KAR 5:001, Section 13 and KRS 61.878, for an Order granting confidential  
15 treatment to certain information contained in Big Rivers’ response to Item No. 4  
16 of the Commission Staff’s Fourth Request for Information, dated August 6, 2025  
17 (“PSC 4-4”). 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 private tax information of  
20 an individual retail customer, Nucor Corporation (“Nucor”). PSC 4-4 specifically  
21 requested “*the tax revenue to the local and state authorities as a result of Nucor*”-  
22 information not ordinarily within the custody or control of Big Rivers. Nucor  
23 provided the Confidential Information to Big Rivers on the express condition that  
24 it be treated as confidential and that Big Rivers file this Motion to protect it from  
25 public disclosure.

1           3.           The Confidential Information is not publicly available; is not  
2 disseminated within Nucor or Big Rivers except to those employees and  
3 professionals with a legitimate business need to know and act upon the  
4 information; and is not disseminated to others without a legitimate need to know  
5 and act upon the information.

6           4.           Pursuant to the Commission’s Emergency Orders in *In the Matter of:*  
7 *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, Case No.  
8 2020-00085, one (1) copy of the Confidential Information highlighted in yellow or  
9 otherwise marked “CONFIDENTIAL,” is being filed with this motion via  
10 electronic mail sent to [PSCED@ky.gov](mailto:PSCED@ky.gov). One (1) copy of the documents with the  
11 Confidential Information redacted is also being electronically filed with this  
12 request. 807 KAR 5:001 Section 13(2)(a)(3).

13          5.           A copy of this motion with the Confidential Information redacted has  
14 been served on all parties to this proceeding through the use of electronic filing.  
15 807 KAR 5:001 Section 13(2)(b).

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

20          7.           As discussed below, the Confidential Information is entitled to  
21 confidential treatment and is being submitted confidentially under the purview of  
22 KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). 807 KAR 5:001 Section 13(2)(a)(1).

1           I.       **The Confidential Information is entitled to confidential**  
2                   **treatment based upon KRS 61.878(1)(a)**

3           8.       The Confidential Information is entitled to confidential treatment  
4 based upon KRS 61.878(1)(a), which explicitly protects “[p]ublic records  
5 containing information of a personal nature where the public disclosure thereof  
6 would constitute a clearly unwarranted invasion of personal privacy.”

7           9.       The Confidential Information reflects private tax data of Nucor,  
8 which is not publicly available and which Nucor considers proprietary and  
9 commercially sensitive. Given the nature of the Confidential Information,  
10 consisting of private tax and financial data—its disclosure would provide  
11 competitors with insights into Nucor’s financial underpinnings, from which  
12 inferences could be drawn about Nucor’s cost structure, revenue base, and market  
13 position. Because Nucor is not a party to this proceeding, publicly revealing such  
14 information would constitute a clearly unwarranted invasion of its privacy.

15          10.      Moreover, the Commission has previously granted confidential  
16 treatment to similar retail information under the purview of KRS 61.878(1)(a).<sup>1</sup>

17          11.      As such, Big Rivers requests confidential treatment of the sensitive  
18 tax information to protect Nucor’s private information.

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<sup>1</sup> See, e.g., *In the Matter of: Sanctuary Church v. Louisville Gas and Electric Company*, Order, P.S.C. Case No. 2018-00181 (Jan. 8, 2019) (granting confidential treatment pursuant to KRS 61.878(1)(a) for an indefinite period to a retail customer’s account and usage information); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, P.S.C. Case No. 2012-00221 (July 25, 2013) (holding customer names, account numbers and usage information exempt from disclosure under KRS 61.878(1)(a)); see also *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation From May 1, 2019 Through October 31, 2019*, P.S.C. Case No. 2020-00009, Order (April 13, 2020).

1           **III.    The Confidential Information is also entitled to**  
2                           **confidential treatment based upon KRS 61.878(1)(c)(1)**

3           12.    Under the Kentucky Open Records Act, the Commission is entitled  
4 to withhold from public disclosure “records confidentially disclosed to an agency  
5 or required by an agency to be disclosed to it, generally recognized as confidential  
6 or proprietary, which if openly disclosed would permit an unfair commercial  
7 advantage to competitors of the entity that disclosed the records.” *See* KRS  
8 61.878(1)(c)(1). Public disclosure of the Confidential Information would permit  
9 such a result as discussed fully below.

10          13.    Therefore, the Confidential Information is entitled to confidential  
11 protection based upon KRS 61.878(1)(c)(1). In support for this ground of granting  
12 confidential protection, Subsection A *infra* describes how Big Rivers operates in  
13 competitive environments; Subsection B *infra* explains that the Confidential  
14 Information is generally recognized as confidential or proprietary; and Subsection  
15 C *infra* demonstrates that public disclosure of the Confidential Information would  
16 permit an unfair commercial advantage to Big Rivers’ competitors.

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

18          14.    Big Rivers must successfully compete in the wholesale power market  
19 in order to sell excess energy to meet its members’ needs, including competition  
20 in: term bilateral energy markets, day-ahead and real-time energy and ancillary  
21 services markets, the annual capacity market, and forward bilateral long-term  
22 wholesale agreements with utilities and industrial customers. Big Rivers’ ability

1 to successfully compete in these wholesale power markets is dependent upon an  
2 effective combination of a) obtaining the maximum price for the power it sells and  
3 the best contract terms, and b) keeping its cost of production as low as possible.  
4 Fundamentally, if Big Rivers' cost of producing a kilowatt hour or its business  
5 risk increases, its ability to sell that kilowatt hour in competition with other  
6 utilities is adversely affected.

7       15.     Big Rivers also competes for reasonably-priced credit in the credit  
8 markets, and its ability to compete is directly impacted by its financial results.  
9 Lower revenues and any events that adversely affect Big Rivers' margins will  
10 adversely affect its financial results and potentially impact the price it pays for  
11 credit. A competitor armed with Big Rivers' proprietary and confidential  
12 information will be able to increase Big Rivers' costs or decrease Big Rivers'  
13 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A  
14 utility the size of Big Rivers that operates generation and transmission facilities  
15 will always have periodic cash and borrowing requirements for both anticipated  
16 and unanticipated needs. Big Rivers expects to be in the credit markets on a  
17 regular basis in the future, and it is imperative that Big Rivers improve and  
18 maintain its credit profile.

19       16.     Accordingly, Big Rivers faces competition in the wholesale power and  
20 capital markets, and the Confidential Information should be afforded confidential  
21 treatment to prevent the imposition of an unfair competitive advantage to those  
22 competitors.

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

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

6           18.     As noted above, the Confidential Information protected under KRS  
7 61.878(1)(c)(1) consists of private and sensitive tax data of an individual retail  
8 customer, Nucor. This information reflects the internal financial operations of  
9 Nucor and is widely recognized as confidential and proprietary.

10          19.     Public disclosure of the Confidential Information would provide Big  
11 Rivers' competitors with the ability to glean sensitive information regarding the  
12 financial and operational structure of a large industrial customer on Big Rivers'  
13 system and, by extension, to obtain knowledge of Big Rivers' cost structure and  
14 market position. Kentucky courts have held that information about a company's  
15 detailed inner workings is generally recognized as confidential or proprietary. In  
16 *Hoy v. Kentucky Industrial Revitalization Authority*, the Kentucky Supreme Court  
17 held that financial information submitted by General Electric Company with its  
18 application for investment tax credits was not subject to disclosure simply  
19 because it had been filed with a state agency. 907 S.W.2d 766, 4 (Ky. 1995).

20          20.     In Big Rivers' case, Big Rivers is currently in negotiations with  
21 potential counterparties and expects to continue to engage in negotiations with  
22 counterparties for power sales agreements. If confidential treatment of the  
23 Confidential Information is denied, potential counterparties would know that the

1 private confidential information, such as tax data, could be publicly disclosed,  
2 which could reveal information to their competitors about their competitiveness.  
3 Because many companies would be reluctant to have such information disclosed,  
4 public disclosure of the Confidential Information would likely reduce the pool of  
5 counterparties willing to negotiate with Big Rivers, reducing Big Rivers' ability to  
6 sell power and impairing its ability to compete in the wholesale power and credit  
7 markets.

8       21. In sum, the Confidential Information is precisely the sort of  
9 information meant to be protected by KRS 61.878(1)(c)(1).

10       ***C. Disclosure of the Confidential Information Would Permit***  
11       ***an Unfair Commercial Advantage to Big Rivers' Competitors***

12       22. Disclosure of the Confidential Information that is protected under  
13 KRS 61.878(1)(c)(1) would permit an unfair commercial advantage to Big Rivers'  
14 competitors. As discussed above, Big Rivers faces actual competition in the  
15 wholesale power market and in the credit markets, and it is likely that Big Rivers  
16 would suffer competitive injury if the Confidential Information were publicly  
17 disclosed.

18       23. As stated above, disclosure of the Confidential Information would  
19 directly undermine Big Rivers' bargaining leverage in ongoing and future  
20 negotiations. Competitors armed with detailed inferences drawn from the  
21 Confidential Information could tailor their market strategies and undercut Big  
22 Rivers in the negotiations of power sales transactions. Moreover, potential

1 counterparties would be discouraged from negotiating with Big Rivers if they  
2 believed their own private, confidential, and proprietary information might be  
3 subject to public disclosure.

4       24.     Accordingly, public disclosure of the information that Big Rivers  
5 seeks to protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers'  
6 competitors with an unfair commercial advantage.

7       **IV.    Time Period**

8       25.     Big Rivers requests that the Confidential Information remain  
9 confidential indefinitely for the reasons stated above. 807 KAR 5:001 Section  
10 13(2)(a)(2).

11       **V.     Conclusion**

12       26.     Based on the foregoing, the Confidential Information is entitled to  
13 confidential treatment, pursuant to KRS 278.160(3); 807 KAR 5:001 Section 13;  
14 and KRS 61.878. If the Commission disagrees that the Confidential Information  
15 is entitled to confidential treatment, due process requires the Commission to hold  
16 an evidentiary hearing. *See Utility Regulatory Comm'n v. Kentucky Water Serv.*  
17 *Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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



