1	COMMONWEALTH OF KENTUCKY
2	BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
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5	In the Matter of:
6	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
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8	MOMION OF DIG DWIFING BY FIGHDIG CORDON MICH.
9	MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR
10 11	CONFIDENTIAL TREATMENT
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 October 10, 2024
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 the identity of an individual
20	large industrial retail customer on the Big Rivers system, which is provided with
21	unredacted information billing information and negotiated terms of special
22	contracts.
23	3. The Confidential Information was redacted from the public version o
24	the Commission Staff's Third Request for Information. Big Rivers respectfully

- 1 requests that the Commission continue to grant confidential treatment of the
- 2 customer's identity.
- 3 4. Pursuant to the Commission's Emergency Orders in *In the Matter of:*
- 4 Electronic Emergency Docket Related to the Novel Coronavirus Covid-19, Case No.
- 5 2020-00085, one (1) copy of the Confidential Information highlighted in yellow or
- 6 otherwise marked "CONFIDENTIAL," is being filed with this motion via
- 7 electronic mail sent to PSCED@ky.gov. One (1) copy of the documents with the
- 8 Confidential Information redacted is also being electronically filed with this
- 9 request. <u>807 KAR 5:001 Section 13(2)(a)(3)</u>.
- 10 5. A copy of this motion with the Confidential Information redacted has
- 11 been served on all parties to this proceeding through the use of electronic filing.
- 12 807 KAR 5:001 Section 13(2)(b).
- 13 6. If and to the extent the Confidential Information becomes generally
- 14 available to the public, whether through filings required by other agencies or
- 15 otherwise, Big Rivers will notify the Commission and have its confidential status
- 16 removed. 807 KAR 5:001 Section 13(10)(b).
- 7. As discussed below, the Confidential Information is entitled to
- 18 confidential treatment and is being submitted confidentially under the purview of
- 19 KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). 807 KAR 5:001 Section 13(2)(a)(1).

- 1 I. <u>The Confidential Information is also entitled to</u> 2 confidential treatment based upon KRS 61.878(1)(a)
- 3 8. The Confidential Information contained in Big Rivers' response to
- 4 PSC 3-1 is entitled to confidential treatment based upon KRS 61.878(1)(a), which
- 5 explicitly protects "[p]ublic records containing information of a personal nature
- 6 where the public disclosure thereof would constitute a clearly unwarranted
- 7 invasion of personal privacy."
- 8 9. The individual customer identified in Big Rivers' response to PSC 3-1
- 9 is not a party to this proceeding, publicly revealing the customer's identity and in
- 10 turn their private billing information would constitute a clearly unwarranted
- 11 invasion of their privacy.
- 12 10. Moreover, the Commission has previously granted confidential
- 13 treatment to similar retail information under the purview of KRS 61.878(1)(a).1
- 14 11. As such, Big Rivers requests continued confidential treatment of the
- 15 identity of the customer in order to protect their private information.

¹ 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. <u>Certain Confidential Information is also entitled to</u> 2 confidential treatment based upon KRS 61.878(1)(c)(1)

12. Under the Kentucky Open Records Act, the Commission is entitled
to withhold from public disclosure "records confidentially disclosed to an agency
or required by an agency to be disclosed to it, generally recognized as confidential
or proprietary, which if openly disclosed would permit an unfair commercial
advantage to competitors of the entity that disclosed the records." See KRS
61.878(1)(c)(1). Public disclosure of the Confidential Information would permit

such a result as discussed fully below.

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

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 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 the identity of an individual retail customer which is
- 8 provided with unreducted information related to terms of special contracts and
- 9 private billing information of that customer. The Confidential Information is
- 10 precisely the sort of information meant to be protected by KRS 61.878(1)(c)(1).
- 11 19. The identified commercial customer participates in an competitive
- 12 environment and disclosure of cost or consumption information puts them at a
- 13 disadvantage. This in turn "could disadvantage BREC by discouraging companies
- 14 from locating or expanding in BREC's territory."2
- 15 20. Big Rivers is currently in negotiations with potential counterparties
- 16 and expects to continue to engage in negotiations with counterparties for power
- 17 sales agreements. If confidential treatment of the Confidential Information is
- 18 denied, potential counterparties would know that the confidential terms of their
- 19 contracts, agreements, and their private billing information could be publicly
- 20 disclosed, which could reveal information to their competitors about their

² 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 competitiveness. Because many companies would be reluctant to have such
- 2 information disclosed, public disclosure of the Confidential Information would
- 3 likely reduce the pool of counterparties willing to negotiate with Big Rivers,
- 4 reducing Big Rivers' ability to sell power and impairing its ability to compete in
- 5 the wholesale power and credit markets.
- 6 21. In sum, the Confidential Information is not publicly available, is not
- 7 disseminated within Big Rivers except to those employees and professionals with
- 8 a legitimate business need to know and act upon the information, and is not
- 9 disseminated to others without a legitimate need to know and act upon the
- 10 information. As such, the Confidential Information details the "inner workings"
- 11 of Big Rivers' and is generally recognized as confidential and proprietary.
- 12 C. Disclosure of the Confidential Information Would Permit
- 13 an Unfair Commercial Advantage to Big Rivers' Competitors
- 14 22. Disclosure of the Confidential Information that is protected under
- 15 KRS 61.878(1)(c)(1) would permit an unfair commercial advantage to Big Rivers'
- 16 competitors. As discussed above, Big Rivers faces actual competition in the
- 17 wholesale power market and in the credit markets, and it is likely that Big Rivers
- 18 would suffer competitive injury if the Confidential Information were publicly
- 19 disclosed.
- 20 23. Given the nature of the Confidential Information, its disclosure
- 21 would harm Big Rivers in negotiating future special contracts and could result in
- 22 higher costs and/or lower revenues for Big Rivers, thereby impairing its ability to

- 1 compete in the wholesale power markets. Furthermore, any competitive pressure
- 2 that adversely affects Big Rivers' revenue and/or margins could make Big Rivers
- 3 appear less creditworthy and impair its ability to compete in the credit markets.
- 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. <u>Time Period</u>

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

11 V. <u>Conclusion</u>

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

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1 WHEREFORE, Big Rivers respectfully requests that the Commission continue to classify and protect as confidential the Confidential Information. 3 On this the 28th day of October, 2024. Respectfully submitted, 4 5 /s/ Senthia Santana 6 7 8 Senthia Santana Tyson Kamuf 9 Whitney Kegley 10 Big Rivers Electric Corporation 11 12 710 W. Second Street 13 Owensboro, Ky 42301 Phone: (270) 827-2561 14 15 Facsimile: (270) 844-6417 16 senthia.santana@bigrivers.com tyson.kamuf@bigrivers.com 17 18 whitney.kegley@bigrivers.com 19 20 Counsel for Big Rivers Electric 21Corporation