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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)
BIG RIVERS ELECTRIC CORPORATION) Case No.
FOR ANNUAL REVIEW OF ITS MRSM) 2025-000021
CHARGE FOR CALENDAR YEAR 2024)

MOTION OF BIG RIVERS ELECTRIC CORPORATION
FOR CONFIDENTIAL PROTECTION

1. Big Rivers Electric Corporation (“*Big Rivers*”) hereby moves the Kentucky Public Service Commission (the “*Commission*”), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential protection to certain information Big Rivers is providing in its Application submitted contemporaneously herewith in the above-styled matter. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “*Confidential Information*.”

2. The Confidential Information consists of customer specific usage data and billing information, contained in the Direct Testimony of Talina R. Mathews attached as Exhibit B to the Application.

1 3. Pursuant to the Commission’s Orders in *In the Matter of: Electronic*
2 *Emergency Docket Related to the Novel Coronavirus Covid-19*, Case No. 2020-
3 00085, one (1) copy of the Confidential Information highlighted with transparent
4 ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being
5 filed with this motion by electronic mail to PSCED@ky.gov. A copy of those pages,
6 with the Confidential Information redacted, is being electronically filed into the
7 public docket with the data request responses accompanying this motion.

8 4. A copy of this motion with the Confidential Information redacted has
9 been served on all parties to this proceeding through the use of electronic filing.
10 807 KAR 5:001, Section 13(b).

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

15 6. As discussed below, the Confidential Information is entitled to
16 confidential treatment based upon KRS 61.878(1)(a) and KRS 61.878(1)(c)(1).
17 807 KAR 5:001 Section 13(2)(a)(1).

1 **A. The Confidential Information is entitled to confidential treatment**
2 **under KRS 61.878(1)(a)**

3 7. KRS 61.878(1)(a) protects “[p]ublic records containing information of
4 a personal nature where the public disclosure thereof would constitute a clearly
5 unwarranted invasion of personal privacy.”

6 8. The Confidential Information in the Direct Testimony of Talina R.
7 Mathews reveals the power usage and billing information of an individual large
8 industrial retail customer on the Big Rivers system, Nucor Corporation (“Nucor”).
9 Because this customer is not a party to this proceeding, publicly revealing such
10 information would constitute a clearly unwarranted invasion of personal privacy.
11 Moreover, on March 9, 2021, the Commission granted confidential treatment to
12 Nucor Corporation’s 2020 power usage and billing information for an indefinite
13 period in Case No. 2021-00061, *In the Matter of: Electronic Application of Big*
14 *River Application for Annual Review of its MRSM Charge for Calendar Year 2020*,
15 finding “the designated material is generally recognized as private, confidential,
16 or proprietary, it therefore meets the criteria for confidential treatment and is
17 exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS
18 61.878(1), and KRS 61.878(1)(2)(1).” In fact, the Commission granted confidential
19 treatment to Nucor’s power usage data and billing information for an indefinite
20 period in three prior cases reviewing Big Rivers’ MRSM credit, Case No. 2021-

1 00061;¹ Case No. 2022-00028;² and Case No. 2023-00038.³ Big Rivers’ motion for
2 confidential treatment of similar confidential information in Case No. 2024-
3 00031, reviewing its MRSM credit for calendar year 2023, is still pending. As
4 such, Big Rivers requests confidential treatment for the customer-specific usage
5 data and billing information in order to protect Nucor’s private usage information.

6 **B. The Confidential Information is also entitled to confidential**
7 **treatment under KRS 61.878(1)(c)(1)**

8 9. Under the Kentucky Open Records Act, the Commission is entitled
9 to withhold from public disclosure “records confidentially disclosed to an agency
10 or required by an agency to be disclosed to it, generally recognized as confidential
11 or proprietary, which if openly disclosed would permit an unfair commercial
12 advantage to competitors of the entity that disclosed the records.” KRS
13 61.878(1)(c)(1). Public disclosure of the Confidential Information would permit
14 such a result as discussed fully below.

¹ *In the Matter of: Electronic Application of Big Rivers Electronic for Annual Review of its MRSM Charge for Calendar Year 2020*, P.S.C. Case No. 2021-00061, Order (March 9, 2021) (finding “the designated material is generally recognized as private, confidential, or proprietary, it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS 61,878(1), and KRS 61.878(1)(2)(1)”).

² *In the Matter of: Electronic Application of Big Rivers Electronic for Annual Review of its MRSM Charge for Calendar Year 2021*, P.S.C. Case No. 2022-00028, Order (April 7, 2022).

³ *In the Matter of: Electronic Application of Big Rivers Electronic for Annual Review of its MRSM Charge for Calendar Year 2022*, P.S.C. Case No. 2023-00038, Order (Sept. 19, 2023).

1 10. The Confidential Information is also entitled to confidential
2 protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially
3 disclosed to an agency or required by an agency to be disclosed to it, generally
4 recognized as confidential or proprietary, which if openly disclosed would permit
5 an unfair commercial advantage to competitors of the entity that disclosed the
6 records.” *See* 807 KAR 5:001 Section 13(3)(a)(1). In support for this ground of
7 granting confidential protection, Subsection I *infra* describes how Big Rivers
8 operates in competitive environments; Subsection II *infra* explains that the
9 Confidential Information is generally recognized as confidential or proprietary;
10 and Subsection III *infra* demonstrates that public disclosure of the Confidential
11 Information would permit an unfair commercial advantage to Big Rivers’
12 competitors. As such, the Commission should grant confidential treatment to the
13 Confidential Information.

14 **SECTION I**

15 **Big Rivers Faces Actual Competition**

16 11. Big Rivers must successfully compete in the wholesale power market
17 in order to sell excess energy to meet its members’ needs, including competition
18 in: term bilateral energy markets, day-ahead and real-time energy and ancillary
19 services markets, the annual capacity market, and forward bilateral long-term
20 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 12. Big Rivers also competes for reasonably-priced credit in the credit
8 markets, and its ability to compete is directly impacted by the financial results it
9 obtains and the business risks it assumes. Any event that adversely affects Big
10 Rivers' financial results or increases its business risks may adversely affect the
11 price it pays for credit. A competitor armed with Big Rivers' proprietary and
12 confidential information will be able to increase Big Rivers' costs or decrease Big
13 Rivers' revenues, which could in turn affect Big Rivers' apparent
14 creditworthiness. Impediments to Big Rivers' obtaining the best contract terms
15 could likewise affect its apparent creditworthiness. A utility the size of Big Rivers
16 that operates generation and transmission facilities will always have periodic
17 cash and borrowing requirements for both anticipated and unanticipated needs.
18 Big Rivers expects to be in the credit markets on a regular basis in the future, and
19 it is imperative that Big Rivers improve and maintain its credit profile.

1 (“It does not take a degree in finance to recognize that such information
2 concerning the inner workings of a corporation is ‘generally recognized as
3 confidential or proprietary”); *Marina Management Services, Inc. v.*
4 *Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995) (“These are
5 records of privately owned marina operators, disclosure of which would unfairly
6 advantage competing operators. The most obvious disadvantage may be the
7 ability to ascertain the economic status of the entities without the hurdles
8 systematically associated with acquisition of such information about privately
9 owned organizations”).

10 17. Moreover, in addition to the Commission’s previously cited Order in
11 Big Rivers’ 2021 MRSM case, the Commission has previously granted confidential
12 treatment to such information in other cases. *See, e.g., In the Matter of: Riverside*
13 *Generating Company, LLC v. Kentucky Power Company*, P.S.C. Case No. 2017-
14 00472, Order (May 16, 2019) (granting confidential treatment to customer specific
15 information relating to purchases and transmission of electricity for an indefinite
16 period); *In the Matter of Electronic Application of Big Rivers Electric Corporation*
17 *and Meade County Rural Electric Cooperative Corporation for (1) Approval of*
18 *Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff*,
19 P.S.C. Case No. 2019-00365, Order (Sept. 30, 2020) (granting confidential

1 treatment to the terms of Nucor Corporation's retail electric service agreement
2 and power purchase agreements between Big Rivers and solar developers).

3 18. The Confidential Information is not publicly available, is not
4 disseminated within Big Rivers except to those employees and professionals with
5 a legitimate business need to know and act upon the information, and is not
6 disseminated to the others without a legitimate need to know and act upon the
7 information.

8 19. Based on the foregoing, the Confidential Information is generally
9 recognized as confidential or proprietary under Kentucky law.

10 SECTION III

11 Disclosure of the Confidential Information Would Permit an Unfair 12 Commercial Advantage to Big Rivers' Competitors

13 20. Public disclosure of the Confidential Information will adversely
14 affect Big Rivers in several respects.

15 21. Disclosure of the Confidential Information would afford Big Rivers'
16 competitors an unfair commercial advantage. As discussed above, Big Rivers
17 faces actual competition in the power markets and in the credit markets. It is
18 likely that Big Rivers would suffer an economic disadvantage in negotiating
19 future transactions and thus competitive injury if the Confidential Information
20 were publicly disclosed, and the information should therefore be subject to
21 confidential treatment.

1 22. If confidential treatment of the Nucor's confidential power usage data
2 and billing information is denied, potential counterparties on future special
3 contracts or future economic development prospects would know that their
4 confidential information would be publicly disclosed. Because many companies
5 would be reluctant to have such information disclosed, public disclosure of the
6 Confidential Information would likely reduce the pool of counterparties willing to
7 negotiate with Big Rivers, reducing Big Rivers' ability to sell power and impairing
8 its ability to compete in the wholesale power and credit markets. In *Hoy v. Kentucky*
9 *Indus. Revitalization Authority*, the Kentucky Supreme Court found that without
10 protection for confidential information provided to a public agency, "companies
11 would be reluctant to apply for investment tax credits for fear the confidentiality of
12 financial information would be compromised. *Hoy v. Kentucky Indus.*
13 *Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

14 23. Accordingly, the public disclosure of the Confidential Information
15 would provide Big Rivers' competitors with an unfair commercial advantage.

16 **C. Time Period**

17 24. Big Rivers requests that the Confidential Information remain
18 confidential indefinitely for the above discussed reasons. 807 KAR 5:001 Section
19 13(2)(a)(2).

1 **D. Conclusion**

2 25. Based on the foregoing, the Confidential Information is entitled to
3 confidential protection. If the Commission disagrees, then the Commission
4 should hold an evidentiary hearing to protect to Big Rivers' due process rights
5 and to supply the Commission with a complete record to enable it to reach a
6 decision with regard to this matter. *See Util. Reg. Comm'n v. Ky. Water Serv. Co.,*
7 *Inc.* 642 S.W.2d 591 (Ky. App. 1982).

8
9 WHEREFORE, Big Rivers respectfully requests that the Commission
10 classify and protect as confidential the Confidential Information.

11 On this the 28th day of February 2025.

12 Respectfully submitted,

13 /s/ *Senthia Santana*

14 _____
15 Senthia Santana

16 Tyson Kamuf

17 Whitney Kegley

18 710 W. Second Street

19 Owensboro, KY 42301

20 Phone: (270) 827-2561 Fax: (270) 844-6417

21 Email: senthia.santana@bigrivers.com

22 Email: tyson.kamuf@bigrivers.com

23 Email: whitney.kegley@bigrivers.com

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28 *Counsel for Big Rivers Electric Corporation*