

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
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4

5 *In the Matter of:*
6

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	
CLAUSE OF BIG RIVERS ELECTRIC)	Case No.
CORPORATION FROM NOVEMBER 1, 2023)	2025-00078
THROUGH APRIL 30, 2024)	

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8
9 **MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR**
10 **CONFIDENTIAL TREATMENT**
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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’ responses to Items 4,
16 12, 13, and 22 of the Commission Staff’s First Request for Information in
17 Appendix B of the Commission’s May 28, 2025, Order.

18 2. The information for which Big Rivers seeks confidential treatment is
19 hereinafter referred to as the “*Confidential Information*.” The Confidential
20 Information consists of:

- 21 (a) information regarding confidential fuel supply bids to Big Rivers
22 and its analysis of those bids, contained in Big Rivers’ response
23 and the attachment to its response to Item 4;

- 1 (b) private usage data of individual retail customers and sales and
2 purchases to non-members, contained in Big Rivers' response to
3 Item 12 and the attachment to the response to Item 13; and
4 (c) terms of a special contract, contained in Big Rivers' response to
5 Item 22.

6 3. 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. 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 4. 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 5. 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 6. As discussed below, the Confidential Information is entitled to
21 confidential treatment and is being submitted confidentially under the purview of

1 KRS 278.160(3), KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). 807 KAR 5:001
2 Section 13(2)(a)(1).

3 **I. The Confidential Information is entitled to confidential**
4 **treatment based upon KRS 278.160(3)**

5 7. Certain Confidential Information contained in Big Rivers’ response
6 to Item 22 is entitled to confidential protection based upon KRS 278.160(3),
7 which shields from disclosure “a provision of a special contract that contains rates
8 and conditions of service not filed in a utility’s general schedule if such provision
9 would otherwise be entitled to be excluded from the application of KRS 61.870 to
10 61.884 under the provisions of KRS 61.878(1)(c)(1).”

11 8. The special contract terms in question relate to a special contract
12 between Meade County Rural Electric Cooperative Corporation (“*Meade*”) and
13 Nucor Corporation (“*Nucor*”), which Big Rivers concurred with a letter agreement.
14 The Commission has already found that the confidential terms of the contracts
15 are entitled to confidential treatment under KRS 61.878(1)(c)(1),¹ and the
16 confidential terms of these special contracts should again be granted confidential
17 treatment.

¹ See *In the Matter of: Filing of Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and the Kentucky Municipal Energy Agency*, P.S.C. Case No. 2016-00306, Order (Jan. 2, 2019) (granting confidential treatment to the confidential terms of the KyMEA contract for an indefinite time period); *In the Matter of Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for Approval of Contracts for Electric Service with Nucor Corporation*, P.S.C. Case No. 2019-00365, Order (Jan. 22, 2020) (granting confidential treatment to the confidential terms of the Nucor contract for an indefinite time period).

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

3 9. Certain Confidential Information contained in Big Rivers’ response
4 to Item 12 and the attachment to its response to Item 13 is entitled to confidential
5 treatment based upon KRS 61.878(1)(a), which explicitly protects “[p]ublic records
6 containing information of a personal nature where the public disclosure thereof
7 would constitute a clearly unwarranted invasion of personal privacy.”

8 10. Big Rivers’ response to Item 12 reveals purchases and sales to non-
9 members. The attachment to Big Rivers’ response to Item 13 reveals the power
10 usage of individual large industrial retail customers on the Big Rivers system and
11 sales to non-members. Because the individual customers and non-members
12 identified in the response and attachment are not parties to this proceeding,
13 publicly revealing such information would constitute a clearly unwarranted
14 invasion of their privacy. Moreover, the Commission has previously granted
15 confidential treatment to similar retail information under the purview of KRS
16 61.878(1)(a).²

17 11. As such, Big Rivers requests confidential treatment for the identity
18 of these entities in order to protect their private information.

² 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. Certain 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 or reveals information about confidential fuel supply
8 bids to Big Rivers and Big Rivers' analysis of those bids, terms of a special
9 contract, private usage data of individual retail customers, and purchases and
10 sales to non-members. The Confidential Information is precisely the sort of
11 information meant to be protected by KRS 61.878(1)(c)(1).

12 19. The Commission has often found that information similar to the
13 Confidential Information contained in Big Rivers' response to Item 4 and its
14 attachment, relating to competitive bidding is generally recognized as confidential
15 and proprietary. *See, e.g., In the Matter of Application of Union Light, Heat and*
16 *Power Company for Confidential Treatment*, P.S.C. Case No. 2003-00054, Order
17 (August 4, 2003).³ In fact, the Commission has granted confidential treatment to

³ In P.S.C. Case No. 2003-00054, the Commission additionally implicitly accepted ULH&P's argument that the bidding contractors would not want their bid information publicly disclosed, and that disclosure would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with other gas suppliers. *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). Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found that without protection for confidential information provided to a public agency, "companies would be reluctant to apply for investment tax credits for fear the confidentiality of financial information would be compromised." *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

1 the bid tabulation sheets that Big Rivers filed in previous reviews of its fuel
2 adjustment clause. *See, e.g.*, letter from the Commission dated September 22,
3 2010, in P.S.C. Case No. 2010-00269 and more recently in P.S.C. Case No. 2019-
4 00231⁴ and P.S.C. Case No. 2022-00041.⁵ Thus, the Confidential Information in
5 the response and attachment to the response to Item 4 is generally recognized as
6 confidential or proprietary.

7 20. The commercial customers and non-members identified in Big
8 Rivers' responses to Items 12 and 13 participate in a competitive environmental
9 and disclosure of cost and consumption information puts them at a disadvantage,
10 which in turn could discourage companies from locating or expanding in Big
11 Rivers' territory, and causing competitive harm to Big Rivers.

12 21. Public disclosure of the Confidential Information would cause
13 competitive harm to Big Rivers, giving Big Rivers' suppliers, buyers and
14 competitors insight into prices and other terms at which it is willing to sell and
15 buy power. Kentucky courts have held that information about a company's
16 detailed inner workings is generally recognized as confidential or proprietary. In
17 *Hoy v. Kentucky Industrial Revitalization Authority*, the Kentucky Supreme Court

⁴ *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2018 through April 30, 2019*, P.S.C. Case No. 2019-00231, Order (April 2, 2020) (granting confidential treatment for fuel supply bids and Big Rivers' analysis of the bids, terms of future off-system sales and private usage information of individual retail customers).

⁵ *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 (Jan. 10, 2023) (granting confidential treatment for fuel supply bids, and Big Rivers' Analysis of the bids, private usage information of individual retail customers, and special contract terms and non-member sales.)

1 held that financial information submitted by General Electric Company with its
2 application for investment tax credits was not subject to disclosure simply
3 because it had been filed with a state agency. 907 S.W.2d 766, 4 (Ky. 1995). The
4 Court applied the plain meaning rule to KRS 61.878(1)(c)(1), and reasoned: “[i]t
5 does not take a degree in finance to recognize that such information concerning
6 the inner workings of a corporation is ‘generally recognized as confidential or
7 proprietary.’” *Id.* at 768. Similarly, in *Marina Management Services, Inc. v.*
8 *Commonwealth Cabinet for Tourism*, the Court held: “[t]hese are records of
9 privately owned marina operators, disclosure of which would unfairly advantage
10 competing operators. The most obvious disadvantage may be the ability to
11 ascertain the economic status of the entities without the hurdles systematically
12 associated with acquisition of such information about privately owned
13 organizations.” 906 S.W.2d 318, 319 (Ky. 1995).

14 22. In Big Rivers’ case, Big Rivers is currently in negotiations with
15 potential counterparties and expects to continue to engage in negotiations with
16 counterparties for power sales agreements. If confidential treatment of the
17 Confidential Information is denied, potential counterparties would know that the
18 confidential terms of their contracts, agreements, and their private usage
19 information could be publicly disclosed, which could reveal information to their
20 competitors about their competitiveness. Because many companies would be
21 reluctant to have such information disclosed, public disclosure of the Confidential
22 Information would likely reduce the pool of counterparties willing to negotiate

1 with Big Rivers, reducing Big Rivers' ability to sell power and impairing its ability
2 to compete in the wholesale power and credit markets.

3 23. In sum, 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 others without a legitimate need to know and act upon the
7 information. As such, the Confidential Information details the "inner workings"
8 of Big Rivers' and is generally recognized as confidential and proprietary.

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

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

17 25. Given the nature of the Confidential Information, its disclosure
18 would provide other market participants, suppliers, buyers and competitors
19 insight into the prices and terms at which Big Rivers is willing to buy fuel and
20 sell and buy power. In turn, the Confidential Information could be used to
21 manipulate the bidding process, leading to higher costs and/or lower revenues for
22 Big Rivers, thereby impairing its ability to compete in the wholesale power

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

4 26. 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 27. Big Rivers requests that the Confidential Information contained in
9 Big Rivers response to Item 4 and its attachment remain confidential for five (5)
10 years from the date of this motion, consistent with Commission precedent. 807
11 KAR 5:001 Section 13(2)(a)(2).

12 28. Big requests that the Confidential Information contained in Big
13 Rivers response to Item 22 remain confidential for ten (10) years from the date of
14 this motion, consistent with Commission precedent. 807 KAR 5:001 Section
15 13(2)(a)(2).

16 29. Big Rivers Requests that all other Confidential Information
17 indefinitely for the reasons stated above. 807 KAR 5:001 Section 13(2)(a)(2).

18 **V. Conclusion**

19 30. Based on the foregoing, the Confidential Information is entitled to
20 confidential treatment, pursuant to KRS 278.160(3); 807 KAR 5:001 Section 13;
21 and KRS 61.878. If the Commission disagrees that Big Rivers' Confidential

1 Information is entitled to confidential treatment, due process requires the
2 Commission to hold an evidentiary hearing. *See Utility Regulatory Comm'n v.*
3 *Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

4

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

7 On this the 20th day of June, 2025.

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Respectfully submitted,

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/s/ Senthia Santana

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