

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
3
4

5 *In the Matter of:*
6

 AN ELECTRONIC EXAMINATION OF THE)
 APPLICATION OF THE FUEL ADJUSTMENT CLAUSE) Case No.
 OF BIG RIVERS ELECTRIC CORPORATION) 2025-00343
FROM NOVEMBER 1, 2022 THROUGH OCTOBER 31, 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*” or the “*Company*”)
13 hereby moves the Public Service Commission of Kentucky (the “*Commission*”),
14 pursuant to 807 KAR 5:001 Section 13; KRS 61.878; and KRS 278.160(3) to grant
15 confidential treatment to certain information contained in Big Rivers’ responses
16 and/or attachments to its responses to information requests and direct testimony
17 being filed contemporaneously with this motion, pursuant to the Commission’s
18 December 19, 2025, Order filed in this matter (the “*Confidential Information*”).

19 2. The Confidential Information consists of:

- 20 a. negotiated terms of special contracts and third party proprietary
21 information (Big Rivers’ Response to Item 12 and Attachment to
22 Response to Item 13);
23 b. projected fuel requirements for years 2026 and 2027 (Big Rivers’
24 Response to Item 32);

1 c. sales projections for years 2026 and 2027 (Big Rivers’ Response to
2 Item 33);
3 d. planned maintenance outages for its generating units for years
4 2026 and 2027 (Big Rivers’ Response to Item 34);
5 e. detailed data related to Big Rivers’ recent power bids into MISO’s
6 day ahead market; (Attachment to Big Rivers’ Response to Item
7 46); and
8 f. internal projections related to market prices, and potential effects
9 of market conditions on Big Rivers, and Big Rivers’ capacity
10 projections (Direct Testimony of Thomas L. Melton).

11 3. Pursuant to the Commission’s orders in *In the Matter of Electronic*
12 *Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-
13 00085 (“*Case No. 2020-00085*”), one (1) copy of the Confidential Information
14 highlighted with transparent ink, printed on yellow paper, or otherwise marked
15 “CONFIDENTIAL,” is being filed with this motion by electronic mail to
16 PSCED@ky.gov . A copy of those pages, with the Confidential Information
17 redacted, is being electronically filed with Big Rivers’ Responses and Direct
18 Testimony accompanying this motion. 807 KAR 5:001 Section 13(2)(a)(3)(b).

19 4. A copy of this motion with the Confidential Information redacted has
20 been served on all parties to this proceeding through the use of electronic filing.
21 807 KAR 5:001 Section 13(b).

1 5. Item No. 46 of the Commission Staff’s First Request for Information,
2 requests detailed data in “an Excel spreadsheet format with all formulas,
3 columns, and rows unprotected and fully accessible, for the period under review
4 and when the units are available to run.” (Emphasis added) Because the
5 attachment to Big Rivers’ response to Item No. 46 is provided the format
6 requested by Staff, the spreadsheet necessarily contains Confidential Information
7 that is inextricably intertwined with non-confidential information. Big Rivers
8 cannot redact only the Confidential Information without rendering the other cells
9 within the spreadsheets unusable. Accordingly, the Excel spreadsheet attached to
10 Big Rivers’ response to Item No. 46 is being filed by electronic mail to
11 PSCED@ky.gov.¹

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

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¹ See *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2020 through October 31, 2022*, Order at 5–7 (Jan. 29, 2024) (granting confidential treatment to the Excel spreadsheet attached to Big Rivers’ response to Item No. 26 of the Commission Staff’s Second Request for Information). Request PSC 2-26 in that proceeding is identical to Item No. 46 of the Commission Staff’s First Request for Information in this case, and the Excel spreadsheet filed here is substantially similar to the spreadsheet previously granted confidential treatment by the Commission.

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

3 7. Certain Confidential Information contained in Big Rivers’ response
4 to Item 12 and attachment to the response to Item 13 is entitled to confidential
5 protection based upon KRS 278.160(3), which shields from disclosure “a provision
6 of a special contract that contains rates and conditions of service not filed in a
7 utility’s general schedule if such provision would otherwise be entitled to be
8 excluded from the application of KRS 61.870 to 61.884 under the provisions of
9 KRS 61.878(1)(c)(1).”

10 8. The special contracts at issue include Big Rivers’ power sales
11 agreements with the Kentucky Municipal Energy Agency (“*KyMEA*”), Owensboro
12 Municipal Utilities (“*OMU*”), and municipalities in Nebraska; Big Rivers’
13 Members’ retail sales agreements with certain Large Industrial Customers, and
14 to short term contracts with other non-member entities. The Commission has
15 already determined that the confidential terms of these contracts are entitled to
16 protection under KRS 61.878(1)(c)(1).² Accordingly, the confidential terms of
17 these special contracts should again be granted confidential treatment.

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² See *In the Matter of: An Electronic Examination of the Application of Big Rivers Electric Corporation from November 1, 2021 Through April 30, 2022*, Case No. 2022-000268, Order (Mar. 1, 2023); See also, *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers’ Electric Corporation from November 1, 2020 through October 31, 2022*, Order (Jan. 29, 2024).

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

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

6 10. The attachment to Big Rivers’ response to Item 13 reveals sales to,
7 and inferably the power usage of, individual large industrial retail customers on
8 the Big Rivers system and to non-members under special contract. Because the
9 individual customers and non-members identified in the attachment to Big
10 Rivers’ response to Item 13 are not parties to this proceeding, publicly revealing
11 such information would constitute a clearly unwarranted invasion of those
12 customers’ privacy. Moreover, the Commission has previously granted
13 confidential treatment to similar retail customer usage information under the
14 purview of KRS 61.878(1)(a).³

15 11. As such, Big Rivers requests confidential treatment for the identity
16 of these customers in order to protect their private usage information.

³ See, e.g., *In the Matter of: Sanctuary Church v. Louisville Gas and Electric Company*, Case No. 2018-00181, Order (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*, Case No. 2012-00221, Order (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*, 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. The Confidential Information is entitled to confidential treatment
4 under KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to an
5 agency or required by an agency to be disclosed to it, generally recognized as
6 confidential or proprietary, which if openly disclosed would permit an unfair
7 commercial advantage to competitors of the entity that disclosed the records.” In
8 support for this ground of granting confidential treatment, Subsection A *infra*
9 describes how Big Rivers operates in competitive environments; Subsection
10 Section B *infra* explains that the Confidential Information is generally recognized
11 as confidential or proprietary; and Subsection C *infra* demonstrates that public
12 disclosure of the Confidential Information would permit an unfair commercial
13 advantage to Big Rivers’ competitors. As such, the Commission should grant
14 confidential treatment to the Confidential Information.

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

16 13. Big Rivers must successfully compete in the wholesale power
17 market in order to sell excess energy to meet its members’ needs, including
18 competition in: term bilateral energy markets, day-ahead and real-time energy
19 and ancillary services markets, the annual capacity market, and forward bilateral
20 long-term wholesale agreements with utilities and industrial customers. Big
21 Rivers’ ability to successfully compete in these wholesale power markets is
22 dependent upon a combination of a) obtaining the maximum price for power it
23 sells and the best contract terms, and b) keeping its cost of production as low as

1 possible. Fundamentally, if Big Rivers' cost of producing a kilowatt hour of
2 energy increases, its ability to sell that kilowatt hour in competition with other
3 utilities is adversely affected.

4 14. Big Rivers also competes for reasonably-priced credit in the credit
5 markets, and its ability to compete for such credit is directly impacted by the
6 financial results it obtains and the business risks it assumes. Any event that
7 adversely affects Big Rivers' financial results or increases its business risks may
8 adversely affect the price it pays for credit. A competitor, including potential
9 counterparties to future contracts, armed with Big Rivers' proprietary and
10 confidential information will be able to increase Big Rivers' costs or decrease Big
11 Rivers' revenues, which could in turn affect Big Rivers' apparent
12 creditworthiness. Impediments to Big Rivers' obtaining the best contract terms
13 could likewise affect its apparent creditworthiness. A utility the size of Big Rivers
14 that operates generation and transmission facilities will always have periodic
15 cash and borrowing requirements for both anticipated and unanticipated needs.
16 Big Rivers expects to be in the credit markets on a regular basis in the future, and
17 it is imperative that Big Rivers improves and maintains its credit profile.

18 15. Finally, the ability to negotiate the most advantageous power
19 purchase agreements and then offer competitive prices to Big Rivers' Members,
20 companies interested in expanding in Kentucky, and potential new Members is
21 fundamental to Big Rivers' continued success.

1 16. Accordingly, Big Rivers faces competition in the wholesale power and
2 capital markets, and the Confidential Information should be afforded confidential
3 treatment to prevent the imposition of an unfair competitive advantage to Big
4 Rivers' competitors.

5 ***B. The Confidential Information is Generally Recognized as***
6 ***Confidential or Proprietary***

7 17. The Confidential Information for which Big Rivers seeks confidential
8 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or
9 proprietary under Kentucky law. As noted above, the Confidential Information
10 includes special contract terms; proprietary usage information belonging to third
11 parties; Big Rivers' internal fuel requirement and sales projections; detailed data
12 related to Big Rivers' recent power bids submitted into MISO's day ahead market;
13 planned maintenance outage schedules for each of Big Rivers' generating units;
14 internal projections regarding market prices and potential effects of market
15 conditions on the Company; and Big Rivers capacity projections. The Confidential
16 Information is precisely the sort of information meant to be protected by KRS
17 61.878(1)(c)(1).

18 18. Kentucky courts have held that information about a company's
19 detailed inner workings is generally recognized as confidential or proprietary. In
20 *Hoy v. Kentucky Industrial Revitalization Authority*, the Kentucky Supreme Court
21 held that financial information submitted by General Electric Company with its
22 application for investment tax credits was not subject to disclosure simply
23 because it had been filed with a state agency. 907 S.W.2d 766, 4 (Ky. 1995). The

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

11 19. In this proceeding, the potential public disclosure of the Confidential
12 Information could give Big Rivers’ suppliers, buyers, and competitors insight into
13 Big Rivers’ “inner workings.” For instance, the Confidential Information could be
14 used to determine when Big Rivers will have power available to sell into the
15 market or when Big Rivers needs power; the amount of power Big Rivers has to
16 sell or will need; as well as the prices at which it is willing to sell power.
17 Knowledge of this information would give other power producers and marketers
18 in wholesale markets an unfair competitive advantage, because they could
19 potentially underbid Big Rivers in the wholesale transactions, reducing Big
20 Rivers’ revenue and impairing Big Rivers’ ability to compete in the wholesale
21 power and credit markets.

1 20. Likewise, the public disclosure of detailed data related to Big Rivers’
2 bids submitted into MISO’s day ahead market, which are cost-based offers, would
3 also provide Big Rivers’ competitors significant insight into Big Rivers’ cost of
4 producing power, giving the competitors an unfair competitive advantage.

5 21. Finally, the public disclosure of the confidential terms of special
6 contracts and third party proprietary information would also cause competitive
7 harm to Big Rivers. In P.S.C. Case No. 2003-00054, the Commission implicitly
8 accepted ULH&P’s argument that the bidding contractors would not want their
9 bid information publicly disclosed, and that disclosure would reduce the
10 contractor pool available to ULH&P, which would drive up ULH&P’s costs,
11 hurting its ability to compete with other gas suppliers. *In the Matter of*
12 *Application of the Union Light, Heat and Power Company for Confidential*
13 *Treatment*, P.S.C. Case No. 2003-00054, Order (Aug. 4, 2003). Similarly, in *Hoy v.*
14 *Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found
15 that without protection for confidential information provided to a public agency,
16 “companies would be reluctant to apply for investment tax credits for fear the
17 confidentiality of financial information would be compromised.” *Hoy v. Kentucky*
18 *Indus. Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

19 22. In Big Rivers’ case, Big Rivers is currently in negotiations with
20 potential counterparties and expects to engage in negotiations with other
21 counterparties for purchase power agreements and sales in the future. If
22 confidential treatment of the confidential terms of the special contract in Big

1 Rivers' responses or attachments to its response to Item 12 and attachment to its
2 response to Item 13 is denied, potential counterparties would know that the
3 confidential terms of their contracts could be publicly disclosed, which could
4 reveal information to their competitors about their competitiveness. Because
5 many companies would be reluctant to have such information disclosed, public
6 disclosure of the Confidential Information would likely reduce the pool of
7 counterparties willing to negotiate with Big Rivers, reducing Big Rivers' ability to
8 sell power and impairing its ability to compete in the wholesale power and credit
9 markets.

10 23. Notably, in its recent reviews of Big Rivers' FAC, the Commission
11 has applied similar reasoning when granting confidential treatment to the same
12 type of information as the Confidential Information contained in Big Rivers'
13 responses to Item 12 and Item 13.⁴

14 24. Likewise, the Commission has granted confidential treatment to
15 information similar to the Confidential Information, including projections related
16 to market conditions, contained in the Direct Testimony of Thomas L. Melton..⁵

⁴ See *In the Matter of: Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2017 through April 30, 2018*, Case No. 2018-00221, Order (Oct. 16, 2018 (granting confidential treatment for Big Rivers' projected ongoing-off system sales)); see also *In the Matter of: Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2018 through April 30, 2019*, Case No. 2019-00231, Order (April 2, 2020); *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers' Electric Corporation from November 1, 2020 through October 31, 2022*, Order (Jan. 29, 2024).

⁵ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity Authorizing the Conversion of the Green Station Units to Natural Gas-Fired Units and an Order Approving the Establishment of a Regulatory Asset*, Case No. 2021-000079, Order (Mar. 5, 2021); *In the Matter of: An Electronic Examination of the*

1 25. In sum, the Confidential Information is not publicly available, is
2 disclosed within Big Rivers only to those employees and professionals who have a
3 legitimate business need to know and act upon the information, and is not
4 disseminated to others absent such a need. Accordingly, the Confidential
5 Information reveals the “inner workings” of Big Rivers and is generally
6 recognized as confidential and proprietary under Kentucky law.

7 ***C. Disclosure of the Confidential Information Would Permit an***
8 ***Unfair Commercial Advantage to Big Rivers’ Competitors***

9 26. Disclosure of the Confidential Information could unreasonably and
10 unnecessarily harm Big Rivers by giving interested third parties an unfair
11 commercial advantage through insight into Big Rivers’ business operations and
12 financial strategies. As discussed above, Big Rivers faces actual competition in the
13 wholesale power market and in the credit market. It is likely that Big Rivers would
14 suffer competitive injury if that Confidential Information were publicly disclosed,
15 and the information should therefore be subject to confidential treatment.

16 27. Given the nature of the Confidential Information, its disclosure
17 would provide other market participants, suppliers, buyers, and competitors
18 insight into the timing of Big Rivers’ capacity needs, its cost of producing power,
19 and the prices at which it is willing to buy fuel or buy and sell power. In turn, the
20 Confidential Information could be used to manipulate the bidding process, leading
21 to higher costs and/or lower revenues for Big Rivers, thereby impairing its ability

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

5 28. Thus, public disclosure of the information that Big Rivers seeks to
6 protect pursuant to KRS 61.878(1)(c)(1) would permit an unfair competitive
7 advantage to Big Rivers' competitors.

8

9 **IV. Time Period**

10 29. Big Rivers requests that the Confidential Information in the Big
11 Rivers' responses and attachments to its responses to Item 12 and Item 13, which
12 consists of confidential terms of special contracts and protected private customer
13 usage information remain confidential indefinitely because for as long as Big
14 Rivers is in the wholesale power market, the public disclosure of the Confidential
15 Information can be used to Big Rivers' competitive disadvantage for the above
16 stated reasons. 807 KAR 5:001 Section 13(2)(a)(2).

17 30. Big Rivers requests that all other Confidential Information remain
18 confidential for a period of five (5) years from the date of this motion, which will
19 allow sufficient time for the information to become sufficiently outdated to no
20 longer pose a competitive risk to Big Rivers. 807 KAR 5:001 Section 13(2)(a)(2).

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