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**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

*In the Matter of:*

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 )

**MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR  
CONFIDENTIAL TREATMENT**

1. Big Rivers Electric Corporation (“*Big Rivers*” or the “*Company*”) hereby moves the Public Service Commission of Kentucky ( the “*Commission*”), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential treatment to certain information contained in Big Rivers’ responses to the Commission Staff’s Second Request for Information dated February 6, 2026, filed contemporaneously with this motion (the “*Confidential Information*”).
2. The Confidential Information consists of detailed data and information related to Big Rivers’ capacity projections, as set forth in Big Rivers’ response to Item 5 and the accompanying attachment.
3. Pursuant to the Commission’s orders in *In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085 (“*Case No. 2020-00085*”), one (1) copy of the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this motion by electronic mail to [PSCED@ky.gov](mailto:PSCED@ky.gov) . A copy of those pages, with the Confidential Information

1 redacted, is being electronically filed with Big Rivers' Responses and Direct  
2 Testimony accompanying this motion. 807 KAR 5:001 Section 13(2)(a)(3)(b).

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

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

10 I. **The Confidential Information is entitled to confidential**  
11 **treatment based upon KRS 61.878(1)(c)(1)**

12 6. The Confidential Information is entitled to confidential treatment  
13 under KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to an  
14 agency or required by an agency to be disclosed to it, generally recognized as  
15 confidential or proprietary, which if openly disclosed would permit an unfair  
16 commercial advantage to competitors of the entity that disclosed the records.” In  
17 support for this ground of granting confidential treatment, Subsection A *infra*  
18 describes how Big Rivers operates in competitive environments; Subsection  
19 Section B *infra* explains that the Confidential Information is generally recognized  
20 as confidential or proprietary; and Subsection C *infra* demonstrates that public  
21 disclosure of the Confidential Information would permit an unfair commercial  
22 advantage to Big Rivers' competitors. As such, the Commission should grant  
23 confidential treatment to the Confidential Information.

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

2           7.       Big Rivers must successfully compete in the wholesale power  
3 market in order to sell excess energy to meet its members' needs, including  
4 competition in: term bilateral energy markets, day-ahead and real-time energy  
5 and ancillary services markets, the annual capacity market, and forward bilateral  
6 long-term wholesale agreements with utilities and industrial customers. Big  
7 Rivers' ability to successfully compete in these wholesale power markets is  
8 dependent upon a combination of a) obtaining the maximum price for power it  
9 sells and the best contract terms, and b) keeping its cost of production as low as  
10 possible. Fundamentally, if Big Rivers' cost of producing a kilowatt hour of  
11 energy increases, its ability to sell that kilowatt hour in competition with other  
12 utilities is adversely affected.

13         8.       Big Rivers also competes for reasonably-priced credit in the credit  
14 markets, and its ability to compete for such credit is directly impacted by the  
15 financial results it obtains and the business risks it assumes. Any event that  
16 adversely affects Big Rivers' financial results or increases its business risks may  
17 adversely affect the price it pays for credit. A competitor, including potential  
18 counterparties to future contracts, armed with Big Rivers' proprietary and  
19 confidential information will be able to increase Big Rivers' costs or decrease Big  
20 Rivers' revenues, which could in turn affect Big Rivers' apparent  
21 creditworthiness. Impediments to Big Rivers' obtaining the best contract terms  
22 could likewise affect its apparent creditworthiness. A utility the size of Big Rivers

1 that operates generation and transmission facilities will always have periodic  
2 cash and borrowing requirements for both anticipated and unanticipated needs.  
3 Big Rivers expects to be in the credit markets on a regular basis in the future, and  
4 it is imperative that Big Rivers improves and maintains its credit profile.

5       9.       Finally, the ability to negotiate the most advantageous power  
6 purchase agreements and then offer competitive prices to Big Rivers' Members,  
7 companies interested in expanding in Kentucky, and potential new Members is  
8 fundamental to Big Rivers' continued success.

9       10.       Accordingly, Big Rivers faces competition in the wholesale power and  
10 capital markets, and the Confidential Information should be afforded confidential  
11 treatment to prevent the imposition of an unfair competitive advantage to Big  
12 Rivers' competitors.

13       ***B.       The Confidential Information is Generally Recognized as***  
14       ***Confidential or Proprietary***

15       11.       The Confidential Information for which Big Rivers seeks confidential  
16 treatment under KRS 61.878(1)(c)(1) is the type of information that is generally  
17 recognized as confidential or proprietary under Kentucky law. As noted above,  
18 the Confidential Information includes Big Rivers' capacity projections and related  
19 data. This is precisely the sort of commercially sensitive information that KRS  
20 61.878(1)(c)(1) is intended to protect.

21       12.       Kentucky courts have held that information about a company's  
22 detailed inner workings is generally recognized as confidential or proprietary. In  
23 *Hoy v. Kentucky Industrial Revitalization Authority*, the Kentucky Supreme Court

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

14       13. In this proceeding, the public disclosure of the Confidential  
15 Information could provide Big Rivers’ suppliers, buyers, and competitors with  
16 undue insight into Big Rivers’ “inner workings.” For example, the Confidential  
17 Information would reveal when Big Rivers will have excess power available to sell  
18 into the market, when it will require power, and the quantities involved,  
19 potentially inferring the prices at which Big Rivers would be willing to transact.  
20 Market participants could use this information to manipulate transactions—for  
21 instance, by timing their offers to take advantage of Big Rivers’ known surplus or  
22 deficit positions, resulting in depressed prices for Big Rivers’ sales or inflated

1 prices for Big Rivers’ purchases. Such strategic behavior would materially  
2 disadvantage Big Rivers and impair its ability to compete effectively in the  
3 wholesale power and credit markets.

4 14. Notably the Commission has granted confidential treatment to  
5 information similar to the Confidential Information.<sup>1</sup>

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

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

14 16. Disclosure of the Confidential Information could unreasonably and  
15 unnecessarily harm Big Rivers by giving interested third parties an unfair  
16 commercial advantage through insight into Big Rivers’ business operations and  
17 financial strategies. As discussed above, Big Rivers faces actual competition in the  
18 wholesale power market and in the credit market. It is likely that Big Rivers would

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<sup>1</sup> *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 Application of the Fuel Adjustment Clause of Big Rivers’ Electric Corporation from November 1, 2020 through October 31, 2022*, Order (Jan. 29, 2024).

1 suffer competitive injury if the Confidential Information were publicly disclosed,  
2 and the information should therefore be subject to confidential treatment.

3       17.     Given the nature of the Confidential Information, its disclosure  
4 would provide other market participants, suppliers, buyers, and competitors  
5 insight into the timing of Big Rivers' capacity needs and the prices at which it is  
6 willing to buy and sell power. In turn, the Confidential Information could be used  
7 to manipulate the bidding process, leading to higher costs and/or lower revenues  
8 for Big Rivers, thereby impairing its ability to compete in the wholesale power  
9 markets. Furthermore, any competitive pressure that adversely affects Big  
10 Rivers' revenue and/or margins could make Big Rivers appear less creditworthy  
11 and impair its ability to compete in the credit market.

12       18.     Thus, public disclosure of the information that Big Rivers seeks to  
13 protect pursuant to KRS 61.878(1)(c)(1) would permit an unfair competitive  
14 advantage to Big Rivers' competitors.

15       **II.     Time Period**

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

20       **III.    Conclusion**

21       20.     Based on the foregoing, the Confidential Information is entitled to  
22 confidential treatment, pursuant to 807 KAR 5:001 Section 13 and KRS 61.878. If

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

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 February, 2026.

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Respectfully submitted,

*/s/ Senthia Santana*

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