

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
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4 In the Matter of:  
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ELECTRONIC APPLICATION OF )  
BIG RIVERS ELECTRIC CORPORATION ) Case No.  
FOR ANNUAL REVIEW OF ITS MRSM ) 2026-000021  
CHARGE FOR CALENDAR YEAR 2025 )

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10 **MOTION OF BIG RIVERS ELECTRIC CORPORATION**  
11 **FOR CONFIDENTIAL PROTECTION**  
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13 1. Big Rivers Electric Corporation (“*Big Rivers*”) hereby moves the  
14 Kentucky Public Service Commission (the “*Commission*”), pursuant to 807 KAR  
15 5:001 Section 13 and KRS 61.878, to grant confidential protection to certain  
16 information Big Rivers is providing in its Application submitted  
17 contemporaneously herewith in the above-styled matter. The information for  
18 which Big Rivers seeks confidential treatment is hereinafter referred to as the  
19 “*Confidential Information.*”

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

23 3. Pursuant to the Commission’s Orders in *In the Matter of: Electronic*  
24 *Emergency Docket Related to the Novel Coronavirus Covid-19*, Case No. 2020-  
25 00085, one (1) copy of the Confidential Information highlighted with transparent

1 ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being  
2 filed with this motion by electronic mail to [PSCED@ky.gov](mailto:PSCED@ky.gov). A copy of those pages,  
3 with the Confidential Information redacted, is being electronically filed into the  
4 public docket with the data request responses accompanying this motion.

5 4. A copy of this motion with the Confidential Information redacted has  
6 been served on all parties to this proceeding through the use of electronic filing.  
7 807 KAR 5:001, Section 13(b).

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

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

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

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

20 8. The Confidential Information in the Direct Testimony of Talina R.  
21 Mathews reveals the power usage and billing information of an individual large  
22 industrial retail customer on the Big Rivers system, Nucor Corporation (“Nucor”).

1 Because this customer is not a party to this proceeding, publicly revealing such  
2 information would constitute a clearly unwarranted invasion of personal privacy.  
3 Moreover, the Commission granted confidential treatment to Nucor’s power usage  
4 data and billing information for an indefinite period in three prior cases reviewing  
5 Big Rivers’ MRSM credit, Case No. 2021-00061;<sup>1</sup> Case No. 2022-00028;<sup>2</sup> and Case  
6 No. 2023-00038.<sup>3</sup> As such, Big Rivers requests confidential treatment for the  
7 Confidential Information in order to protect Nucor’s private usage information.

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

10 9. Under the Kentucky Open Records Act, the Commission is entitled  
11 to withhold from public disclosure “records confidentially disclosed to an agency  
12 or required by an agency to be disclosed to it, generally recognized as confidential  
13 or proprietary, which if openly disclosed would permit an unfair commercial  
14 advantage to competitors of the entity that disclosed the records.” KRS  
15 61.878(1)(c)(1). Public disclosure of the Confidential Information would permit  
16 such a result as discussed fully below.

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<sup>1</sup> *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)”).

<sup>2</sup> *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).

<sup>3</sup> *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 the best contract terms, and b) keeping its cost of production as low as possible.  
2 Fundamentally, if Big Rivers' cost of producing a kilowatt hour or its business  
3 risk increases, its ability to sell that kilowatt hour in competition with other  
4 utilities is adversely affected.

5 12. Big Rivers also competes for reasonably-priced credit in the credit  
6 markets, and its ability to compete is directly impacted by the financial results it  
7 obtains and the business risks it assumes. Any event that adversely affects Big  
8 Rivers' financial results or increases its business risks may adversely affect the  
9 price it pays for credit. A competitor 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 improve and maintain its credit profile.

18 13. Accordingly, Big Rivers faces competition in the wholesale power and  
19 capital markets, and the Confidential Information should be afforded confidential  
20 treatment to prevent the imposition of an unfair competitive advantage to those  
21 competitors.



1 advantage competing operators. The most obvious disadvantage may be the  
2 ability to ascertain the economic status of the entities without the hurdles  
3 systematically associated with acquisition of such information about privately  
4 owned organizations”).

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

10 18. Based on the foregoing, the Confidential Information is generally  
11 recognized as confidential or proprietary under Kentucky law.

### 12 SECTION III

#### 13 Disclosure of the Confidential Information Would Permit an Unfair 14 Commercial Advantage to Big Rivers' Competitors

15 19. Public disclosure of the Confidential Information will adversely  
16 affect Big Rivers in several respects.

17 20. Disclosure of the Confidential Information would afford Big Rivers'  
18 competitors an unfair commercial advantage. As discussed above, Big Rivers  
19 faces actual competition in the power markets and in the credit markets. It is  
20 likely that Big Rivers would suffer an economic disadvantage in negotiating  
21 future transactions and thus competitive injury if the Confidential Information

1 were publicly disclosed, and the information should therefore be subject to  
2 confidential treatment.

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

16           22. Given the nature of the Confidential Information, its disclosure could  
17 impair Big Rivers’ ability to compete in the wholesale power markets.  
18 Furthermore, any competitive pressure that adversely affects Big Rivers’ revenue  
19 and/or margins could make Big Rivers appear less creditworthy and impair its  
20 ability to compete in the credit markets.

21           23. Accordingly, the public disclosure of the Confidential Information  
22 would provide Big Rivers’ competitors with an unfair commercial advantage.

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**C. Time Period**

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

**D. Conclusion**

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

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

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4           On this the 26<sup>th</sup> day of February 2026.

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Respectfully submitted,

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*/s/ Senthia Santana*

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