

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION  
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4 In the Matter of:  
5

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*”), pursuant to 807 KAR  
14 5:001 Section 13 and KRS 61.878, hereby moves the Kentucky Public Service  
15 Commission (the “*Commission*”) to grant confidential protection to certain  
16 information contained in Big Rivers’ responses and attachments to responses to  
17 the Commission Staff’s First Request for Information, dated March 24, 2026, filed  
18 contemporaneously herewith in this proceeding. The information for which Big  
19 Rivers seeks confidential treatment is hereinafter referred to as the “*Confidential*  
20 *Information.*”

21 2. The Confidential Information consists of (1) customer-specific usage  
22 and billing data; and (2) negotiated terms of special contracts. This information is  
23 contained in Big Rivers’ response to Item No. 4 and its attachments, as well as in  
24 the attachment to Big Rivers’ response to Item No. 1 of the Commission Staff’s  
25 First Request for Information dated March 25, 2025 (“*PSC 1-1*”).

1           3.       The attachment to Big Rivers’ response to PSC 1-1 was previously  
2 filed as an exhibit to the Direct Testimony of Talina R. Mathews as Exhibit  
3 Mathews-2, and is now being provided in Excel spreadsheet format at the  
4 Commission Staff’s request. Similarly, the attachments to Big Rivers’ response to  
5 Item No. 4(a) (“PSC 1-4(a)”), consisting of Exhibit Mathews-2 for fiscal years 2022  
6 through 2024, were previously submitted as part of Big Rivers’ responses to the  
7 Commission Staff’s First Request for Information in Case No. 2023-00038, Case  
8 No. 2024-00031, and Case No. 2025-00021. The Commission granted confidential  
9 treatment of Exhibit Mathews-2 for fiscal year 2022 filed in Case No. 2023-00038  
10 for an indefinite period.<sup>1</sup> Big Rivers’ motions for confidential treatment of  
11 Mathews-2 for fiscal years 2023 and 2024 are currently pending in Case No. 2024-  
12 00031 and Case No. 2025-00021.<sup>2</sup>

13           4.       Pursuant to the Commission’s Orders in *In the Matter of: Electronic*  
14 *Emergency Docket Related to the Novel Coronavirus Covid-19*, Case No. 2020-  
15 00085, one (1) copy of the Confidential Information highlighted with transparent  
16 ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being  
17 filed with this motion by electronic mail to [PSCED@ky.gov](mailto:PSCED@ky.gov). A copy of those pages,

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<sup>1</sup> See, *In the Matter of: Electronic Application of Big Rivers Electric for Annual Review of Its MRSMS Charge for Calendar Year 2022*, Case No. 2023-00038, Order (Sept. 19, 2023).

<sup>2</sup> See, *In the Matter of: Electronic Application of Big Rivers Electric for Annual Review of Its MRSMS Charge for Calendar Year 2023*, Case No. 2024-00031, Motion (May 1, 2024); and *In the Matter of: Electronic Application of Big Rivers Electric for Annual Review of Its MRSMS Charge for Calendar Year 2024*, Case No. 2025-00021, Motion (April 8, 2025).

1 with the Confidential Information redacted, is being electronically filed into the  
2 public docket with the data request responses accompanying this motion.

3 5. 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 6. 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 7. As discussed below, the Confidential Information is entitled to  
11 confidential treatment based upon KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). 807  
12 KAR 5:001 Section 13(2)(a)(1).

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

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

18 9. The Confidential Information reveals the power usage and billing  
19 information of individual large industrial retail customers on the Big Rivers  
20 system. Because these customers are not a party to this proceeding, publicly  
21 revealing such information would constitute a clearly unwarranted invasion of  
22 personal privacy. Moreover, the Commission granted confidential treatment to a

1 large industrial retail customer’s power usage data and billing information for an  
2 indefinite period in multiple prior cases, including reviews of Big Rivers’ MRS  
3 credit, Case No. 2021-00061;<sup>3</sup> Case No. 2022-00028;<sup>4</sup> and Case No. 2023-00038.<sup>5</sup>  
4 As such, Big Rivers requests confidential treatment for the Confidential  
5 Information in order to protect the large industrial retail customers’ private usage  
6 information.

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

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

16 11. The Confidential Information is also entitled to confidential  
17 protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially

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<sup>3</sup> *In the Matter of: Electronic Application of Big Rivers Electronic for Annual Review of its MRS  
M 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>4</sup> *In the Matter of: Electronic Application of Big Rivers Electronic for Annual Review of its MRS  
M Charge for Calendar Year 2021*, P.S.C. Case No. 2022-00028, Order (April 7, 2022).

<sup>5</sup> *In the Matter of: Electronic Application of Big Rivers Electronic for Annual Review of its MRS  
M Charge for Calendar Year 2022*, P.S.C. Case No. 2023-00038, Order (Sept. 19, 2023).

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

## 12 SECTION I

### 13 Big Rivers Faces Actual Competition

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

1 risk increases, its ability to sell that kilowatt hour in competition with other  
2 utilities is adversely affected.

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

16 14. Accordingly, Big Rivers faces competition in the wholesale power and  
17 capital markets, and the Confidential Information should be afforded confidential  
18 treatment to prevent the imposition of an unfair competitive advantage to those  
19 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 18. 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 19. 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 20. Public disclosure of the Confidential Information will adversely  
16 affect Big Rivers in several respects.

17 21. 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           22. If confidential treatment of the large industrial retail customers'  
4 confidential power usage data and billing information is denied, potential  
5 counterparties on future special contracts or future economic development  
6 prospects would know that their confidential information would be publicly  
7 disclosed. Because many companies would be reluctant to have such information  
8 disclosed, public disclosure of the Confidential Information would likely reduce the  
9 pool of counterparties willing to negotiate with Big Rivers, reducing Big Rivers'  
10 ability to sell power and impairing its ability to compete in the wholesale power  
11 and credit markets. In *Hoy v. Kentucky Indus. Revitalization Authority*, the  
12 Kentucky Supreme Court found that without protection for confidential  
13 information provided to a public agency, "companies would be reluctant to apply  
14 for investment tax credits for fear the confidentiality of financial information would  
15 be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766,  
16 769 (Ky. 1995).

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



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 10<sup>th</sup> day of April 2026.

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Respectfully submitted,

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*/s/ Senthia Santana*

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