

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 BY THE	)	
PUBLIC SERVICE COMMISSION OF THE	)	
ENVIRONMENTAL SURCHARGE MECHANISM	)	Case No.
OF BIG RIVERS ELECTRIC CORPORATION	)	2026-00089
FOR THE SIX-MONTH BILLING PERIOD	)	
ENDING JANUARY 31, 2026	)	

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9 **MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR**
10 **CONFIDENTIAL TREATMENT**
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12 1. Big Rivers Electric Corporation (“*Big Rivers*”) respectfully moves the
13 Public Service Commission of Kentucky (the “*Commission*”), pursuant to 807 KAR
14 5:001 Section 13, KRS 61.878, and KRS 278.160(3), for an order granting
15 confidential treatment to certain information contained in Big Rivers’ response to
16 the Commission Fourth Request for Information to Big Rivers, Item 1 (“*PSC 4-1*”) dated August 26, 2026 in this matter.

18 2. The information for which Big Rivers seeks confidential treatment
19 (the “*Confidential Information*”) consists of certain negotiated terms and
20 provisions of the special contract, among Big Rivers, Meade County RECC, and
21 Nucor (“*Nucor*”), dated September 9, 2019 (the “*Nucor Contract*”). The
22 Commission approved the Nucor Contract by Order entered on August 17, 2020,

1 in Case No. 2019-00365.¹ In that same proceeding, the Commission also granted
2 confidential treatment to these negotiated terms and provisions.²

3 3. Pursuant to the Commission’s Emergency Orders in *In the Matter of:*
4 *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, Case No.
5 2020-00085, one (1) copy of the Confidential Information highlighted in yellow or
6 otherwise marked “CONFIDENTIAL,” is being filed with this motion via
7 electronic mail sent to PSCED@ky.gov. One (1) copy of the documents with the
8 Confidential Information redacted is also being electronically filed with this
9 request. 807 KAR 5:001 Section 13(2)(a)(3).

10 4. A copy of this motion with the Confidential Information redacted has
11 been served on all parties to this proceeding through the use of electronic filing.
12 807 KAR 5:001 Section 13(2)(b).

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

17 6. As discussed below, the Confidential Information is entitled to
18 confidential treatment and is being submitted confidentially under the purview of

¹ See *In the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff*, Case No. 2019-00365, Order (Ky. PSC Aug. 17, 2020).

² Id. Order (Ky. PSC Mar. 12, 2020).

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

2 Section 13. 807 KAR 5:001 Section 13(2)(a)(1).

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

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

11 8. The Commission has previously found that these negotiated Nucor
12 Contract terms constitute confidential, proprietary information entitled to
13 protection under KRS 61.878(1)(c)(1). In Case No. 2019-00365, the Commission
14 granted confidential protection for the Nucor contract terms, including negotiated
15 pricing provisions and structural components of the agreement, on an indefinite
16 basis, finding that disclosure would permit an unfair commercial advantage to
17 competitors and that the information was not publicly available.³ In the
18 subsequent FAC proceedings, Case Nos. 2024-00141 and 2024-00149, (the “2024
19 Cases”) the Commission again granted confidential treatment for certain
20 Nucor-contract related information in Big Rivers’ responses, including specific

³ See *In the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff.*, P.S.C. Case No. 2019-00365, Orders (Jan. 22, 2020, Mar. 12, 2020, Sept. 30, 2020).

1 provisions of the Nucor Contracts and related data.⁴ While the 2024 Cases
2 referenced certain operational aspects of the Nucor-contract, such as the end date
3 of the contract's current phase, they did not disclose the underlying negotiated
4 pricing mechanisms or commercial terms for which Big Rivers seeks continued
5 confidential treatment in this motion.

6 9. The Confidential Information falls squarely in the category of
7 information generally recognized as confidential and proprietary, is not otherwise
8 publicly available, and, if openly disclosed, would permit an unfair commercial
9 advantage to Big Rivers' competitors. The Commission has previously made
10 findings consistent with this conclusion in Case No. 2019-00365. Accordingly, the
11 information continues to warrant confidential treatment pursuant to KRS
12 278.160(3) and KRS 61.878(1)(c)(1).

13 **II. The Confidential Information is also entitled to**
14 **confidential treatment under KRS 61.878(1)(c)(1).**

15 10. Under the Kentucky Open Records Act, the Commission is entitled
16 to withhold from public disclosure "records confidentially disclosed to an agency
17 or required by an agency to be disclosed to it, generally recognized as confidential
18 or proprietary, which if openly disclosed would permit an unfair commercial
19 advantage to competitors of the entity that disclosed the records." *See* KRS

⁴ *See In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2022 through April 30, 2023*, P.S.C. Case No. 2024-00141, Order (Dec. 4, 2024); *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 2023 Through October 31, 2023*, P.S.C. Case No. 2024-00149, Order (Mar. 11, 2025).

1 61.878(1)(c)(1). Public disclosure of the Confidential Information would permit
2 such a result as discussed fully below.

3 11. Therefore, the Confidential Information is entitled to confidential
4 protection based upon KRS 61.878(1)(c)(1). In support for this ground of granting
5 confidential protection, Subsection A *infra* describes how Big Rivers operates in
6 competitive environments; Subsection B *infra* explains that the Confidential
7 Information is generally recognized as confidential or proprietary; and Subsection
8 C *infra* demonstrates that public disclosure of the Confidential Information would
9 permit an unfair commercial advantage to Big Rivers' competitors.

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

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

1 13. Big Rivers also competes for reasonably-priced credit in the credit
2 markets, and its ability to compete is directly impacted by its financial results.
3 Lower revenues and any events that adversely affect Big Rivers' margins will
4 adversely affect its financial results and potentially impact the price it pays for
5 credit. A competitor armed with Big Rivers' proprietary and confidential
6 information will be able to increase Big Rivers' costs or decrease Big Rivers'
7 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A
8 utility the size of Big Rivers that operates generation and transmission facilities
9 will always have periodic cash and borrowing requirements for both anticipated
10 and unanticipated needs. Big Rivers expects to be in the credit markets on a
11 regular basis in the future, and it is imperative that Big Rivers improve and
12 maintain its credit profile.

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

17 ***B. The Confidential Information is Generally Recognized as***
18 ***Confidential or Proprietary***

19 15. The Confidential Information for which Big Rivers seeks confidential
20 treatment under KRS 61.878 is generally recognized as confidential or
21 proprietary under Kentucky law.

1 16. As noted above, the Confidential Information protected under KRS
2 61.878(1)(c)(1) consists of confidential terms of special contracts. The
3 Confidential Information is precisely the sort of information meant to be protected
4 by KRS 61.878(1)(c)(1).

5 17. In Big Rivers' case, Big Rivers is currently in negotiations with
6 potential counterparties and expects to continue to engage in negotiations with
7 counterparties for power sales agreements. If confidential treatment of the
8 Confidential Information is denied, potential counterparties would know that the
9 confidential terms of their contracts or agreements could be publicly disclosed,
10 which could reveal information to their competitors about their competitiveness.
11 Because many companies would be reluctant to have such information disclosed,
12 public disclosure of the Confidential Information would likely reduce the pool of
13 counterparties willing to negotiate with Big Rivers, reducing Big Rivers' ability to
14 sell power and impairing its ability to compete in the wholesale power and credit
15 markets.

16 18. As discussed above, the Commission has granted confidential
17 treatment to Nucor Contract terms prior proceedings.⁵ Accordingly, the

⁵ *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); *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2022 through April 30, 2023*, P.S.C. Case No. 2024-00141, Order (Dec. 4, 2024); *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 2023 through October 31, 2023*, P.S.C. Case No. 2024-00149, Order (Mar. 11, 2025); see also Electronic Applications of Big Rivers Electric Corporation in its MRSM proceedings, including P.S.C. Case No. 2023-00038, Order (Sept. 19, 2023); P.S.C. Case No. 2020-00064, Order (June 30, 2020); P.S.C. Case No. 2021-00061, Order

1 Commission should again grant confidential treatment to the Confidential
2 Information in this proceeding.

3 19. 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 is generally recognized as
8 confidential and proprietary.

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

11 20. 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 the Confidential
15 Information is generally recognized as confidential or proprietary under Kentucky
16 law. Given the nature of the Confidential Information, its disclosure would allow
17 market participants to infer pricing and structural terms of the Nucor Contract,
18 thereby enabling benchmarking and undermining Big Rivers' competitive position
19 in wholesale power and credit markets. Public disclosure of the Confidential
20 Information could also adversely affect Big Rivers' future contracting

(Apr. 8, 2021); P.S.C. Case No. 2022-00028, Order (Apr. 7, 2022); P.S.C. Case Nos. 2024-00031 and 2025-00021, (motions for confidential treatment pending).

1 opportunities by deterring potential counterparties from participating in
2 negotiations.

3 21. Accordingly, public disclosure of the information that Big Rivers
4 seeks to protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers'
5 competitors with an unfair commercial advantage.

6 **IV. Time Period**

7 22. Big Rivers requests that the Confidential Information remain
8 confidential indefinitely for the reasons stated above and consistent with prior
9 Commission Orders in Case No. 2019-00365. 807 KAR 5:001 Section 13(2)(a)(2).

10 **V. Conclusion**

11 23. Based on the foregoing, the Confidential Information is entitled to
12 confidential treatment, pursuant to KRS 278.160(3); 807 KAR 5:001 Section 13;
13 and KRS 61.878. If the Commission disagrees that Big Rivers' Confidential
14 Information is entitled to confidential treatment, due process requires the
15 Commission to hold an evidentiary hearing. *See Utility Regulatory Comm'n v.*
16 *Kentucky 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 11th day of September, 2026.

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Respectfully submitted,

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/s/ *Senthia Santana*

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