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

*In the Matter of:*

<p><b>AN ELECTRONIC EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE ENVIRONMENTAL SURCHARGE MECHANISM OF BIG RIVERS ELECTRIC CORPORATION FOR THE SIX-MONTH BILLING PERIOD ENDING JANUARY 31, 2026</b></p>	<p>) ) ) ) )</p>	<p><b>Case No. 2026-00089</b></p>
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**MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR  
CONFIDENTIAL TREATMENT**

1. Big Rivers Electric Corporation (“*Big Rivers*”) respectfully moves the Public Service Commission of Kentucky (the “*Commission*”), pursuant to 807 KAR 5:001 Section 13, KRS 61.878, and KRS 278.160(3), for an order granting confidential treatment to certain information contained in Big Rivers’ response, and the attachment thereto, to Item No. 5 of the Commission Staff’s First Request for Information set forth in Appendix B to the Commission’s May 11, 2026 Order in this matter.
  
2. The information for which Big Rivers seeks confidential treatment (the “*Confidential Information*”) consists of: (a) customer-specific usage data and billing information of Nucor Corporation (“*Nucor*”); and (b) provisions of the special contract, among Big Rivers, Meade County RECC, and Nucor, dated September 9, 2019 (the “*Nucor Contract*”) which was approved by the Commission on August 17, 2020 in Case No. 2019-00365.

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

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

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

15          6.       As discussed below, the Confidential Information is entitled to  
16 confidential treatment and is being submitted confidentially under the purview of  
17 KRS 278.160(3), KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). 807 KAR 5:001  
18 Section 13(2)(a)(1).

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

21          7.       Certain Confidential Information contained in Big Rivers’ response  
22 to Item 5, including its attachment, is entitled to confidential protection based

1 upon KRS 278.160(3), which shields from disclosure “a provision of a special  
2 contract that contains rates and conditions of service not filed in a utility’s  
3 general schedule if such provision would otherwise be entitled to be excluded from  
4 the application of KRS 61.870 to 61.884 under the provisions of KRS  
5 61.878(1)(c)(1).”

6       8.       The Commission has consistently granted confidential treatment to  
7 the same categories of information at issue here—including Nucor customer-  
8 specific usage data, billing information, and special contract terms—in prior  
9 proceedings.<sup>1</sup> Accordingly, the Commission should again grant confidential  
10 treatment to the Confidential Information in this proceeding.

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

13       9.       Certain Confidential Information contained in the attachment to Big  
14 Rivers’ response to Item No. 5 (“PSC 1-5 Attachment”) is entitled to confidential  
15 treatment based upon KRS 61.878(1)(a), which explicitly protects “[p]ublic records

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<sup>1</sup> *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 (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 containing information of a personal nature where the public disclosure thereof  
2 would constitute a clearly unwarranted invasion of personal privacy.”

3 10. The PSC 1-5 Attachment reveals Nucor’s historical monthly demand  
4 and base energy data. Because Nucor is not a party to this proceeding, publicly  
5 revealing such information would constitute a clearly unwarranted invasion of its  
6 privacy. Moreover, the Commission has previously granted confidential  
7 treatment to similar retail information under the purview of KRS 61.878(1)(a).<sup>2</sup>

8 11. As such, Big Rivers requests confidential treatment of the PSC 1-5  
9 Attachment, in order to protect this private information.

10 **III. Certain Confidential Information is also entitled to**  
11 **confidential treatment based upon KRS 61.878(1)(c)(1)**

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

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<sup>2</sup> *See, e.g., In the Matter of: Sanctuary Church v. Louisville Gas and Electric Company*, Order, P.S.C. Case No. 2018-00181 (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*, Order, P.S.C. Case No. 2012-00221 (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*, P.S.C. Case No. 2020-00009, Order (April 13, 2020).

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

3 13. 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 14. 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           15.     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           16.     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           17.     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           18.    As noted above, the Confidential Information protected under KRS  
2 61.878(1)(c)(1) consists of or reveals information about confidential terms of  
3 special contracts, private usage data and billing information of an individual  
4 retail customer, Nucor. The Confidential Information is precisely the sort of  
5 information meant to be protected by KRS 61.878(1)(c)(1).

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

17           20.    In sum, the Confidential Information is not publicly available, is not  
18 disseminated within Big Rivers except to those employees and professionals with  
19 a legitimate business need to know and act upon the information, and is not  
20 disseminated to others without a legitimate need to know and act upon the  
21 information. As such, the Confidential Information is generally recognized as  
22 confidential and proprietary.

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

3           21.     Disclosure of the Confidential Information that is protected under  
4 KRS 61.878(1)(c)(1) would permit an unfair commercial advantage to Big Rivers'  
5 competitors. As discussed above, Big Rivers faces actual competition in the  
6 wholesale power market and in the credit markets, and it is likely that Big Rivers  
7 would suffer competitive injury if the Confidential Information were publicly  
8 disclosed.

9           22.     Given the nature of the Confidential Information, its disclosure  
10 would provide other market participants, suppliers, buyers, and competitors with  
11 insight into the timing and structure of the contractual terms governing the  
12 provision of service to Nucor, including when certain provisions of the Nucor  
13 Contract take effect or change. Disclosure of this information would allow third  
14 parties to infer the evolution of pricing and service conditions under the contract  
15 and use that knowledge to benchmark, anticipate, or undercut Big Rivers'  
16 positions in future negotiations. In turn, such information could be used to  
17 manipulate the competitive bidding and negotiation process, leading to higher  
18 costs and/or lower revenues for Big Rivers, thereby impairing its ability to  
19 compete in the wholesale power markets. Furthermore, any competitive pressure  
20 that adversely affects Big Rivers' revenue and/or margins could make Big Rivers  
21 appear less creditworthy and impair its ability to compete in the credit markets.

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

4           **IV.   Time Period**

5           24.     Big Rivers requests that the Confidential Information remain  
6 confidential indefinitely for the reasons stated above. 807 KAR 5:001 Section  
7 13(2)(a)(2).

8           **V.   Conclusion**

9           25.     Based on the foregoing, the Confidential Information is entitled to  
10 confidential treatment, pursuant to KRS 278.160(3); 807 KAR 5:001 Section 13;  
11 and KRS 61.878. If the Commission disagrees that Big Rivers' Confidential  
12 Information is entitled to confidential treatment, due process requires the  
13 Commission to hold an evidentiary hearing. *See Utility Regulatory Comm'n v.*  
14 *Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

1           On this the 8<sup>th</sup> day of June, 2026.

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Respectfully submitted,

*/s/ Senthia Santana*

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