

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
3
4

5 *In the Matter of:*
6

AN ELECTRONIC EXAMINATION OF THE	)	
APPLICATION OF THE FUEL ADJUSTMENT	)	
CLAUSE OF BIG RIVERS ELECTRIC	)	
CORPORATION FROM NOVEMBER 1, 2024	)	Case No.
THROUGH APRIL 30, 2025; MAY 1, 2025 THROUGH	)	2026-00276
OCTOBER 31, 2025; AND NOVEMBER 1, 2025	)	
THROUGH APRIL 30, 2026	)	

7
8
9 **MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR**
10 **CONFIDENTIAL TREATMENT**
11

12 1. Big Rivers Electric Corporation (“*Big Rivers*”) hereby moves the

13 Public Service Commission of Kentucky (the “*Commission*”), pursuant to 807
14 KAR 5:001 Section 13, KRS 61.878 and KRS 278.160(3) to grant confidential
15 treatment to certain information contained in Big Rivers’ responses or attachment
16 to responses to Items 13, 14, and 23 of the Commission Staff’s First Request for
17 Information in Appendix B of the Commission’s September 29, 2026, Order.

18 2. The information for which Big Rivers seeks confidential treatment is
19 hereinafter referred to as the “*Confidential Information.*” The Confidential
20 Information consists of:

- 21 (a) Information concerning purchases and sales to non-members
22 contained in Big Rivers’ response to Item 13;

- 1 (b) individual retail customer usage and billing data and information
2 concerning sales to non-members contained in the attachments to
3 Big Rivers' response to Item 14; and
4 (c) terms of a special contract, contained in Big Rivers' response to
5 Item 23.

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

13 4. A copy of this motion with the Confidential Information redacted has
14 been served on all parties to this proceeding through the use of electronic filing.
15 807 KAR 5:001 Section 13(2)(b).

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

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

1 KRS 278.160(3), KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). 807 KAR 5:001
2 Section 13(2)(a)(1).

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

5 7. Certain Confidential Information contained in Big Rivers’ response
6 to Item 23 is entitled to confidential protection based upon KRS 278.160(3),
7 which shields from disclosure “a provision of a special contract that contains rates
8 and conditions of service not filed in a utility’s general schedule if such provision
9 would otherwise be entitled to be excluded from the application of KRS 61.870 to
10 61.884 under the provisions of KRS 61.878(1)(c)(1).”

11 8. The special-contract terms at issue relate to a contract between
12 Meade County Rural Electric Cooperative Corporation (“Meade”) and Nucor
13 Corporation (“Nucor”), to which Big Rivers provided its concurrence through a
14 letter agreement. The Commission has already found that the confidential terms
15 of the contracts are entitled to confidential treatment under KRS 61.878(1)(c)(1),¹
16 and the confidential terms of these special contracts should again be granted
17 confidential treatment.

¹ See *In the Matter of: Filing of Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and the Kentucky Municipal Energy Agency*, P.S.C. Case No. 2016-00306, Order (Jan. 2, 2019) (granting confidential treatment to the confidential terms of the KyMEA contract for an indefinite time period); *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).

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

3 9. Certain Confidential Information contained in Big Rivers’ response
4 to Item 13 and the attachments to its response to Item 14 is entitled to
5 confidential treatment based upon KRS 61.878(1)(a), which explicitly protects
6 “[p]ublic records containing information of a personal nature where the public
7 disclosure thereof would constitute a clearly unwarranted invasion of personal
8 privacy.”

9 10. Big Rivers’ response to Item 13 reveals purchases and sales to non-
10 members. The attachments to Big Rivers’ response to Item 14 reveal customer-
11 specific usage and billing information concerning individual retail customers on
12 the Big Rivers system. Because these customers are not parties to this
13 proceeding, public disclosure of their customer-specific information would
14 constitute a clearly unwarranted invasion of their privacy. Moreover, the
15 Commission has previously granted confidential treatment to similar retail
16 information under the purview of KRS 61.878(1)(a).²

17 11. As such, Big Rivers requests confidential treatment for the identity
18 of these entities in order to protect their private information.

² 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: Electronic Application of Big Rivers Electric Corporation for Annual Review of Its MRSM Charge for Calendar Year 2025*, Case No. 2026-00021, Order (Sept. 15, 2026).

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

3 12. Under the Kentucky Open Records Act, the Commission is entitled
4 to withhold from public disclosure “records confidentially disclosed to an agency
5 or required by an agency to be disclosed to it, generally recognized as confidential
6 or proprietary, which if openly disclosed would permit an unfair commercial
7 advantage to competitors of the entity that disclosed the records.” *See* KRS
8 61.878(1)(c)(1). Public disclosure of the Confidential Information would permit
9 such a result as discussed fully below.

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

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

18 14. Big Rivers must successfully compete in the wholesale power market
19 in order to sell excess energy to meet its members’ needs, including competition
20 in: term bilateral energy markets, day-ahead and real-time energy and ancillary
21 services markets, the annual capacity market, and forward bilateral long-term
22 wholesale agreements with utilities and industrial customers. Big Rivers’ ability

1 to successfully compete in these wholesale power markets is dependent upon an
2 effective combination of a) obtaining the maximum price for the power it sells and
3 the best contract terms, and b) keeping its cost of production as low as possible.
4 Fundamentally, if Big Rivers' cost of producing a kilowatt hour or its business
5 risk increases, its ability to sell that kilowatt hour in competition with other
6 utilities is adversely affected.

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

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

1 ***B. The Confidential Information is Generally Recognized as***
2 ***Confidential or Proprietary***

3 17. The Confidential Information for which Big Rivers seeks confidential
4 treatment under KRS 61.878 is generally recognized as confidential or
5 proprietary under Kentucky law.

6 18. As noted above, the Confidential Information protected under KRS
7 61.878(1)(c)(1) consists of or reveals information about individual customer usage
8 and billing data, purchases and sales to non-members, and terms of a special
9 contract. Confidential Information is precisely the sort of information meant to be
10 protected by KRS 61.878(1)(c)(1).

11 19. The commercial customers and non-members identified in Big
12 Rivers' responses to Items 13 and 14 participate in a competitive environment
13 and disclosure of usage and billing data puts them at a disadvantage, which in
14 turn could discourage companies from locating or expanding in Big Rivers'
15 territory, and causing competitive harm to Big Rivers.

16 20. Public disclosure of the Confidential Information would cause
17 competitive harm to Big Rivers, giving Big Rivers' suppliers, buyers and
18 competitors insight into prices and other terms at which it is willing to sell and
19 buy power. Kentucky courts have held that information about a company's
20 detailed inner workings is generally recognized as confidential or proprietary. In
21 *Hoy v. Kentucky Industrial Revitalization Authority*, the Kentucky Supreme Court
22 held that financial information submitted by General Electric Company with its
23 application for investment tax credits was not subject to disclosure simply

1 because it had been filed with a state agency. 907 S.W.2d 766, 4 (Ky. 1995). The
2 Court applied the plain meaning rule to KRS 61.878(1)(c)(1), and reasoned: “[i]t
3 does not take a degree in finance to recognize that such information concerning
4 the inner workings of a corporation is ‘generally recognized as confidential or
5 proprietary.’” *Id.* at 768. Similarly, in *Marina Management Services, Inc. v.*
6 *Commonwealth Cabinet for Tourism*, the Court held: “[t]hese are records of
7 privately owned marina operators, disclosure of which would unfairly advantage
8 competing operators. The most obvious disadvantage may be the ability to
9 ascertain the economic status of the entities without the hurdles systematically
10 associated with acquisition of such information about privately owned
11 organizations.” 906 S.W.2d 318, 319 (Ky. 1995).

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

1 22. In sum, the Confidential Information is not publicly available, is not
2 disseminated within Big Rivers except to those employees and professionals with
3 a legitimate business need to know and act upon the information, and is not
4 disseminated to others without a legitimate need to know and act upon the
5 information. As such, the Confidential Information details the “inner workings”
6 of Big Rivers’ and is generally recognized as confidential and proprietary.

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

9 23. Disclosure of the Confidential Information would permit an unfair
10 commercial advantage to Big Rivers Electric Corporation’s competitors and
11 counterparties. As discussed above, Big Rivers Electric Corporation faces actual
12 competition in the wholesale power and credit markets, and disclosure of
13 commercially sensitive information concerning its load, market transactions, and
14 contractual arrangements would provide market participants with non-public
15 information they could use to Big Rivers Electric Corporation’s disadvantage.

16 24. The Confidential Information includes individual customer usage
17 and billing data. Disclosure of this information could provide market participants
18 with insight into the magnitude and characteristics of load served by Big Rivers
19 Electric Corporation and the revenues associated with that load. Competitors and
20 potential counterparties could use this information to assess Big Rivers Electric
21 Corporation’s commercial position and anticipated power needs and to formulate
22 bids, offers, or negotiating strategies accordingly, thereby diminishing Big Rivers

1 Electric Corporation's bargaining position and potentially resulting in higher
2 costs or lower revenues.

3 25. The Confidential Information also includes Big Rivers Electric
4 Corporation's purchases and sales to non-members and negotiated special-
5 contract terms. Disclosure of purchases and sales to non-members could provide
6 market participants with insight into Big Rivers Electric Corporation's supply
7 and demand position and purchasing and sales activity, which could be used to
8 inform pricing, bidding, and negotiating strategies in future transactions.
9 Similarly, disclosure of negotiated special-contract terms could provide other
10 customers and counterparties with benchmarks for future negotiations,
11 diminishing Big Rivers Electric Corporation's negotiating leverage and potentially
12 resulting in less favorable contractual terms.

13 26. Accordingly, disclosure of the Confidential Information could provide
14 competitors and counterparties with an informational advantage in their dealings
15 with Big Rivers Electric Corporation, potentially resulting in higher costs, lower
16 revenues, or less favorable contractual terms. Those effects would impair Big
17 Rivers Electric Corporation's ability to compete effectively in the wholesale power
18 market and could adversely affect its financial position and ability to obtain
19 reasonably priced credit. Public disclosure would therefore permit the type of
20 unfair commercial advantage addressed by KRS 61.878(1)(c)(1).

1 **IV. Time Period**

2 27. Big Rivers requests that the Confidential Information remain
3 confidential indefinitely, consistent with Commission precedent, 807 KAR 5:001
4 Section 13(2)(a)(2).

5 **V. Conclusion**

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

12

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

1 On the 21st day of October 2026

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

Respectfully submitted,

/s/ Senthia Santana

Senthia Santana
Tyson Kamuf
Big Rivers Electric Corporation
710 W. Second Street
Owensboro, KY 42301
Phone: (270) 827-2561
Facsimile: (270) 844-6417
senthia.santana@bigrivers.com
tyson.kamuf@bigrivers.com
Counsel for Big Rivers Electric
Corporation