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March 31, 2021

VIA ELECTRONIC MAIL

Ms. Linda C. Bridwell
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

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MAR 31 2021

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PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts – Case No. 2016-00117*

Dear Ms. Bridwell:

Pursuant to the Public Service Commission's ("*Commission*") Emergency Orders¹, Big Rivers Electric Corporation ("*Big Rivers*") is filing the following materials via electronic mail to PSCED@ky.gov:

1. this cover letter, which constitutes the Read1st file required by 807 KAR 5:001 Section 8(5);
2. Big Rivers' motion to convert to electronic filing;
3. the public version of Big Rivers' 2020 Annual Report pursuant to Ordering Paragraphs Nos. 2 and 4 of the Commission's June 30, 2016 Order in the abovementioned matter, with certain confidential information redacted;
4. Big Rivers' motion for confidential treatment of the confidential information in the 2020 Annual Report (the "*Confidential Information*"); and,
5. a file containing the pages from the report that contain Confidential Information with the Confidential Information highlighted.

Pursuant to the Commission's Orders in Case No. 2020-00085, Big Rivers will file the requisite paper copies of this electronic filing within thirty (30) days after the

¹ *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, Case No. 2020-00085, Orders (March 16, 2020 and March 24, 2020).

Ms. Linda C. Bridwell
Executive Director
March 31, 2021
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current state of emergency is lifted, as required by the Commission's Orders in Case No. 2020-00085.

The undersigned certifies that, except for the redaction of the Confidential Information, the public version of Big Rivers' 2020 Annual Report in the electronic filing is a true representation of the materials in paper medium, and that, except for the redaction of the Confidential Information, the electronic version of the paper filing is a true and accurate copy of each paper filed in paper medium.

Please feel free to contact me should you have any questions regarding this filing.

Sincerely yours,

/s/ Tyson Kamuf

Tyson Kamuf
Corporate Attorney
tyson.kamuf@bigrivers.com

cc: Service List (via electronic mail only)



BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS
CASE NO. 2016-00117

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1 **WHEREFORE**, Big Rivers respectively requests the Commission to
2 convert the instant matter to an electronic filing.

3

4 On this the 31st day of March, 2021.

5

6

Respectfully submitted,

7

/s/ Tyson Kamuf

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Tyson Kamuf

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21

Corporation

1 No. 2020-00085 (March 16, 2020 and March 24, 2020), Big Rivers is filing with
2 this Motion, via electronic mail sent to PSCED@ky.gov, (a) a public version of the
3 report, with the Confidential Information redacted; and (b) the pages from the
4 report that contain Confidential Information, with the Confidential Information
5 highlighted.

6 4. Pursuant to 807 KAR 5:001 Section 13(2)(b) and the Emergency
7 Orders, one (1) copy of this Motion and one (1) copy of the redacted pages
8 containing Confidential Information have been served on all parties to this
9 proceeding by electronic mail.

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

14 6. Pursuant to 807 KAR 5:001 Section 13(2)(a)(1), as discussed *infra*,
15 the Confidential Information is entitled to confidential protection and is being
16 submitted confidentially under the purview of KRS 61.878(1)(a) and KRS
17 61.878(1)(c)(1).

18 **I. The Confidential Information is entitled to**
19 **confidential protection based upon KRS 61.878(1)(a)**

20 7. KRS 61.878(1)(a) explicitly grants confidential protection to “[p]ublic
21 records containing information of a personal nature where the public disclosure
22 thereof would constitute a clearly unwarranted invasion of personal privacy.”
23 Here, Aleris underwent a multi-phase expansion at its facility located in

1 Lewisport, Hancock County, Kentucky and the Confidential Information reveals
2 proprietary, business-sensitive, and otherwise private information, including its
3 load under the expansion project and the cost it pays for power.

4 8. As a point of reference and consistency, Big Rivers sought, and was
5 granted, confidential treatment for similar information in its March 24, 2016 and
6 April 21, 2016 Petitions for Confidential Treatment filed in this case; and in
7 conjunction with its prior annual reports related to this matter, Big Rivers
8 sought, and was granted, confidential treatment for analogous information in
9 2017, 2018, and 2019. The motion for confidential treatment for the 2020 report
10 is still pending.

11 9. As explained in more detail in Section II *infra*, Aleris, a retail
12 customer on the Big Rivers system, considers this information highly confidential
13 and believes that public disclosure of this information will cause it substantial
14 competitive harm. Because public disclosure of the Confidential Information
15 would constitute an unwarranted invasion of this customer's privacy, this
16 Confidential Information should be granted confidential treatment. *See* Ky. Op.
17 Atty. Gen. 96-ORD-176 (August 20, 1996) (holding Kroger Company's utility bills
18 exempt from disclosure under KRS 61.878(1)(a)); *In the Matter of: Application of*
19 *Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, P.S.C.
20 Case No. 2012-00221 (July 25, 2013) (holding customer names, account numbers,
21 and usage information exempt from disclosure under KRS 61.878(1)(a)).

22

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

3 10. The Confidential Information is also entitled to confidential
4 protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially
5 disclosed to an agency or required by an agency to be disclosed to it, generally
6 recognized as confidential or proprietary, which if openly disclosed would permit
7 an unfair commercial advantage to competitors of the entity that disclosed the
8 records.” *See* 807 KAR 5:001 Section 13(2)(a)(1). In support for this ground of
9 granting confidential protection, Subsection A *infra* describes how Big Rivers
10 operates in competitive environments; Subsection B *infra* explains that the
11 Confidential Information is generally recognized as confidential or proprietary;
12 and Subsection C *infra* demonstrates that public disclosure of the Confidential
13 Information would permit an unfair commercial advantage to Big Rivers’
14 competitors. As such, the Commission should grant confidential treatment to the
15 Confidential Information.

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

18 11. Big Rivers must successfully compete in the wholesale power
19 market in order to sell excess energy to meet its members’ needs, including
20 competition in: term bilateral energy markets, day-ahead and real-time energy
21 and ancillary services markets, the annual capacity market, and forward
22 bilateral long-term wholesale agreements with utilities and industrial customers.
23 Big Rivers’ ability to successfully compete in these wholesale power markets is
24 dependent upon an effective combination of a) obtaining the maximum price for

1 the power it sells and the best contract terms, and b) keeping its cost of
2 production as low as possible. Fundamentally, if Big Rivers' cost of producing a
3 kilowatt hour or its business risk increases, its ability to sell that kilowatt hour
4 in competition with other 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
14 Rivers that operates generation and transmission facilities will always have
15 periodic cash and borrowing requirements for both anticipated and unanticipated
16 needs. Big Rivers expects to be in the credit markets on a regular basis in the
17 future, and it is imperative that Big Rivers improve and maintain its credit
18 profile.

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

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

3
4 14. The Confidential Information for which Big Rivers seeks
5 confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as
6 confidential or proprietary under Kentucky law.

7 15. Aleris is a privately-held, global leader in aluminum rolled products,
8 and has owned and operated an aluminum rolling mill in Lewisport, Kentucky
9 since 1964. The Lewisport mill operates in a highly competitive, cost sensitive,
10 and increasingly global market to provide rolled aluminum sheet to key
11 industries in Kentucky and the United States including Distribution,
12 Transportation, Automotive, Building and Construction and Specialty Products.
13 Although Aleris maintains a positive outlook, its domestic competition in the flat-
14 rolled aluminum industry has increased significantly due to the introduction of
15 foreign competitors that benefit from lower cost structures and rich government
16 incentives on power, tax adjustments, and other subsidies.

17 16. Aleris' expansion that was the subject of this case was the largest
18 investment in the company's history and involved the construction of twin
19 Continuous Annealing Line with Pre-Treatment ("*CALP*") lines, which allow
20 Aleris to be one of the first companies in the United States with a state of the art
21 auto body sheet production process.

22 17. It is clear that the Confidential Information relates to the inner
23 workings of Aleris' organization. The Confidential Information is not publicly
24 available, nor is such information known or disseminated within the Aleris or Big

1 Rivers organizations except to those employees and professionals with a
2 legitimate business need to know and act upon the information. Under Kentucky
3 law, it is well recognized that the information about a company’s detailed inner
4 workings, such as the Confidential Information, is generally recognized as
5 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization*
6 *Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“[i]t does not take a degree in finance
7 to recognize that such information concerning the inner workings of a corporation
8 is ‘generally recognized as confidential or proprietary’”).

9 18. Moreover, KRS 278.160(3) specifically recognizes that terms of a
10 special contract are not required to be publicly disclosed if such terms are
11 entitled to protection under KRS 61.878(1)(c)(1), and the Commission has
12 previously granted confidential treatment to similar information. *See, e.g. In the*
13 *Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant*
14 *to KRS 278.180 and KAR 5:001 §13*, P.S.C. Case No. 2014-00134, Order (Sept. 10,
15 2014) (granting confidential treatment to the confidential terms of the Nebraska
16 contracts for an indefinite time period); *In the Matter of: Filing of Agreement for*
17 *the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric*
18 *Corporation and the Kentucky Municipal Energy Agency*, P.S.C. Case No. 2016-
19 00306, Order (Jan. 2, 2019) (granting confidential treatment to the confidential
20 terms of the KyMEA contract for an indefinite time period); *In the Matter of:*
21 *Joint Application of Big Rivers Electric Corporation and Meade County Rural*
22 *Electric Cooperative Cooperation for Approval of Contracts for Electric Service*

1 *with Nucor Corporation*, P.S.C. Case No. 2019-00365, Orders (Jan. 22, 2020)
2 (granting confidential treatment to the confidential terms of the Nucor contract
3 for an indefinite time period).

4 19. The Commission has recognized the confidentiality of customer
5 information in previous cases. *See, eg., In the Matter of: Riverside Generating*
6 *Company, LLC v. Kentucky Power Company*, Order, P.S.C. Case No. 2017-00472
7 (May 16, 2019) (granting confidential treatment to customer specific information
8 relating to purchases and transmission of electricity for an indefinite period); *In*
9 *the Matter of: Sanctuary of Church v. Louisville Gas and Electric Company*,
10 Order, P.S.C. Case No. 2018-00181 (January 8, 2019) (granting confidential
11 treatment for an indefinite period to detailed account and usage information of a
12 non-party); and *See, In the Matter of: Electronic Application of Big Rivers Electric*
13 *Corporation for Approval to Modify Its MRSM Tariff, Cease Deferring*
14 *Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets,*
15 *and Other Appropriate Relief*, Order, P.S.C. Case No. 2020-00064 (June 30,
16 2020) (granting Confidential Treatment of information related to individual
17 customer names and usage in Big Rivers' responses to the Commission Staff's
18 First Requests for Information, Attorney General's First Set of Data Requests
19 and KIUC's First Set of Data Requests)

20 20. Based on the foregoing, the Confidential Information is generally
21 recognized as confidential or proprietary under Kentucky law.

1 ***C. Disclosure of the Confidential Information Would Permit***
2 ***an Unfair Commercial Advantage to Big Rivers’***
3 ***Competitors***
4

5 21. Disclosure of the Confidential Information would permit an unfair
6 commercial advantage to Big Rivers’ competitors. As discussed *supra*, Big Rivers
7 faces actual competition in the wholesale power and credit markets, so it
8 reasonably follows that Big Rivers would suffer competitive injury if the
9 Confidential Information were publicly disclosed.

10 22. Applying analogous considerations, in P.S.C. Case No. 2003-00054,
11 the Commission granted confidential protection to bids submitted to Union Light,
12 Heat & Power (“*ULH&P*”). *ULH&P*’s argued, and the Commission implicitly
13 accepted, that the bidding contractors would not want their bid information
14 publicly disclosed, and that disclosure would reduce the contractor pool available
15 to *ULH&P*, which would drive up *ULH&P*’s costs, hurting its ability to compete
16 with other gas suppliers. *In the Matter of: Application of the Union Light, Heat*
17 *and Power Company for Confidential Treatment*, Order, P.S.C. Case No. 2003-
18 00054 (August 4, 2003). Similarly, in *Hoy v. Kentucky Indus. Revitalization*
19 *Authority*, the Kentucky Supreme Court found that without protection for
20 confidential information provided to a public agency, “companies would be
21 reluctant to apply for investment tax credits for fear the confidentiality of
22 financial information would be compromised. *Hoy v. Kentucky Indus.*
23 *Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

1 23. Here, Aleris considers the Confidential Information highly
2 confidential. If Big Rivers is unable to obtain confidential treatment for the
3 information that its counterparty (Aleris in this case) considers confidential, then
4 potential future counterparties dealing with Big Rivers would inevitably worry
5 that their competitive information would also be at risk of public disclosure.
6 Because many companies would be reluctant to have such information disclosed,
7 public disclosure of the Confidential Information would likely reduce the pool of
8 counterparties willing to deal with Big Rivers, reducing Big Rivers' ability to sell
9 power and impairing its ability to compete in the wholesale power and credit
10 markets.

11 24. In the same way, Aleris had choices about where it would make its
12 CALP project investment. If Aleris knew that it would be risking the disclosure
13 of extremely confidential project information that could endanger the ultimate
14 competitiveness of the company, Aleris may have made a different decision about
15 the location of the expansion project.

16 25. Accordingly, the public disclosure of the Confidential Information
17 would provide competitors of Big Rivers with an unfair commercial advantage.

BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS
CASE NO. 2016-00117

Response to Ordering Paragraph No. 2 of
Commission's Order dated June 30, 2016

March 31, 2021

1 **Ordering Paragraph No. 2)** *By March 31 of each year, Big Rivers shall file*
2 *an annual report with the Commission detailing, for the prior calendar*
3 *year, revenues received from Aleris and the marginal costs associated with*
4 *servicing Aleris throughout the term of the proposed contracts.*

5

6 **Response)** Please see the attached report. The **CONFIDENTIAL** version thereof
7 is filed with a Motion for Confidential Treatment.

8

9

Big Rivers Electric Corporation
Annual Report Pursuant to Ordering Paragraph No. 2,
Commission Order dated June 30, 2016,
in Case No. 2016-00117

For the period ending December 31, 2020

Revenues under EDR Contract
Associated Variable Costs (Marginal Costs)
Gross Margin for EDR Contract



BIG RIVERS ELECTRIC CORPORATION
JOINT APPLICATION OF KENERGY CORP. AND
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF CONTRACTS
CASE NO. 2016-00117

Response to Ordering Paragraph No. 4 of Commission's Order
dated June 30, 2016

March 31, 2021

1 **Ordering Paragraph No. 4) *So long as it is providing wholesale service to***
2 ***one of its distribution cooperatives with an active EDR contract, Big Rivers***
3 ***shall file by March 31 of each year an annual report with the Commission***
4 ***providing, for the prior calendar year, the information shown in the***
5 ***Appendix to this Order.***

6

7 **Response) Please see the attached report. The **CONFIDENTIAL** version thereof**
8 **is filed with a Motion for Confidential Treatment.**

9

10

**Economic Development Rate Contract Report
Pursuant to Ordering Paragraph No. 4,
Commission Order dated June 30, 2016 in
Case No. 2016-00117**

Utility: Big Rivers Electric Corporation Year: 2020

	Current Reporting Period		Cumulative	
1) Number of EDR Contracts				
Total:	1		1	
Existing Customers:	1		1	
New Customers:				
2) Number of Jobs Created				
Total:	-		61	
Existing Customers:	-		61	
New Customers:				
3) Amount of Capital Investment				
Total:				
Existing Customers:				
New Customers:	N/A		N/A	
4)				
(A) DEMAND:				
Total:		kW		kW
Existing Customers:		Kw		Kw
New Customers:	N/A	kW	N/A	kW
(B) ENERGY/CONSUMPTION:				
Total:		kWh		kWh
Existing Customers:		kWh		kWh
New Customers:	N/A	kWh	N/A	kWh