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March 31, 2022

VIA ELECTRONIC MAIL

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

RECEIVED

MAR 31 2022

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:

On June 30, 2016, the Public Service Commission (“*Commission*”) approved an Amended and Restated Retail Electric Service Agreement between Kenergy Corporation (“*Kenergy*”) and Aleris Rolled Products Manufacturing, Inc. (“*Aleris*”), which contained an economic development rate (“*EDR*”).¹ The Commission’s June 30, 2016 Order required Big Rivers by March 31 of each year, to file an annual report detailing certain information regarding service to Aleris, for the prior calendar year.²

On October, 14, 2021, the Commission approved an Agreement for Electric Service between Jackson Purchase Energy Corporation (“*Jackson Purchase*”) and Blockware Mining, LLC (“*Blockware*”), which also included an economic development rate.³ The Commission’s October 14, 2021 Order required Big Rivers

¹ See *In the Matter of: Electronic Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts*, P.S.C. Case No. 2016-00117, Order (June 30, 2016) (approving also a corresponding wholesale agreement between Big Rivers and Kenergy).

² See *Id.* at Ordering Paragraphs Nos. 2 and 4 (June 30, 2016).

³ See *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Jackson Purchase Energy Corporation for Approval and Confidential Treatment of a Special Contract and Cost Analysis Information and a Request for Deviation from the Commission’s September 24, 1990 Order in Administrative Case No. 327*, P.S.C. Case No. 2021-00282, Order (Oct. 14, 2021) (approving also a corresponding wholesale agreement between Big Rivers and Jackson Purchase).

and Jackson Purchase to file an annual report detailing information regarding service to Blockware.⁴ Both orders required Big Rivers to file an annual report with the Commission providing information as shown in Appendix A, to Administrative Order 327, an “Economic Development Rate Contract Report.”⁵ .

As described below, Big Rivers is filing an Economic Rate Contract Report for the 2021 calendar year contemporaneously with this letter, as well as further information related to service to Aleris. However, service to Blockware began recently in 2022. Therefore, the 2021 report only includes information regarding service to Aleris and is being filed pursuant to the Commission June 30, 2016 Order in Case No. 2016-00017.

On March 31, 2021, pursuant to Orders entered in Case No. 2020-00085,⁶ Big Rivers filed a motion to convert the instant matter to an electronic filing for purposes of complying with the annual filing requirement. However, the Commission has not issued a responsive Order.

Pursuant to the Orders entered in Case No. 2020-00085, 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. the public version of Big Rivers’ 2021 Annual Report pursuant to Ordering Paragraphs Nos. 2 and 4 of the Commission’s June 30, 2016 Order in Case No. 2016-00117, with certain confidential information redacted; and
3. Big Rivers’ motion for confidential treatment of the confidential information in the 2021 Annual Report (the “*Confidential Information*”).

⁴ *Id.* Ordering Paragraph No. 5: (“The Joint Applicants shall file an annual report with the Commission detailing the revenues received from Blockware and the marginal costs associated with serving Blockware.”) and Ordering Paragraph No. 7. (“The Joint Applicants shall file an annual report with the Commission providing the information as shown in Appendix A of the Administrative Order 327, which is attached as an Appendix to this Order.”)

⁵ See *An Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities*, Ky. P.S.C. Administrative Case No. 327, Final Order (Sept. 24, 1990).

⁶ *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, P.S.C. Case No. 2020-00085, Orders (March 16, 2020 and March 24, 2020).

Ms. Linda C. Bridwell
March 31, 2022
Page 2 of 3

Big Rivers is filing the confidential version of the reports, with the Confidential Information highlighted via electronic mail to PSCED@ky.gov as a separate email.

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

Sincerely yours,

/s/ Senthia Santana

Senthia Santana
Associate Attorney
senthia.santana@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 3. On December 22, 2021, the Commission granted confidential
2 treatment for similar information redacted from Big Rivers’ April 1, 2020 and
3 March 31, 2021 annual reports filed in this matter, finding “the redacted
4 information, if disclosed, would disadvantage BREC with its competitors, who
5 could use the information in the energy market with knowledge of BREC’s
6 energy purchase history” and “public disclosure of this information could harm
7 BREC in negotiating future special contracts.”¹ Big Rivers seeks confidential
8 treatment of the Confidential Information for fourteen (14) years, which is
9 consistent with the Commission’s August 23, 2019 Order in Case No. 2019-
10 00124,² cited in the Commission’s December 22, 2021 Order in the above-
11 captioned matter.

12 4. Pursuant to the Commission’s Emergency Orders *In the Matter of:*
13 *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, Case
14 No. 2020-00085 (March 16, 2020 and March 24, 2020), Big Rivers is filing with
15 this Motion, via electronic mail sent to PSCED@ky.gov, (a) a public version of the
16 report, with the Confidential Information redacted; and (b) the pages from the

¹ See *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts*, Order, Case. No. 2016-00117 (Ky. PSC Dec. 22, 2021).

² See *In the Matter of: Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Service with MC Mining, LLC*, Order, Case No. 2019-00124 (Ky. PSC Aug. 23, 2019), (granting confidential treatment for 14 years for information involving economic development rates and credits in a special contract.)

1 report that contain Confidential Information, with the Confidential Information
2 highlighted.³

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

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

11 7. Pursuant to 807 KAR 5:001 Section 13(2)(a)(1), as discussed *infra*,
12 the Confidential Information is entitled to confidential treatment and is being
13 submitted confidentially under the purview of KRS 61.878(1)(c)(1).

14 **I. The Confidential Information is entitled to**
15 **confidential treatment based upon KRS 61.878(1)(c)(1)**

16 8. The Confidential Information is entitled to confidential treatment
17 based upon KRS 61.878(1)(c)(1), which protects “records confidentially disclosed
18 to an agency or required by an agency to be disclosed to it, generally recognized
19 as confidential or proprietary, which if openly disclosed would permit an unfair

³ On March 31, 2021, pursuant to Orders entered in Ky. PSC Case No. 2020-00085, Big Rivers filed a motion to convert the instant matter to an electronic filing for purposes of complying with the annual filing requirement. However, the Commission has not issued a responsive Order.

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

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

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

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

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

19

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

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

6 13. As discussed below the Confidential Information relates to the inner
7 workings of Big Rivers’ business. The Confidential Information is not publicly
8 available, nor is such information known or disseminated within the Aleris or Big
9 Rivers organizations except to those employees and professionals with a
10 legitimate business need to know and act upon the information. Under Kentucky
11 law, it is well recognized that the information about a company’s detailed inner
12 workings, such as the Confidential Information, is generally recognized as
13 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization*
14 *Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“[i]t does not take a degree in finance
15 to recognize that such information concerning the inner workings of a corporation
16 is ‘generally recognized as confidential or proprietary’”).

17 14. Moreover, KRS 278.160(3) specifically recognizes that terms of a
18 special contract are not required to be publicly disclosed if such terms are
19 entitled to treatment under KRS 61.878(1)(c)(1), and the Commission has
20 previously granted confidential treatment to similar information.⁴ Additionally,

⁴ See *In the Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to KRS 278.180 and KAR 5:001 §13*, Order, Case No. 2014-00134, (Ky. PSC Sept. 10,

1 the Commission has recognized the confidentiality of customer information in
2 previous cases.⁵

3 15. Based on the foregoing, the Confidential Information is generally
4 recognized as confidential or proprietary under Kentucky law.

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

8 16. Public disclosure of the Confidential Information could adversely
9 affect Big Rivers in several respects.

10 17. Disclosure of the Confidential Information would afford Big Rivers’
11 competitors an unfair commercial advantage. As discussed *supra*, Big Rivers
12 faces actual competition in the wholesale power and credit markets. It is likely

2014) (granting confidential treatment to the confidential terms of the Nebraska contracts for an indefinite time period); *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*, Order, Case No. 2016-00306, (Ky. PSC 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 Cooperation for Approval of Contracts for Electric Service with Nucor Corporation*, Orders, Case No. 2019-00365, (Ky. PSC Jan. 22, 2020) (granting confidential treatment to the confidential terms of the Nucor contract for an indefinite time period).

⁵ See *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRSM Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief*, Order, Case No. 2020-00064, (Ky. PSC June 30, 2020) (granting Confidential Treatment of information related to individual customer names and usage in Big Rivers’ responses to the Commission Staff’s First Requests for Information, Attorney General’s First Set of Data Requests and KIUC’s First Set of Data Requests); *In the Matter of: Sanctuary of Church v. Louisville Gas and Electric Company*, Order, Case No. 2018-00181 (Ky. PSC January 8, 2019) (granting confidential treatment for an indefinite period to detailed account and usage information of a non-party); and *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Annual Review of its MRSM Charge for Calendar Year 2021*, Order, Case No. 2022-00028 (Ky. PSC Mar. 16, 2022) (granting confidential treatment for an indefinite period to customer-specific power usage data and billing information).

1 that Big Rivers would suffer competitive injury if the Confidential Information
2 were publicly disclosed, and the information should therefore be subject to
3 confidential treatment.

4 18. Aleris is a privately-held, global leader in aluminum rolled products,
5 and has owned and operated an aluminum rolling mill in Lewisport, Kentucky
6 since 1964. The Lewisport mill operates in a highly competitive, cost sensitive,
7 and increasingly global market to provide rolled aluminum sheet to key
8 industries in Kentucky and the United States including Distribution,
9 Transportation, Automotive, Building and Construction and Specialty Products.

10 19. Aleris' expansion that was the subject of this 2016 case was the
11 largest investment in the company's history and involved the construction of twin
12 Continuous Annealing Line with Pre-Treatment ("CALP") lines, which allow
13 Aleris to be one of the first companies in the United States with a state of the art
14 auto body sheet production process.

15 20. Here, Aleris considers the Confidential Information highly
16 confidential. If Big Rivers is unable to obtain confidential treatment for the
17 information that its counterparty (Aleris in this case) considers confidential, then
18 potential future counterparties dealing with Big Rivers would inevitably worry
19 that their competitive information would also be at risk of public disclosure.
20 Because many companies would be reluctant to have such information disclosed,
21 public disclosure of the Confidential Information would likely reduce the pool of
22 counterparties willing to deal with Big Rivers, reducing Big Rivers' ability to sell

1 power and impairing its ability to compete in the wholesale power and credit
2 markets.

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

17 22. Moreover, disclosure of the Confidential Information could
18 unreasonably and unnecessarily harm Big Rivers by giving interested third
19 parties, potential counterparties and competitors, an unfair commercial
20 advantage through knowledge of Big River’s energy purchase history and insight
21 into Big Rivers’ business operations and financial strategies.

1 23. Accordingly, the public disclosure of the Confidential Information
2 would provide competitors of Big Rivers with an unfair commercial advantage.

3 **II. Time Period**

4 24. Big Rivers requests that the Confidential Information remain
5 confidential for a period of fourteen (14) years from the date of this Motion. *See*
6 807 KAR 5:001 Section 13(2)(a)(2).

7 **III. Conclusion**

8 25. Based on the foregoing, the Confidential Information is entitled to
9 confidential treatment. If the Commission disagrees that Big Rivers is entitled
10 to confidential treatment, due process requires the Commission to hold an
11 evidentiary hearing. *See Utility Regulatory Com'n v. Kentucky Water Service Co.,*
12 *Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

13



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

In the Matter of:

**JOINT APPLICATION OF KENERGY CORP. AND)
BIG RIVERS ELECTRIC CORPORATION) Case No.
FOR APPROVAL OF CONTRACTS) 2016-00117**

**Annual Reports per Ordering Paragraph Nos. 2 and 4 of
Commission's Order dated June 30, 2016**

FILED: March 31, 2022

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC 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, 2022

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 year,*
3 *revenues received from Aleris and the marginal costs associated with serving*
4 *Aleris through the term of the proposed contracts*

5

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

8

9

10

**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, 2021

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



BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC 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, 2022

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 is filed
8 with a Motion for Confidential Treatment.

9

**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: 2021

	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:		[REDACTED]		
Existing Customers:		[REDACTED]		
New Customers:	N/A	N/A		
4)				
(A) DEMAND:				
Total:	[REDACTED]	kW	[REDACTED]	kW
Existing Customers:	[REDACTED]	Kw	[REDACTED]	Kw
New Customers:	N/A	kW	N/A	kW
(B) ENERGY/CONSUMPTION:				
Total:	[REDACTED]	kWh	[REDACTED]	kWh
Existing Customers:	[REDACTED]	kWh	[REDACTED]	kWh
New Customers:	N/A	kWh	N/A	kWh



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

In the Matter of:

**JOINT APPLICATION OF KENERGY CORP. AND)
BIG RIVERS ELECTRIC CORPORATION) Case No.
FOR APPROVAL OF CONTRACTS) 2016-00117**

**Annual Reports per Ordering Paragraph Nos. 2 and 4 of
Commission's Order dated June 30, 2016**

FILED: March 31, 2022

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC 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, 2022

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 year,*
3 *revenues received from Aleris and the marginal costs associated with serving*
4 *Aleris through the term of the proposed contracts*

5

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

8

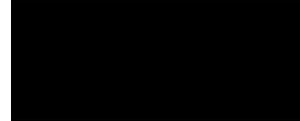
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**Big Rivers Electric Corporation
Annual Report Pursuant to
Ordering Paragraph No. 2, Commission Order
dated June 30, 2016 in Case No. 2016-00117**

For the period ending December 31, 2021

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



BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC 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, 2022

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 is filed
8 with a Motion for Confidential Treatment.

9

**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: 2021

	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:		[REDACTED]		
Existing Customers:		[REDACTED]		
New Customers:	N/A	N/A		
4)				
(A) DEMAND:				
Total:	[REDACTED]	kW	[REDACTED]	kW
Existing Customers:	[REDACTED]	Kw	[REDACTED]	Kw
New Customers:	N/A	kW	N/A	kW
(B) ENERGY/CONSUMPTION:				
Total:	[REDACTED]	kWh	[REDACTED]	kWh
Existing Customers:	[REDACTED]	kWh	[REDACTED]	kWh
New Customers:	N/A	kWh	N/A	kWh