

1 one (1) copy of the Confidential Information highlighted with transparent ink,
2 printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed
3 with this motion by electronic mail to PSCED@ky.gov. A copy of those pages, with
4 the Confidential Information redacted, is being electronically filed into the public
5 docket with the data request responses accompanying this motion.

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

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

13 6. As discussed below, the Confidential Information is entitled to
14 confidential protection based upon KRS 61.878(1)(c)(1), which protects “records
15 confidentially disclosed to an agency or required by an agency to be disclosed to it,
16 generally recognized as confidential or proprietary, which if openly disclosed would
17 permit an unfair commercial advantage to competitors of the entity that disclosed
18 the records.” KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1).

19 7. In support for this ground of granting confidential protection,
20 Subsection I *infra* describes how Big Rivers operates in competitive environments;
21 Subsection II *infra* explains that the Confidential Information is generally
22 recognized as confidential or proprietary; and Subsection III *infra* demonstrates

1 that public disclosure of the Confidential Information would permit an unfair
2 commercial advantage to Big Rivers' competitors. As such, the Commission should
3 grant confidential treatment to the Confidential Information.

4 **I. Big Rivers Faces Actual Competition.**

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

16 9. Big Rivers also competes for reasonably-priced credit in the credit
17 markets, and its ability to compete is directly impacted by the financial results it
18 obtains and the business risks it assumes. Any event that adversely affects Big
19 Rivers' financial results or increases its business risks may adversely affect the
20 price it pays for credit. A competitor armed with Big Rivers' proprietary and
21 confidential information will be able to increase Big Rivers' costs or decrease Big
22 Rivers' revenues, which could in turn affect Big Rivers' apparent creditworthiness.

1 Impediments to Big Rivers' obtaining the best contract terms could likewise affect
2 its apparent creditworthiness. A utility the size of Big Rivers that operates
3 generation and transmission facilities will always have periodic cash and
4 borrowing requirements for both anticipated and unanticipated needs. Big Rivers
5 expects to be in the credit markets on a regular basis in the future, and it is
6 imperative that Big Rivers improve and maintain its credit profile.

7 10. Accordingly, Big Rivers faces competition in the wholesale power and
8 capital markets, and the Confidential Information should be afforded confidential
9 treatment to prevent the imposition of an unfair competitive advantage to those
10 competitors.

11 **II. The Confidential Information is Generally Recognized as**
12 **Confidential or Proprietary.**

13
14 11. The Confidential Information for which Big Rivers seeks confidential
15 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or
16 proprietary under Kentucky law. The Confidential Information consists of (i)
17 information related to projected capacity purchases; (ii) a list of future scheduled
18 outages; and (iii) a list of planned transmission system additions.

19 12. The Confidential Information is not publicly available, is not
20 disseminated within Big Rivers except to those employees and professionals with a
21 legitimate business need to know and act upon the information, and is not
22 disseminated to others without a legitimate need to know and act upon the
23 information.

1 13. Public disclosure of the Confidential Information could cause an
2 economic disadvantage in negotiating future transaction as Big Rivers’ potential
3 counter parties and competitors would have insight into Big Rivers’ future
4 maintenance plans and capital improvements and potentially the timing of Big
5 Rivers’ capacity needs or excess. Information such as this which bears upon a
6 company’s detailed inner workings is generally recognized as confidential or
7 proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d
8 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such
9 information concerning the inner workings of a corporation is ‘generally recognized
10 as confidential or proprietary”); *Marina Management Servs. v. Cabinet for Tourism,*
11 *Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises
12 simply from “the ability to ascertain the economic status of the entities without the
13 hurdles systemically associated with the acquisition of such information about
14 privately owned organizations”).

15 14. Moreover, the Commission previously granted confidential treatment
16 to substantial similar information. *See* Commission order March 9, 2023, in this
17 proceeding, Administrative Case No. 387 (granting confidential treatment to
18 projected capacity purchases, a list of future scheduled outages and planned
19 transmission system additions that Big Rivers filed as part of the supplement to its
20 annual report for a period of five years).

1 15. Accordingly, the information for which Big Rivers seeks confidential
2 treatment is recognized as confidential or proprietary under Kentucky law and is
3 entitled to confidential protection as further discussed below.

4 **III. Disclosure of the Confidential Information Would Permit an Unfair**
5 **Commercial Advantage to Big Rivers' Competitors.**
6

7 16. Disclosure of the Confidential Information would permit an unfair
8 commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers
9 faces actual competition in the wholesale power market and in the credit market.
10 It is likely that Big Rivers would suffer competitive injury if that Confidential
11 Information was publicly disclosed, and the information should therefore be subject
12 to confidential treatment.

13 17. If the Confidential Information is publicly disclosed, Big Rivers'
14 competitors would have insight into when Big Rivers' generation levels will drop
15 due to maintenance and thus know a crucial input into Big Rivers' need for power
16 and energy during those periods. Further the Confidential Information would
17 provide insight into when Big Rivers plans capacity purchases. With that
18 information, potential suppliers to Big Rivers will be able to manipulate the price
19 of power bid to Big Rivers in order to maximize their revenues, and potential market
20 power purchasers could use the information to know when and to the extent Big
21 Rivers is long on power and could use that information to manipulate their bids,
22 leading to lower revenues to Big Rivers.

23 18. Likewise, knowledge of future capital projects would allow contractors
24 and suppliers of materials for those projects to manipulate their bids, leading to

1 higher costs to Big Rivers and placing it at an unfair competitive disadvantage in
2 the wholesale power and credit markets.

3 19. In P.S.C. Case No. 2003-00054, the Commission granted confidential
4 protection to bids submitted to Union Light, Heat & Power (“ULH&P”). ULH&P
5 argued, and the Commission implicitly accepted, that if the bids it received were
6 publicly disclosed, contractors on future work could use the bids as a benchmark,
7 which would likely lead to the submission of higher bids. *In the Matter of:*
8 *Application of the Union Light, Heat and Power Company for Confidential*
9 *Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003). The Commission
10 also implicitly accepted ULH&P’s further argument that the higher bids would
11 lessen ULH&P’s ability to compete with other gas suppliers. *Id.* Similarly,
12 potential power suppliers or purchasers manipulating Big Rivers’ bidding process
13 would lead to higher costs or lower revenues to Big Rivers and would place it at an
14 unfair competitive disadvantage in the wholesale power market and credit markets.

15 20. Thus, public disclosure of the Confidential Information would permit
16 an unfair competitive advantage to Big Rivers’ competitors.

17 **IV. Time Period**

18 21. Big Rivers requests that the Confidential Information remain
19 confidential for a period of five (5) years from the date this motion, at which time
20 the information regarding projected capacity purchases will be sufficiently
21 outdated, the scheduled outages will have passed and will no longer be confidential,
22 and the list of planned transmission projects will be sufficiently outdated so that it

1 could not be used to competitively disadvantage Big Rivers. 807 KAR 5:001 Section
2 13(2)(a)(2).

3 **V. Conclusion**

4 22. Based on the foregoing, the Confidential Information is entitled to
5 confidential protection. If the Commission disagrees that Big Rivers is entitled to
6 confidential protection, due process requires the Commission to hold an evidentiary
7 hearing. *See Utility Regulatory Comm'n v. Kentucky Water Serv. Co., Inc.*, 642
8 S.W.2d 591 (Ky. App. 1982).

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

11 On this the 28th day of February 2024.

12 Respectfully submitted,

13 /s/ *Sentia Santana*
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