

1 2. The information for which Big Rivers seeks confidential treatment
2 is hereinafter referred to as the “*Confidential Information.*” The Confidential
3 Information consists of proprietary, business-sensitive, or otherwise private
4 information relating to:

- 5 a) the increase in load from the ramp-up project at the Aleris Rolled
6 Products, Inc. (“*Aleris*”) facility located in Lewisport, Hancock
7 County, Kentucky under the Amended and Restated Agreement
8 for Retail Electric Service between Kenergy Corp. (“*Kenergy*”)
9 and Aleris, which was the subject of this 2016 proceeding (“*Aleris*
10 *Agreement*”);
- 11 b) the Block Mining, Inc. (“*Blockware*”) commercial cryptocurrency
12 mining facility located in Paducah, McCracken County,
13 Kentucky under the Retail Electric Service Agreement between
14 Jackson Purchase Energy Corporation (“*Jackson Purchase*”) and
15 Blockware, which was the subject of Case No. 2021-00282⁴
16 (“*Blockware Agreement*”); and
- 17 c) the Pratt Paper (KY), LLC (“*Pratt*”) paper mill located in
18 Henderson County, Kentucky under the Retail Electric Service

⁴ *Id.*

1 Contract between Kenergy Corp. and Pratt, which was the
2 subject of Case No. 2023-00045.⁵

3 3. The Commission has granted confidential treatment of similar
4 information redacted from Big Rivers’ prior annual reports filed in this matter,
5 finding “the redacted information, if disclosed, would disadvantage BREC with
6 its competitors, who could use the information in the energy market with
7 knowledge of BREC’s energy purchase history” and “public disclosure of this
8 information could harm BREC in negotiating future special contracts.”⁶

9 4. Pursuant to the Commission’s Emergency Orders *In the Matter of:*
10 *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, Case
11 No. 2020-00085 (March 16, 2020 and March 24, 2020), one (1) copy of the
12 Confidential Information highlighted with transparent ink, printed on yellow
13 paper, or otherwise marked “CONFIDENTIAL,” is being filed with this request
14 via electronic mail sent to PSCED@ky.gov. One (1) copy of the documents with
15 the Confidential Information redacted is also being electronically filed with this
16 request. 807 KAR 5:001 Section 13(3)(a)(3).

17 5. Pursuant to 807 KAR 5:001 Section 13(10)(b), if and to the extent
18 the Confidential Information becomes generally available to the public, whether

⁵ *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. for Approval of a Special Contract with Economic Development Rates with Pratt Paper (KY), LLC*, Case No. 2023-00045.

⁶ *See In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts*, Case. No. 2016-00117, Order (Dec. 22, 2021).

1 through filings required by other agencies or otherwise, Big Rivers will notify the
2 Commission and have its confidential status removed.

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

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

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

21

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

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

13 9. Big Rivers also competes for reasonably-priced credit in the credit
14 markets, and its ability to compete is directly impacted by the financial results it
15 obtains and the business risks it assumes. Any event that adversely affects Big
16 Rivers' financial results or increases its business risks may adversely affect the
17 price it pays for credit. A competitor armed with Big Rivers' proprietary and
18 confidential information will be able to increase Big Rivers' costs or decrease Big
19 Rivers' revenues, which could in turn affect Big Rivers' apparent
20 creditworthiness. Impediments to Big Rivers' obtaining the best contract terms
21 could likewise affect its apparent creditworthiness. A utility the size of Big
22 Rivers that operates generation and transmission facilities will always have

1 periodic cash and borrowing requirements for both anticipated and unanticipated
2 needs. Big Rivers expects to be in the credit markets on a regular basis in the
3 future, and it is imperative that Big Rivers improves and maintains its credit
4 profile.

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

9 ***B. The Confidential Information is Generally Recognized***
10 ***as Confidential or Proprietary***

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

14 12. As discussed below the Confidential Information relates to the inner
15 workings of Big Rivers' business. The Confidential Information is not publicly
16 available, nor is such information known or disseminated within the EDR
17 Customers, Aleris, Blockware, and Pratt or Big Rivers organizations except to
18 those employees and professionals with a legitimate business need to know and
19 act upon the information. Under Kentucky law, it is well recognized that the
20 information about a company's detailed inner workings, such as the Confidential
21 Information, is generally recognized as confidential or proprietary. *See, e.g., Hoy*
22 *v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“[i]t

1 does not take a degree in finance to recognize that such information concerning
2 the inner workings of a corporation is ‘generally recognized as confidential or
3 proprietary”).

4 13. Moreover, KRS 278.160(3) specifically recognizes that terms of a
5 special contract are not required to be publicly disclosed if such terms are
6 entitled to treatment under KRS 61.878(1)(c)(1), and the Commission has
7 previously granted confidential treatment to similar information.⁷ Additionally,
8 the Commission has recognized the confidentiality of customer information in
9 this matter⁸ and previous cases.⁹

⁷ 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, 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).

⁸ April 12, 2023, Order.

⁹ See *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRSMS 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 MRSMS 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 14. Based on the foregoing, the Confidential Information is generally
2 recognized as confidential or proprietary under Kentucky law.

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

6 15. Public disclosure of the Confidential Information could adversely
7 affect Big Rivers in multiple respects.

8 16. As referenced above, the Commission previously found that public
9 disclosure of information similar to the Confidential Information, “would
10 disadvantage BREC with its competitors, who could use the information in the
11 energy market with knowledge of BREC’s energy purchase history.”¹⁰

12 17. Further, Aleris, Blockware, and Pratt operate in highly competitive,
13 cost sensitive, and global markets and the EDR customers consider the
14 Confidential Information related to their business and contract highly
15 confidential. If Big Rivers is unable to obtain confidential treatment for the
16 information that its counterparties consider confidential, then potential future
17 counterparties dealing with Big Rivers would inevitably worry that their
18 competitive information would also be at risk of public disclosure. Because many
19 companies would be reluctant to have such information disclosed, public
20 disclosure of the Confidential Information would likely reduce the pool of

¹⁰ See *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts*, Case. No. 2016-00117, Orders, (Dec. 22, 2021) and Jan. 20, 2023).

1 counterparties willing to deal with Big Rivers, harming Big Rivers' ability to
2 negotiate future special contracts and impairing its ability to compete in the
3 wholesale power and credit markets.

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

18 19. Accordingly, the public disclosure of the Confidential Information
19 would provide competitors of Big Rivers with an unfair commercial advantage.
20 As discussed *supra*, Big Rivers faces actual competition in the wholesale power
21 and credit markets. It is likely that Big Rivers would suffer competitive injury if

1 the Confidential Information were publicly disclosed and the information should
2 therefore be subject to confidential treatment.

3 **II. Time Period**

4 20. Big Rivers seeks confidential treatment of the Confidential
5 Information related to the EDR Customers, for an indefinite period, consistent
6 with the Commission's April 12, 2023 Order in this matter, as well as other
7 orders referenced above. *See* 807 KAR 5:001 Section 13(2)(a)(2).

8 **III. Conclusion**

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

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

3 On this the 27th day of March, 2024.

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Respectfully submitted,

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