



- 1           a)       the increase in load from the ramp-up project at the Aleris  
2                   Rolled Products, Inc. (“*Aleris*”) facility located in Lewisport,  
3                   Hancock County, Kentucky under the Amended and Restated  
4                   Agreement for Retail Electric Service between Kenergy Corp.  
5                   (“*Kenergy*”) and Aleris, which was the subject of this 2016  
6                   proceeding (“*Aleris Agreement*”); and
- 7           b)       the Blockware Mining, LLC (“*Blockware*”) commercial  
8                   cryptocurrency mining facility located in Paducah, McCracken  
9                   County, Kentucky under the Retail Electric Service Agreement  
10                  between Jackson Purchase Energy Corporation (“*Jackson*  
11                  *Purchase*”) and Blockware, which was the subject of Case No.  
12                  2021-00282<sup>3</sup> (“*Blockware Agreement*”).

13           3.       The Commission has granted confidential treatment of similar  
14 information redacted from Big Rivers’ prior annual reports filed in this matter,  
15 finding “the redacted information, if disclosed, would disadvantage BREC with  
16 its competitors, who could use the information in the energy market with  
17 knowledge of BREC’s energy purchase history” and “public disclosure of this  
18 information could harm BREC in negotiating future special contracts.”<sup>4</sup>

---

<sup>3</sup> *Id.*

<sup>4</sup> 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).

1           4.       The Commission has also granted confidential treatment for an  
2 indefinite period of similar information redacted from documents filed in Case  
3 No. 2021-00282, where Big Rivers and Jackson Purchase received Commission  
4 approval of the Blockware Agreement.<sup>5</sup>

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

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

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

---

<sup>5</sup> 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*, Case No. 2021-00282, Order (Oct. 14, 2021) at Ordering Paragraph No. 8.

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

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

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

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

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

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

20       11. Accordingly, Big Rivers faces competition in the wholesale power  
21 and capital markets, and the Confidential Information should be afforded

1 confidential treatment to prevent the imposition of an unfair competitive  
2 advantage to those competitors.

3 ***B. The Confidential Information is Generally Recognized as***  
4 ***Confidential or Proprietary***

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

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

20 14. Moreover, KRS 278.160(3) specifically recognizes that terms of a  
21 special contract are not required to be publicly disclosed if such terms are  
22 entitled to treatment under KRS 61.878(1)(c)(1), and the Commission has

1 previously granted confidential treatment to similar information.<sup>6</sup> Additionally,  
2 the Commission has recognized the confidentiality of customer information in  
3 previous cases.<sup>7</sup>

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

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

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

---

<sup>6</sup> 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).

<sup>7</sup> See *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRS M 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 MRS M 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           17.    As referenced above, the Commission previously found that public  
2 disclosure of information similar to the Confidential Information, “would  
3 disadvantage BREC with its competitors, who could use the information in the  
4 energy market with knowledge of BREC’s energy purchase history.”<sup>8</sup>

5           18.    Further, the Aleris mill and Blockware facility operate in highly  
6 competitive, cost sensitive, and global markets and the EDR customers consider  
7 the Confidential Information related to their business and contract highly  
8 confidential. If Big Rivers is unable to obtain confidential treatment for the  
9 information that its counterparties consider confidential, then potential future  
10 counterparties dealing with Big Rivers would inevitably worry that their  
11 competitive information would also be at risk of public disclosure. Because many  
12 companies would be reluctant to have such information disclosed, public  
13 disclosure of the Confidential Information would likely reduce the pool of  
14 counterparties willing to deal with Big Rivers, harming Big Rivers’ ability to  
15 negotiate future special contracts and impairing its ability to compete in the  
16 wholesale power and credit markets.

17           19.    Applying analogous considerations, in Case No. 2003-00054, the  
18 Commission granted confidential treatment to bids submitted to Union Light,  
19 Heat & Power (“*ULH&P*”). *ULH&P*’s argued, and the Commission implicitly  
20 accepted, that the bidding contractors would not want their bid information

---

<sup>8</sup> See *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts, Orders*, Case. No. 2016-00117 (Ky. PSC Dec. 22, 2021) and Jan. 20, 2023).

1 publicly disclosed, and that disclosure would reduce the contractor pool available  
2 to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete  
3 with other gas suppliers. *In the Matter of: Application of the Union Light, Heat*  
4 *and Power Company for Confidential Treatment*, Order, Case No. 2003-00054  
5 (Ky. PSC August 4, 2003). Similarly, in *Hoy v. Kentucky Indus. Revitalization*  
6 *Authority*, the Kentucky Supreme Court found that without protection for  
7 confidential information provided to a public agency, "companies would be  
8 reluctant to apply for investment tax credits for fear the confidentiality of  
9 financial information would be compromised. *Hoy v. Kentucky Indus.*  
10 *Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

11         20.     Accordingly, the public disclosure of the Confidential Information  
12 would provide competitors of Big Rivers with an unfair commercial advantage.  
13 As discussed *supra*, Big Rivers faces actual competition in the wholesale power  
14 and credit markets. It is likely that Big Rivers would suffer competitive injury if  
15 the Confidential Information were publicly disclosed and the information should  
16 therefore be subject to confidential treatment.

17         **II.         Time Period**

18         21.     Big Rivers seeks confidential treatment of the Confidential  
19 Information related to the Aleris and the Aleris Agreement, for fourteen (14)  
20 years from the date of this Motion, consistent with the Commission's January  
21 20, 2023 Order in this matter. *See* 807 KAR 5:001 Section 13(2)(a)(2).

1           22.    Big Rivers seeks confidential treatment of the Confidential  
2 Information related to Blockware and the Blockware Agreement, for an indefinite  
3 period, consistent with the Commission’s October 14, 2021 Order in Case No.  
4 2021-00282 as referenced above. *See* 807 KAR 5:001 Section 13(2)(a)(2).

5           **III.    Conclusion**

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

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

13           On this the 30th day of March, 2023.

14  
15

Respectfully submitted,

16  
17

*/s/ Senthia Santana*

18  
19

\_\_\_\_\_  
Senthia Santana

20  
21

Tyson Kamuf

22  
23

Whitney Kegley

24  
25

710 W. Second Street

26  
27

Owensboro, Kentucky 42301

Phone: (270) 827-2561

Fax: (270) 844-6417

Email: [senthia.santana@bigrivers.com](mailto:senthia.santana@bigrivers.com)

Email: [tyson.kamuf@bigrivers.com](mailto:tyson.kamuf@bigrivers.com)

Email: [whitney.kegley@bigrivers.com](mailto:whitney.kegley@bigrivers.com)

28  
29

Counsel for Big Rivers Electric  
Corporation

30