

1 marked “CONFIDENTIAL,” is being filed with this motion by electronic mail. A
2 copy of those pages, with the Confidential Information redacted, is being
3 electronically filed with the information request responses accompanying this
4 motion.

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

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

12 5. As discussed below, the Confidential Information is entitled to
13 confidential protection based upon KRS 278.160(3), which shields from disclosure “*a*
14 *provision of a special contract that contains rates and conditions of service not filed*
15 *in a utility’s general schedule if such provision would otherwise be entitled to be*
16 *excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS*
17 *61.878(1)(c)(1);”* and KRS 61.878(1)(c)(1), which protects “*records confidentially*
18 *disclosed to an agency or required by an agency to be disclosed to it, generally*
19 *recognized as confidential or proprietary, which if openly disclosed would permit an*
20 *unfair commercial advantage to competitors of the entity that disclosed the records.”*
21 807 KAR 5:001 Section 13(2)(a)(1).

1 adversely affect its financial results and potentially impact the price it pays for
2 credit. A competitor armed with Big Rivers' proprietary and confidential
3 information will be able to increase Big Rivers' costs or decrease Big Rivers'
4 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A
5 utility the size of Big Rivers that operates generation and transmission facilities
6 will always have periodic cash and borrowing requirements for both anticipated and
7 unanticipated needs. Big Rivers expects to be in the credit markets on a regular
8 basis in the future, and it is imperative that Big Rivers improve and maintain its
9 credit profile.

10 9. Finally, Big Rivers competes for economic development opportunities
11 both within the Commonwealth and throughout the nation. The ability to negotiate
12 competitive electric pricing structures with companies interested in expanding in
13 Kentucky is fundamental to the success of Big Rivers' economic development efforts.

14 **SECTION II**

15 **The Confidential Information is Generally Recognized as Confidential or**
16 **Proprietary**

17 10. The Confidential Information for which Big Rivers seeks confidential
18 treatment under KRS 278.160(3) and KRS 61.878(1)(c)(1) is generally recognized as
19 confidential or proprietary under Kentucky law. As fully discussed below, the
20 Confidential Information in the responses to both PSC 3-2 and PSC 3-3 consists of
21 the confidential terms of the Nucor special contracts that are the subject of this
22 proceeding. The Confidential Information in the attachment to the responses to
23 PSC 3-2 consists of the confidential terms of certain contracts, including the Nucor

1 contracts and the contract between Big Rivers and Geronimo that is pending before
2 the Commission in Case No. 2020-00183, and it reveals Big Rivers' confidential and
3 proprietary strategic business plan, containing sensitive projected information
4 regarding Big Rivers' plans to hedge the Nucor energy requirements.

5 11. The Confidential Information is not publicly available, is not
6 disseminated within Big Rivers except to those employees and professionals with a
7 legitimate business need to know and act upon the information, and is not
8 disseminated to others without a legitimate need to know and act upon the
9 information. As such, the Confidential Information is generally recognized as
10 confidential and proprietary.

11 12. Moreover, the Confidential Information includes information similar
12 in nature to the Confidential Information contained in Big River's Application in
13 this case, for which the Commission already granted confidential treatment. *See*
14 Case No. 2019-00365, Order (March 12, 2020) (granting confidential treatment to
15 the information for an indefinite period).¹

¹ *See also 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*, P.S.C. Case No. 2019-00365, Orders (January 22, 2020, January 27, 2020, and January 28, 2020) (granting confidential protection to information similar in nature to the subject Confidential Information regarding the terms and conditions of the Nucor Contracts); *see also 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*, P.S.C. Case No. 2020-00064, Order (March 17, 2020) (granting confidential treatment to, among other things, the confidential terms of the Nucor contracts).

1 No. 2018-00056, the Commission granted confidential treatment to the pricing
2 terms of a contract, recognizing “that the specific cost information may be used to
3 the financial detriment of Cumberland Valley and its ratepayers by allowing
4 potential future vendors to bid just under the cost of its current vendor, which, in
5 turn, would place Cumberland Valley at a competitive disadvantage.” *In the Matter*
6 *of: Application of Cumberland Valley Electric, Inc. for Commission Approval for a*
7 *Certificate of Public Convenience and Necessity to Install an Advanced Metering*
8 *Infrastructure (AMI) System Pursuant to KRS 807 KAR 5:001 and KRS 278.020,*
9 P.S.C. Case No. 2018-00056, Order (May 9, 2018). Similarly, potential power
10 suppliers or buyers manipulating Big Rivers’ bidding process would lead to higher
11 costs or lower revenues to Big Rivers and would place it at an unfair competitive
12 disadvantage in the wholesale power market and credit markets.

13 15. Further, if confidential treatment of confidential contract terms is
14 denied, then other companies interested in buying or selling power in Kentucky
15 would know that the confidential terms of their future contracts, plans, or bids may
16 also be publicly disclosed. Many companies would be reluctant to have such
17 confidential and proprietary information disclosed because public disclosure would,
18 for example, allow their competitors to know how they offer and price their projects.
19 This would create precisely the kind of competitive harm KRS 61.878(1)c)(1) intends
20 to prevent.

21 16. Because companies would not want their confidential and proprietary
22 information disclosed to their competitors, public disclosure of the Confidential

1 Information in this case would likely reduce the pool of companies willing to
2 negotiate with Big Rivers, reducing Big Rivers' and other utilities' ability to secure
3 the best terms in power purchase agreements. Big Rivers' competition for future
4 renewable purchase contracts is not limited to its traditional regulated competitors.
5 Large industrial consumers, municipals, cities, and communities are reaching out to
6 solar developers as well.

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

21 18. Finally, public disclosure of the Confidential Information would
22 provide insight into the prices at which Big Rivers is willing to buy or sell energy

1 and capacity, and Big Rivers' future needs for energy and capacity. The information
2 is also indicative of the market conditions Big Rivers expects to encounter and its
3 ability to compete with competitors. Information such as this which bears upon a
4 company's detailed inner workings is generally recognized as confidential or
5 proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d
6 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such
7 information concerning the inner workings of a corporation is 'generally recognized
8 as confidential or proprietary'"); *Marina Management Servs. v. Cabinet for Tourism,*
9 *Dep't of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises
10 simply from the ability to ascertain the economic status of the entities without the
11 hurdles systemically associated with the acquisition of such information about
12 privately owned organizations").

13 19. Accordingly, the public disclosure of the information that Big Rivers
14 seeks to protect would provide Big Rivers' competitors with an unfair commercial
15 advantage.

16 **SECTION IV**

17 **Time Period**

18 20. Big Rivers requests that all of the Confidential Information remain
19 confidential indefinitely because for so long as Big Rivers is in the wholesale power
20 market, the public disclosure of the Confidential Information can be used to Big
21 Rivers' competitive disadvantage for the reasons stated above. 807 KAR 5:001
22 Section 13(2)(a)(2).

23 **SECTION V**

1 **Conclusion**

2 21. Based on the foregoing, the Confidential Information is entitled to
3 confidential protection. If the Commission disagrees, then the Commission should
4 hold an evidential hearing to protect Big Rivers' due process rights and to supply
5 the Commission with a complete record to enable it to reach a decision with regard
6 to this matter. *See Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*,
7 642 S.W.2d 591 (Ky. App. 1982).

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

10 On this the 13th day of August, 2020.

11 Respectfully submitted,

12
13 /s/ *Tyson Kamuf*

14
15 _____
16 Tyson Kamuf
17 Senthia Santana
18 Gregory E. Mayes, Jr.
19 Big Rivers Electric Corporation
20 201 Third Street, P.O. Box 24
21 Henderson, Kentucky 42419-0024
22 Phone: (270) 827-2561
23 Facsimile: (270) 844-6417
24 Tyson.kamuf@bigrivers.com
25 Senthia.santana@bigrivers.com
26 Gregory.mayes@bigrivers.com

27 *Counsel for Big Rivers Electric*
28 *Corporation*