

1 “CONFIDENTIAL,” is being filed with this motion by use of electronic mail. A copy
2 of those pages, with the Confidential Information redacted, is being electronically
3 filed with the Responses to the Information Requests filed with this Motion.

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

8 5. The Confidential Information is not publicly available, is not
9 disseminated within Big Rivers except to those employees and professionals with a
10 legitimate business need to know and act upon the information, and is not
11 disseminated to others without a legitimate need to know and act upon the
12 information.

13 6. If disclosed, the Confidential Information included herein would allow
14 Big Rivers’ competitors to discover, and make use of, confidential information
15 concerning Big Rivers’ financial condition and business strategies, to the unfair
16 competitive disadvantage of Big Rivers.

17 7. If and to the extent the Confidential Information becomes generally
18 available to the public, whether through filings required by other agencies or
19 otherwise, Big Rivers will notify the Commission in writing. *See* 807 KAR 5:001,
20 Section 13(10)(b).

1 8. As discussed below, the Confidential Information is entitled to
2 confidential treatment based upon KRS 61.878(1)(c)(1). *See* 807 KAR 5:001, Section
3 13(2)(a)(1).

4 9. Further, much of the Confidential Information is similar to or pertains
5 to the Confidential Information contained in Big Rivers' Application (including
6 information related to Big Rivers' confidential financial information), for which the
7 Commission already granted confidential treatment. *See* Commission's March 17,
8 2020 Order, Case No. 2020-00064 (granting confidentiality to financial information
9 for five years) (the "March 17, 2020 Order").

10 10. Finally, much of the Confidential Information is similar to or is derived
11 from the Confidential Information contained in Big Rivers' responses to the PSC's
12 First Request for Information, KIUC's First Set of Data Requests, the AG's First Set
13 of Data Requests, Big Rivers' supplemental responses to the AG's First Set of Data
14 Requests, the PSC's Second Request for Information, the AG's Supplemental Data
15 Requests, the PSC's Third Request for Information and/or the PSC's Request for
16 Information from the May 14, 2020 Informal Conference for which confidentiality has
17 been sought pursuant to the Motions for Confidential Treatment filed
18 contemporaneously with Big Rivers' responses to the data requests in this proceeding.
19 Thus, the Confidential Information should be granted confidential treatment pending
20 review of Big Rivers' previously filed Motions for Confidential Treatment in this
21 proceeding, which were filed on April 3, 2020, April 15, 2020, April 24, 2020, and May
22 22, 2020. *See* 807 KAR 5:001 Section 13(4) ("Pending action by the commission on a

1 motion for confidential treatment or by its executive director on a request for
2 confidential treatment, the material specifically identified shall be accorded
3 confidential treatment.”).

4 **I. Information Protected by KRS 61.878(1)(c)(1)**

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

6 11. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an
7 agency or required by an agency to be disclosed to it, generally recognized as
8 confidential or proprietary, which if openly disclosed would permit an unfair
9 commercial advantage to competitors of the entity that disclosed the records.”

10 12. As a generation and transmission cooperative, Big Rivers competes in
11 the wholesale power market to sell energy that it produces in excess of its members’
12 needs. This includes not only the over-the-counter day-ahead and over-the-counter
13 hourly markets to which Big Rivers has access by virtue of its membership in
14 Midcontinent Independent System Operator, Inc. (“MISO”), but also direct, bilateral
15 long-term agreements. Big Rivers’ ability to successfully compete in these markets is
16 dependent upon a combination of its ability to: 1) obtain the maximum price for the
17 power it sells, and 2) keep its cost of production as low as possible. Fundamentally, if
18 Big Rivers’ cost of producing a unit of power increases, its ability to sell that unit in
19 competition with other utilities is adversely affected.

20 13. Big Rivers also competes for reasonably priced credit in the credit
21 markets, and its ability to compete is directly impacted by its financial results. Lower
22 revenues and any events that adversely affect Big Rivers’ margins will adversely

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

9 14. Accordingly, Big Rivers has competitors in both the power and capital
10 markets, and its Confidential Information should be protected to prevent the
11 imposition of an unfair competitive advantage.

12 **B. The Confidential Information is Generally Recognized as**
13 **Confidential or Proprietary.**

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

18 16. The Confidential Information contained in response to Second IC Item
19 1 includes information derived from Big Rivers' long-term financial forecast, which is
20 similar to the confidential financial information the Commission has already
21 recognized as confidential.

22 17. Public disclosure of the Confidential Information would reveal detailed
23 information relating to Big Rivers' long-term financial forecast, including projected
24 financial data. Information such as this which bears upon a company's detailed inner

1 workings is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Ky.*
2 *Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree
3 in finance to recognize that such information concerning the inner workings of a
4 corporation is ‘generally recognized as confidential or proprietary.’”). Additionally,
5 the Commission has previously granted confidential treatment to this type of
6 information. *See, e.g.,* April 25 Confidentiality Order, P.S.C. Case No. 2012-00535
7 (granting confidential treatment to minutes of the Big Rivers Board of Directors, Big
8 Rivers’ Financial Model, and Big Rivers’ load forecast); November 25, 2013
9 Confidentiality Order, P.S.C. Case No. 2013-00199; *In the Matter of: An Examination*
10 *of the Application of the Fuel Adjustment Clause of East Ky. Power Coop., Inc. From*
11 *Nov. 1, 2011 through Apr. 30, 2012*, Order, P.S.C. Case No. 2012-003919 (February
12 21, 2013).

13 18. Finally, the Commission has previously granted confidentiality to
14 similar information for which confidentiality is sought, including through the March
15 17, 2020 Order, in which the Commission recognized that sensitive financial
16 information is subject to confidential treatment.

17 **C. Disclosure of the Confidential Information Would Result in an**
18 **Unfair Commercial Advantage to Big Rivers’ Competitors.**
19

20 19. Disclosure of the Confidential Information would grant Big Rivers’
21 competitors an unfair commercial advantage. As discussed above in Section I.A, Big
22 Rivers faces actual competition in both the short-and long-term wholesale power
23 markets and in the credit markets. It is likely that Big Rivers’ ability to compete in

1 these markets would be adversely affected if the Confidential Information were
2 publicly disclosed, and Big Rivers seeks protection from such competitive injury.

3 20. The Confidential Information includes material that is derived from Big
4 Rivers' projected financial forecasts and expenditures. The Commission has
5 consistently recognized that internal strategic planning information, projected
6 financial information, and related materials are entitled to confidential treatment, as
7 these documents typically relate to the company's economic status and business
8 strategies. *See, e.g., Marina Mgmt. Servs. v. Cabinet for Tourism, Dep't of Parks*, 906
9 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from "the
10 ability to ascertain the economic status of the entities without the hurdles
11 systematically associated with the acquisition of such information about privately
12 owned organizations"); *In the Matter of: The Joint Application of Duke Energy Corp.,*
13 *Cinergy Corp., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Diamond*
14 *Acquisition Corp., and Progress Energy Inc., for Approval of the Indirect Transfer of*
15 *Control of Duke Energy Kentucky, Inc.*, P.S.C. Case No. 2011-00124 (Dec. 5, 2011); *In*
16 *the Matter of: The Joint Petition of Kentucky-American Water Co., Thames Water*
17 *Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua U.S. Holdings,*
18 *Inc., and Am. Water Works Co., Inc. for Approval of a Change in Control of Kentucky-*
19 *American Water Co.*, P.S.C. Case No. 2006-00197 (Aug. 29, 2006) (holding that reports
20 from the joint applicants' financial advisors and all board of director minutes and
21 information is confidential because competitors could use it to gain unfair competitive
22 advantage).

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Respectfully submitted,

BIG RIVERS ELECTRIC CORPORATION

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1 **Certification**

2 I hereby certify that the electronic version of this filing made with the
3 Commission on June 3, 2020, is a true and accurate copy of the paper document that
4 will be submitted to the Commission within 30 days of the Governor lifting the state
5 of the emergency pursuant to the Commission's Orders in Case No. 2020-00085, and
6 the electronic version of the filing has been transmitted to the Commission. A copy of
7 this filing has been served electronically on all parties of record for whom an email
8 address is given in the online Service List for this proceeding, and there are currently
9 no parties that the Commission has excused from participation by electronic means.

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11
12 /s/ Tyson Kamuf
13 *Counsel to Big Rivers Electric Corporation*

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