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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR APPROVAL)
TO MODIFY ITS MRSM TARIFF, CEASE) Case No.
DEFERRING DEPRECIATION EXPENSES,) 2020-00064
ESTABLISH REGULATORY ASSETS,)
AMORTIZE REGULATORY ASSETS, AND)
OTHER APPROPRIATE RELIEF)

**MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR
CONFIDENTIAL PROTECTION**

1. Big Rivers Electric Corporation (“Big Rivers”) hereby moves the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential treatment to certain information Big Rivers is filing with its responses to the Commission Staff’s (“PSC”) Third Request for Information. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information includes:
- a. Portions of the responses and/or attachments for the responses to: Items 4 and 6 of the PSC’s Third Request for Information (“PSC 3-4,” and “PSC 3-6,” respectively); and
 - b. Portions of the responses and/or attachments for the responses to: Item 1 of the PSC’s Request for Information from the Informal Conference (“PSC IC-1”).

1 3. Pursuant to the Commission’s March 24, 2020 Order in *In the Matter of:*
2 *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No.
3 2020-00085 (“Case No. 2020-00085”), one (1) copy of the confidential information
4 highlighted with transparent ink, printed on yellow paper, or otherwise marked
5 “CONFIDENTIAL,” is being filed with this motion by electronic mail. A copy of those
6 pages, with the Confidential Information redacted, is being electronically filed with
7 the Responses to the Information Requests filed with this Motion.

8 4. A copy of this motion with the Confidential Information redacted has
9 been served on all parties to this proceeding through the use of electronic filing. *See*
10 807 KAR 5:001, Section 13(b). A copy of the Confidential Information has been served
11 on all parties that have signed a confidentiality agreement.

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

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

21 7. If and to the extent the Confidential Information becomes generally
22 available to the public, whether through filings required by other agencies or

1 otherwise, Big Rivers will notify the Commission in writing. *See* 807 KAR 5:001,
2 Section 13(10)(b).

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

6 9. Further, much of the Confidential Information is similar to or pertains
7 to the Confidential Information contained in Big Rivers' Application (including
8 information related to Big Rivers' confidential financial information), for which the
9 Commission already granted confidential treatment. *See* Commission's March 17,
10 2020 Order, Case No. 2020-00064 (granting confidentiality to financial information
11 for five years) (the "March 17, 2020 Order").

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

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

14
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 PSC 3-4 includes
19 information related to projected values of assets Big Rivers may attempt to sale in
20 the future, which, if disclosed, would allow potential purchasers to gain an advantage
21 over Big Rivers.

22 17. The Confidential Information contained in and attached to response to
23 PSC 3-6 includes information derived from Big Rivers' financial forecast, which is

1 confidential financial information the Commission has already recognized as
2 confidential.

3 18. The Confidential Information attached to response to PSC IC-1 includes
4 information that is taken directly from Big Rivers' long-term financial forecast.

5 19. Public disclosure of the Confidential Information would reveal detailed
6 information relating to Big Rivers' long-term financial forecast, including projected
7 financial data and projected expenditures. Information such as this which bears upon
8 a company's detailed inner workings is generally recognized as confidential or
9 proprietary. *See, e.g., Hoy v. Ky. Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky.
10 1995) ("It does not take a degree in finance to recognize that such information
11 concerning the inner workings of a corporation is 'generally recognized as confidential
12 or proprietary.'"). Additionally, the Commission has previously granted confidential
13 treatment to this type of information. *See, e.g., April 25 Confidentiality Order, P.S.C.*
14 *Case No. 2012-00535* (granting confidential treatment to minutes of the Big Rivers
15 Board of Directors, Big Rivers' Financial Model, and Big Rivers' load forecast);
16 *November 25, 2013 Confidentiality Order, P.S.C. Case No. 2013-00199; In the Matter*
17 *of: An Examination of the Application of the Fuel Adjustment Clause of East Ky. Power*
18 *Coop., Inc. From Nov. 1, 2011 through Apr. 30, 2012, Order, P.S.C. Case No. 2012-*
19 *003919* (February 21, 2013).

20 20. Additionally, public disclosure of the Confidential Information would
21 also reveal anticipated value of the Coleman Station property following
22 decommissioning, which Big Rivers may attempt to sale to a third-party in the future.

1 Disclosure of the anticipated value would give a potential purchaser of the property
2 an advantage over Big Rivers because they would have insight into the price Big
3 Rivers might be willing to accept. *See In the Matter of: Application of the Union Light,
4 Heat and Power Company for Confidential Treatment*, Order, PSC Case No. 2003-
5 00054 (August 4, 2003) (recognizing that publicly disclosing bid information would be
6 harmful to a utility as it would set a benchmark for all potential bidders).

7 21. Finally, the Commission has previously granted confidentiality to much
8 of the specific information for which confidentiality is sought, including through the
9 March 17, 2020 Order, in which the Commission recognized that sensitive financial
10 information is subject to confidential treatment.

11 **C. Disclosure of the Confidential Information Would Result in an**
12 **Unfair Commercial Advantage to Big Rivers' Competitors.**
13

14 22. Disclosure of the Confidential Information would grant Big Rivers'
15 competitors an unfair commercial advantage. As discussed above in Section I.A, Big
16 Rivers faces actual competition in both the short-and long-term wholesale power
17 markets and in the credit markets. It is likely that Big Rivers' ability to compete in
18 these markets would be adversely affected if the Confidential Information were
19 publicly disclosed, and Big Rivers seeks protection from such competitive injury.

20 23. The Confidential Information includes material that is derived from Big
21 Rivers' projected financial forecasts and expenditures, and projected values of
22 property that Big Rivers may attempt to sale in the future. The Commission has
23 consistently recognized that internal strategic planning information, projected
24 financial information, and related materials are entitled to confidential treatment, as

1 response to PSC 3-4 remain confidential for a period of five (5) years from the date
2 Big Rivers' completes decommissioning of the Coleman Station, at which time the
3 Confidential Information should be sufficiently outdated so that it could not be used
4 to competitively disadvantage Big Rivers. 807 KAR 5:001, Section 13(2)(a)(2).

5 26. Big Rivers requests that the remainder of the Confidential Information
6 remain confidential for a period of five (5) years from the date of this motion, at which
7 time the Confidential Information should be sufficiently outdated so that it could not
8 be used to competitively disadvantage Big Rivers. 807 KAR 5:001, Section 13(2)(a)(2).

9 **IV. Conclusion**

10 27. Based on the foregoing, the Confidential Information is entitled to
11 confidential protection. If the Commission disagrees, then the Commission should
12 hold an evidentiary hearing to protect Big Rivers' due process rights and to supply
13 the Commission with a complete record to enable it to reach a decision with regard to
14 this matter. *See Util. Reg. Comm'n v. Ky. Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky.
15 App. 1982).

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

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This 22nd day of May, 2020.

Respectfully submitted,

BIG RIVERS ELECTRIC CORPORATION

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Counsel to Big Rivers Electric Corporation

1 **Certification**

2 I hereby certify that the electronic version of this filing made with the
3 Commission on May 22, 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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