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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”) Post-Hearing Request for Information following the Commission’s June 9, 2020 Hearing. The information for which Big Rivers seeks confidential treatment is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information includes portions of the responses and/or attachments to Items 2 and 3 of the PSC’s Post-Hearing Request for Information following the June 9, 2020 Hearing (“PSC PH-2” and “PSC PH-3,” respectively).

3. Pursuant to the Commission’s March 24, 2020 Order in *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085 (“Case No. 2020-00085”), one (1) copy of the confidential information highlighted with transparent ink, printed on yellow paper, or otherwise marked

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, the Confidential Information contained in response to PSC PH-  
5 2 is similar to or pertains to the Confidential Information contained in Big Rivers’  
6 Application (including information related to Big Rivers’ confidential financial  
7 information), for which the Commission already granted confidential treatment. *See*  
8 Commission’s March 17, 2020 Order, Case No. 2020-00064 (granting confidentiality  
9 to financial information for five years) (the “March 17, 2020 Order”).

10          10.    Finally, the Confidential Information is similar to or is derived from the  
11 Confidential Information contained in Big Rivers’ responses to the PSC’s First  
12 Request for Information, KIUC’s First Set of Data Requests, the AG’s First Set of  
13 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 PSC PH-2  
19 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. The Confidential Information attached in response to PSC PH-3  
23 contains expected costs of capital projects for which Big Rivers expects to receive bids  
24 from third-parties.

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

17           19.     Finally, the Commission has previously granted confidentiality to  
18 similar information for which confidentiality is sought, including through the March  
19 17, 2020 Order, in which the Commission recognized that sensitive financial  
20 information is subject to confidential treatment.

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

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

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

1 *Co., Inc. for Approval of a Change in Control of Kentucky-American Water Co., P.S.C.*  
2 Case No. 2006-00197 (Aug. 29, 2006) (holding that reports from the joint applicants’  
3 financial advisors and all board of director minutes and information is confidential  
4 because competitors could use it to gain unfair competitive advantage).

5 22. The Confidential Information also includes anticipated costs of capital  
6 projects for which Big Rivers expects to receive bids. If this information were publicly  
7 disclosed, it would give potential bidders a competitive advantage and potentially  
8 increase the costs of the projects. These effects were recognized in PSC Case No. 2003-  
9 00054, in which the Commission granted confidential treatment to bids submitted to  
10 Union Light, Heat & Power (“ULH&P”). ULH&P argued, and the Commission  
11 implicitly accepted, that if the bids it received were publicly disclosed, contractors on  
12 future work could use the bids as a benchmark, which would likely lead to the  
13 submission of higher bids. *In the Matter of: Application of the Union Light, Heat and*  
14 *Power Company for Confidential Treatment*, Order, PSC Case No. 2003-00054  
15 (August 4, 2003). The Commission also implicitly accepted ULH&P’s further  
16 argument that the higher bids would lessen ULH&P’s ability to compete with other  
17 gas suppliers. *Id.* Similarly, manipulation of Big Rivers’ bidding process would lead  
18 to higher costs or lower revenues to Big Rivers and would place it at an unfair  
19 competitive disadvantage in the wholesale power market and credit markets.

20 23. Accordingly, the public disclosure of the information that Big Rivers  
21 seeks to protect would provide Big Rivers’ competitors with an unfair commercial  
22 advantage.



1 **III. Time Period**

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

6 **IV. Conclusion**

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

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

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This 12<sup>th</sup> day of June, 2020.

Respectfully submitted,

**BIG RIVERS ELECTRIC CORPORATION**

/s/ Tyson Kamuf

Tyson Kamuf  
Gregory E. Mayes, Jr.  
201 Third Street, P.O. Box 24  
Henderson, Kentucky 42419-0024  
Phone: (270) 827-2561 Fax: (270) 844-6417  
Email: tyson.kamuf@bigrivers.com  
Email: gregory.mayes@bigrivers.com

**DINSMORE & SHOHL LLP**

Edward T. Depp  
R. Brooks Herrick  
101 South Fifth Street, Suite 2500  
Louisville, Kentucky 40202  
E-mail: tip.depp@dinsmore.com  
E-mail: brooks.herrick@dinsmore.com  
Phone: (502) 540-2300 Fax: (502) 585-2207

M. Evan Buckley  
100 West Main Street, Suite 900  
Lexington, Kentucky 40507  
E-mail: evan.buckley@dinsmore.com  
Phone: (859) 425-1000 Fax: (859) 425-1099

*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 June 12, 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.

10  
11  
12 /s/ Tyson Kamuf  
13 *Counsel to Big Rivers Electric Corporation*

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