



1 10,” “AG 1-15,” “AG 1-16,” “AG 1-18,” “AG 1-19,” “AG 1-20,” “AG 1-27,” “AG1-  
2 31,” “AG 1-32,” “AG 1-33,” “AG 1-42,” and “AG 1-43,” respectively).

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

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

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

18 5. As discussed below, the Confidential Information is entitled to  
19 confidential treatment under KRS 61.878(1)(a) or KRS 61.878(1)(c)(1). 807 KAR  
20 5:001 Section 13(2)(a)(1). Public disclosure of the certain information contained in  
21 Big Rivers’ Response to Commission Staff’s Initial Request for Information and in

1 Big Rivers’ Response to the Office of the Attorney General’s First Request for  
2 Information, would permit such a result as discussed fully below.

3 **INFORMATION PROTECTED UNDER KRS 61.878(1)(a)**

4 6. The Confidential Information contained in Big Rivers’ response to AG  
5 1-15 consists of the energy usage of individual retail customers on the Big Rivers  
6 system, and is entitled to protection under KRS 61.878(1)(a), which protects from  
7 public disclosure “records containing information of a personal nature where the  
8 public disclosure thereof would constitute a clearly unwarranted invasion of  
9 personal privacy.”

10 7. Because the retail customers listed in the response to AG 1-15 are not  
11 parties to this proceeding, publicly revealing such information would constitute a  
12 clearly unwarranted invasion of personal privacy. Moreover, the Commission has  
13 previously granted confidential treatment to similar retail customer usage  
14 information. *See, e.g., In the Matter of: Sanctuary Church v. Louisville Gas and*  
15 *Electric Company*, P.S.C. Case No. 2018-00181, Order (Jan. 8, 2019) (granting  
16 confidential treatment pursuant to KRS 61.878(1)(a) for an indefinite period to a  
17 retail customer’s account and usage information); *In the Matter of: Application of*  
18 *Kentucky Utilities Company for an Adjustment of its Electric Rates*, P.S.C. Case No.  
19 2012-00221, Order (July 25, 2013) (holding customer names, account numbers, and  
20 usage information exempt from disclosure under KRS 61.878(1)(a)). As such, Big  
21 Rivers requests confidential treatment for the Confidential Information in the

1 response to AG 1-15 to protect the private usage information of the listed retail  
2 customers.

3 **INFORMATION PROTECTED BY KRS 61.878(1)(c)**

4 8. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an  
5 agency or required by an agency to be disclosed to it, generally recognized as  
6 confidential or proprietary, which if openly disclosed would permit an unfair  
7 commercial advantage to competitors of the entity that disclosed the records.”  
8 Section I below explains that Big Rivers operates in competitive environments in  
9 the wholesale power market and in the credit market. Section II below shows that  
10 the Confidential Information is generally recognized as confidential or proprietary.  
11 Section III below demonstrates that public disclosure of the Confidential  
12 Information would permit an unfair commercial advantage to Big Rivers’  
13 competitors, as well as the Solar Developer’s competitors.

14 **SECTION I**

15 **Big Rivers Faces Actual Competition**

16 9. As a generation and transmission cooperative, Big Rivers competes in  
17 the wholesale power market. This includes not only the short-term bilateral energy  
18 market, the day-ahead and real time energy and ancillary services markets, and the  
19 capacity market to which Big Rivers has access by virtue of its membership in the  
20 Midcontinent Independent System Operator, Inc. (“MISO”) system, but also forward  
21 bilateral long-term agreements and wholesale agreements with utilities and  
22 industrial customers. Big Rivers’ ability to successfully compete in the market is  
23 dependent upon a combination of its ability to: 1) obtain the maximum price for the

1 power it sells, and 2) keep its cost of production or purchase as low as possible.  
2 Fundamentally, if Big Rivers' cost of producing or purchasing a unit of power  
3 increases, its ability to sell that unit in competition with other utilities is adversely  
4 affected. In fact, the Commission recognizing the competitive market for purchase  
5 power agreements when it stated, "[I]n this **era of increasing competition,**  
6 utilities should be able to purchase power without prior Commission approval"  
7 (emphases added).<sup>1</sup>

8 10. Big Rivers also competes for reasonably priced credit in the credit  
9 markets, and its ability to compete is directly impacted by its financial results.  
10 Lower revenues and any events that adversely affect Big Rivers' margins will  
11 adversely affect its financial results and potentially impact the price it pays for  
12 credit. A competitor armed with Big Rivers' proprietary and confidential  
13 information will be able to increase Big Rivers' costs or decrease Big Rivers'  
14 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A  
15 utility the size of Big Rivers that operates generation and transmission facilities  
16 will always have periodic cash and borrowing requirements for both anticipated and  
17 unanticipated needs. Big Rivers expects to be in the credit markets on a regular  
18 basis in the future, and it is imperative that Big Rivers improve and maintain its  
19 credit profile.

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<sup>1</sup> *In the Matter of: The Consideration and Determination of the Appropriateness of Implementing a Ratemaking Standard Pertaining to the Purchase of Long-Term Wholesale Power by Electricity Utilities as Required in Section 712 of the Energy Policy Action of 1992*, P.S.C. Administrative Case No. 350, Order at 8 (October 25, 1993).



- 1 c. A confidential Request for Information (“*RFI*”) provided to Big Rivers  
2 by an economic development prospect, contained in the attachment to  
3 the response to AG 1-4;
- 4 d. The negotiated, confidential terms of special contracts with Nucor  
5 Corporation, Owensboro Municipal Utilities, and the Kentucky  
6 Municipal Energy Agency contained in the responses to PSC 1-4, PSC  
7 1-6, PSC 1-17, PSC 1-28, PSC 1-29, AG 1-2, AG 1-16, AG 1-19, and AG  
8 1-33;
- 9 e. Big Rivers’ confidential and proprietary financial information,  
10 including its projections of its capacity position, energy market prices,  
11 market prices for renewable energy credits (“*RECs*”), and capacity  
12 market prices, contained in the response and the attachment to the  
13 response to PSC 1-17; and
- 14 f. Big Rivers’ economic analysis of the three solar contracts that are the  
15 subject of this proceeding, which reveals the confidential terms of the  
16 solar contracts, as well as Big Rivers’ confidential and proprietary  
17 financial information and projections, including market price  
18 projections, contained in the responses to AG 1-1, AG 1-9, AG 1-16, AG  
19 1-20, AG 1-32, and AG 1-42, and in the attachments to the responses to  
20 PSC 1-25 and PSC 1-27.

21 13. As noted above and fully discussed below, the Confidential Information  
22 consists of the negotiated, confidential terms of the three solar contracts that are

1 the subject of this proceeding; the negotiated, confidential terms of the special  
2 contracts with Nucor, OMU, and KyMEA; confidential and proprietary financial  
3 information including projections of market prices and Big Rivers' capacity position;  
4 a confidential RFI provided by an economic development prospect; and confidential  
5 bid information submitted in response to Big Rivers' solar RFP and Big Rivers'  
6 evaluations of those bids.

7 14. Public disclosure of such information would give Big Rivers' suppliers,  
8 buyers, and competitors insight into Big Rivers' view of future energy, capacity, and  
9 REC prices; the contract terms Big Rivers has agreed to in the past; Big Rivers' cost  
10 of producing power; Big Rivers' need and availability of power; and the market  
11 conditions Big Rivers expects to encounter, all of which would indicate the prices  
12 and terms on which Big Rivers is willing to buy or sell such commodities.

13 15. Information about a company's detailed inner workings is generally  
14 recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus.*  
15 *Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree  
16 in finance to recognize that such information concerning the inner workings of a  
17 corporation is 'generally recognized as confidential or proprietary'"); *Marina*  
18 *Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky.  
19 1995) (unfair commercial advantage arises simply from "the ability to ascertain the  
20 economic status of the entities without the hurdles systemically associated with the  
21 acquisition of such information about privately owned organizations").

1           16.     Moreover, the Commission has previously granted confidential  
2 treatment to similar information. *See, e.g., In the Matter of: An Examination of the*  
3 *Application of the Fuel Adjustment Clause of Kentucky Power Company from*  
4 *November 1, 2012 through October 31, 2014*, P.S.C. Case No. 2014-00450, Order  
5 (Jan. 24, 2019) (granting confidential treatment to planned outage schedules, coal  
6 bid analysis information, and forecasted fuel cost and sales data); *In the Matter of:*  
7 *Electronic Examination of the Application of the Fuel Adjustment Clause of Big*  
8 *Rivers Electric Corporation from November 1, 2017 through April 30, 2018*, P.S.C.  
9 Case No. 2018-00221, Order (Oct. 16, 2018) (granting confidential treatment to the  
10 terms of future off-system sales).

11           17.     In fact, the Commission has granted confidential treatment for the  
12 same Nucor contract terms for which Big Rivers seeks confidential treatment in this  
13 proceeding, as well as Big Rivers' economic analysis of the Nucor contract. *See In*  
14 *the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and*  
15 *Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts*  
16 *for Electric Service with Nucor Corporation; and (2) Approval of Tariff*, P.S.C. Case  
17 No. 2019-00365, Order (Jan. 22, 2020); *see also In the Matter of: Application of*  
18 *Kentucky Power Company for Approval of Renewable Energy Purchase Agreement*  
19 *for Wind Energy Resources Between Kentucky Power Company and FPL Illinois*  
20 *Wind, LLC*. P.S.C. Case No. 2009-00545, Order (July 31, 2019) (granting  
21 confidential treatment to confidential contract terms).



1 benchmark, which would likely lead to the submission of higher bids. *In the Matter*  
2 *of: Application of the Union Light, Heat and Power Company for Confidential*  
3 *Treatment*, P.S.C. Case No. 2003-00054, Order (Aug. 4, 2003). The Commission also  
4 implicitly accepted ULH&P’s further argument that the higher bids would lessen  
5 ULH&P’s ability to compete with other gas suppliers. *Id.*

6 21. Likewise, in P.S.C. Case No. 2018-00056, the Commission granted  
7 confidential treatment to the pricing terms of a contract, recognizing “that the  
8 specific cost information may be used to the financial detriment of Cumberland  
9 Valley and its ratepayers by allowing potential future vendors to bid just under the  
10 cost of its current vendor, which, in turn, would place Cumberland Valley at a  
11 competitive disadvantage.” *In the Matter of: Application of Cumberland Valley*  
12 *Electric, Inc. for Commission Approval for a Certificate of Public Convenience and*  
13 *Necessity to Install an Advanced Metering Infrastructure (AMI) System Pursuant to*  
14 *KRS 807 KAR 5:001 and KRS 278.020*, P.S.C. Case No. 2018-00056, Order (May 9,  
15 2018).

16 22. Similarly, potential suppliers or buyers manipulating Big Rivers’  
17 bidding process would lead to higher costs or lower revenues to Big Rivers and  
18 would place it at an unfair competitive disadvantage in the wholesale power market  
19 and credit markets.

20 23. Further, if confidential treatment of the confidential, negotiated terms  
21 of the solar, Nucor, OMU, or KyMEA contracts; the RFI provided by an economic  
22 development prospect; or the bid information or bid analyses is denied, then other

1 economic development prospects and companies interested in buying or selling  
2 power in Kentucky would know that the confidential terms of their future contracts,  
3 plans, or bids may also be publicly disclosed. Many companies would be reluctant to  
4 have such confidential and proprietary information disclosed because public  
5 disclosure would, for example, allow their competitors to know how they offer and  
6 price their projects. This would create precisely the kind of competitive harm KRS  
7 61.878(1)(c)(1) is intended to prevent.

8         24. Because companies would not want their confidential and proprietary  
9 information disclosed to their competitors, public disclosure of the Confidential  
10 Information in this case would likely reduce the pool of companies willing to  
11 negotiate with Big Rivers, reducing Big Rivers' and other utilities' ability to secure  
12 economic development prospects and the best terms in power purchase agreements.  
13 Big Rivers' competition for future renewable purchase contracts is not limited to its  
14 traditional regulated competitors. Large industrial consumers, municipals, cities,  
15 and communities are reaching out to solar developers as well.

16         25. The Commission has also recognized this real danger to utilities in  
17 Kentucky. In P.S.C. Case No. 2003-00054, the Commission granted confidential  
18 protection for bids submitted to ULH&P. ULH&P argued, and the Commission  
19 implicitly accepted, that the bidding contractors would not want their bid  
20 information publicly disclosed, and that disclosure would reduce the contractor pool  
21 available to ULH&P, which would drive up ULH&P's costs, hurting its ability to  
22 compete with other gas suppliers. *In the Matter of: Application of the Union Light,*

1 *Heat and Power Company for Confidential Treatment*, P.S.C. Case No. 2003-00054,  
2 Order (August 4, 2003). Similarly, in *Hoy v. Kentucky Indus. Revitalization*  
3 *Authority*, the Kentucky Supreme Court found that without protection for  
4 confidential information provided to a public agency, “companies would be reluctant  
5 to apply for investment tax credits for fear the confidentiality of financial  
6 information would be compromised.” *Hoy v. Kentucky Indus. Revitalization*  
7 *Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

8 26. Accordingly, the public disclosure of the Confidential Information  
9 would provide Big Rivers’ competitors with an unfair commercial advantage.

10 **SECTION IV**

11 **Time Period**

12 27. Big Rivers requests that the Confidential Information contained in the  
13 response and the attachment to the response to PSC 1-17 (projected market prices  
14 and capacity position) remain confidential for 5 years from the date of this motion,  
15 which will allow sufficient time for the information to become sufficiently outdated  
16 to no longer pose a competitive risk to Big Rivers. 807 KAR 5:001 Section  
17 13(2)(a)(2).

18 28. Big Rivers requests the Confidential Information contained in the  
19 response to AG 1-15 (customer usage) remain confidentially indefinitely so as to  
20 protect private customer usage information. *See In the Matter of: Sanctuary Church*  
21 *v. Louisville Gas and Electric Company*, Order, P.S.C. Case No. 2018-00181  
22 (January 8, 2019) (granting confidential treatment for an indefinite period to  
23 detailed account and usage information of a non-party).



