



1 posting on a secure file share site. A copy of those pages, with the Confidential  
2 Information redacted, is being electronically filed with Big Rivers' Responses  
3 accompanying this motion

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

8 4. As discussed below, the Confidential Information is entitled to  
9 confidential treatment based upon KRS 61.878(1)(a). 807 KAR 5:001 Section  
10 13(2)(a)(1).

11 **I. The Confidential Information is Entitled to Confidential**  
12 **Treatment under KRS 61.878(1)(a)**

13 5. KRS 61.878(1)(a) protects “[p]ublic records containing information of a  
14 personal nature where the public disclosure thereof would constitute a clearly  
15 unwarranted invasion of personal privacy.”

16 6. The attachment to Big Rivers' response to Item 13 reveals the power  
17 usage of individual large industrial retail customers on the Big Rivers system.  
18 Because these customers are not parties to this proceeding, publicly revealing such  
19 information would constitute a clearly unwarranted invasion of personal privacy.  
20 Moreover, the Commission has previously granted confidential treatment to similar  
21 retail customer usage information. *See, e.g., In the Matter of: Sanctuary Church v.*  
22 *Louisville Gas and Electric Company*, Order, P.S.C. Case No. 2018-00181 (Jan. 8,  
23 2019) (granting confidential treatment pursuant to KRS 61.878(1)(a) for an

1 indefinite period to a retail customer’s account and usage information); *In the*  
2 *Matter of: Application of Kentucky Utilities Company for an Adjustment of its*  
3 *Electric Rates*, Order, P.S.C. Case No. 2012-00221 (July 25, 2013) (holding customer  
4 names, account numbers, and usage information exempt from disclosure under KRS  
5 61.878(1)(a)). In fact, the Commission has granted confidential treatment for  
6 substantially the same information which Big Rivers seeks confidential treatment  
7 in this proceeding. See *In the Matter of: An Electronic Examination of the*  
8 *Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation From*  
9 *May 1, 2019 Through October 31, 2019*, P.S.C. Case No. 2020-00009, Order (April  
10 13, 2020) As such, Big Rivers requests confidential treatment for the identity of  
11 these customers in order to protect their private usage information.

## 12 **II. Information Protected under KRS 61.878(1)(c)(1)**

13 7. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an  
14 agency or required by an agency to be disclosed to it, generally recognized as  
15 confidential or proprietary, which if openly disclosed would permit an unfair  
16 commercial advantage to competitors of the entity that disclosed the records.” KRS  
17 61.878(1)(c)(1). Section A below explains that Big Rivers operates in competitive  
18 environments in the wholesale power market and in the credit market. Section B  
19 below shows that the Confidential Information is generally recognized as  
20 confidential or proprietary. Section C below demonstrates that public disclosure of  
21 the Confidential Information would permit an unfair commercial advantage to Big  
22 Rivers’ competitors.

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

2           8.     As a generation and transmission cooperative, Big Rivers competes in  
3 the wholesale power market. This includes not only the short-term bilateral energy  
4 market, the day-ahead and real time energy and ancillary services markets, and the  
5 capacity market to which Big Rivers has access by virtue of its membership in  
6 Midcontinent Independent System Operator, Inc. (“*MISO*”), but also forward  
7 bilateral long-term agreements and wholesale agreements with utilities and  
8 industrial customers. Big Rivers’ ability to successfully compete in the market is  
9 dependent upon a combination of its ability to: 1) obtain the maximum price for the  
10 power it sells, and 2) keep its cost of production as low as possible. Fundamentally,  
11 if Big Rivers’ cost of producing a unit of power increases, its ability to sell that unit  
12 in competition with other utilities is adversely affected.

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

1 basis in the future, and it is imperative that Big Rivers improve and maintain its  
2 credit profile.

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

6 **B. The Confidential Information is Generally Recognized as**  
7 **Confidential or Proprietary**

8 11. The Confidential Information for which Big Rivers seeks confidential  
9 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or  
10 proprietary under Kentucky law.

11 12. As noted above, the Confidential Information protected under KRS  
12 61.878(1)(c)(1) within Big Rivers' response to Item 12 consists of or reveals  
13 information about confidential terms of power purchases and off-system sales.

14 13. Public disclosure of the terms of power purchases and off-system sales  
15 will give Big Rivers' suppliers, buyers, and competitors insight into when Big Rivers  
16 will have power available to sell into the market or when Big Rivers needs power,  
17 and the amount of power Big Rivers has to sell or will need.

18 14. Information about a company's detailed inner workings is generally  
19 recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus.*  
20 *Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree  
21 in finance to recognize that such information concerning the inner workings of a  
22 corporation is 'generally recognized as confidential or proprietary'"); *Marina*  
23 *Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky.

1 1995) (unfair commercial advantage arises simply from “the ability to ascertain the  
2 economic status of the entities without the hurdles systemically associated with the  
3 acquisition of such information about privately owned organizations”). Moreover,  
4 the Commission has previously granted confidential treatment to similar  
5 information. *See, e.g., In the Matter of: Electronic Examination of the Application of*  
6 *the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1,*  
7 *2017 through April 30, 2018, Order, P.S.C. Case No. 2018-00221 (Oct. 16, 2018)*  
8 (granting confidential treatment to the terms of future off-system sales) In fact, in  
9 recent reviews of Big Rivers’ fuel adjustment clause, the Commission has granted  
10 confidential treatment to the same type of information as the Confidential  
11 Information in this case. *See, e.g., In the Matter of: Electronic Examination of the*  
12 *Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from*  
13 *November 1, 2018 through April 30, 2019, Order, P.S.C. Case No. 2019-00231*  
14 (April 2, 2020).

15       15. The Confidential Information is not publicly available, is not  
16 disseminated within Big Rivers except to those employees and professionals with a  
17 legitimate business need to know and act upon the information, and is not  
18 disseminated to others without a legitimate need to know and act upon the  
19 information. As such, the Confidential Information is generally recognized as  
20 confidential and proprietary.

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

3 16. Disclosure of the Confidential Information would permit an unfair  
4 commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers  
5 faces actual competition in the wholesale power market and in the credit market. It  
6 is likely that Big Rivers would suffer competitive injury if that Confidential  
7 Information was publicly disclosed.

8 17. Potential market power purchasers could use the information related  
9 to Big Rivers' confidential off-system sales to know when and to the extent Big  
10 Rivers is long on power and could use that information to manipulate their bids,  
11 leading to lower revenues to Big Rivers and placing it at an unfair competitive  
12 disadvantage in the credit markets.

13 18. If the information regarding the terms of power purchases and off-  
14 system sales is publicly disclosed, potential power suppliers to Big Rivers and  
15 buyers of power from Big Rivers would have insight into the prices Big Rivers is  
16 willing to buy and sell those items at and could manipulate the bidding process,  
17 leading to higher prices or lower revenues for Big Rivers and impairing its ability to  
18 compete in the wholesale power and credit markets. Potential power suppliers and  
19 power purchasers manipulating Big Rivers' bidding process would lead to higher  
20 costs or lower revenues to Big Rivers and would place it at an unfair competitive  
21 disadvantage in the wholesale power market and credit markets.

22 19. Additionally, public disclosure of the information about Big Rivers'  
23 wholesale power needs would give the power producers and marketers with which

1 Big Rivers competes in the wholesale power market insight into Big Rivers' need for  
2 power and energy during the periods covered by the information. Knowledge of this  
3 information would give those power producers and marketers an unfair competitive  
4 advantage because they could use that information to potentially underbid Big  
5 Rivers in wholesale transactions.

6 20. Accordingly, the public disclosure of the information that Big Rivers  
7 seeks to protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers'  
8 competitors with an unfair commercial advantage.

### 9 **III. Time Period**

10 21. Big Rivers requests that the Confidential Information within the  
11 attachment to Big Rivers' response to Item 13 remain confidentiality indefinitely so  
12 as to protect private customer usage information. 807 KAR 5:001 Section  
13 13(2)(a)(2). . Big Rivers requests that all other Confidential Information remain  
14 confidential for a period of five (5) years from the date of this petition, which will  
15 allow sufficient time for the information to become sufficiently outdated to no longer  
16 pose a competitive risk to Big Rivers. 807 KAR 5:001 Section 13(2)(a)(2).

### 17 **IV. Conclusion**

18 22. Based on the foregoing, the Confidential Information is entitled to  
19 confidential treatment.

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

On this the 2<sup>nd</sup> day of September, 2020.

Respectfully submitted,

*/s/ Tyson Kamuf*

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