



1 Commission Staff's First Request for Information ("PSC1-1," "PSC 1-10," "PSC 1-  
2 13," "PSC 1-20," "PSC 1-43," "PSC 1-52," and "PSC 1-62," respectively).

3           3. 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  
7 otherwise marked "CONFIDENTIAL," is being filed with this motion by electronic  
8 mail. A copy of those pages, with the Confidential Information redacted, is being  
9 electronically filed with Big Rivers' Response to the Commission Staff's First  
10 Request for Information.<sup>1</sup>

11           4. 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.  
13 *See* 807 KAR 5:001 Section 13(b). A copy of the Confidential Information has been  
14 served on all parties that have signed a confidentiality agreement.

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

19           6. As discussed below, the Confidential Information is entitled to  
20 confidential treatment under KRS 278.160(3) and/or KRS 61.878. *See* 807 KAR

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<sup>1</sup> Big Rivers' Response to the Attorney General's Initial Data Requests and Big Rivers' Response to Sierra Club's Initial Requests for Information are also being filed with this motion, but Big Rivers is not seeking confidential treatment for information contained in those responses.

1 5:001 Section 13(2)(a)(1). Public disclosure of the Confidential Information  
2 contained in Big Rivers' Response to the Commission Staff's First Request for  
3 Information would afford Big Rivers' competitors an unfair commercial advantage  
4 as discussed fully below.

5 **I. Information Exempted from Public Disclosure by 807 KAR**  
6 **5:001 Section 13(4) and KRS 278.160(3)**

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8 7. As discussed below, the Confidential Information contained in Big  
9 Rivers' responses and/or attachment to its responses to PSC 1-1, PSC 1-13, PSC 1-  
10 43, and PSC 1-52<sup>2</sup> are entitled to confidential protection based upon KRS  
11 278.160(3), which shields from disclosure "a provision of a special contract that  
12 contains rates and conditions of service not filed in a utility's general schedule if  
13 such provision would otherwise be entitled to be excluded from the application of  
14 KRS 61.870 to 61.884 under the provisions of KRS 61.878(1)(c)(1)."

15 8. The special contracts in question relate to Big Rivers' power sales  
16 contracts with entities in Nebraska, the Kentucky Municipal Energy Agency  
17 ("KyMEA"), Owensboro Municipal Utilities ("OMU"); to short term contracts with  
18 other non-members; and to the retail electric service agreement between Meade  
19 County Rural Electric Cooperative Corporation and Nucor Corporation ("Nucor").  
20 The Commission has already found that the confidential terms of the Nebraska,  
21 KyMEA, and Nucor contracts are entitled to confidential treatment under KRS

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<sup>2</sup> Big Rivers' response to PSC 1-52 also contains Confidential Information related to the projected usage of a specific customer, which is discussed fully below.

1 611.878(1)(c)(1),<sup>3</sup> and the confidential terms of these special contracts should again  
2 be granted confidential treatment. Big Rivers’ motion for confidential treatment of  
3 the confidential terms of the OMU contract is still pending,<sup>4</sup> and those terms  
4 should be afforded confidential treatment for the reasons stated in that motion  
5 and pursuant to 807 KAR 5:001 Section 13(4), which provides, “Pending action by  
6 the commission on a motion for confidential treatment or by its executive director  
7 on a request for confidential treatment, the material specifically identified shall be  
8 accorded confidential treatment.”

9 **II. Information Exempted from Public Disclosure**  
10 **by KRS 61.878(1)(c)(1)**

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12 9. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an  
13 agency or required by an agency to be disclosed to it, generally recognized as  
14 confidential or proprietary, which if openly disclosed would permit an unfair  
15 commercial advantage to competitors of the entity that disclosed the records.”  
16 Section A below explains that Big Rivers operates in competitive environments in

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<sup>3</sup> *In the Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to KRS 278.180 and KAR 5:001 §13*, P.S.C. Case No. 2014-00134, Order (Sept. 10, 2014) (granting confidential treatment to the confidential terms of the Nebraska contracts for an indefinite time period); *In the Matter of: Filing of Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and the Kentucky Municipal Energy Agency*, P.S.C. Case No. 2016-00306, Order (Jan. 2, 2019) (granting confidential treatment to the confidential terms of the KyMEA contract for an indefinite time period); *In the Matter of: Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Cooperation for Approval of Contracts for Electric Service with Nucor Corporation*, P.S.C. Case No. 2019-00365, Orders (Jan. 22, 2020) (granting confidential treatment to the confidential terms of the Nucor contract for an indefinite time period).

<sup>4</sup> *See* TFS 2018-00318; *see also In the Matter of: Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity Authorizing the Conversion of the Green Station Units to Natural Gas-Fired Units and an Order Approving the Establishment of a Regulatory Asset*, P.S.C. Case No. 2021-000079, Order (Mar. 5, 2021) (granting confidential treatment for confidential terms of the OMU contract for an indefinite time period).

1 the wholesale power market and in the credit market. Section B below shows that  
2 the Confidential Information is generally recognized as confidential or proprietary.  
3 Section C below demonstrates that public disclosure of the Confidential  
4 Information would permit an unfair commercial advantage to Big Rivers’  
5 competitors.

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

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

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

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

9       12.     Accordingly, Big Rivers has competitors in both the power and credit  
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**  
13                                   **as Confidential or Proprietary**  
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15       13.     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       14.     The Confidential Information in Big Rivers' two (2) attachments to  
19 its response to PSC 1-20 consists of the inputs used to calculate the total resource  
20 cost benefit – cost ratio, including projected avoided costs; cooperative retail rates;  
21 distribution O&M costs; and operation and maintenance costs growth rates, all of  
22 which provides insight into Big Rivers' cost of producing power.

23       15.     As discussed above, the Confidential Information contained in Big  
24 Rivers' responses and/or attachment to its responses to PSC 1-1, PSC 1-13, PSC 1-

1 43, and PSC 1-52 includes confidential terms of special contracts. KRS 278.160  
2 specifically recognizes that terms of a special contract are not required to be  
3 publicly disclosed if such terms are entitled to protection under KRS  
4 61.878(1)(c)(1). *See* KRS 278.160(3).

5       16. The Confidential Information in Big Rivers' response to PSC 1-62  
6 consists of information related to its projected annual energy position, which  
7 provides insight into the timing of Big Rivers' energy needs. Additionally, this  
8 Confidential Information in Big Rivers' response to PSC 1-62 is similar to or  
9 derived from the same production cost modeling as the information in Appendix G  
10 to Big Rivers' 2020 IRP. Big Rivers' motion for confidential treatment of the  
11 Appendix G to Big Rivers 2020 IRP, filed on September 21, 2020, is still pending,  
12 and the information in PSC 1-62 should be afforded confidential treatment for the  
13 reasons stated in that motion and pursuant to 807 KAR 5:001 Section 13(4).

14       17. As noted above, public disclosure of the Confidential Information  
15 would reveal detailed information relating to terms of special contracts; third-  
16 party propriety information; the usage of an individual customer; inputs for  
17 calculating the resource cost benefit – cost ratio, including projections of avoided  
18 costs, distribution O&M costs, cost growth rates, and cooperative retail rates; Big  
19 Rivers' projected annual energy position and the timing of its energy needs; and  
20 related information. This information provides insight into Big Rivers' cost of  
21 producing power and would indicate the prices at which Big Rivers is willing to  
22 buy or sell power. The information is also indicative of the market conditions Big

1 Rivers expects to encounter and its ability to compete with competitors. The  
2 Commission has previously granted confidential treatment to similar information.  
3 *See In the Matter of: 2017 Integrated Resource Plan of Big Rivers Electric*  
4 *Corporation*, P.S.C. Case No. 2017-00384 (Apr. 25, 2019) (granting confidential  
5 treatment to fuel cost projections, projected O&M costs, NPV results of production  
6 cost model runs, and rate projections).

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

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

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

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

9 21. The Confidential Information includes material such as Big Rivers'  
10 terms of special contracts; third-party propriety information; the usage of an  
11 individual customer; Big Rivers' inputs for calculating the resource cost benefit –  
12 cost ratio, including projections of avoided costs, distribution O&M costs, cost  
13 growth rates, and cooperative retail rates; and Big Rivers' projected annual energy  
14 position. If that information is publicly disclosed, market participants would have  
15 insight into the timing of Big Rivers' energy needs, its cost of producing power, and  
16 the prices at which it is willing to buy and sell power, and could use that  
17 information to manipulate the bidding process, leading to higher costs or lower  
18 revenues for Big Rivers and impairing its ability to compete in the wholesale  
19 power markets. Furthermore, any competitive pressure that adversely affects Big  
20 Rivers' revenue and margins could make the company appear less creditworthy  
21 and thus impair its ability to compete in the credit market.

22 22. These effects were recognized in P.S.C. Case No. 2003-00054, in  
23 which the Commission granted confidential treatment to bids submitted to Union  
24 Light, Heat & Power ("*ULH&P*"). *ULH&P* argued, and the Commission implicitly

1 accepted, that if the bids it received were publicly disclosed, contractors in the  
2 future could use the bids as a benchmark, which would likely lead to the  
3 submission of higher bids. *In the Matter of Application of the Union Light, Heat  
4 and Power Company for Confidential Treatment*, P.S.C. Case No. 2003-00054,  
5 Order (Aug. 4, 2003); *see also In the Matter of An Examination of the Application of  
6 the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1,  
7 2007 through October 31, 2007*, P.S.C. Case No. 2007-00523, Letter (Feb. 27, 2008).

8         23. The Commission also implicitly accepted ULH&P's further argument  
9 that the higher bids would lessen ULH&P's ability to compete with other gas  
10 suppliers. *In the Matter of Application of the Union Light, Heat and Power  
11 Company for Confidential Treatment*, P.S.C. Case No. 2003-00054, Order (Aug. 4,  
12 2003).

13         24. Similarly, potential power suppliers and purchasers manipulating  
14 Big Rivers' bidding process would lead to higher costs to, or lower revenues for, Big  
15 Rivers and would place it at an unfair competitive disadvantage in the wholesale  
16 power and credit markets.

17         25. Public disclosure of Big Rivers' projections of its production costs and  
18 power market prices would give the power producers and marketers with which  
19 Big Rivers competes in the wholesale power market insight into Big Rivers' cost of  
20 producing power and view of energy and capacity prices. Knowledge of this  
21 information would give those power producers and marketers an unfair

1 competitive advantage because they could use that information to potentially  
2 underbid Big Rivers in wholesale transactions.

3         26. Public disclosure of the confidential terms of special contracts and  
4 third party proprietary information would also cause competitive harm to Big  
5 Rivers. In P.S.C. Case No. 2003-00054, the Commission additionally implicitly  
6 accepted ULH&P's argument that the bidding contractors would not want their  
7 bid information publicly disclosed, and that disclosure would reduce the contractor  
8 pool available to ULH&P, which would drive up ULH&P's costs, hurting its ability  
9 to compete with other gas suppliers. *In the Matter of Application of the Union*  
10 *Light, Heat and Power Company for Confidential Treatment*, P.S.C. Case No. 2003-  
11 00054, Order (Aug. 4, 2003). Similarly, in *Hoy v. Kentucky Indus. Revitalization*  
12 *Authority*, the Kentucky Supreme Court found that without protection for  
13 confidential information provided to a public agency, "companies would be  
14 reluctant to apply for investment tax credits for fear the confidentiality of financial  
15 information would be compromised." *Hoy v. Kentucky Indus. Revitalization*  
16 *Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

17         27. In Big Rivers' case, Big Rivers is currently in negotiations with  
18 potential and expects to engage in negotiations with counterparties for purchase  
19 power agreements other counterparties in the future. If confidential treatment of  
20 the confidential terms of the special contract in Big Rivers' responses and/or  
21 attachment to its responses to PSC 1-1, PSC 1-13, PSC 1-43, and PSC 1-52 is  
22 denied, potential counterparties would know that the confidential terms of their

1 contracts could be publicly disclosed, which could reveal information to their  
2 competitors about their competitiveness. Because many companies would be  
3 reluctant to have such information disclosed, public disclosure of the Confidential  
4 Information would likely reduce the pool of counterparties willing to negotiate  
5 with Big Rivers, reducing Big Rivers' ability to sell power and impairing its ability  
6 to compete in the wholesale power and credit markets.

7       28. The Confidential Information in the attachment to Big Rivers'  
8 response to PSC 1-10 consists of variables used in the regression model equations  
9 provided by a third party, which is the proprietary work product of that third  
10 party, which Big Rivers does not have the authority to publicly disclose. As such,  
11 the Commission should grant confidential treatment for that information. *See In*  
12 *the Matter of: Duke Energy Kentucky, Inc.'s Integrated Resource Plan*, P.S.C. Case  
13 No. 2018-00195, Order (Sept. 3, 2019) (granting confidential treatment to "third  
14 party owned and licensed modeling tool").

15       29. Like with confidential contract terms, third party companies that  
16 provide their proprietary and confidential work product to Big Rivers would also  
17 not want their proprietary information publicly disclosed. Public disclosure of that  
18 information would limit the number of third parties willing to provide such  
19 information to Big Rivers, which would prevent Big Rivers from having access to  
20 valuable tools upon which it relies in negotiating power sales and determining  
21 whether to engage in wholesale market transactions. Not having access to such  
22 tools would impair Big Rivers' ability to compete in the wholesale power market.

1 Accordingly, disclosure of the Confidential Information contained in Big Rivers’  
2 response to PSC 1-10 would also provide Big Rivers’ competitors with an unfair  
3 commercial advantage and should be granted confidential treatment for an  
4 indefinite period pursuant to KRS 61.878(1)(c)(1). *See In the Matter of: Electronic*  
5 *Application of Grayson County Water District for a Deviation from Meter Testing*  
6 *Requirements of 807 KAR 5:006, Section 16(1), P.S.C. Case No. 2019-00115, Order*  
7 *(Sept. 19, 2019) (granting confidential protection for proprietary product produced*  
8 *by a third party that was not available to the general public/required membership*  
9 *to obtain and was generally recognized as confidential).*

10 30. Accordingly, the public disclosure of the information that Big Rivers  
11 seeks to protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers’  
12 competitors with an unfair commercial advantage.

13 **III. Information Exempted From Public Disclosure pursuant to**  
14 **KRS 61.878(1)(a)**

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

18 32. The Confidential Information in Big Rivers’ response to PSC 1-52  
19 reveals the projected usage of an individual large industrial retail customer.  
20 Because this customer is not a party to this proceeding, publicly revealing such  
21 information would constitute a clearly unwarranted invasion of personal privacy.  
22 Moreover, the Commission has previously granted confidential treatment to  
23 similar information. *See, e.g., In the Matter of: Sanctuary Church v. Louisville Gas*

1 *and Electric Company*, P.S.C. Case No. 2018-00181, Order (Jan. 8, 2019) (granting  
2 confidential treatment pursuant to KRS 61.878(1)(a) for an indefinite period to a  
3 retail customer’s account and usage information); *In the Matter of: Application of*  
4 *Kentucky Utilities Company for an Adjustment of its Electric Rates*, P.S.C. Case  
5 No. 2012-00221, Order (July 25, 2013) (holding customer names, account numbers,  
6 and usage information exempt from disclosure under KRS 61.878(1)(a)); *In the*  
7 *Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to*  
8 *Modify Its MRSM Tariff, Cease Deferring Depreciation Expenses, Establish*  
9 *Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief*,  
10 P.S.C. Case No. 2020-00064, Order (June 30, 2020) (granting confidential  
11 treatment to information related to individual customer names and usage in Big  
12 Rivers’ responses to the Commission Staff’s First Requests for Information,  
13 Attorney General’s First Set of Data Requests, and KIUC’s First Set of Data  
14 Requests); *In the Matter of: Riverside Generating Company, LLC v. Kentucky*  
15 *Power Company*, P.S.C. Case No. 2017-00472, Order (May 16, 2019) (granting  
16 confidential treatment to customer specific information relating to purchases and  
17 transmission of electricity for an indefinite period). As such, Big Rivers requests  
18 confidential treatment for the customer’s projected usage in order to protect their  
19 private information.

20 **IV. Time Period**

21 33. Pursuant to 807 KAR 5:001 Section 13(2)(a)(2), Big Rivers requests  
22 that the Confidential Information be afforded confidential treatment for the time  
23 periods explained below.

1           34.    Big Rivers requests that the Confidential Information in its responses  
2 and/or the attachments to its responses to PSC 1-1, PSC 1-13, PSC 1-43, and PSC  
3 1-52, which is the confidential special contract terms, remain confidential  
4 indefinitely for the above-stated reasons.

5           35.    Big Rivers requests that the Confidential Information related to  
6 third-party private and/or proprietary information in its responses and/or the  
7 attachments to its responses to PSC 1-10 and PSC 1-52 protected by KRS  
8 61.878(1)(a) remain confidential indefinitely for the above-stated reasons.

9           36.    Big Rivers requests that the Confidential Information in its responses  
10 and/or the attachments to its responses to PSC 1-20 and PSC1-62 remain  
11 confidential for a period of five (5) years from the date of this motion, which should  
12 allow sufficient time for the projected data to become historical and sufficiently  
13 outdated that it could not be used to determine similar confidential information at  
14 that time or to competitively disadvantage Big Rivers.

15           **V.    Conclusion**

16           37.    Based on the foregoing, the Confidential Information is entitled to  
17 confidential treatment pursuant to 807 KAR 5:001 Section 13, KRS 61.878, and  
18 KRS 278.160(3). If the Commission disagrees that Big Rivers' Confidential  
19 Information is entitled to confidential treatment, due process requires the  
20 Commission to hold an evidentiary hearing. *See Utility Regulatory Comm'n v.*  
21 *Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

22           WHEREFORE, Big Rivers respectfully requests that the Commission grant  
23 this motion and classify and treat as confidential the Confidential Information.

1           On this the 19<sup>st</sup> day of March, 2021.

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Respectfully submitted,

*/s/ Tyson Kamuf*

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