

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

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4  
5 *In the Matter of:*  
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**ELECTRONIC TARIFF FILING OF BIG RIVERS    )**  
**ELECTRIC CORPORATION AND JACKSON        )**  
**PURCHASE ENERGY CORPORATION FOR        )**  
**APPROVAL AND CONFIDENTIAL                )**  
**TREATMENT OF A SPECIAL CONTRACT AND     )**        **Case No.**  
**COST ANALYSIS INFORMATION AND A         )**        **2021-00282**  
**REQUEST FOR DEVIATION FROM THE         )**  
**COMMISSION’S SEPTEMBER 24, 1990 IN       )**  
**ADMINISTRATIVE CASE NO. 327               )**

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9                                   **MOTION FOR CONFIDENTIAL TREATMENT**

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11           1.     Big Rivers Electric Corporation (“*Big Rivers*”) and Jackson Purchase  
12 Energy Corporation (“*Jackson Purchase*”) (collective the “*Movants*”) hereby move  
13 the Kentucky Public Service Commission (the “*Commission*”), pursuant to KRS  
14 61.878(1)(c), KRS 278.160(3), and 807 KAR 5:001 Section 13, to grant  
15 confidential protection to certain information contained in *Movants’ Responses to*  
16 the Commission Staff’s First Request for Information being filed  
17 contemporaneously with this motion.

18           2.     The information the *Movants* seek to protect as confidential is  
19 hereinafter referred to as the “Confidential Information.” The Confidential  
20 Information consists of:

- 21           a)     negotiated terms of the retail agreement between Blockware  
22                   Mining LLC (“*Blockware*”) and Jackson Purchase (“*Retail*  
23                   *Agreement*”);

- 1           b)     information related to Blockware’s private information, including  
2                     its projected energy usage and changes in the load requirements  
3                     for its planned commercial cryptocurrency mining facility  
4                     locating in Paducah, Kentucky, and the cost it will pay for power;
- 5           c)     Big Rivers’ internal projections of:
- 6                     i. its marginal production costs;
- 7                     ii. its margins and the Net Present Value of the benefits to its  
8                         Members from the proposed Retail Agreement and  
9                         corresponding Wholesale Agreement between Big Rivers and  
10                         Jackson Purchase (the “*Blockware Contracts*”); and
- 11                     iii. market energy prices.

12           3.     Pursuant to the Commission’s Emergency Orders *In the Matter of:*  
13 *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19, Case*  
14 No. 2020-00085, one (1) copy of the Confidential Information highlighted in  
15 yellow or otherwise marked “CONFIDENTIAL,” is being filed with this request  
16 via electronic mail sent to [PSCED@ky.gov](mailto:PSCED@ky.gov). One (1) copy of the documents with  
17 the Confidential Information redacted is also being electronically filed with this  
18 request. 807 KAR 5:001 Section 13(2)(a)(3).

19           4.     A copy of this motion with the Confidential Information redacted  
20 has been served on all parties to this proceeding through the use of electronic  
21 filing. 807 KAR 5:001 Section 13(2)(b).

1           5.       In the event that and to the extent the Confidential Information  
2 becomes generally available to the public, whether through filings required by  
3 other agencies or otherwise, the Movants will notify the Commission and have its  
4 confidential status removed. 807 KAR 5:001 Section 13(10)(b),

5           6.       Pursuant to 807 KAR 5:001 Section 13(2)(a)(1), as discussed *infra*,  
6 the Confidential Information is entitled to confidential protection and is being  
7 submitted confidentially under the purview of KRS 61.878(1)(a) and KRS  
8 61.878(1)(c)(1).

9           **I.   The Confidential Information is entitled to confidential**  
10           **protection based upon KRS 61.878(1)(a)**

11           7.       KRS 61.878(1)(a) explicitly grants confidential protection to “[p]ublic  
12 records containing information of a personal nature where the public disclosure  
13 thereof would constitute a clearly unwarranted invasion of personal privacy.”  
14 Here, Blockware plans to operate an energy-intensive commercial cryptocurrency  
15 mining facility in Paducah, Kentucky, and the Confidential Information reveals  
16 its proprietary and otherwise private information, including its projected power  
17 usage and the cost it will pay for power. Because public disclosure of the  
18 Confidential Information would constitute an unwarranted invasion of this  
19 customer’s privacy, this Confidential Information should be granted confidential  
20 treatment. *See* Ky. Op. Atty. Gen. 96-ORD-176 (August 20, 1996) (holding  
21 Kroger Company’s utility bills exempt from disclosure under KRS 61.878(1)(a));  
22 *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of*  
23 *its Electric Rates*, Order, P.S.C. Case No. 2012-00221 (July 25, 2013) (holding

1 customer names, account numbers, and usage information exempt from  
2 disclosure under KRS 61.878(1)(a)).

3 8. The Commission has granted confidential treatment for similar  
4 information relating to other retail and wholesale customers. *See, e.g., In the*  
5 *Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric*  
6 *Corporation for Approval of Contracts*, P.S.C. Case No. 2016-00117, Order, June  
7 11, 2019; *In the Matter of: Joint Application of Big Rivers Electric Corporation*  
8 *and Meade County Rural Electric Cooperative Corporation for Approval of*  
9 *Contracts for Electric Service with Nucor Corporation*, P.S.C. Case No. 2019-  
10 00365, Orders (Jan. 22, 2020); *In the Matter of: Big Rivers Electric Corporation*  
11 *Filing of Wholesale Contracts Pursuant to KRS 278.180 and KAR 5:001 §13*,  
12 P.S.C. Case No. 2014-00134, Order (Sept. 10, 2014) (granting confidential  
13 treatment to the confidential terms of the Nebraska contracts for an indefinite  
14 time period); *In the Matter of: Filing of Agreement for the Purchase and Sale of*  
15 *Firm Capacity and Energy Between Big Rivers Electric Corporation and the*  
16 *Kentucky Municipal Energy Agency*, P.S.C. Case No. 2016-00306, Order (Jan. 2,  
17 2019) (granting confidential treatment to the confidential terms of the KyMEA  
18 contract for an indefinite time period).

19 **II. The Confidential Information is also entitled to**  
20 **confidential protection based upon KRS 61.878(1)(c)(1)**

21 9. The Confidential Information is also entitled to confidential  
22 protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially  
23 disclosed to an agency or required by an agency to be disclosed to it, generally

1 recognized as confidential or proprietary, which if openly disclosed would permit  
2 an unfair commercial advantage to competitors of the entity that disclosed the  
3 records.” See 807 KAR 5:001 Section 13(3)(a)(1). Subsection A *infra* describes  
4 how the Movants operate in competitive environments; Subsection B *infra*  
5 explains that the Confidential Information is generally recognized as confidential  
6 or proprietary; and Subsection C *infra* demonstrates that public disclosure of the  
7 Confidential Information would permit an unfair commercial advantage to the  
8 Movants’ competitors. As such, the Commission should grant confidential  
9 treatment to the Confidential Information.

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

11 10. Big Rivers must successfully compete in the wholesale power  
12 markets to sell energy it produces in excess of its needs. Big Rivers’ ability to  
13 successfully compete in these wholesale power markets is dependent upon an  
14 effective combination of a) obtaining the maximum price for the power it sells  
15 and the best contract terms, and b) keeping its cost of production as low as  
16 possible. Fundamentally, if Big Rivers’ cost of producing a kilowatt hour or its  
17 business risk increases, its ability to sell that kilowatt hour in competition with  
18 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 the financial results it  
21 obtains and the business risks it assumes. Any event that adversely affects Big  
22 Rivers’ financial results or increases its business risks may adversely affect the

1 price it pays for credit. Impediments to Big Rivers' obtaining the best contract  
2 terms could likewise affect its apparent creditworthiness. A utility the size of Big  
3 Rivers that operates generation and transmission facilities will always have  
4 periodic cash and borrowing requirements for both anticipated and unanticipated  
5 needs. Big Rivers expects to be in the credit markets on a regular basis in the  
6 future, and it is imperative that Big Rivers improve and maintain its credit  
7 profile.

8 12. Jackson Purchase competes with other retail electric suppliers for  
9 economic development prospects such as Blockware.

10 13. Accordingly, Big Rivers faces competition in the wholesale power  
11 and capital markets, Jackson Purchase faces competition with regard to  
12 economic development prospects, and the Confidential Information should be  
13 afforded confidential treatment to prevent the imposition of an unfair  
14 competitive advantage to those competitors.

15 ***B. The Confidential Information is Generally***  
16 ***Recognized as Confidential or Proprietary***

17 14. The Confidential Information for which Movants seek confidential  
18 treatment under KRS 61.878 is generally recognized as confidential or  
19 proprietary under Kentucky law.

20 15. As noted above, the Confidential Information consists of  
21 confidential, negotiated terms of retail electric service agreements. KRS  
22 278.160(3) specifically recognizes that terms of a special contract are not required

1 to be publicly disclosed if such terms are entitled to protection under KRS  
2 61.878(1)(c)(1).

3 16. The Confidential Information also consists of Big Rivers' projections  
4 of its production costs, market energy prices, margins, and the Net Present Value  
5 of the benefits to its Members from the proposed Blockware Contracts. That  
6 information, and the confidential contract terms, is indicative of the market  
7 conditions Big Rivers expects to encounter and the prices and terms on which it  
8 is willing to buy and sell power.

9 17. Under Kentucky law, it is well recognized that information about a  
10 company's detailed inner workings, such as the Confidential Information here, is  
11 generally recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky*  
12 *Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“[i]t does not  
13 take a degree in finance to recognize that such information concerning the inner  
14 workings of a corporation is ‘generally recognized as confidential or  
15 proprietary’”). Moreover, the Commission has recognized in previous cases the  
16 confidentiality of customer information similar to the Confidential Information  
17 related to Blockware's projected power usage and cost of power. *See, e.g., In the*  
18 *Matter of: Riverside Generating Company, LLC v. Kentucky Power Company*,  
19 Order, P.S.C. Case No. 2017-00472 (May 16, 2019) (granting confidential  
20 treatment to customer specific information relating to purchases and  
21 transmission of electricity for an indefinite period); *In the Matter of: Sanctuary of*  
22 *Church v. Louisville Gas and Electric Company*, Order, P.S.C. Case No. 2018-

1 00181 (January 8, 2019) (granting confidential treatment for an indefinite period  
2 to detailed account and usage information of a non-party); *In the Matter of:*  
3 *Electronic Application of Big Rivers Electric Corporation for Approval to Modify*  
4 *Its MRSM Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory*  
5 *Assets, Amortize Regulatory Assets, and Other Appropriate Relief*, Order, P.S.C.  
6 Case No. 2020-00064 (June 30, 2020) (granting confidential treatment for  
7 information that would reveal individual customers' power usage).

8 18. The Confidential Information is not publicly available, is not  
9 disseminated within Big Rivers or Jackson Purchase except to those employees  
10 and professionals with a legitimate business need to know and act upon the  
11 information, and is not disseminated to others without a legitimate need to know  
12 and act upon the information. As such, the Confidential Information is generally  
13 recognized as confidential and proprietary.

14 19. Based on the foregoing, the Confidential Information is generally  
15 recognized as confidential or proprietary under Kentucky law.

16 ***C. Disclosure of the Confidential Information Would***  
17 ***Permit an Unfair Commercial Advantage to Big***  
18 ***Rivers' Competitors***

19 20. Disclosure of the Confidential Information would permit an unfair  
20 commercial advantage to Movants' competitors. As discussed *supra*, Big Rivers  
21 faces actual competition in the wholesale power and credit markets, and Jackson  
22 Purchase faces actual competition in the effort to secure economic development  
23 prospects. It is likely that Movants' ability to compete in these markets would be



1 adversely affected if the Confidential Information was publicly disclosed, and  
2 Movants seek protection from such competitive injury.

3           21.    Big Rivers is actively engaged in buying and selling power in the  
4 wholesale power markets, Jackson Purchase is actively engaged in discussions  
5 with other economic development prospects, and Big Rivers and Jackson  
6 Purchase expect to engage in negotiations with such counterparties in the future.  
7 If confidential treatment of the confidential terms of the Retail Agreement is  
8 denied, potential counterparties would know that the confidential terms of their  
9 contracts would be publicly disclosed, which could reveal information to their  
10 competitors about their competitiveness. Because many companies would be  
11 reluctant to have such information disclosed, public disclosure of the Confidential  
12 Information in this case would likely reduce the pool of counterparties willing to  
13 negotiate with Big Rivers or Jackson Purchase, reducing Big Rivers' ability to  
14 buy and sell power at favorable prices and Jackson Purchase's ability to secure  
15 economic development prospects. Further, any competitive pressure that  
16 adversely affects Big Rivers' revenue and margins could make the company  
17 appear less creditworthy, and thus impair its ability to compete in the credit  
18 markets.

19           22.    Public disclosure of the Confidential Information related to the  
20 negotiated terms of the Retail Agreement would provide potential purchasers of  
21 energy or capacity from Big Rivers; potential sellers of energy or capacity to Big  
22 Rivers; and other providers competing against Big Rivers for purchases or sales

1 of energy or capacity with insight into the terms under which Big Rivers is  
2 willing to buy and sell energy and capacity. These market participants could use  
3 this information as a benchmark, leading to higher costs, lower revenues, or less  
4 favorable terms to Big Rivers, hurting Big Rivers' ability to compete in the  
5 wholesale power and credit markets.

6       23. Thus, Movants' competitiveness will be adversely affected if other  
7 suppliers are given such an unfair competitive advantage or if potential  
8 counterparties are given a negotiating advantage. Accordingly, the public  
9 disclosure of the Confidential Information would provide competitors of Movants  
10 with an unfair commercial advantage.

11       24. If the Confidential Information consisting of Big Rivers' projections  
12 of its margins, the Net Present Value of the benefits to its Member from the  
13 proposed Blockware Contracts; its marginal production costs; and market energy  
14 prices is publically disclosed, market participants will have insight into Big  
15 Rivers' cost of producing power and the prices at which it is willing to buy and  
16 sell power. These market participants could use that information to manipulate  
17 the bidding process, leading to higher costs or lower revenues for Big Rivers and  
18 impairing its ability to compete in the wholesale power markets. Furthermore,  
19 any competitive pressure that adversely affects Big Rivers' revenue and margins  
20 could make the company appear less creditworthy and thus impair its ability to  
21 compete in the credit market.

1           25.    The Movants submitted a request for confidential treatment of the  
2 same confidential information contained in the Blockware Contracts and  
3 supporting documents through the Commission’s Tariff Filing System on June  
4 21, 2021, prior to the Commission establishing this proceeding. This request is  
5 still pending and the confidential information should be afforded confidential  
6 treatment for the reasons stated in that motion and pursuant to 807 KAR 5:001  
7 Section 13(4), which provides, “Pending action by the commission on a motion for  
8 confidential treatment or by its executive director on a request for confidential  
9 treatment, the material specifically identified shall be accorded confidential  
10 treatment.”

11       **III.    Time Period**

12           26.    Big Rivers requests that the Confidential Information remain  
13 confidential indefinitely because it reveals private customer data and  
14 confidential contract terms, which public disclosure of such information would  
15 cause competitive harm to Movants for the reasons above for so long as Movants  
16 are buying and selling power or competing for economic development prospects.  
17 All other Confidential Information is intertwined with the contract terms and  
18 private customer data and cannot be publicly disclosed without revealing the  
19 confidential contract terms and customer data. *See* 807 KAR 5:001 Section  
20 13(3)(a)(2).

1     **IV.   Conclusion**

2           27.   Based on the foregoing, the Confidential Information is entitled to  
3 confidential protection. If the Commission disagrees that Big Rivers is entitled  
4 to confidential protection, due process requires the Commission to hold an  
5 evidentiary hearing. *See Utility Regulatory Com'n v. Kentucky Water Service Co.,*  
6 *Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

7           WHEREFORE, Movants respectfully request that the Commission classify  
8 and protect as confidential the Confidential Information.

9           On this the 20st day of August, 2021.  
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Respectfully submitted,

*/s/ Tyson Kamuf*

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