



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

**In the Matter of:**

**ELECTRONIC APPLICATION OF BIG RIVERS )  
ELECTRIC CORPORATION FOR A CERTIFICATE )  
OF CONVENIENCE AND NECESSITY )  
AUTHORIZING CONSTRUCTION OF A NEW )  
HEADQUARTERS FACILITY AND AN ORDER )  
AUTHORIZING BIG RIVERS TO SELL ITS )  
EXISTING HEADQUARTERS FACILITY )**

**Case No.  
2021-00314**

**MOTION FOR CONFIDENTIAL TREATMENT**

**FILED: October 22, 2021**



- a) the current cost estimate for the construction of a new Transmission Operations Center (“*TOC*”), (found in Big Rivers’ response to PSC 1-7);
- b) the appraisal reports and estimated current value of Big Rivers’ existing headquarters properties and related information, (found in response or the attachments to Big Rivers’ responses to PSC 1-15, PSC 1-17, and PSC 1-18); and
- c) the location, structure, and other sensitive information regarding critical energy infrastructure (found in Big Rivers’ response to PSC 1-21).

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

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

5. In the event that and to the extent the Confidential Information becomes generally available to the public, whether through filings required by

1 other agencies or otherwise, Big Rivers will notify the Commission and have its  
2 confidential status removed. 807 KAR 5:001 Section 13(10)(b).

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

7 **I. The Confidential Information is Entitled to Confidential**  
8 **Treatment Based upon KRS 61.878(1)(c)(1)**

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

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

20 8. Big Rivers must successfully compete in the wholesale power  
21 markets to sell energy it produces in excess of its members’ needs. Big Rivers’  
22 ability to successfully compete in these wholesale power markets is dependent  
23 upon an effective combination of a) obtaining the maximum price for the power it

1 sells and the best contract terms, and b) keeping its cost of production as low as  
2 possible. Fundamentally, if Big Rivers' cost of producing a kilowatt hour of  
3 energy increases, its ability to sell that kilowatt hour in competition with other  
4 utilities is adversely affected.

5           9.     Big Rivers also competes for reasonably-priced credit in the credit  
6 markets, and its ability to compete is directly impacted by the financial results it  
7 obtains. Any events that adversely affect Big Rivers' financial results may  
8 impact the price it pays for credit. Impediments to Big Rivers' negotiating the  
9 best terms for the construction of the proposed headquarters facility or the sale of  
10 its existing headquarters properties could likewise affect its apparent  
11 creditworthiness. A utility the size of Big Rivers that operates generation and  
12 transmission facilities will always have periodic cash and borrowing  
13 requirements for both anticipated and unanticipated needs. Big Rivers expects to  
14 be in the credit markets on a regular basis in the future, and it is imperative that  
15 Big Rivers improve and maintain its credit profile.

16           10.    Accordingly, Big Rivers faces competition in both the wholesale  
17 power and credit markets, and its Confidential Information should be afforded  
18 confidential treatment to prevent the imposition of an unfair competitive  
19 advantage to those competitors.

1 ***B. The Confidential Information is Generally Recognized***  
2 ***as Confidential or Proprietary***

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

6 12. As noted above, the Confidential Information consists of the current  
7 cost estimate for the construction of a new TOC <sup>1</sup> and the appraisal reports and  
8 appraised value of Big Rivers' existing headquarters properties and related  
9 information.<sup>2</sup> This Confidential Information is critical to the effective execution  
10 of Big Rivers' business decisions and strategy.

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

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<sup>1</sup> The referenced Confidential Information is contained in Big Rivers' response to PSC 1-7.

<sup>2</sup> The referenced Confidential Information is contained in the attachments to Big Rivers' response to PSC 1-15 and responses to PSC 1-17 and PSC 1-18.

1 organizations”). Moreover, the Commission has recognized in previous cases the  
2 confidentiality of capital project information similar to the Confidential  
3 Information related to the construction of a new headquarters facility and the  
4 sale of its existing headquarters properties. *See, e.g., In the Matter of: Electronic*  
5 *Application of Jackson Purchase Energy Corporation for a Certificate of Public*  
6 *Convenience and Necessity to Construct a New Headquarters Facility*, P.S.C. Case  
7 No. 2019-00326, Order (Oct. 01, 2019) (granting confidential treatment of the  
8 purchase price of the proposed headquarters, the anticipated cost of construction,  
9 and the estimated net cost of the proposed headquarters, until the construction  
10 costs became final) and Order (Jan. 14, 2020) (granting confidential treatment of  
11 the commercial appraisal report on existing headquarters facilities).

12 14. Finally, the Confidential Information is similar to or is derived from  
13 the Confidential Information contained in Big Rivers’ Application, for which  
14 confidentiality has been sought pursuant to the pending Motion for Confidential  
15 Treatment contemporaneously filed with Big Rivers’ Application in this  
16 proceeding. Thus, the Confidential Information should be granted confidential  
17 treatment pending review of Big Rivers’ previously filed Motion for Confidential  
18 Treatment in this proceeding, which was filed on August 26, 2021. *See* 807 KAR  
19 5:001 Section 13(4) (“Pending action by the commission on a motion for  
20 confidential treatment or by its executive director on a request for confidential  
21 treatment, the material specifically identified shall be accorded confidential  
22 treatment.”).

1           15.    The Confidential Information is not publicly available, is not  
2 disseminated within Big Rivers except to those employees and professionals with  
3 a legitimate business need to know and act upon the information, and is not  
4 disseminated to others without a legitimate need to know and act upon the  
5 information. As such, the Confidential Information is generally recognized as  
6 confidential and proprietary.

7                   ***C. Disclosure of the Confidential Information Would Result in an***  
8                   ***Unfair Commercial Advantage to Big Rivers' Competitors***  
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10           16.    Disclosure of the Confidential Information could unreasonably and  
11 unnecessarily harm Big Rivers by giving interested third parties, potential  
12 construction bidders, and potential counterparties in real estate sales  
13 transactions, an unfair commercial advantage through insight into Big Rivers'  
14 business operations and financial strategies. As discussed *supra*, Big Rivers  
15 faces actual competition in the wholesale power market and in the credit market.  
16 It is likely that Big Rivers would suffer competitive injury if that Confidential  
17 Information was publicly disclosed, and Big Rivers seeks protection from such  
18 competitive injury.

19           17.    Public disclosure of the current cost estimate for the construction of  
20 a new TOC would allow prospective construction bidders potentially to use this  
21 sensitive information to submit construction bids higher than what they might  
22 otherwise provide if the information were not publically available. The estimate  
23 shown in Big Rivers' response to PSC 1-7 gives potential vendors insight into how  
24 much Big Rivers is willing to pay for the construction, setting a benchmark that



1 would not exist but for the disclosure of this sensitive information. In this case,  
2 potential bidders would be competitors to Big Rivers as contemplated by KRS  
3 61.878(1)(c)(1), as Big Rivers and potential bidders each have competing interests  
4 to secure the most favorable cost and terms.<sup>3</sup> This could lead to higher costs or  
5 less favorable terms for Big Rivers and impair its ability to compete in the  
6 wholesale power market and credit markets. The Commission has often found  
7 that similar information relating to competitive bidding is generally recognized as  
8 confidential and proprietary. *See, e.g., In the Matter of Application of the Union*  
9 *Light, Heat and Power Company for Confidential Treatment*, Order, P.S.C. Case  
10 No. 2003-00054 (Aug. 4, 2003) (finding that bids submitted to a utility were  
11 confidential).

12 18. These effects were recognized in P.S.C. Case No. 2003-00054, in  
13 which the Commission granted confidential treatment to bids submitted to Union  
14 Light, Heat & Power (“*ULH&P*”). *ULH&P* argued, and the Commission  
15 implicitly accepted, that if the bids it received were publicly disclosed, contractors  
16 in the future could use the bids as a benchmark, which would likely lead to the  
17 submission of higher bids. *In the Matter of Application of the Union Light, Heat*  
18 *and Power Company for Confidential Treatment*, P.S.C. Case No. 2003-00054,  
19 Order (Aug. 4, 2003); *see also In the Matter of An Examination of the Application*  
20 *of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May*

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<sup>3</sup> *See In the Matter of: Electronic Application of Jackson Purchase Energy Corporation for a Certificate of Public Convenience and Necessity to Construct a New Headquarters Facility*, Case No. 2019-00326, Order (Jan. 14, 2020).

1 *1, 2007 through October 31, 2007*, P.S.C. Case No. 2007-00523, Letter (Feb. 27,  
2 2008).

3 19. Disclosure of the appraisal reports and estimated current value of  
4 Big Rivers' existing headquarters properties and related information<sup>4</sup> would  
5 likewise give potential counterparties and competitors insight into Big Rivers'  
6 internal evaluation of the properties. The counterparties and competitors would  
7 have a business advantage in the course of ongoing and future negotiations,  
8 potentially affecting the ultimate purchase price obtained by Big Rivers for the  
9 sale of its existing headquarters properties. Furthermore, any competitive  
10 pressure that adversely affects Big Rivers' financial results and contract terms  
11 could make the company appear less creditworthy and thus impair its ability to  
12 compete in the credit market.

13 20. Accordingly, the public disclosure of the information that Big Rivers  
14 seeks to protect pursuant to KRS 61.878 would provide Big Rivers' competitors  
15 with an unfair commercial advantage.

16 **II. The Confidential Information is also Entitled to Confidential**  
17 **Treatment Based Upon KRS 61.878(1)(m)**

18 21. Certain Confidential Information is entitled to confidential  
19 treatment based upon KRS 61.878(1)(m)(1), which protects "[p]ublic records the  
20 disclosure of which would have a reasonable likelihood of threatening the public

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<sup>4</sup> The referenced Confidential Information is contained in the attachments to Big Rivers' response to PSC 1-15 and its responses to PSC 1-17 and PSC 1-18.

1 safety by exposing a vulnerability in preventing protecting against, mitigating, or  
2 responding to a terrorist act. . . .”

3 22. This Confidential Information contained in Big Rivers’ response to  
4 PSC 1-21 consists of detailed information that describes the current and planned  
5 location, layout, and configuration of critical energy infrastructure. If publically  
6 disclosed, this Confidential Information could be utilized to commit or further a  
7 terrorist act, including the intimidation or coercion of all or part of the civilian  
8 population and the disruption of public utility and other critical systems. The  
9 public release of such Confidential Information has a reasonable likelihood of  
10 threatening the public safety, particularly because it reflect detailed, precise, and  
11 highly technical information about the configuration and operations of valuable  
12 infrastructure upon which many individuals and businesses rely. Pursuant to  
13 KRS 61.878(1)(m), the Confidential Information should be exempt from public  
14 disclosure.

15 23. The Commission granted confidential treatment on these grounds  
16 for an indefinite period to maps showing critical transmission infrastructures  
17 contained in Big Rivers’ 2014 IRP and 2017 IRP. *See In the Mater of: 2014*  
18 *Integrated Resource Plan of Big Rivers Electric Corporation*, P.S.C. Case No.  
19 2014-00166, Order (August 26, 2014); *In the Matter of 2017 Integrated Resource*  
20 *Plan of Big Rivers Electric Corporation*, P.S.C. Case No. 2017-00384, Order (April  
21 25, 2019). Likewise, the Commission has granted confidential treatment of a  
22 detailed map of Big Rivers’ transmission system and a detailed diagram showing

1 the system's components. *See In the Matter of: Application of Big Rivers Electric*  
2 *Corporation for a Certificate of Public Convenience and Necessity to Construct*  
3 *Two 161 KV Transmission Lines in Hancock County, Kentucky*, P.S.C. Case No.  
4 2015-00051, Order (January 15, 2016). More recently, the Commission granted  
5 confidential treatment to maps and drawings of critical infrastructure submitted  
6 with Big Rivers' 2020 Environmental Compliance Plan. *See In The Matter of:*  
7 *Application of Big Rivers Electric Corporation for Approval of Its 2020*  
8 *Environmental Compliance Plan, Authority To Recover Costs Through A revised*  
9 *Environmental surcharge and Tariff, the Issuance of a Certificate of Public*  
10 *Convenience and Necessity For Certain Projects, and Appropriate Accounting and*  
11 *Other Relief*, P.S.C. Case No. 2019-00435, Order (August 6, 2020).

12 **III. TIME PERIOD**

13 24. Pursuant to 807 KAR 5:001 Section 13(3)(a)(2), Big Rivers requests  
14 that the Confidential Information be granted confidential treatment for the time  
15 periods explained below.

16 25. Big Rivers requests that the Confidential Information consisting of  
17 the current cost estimate for the construction of a new Transmission Operations  
18 Center remain confidential for a period of five (5) years from the date of this  
19 motion, at which time the Confidential Information should be sufficiently  
20 outdated so that it could not be used to competitively disadvantage Big Rivers.

21 26. Big Rivers requests that the Confidential Information consisting of  
22 appraisal reports and estimated current value of Big Rivers' existing

1 headquarters properties and related information remain confidential until such  
2 time as the real estate transactions for all of Big Rivers' existing headquarters  
3 properties have closed.

4 27. Big Rivers requests that the Confidential Information protected by  
5 KRS 61.878(1)(m) remain confidential indefinitely because as long as the critical  
6 energy infrastructure remains in place, the information should be confidential for  
7 the reasons stated above.

8 **IV. CONCLUSION**

9 28. Based on the foregoing, the Confidential Information is entitled to  
10 confidential treatment pursuant to KRS 61.878, 807 KAR 5:001 Section 13, and  
11 related law. If the Commission disagrees that Big Rivers' Confidential  
12 Information is entitled to confidential treatment, due process requires the  
13 Commission to hold an evidentiary hearing. *See Utility Regulatory Comm'n v.*  
14 *Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

1            On this 22<sup>th</sup> day of October, 2021.

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Respectfully submitted,

*/s/ Tyson Kamuf*

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Tyson Kamuf  
Senthia Santana  
Big Rivers Electric Corporation  
201 Third Street  
P.O. Box 24  
Henderson, Kentucky 42419-0024  
Phone: (270) 827-2561  
Facsimile: (270) 844-6417  
[tyson.kamuf@bigrivers.com](mailto:tyson.kamuf@bigrivers.com)  
[senthia.santana@bigrivers.com](mailto:senthia.santana@bigrivers.com)

*Counsel for Big Rivers Electric  
Corporation*