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

**IN THE MATTER OF:**

<b>ELECTRONIC APPLICATION OF</b>	)	
<b>BIG RIVERS ELECTRIC CORPORATION</b>	)	
<b>FOR A CERTIFICATE OF PUBLIC</b>	)	<b>Case No.</b>
<b>CONVENIENCE AND NECESSITY TO</b>	)	<b>2022-00012</b>
<b>CONSTRUCT A 161 KV TRANSMISSION LINE</b>	)	
<b>IN HENDERSON COUNTY, KENTUCKY</b>	)	

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**MOTION FOR CONFIDENTIAL TREATMENT**

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9           1.       Big Rivers Electric Corporation (“*Big Rivers*”) hereby moves the  
10 Kentucky Public Service Commission (the “*Commission*”), pursuant to KRS  
11 61.878 and 807 KAR 5:001 Section 13, to grant confidential treatment to certain  
12 information contained in Big Rivers’ Responses to the Commission Staff’s Third  
13 Request for Information being filed contemporaneously with this motion.

14           2.       The information for which Big Rivers seeks confidential treatment is  
15 hereinafter referred to as the “Confidential Information.” The Confidential  
16 Information consists of negotiated material terms of a Memorandum of  
17 Understanding between Big Rivers, Pratt Paper (KY), LLC , (“*Pratt*”) and  
18 Kenergy Corp.(“*Kenergy*”) in connection with a retail electric service agreement  
19 between Pratt and Kenergy and corresponding letter wholesale agreement

1 between Kenergy and Big Rivers (the “*Pratt Agreement*”).<sup>1</sup> These material terms  
2 relate to Pratt’s projected power usage, the cost it will pay for power, credit  
3 support requirements, and timing and details regarding construction power.

4       3. Pursuant to the Commission’s March 24, 2020, Order in *In the*  
5 *Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-*  
6 *19*, Case No. 2020-00085 (“*Case No. 2020-00085*”), one (1) copy of the Confidential  
7 Information marked “CONFIDENTIAL,” is being filed with this motion via  
8 electronic mail sent to [PSCED@ky.gov](mailto:PSCED@ky.gov).

9       4. One (1) copy of the filing, with the Confidential Information  
10 redacted, is being electronically filed with this motion. *See* 807 KAR 5:001  
11 Section 13(2)(b).

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

16       6. As discussed below, the Confidential Information is entitled to  
17 confidential treatment under KRS 61.878(1)(a) and 61.878(1)(c)(1). *See* 807 KAR  
18 5:001 Section 13(2)(a)(1).

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<sup>1</sup> Big Rivers will file the retail electric service agreement between Pratt and Kenergy (“*Retail Agreement*”) and the corresponding letter agreement between Kenergy and Big Rivers (“*Wholesale Agreement*”) with the Commission immediately after the parties have completed and executed the contracts.

1       **I. The Confidential Information is entitled to confidential**  
2       **treatment based upon KRS 61.878(1)(a)**

3           7.       KRS 61.878(1)(a) explicitly grants confidential protection to “[p]ublic  
4 records containing information of a personal nature where the public disclosure  
5 thereof would constitute a clearly unwarranted invasion of personal privacy.”  
6 Here, Pratt is constructing and plans to operate a paper mill and box factory in  
7 Henderson, Kentucky, and the Confidential Information reveals its proprietary  
8 and otherwise private information, including its projected power usage and the  
9 cost it will pay for power. Because public disclosure of the Confidential  
10 Information, would constitute an unwarranted invasion of this customer’s  
11 privacy, this Confidential Information should be granted confidential treatment.  
12 See Ky. Op. Atty. Gen. 96-ORD-176 (August 20, 1996) (holding Kroger Company’s  
13 utility bills exempt from disclosure under KRS 61.878(1)(a)); *In the Matter of:*  
14 *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates,*  
15 P.S.C. Case No. 2012-00221, Order (July 25, 2013) (holding customer names,  
16 account numbers, and usage information exempt from disclosure under KRS  
17 61.878(1)(a)); *In the Matter of: Electronic Application of Big Rivers Electric*  
18 *Corporation for Annual Review of Its MRSM Charge for Calendar Year 2021,*  
19 P.S.C. Case No. 2022-00028, Order (March 16, 2022) (granting confidential  
20 treatment for customer-specific usage for an indefinite time period pursuant to  
21 KRS 61.878(1)(a) and KRS 61.878(1)(c)(1)).

1       **II.   The Confidential Information is also entitled to**  
2       **confidential treatment based upon KRS 61.878(1)(c)(1)**

3           8.       The Confidential Information is also entitled to confidential  
4 treatment based upon KRS 61.878(1)(c)(1), which protects “records confidentially  
5 disclosed to an agency or required by an agency to be disclosed to it, generally  
6 recognized as confidential or proprietary, which if openly disclosed would permit  
7 an unfair commercial advantage to competitors of the entity that disclosed the  
8 records.” *See* 807 KAR 5:001 Section 13(2)(a)(1). Subsection A below explains  
9 that Big Rivers operates in competitive environments in the wholesale power  
10 markets and in the credit markets; Subsection B below shows that the  
11 Confidential Information entitled to protection under KRS 61.87(1)(c)(1) is  
12 generally recognized as confidential or proprietary; and Subsection C below  
13 demonstrates that public disclosure of the Confidential Information would permit  
14 an unfair commercial advantage to Big Rivers’ competitors. As such, the  
15 Commission should grant confidential treatment to the Confidential Information.

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

17           9.       As a generation and transmission cooperative, Big Rivers competes  
18 in the wholesale power markets. This includes not only the short-term bilateral  
19 energy market, the day-ahead and real time energy and ancillary services  
20 markets, and the capacity markets to which Big Rivers has access by virtue of its  
21 membership in Midcontinent Independent System Operator, Inc. (“MISO”), but  
22 also forward bilateral long-term agreements and wholesale agreements with

1 utilities and industrial customers. Big Rivers' ability to successfully compete in  
2 these wholesale power markets is dependent upon an effective combination of a)  
3 obtaining the maximum price for the power it sells and the best contract terms,  
4 and b) keeping its cost of production as low as possible. Fundamentally, if Big  
5 Rivers' cost of producing or purchasing a unit of power increases or its business  
6 risk increases, its ability to sell that unit in competition with other utilities is  
7 adversely affected.

8       10. Big Rivers also competes for reasonably-priced credit in the credit  
9 markets, and its ability to compete is directly impacted by the financial results it  
10 obtains and the business risks it assumes. Any event that adversely affects Big  
11 Rivers' financial results or increases its business risks may adversely affect the  
12 price it pays for credit. Impediments to Big Rivers' obtaining the best contract  
13 terms could likewise affect its apparent creditworthiness. A utility the size of Big  
14 Rivers that operates generation and transmission facilities will always have  
15 periodic cash and borrowing requirements for both anticipated and unanticipated  
16 needs. Big Rivers expects to be in the credit markets on a regular basis in the  
17 future, and it is imperative that Big Rivers improve and maintain its credit  
18 profile.

19       11. Accordingly, Big Rivers faces competition in the wholesale power and  
20 credit markets, and the Confidential Information should be afforded confidential  
21 treatment to prevent the imposition of an unfair competitive advantage to those  
22 competitors.

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

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

6            13.    As noted above, the Confidential Information consists of  
7 confidential, negotiated material terms of a Memorandum of Understanding and  
8 the pending retail electric service agreement between Pratt and Kenergy and  
9 corresponding letter agreement between Kenergy and Big Rivers. KRS 278.160(3)  
10 specifically recognizes that terms of a special contract are not required to be  
11 publicly disclosed if such terms are entitled to confidential treatment under KRS  
12 61.878(1)(c)(1).

13           14.    The Commission has previously granted confidential treatment of  
14 negotiated terms of contracts similar to the Confidential Information. *See, e.g. In*  
15 *the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and*  
16 *Meade County Rural Electric Cooperative Corporation for (1) Approval of*  
17 *Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff,*  
18 *Order, P.S.C. Case No. 2019-00365 (Jan. 22, 2020) (granting confidential*  
19 *treatment of terms of special contracts between Big Rivers and various entities,*  
20 *including Nucor Corporation, Kentucky Municipal Energy Agency, and entities in*  
21 *Nebraska).*

1           15.     Moreover, the Commission has recognized in previous cases the  
2 confidentiality of customer information similar to the Confidential Information  
3 consisting of Pratt’s projected power usage and cost of power. *See, e.g., In the*  
4 *Matter of: Riverside Generating Company, LLC v. Kentucky Power Company,*  
5 *Order, P.S.C. Case No. 2017-00472 (May 16, 2019) (granting confidential*  
6 *treatment to customer specific information relating to purchases and*  
7 *transmission of electricity for an indefinite period pursuant to KRS*  
8 *61.878(1)(c)(1)).*

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

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

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

20           18.     Disclosure of the Confidential Information would permit an unfair  
21 commercial advantage to Big Rivers’ competitors. As discussed above, Big Rivers  
22 faces actual competition in the wholesale power and credit markets. It is likely

1 that Big Rivers' ability to compete in these markets would be adversely affected if  
2 the Confidential Information were publicly disclosed, and Big Rivers seeks  
3 protection from such competitive injury.

4       19.     Big Rivers is actively engaged in buying and selling power in the  
5 wholesale power markets and expects to engage in negotiations with  
6 counterparties in the future. Additionally, it is actively engaged in discussions  
7 with economic development prospects. If confidential treatment of the  
8 confidential terms of the Pratt Agreement is denied, potential counterparties  
9 would know that the confidential terms of their agreement would be publicly  
10 disclosed, which could reveal information to their competitors about their  
11 competitiveness. Because many companies would be reluctant to have such  
12 information disclosed, public disclosure of the Confidential Information in this  
13 case would likely reduce the pool of counterparties willing to negotiate with Big  
14 Rivers, reducing Big Rivers' ability to buy and sell power at favorable prices and  
15 its ability to secure economic development prospects.

16       20.     Public disclosure of the Confidential Information would provide  
17 potential purchasers of energy or capacity from Big Rivers and other providers  
18 competing against Big Rivers for purchases or sales of energy or capacity with  
19 insight into the terms under which Big Rivers is willing to sell energy. These  
20 market participants could use this information as a benchmark or to manipulate  
21 the bidding process, leading to lower revenues or less favorable terms to Big  
22 Rivers, hurting Big Rivers' ability to compete in the wholesale power and credit

1 markets. Thus, Big Rivers' competitiveness will be adversely affected if other  
2 suppliers are given such an unfair competitive advantage or if potential  
3 counterparties are given a negotiating advantage.

4 21. Further, any competitive pressure that adversely affects Big Rivers'  
5 revenue and margins could make the company appear less creditworthy, and thus  
6 impair its ability to compete in the credit markets.

7 22. Accordingly, the public disclosure of the information that Big Rivers  
8 seeks to protect pursuant to KRS 61.878 would provide competitors of Big Rivers  
9 with an unfair commercial advantage.

### 10 **III. Time Period**

11 23. Big Rivers requests that the Confidential Information remain  
12 confidential indefinitely because it reveals private customer data and confidential  
13 contract terms, which public disclosure of such information would cause  
14 competitive harm to Big Rivers for the reasons above, for so long as Big Rivers is  
15 selling power or competing for economic development prospects. *See* 807 KAR  
16 5:001 Section 13(2)(a)(2).

### 17 **IV. Conclusion**

18 24. Based on the foregoing, the Confidential Information is entitled to  
19 confidential treatment. If the Commission disagrees that Big Rivers is entitled to  
20 confidential treatment, due process requires the Commission to hold an

1 evidentiary hearing. *See Utility Regulatory Com'n v. Kentucky Water Service Co.,*  
2 *Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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4 WHEREFORE, Big Rivers respectfully request that the Commission  
5 classify and treat as confidential the Confidential Information.

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7 On this the 17th day of May, 2022.

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Respectfully submitted,

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*/s/ Senthia Santana*

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