



1 billing information and information regarding power purchases from, and sales to,  
2 specific non-members (*see* Joint Response to Kimberly-Clark’s Second Request for  
3 Information, Request No. 2-3, Confidential Attachment).<sup>1</sup>

4 3. Pursuant to the Commission’s March 24, 2020 Order in *In the Matter of: Electronic*  
5 *Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085 (“Case  
6 No. 2020-00085”), Big Rivers is submitting with this motion one (1) copy of the documents  
7 containing Confidential Information highlighted with transparent ink, printed on yellow paper, or  
8 otherwise marked “CONFIDENTIAL,” via electronic mail to PSCED@ky.gov. A copy of those  
9 pages, with the Confidential Information redacted, is being filed into public docket via the  
10 Commission’s Electronic Filing System.

11 4. If and to the extent the Confidential Information becomes generally available to the  
12 public, whether through filings required by other agencies or otherwise, Big Rivers will notify the  
13 Commission in writing. *See* 807 KAR 5:001, Section 13(10)(b).

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

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<sup>1</sup> The Confidential Information contained in the attachment to the Joint Response to KCC 2-3 consist of copies of the COSS and related work papers previously filed in Case No. 2021-00061, Case No. 2021-00289, and herein (*see* Joint Response to Domtar’s First Request for Information, Request No. 1-3); this material was granted confidential treatment for an indefinite period in the earlier cases. *See In the Matter of: Electronic Application of Big Rivers Electric Corporation for Review of its MRSM Charge for Calendar Year 2020*, P.S.C. Case No. 2021-00061, Order (Mar. 9, 2021)(the Confidential Information was provided in Big Rivers’ Application as Exhibits Wolfram-6 and Wolfram-8 to Direct Testimony of John Wolfram), *see also In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff*, P.S.C. Case No. 2021-00289, Order (Mar. 3, 2022).

1 **I. Certain of the Confidential Information is Entitled to Protection**  
2 **from Public Disclosure by KRS 61.878(1)(c)(1)**

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

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

12 7. Big Rivers must successfully compete in the wholesale power markets to sell  
13 energy it produces in excess of its members’ needs. Big Rivers’ ability to successfully compete in  
14 these markets is dependent upon a combination of its ability to: a) obtain the maximum price for  
15 the power it sells and secure the most favorable contract terms available, and b) keep its cost of  
16 production as low as possible. Fundamentally, if Big Rivers’ cost of producing a kilowatt hour of  
17 energy increases, its ability to sell that kilowatt hour in competition with other utilities is adversely  
18 affected. Keeping Big Rivers’ proprietary information and anticipated capacity position  
19 confidential is therefore essential to preventing its competitors from gaining a competitive  
20 advantage.

21 8. Big Rivers also competes for reasonably-priced credit in the credit markets, and its  
22 ability to compete is directly impacted by its financial results. Lower revenues and any events that  
23 adversely affect Big Rivers’ margins will adversely affect its financial results and potentially  
24 impact the price it pays for credit. A competitor or potential counterparty armed with Big Rivers’

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

7 9. Accordingly, Big Rivers has competitors in both the wholesale power and credit  
8 markets, and its Confidential Information should be protected to prevent the imposition of an unfair  
9 competitive advantage.

10 **B. The Confidential Information is Generally Recognized as Confidential or**  
11 **Proprietary.**  
12

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

16 11. As described above, the Confidential Information includes detailed, proprietary  
17 information pertaining to discrete Big Rivers operations and assets, specifically including capacity  
18 information with respect to future MISO Planning Years. This Confidential Information is critical  
19 to the effective execution of Big Rivers' business decisions and strategy and, if disclosed, would  
20 allow potential counterparties and competitors to gain an advantage over Big Rivers in the course  
21 of ongoing and future negotiations. Allowing counterparties and competitors access to detailed,  
22 internal information related to the operation of generation assets may impact Big Rivers' ability to  
23 secure the best pricing available in connection with future opportunities.

24 12. Information about a company's detailed inner workings is generally recognized as  
25 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d

1 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such information  
2 concerning the inner workings of a corporation is ‘generally recognized as confidential or  
3 proprietary’”); *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d  
4 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from “the ability to ascertain the  
5 economic status of the entities without the hurdles systemically associated with the acquisition of  
6 such information about privately owned organizations”). The Confidential Information is not  
7 publicly available, is not disseminated within Big Rivers except to those employees and  
8 professionals with a legitimate business need to know and act upon the information, and is not  
9 disseminated to others without a legitimate need to know and act upon the information. As such,  
10 the Confidential Information is both recognized by Big Rivers and generally recognized as  
11 confidential and proprietary.

12 **C. Disclosure of the Confidential Information Would Result in an Unfair**  
13 **Commercial Advantage to Big Rivers’ Competitors.**  
14

15 13. Disclosure of the Confidential Information could unreasonably and unnecessarily  
16 harm Big Rivers by giving interested third parties an unfair commercial advantage through insight  
17 into Big Rivers’ business operations and strategies. As discussed *supra*, Big Rivers faces actual  
18 competition in both the short-and long-term wholesale power markets and in the credit markets,  
19 and the success of Big Rivers turns in large part on its ability to maximize the value of its assets.  
20 It is likely that Big Rivers’ ability to compete would be adversely affected if the Confidential  
21 Information were publicly disclosed, and Big Rivers seeks protection from such competitive  
22 injury.

23 14. Allowing competitors and potential counterparties access to this information would  
24 lead to higher costs to Big Rivers and would place it at an unfair competitive disadvantage in the  
25 wholesale power and credit markets. Potential partners and power suppliers could likewise use the

1 information to manipulate their offers to Big Rivers, leading to higher costs to Big Rivers and  
2 placing it at an unfair competitive disadvantage in the wholesale power and credit markets.

3 15. If disclosed, certain of the Confidential Information would allow Big Rivers’  
4 competitors and potential counterparties to discover, and make use of, confidential information  
5 concerning Big Rivers’ assets and business strategies, to the unfair competitive disadvantage of  
6 Big Rivers.

7 **II. Certain of the Confidential Information is also Entitled to Confidential Treatment**  
8 **Based Upon KRS 61.878(1)(a).**  
9

10 16. Certain Confidential Information, including Domtar’s private MISO registration  
11 information and data contained in the attachment to the Joint Responses to KCC 2-3, is entitled to  
12 confidential treatment based upon KRS 61.878(1)(a). KRS 61.878(1)(a) explicitly protects  
13 “[p]ublic records containing information of a personal nature where the public disclosure thereof  
14 would constitute a clearly unwarranted invasion of personal privacy.”

15 17. The Confidential Information includes proprietary or sensitive counterparty  
16 operations and usage information that is not available to the public. Because public disclosure of  
17 the Confidential Information would constitute an unwarranted invasion of a counterparty’s  
18 privacy, the Confidential Information should be granted confidential treatment. *See* Ky. Op. Atty.  
19 Gen. 96-ORD-176 (August 20, 1996) (holding Kroger Company’s utility bills exempt from  
20 disclosure under KRS 61.878(1)(a)); *In the Matter of: Application of Kentucky Utilities Company*  
21 *for an Adjustment of its Electric Rates*, Case No. 2012-00221 (Ky. P.S.C. July 25, 2013) (holding  
22 customer names, account numbers, and usage information exempt from disclosure under KRS  
23 61.878(1)(a)). Moreover, to ensure that future opportunities are encouraged, it is imperative that  
24 Big Rivers be able to negotiate with third parties and accept and utilize third party proprietary  
25 information without risk of public disclosure.

1           18.    As such, Big Rivers requests confidential treatment for the customer-specific  
2 information contained within the Confidential Information in order to protect those customers'  
3 private information.

4    **III.    Time Period.**

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

7           20.    Big Rivers requests that the Confidential Information protected by KRS  
8 61.878(1)(c)(1) remain confidential for a period of five (5) years from the date of this motion,  
9 which should allow sufficient time for the projected information to become historical and  
10 sufficiently outdated that it could not be used to determine similar confidential information at that  
11 time or to competitively disadvantage Big Rivers.

12          21.    Big Rivers requests that the Confidential Information protected by KRS  
13 61.878(1)(a), consisting of Domtar's MISO registration information and customer-specific  
14 information contained within the COSS attachment, remain confidential indefinitely, consistent  
15 with the Commissions' Orders in Case Nos. 2021-00061 and 2021-00289. *See supra*, n. 1.

16    **IV.    Conclusion.**

17          22.    Based on the foregoing, the Confidential Information is entitled to confidential  
18 protection. If the Commission disagrees, then the Commission should hold an evidentiary hearing  
19 to protect Big Rivers' due process rights and to supply the Commission with a complete record to  
20 enable it to reach a decision with regard to this matter. *See Util. Reg. Comm'n v. Ky. Water Serv.*  
21 *Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

1 Dated this 27<sup>th</sup> day of November, 2023.

2  
3 Respectfully submitted,

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5  
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22  
23 *Counsel to Big Rivers Electric Corporation*

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25  
26 **Certification**

27 I hereby certify that a copy of this Motion for Confidential Treatment has been served  
28 electronically on all parties of record through the use of the Commission's electronic filing system,  
29 and there are currently no parties that the Commission has excused from participation by electronic  
30 means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy  
31 of this filing has not been transmitted to the Commission.

32  
33 /s/ Edward T. Depp  
34 *Counsel to Big Rivers Electric Corporation*