



1 requests that the Commission continue to grant confidential treatment of the  
2 customer's identity.

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

10       5. A copy of this motion with the Confidential Information redacted has  
11 been served on all parties to this proceeding through the use of electronic filing.  
12 807 KAR 5:001 Section 13(2)(b).

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

17       7. As discussed below, the Confidential Information is entitled to  
18 confidential treatment and is being submitted confidentially under the purview of  
19 KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). 807 KAR 5:001 Section 13(2)(a)(1).

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

3           8.       The Confidential Information contained in Big Rivers’ response to  
4 PSC 3-1 is entitled to confidential treatment based upon KRS 61.878(1)(a), which  
5 explicitly protects “[p]ublic records containing information of a personal nature  
6 where the public disclosure thereof would constitute a clearly unwarranted  
7 invasion of personal privacy.”

8           9.       The individual customer identified in Big Rivers’ response to PSC 3-1  
9 is not a party to this proceeding, publicly revealing the customer’s identity and in  
10 turn their private billing information would constitute a clearly unwarranted  
11 invasion of their privacy.

12          10.      Moreover, the Commission has previously granted confidential  
13 treatment to similar retail information under the purview of KRS 61.878(1)(a).<sup>1</sup>

14          11.      As such, Big Rivers requests continued confidential treatment of the  
15 identity of the customer in order to protect their private information.

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<sup>1</sup> See, e.g., *In the Matter of: Sanctuary Church v. Louisville Gas and Electric Company*, Order, P.S.C. Case No. 2018-00181 (Jan. 8, 2019) (granting confidential treatment pursuant to KRS 61.878(1)(a) for an indefinite period to a retail customer’s account and usage information); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, P.S.C. Case No. 2012-00221 (July 25, 2013) (holding customer names, account numbers and usage information exempt from disclosure under KRS 61.878(1)(a)); See also *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation From May 1, 2019 Through October 31, 2019*, P.S.C. Case No. 2020-00009, Order (April 13, 2020).

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

3           12.     Under the Kentucky Open Records Act, the Commission is entitled  
4 to withhold from public disclosure “records confidentially disclosed to an agency  
5 or required by an agency to be disclosed to it, generally recognized as confidential  
6 or proprietary, which if openly disclosed would permit an unfair commercial  
7 advantage to competitors of the entity that disclosed the records.” *See* KRS  
8 61.878(1)(c)(1). Public disclosure of the Confidential Information would permit  
9 such a result as discussed fully below.

10          13.     Therefore, the Confidential Information is entitled to confidential  
11 protection based upon KRS 61.878(1)(c)(1). In support for this ground of granting  
12 confidential protection, Subsection A *infra* describes how Big Rivers operates in  
13 competitive environments; Subsection B *infra* explains that the Confidential  
14 Information is generally recognized as confidential or proprietary; and Subsection  
15 C *infra* demonstrates that public disclosure of the Confidential Information would  
16 permit an unfair commercial advantage to Big Rivers’ competitors.

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

18          14.     Big Rivers must successfully compete in the wholesale power market  
19 in order to sell excess energy to meet its members’ needs, including competition  
20 in: term bilateral energy markets, day-ahead and real-time energy and ancillary  
21 services markets, the annual capacity market, and forward bilateral long-term  
22 wholesale agreements with utilities and industrial customers. Big Rivers’ ability

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

7       15.     Big Rivers also competes for reasonably-priced credit in the credit  
8 markets, and its ability to compete is directly impacted by its financial results.  
9 Lower revenues and any events that adversely affect Big Rivers' margins will  
10 adversely affect its financial results and potentially impact the price it pays for  
11 credit. A competitor armed with Big Rivers' proprietary and confidential  
12 information will be able to increase Big Rivers' costs or decrease Big Rivers'  
13 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A  
14 utility the size of Big Rivers that operates generation and transmission facilities  
15 will always have periodic cash and borrowing requirements for both anticipated  
16 and unanticipated needs. Big Rivers expects to be in the credit markets on a  
17 regular basis in the future, and it is imperative that Big Rivers improve and  
18 maintain its credit profile.

19       16.     Accordingly, Big Rivers faces competition in the wholesale power and  
20 capital 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 competitiveness. Because many companies would be reluctant to have such  
2 information disclosed, public disclosure of the Confidential Information would  
3 likely reduce the pool of counterparties willing to negotiate with Big Rivers,  
4 reducing Big Rivers' ability to sell power and impairing its ability to compete in  
5 the wholesale power and credit markets.

6       21. In sum, the Confidential Information is not publicly available, is not  
7 disseminated within Big Rivers except to those employees and professionals with  
8 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  
10 information. As such, the Confidential Information details the "inner workings"  
11 of Big Rivers' and is generally recognized as confidential and proprietary.

12               ***C. Disclosure of the Confidential Information Would Permit***  
13               ***an Unfair Commercial Advantage to Big Rivers' Competitors***

14       22. Disclosure of the Confidential Information that is protected under  
15 KRS 61.878(1)(c)(1) would permit an unfair commercial advantage to Big Rivers'  
16 competitors. As discussed above, Big Rivers faces actual competition in the  
17 wholesale power market and in the credit markets, and it is likely that Big Rivers  
18 would suffer competitive injury if the Confidential Information were publicly  
19 disclosed.

20       23. Given the nature of the Confidential Information, its disclosure  
21 would harm Big Rivers in negotiating future special contracts and could result in  
22 higher costs and/or lower revenues for Big Rivers, thereby impairing its ability to

1 compete in the wholesale power markets. Furthermore, any competitive pressure  
2 that adversely affects Big Rivers' revenue and/or margins could make Big Rivers  
3 appear less creditworthy and impair its ability to compete in the credit markets.

4 24. Accordingly, public disclosure of the information that Big Rivers  
5 seeks to protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers'  
6 competitors with an unfair commercial advantage.

7 **IV. Time Period**

8 25. Big Rivers requests that the Confidential Information remain  
9 confidential indefinitely for the reasons stated above. 807 KAR 5:001 Section  
10 13(2)(a)(2).

11 **V. Conclusion**

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

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