

- 1 information, including Pratt’s projected energy usage and the
2 price it will pay for power;¹
- 3 b) material terms of the retail electric service agreement between
4 Meade County Rural Electric Cooperative Corporation (“*Meade*
5 *Co. RECC*”) and Nucor Corporation (“*Nucor*”) (the “*Nucor*
6 *Contract*”);²
- 7 c) information related to Big Rivers’ contracts with entities in
8 Nebraska (the “*Nebraska Contracts*”);³ Kentucky Municipal
9 Energy Agency (“*KyMEA*”);⁴ and Owensboro Municipal Utilities
10 (“*OMU*”);⁵ and
- 11 d) Big Rivers’ internal projections related to its margins and the
12 Net Present Value (“*NPV*”) of the benefits to its Members from
13 the proposed contracts.⁶
- 14

¹See, *In the Matter of: Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct a 161 KV Transmission Line in Henderson County, Kentucky*, P.S.C. Case No. 2022-00012, Order (Jun. 3, 2022) (granting confidential treatment of the Memorandum of Agreement between Big Rivers, Kenergy, and Pratt, which was incorporated into the Retail Agreement).

² See, *In the Matter of: Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for Approval of Contracts for Electric Service with Nucor Corporation*, P.S.C. Case No. 2019-00365, Order (Jan. 22, 2020).

³ See, *In the Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to KRS 278.180 and KAR 5:001 §13*, P.S.C. Case No. 2014-00134, Order (Sept. 10, 2014).

⁴ See, *In the Matter of: Filing of Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and the Kentucky Municipal Energy Agency*, P.S.C. Case No. 2016-00306, Order (Jan. 2, 2019)

⁵ See, TFS 2018-00318; see also *In the Matter of: Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity Authorizing the Conversion of the Green Station Units to Natural Gas-Fired Units and an Order Approving the Establishment of a Regulatory Asset*, P.S.C. Case No. 2021-000079, Order (Mar. 5, 2021).

⁶ See, *In the Matter of: Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct a 161 KV Transmission Line in Henderson County, Kentucky*, P.S.C. Case No. 2022-00012, Order (Jun. 3, 2022).

1 3. The remaining Confidential Information, consisting of Big Rivers’
2 internal projections related to its annual capacity position and its marginal
3 production of energy costs, is substantially similar to information which the
4 Commission has previously granted confidential treatment. *See, In the Matter of:*
5 *Electronic Tariff Filing of Big Rivers Electric Corporation and Jackson Purchase*
6 *Energy Corporation for Approval and Confidential Treatment of a Special*
7 *Contract and Cost Analysis Information and a Request for Deviation from the*
8 *Commission’s September 24, 1990 Order in Administrative Case No. 327, Order,*
9 *P.S.C. Case No. 2021-00282 (Oct. 14, 2021) (granting confidential treatment of*
10 *Big Rivers internal projections related to its capacity position, its marginal*
11 *production energy costs, and its margins and the NPV of the benefits to its*
12 *Members from the proposed contracts for an indefinite period).*

13 4. Pursuant to the Commission’s Emergency Orders *In the Matter of:*
14 *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19, Case*
15 *No. 2020-00085 (March 16, 2020 and March 24, 2020), one (1) copy of the*
16 *Confidential Information highlighted with transparent ink, printed on yellow*
17 *paper, or otherwise marked “CONFIDENTIAL,” is being filed with this request*
18 *via electronic mail sent to PSCED@ky.gov. One (1) copy of the documents with*
19 *the Confidential Information redacted is also being electronically filed with this*
20 *request. 807 KAR 5:001 Section 13(3)(a)(3).*

21 5. In the event that and to the extent the Confidential Information
22 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(3)(a)(1), as discussed *infra*,
4 the Confidential Information is entitled to confidential protection and is being
5 submitted confidentially under the purview of KRS 61.878(1)(a) and KRS
6 61.878(1)(c)(1).

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

9 7. KRS 61.878(1)(a) explicitly grants confidential protection to “[p]ublic
10 records containing information of a personal nature where the public disclosure
11 thereof would constitute a clearly unwarranted invasion of personal privacy.”
12 Here, Pratt plans to operate an energy-intensive commercial facility in
13 Henderson County, Kentucky and the Confidential Information reveals
14 proprietary, business-sensitive, and otherwise private information, including its
15 projected energy use and the cost it will pay for power.

16 8. Pratt, a retail customer on the Kenergy system, considers this
17 information highly confidential and believes that public disclosure of this
18 information will cause it substantial competitive harm. Because public
19 disclosure of the Confidential Information consisting of negotiated terms of
20 special contracts would constitute an unwarranted invasion of this customer’s
21 privacy, this Confidential Information should be granted confidential treatment.
22 *See* Ky. Op. Atty. Gen. 96-ORD-176 (August 20, 1996) (holding Kroger Company’s
23 utility bills exempt from disclosure under KRS 61.878(1)(a)); *In the Matter of:*

1 *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates,*
2 Order, P.S.C. Case No. 2012-00221 (July 25, 2013) (holding customer names,
3 account numbers, and usage information exempt from disclosure under KRS
4 61.878(1)(a)).

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

7 9. The Confidential Information is also entitled to confidential
8 protection based upon KRS 61.878(1)(c)(1), which protects “records confidentially
9 disclosed to an agency or required by an agency to be disclosed to it, generally
10 recognized as confidential or proprietary, which if openly disclosed would permit
11 an unfair commercial advantage to competitors of the entity that disclosed the
12 records.” *See* 807 KAR 5:001 Section 13(3)(a)(1). In support for this ground of
13 granting confidential protection, Subsection A *infra* describes how Big Rivers
14 operates in competitive environments; Subsection B *infra* explains that the
15 Confidential Information is generally recognized as confidential or proprietary;
16 and Subsection C *infra* demonstrates that public disclosure of the Confidential
17 Information would permit an unfair commercial advantage to Big Rivers’
18 competitors. As such, the Commission should grant confidential treatment to the
19 Confidential Information.

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

21
22 10. Big Rivers must successfully compete in the wholesale power
23 market in order to sell excess energy to meet its members’ needs, including
24 competition in term bilateral energy markets, day-ahead and real-time energy

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

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

1 12. Accordingly, Big Rivers faces competition in the wholesale power
2 and capital markets, and the Confidential Information should be afforded
3 confidential treatment to prevent the imposition of an unfair competitive
4 advantage to those competitors.

5 ***B. The Confidential Information is Generally Recognized***
6 ***as Confidential or Proprietary***
7

8 13. The Confidential Information for which Big Rivers seeks
9 confidential treatment under KRS 61.878 is generally recognized as confidential
10 or proprietary under Kentucky law.

11 14. As noted above, a portion of the Confidential Information consists of
12 confidential, negotiated terms of retail electric service agreements. KRS
13 278.160(3) specifically recognizes that terms of a special contract are not required
14 to be publicly disclosed if such terms are entitled to protection under KRS
15 61.878(1)(c)(1).

16 15. The Confidential Information also consists of Big Rivers' projected
17 annual capacity position; margins and Net Present Value of the benefits to its
18 Member from the proposed contracts; and marginal energy production costs. It is
19 clear that this information relates to the inner workings of Big Rivers.

20 16. The Confidential Information is not publicly available, nor is such
21 information known or disseminated within the Kenergy, Pratt, or Big Rivers
22 organizations except to those employees and professionals with a legitimate
23 business need to know and act upon the information. Under Kentucky law, it is
24 well recognized that the information about a company's detailed inner workings,

1 such as the Confidential Information, is generally recognized as confidential or
2 proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907
3 S.W.2d 766, 768 (Ky. 1995) (“[i]t does not take a degree in finance to recognize
4 that such information concerning the inner workings of a corporation is
5 ‘generally recognized as confidential or proprietary’”).

6 17. As referenced above, the Commission has recognized the
7 confidentiality of Big Rivers’ projected annual capacity position and marginal
8 energy production costs.

9 18. Based on the foregoing, the Confidential Information is generally
10 recognized as confidential or proprietary under Kentucky law.

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

15 19. Disclosure of the Confidential Information would permit an unfair
16 commercial advantage to Big Rivers’ competitors. As discussed *supra*, Big Rivers
17 faces actual competition in the wholesale power and credit markets. It is likely
18 that Big Rivers’ ability to compete in these markets would be adversely affected
19 if the Confidential Information was publicly disclosed, and Big Rivers seeks
20 protection from such competitive injury.

21 20. Here, Pratt considers the Confidential Information consisting of
22 negotiated terms of the Retail Agreement highly confidential. In Big Rivers’
23 case, Big Rivers is actively engaged in buying and selling power in the wholesale
24 power markets, and Big Rivers expects to engage in negotiations with

1 counterparties in the future. If confidential treatment of the confidential terms
2 of the Agreement is denied, potential counterparties would know that the
3 confidential terms of their contracts would be publicly disclosed, which could
4 reveal information to their competitors about their competitiveness. Because
5 many companies would be reluctant to have such information disclosed, public
6 disclosure of the Confidential Information in this case would likely reduce the
7 pool of counterparties willing to negotiate with Big Rivers, reducing Big Rivers'
8 ability to buy and sell power at favorable prices. Further, any competitive
9 pressure that adversely affects Big Rivers' revenue and margins could make the
10 company appear less creditworthy and thus impair its ability to compete in the
11 credit markets.

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

