

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

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4
5 *In the Matter of:*

6 **JOINT SPECIAL CONTRACT FILING OF)**
 BIG RIVERS ELECTRIC CORPORATION AND) **TFS No.**
 JACKSON PURCHASE ENERGY CORPORATION) **2023-00_____**

7
8
9 **REQUEST FOR CONFIDENTIAL TREATMENT**

10 1. Pursuant to KRS 61.878(1)(c), KRS 278.160(3), and 807 KAR 5:001
11 § 13, Big Rivers Electric Corporation (“*Big Rivers*”) and Jackson Purchase Energy
12 Corporation (“*Jackson Purchase*”) hereby request that the Executive Director of
13 the Kentucky Public Service Commission (the “*Commission*”), grant confidential
14 treatment to certain confidential negotiated terms in the Agreement for Electric
15 Service, (the “*New Commerce Park Site Agreement*”) dated January 26, 2026,
16 among Big Rivers, Jackson Purchase, and Block Mining, Inc. (“*Block Mining*”),
17 an existing large commercial customer intending to take retail electric service for
18 a new facility located in Jackson Purchase’s service territory. The information
19 Big Rivers seeks to protect as confidential is hereinafter referred to as the
20 “Confidential Information.”

21
22 2. The Confidential Information consists of negotiated contract terms
23 including load size, rates, customer-specific costs and timing, and a customer-
24 specific credit support provision. Block Mining also operates an existing facility
25 that is served under a current retail electric service agreement (the “*Existing*
26 *Agreement*”). As a point of reference, and to maintain consistency with the

1 Commission’s prior treatment of comparable commercially sensitive information,
2 Big Rivers sought confidential protection for an indefinite period for similar
3 information contained in the Existing Agreement in requests filed on June 21,
4 2021, and August 20, 2021. As reflected in the Commission’s October 14, 2021
5 Order in Case No. 2021-00282, the Commission granted those requests.¹

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

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

¹ See *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Jackson Purchase Energy Corporation for Approval and Confidential Treatment of a Special Contract and Cost Analysis Information and a Request for Deviation from the Commission’s September 24, 1990 Order in Administrative Case No. 327.*, Case No. 2021-00282, Order (Oct. 14, 2021).

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

4 **I. The Confidential Information is entitled to**
5 **confidential protection based upon KRS 61.878(1)(c)(1)**

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

18 **A. *Big Rivers and Jackson Purchase Face Actual Competition***
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20 7. Big Rivers must successfully compete in the wholesale power
21 market in order to sell excess energy to meet its members’ needs, including
22 competition in: term bilateral energy markets, day-ahead and real-time energy
23 and ancillary services markets, the annual capacity market, and forward
24 bilateral long-term wholesale agreements with utilities and industrial customers.

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

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

21 9. Jackson Purchase competes with other retail electric suppliers for
22 economic development prospects such as Block Mining.

1 the inner workings of a corporation is ‘generally recognized as confidential or
2 proprietary”).

3 15. Additionally, the Commission has a long history of granted
4 confidential treatment to similar information. *See, e.g. In the Matter of: Joint*
5 *Application of Big Rivers Electric Corporation and Meade County Rural Electric*
6 *Cooperative Corporation for Approval of Contracts for Electric Service with Nucor*
7 *Corporation*, P.S.C. Case No. 2019-00365, Order (Jan. 22, 2020) (granting
8 confidential treatment of the negotiated terms of the retail electric service
9 agreement between Meade County Rural Electric Cooperative Corporation and
10 Nucor Corporation for an indefinite period); *In the Matter of: Big Rivers Electric*
11 *Corporation Filing of Wholesale Contracts Pursuant to KRS 278.180 and KAR*
12 *5:001 §13*, P.S.C. Case No. 2014-00134, Order (Sept. 10, 2014) (granting
13 confidential treatment to the confidential terms of the Nebraska contracts for an
14 indefinite time period); *In the Matter of: Filing of Agreement for the Purchase and*
15 *Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and*
16 *the Kentucky Municipal Energy Agency*, P.S.C. Case No. 2016-00306, Order (Jan.
17 2, 2019) (granting confidential treatment to the confidential terms of the KyMEA
18 contract for an indefinite time period).

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

21

1 **C. *Disclosure of the Confidential Information Would Permit an***
2 ***Unfair Commercial Advantage to Big Rivers' Competitors***
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4 17. Disclosure of the Confidential Information would permit an unfair
5 commercial advantage to Big Rivers' and Jackson Purchase's competitors. As
6 discussed *supra*, Big Rivers faces actual competition in the wholesale power and
7 credit markets, and Jackson Purchase faces actual competition in the effort to
8 secure economic development prospects. It is likely that Big Rivers' and Jackson
9 Purchase's ability to compete in these markets would be adversely affected if the
10 Confidential Information were publicly disclosed, and they seek protection from
11 such competitive injury.

12 18. Big Rivers is actively engaged in buying and selling power in the
13 wholesale markets, Jackson Purchase is actively engaged in discussion with
14 other economic development prospects, and Big Rivers and Jackson Purchase
15 expect to engage in negotiations with such counterparties in the future. If
16 confidential treatment of the confidential terms of the Agreement is denied,
17 potential counterparties would know that the confidential terms of their
18 contracts would be publicly disclosed, which could reveal information to their
19 competitors about their competitiveness. Because many companies would be
20 reluctant to have such information disclosed, public disclosure of the Confidential
21 Information in this case would likely reduce the pool of counterparties willing to
22 negotiate with Big Rivers or Jackson Purchase, reducing Big Rivers' ability to
23 buy and sell power at favorable prices and Jackson Purchase's ability to secure
24 economic development prospects. Further, any competitive pressure that

1 adversely affects Big Rivers' revenue and margins could make the company
2 appear less creditworthy and thus impair its ability to compete in the credit
3 markets.

4 19. Block Mining had choices about where it locates its new commercial
5 cryptocurrency mining facility. If Block Mining knew that it would be risking the
6 disclosure of extremely confidential project information that could endanger the
7 ultimate competitiveness of the company, Block Mining may have made a
8 different decision about the location.

9 20. Public disclosure of the Confidential Information would provide
10 potential purchasers of energy or capacity from Big Rivers; potential sellers of
11 energy or capacity to Big Rivers; and other providers competing against Big
12 Rivers for purchases or sales of energy or capacity with insight into the terms
13 under which Big Rivers is willing to buy and sell energy and capacity. These
14 market participants could use that information to manipulate the bidding
15 process, leading to higher costs or lower revenues for Big Rivers and impairing
16 its ability to compete in the wholesale power markets.

17 21. Thus, Big Rivers' and Jackson Purchase's competitiveness will be
18 adversely affected if other suppliers are given such an unfair competitive
19 advantage or if potential counterparties are given a negotiating advantage.
20 Accordingly, the public disclosure of the Confidential Information would provide
21 competitors of Big Rivers with an unfair commercial advantage.

22

1 **II. Time Period**

2 22. Big Rivers and Jackson Purchase request that the Confidential
3 Information remain confidential indefinitely consistent with Commission
4 precedent, because it reveals confidential contract terms, which public disclosure
5 of such information would cause competitive harm to Big Rivers and Jackson
6 Purchase for the above reasons, for so long as they are buying and selling power
7 or competing for economic development prospects. *See* 807 KAR 5:001 Section
8 13(3)(a)(2).

9 **III. Conclusion**

10 23. Based on the foregoing, the Confidential Information is entitled to
11 confidential protection. If the Commission disagrees that Big Rivers is entitled
12 to confidential protection, due process requires the Commission to hold an
13 evidentiary hearing. *See Utility Regulatory Com'n v. Kentucky Water Service Co.,*
14 *Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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