

1 one (1) copy of the Confidential Information highlighted with transparent ink,
2 printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed
3 with this motion by electronic mail to PSCED@ky.gov.

4 3. A copy of this motion with the Confidential Information redacted has
5 been served on all parties to this proceeding through the use of electronic filing.
6 807 KAR 5:001, Section 13(b).

7 4. The Confidential Information is not publicly available, is not
8 disseminated within Big Rivers except to those employees and professionals with a
9 legitimate business need to know and act upon the information, and is not
10 disseminated to others without a legitimate need to know and act upon the
11 information.

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 the information’s
15 confidential status removed. 807 KAR 5:001 Section 13(10)(b).

16 6. As discussed below, the Confidential Information is entitled to
17 confidential protection based upon KRS 61.878(1)(c)(1), which protects “records
18 confidentially disclosed to an agency or required by an agency to be disclosed to it,
19 generally recognized as confidential or proprietary, which if openly disclosed would
20 permit an unfair commercial advantage to competitors of the entity that disclosed
21 the records.” KRS 61.878(1)(c)(1); 807 KAR 5:001 Section 13(2)(a)(1).

1 7. In support for this ground of granting confidential protection,
2 Subsection I *infra* describes how Big Rivers operates in competitive environments;
3 Subsection II *infra* explains that the Confidential Information is generally
4 recognized as confidential or proprietary; and Subsection III *infra* demonstrates
5 that public disclosure of the Confidential Information would permit an unfair
6 commercial advantage to Big Rivers' competitors. As such, the Commission should
7 grant confidential treatment to the Confidential Information.

8 **I. Big Rivers Faces Actual Competition.**

9 8. Big Rivers must successfully compete in the wholesale power market
10 in order to sell excess energy to meet its members' needs, including competition in:
11 term bilateral energy markets, day-ahead and real-time energy and ancillary
12 services markets, the annual capacity market, and forward bilateral long-term
13 wholesale agreements with utilities and industrial customers. Big Rivers' ability
14 to successfully compete in these wholesale power markets is dependent upon an
15 effective combination of a) obtaining the maximum price for the power it sells and
16 the best contract terms, and b) keeping its cost of production as low as possible.
17 Fundamentally, if Big Rivers' cost of producing a kilowatt hour or its business risk
18 increases, its ability to sell that kilowatt hour in competition with other utilities is
19 adversely affected.

20 9. Big Rivers also competes for reasonably-priced credit in the credit
21 markets, and its ability to compete is directly impacted by the financial results it
22 obtains and the business risks it assumes. Any event that adversely affects Big

1 Rivers' financial results or increases its business risks may adversely affect the
2 price it pays for credit. A competitor armed with Big Rivers' proprietary and
3 confidential information will be able to increase Big Rivers' costs or decrease Big
4 Rivers' revenues, which could in turn affect Big Rivers' apparent creditworthiness.
5 Impediments to Big Rivers' obtaining the best contract terms could likewise affect
6 its apparent creditworthiness. A utility the size of Big Rivers that operates
7 generation and transmission facilities will always have periodic cash and
8 borrowing requirements for both anticipated and unanticipated needs. Big Rivers
9 expects to be in the credit markets on a regular basis in the future, and it is
10 imperative that Big Rivers improve and maintain its credit profile.

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

15 **II. The Confidential Information is Generally Recognized as**
16 **Confidential or Proprietary.**

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18 11. The Confidential Information for which Big Rivers seeks confidential
19 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or
20 proprietary under Kentucky law. The Confidential Information consists of (i)
21 projected capacity purchases; (ii) a list of future scheduled outages; and (iii) a list of
22 planned transmission system additions.

23 12. Public disclosure of the Confidential Information could cause an
24 economic disadvantage in negotiating future transaction as Big Rivers' potential

1 counter parties and competitors would have insight into Big Rivers' future
2 maintenance plans and capital improvements. Information such as this which
3 bears upon a company's detailed inner workings is generally recognized as
4 confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization*
5 *Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to
6 recognize that such information concerning the inner workings of a corporation is
7 'generally recognized as confidential or proprietary'"); *Marina Management Servs.*
8 *v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair
9 commercial advantage arises simply from "the ability to ascertain the economic
10 status of the entities without the hurdles systemically associated with the
11 acquisition of such information about privately owned organizations"). Moreover,
12 the Commission previously granted confidential treatment to this type of
13 information. *See, e.g., In the Matter of: Electronic Application of Kentucky Power*
14 *Company for (1) a General Adjustment of its Rates for Electric Service; (2) an Order*
15 *Approving its 2017 Environmental Compliance Plan; (3) an Order Approving its*
16 *Tariffs and Riders' (4) an Order Approving Accounting Practices to Establish*
17 *Regulatory Assets and Liabilities; and (5) an Order Granting all other Required*
18 *Approvals and Relief*, Order, P.S.C. Case No. 2017-00179 (June 19, 2018) (granting
19 confidential treatment to maintenance and budget information that could be used
20 to determine scope and timing of planned maintenance outages); letter from the
21 Commission dated August 13, 2019, in Administrative Case No. 387 (granting
22 confidential treatment to a list of future scheduled outages and planned

1 transmission system additions that Big Rivers filed as part of the supplement to its
2 annual report).

3 13. Accordingly, the information for which Big Rivers seeks confidential
4 treatment is recognized as confidential or proprietary under Kentucky law and is
5 entitled to confidential protection as further discussed below.

6 **III. Disclosure of the Confidential Information Would Permit an Unfair**
7 **Commercial Advantage to Big Rivers' Competitors.**

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9 14. Disclosure of the Confidential Information would permit an unfair
10 commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers
11 faces actual competition in the wholesale power market and in the credit market.
12 It is likely that Big Rivers would suffer competitive injury if that Confidential
13 Information was publicly disclosed, and the information should therefore be subject
14 to confidential treatment.

15 15. If the Confidential Information is publicly disclosed, Big Rivers'
16 competitors would have insight into when Big Rivers' generation levels will drop
17 due to maintenance and thus know a crucial input into Big Rivers' need for power
18 and energy during those periods. Further the Confidential Information would
19 provide insight into when Big Rivers' projects a capacity deficit and plans capacity
20 purchases. With that information, potential suppliers to Big Rivers will be able to
21 manipulate the price of power bid to Big Rivers in order to maximize their revenues,
22 and potential market power purchasers could use the information to know when
23 and to the extent Big Rivers is long on power and could use that information to
24 manipulate their bids, leading to lower revenues to Big Rivers. In P.S.C. Case No.

1 2003-00054, the Commission granted confidential protection to bids submitted to
2 Union Light, Heat & Power (“ULH&P”). ULH&P argued, and the Commission
3 implicitly accepted, that if the bids it received were publicly disclosed, contractors
4 on future work could use the bids as a benchmark, which would likely lead to the
5 submission of higher bids. *In the Matter of: Application of the Union Light, Heat
6 and Power Company for Confidential Treatment*, Order, P.S.C. Case No. 2003-
7 00054 (August 4, 2003). The Commission also implicitly accepted ULH&P’s further
8 argument that the higher bids would lessen ULH&P’s ability to compete with other
9 gas suppliers. *Id.* Similarly, potential power suppliers or purchasers manipulating
10 Big Rivers’ bidding process would lead to higher costs or lower revenues to Big
11 Rivers and would place it at an unfair competitive disadvantage in the wholesale
12 power market and credit markets. Likewise, knowledge of future capital projects
13 would allow contractors and suppliers of materials for those projects to manipulate
14 their bids, leading to higher costs to Big Rivers and placing it at an unfair
15 competitive disadvantage in the wholesale power and credit markets.

16 16. Thus, public disclosure of the Confidential Information would permit
17 an unfair competitive advantage to Big Rivers’ competitors.

18 **IV. Time Period**

19 17. Big Rivers requests that the Confidential Information remain
20 confidential for a period of five years from the date this motion, at which time the
21 information regarding projected capacity purchases will be sufficiently outdated,
22 the scheduled outages will have passed and will no longer be confidential, and the

1 list of planned transmission projects will be sufficiently outdated so that it could
2 not be used to competitively disadvantage Big Rivers. 807 KAR 5:001 Section
3 13(2)(a)(2).

4 **V. Conclusion**

5 18. Based on the foregoing, the Confidential Information is entitled to
6 confidential protection. If the Commission disagrees that Big Rivers is entitled to
7 confidential protection, due process requires the Commission to hold an evidentiary
8 hearing. *See Utility Regulatory Comm'n v. Kentucky Water Serv. Co., Inc.*, 642
9 S.W.2d 591 (Ky. App. 1982).

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

12 On this the 28th day of February 2023.

13 Respectfully submitted,

14 /s/ *Sentia Santana*

15 _____
16 Sentia Santana

17 Tyson Kamuf

18 Whitney Kegley

19 710 W. Second Street

20 Owensboro, KY 42301

21 Phone: (270) 827-2561 Fax: (270) 844-6417

22 Email: sentia.santana@bigrivers.com

23 Email: tyson.kamuf@bigrivers.com

24 Email: whitney.kegley@bigrivers.com

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29 *Counsel for Big Rivers Electric Corporation*
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