$egin{array}{c} 1 \\ 2 \\ 3 \end{array}$	COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION
6 7 8	In the Matter of: ELECTRONIC APPLICATION OF) BIG RIVERS ELECTRIC CORPORATION) Case No. FOR ANNUAL REVIEW OF ITS MRSM) 2022-00028 CHARGE FOR CALENDAR YEAR 2021)
9 10 11 12	MOTION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL PROTECTION
13	1. Big Rivers Electric Corporation (" <i>Big Rivers</i> ") hereby moves the
14	Kentucky Public Service Commission (the "Commission"), pursuant to 807 KAR
15	5:001 Section 13 and KRS 61.878, to grant confidential protection to certain
16	information Big Rivers is providing in its Application submitted
17	contemporaneously herewith in the above-styled matter. The information for
18	which Big Rivers seeks confidential treatment is hereinafter referred to as the
19	"Confidential Information."
20	2. The Confidential Information consists of customer specific usage
21	data and billing information contained in the Direct Testimony of Paul G. Smith
22	attached as Exhibit B to the Application.
23	3. Pursuant to the Commission's March 24, 2020, Order in <i>In the</i>
24	Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-
25	19, Case No. 3 2020-00085 (" <i>Case No. 2020-00085</i> "), one (1) copy of the

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1 Confidential Information highlighted with transparent ink, printed on yellow $\mathbf{2}$ paper, or otherwise marked "CONFIDENTIAL," is being filed with this motion by 3 electronic mail. A copy of those pages, with the Confidential Information redacted, is being electronically filed with the Application accompanying this 4 $\mathbf{5}$ motion. 6 4. A copy of this motion with the Confidential Information redacted has 7been served on all parties to this proceeding through the use of electronic filing. 8 807 KAR 5:001, Section 13(b). 9 5. If and to the extent the Confidential Information becomes generally 10 available to the public, whether through filings required by other agencies or 11 otherwise, Big Rivers will notify the Commission and have its confidential status 12removed. 807 KAR 5:001 Section 13(10)(b). 13 6. As discussed below, the Confidential Information is entitled to 14confidential treatment based upon KRS 61.878(1)(a) and/or KRS 61.878(1)(c)(1). 15807 KAR 5:001 Section 13(2)(a)(1). INFORMATION ENTITLED TO CONFIDENTIAL TREATMENT 16A. UNDER KRS 61.878(1)(a) 177. KRS 61.878(1)(a) protects "[p]ublic records containing information of 18 19a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." 20218. The Confidential Information in the Direct Testimony of Paul G. 22Smith reveals the power usage and billing information of an individual large

1	industrial retail customer on the Big Rivers system, Nucor Corporation. Because
2	this customer is not a party to this proceeding, publicly revealing such
3	information would constitute a clearly unwarranted invasion of personal privacy.
4	Moreover, on March 9, 2021, the Commission granted confidential treatment to
5	Nucor Corporation's 2020 power usage data and billing information for an
6	indefinite period in Case No. 2021-00061, In the Matter of: Electronic Application
7	of Big Rivers Electronic for Annual Review of its MRSM Charge for Calendar Year
8	2020 ("Big Rivers 2020 MRSM Case"), finding "the designated material is
9	generally recognized as private, confidential, or proprietary, it therefore meets the
10	criteria for confidential treatment and is exempted from public disclosure
11	pursuant to 807 KAR 5:001, Section 13, KRS 61,878(1), and KRS 61.878(1)(2)(1)."
12	As such, Big Rivers requests confidential treatment for the customer-specific
13	usage data and billing information in order to protect Nucor Corporation's private
14	usage information.
$\begin{array}{c} 15\\ 16 \end{array}$	B. INFORMATION ENTITLED TO CONFIDENTIAL TREATMENT UNDER KRS 61.878(1)(c)(1)
17	9. Under the Kentucky Open Records Act, the Commission is entitled
18	to withhold from public disclosure "records confidentially disclosed to an agency
19	or required by an agency to be disclosed to it, generally recognized as confidential
20	or proprietary, which if openly disclosed would permit an unfair commercial
21	advantage to competitors of the entity that disclosed the records." $\underline{\mathrm{KRS}}$

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1	<u>61.878(1)(c)(1)</u> . Public disclosure of the Confidential Information in the Direct
2	Testimony of Paul G. Smith would permit such a result as discussed fully below.
3	10. Section I below explains that Big Rivers operates in competitive
4	environments in the wholesale power market and in the credit market. Section II
5	below shows that the Confidential Information entitled to protection under KRS
6	61.87(1)(c)(1) is generally recognized as confidential or proprietary. Section III
7	below demonstrates that public disclosure of the Confidential Information would
8	permit an unfair commercial advantage to Big Rivers' competitors.
9	SECTION I
10	Big Rivers Faces Actual Competition
11	11. As a generation and transmission cooperative, Big Rivers competes
12	in the wholesale power market. This includes not only the short-term bilateral
13	energy market, the day-ahead and real time energy and ancillary services
14	markets, and the capacity market to which Big Rivers has access by virtue of its
15	membership in Midcontinent Independent System Operator, Inc. ("MISO"), but
16	also forward bilateral long-term agreements and wholesale agreements with
17	utilities and industrial customers. Big Rivers' ability to successfully compete in
18	the market is dependent upon a combination of its ability to: 1) obtain the
19	maximum price for the power it sells, and 2) keep its cost of production or
20	purchase as low as possible. Fundamentally, if Big Rivers' cost of producing or
21	purchasing a unit of power increases, its ability to sell that unit in competition
22	with other utilities is adversely affected.

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1	12. Big Rivers also competes for reasonably priced credit in the credit
2	markets, and its ability to compete is directly impacted by its financial results.
3	Lower revenues and any events that adversely affect Big Rivers' margins will
4	adversely affect its financial results and potentially impact the price it pays for
5	credit. A competitor armed with Big Rivers' proprietary and confidential
6	information will be able to increase Big Rivers' costs or decrease Big Rivers'
7	revenues, which could in turn affect Big Rivers' apparent creditworthiness. A
8	utility the size of Big Rivers that operates generation and transmission facilities
9	will always have periodic cash and borrowing requirements for both anticipated
10	and unanticipated needs. Big Rivers expects to be in the credit markets on a
11	regular basis in the future, and it is imperative that Big Rivers improve and
12	maintain its credit profile.
13	SECTION II
$\begin{array}{c} 14 \\ 15 \end{array}$	<u>The Confidential Information is Generally Recognized as</u>
	Confidential or Proprietary
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16 17	Confidential or Proprietary
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17	Confidential or Proprietary13. The Confidential Information entitled to confidential treatmentunder KRS 61.878(1)(c)(1) consists of power usage data and billing information of
17 18	Confidential or Proprietary13. The Confidential Information entitled to confidential treatmentunder KRS 61.878(1)(c)(1) consists of power usage data and billing information ofan individual large industrial retail customer on the Big Rivers system, Nucor
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insight into their power needs or the prices at which they are willing to buy or sell
power.

3 14. Information such as this which bears upon a company's detailed inner workings is generally recognized as confidential or proprietary. See, e.g., 4 $\mathbf{5}$ Hoy v. Kentucky Indus. Revitalization Authority, 907 S.W.2d 766, 768 (Ky. 1995) 6 ("It does not take a degree in finance to recognize that such information 7concerning the inner workings of a corporation is 'generally recognized as 8 confidential or proprietary"); Marina Management Services, Inc. v. 9 Commonwealth, Cabinet for Tourism, 906 S.W.2d 318, 319 (Ky. 1995) ("These are 10 records of privately owned marina operators, disclosure of which would unfairly 11 advantage competing operators. The most obvious disadvantage may be the 12ability to ascertain the economic status of the entities without the hurdles 13systematically associated with acquisition of such information about privately 14owned organizations"). 1515.Moreover, in addition to the Commission's previously cited Order in 16Big Rivers' 2021 MRSM case, the Commission has previously granted confidential 17treatment to such information in other cases. See, e.g., In the Matter of: Riverside 18 Generating Company, LLC v. Kentucky Power Company, P.S.C. Case No. 2017-1900472, Order (May 16, 2019) (granting confidential treatment to customer specific 20information relating to purchases and transmission of electricity for an indefinite 21period); In the Matter of Electronic Application of Big Rivers Electric Corporation 22and Meade Couty Rural Electric Cooperative Corporation for (1) Approval of

1	Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff,
2	P.S.C. Case No. 2019-00365, Order (Sept. 30, 2020) (granting confidential
3	treatment to the terms of Nucor Corporation's retail electric service agreement
4	and power purchase agreements between Big Rivers and solar developers).
5	16. The Confidential Information is not publicly available, is not
6	disseminated within Big Rivers except to those employees and professionals with
7	a legitimate business need to know and act upon the information, and is not
8	disseminated to the others without a legitimate need to know and act upon the
9	information.
10	SECTION III
$\frac{11}{12}$	<u>Disclosure of the Confidential Information Would Permit an Unfair</u> <u>Commercial Advantage to Big Rivers' Competitors</u>
13	17. Public disclosure of the Confidential Information will adversely
14	affect Big Rivers in several respects.
15	18. Disclosure of the Confidential Information would afford Big Rivers'
16	competitors an unfair commercial advantage. As discussed above, Big Rivers
17	faces actual competition in the power markets and in the credit markets. It is
18	likely that Big Rivers would suffer an economic disadvantage in negotiating
19	future transactions and thus competitive injury if the Confidential Information
20	were publicly disclosed, and the information should therefore be subject to

1	19. In P.S.C. Case No. 2003-00054, the Commission implicitly accepted
2	the Union Light, Heat, and Power Company's argument that the bidding
3	contractors would not want their bid information publicly disclosed, and that
4	disclosure would reduce the contractor pool available to ULH&P, which would
5	drive up ULH&P's costs, hurting its ability to compete with other gas suppliers.
6	In the Matter of Application of the Union Light, Heat and Power Company for
7	Confidential Treatment, Order, P.S.C. Case No. 2003-00054 (August 4, 2003).
8	Similarly, in Hoy v. Kentucky Indus. Revitalization Authority, the Kentucky
9	Supreme Court found that without protection for confidential information
10	provided to a public agency, "companies would be reluctant to apply for
11	investment tax credits for fear the confidentiality of financial information would
12	be compromised. Hoy v. Kentucky Indus. Revitalization Authority, 907 S.W.2d
13	766, 769 (Ky. 1995). In Big Rivers' case, if confidential treatment of the
14	confidential customer specific power usage data and billing information is denied,
15	potential counterparties on future special contracts or future economic
16	development prospects would know that their confidential information would be
17	publicly disclosed. Because many companies would be reluctant to have such
18	information disclosed, public disclosure of the Confidential Information could
19	disincentive other companies from locating in Big Rivers' service area, reducing
20	Big Rivers' revenues (which could then drive up the cost of credit to Big Rivers)
21	and impairing its ability to compete in the wholesale power market.

1	20. Accordingly, the public disclosure of the Confidential Information
2	would provide Big Rivers' competitors with an unfair commercial advantage.
3	C. Time Period
4	21. Big Rivers requests that the Confidential Information remain
5	confidential indefinitely for the reasons stated above, and for the same reasons
6	the Commission granted indefinite confidential treatment to similar information
7	in Case No. 2021-00061. See In the Matter of: Electronic Application of Big
8	Rivers Electronic for Annual Review of its MRSM Charge for Calendar Year 2020,
9	Order (Mar. 9, 2021). <u>807 KAR 5:001 Section 13(2)(a)(2)</u> .
10	D. Conclusion
11	22. Based on the foregoing, the Confidential Information is entitled to
12	confidential protection. If the Commission disagrees, then the Commission
13	should hold an evidentiary hearing to protect to Big Rivers' due process rights
14	and to supply the Commission with a complete record to enable it to reach a
15	decision with regard to this matter. See Util. Reg. Comm'n v. Ky. Water Serv. Co.,
16	Inc. 642 S.W.2d 591 (Ky. App. 1982).
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1	WHEREFORE, Big Rivers respectfully requests that the Commission
2	classify and protect as confidential the Confidential Information.
3	On this the 28 th day of February 2022.
4	Respectfully submitted,
$5 \\ 6$	/s/ Senthia Santana
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