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1	COMMONWEALTH OF KENTUCKY		
2	BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY		
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5	In the Matter of:		
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	AN ELECTRONIC EXAMINATION OF THE)		
	APPLICATION OF THE FUEL ADJUSTMENT		
	CLAUSE OF BIG RIVERS ELECTRIC Case No.		
	CORPORATION FROM MAY 1, 2021) 2022-00041		
	THROUGH OCTOBER 31, 2021		
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9 10			
11	1 Dig Divers Electric Comparation ("Dig Divers") handly many the		
12	1. Big Rivers Electric Corporation (" <i>Big Rivers</i> ") hereby moves the		
13	Public Service Commission of Kentucky (the "Commission"), pursuant to 807		
10	Tuble bervice commission of Kentucky (the commission), pursuant to oor		
14	KAR 5:001 Section 13, KRS 61.878 and KRS 278.160(3) to grant confidential		
15	5 treatment to certain information contained in the attachments to Big Rivers'		
10	^y treatment to certain mormation contained in the attachments to big filvers		
16	6 amended response to Item 4, and second amended response to Item 21 of the		
10	amended response to item 4, and second amended response to item 21 of the		
17	7 information requested in the Appendix to the Commission's March 31, 2022,		
	⁷ mormation requested in the Appendix to the Commission's March 51, 2022,		
18	3 Order in this matter.		
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19	2. The information for which Big Rivers seeks confidential treatment is		
10	2. The mornation for which big fivers seeks connaction if cathener is		
20	hereinafter referred to as the "Confidential Information." The Confidential		
20	nerematier referred to as the completitual information. The commential		
21	Information consists of information regarding confidential fuel supply bids to Big		
<u>4</u> 1	mormation consists of mormation regarding connuclitial fuel supply blus to big		
22	Rivers and its analysis of these hids. Specifically, the smended attachments filed		
44	Rivers and its analysis of those bids. Specifically, the amended attachments filed		
23	with this motion consist of confidential bid tabulation sheets previously submitted		
40	with this motion consist of confidential bid tabulation sheets previously submitted		

with motions for confidential treatment on March 31, 2022, and May 19, 2022, in
 this matter.¹

3 3. Pursuant to the Commission's Emergency Orders in In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus Covid-19, Case No. 4 5 2020-00085, one (1) copy of the Confidential Information highlighted in yellow or otherwise marked "CONFIDENTIAL," is being filed with this motion via 6 7 electronic mail sent to PSCED@ky.gov. One (1) copy of the documents with the Confidential Information redacted is also being electronically filed with this 8 9 request. 807 KAR 5:001 Section 13(2)(a)(3). 10 A copy of this motion with the Confidential Information redacted has 4. been served on all parties to this proceeding through the use of electronic filing. 11 12807 KAR 5:001 Section 13(2)(b).

13 5. 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),

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

¹ The Confidential Information should be granted confidential treatment pending review of Big Rivers' previously filed motions for confidential treatment in this proceeding. *See* 807 KAR 5:001 Section 13(4) ("Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment").

1I.The Confidential Information is entitled to confidential2treatment based upon KRS 61.878(1)(c)(1)

7. 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).

Subsection A below explains that Big Rivers operates in competitive
 environments in the wholesale power market and in the credit markets.
 Subsection B below shows that the Confidential Information is generally
 recognized as confidential or proprietary. Subsection C below demonstrates that
 public disclosure of the Confidential Information would permit an unfair
 commercial advantage to Big Rivers' competitors. As such, the Commission
 should grant confidential treatment to the Confidential Information.

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A. Big Rivers Faces Actual Competition

9. As a generation and transmission cooperative, Big Rivers competes in the wholesale power market. This includes not only the short-term bilateral energy market, the day-ahead and real time energy and ancillary services markets, and the capacity market to which Big Rivers has access by virtue of its membership in Midcontinent Independent System Operator, Inc. ("*MISO*"), but also forward bilateral long-term agreements and wholesale agreements with

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utilities and industrial customers. Big Rivers' ability to successfully compete in
 the market is dependent upon a combination of its ability to: 1) obtain the
 maximum price for the power it sells, and 2) keep its cost of production or
 purchase as low as possible. Fundamentally, if Big Rivers' cost of producing or
 purchasing a unit of power increases, its ability to sell that unit in competition
 with other utilities is adversely affected.

7 10. Big Rivers also competes for reasonably-priced credit in the credit markets, and its ability to compete is directly impacted by its financial results. 8 9 Lower revenues and any events that adversely affect Big Rivers' margins will adversely affect its financial results and potentially impact the price it pays for 10credit. A competitor armed with Big Rivers' proprietary and confidential 11 information will be able to increase Big Rivers' costs or decrease Big Rivers' 12revenues, which could in turn affect Big Rivers' apparent creditworthiness. A 13 utility the size of Big Rivers that operates generation and transmission facilities 1415will 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 regular basis in the future, and it is imperative that Big Rivers improve and 17maintain its credit profile. 18

19 11. 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.

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B. The Confidential Information is Generally Recognized as Confidential or Proprietary

- 3 12.The Confidential Information for which Big Rivers seeks confidential treatment under KRS 61.878 is generally recognized as confidential or 4 proprietary under Kentucky law. $\mathbf{5}$ 6 13.As noted above, the Confidential Information protected under KRS 7 61.878(1)(c)(1) consists of bid tabulation sheets containing information regarding 8 confidential fuel supply bids to Big Rivers and its analysis of those bids. The 9 Confidential Information is precisely the sort of information meant to be protected by KRS 61.878(1)(c)(1). 10 11 14. The Commission has often found that information similar to the 12 Confidential Information, relating to competitive bidding is generally recognized as confidential and proprietary. See, e.g., In the Matter of Application of Union 13 14 Light, Heat and Power Company for Confidential Treatment, P.S.C. Case No. 2003-00054, Order (August 4, 2003).² In fact, the Commission has granted 1516 confidential treatment to the bid tabulation sheets that Big Rivers filed in
- 17 previous reviews of its fuel adjustment clause. See, e.g., letter from the

² In P.S.C. Case No. 2003-00054, the Commission implicitly accepted ULH&P's argument that the bidding contractors would not want their bid information publicly disclosed and that disclosure would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with other gas suppliers. *In the Matter of Application of the Union Light, Heat and Power Company for Confidential Treatment*, P.S.C. Case No. 2003-00054, Order (Aug. 4, 2003).

Commission dated September 22, 2010, in P.S.C. Case No. 2010-00269 and more
 recently in P.S.C. Case No. 2019-00231.³

3 15.In Hoy v. Kentucky Industrial Revitalization Authority, the Kentucky Supreme Court held that financial information submitted by General Electric 4 Company with its application for investment tax credits was not subject to $\mathbf{5}$ disclosure simply because it had been filed with a state agency. 907 S.W.2d 766, 6 (Ky. 1995). The Court applied the plain meaning rule to KRS 61.878(1)(c)(1), and 7 reasoned: "[i]t does not take a degree in finance to recognize that such information 8 concerning the inner workings of a corporation is 'generally recognized as 9 confidential or proprietary." Id. at 768. 10

11 16. In sum, the Confidential Information is not publicly available, is not 12 disseminated within Big Rivers except to those employees and professionals with 13 a legitimate business need to know and act upon the information, and is not 14 disseminated to others without a legitimate need to know and act upon the 15 information. As such, the Confidential Information details the "inner workings" 16 of Big Rivers' and is generally recognized as confidential and proprietary.

³ See also, In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2018 through April 30, 2019, P.S.C. Case No. 2019-00231, Order (April 2, 2020) (granting confidential treatment for fuel supply bids and Big Rivers' analysis of the bids, terms of future off-system sales and private usage information of individual retail customers).

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

3 17. Disclosure of the Confidential Information that is protected under KRS 61.878(1)(c)(1) would permit an unfair commercial advantage to Big Rivers' 4 competitors. As discussed above, Big Rivers faces actual competition in the $\mathbf{5}$ wholesale power market and in the credit markets, and it is likely that Big Rivers 6 7 would suffer competitive injury if the Confidential Information were publicly disclosed. 8 9 18. Given the nature of the Confidential Information, its disclosure 10 would provide other market participants, suppliers and competitors insight into 11 the prices and terms at which Big Rivers is willing to buy fuel. In turn, the Confidential Information could be used by potential fuel suppliers to manipulate 12

13 the bidding process, leading to higher costs to Big Rivers, thereby placing it at an 14 unfair competitive disadvantage in the wholesale power market and credit

15 markets.

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16 19. Accordingly, public disclosure of the information that Big Rivers
17 seeks to protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers'
18 competitors with an unfair commercial advantage.

19 IV. <u>Time Period</u>

20 20. Big Rivers requests that all other Confidential Information remain 21 confidential for a period of five (5) years from the date of this motion, which will

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allow sufficient time for the information to become sufficiently outdated to no
 longer pose a competitive risk to Big Rivers. 807 KAR 5:001 Section 13(2)(a)(2).

3 V. <u>Conclusion</u>

4	21. Based on the foregoing, the Confi	dential Information is entitled to	
5	confidential treatment, pursuant to $807 \text{ KAR} 5:001 \text{ Section } 13 \text{ and KRS } 61.878$. If		
6	the Commission disagrees that Big Rivers' Confidential Information is entitled to		
7	confidential treatment, due process requires the Commission to hold an		
8	evidentiary hearing. See Utility Regulatory Comm'n v. Kentucky Water Serv. Co.,		
9	Inc., 642 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 July, 2022.		
13	I	Respectfully submitted,	
14 15	/	/s/ Senthia Santana	
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19		Whitney Kegley	
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