

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

3 3. Pursuant to the Commission’s Emergency Orders in *In the Matter of:*
4 *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, Case No.
5 2020-00085, one (1) copy of the Confidential Information highlighted in yellow or
6 otherwise marked “CONFIDENTIAL,” is being filed with this motion via
7 electronic mail sent to PSCED@ky.gov. One (1) copy of the documents with the
8 Confidential Information redacted is also being electronically filed with this
9 request. 807 KAR 5:001 Section 13(2)(a)(3).

10 4. A copy of this motion with the Confidential Information redacted has
11 been served on all parties to this proceeding through the use of electronic filing.
12 807 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),

17 6. Pursuant to 807 KAR 5:001 Section 13(2)(a)(1) as discussed below,
18 the Confidential Information is entitled to confidential treatment and is being
19 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”).

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

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

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.

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

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

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).

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

3 17. Disclosure of the Confidential Information that is protected under
4 KRS 61.878(1)(c)(1) would permit an unfair commercial advantage to Big Rivers'
5 competitors. As discussed above, Big Rivers faces actual competition in the
6 wholesale power market and in the credit markets, and it is likely that Big Rivers
7 would suffer competitive injury if the Confidential Information were publicly
8 disclosed.

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
12 Confidential Information could be used by potential fuel suppliers to manipulate
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.

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. Time Period**

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

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

3 **V. Conclusion**

4 21. Based on the foregoing, the Confidential Information is entitled to
5 confidential treatment, pursuant to 807 KAR 5:001 Section 13 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 Respectfully submitted,

14 /s/ *Senthia Santana*
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16 _____
17 Senthia Santana
18 Tyson Kamuf
19 Whitney Kegley
20 Big Rivers Electric Corporation
21 201 Third Street
22 P.O. Box 24
23 Henderson, Kentucky 42419-0024
24 Phone: (270) 827-2561
25 Facsimile: (270) 844-6417
26 senthia.santana@bigrivers.com
27 tyson.kamuf@bigrivers.com
28 whitney.kegley@bigrivers.com

29
30 Counsel for Big Rivers Electric
31 Corporation