$egin{array}{c} 1 \\ 2 \\ 3 \end{array}$	COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION			
4	4 In the Matter of:			
5				
	ELECTRONIC APPLICATION OF BIG)RIVERS ELECTRIC CORPORATION FOR)Case No.			
	APPROVAL OF AMENDMENT TO POWER)2022-00296PURCHASE AGREEMENT)			
6				
7				
8	BRIEF OF BIG RIVERS ELECTRIC CORPORATION			
9				
10	Ormer Dir Director Florencie Commenting ("Dir Direct") and four its building			
11	Comes Big Rivers Electric Corporation ("Big Rivers"), and for its brief in			
12	2 response to the Kentucky Public Service Commission's ("Commission") March 31,			
13	2023, Order in this matter, states as follows:			
14	Introduction			
15	On September 28, 2020, the Commission approved a Power Purchase			
16	Agreement ("PPA") between Big Rivers and Unbridled Solar, LLC ("Unbridled			
17	Solar"). <sup>1,2</sup> Under the PPA, Big Rivers will receive the entire capacity value (MW),			
18	energy (MWh), ancillary services, and environmental attributes ( <i>i.e.</i> , renewable			
19	energy certificates or carbon credits) of the 160 MW solar facility being			

<sup>&</sup>lt;sup>1</sup> In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts, P.S.C. Case No. 2020-00183, Order (Sept. 28, 2020).

<sup>&</sup>lt;sup>2</sup> Unbridled Solar was formerly Henderson Solar, LLC.

1 constructed on the Henderson/Webster County line just south of Henderson,

2 Kentucky.<sup>3</sup>

Unfortunately, Unbridled Solar has approached Big Rivers, claiming that
the project has faced a number of issues that the entire solar development
industry has encountered, such as delays in the interconnection process, labor
shortages, supply chain issues, and inflation. Unbridled Solar stated that without
a change in the price and certain other terms of the PPA, it would not move
forward with the project. Unbridled Solar's position is that it can abandon the
project and forfeit the credit support it has provided.<sup>4</sup>

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16

## Amendment No. 1

Big Rivers and Unbridled Solar have negotiated an amendment to the PPA that preserves approximately two-thirds of the economic benefit of the PPA for Big Rivers and its Members ("*Amendment No. 1*").<sup>5</sup> The proposed amendment consists of amendments related to:

15 1. reducing the guaranteed Net Output of the facility to enable Unbridled

Solar to utilize different solar panels than it originally planned;

- 17 2. pushing back the Scheduled Commercial Operation Date;
- 18 3. allowing for the filing of a Provisional Generator Interconnection
- 19 Agreement ("GIA") so that the project can interconnect without waiting

<sup>&</sup>lt;sup>3</sup> Direct Testimony of Mark Eacret at p. 6.

<sup>&</sup>lt;sup>4</sup> *Id.* at pp. 9-13.

<sup>&</sup>lt;sup>5</sup> *Id.* at p. 18.

for the traditional interconnection process, and with Big Rivers
 consequently assuming the risk of any Network Upgrade Costs;
 4. increasing the credit support required from Unbridled Solar; and
 5. increasing the Contract Price from \$29.60/MWh to \$38.10/MWh.<sup>6</sup>
 The Direct Testimony of Mark Eacret, attached as Exhibit 3 to Big Rivers'
 Application in this matter, fully describes the proposed Amendment No. 1.

7

## The Commission Should Approve Amendment No. 1

8 Retaining the original PPA without any change is not a viable option. 9 Unbridled Solar will not honor the original PPA. The alternatives are legal action 10 against Unbridled Solar and finding another solar developer; keeping the credit 11 support and finding another solar developer; or agreeing to the proposed 12 amendment. The result of any legal action is uncertain as to timing and 13 outcome.<sup>7</sup>

The proposed Amendment No. 1, on the other hand, provides value to Big Rivers and its Members that is known and that is several times what they would receive if Unbridled Solar simply abandoned the project and relinquished the credit support. In fact, the amended PPA provides nearly \$86 million in value to Big Rivers and its Members.<sup>8</sup>

While the price and certain other terms are not as favorable to Big Riversas the original PPA, the Contract Price under Amendment No. 1 is still well below

<sup>&</sup>lt;sup>6</sup> Id. at pp. 6-7.

<sup>&</sup>lt;sup>7</sup> Id. at p. 18.

<sup>&</sup>lt;sup>8</sup> *Id.* at p. 16.

1	the prices Big Rivers could get from a substitute solar project. The amended PPA
2	will still provide needed capacity to reduce a short-term capacity shortfall. The
3	amended PPA can still be utilized to satisfy Big Rivers' solar obligation to Nucor.
4	The amended PPA will still help entice economic development candidates
5	considering locating in the Big Rivers footprint who are interested in Big Rivers'
6	generation resource mix and decarbonization efforts. And the amended PPA will
7	still help diversify Big Rivers' resource mix and satisfy the credit rating agencies'
8	Environmental, Social, and Governance ("ESG") criteria.9
9	For these reasons, the amended PPA remains a reasonable and cost-
10	effective source of energy that is (1) for a lawful object within the corporate
11	purposes of Big Rivers and necessary; (2) appropriate for, and consistent with, the
12	proper performance by Big Rivers of its service to the public, and will not impair
13	its ability to perform that service; (3) reasonably necessary and appropriate for
14	such purpose; and (4) not a wasteful duplication of facilities. <sup>10</sup>
15	Conclusion
16	The proposed amendment makes the best of a bad situation. The
17	amendment retains approximately two-thirds of the original contract value for

- $18\;$  Big Rivers' Members, keeps the Nucor pricing structure intact, and allows Big
- 19 Rivers to increase the diversity of its resources as encouraged by economic

<sup>&</sup>lt;sup>9</sup> See id. at pp. 7, 17.

<sup>&</sup>lt;sup>10</sup> See KRS 278.300.

1	development candidates and credit rating agencies. For these reasons, the	
2	Commission should approve Amendment No	o. 1.
3	On this the 12 <sup>th</sup> day of April, 2023.	
4		Respectfully submitted,
$5 \\ 6$		/s/ Tyson Kamuf
7		
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