

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF KENERGY CORP. AND	)	CASE NO.
BIG RIVERS ELECTRIC CORPORATION FOR	)	2016-00117
APPROVAL OF CONTRACTS	)	

O R D E R

This matter arises from certain motions requesting confidential treatment, pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, filed by Big Rivers Electric Corporation (BREC), individually, or by BREC and Aleris Rolled Products, Inc. (Aleris), jointly. BREC and Aleris filed joint motions on March 24, 2016, April 21, 2016, and May 10, 2016. BREC filed its individual motions on March 30, 2017, March 29, 2018, and April 1, 2019.

March 24, 2016 Joint Motion

In the March 24, 2016 joint motion, BREC and Aleris requested confidential treatment for information contained in Section 2.03 and Exhibit C of the Amended and Restated Agreement for Retail Electric Service between Kenergy Corp. and Aleris (Retail Agreement)<sup>1</sup> and in the Direct Testimony of Michael Chambliss (Chambliss Testimony) at page 7.<sup>2</sup> BREC and Aleris state that the information sought to be kept confidential in the Retail Agreement and in the Chambliss Testimony consists of projections of an individual retail customer's demand and energy requirements and related payment obligations. BREC and Aleris state that such information is highly confidential and public

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<sup>1</sup> The Retail Agreement is attached as Exhibit 5 to the joint application of this matter.

<sup>2</sup> The Chambliss Testimony is attached as Exhibit 3 to the joint application in this matter.

disclosure of this information would cause substantial harm to Aleris and constitute an unwarranted invasion of the customer's privacy in contravention of KRS 61.878(1)(a).

BREC and Aleris further state that information related to Aleris' demand, energy requirements, and payment obligations are exempt from public disclosure pursuant to KRS 61.878(1)(c)(1). BREC and Aleris point out that they both operate in competitive environments; that the information contained in the Retail Agreement and the Chambliss Testimony is generally recognized as confidential or proprietary; and that public disclosure of this information would permit an unfair commercial advantage to competitors of BREC and Aleris. Accordingly, BREC and Aleris request that the information contained in Section 2.03 and Exhibit C of the Retail Agreement and the Chambliss Testimony, at page 7, be kept confidential for an indefinite period, or in the alternative, for ten years if the Commission determines that KRS 61.878(1)(a) does not apply to this information.

BREC also requests confidential treatment for certain information contained in the 2016 Marginal Cost Analysis attached as Exhibit Wolfram-2 to the Direct Testimony of John Wolfram (Wolfram Testimony) and for certain information contained in Exhibit C attached to the Chambliss Testimony.<sup>3</sup> BREC states that the 2016 Marginal Cost Analysis contains sensitive information about BREC's production and purchased power costs and energy and capacity price forecasts. BREC further states that Exhibit Chambliss\_C attached to the Chambliss Testimony is a schedule that compares the benefits of the Aleris expansion contract to market sales and includes detailed forecasts of its operation and maintenance costs, its purchased power costs, and market price projections. BREC asserts that this information is entitled to confidential protection under

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<sup>3</sup> The Wolfram Testimony is attached as Exhibit 4 to the joint application in this matter.

KRS 61.878(1)(c)(1), contending that public disclosure of the sensitive information would give BREC's suppliers, buyers, and competitors insight into the prices at which BREC is willing to buy or sell power and capacity. BREC also asserts that this information is indicative of the market conditions that it expects to encounter and its ability to compete with competitors. Accordingly, BREC requests the information in the 2016 Marginal Cost Analysis and the information contained in Exhibit Chambliss\_C be kept confidential for five years.

April 21, 2016 Joint Motion

In the April 21, 2016 joint motion, BREC and Aleris request confidential treatment for information that was presented at the April 21, 2016 informal conference in this matter. BREC and Aleris state that the information that is sought to be kept confidential consists of information relating to the increase in load at the Aleris Lewisport facility under the Retail Agreement. BREC and Aleris contend that the information is exempt from public disclosure under KRS 61.878(1)(a) because it contains private customer information related to Aleris' demand requirements and payment obligations and the public disclosure of this information would constitute an unwarranted invasion of personal privacy.

BREC and Aleris further contend that the information is exempt from public disclosure pursuant to KRS 61.878(1)(c)(1) because BREC and Aleris operate in competitive environments; the information is generally recognized as confidential or proprietary; and disclosure would permit an unfair commercial advantage to competitors of Aleris and BREC. Aleris notes that it is making the largest investment in its history to build twin Continuous Annealing Line with Pre-Treatment (CALP) lines. This investment, and its related timing, will allow Aleris to be on the first few companies to market in the

United States with a state of the art auto body sheet production process. Aleris contends that disclosure of the timing and extent of its ramp up of production combined with other publicly available information would enable its competitors to estimate Aleris' capacity and pricing capabilities at specific points in time. BREC contends that if it is unable to obtain confidential treatment for the contract terms that Aleris considers highly confidential, then potential counterparties dealing with BREC on future transactions would know that such information related to them could be publicly disclosed, which could reveal information to their competitors about their competitiveness. This would likely result in reducing the pool of counterparties willing to deal with BREC, reducing BREC's ability to sell power and impairing its ability to compete in the wholesale and credit markets. Given that Aleris had choices about where it would make its CALP project investment, the risk of public disclosure of timing and load requirements would have been a significant factor in its decision about where the project would be constructed.

BREC and Aleris request that the information contained in the April 21, 2016 motion be kept confidential for an indefinite period because it reveals private customer data. In the alternative, BREC and Aleris request that the information be kept confidential for ten years the Commission disagrees that such information is not entitled to confidential treatment pursuant to KRS 61.878(1)(a).

#### May 10, 2016 Joint Motion

In the May 10, 2016 joint motion, BREC and Aleris request confidential treatment for the information contained in BREC's responses to Commission Staff's First Request for Information (Staff's First Request), Items 1(b), 1(d), 1(e), and 5. BREC and Aleris state that the attachments to Staff's First Request, Items 1(e) and 5, and the years listed

in the attachment to Staff's First Request, Item 1(b), is the same information that is the subject of their joint motions for confidentiality filed on March 24, 2016 and April 21, 2016. BREC and Aleris also state that the first confidential number in the response to Staff's First Request, Item 1(d), is the same information that is the subject of their joint motion for confidentiality filed on March 24, 2016.

BREC and Aleris further state the remaining information contained in the response to Staff's First Request, Item 1(d), and the attachment to the response to Staff's First Request, Item 1(b), is entitled to confidential treatment under KRS 61.878(1)(c)(1). BREC and Aleris state that the remaining information that is sought to be kept confidential in the response to Staff's First Request, Item 1(d), consists of BREC's projected capacity prices and revenues. BREC and Aleris state that the remaining information contained in the attachment to the response to Staff's First Request, Item 1(b), consists of BREC's projections of its fuel costs, purchased power costs, environmental costs, rates, and off-system sales. BREC contends that public disclosure of this information would provide BREC's suppliers, buyers, and competitors insight into its cost of producing power and the prices at which BREC is willing to buy or sell power and fuel. BREC further contends that public disclosure of this information would permit an unfair commercial advantage to competitors of BREC as purchasers could use the information as a benchmark to manipulate BREC's bidding process, which would lead to higher costs and lower revenues to BREC. Lastly, BREC contends that disclosure of information related to BREC's cost of producing power would give power producers and marketers an unfair competitive advantage because they could use that information to potentially underbid

BREC in wholesale transactions, leading to lower revenues to BREC and placing the company in an unfair competitive advantage in the wholesale power and credit markets.

BREC and Aleris request that the information provided in the attachments to responses to Staff's First Request, Items 1(e) and 5, the first confidential number in the response to Staff's First Request, Item 1(d), and the years listed in the attachment to the response to Staff's First Request, Item 1(b), remain confidential for an indefinite period or, alternatively, for ten years if the Commission finds that KRS 61.878(1)(a) does not apply to this information. BREC and Aleris further request that the remainder of the information in the response to Staff's First Request, Items 1(b) and 1(d), remain confidential for five years.

BREC Motions Filed on March 30, 2017; March 29, 2018; and April 1, 2019

In connection with the submission of its annual report detailing the revenues and the marginal costs associated with serving Aleris under the special contract, as required by the final Order issued on June 30, 2016, in this matter, BREC requested confidentiality for certain information contained in the annual reports filed on March 30, 2017; March 29, 2018; and April 1, 2019. BREC states that the information that it seeks to be protected from public disclosure consists of information relating to the increase in load at the Aleris Lewisport facility under the Retail Agreement.

BREC asserts that the information is exempt from public disclosure under KRS 61.878(1)(a) because it contains information that Aleris considers to be highly confidential and public disclosure of this information would cause Aleris substantial competitive harm. BREC notes that the success of Aleris' CALP investment is critically dependent upon the

timing and extent of the ramp up in production and disclosure of this information would provide Aleris' competitors to gain insight into its capacity, pricing, and customers.

BREC further asserts that the information is exempt from public disclosure under KRS 61.878(1)(c)(1) because the information is generally recognized as confidential or proprietary and public disclosure of the information would permit an unfair commercial advantage to BREC's competitors. As it did in the April 21, 2016 motion, BREC contends that if it is unable to obtain confidential treatment for the contract terms that Aleris considers highly confidential, this would likely result in reducing the pool of counterparties willing to deal with BREC and would consequently impact BREC's ability to sell power and impairing its ability to compete in the wholesale and credit markets. Accordingly, BREC requests that this information be kept confidential for an indefinite period because it reveals private customer data. In the alternative, BREC requests that the information be kept confidential for ten years if the Commission determines that KRS 61.878(1)(a) does not apply to this information.

Having carefully considered the motions and the materials at issue, the Commission finds that the designated materials in the confidentiality motions of BREC and Aleris meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a), 61.878(1)(c)(1), and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. The joint motions for confidential treatment filed by BREC and Aleris filed on March 24, 2016, April 21, 2016, and May 10, 2016, are granted.

2. The motions for confidential treatment filed by BREC on March 30, 2017, March 29, 2018, and April 1, 2019, are granted.

3. The designated materials for which BREC and Aleris seek confidential treatment in their March 24, 2016, April 21, 2016, May 10, 2016, March 30, 2017, March 29, 2018, and April 1, 2019 motions shall not be placed in the public record or made available for public inspection for an indefinite period or until further Orders of this Commission.

4. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

5. BREC or Aleris shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

6. If a non-party to this proceeding requests to inspect the materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then BREC or Aleris shall have 30 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If BREC or Aleris is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. The Commission shall not make the requested materials available for inspection for 30 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow BREC or Aleris to seek a remedy afforded by law.



By the Commission

ENTERED  
JUN 11 2019  
KENTUCKY PUBLIC  
SERVICE COMMISSION

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