

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)	
CORPORATION FOR TERMINATION OF)	CASE NO.
CONTRACTS AND A DECLARATORY ORDER AND)	2018-00146
FOR AUTHORITY TO ESTABLISH A)	
REGULATORY ASSET)	

ORDER

On May 1, 2018, and May 7, 2018, Big Rivers Electric Corporation (BREC) filed petitions, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for a five-year period to designated information contained in BREC's Notice and Application, and the Exhibits thereto. On May 15, 2018, BREC filed revisions to the Application and Exhibits, and noted in a letter that these minor changes should also be provided confidential treatment under the May 1, 2018 petition for confidentiality.

BREC states that the confidential information consists of BREC's financial model; production cost model information; projections of power market prices, coal and other fuel prices, emission allowance prices, other fixed and variable operation and maintenance (O&M) costs, unit start-up and mill cycle costs, capital projects costs, decommissioning costs, and rates; planned outage schedules and other information relating to projected unit generation and availability, including projected sales to members; recent energy and capacity revenues, which would give insight into projected revenue amounts; and information such as totals, margins, TIER, and cash balances that can be used in

combination with other information to calculate the other confidential information. BREC asserts that this information is not publicly available, and is not widely disseminated within BREC.

As a basis for the request, BREC states that the confidential information is entitled to confidential protection pursuant to KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” BREC asserts that it is a participant in credit markets and the wholesale power markets, and as such, it faces competition from other entities. Due to this competition, if the confidential information is released then it will negatively affect BREC’s ability to successfully compete as well as have a direct impact on its financial results.

BREC further argues that the confidential information contains BREC’s key internal strategic planning documents. BREC contends that these documents relate to the company’s economic status and business strategies and are therefore entitled to confidential treatment. BREC further argues that information such as this bears upon a company’s detailed inner workings and the Commission has previously generally recognized this type of information as confidential or proprietary.

Finally, BREC states that public disclosure of the confidential information would provide insight into BREC’s cost of producing power; BREC’s availability and need for power; the prices at which BREC is willing to buy or sell power, fuel, emission allowances, and other items; the amounts BREC is willing to pay for capital projects; and is also

indicative of the market conditions that BREC expects to encounter and its ability to compete.

Having considered the petitions and the material at issue, the Commission finds that the designated information contained in BREC's Notice and Application, and the Exhibits thereto, are generally recognized as confidential or proprietary; the information, therefore, meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. BREC's petitions for confidential protection for certain information contained in BREC's Notice and Application, and the Exhibits thereto, as described herein, are granted.

2. The designated information contained in BREC's Notice and Application, and the Exhibits thereto, as described herein, shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

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

4. BREC shall inform the Commission if the materials in question become publicly available or no longer qualifies for confidential treatment.

5. 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 expired, BREC 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 is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

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

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By the Commission

ENTERED
SEP 17 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2018-00146

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