

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)	

ORDER

On April 1, 2020, Big Rivers Electric Corporation (BREC) filed an annual report as required by the Commission pursuant to its June 30, 2016 Order. BREC also filed a petition requesting, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and (1)(c)(1), that the Commission grant confidential protection for an indefinite period for redacted portions of the report. On March 31, 2021, BREC again filed its annual report as ordered by the Commission and filed a petition requesting that the Commission grant confidential protection for an indefinite period for redacted portions of the report on the same basis as in the April 1, 2020 request.

BREC argued that the redacted material is exempt from public disclosure under KRS 61.878(1)(a) which exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy” and KRS 61.878(1)(c)(1) which exempts “[r]ecords 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.”

The redacted information consists of the economic development rate, revenue, and costs related to a special contract with Aleris Rolled Products, Inc. (Aleris). BREC

argued that since Aleris is a customer, it is entitled to privacy regarding its energy expenditures under KRS 61.878(1)(a). BREC further argues that under KRS 61.878(1)(c)(1), the redacted information should be confidential because Aleris would be disadvantaged competitively by disclosure and BREC would be disadvantaged because it is a participant in energy markets, and disclosure of what it pays for energy would be detrimental.

Having considered the motion and the material at issue, the Commission finds that BREC's motions for confidential treatment for information redacted from its April 1, 2020 and March 31, 2021 annual reports are granted. Since Aleris is not a person, it does not have an expectation of "personal privacy" and the information is not "of a personal nature" protected by KRS 61.878(1)(a). Also, Aleris' potential competitive disadvantage does not trigger protection under KRS 61.878(1)(c)(1) because Aleris is not "the entity that disclosed the records." However, the redacted information, if disclosed, would disadvantage BREC with its competitors, who could use the information in the energy market with knowledge of BREC's energy purchase history. In addition, public disclosure of this information could harm BREC in negotiating future special contracts. It therefore meets the criteria for confidential treatment and is exempted from public disclosure for ten years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).¹

IT IS THEREFORE ORDERED that:

1. BREC's motion for confidential treatment is granted.

¹ See Case No. 2019-00124, *Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Service with MC Mining, LLC* (Ky. PSC Aug. 23, 2019), Order, granting confidential treatment for 14 years for information involving economic development rates and credits in a special contract.

2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.

3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

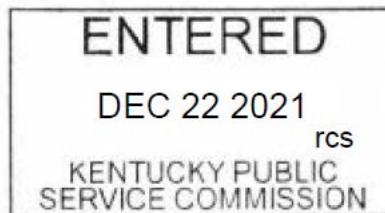
4. BREC shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, BREC shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls 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 material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow BREC to seek a remedy afforded by law.

By the Commission

Chairman Kent Chandler did not participate in deliberations or decision concerning this case.



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