

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR)	CASE NO.
ENFORCEMENT OF RATE AND SERVICE)	2019-00269
STANDARDS)	

ORDER

On June 8, 2020, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years to information provided in response to Commission Staff's First Request for Information (Staff's First Request) Item No. 1 and the city of Henderson and Henderson Utility Commission d/b/a Henderson Municipal Power & Light's (jointly Henderson) First Request for Information (Henderson's First Request) Items No. 34, 36, and 58.

On June 29, 2020, BREC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period to information provided in response to Henderson's First Request for Information Item No. 9.

In support of its motions, BREC argued that KRS 61.878(1)(c)(1) exempts the provided information from disclosure because it constitutes: "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."

The information provided in response to Staff's First Request No. 1 includes dollar figures redacted from BREC's responses representing estimated costs of decommissioning Coleman generation facility Station Two and Station Two ash pond, cost figures in a study pertaining to those costs, and cost figures in a study pertaining to groundwater monitoring. The documents provided in response to Henderson's First Request Items No. 34 and 36 consist of bid proposals from various contractors for the decommissioning work. The documents provided in response to Henderson's First Request Item No. 58 is a purchase order from the winning bidder showing the amount paid to that bidder. Documents provided in response to Henderson's First Request for Information Item No. 9 included two additional bid proposals.

BREC argued that estimates, bids, and supporting documents should be held confidential because disclosure of this information would result in future contractors to submit higher bids, leading to higher costs and lower revenues, hurting its ability to compete in the wholesale power and credit markets. BREC also suggested that disclosure of bids would be harmful to the bidders and could result in potential bidders declining to submit bids.

Having considered the motion and the material at issue, the Commission finds that the information BREC sought confidential treatment for is generally recognized as confidential or proprietary and if openly disclosed would permit an unfair commercial advantage to BREC's competitors. The Commission has previously granted confidential treatment to estimates and bids due to the possibility of bid manipulation resulting from

disclosure.¹ Bid manipulation would commercially disadvantage BREC with its competition. However, the Commission finds that bids are only entitled to confidential treatment for a five-year period. This information is used in rate calculation and should not be granted confidential treatment for an indefinite period.

This information 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 motion for confidential treatment is granted.
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 five 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

¹ Case No. 2020-00309, *Electronic Purchased Gas Adjustment Filing of Louisville Gas and Electric Company* (Ky. PSC Aug. 20, 2021), Order at 3.

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.

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By the Commission

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



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