

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	CASE NO.
ELECTRIC CORPORATION FOR APPROVAL TO)	2021-00468
ISSUE EVIDENCES OF INDEBTEDNESS)	

ORDER

On January 26, 2022, 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 protection for Exhibits 1 through 4 to its application. BREC sought confidential treatment for an indefinite period for power plant schematics, diagrams, drawings, plans, photographs, scope of work plans, and technical specifications of Big Rivers' Wilson Station, Coleman Station, and Green Station. BREC sought confidential treatment for five years for all remaining information contained in the exhibits.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ In support of its motion, BREC argued the application of two provisions of KRS 61.870. Under KRS 61.878(1)(m), the Open Records Act exempts "[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing,

¹ KRS 61.872(1).

protecting against, mitigating, or responding to a terrorist act . . .”² The exemption is limited to certain types of records, including:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.³

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁴

In addition, KRS 61.878(1)(c)(1) exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁵ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁶

DISCUSSION

BREC sought confidential treatment for documents provided as exhibits to its Application described as power plant schematics, diagrams, drawings, plans, and photographs of BREC’s Wilson Station, Coleman Station, and Green Station; and detailed scope of work plans and technical specifications. This included all of Exhibits 2 and 4, as

² KRS 61.878(1)(m)(1).

³ KRS 61.878(1)(m)(1)(f).

⁴ KRS 61.878(1)(m)(2)(b).

⁵ See KRS 61.871.

⁶ 807 KAR 5:001, Section 13(2)(c).

well as portions of Exhibits 1 and 3. BREC argued that plans and specifications could be used to damage or destroy the plant structures and injure persons or property at or near the plant, or to locate chemicals and other material that could be used to the detriment of public safety. BREC also stated this information could be used to gain an understanding of the workings of the power plants or other similar power plants and that disclosure of this information would provide the public with a tool to analyze the vulnerabilities in public utility critical systems under KRS 61.878(1)(m).

The remaining documents provided in exhibits to its application include construction contracts and bid packages, as well as purchase orders for each contractor with itemized cost information. BREC argued that these documents should remain confidential under KRS 61.878(1)(c)(1) because the amounts paid for each line item constitute detailed inner planning information and commercially sensitive data, which if disclosed could unreasonably and unnecessarily harm BREC by giving interested third parties and potential construction bidders internal information.

FINDINGS

Having considered the motion and the material at issue, the Commission finds that BREC's motion for confidential treatment is granted. The Commission grants confidential treatment indefinitely for Exhibits 2 and 4 to BREC's application and power plant schematics, diagrams, drawings, plans, photographs, scope of work plans, and technical specifications of BREC's Wilson Station, Coleman Station, and Green Station included in Exhibits 1 and 3. Power plant construction plans constitute public utility critical systems

pursuant to the plain language of KRS 61.878(1)(m). As-built versions of these plans were granted confidential treatment in the case approving construction.⁷

The Commission grants confidential treatment for five years for remaining portions of Exhibits 1 and 3 to BREC's application. Contracts, bid packages, and purchase orders containing itemized cost information should be granted confidential treatment due to the risk of bid manipulation by contractors on other projects.⁸ However, this Order shall not be construed to grant confidential treatment to the total aggregate cost of the construction project since this sum is used in base rate calculations.

Therefore, the designated material 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)(m) and (1)(c)(1).

IT IS THEREFORE ORDERED that:

1. BREC's motion for confidential treatment for Exhibits 1 through 4 to its application is granted.

2. Exhibits 2 and 4 to the application and any portions of Exhibits 1 and 3 to the application constituting power plant schematics, diagrams, drawings, plans, photographs, scope of work plans, and technical specifications of BREC's Wilson Station, Coleman Station, and Green Station shall not be placed in the public record or made

⁷ Case No. 2019-00435, *Electronic Application of Big Rivers Electric Corporation for Approval of its 2020 Environmental Compliance Plan, Authority to Recover Costs Through a Revised Environmental Surcharge and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief* (Ky. PSC Dec. 27, 2021), Order at 2–3.

⁸ See Case No. 2019-00269, *Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (Ky. PSC Dec. 8, 2021), Order at 2–3.

available for public inspection for an indefinite period for or until further Order of this Commission.

3. Remaining portions of Exhibits 1 and 3 to the application shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

4. After the expiration of the five-year period, BREC shall refile Exhibits 1 and 3 to the application, with power plant schematics, diagrams, drawings, plans, photographs, scope of work plans, and technical specifications of Big Rivers' Wilson Station, Coleman Station, and Green Station redacted.

5. 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).

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

7. 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.

8. The Commission shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of

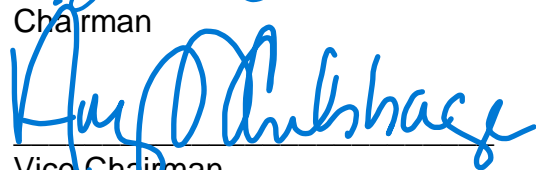
service of an Order finding that the material no longer qualifies for confidential treatment in order to allow BREC to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman

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ATTEST:



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