

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS	)	
ELECTRIC CORPORATION FOR ANNUAL	)	CASE NO.
REVIEW OF ITS MRSM CHARGE FOR	)	2023-00038
CALENDAR YEAR 2022	)	

ORDER

This matter arises on two motions for confidential treatment filed by Big Rivers Electric Corporation (BREC). On February 28, 2023, BREC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting the Commission grant confidential treatment for an indefinite period for customer specific usage and billing information that was provided with the direct testimony of Talina R. Mathews<sup>1</sup> (Mathews Direct Testimony) as well as for information relating to decommissioning bids that was included in the direct testimony of Nathaniel A. Berry (Berry Direct Testimony), Chief Operating Officer of BREC.<sup>2</sup>

On April 4, 2023 BREC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting the Commission grant confidential treatment for an indefinite period for customer specific usage and billing information provided in response to Commission Staffs First Request for information (Staff's First Request), Item 1.

---

<sup>1</sup> Application, Exhibit B.

<sup>2</sup> Application, Exhibit C.

## 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."<sup>3</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>4</sup> The party requesting the materials be treated confidentiality has the burden of establishing that one of the exceptions is applicable.<sup>5</sup>

In support of its motions, BREC argued the application of two exceptions to disclosure. KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are "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." KRS 61.878(1)(a) exempts "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

## FEBRUARY 28, 2023 MOTION AND FINDINGS

The Mathews Direct Testimony includes customer specific billing and usage information that was redacted.<sup>6</sup> BREC argued that release of such information would constitute an unwarranted invasion of the industrial customer's personal privacy and private energy usage information. BREC also argued that the information should be

---

<sup>3</sup> KRS 61.872(1).

<sup>4</sup> KRS 61.878.

<sup>5</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>6</sup> Application, Exhibit B.

granted confidential treatment because public disclosure of the designated material could provide BREC's competitors an unfair commercial advantage in the wholesale power and capital markets and negotiating future transactions.

The Berry Direct Testimony includes information relating to decommissioning bids, including contractor's names, bid details, and pricing, and BREC's analysis of the bids. BREC argued this information should be granted indefinite confidential treatment pursuant to KRS 61.878(1)(c)(1). BREC asserted that the information is generally treated as confidential or propriety. BREC further asserted that public disclosure of the information would put BREC at a commercial disadvantage in soliciting decommissioning bids in the future and could be used by vendors to manipulate the bidding process.

Having considered the motion and the material at issue, the Commission finds that BREC's motion for confidential treatment should be granted. Customer specific billing and usage information is generally recognized as confidential or proprietary,<sup>7</sup> and of a personal nature, and that public disclosure would result in an unwarranted invasion of personal privacy because it would make private usage and billing data public and provide an unfair commercial advantage to BREC's competitors because it could adversely impact BREC's ability to negotiate in the future for the most favorable terms possible.

Furthermore, information regarding decommissioning bids and the analysis thereof is generally considered confidential or proprietary, the Commission has granted

---

<sup>7</sup> Case No. 2022-00028, *Electronic Application of Big Rivers Electric Corporation for Annual Review of its MRSB Charge for Calendar Year 2021* (Ky. PSC Apr. 7, 2022), Order.

confidential treatment to similar material before,<sup>8</sup> and that disclosure of such information would grant BREC competitors an unfair commercial advantage by placing BREC at a disadvantage when soliciting such bids in the future.

The designated material therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 807 5:001, Section 13; KRS 61.878(1)(a); and KRS 61.878 (1)(c)(1).

#### APRIL 4, 2023 MOTION AND FINDINGS

The response to Commission Staff's First Request for Information consists of the same customer-specific billing and usage information contained in the Mathews Direct Testimony that is subject to the February 28, 2023 motion for confidential treatment, but in Excel format.

Because the designated material was granted confidential treatment above and because the change in format in which the designated material was provided does not change the confidential nature of the designated material, the Commission finds that the designated material for which confidential treatment was requested in the April 4, 2023 motion should be granted for the same reasons discussed above.

IT IS THEREFORE ORDERED that:

1. BREC's February 28, 2023, and April 4, 2023 motions for confidential treatment are granted.

---

<sup>8</sup> Case No. 2003-00054, *Application of the Union Light, Heat and Power Company for Confidential Treatment* (Ky. PSC Aug. 4, 2003), Order. See also: Case No. 2019-00231, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2018 Through April 30, 2019* (Ky. PSC Apr. 2, 2020), Order.

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 an indefinite period 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.

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner

ENTERED  
SEP 19 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

\*Angela M Goad  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Whitney Kegley  
Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304

\*John Horne  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Lawrence W Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Michael West  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304

\*Senthia Santana  
Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304

\*Tyson Kamuf  
Corporate Attorney  
Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304