

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|--|---|------------|
| ELECTRONIC TARIFF FILING OF BIG RIVERS | ) |            |
| ELECTRIC CORPORATION FOR APPROVAL OF   | ) | CASE NO.   |
| PROPOSED CHANGES TO ITS QUALIFIED      | ) | 2023-00102 |
| COGENERATION AND SMALL POWER           | ) |            |
| PRODUCTION FACILITIES TARIFFS          | ) |            |

ORDER

On May 26, 2023, 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 for its response to Commission Staff's Second Request for Information (Response to Staff's Second Request), Item 10.

LEGAL STANDARD

The Commission is a public agency subject to the Kentucky Open Records Act,<sup>1</sup> which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884."<sup>2</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>3</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.<sup>4</sup> KRS 61.878(1)(c)(1) provides an exception to the requirement

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<sup>1</sup> KRS 61.870 through 61.884.

<sup>2</sup> KRS 61.872(1).

<sup>3</sup> KRS 61.878.

<sup>4</sup> 807 KAR 5:001E, Section 13(2)(c).

for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

### DISCUSSION AND FINDINGS

In support of its motion, BREC stated that its Response to Staff’s Second Request, Item 10, contains avoided capacity energy charges derived from the costs included for the natural gas combined cycle unit cited in its most recent Integrated Resource Plan.<sup>5</sup> BREC argued it competes in wholesale power markets and credit markets and the disclosure of this information would reveal detailed information relating to BREC’s projected production costs. BREC also argued the information provides insight into BREC’s costs of producing power. BREC stated this insight could give competitors an unfair commercial advantage because they would know the prices BREC is willing to buy or sell power, natural gas, or other commodities. BREC also argued the Commission has granted confidential protection for this same type of information in the past.<sup>6</sup>

Having considered the motion and the material at issue, the Commission finds that BREC’s Response to Staff’s Second Request, Item 10, is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). The avoided capacity charges and energy charges, if disclosed,

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<sup>5</sup> Case No. 2020-00299, *Electronic 2020 Integrated Resource Plan of Big Rivers Electric Corporation*.

<sup>6</sup> Motion for Confidential Treatment at 7 *citing* Case No. 2020-00299, *Electronic 2020 Integrated Resource Plan of Big Rivers Electric Corporation*, April 14, 2022 Order (Ky. PSC. Apr. 14, 2022).

could provide an unfair advantage to competitors because if the prices BREC is willing to buy and sell power were known, BREC's market position would be harmed.

IT IS THEREFORE ORDERED that:

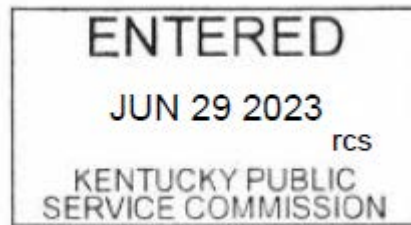
1. BREC's motion for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
3. Use of the designated material 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 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

  
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Chairman

  
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Vice Chairman

  
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Commissioner



ATTEST:

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

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