

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
KENERGY CORP. AND BIG RIVERS ELECTRIC)	CASE NO.
CORPORATION FOR APPROVAL OF)	2016-00117
CONTRACTS)	

ORDER

On March 30, 2023, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for specific terms redacted from the annual report required to be filed related to the economic development contracts (EDRs) with Aleris Rolled Products, Inc. (Aleris) and Blockware Mining, LLC (Blockware). The information is filed yearly with the Commission pursuant to three separate Commission Orders.¹

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act,² which requires that all public records “be open for inspection by any person, except as otherwise

¹ Case No. 2016-00117, *Electronic Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC June 30, 2016), Order. Administrative Case No. 327, *An Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities* (Ky PSC Sept. 24, 1990), Order. Case No. 2021-00282, *Electronic Tariff Filing of Big Rivers Electric Corporation and Jackson Purchase Energy Corporation for Approval and Confidential Treatment of a Special Contract and Cost Analysis Information and a Request for Deviation from the Commission’s September 24, 1990 Order in Administrative Case No. 327* (Ky. PSC Oct. 14, 2021), Order at ordering paragraphs 5 and 7.

² KRS 61.870 through 61.884.

provided by KRS 61.870 to KRS 61.884.³ The exceptions to the free and open examination of public records should be strictly construed.⁴ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁵ KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.⁶ KRS 61.878(1)(c)(1) provides an exception to the requirement 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.” KRS 61.878(1)(i) grants confidential protection to preliminary drafts, notes, or correspondence.⁷

DISCUSSION AND FINDINGS

In support of its motion, BREC argues that BREC argued that the redacted material is exempt from public disclosure under 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 as part of an annual report related to the special contracts with Aleris and Blockware. BREC argued that under KRS 61.878(1)(c)(1), the redacted information

³ KRS 61.872(1).

⁴ KRS 61.878.

⁵ 807 KAR 5:001E, Section 13(2)(c).

⁶ KRS 61.878(1)(a).

⁷ KRS 61.878(1)(i).

should be confidential because Aleris and Blockware 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. BREC further argued that public disclosure of the designated material could harm BREC in future negotiations for similar special contracts. This information has been held confidential in this case several times previously.⁸

Having considered the motion and the material at issue, the Commission finds that specific terms redacted and filed as part of the required annual report related to the economic development contracts with Aleris and Blockware are generally recognized as confidential or proprietary. This is because the designated material, 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 should be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1). This finding is consistent with prior Orders in this matter.⁹

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 indefinite period or until further Order of this Commission.

⁸ Order (Ky PSC June 11, 2019), Order (Ky. PSC Dec. 22, 2021), Order, (Ky. PSC Jan. 20, 2023).

⁹ Order (Ky PSC June 11, 2019), Order (Ky. PSC Dec. 22, 2021), Order, (Ky. PSC Jan. 20, 2023).

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

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



ATTEST:



Executive Director

Case No. 2016-00117

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