

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF BIG)	
RIVERS ELECTRIC CORPORATION AND MEADE)	
COUNTY RURAL ELECTRIC COOPERATIVE)	CASE NO.
CORPORATION FOR (1) APPROVAL OF)	2019-00365
CONTRACTS FOR ELECTRIC SERVICE WITH)	
NUCOR CORPORATION; AND (2) APPROVAL OF)	
TARIFF)	

ORDER

On December 13, 2019, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to KRS 278.160(3), KRS 61.878(1)(c)(1), and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection indefinitely for certain information contained in BREC's responses and the attachments to BREC's responses to Items 2, 3, 4, 5, 7, 8, 10, and 13 of Commission Staff's First Request for Information.

The information for which BREC seeks confidential protection is more particularly described as terms of the special contract for Nucor Corporation (Nucor) that is the subject of this case and the negotiation of those terms; BREC's internal evaluations relating to that agreement, including energy and capacity projections and needs, hedging strategies, an analysis of the rate for Nucor, a cost-benefit analysis, and proprietary reports and projections from third-party vendors such as ACES and S&P Global Market Intelligence; discussions with other economic development prospects; and information that would reveal the confidential price terms of the special contracts BREC has with entities in Nebraska, the Kentucky Municipal Energy Agency, and others.

In support of its motion, BREC points out that it operates in competitive environments in the wholesale power market, the credit market, and in seeking economic development opportunities within the Commonwealth and throughout the nation. BREC contends it would likely suffer competitive injury if the information for which it seeks confidential protection is publicly disclosed. BREC maintains that the information sought to be protected is not publicly available, is not disseminated within BREC except to those with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information. As such, BREC argues the information is generally recognized as confidential and proprietary, and should be granted confidential protection.

BREC argues that much of the information for which it seeks confidential protection consists of negotiated terms of special contracts (responses to Items 2, 3, 7, 8, and 10), and as such is entitled to confidential protection based upon KRS 278.160(3)¹ and KRS 61.878(1)(c)(1).² BREC argues that denying confidential protection to the rates and terms of service set forth in its special contracts would have a chilling effect on companies willing to negotiate with BREC.

¹ KRS 278.160(3) states: "The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.844 under the provisions of KRS 61.878(1)(c)(1)."

² KRS 61.878(1)(c)(1) states: "The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery: ... 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."

BREC further states that its responses to Items 2 and 4 contain energy and capacity projections, hedging strategies, an analysis of rates for Nucor, a cost-benefit analysis, and proprietary reports from third-party vendors. BREC argues disclosure of its internal analyses would provide insight into its need and availability of energy and capacity and would adversely affect its competitive position with suppliers and potential counterparties. BREC also contends information such as this is generally recognized as confidential and proprietary. BREC also argues third parties would not provide proprietary data and projections to BREC if confidential protection is not provided. BREC would then lose an important tool it relies upon to negotiate favorable terms with other parties.

BREC states that its responses to Items 5 and 13 contain discussions of other economic development prospects, and the ability to negotiate competitive electric pricing structures with companies interested in expanding in Kentucky is fundamental to the success of BREC's economic development efforts. According to BREC, its competitiveness will be adversely affected if other suppliers are given an unfair competitive advantage or if potential counterparties are given a negotiating advantage.

Having considered the motion and the material at issue, the Commission finds that the materials meet the criteria for confidential treatment and are exempt from public disclosure pursuant to KRS 278.160(3), KRS 61.878(1)(c)(1), and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. BREC's December 13, 2019 motion for confidential protection is granted.

2. The designated materials for which BREC seeks confidential protection 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 material in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

4. BREC shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.

5. If a non-party 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 following an Order finding that the material no longer qualifies for confidential treatment in order to allow BREC to seek a remedy afforded by law.

By the Commission

ENTERED
JAN 22 2020
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Tyson Kamuf
Corporate Attorney
Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Meade County R.E.C.C.
P. O. Box 489
Brandenburg, KY 40108-0489

*Mary Myers
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507