

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS	)	
ELECTRIC CORPORATION FOR APPROVAL	)	
TO MODIFY ITS MRSM TARIFF, CEASE	)	CASE NO.
DEFERRING DEPRECIATION EXPENSES,	)	2020-00064
ESTABLISH REGULATORY ASSETS,	)	
AMORTIZE REGULATORY ASSETS, AND	)	
OTHER APPROPRIATE RELIEF	)	

ORDER

This matter arises upon seven motions for confidential treatment filed by Big Rivers Electric Corporation (BREC), pursuant to 807 KAR 5:001, Section 13, on April 3, 2020; April 15, 2020; April 24, 2020; May 22, 2020; May 29, 2020; June 3, 2020; and June 12, 2020, respectively.

In the April 3, 2020 motion, BREC requested confidential treatment for its response to Commission Staff's First Request for Information (Staff's First Request), Items 1, 3, 8, 9, 12, 17, 19, 20, and 28. BREC also requested confidential treatment for its response to the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention's (Attorney General) First Request for Information (Attorney General's First Request), Items 10, 12, 17, 18, 27, 28, 29, 32, 36, 38, 39, 44, 47, 48, 50, 51, 54, 55, 57, and 62. Finally, BREC requested confidential treatment for its response to Kentucky Industrial Utility Customers, Inc.'s (KIUC) First Request for Information (KIUC's First Request), Items 4, 7, 10, 11, 12, 13, and 14. BREC requested confidential treatment for an indefinite period for BREC's contracts with Nucor Corporation (Nucor); Aleris Rolled

Products, Inc. (Aleris); Kentucky Municipal Energy Agency (KyMEA); and contracts with entities in Nebraska (Nebraska Contracts), all of which were previously granted confidential treatment by the Commission for an indefinite period.<sup>1</sup> BREC also requested confidential treatment for an indefinite period for individual customer names and usage in the designated materials. Finally, BREC requested confidential treatment for five years for the remainder of the designated materials.

As a basis for its request for confidential treatment of individual customer names and usage, BREC asserted that public disclosure of the customer-specific information could constitute an invasion of personal privacy. As a basis for its request for confidential treatment of the remaining designated materials, BREC asserted that the designated materials contained projected cost estimates for proposed capital projects subject to a request for proposal (RFP), projected value of assets that may be sold, and projected financial information derived from confidential business plans, and that public disclosure would result in competitive injury to BREC by giving potential bidders, buyers, and competitors insight into information that would give the bidders, buyers, and competitors a competitive advantage.

In the April 15, 2020 motion, BREC requested confidential treatment for its supplemental response to the Attorney General's First Request, Items 40 and 42. BREC asserted that the designated materials in the Attorney General's First Request, Item 40, consist, in part, of the same or similar information pertaining to projected cost and savings,

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<sup>1</sup> Case No. 2020-00064, Order (Ky. PSC Mar. 17, 2020) (March 17, 2020 Order); Case No. 2016-00117, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC June 11, 2019); Case No. 2016-00306, *Filing of Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and the Kentucky Municipal Energy Agency* (Ky. PSC Jan. 2, 2019); Case No. 2014-00134, *Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to KRS 278.180 and KAR 5:011 § 13* (Ky. PSC Sept. 10, 2014).

financial modeling, confidential operational data, and the terms of the Nucor contract for which the Commission previously granted confidential treatment for an indefinite period, asserting that public disclosure would result in commercial harm to BREC.<sup>2</sup> BREC requested confidential treatment for the remaining designated materials for five years, asserting the public disclosure would result in commercial harm to BREC. BREC further asserted that the designated materials in its response to the Attorney General's First request, Item 42, consists of the same information pertaining to critical infrastructure, bid information in a pending RFP, and information that could be used to determine confidential information, all of which the Commission previously granted confidential treatment.<sup>3</sup> BREC stated that public disclosure of critical infrastructure is prohibited by KRS 61.878(1)(m). BREC also stated that public disclosure of the RFP bids could result in commercial harm to BREC.

In the April 24, 2020 motion, BREC requested confidential treatment for its response to Commission Staff's Second Request for Information (Staff's Second Request), Items 7(b) and 8, and for its response to the Attorney General's Second Request for Information (Attorney General's Second Request), Items 3, 5, 10, and 12–20. BREC asserted that much of the designated materials was financial information or the terms of special contracts for which the Commission previously granted confidential treatment.<sup>4</sup> BREC stated that designated materials not previously granted confidential

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<sup>2</sup> See Case No. 2019-00435, *Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff* (Ky. PSC Jan. 22, 2020).

<sup>3</sup> See Case No. 2019-00269, *Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (Ky. PSC Apr. 6, 2020).

<sup>4</sup> See March 17, 2020 Order.

treatment include confidential information pertaining to the Nucor and KyMEA contracts for which BREC requests confidential treatment for an indefinite period. BREC requests confidential treatment for five years for the remaining designated materials that have not previously been granted confidential treatment, including information regarding projected expenses for regulatory exclusions between 2020 and 2022. BREC maintained that public disclosure of the designated materials would cause commercial harm to BREC.

In the May 22, 2020 motion for confidential treatment, BREC requested confidential treatment for its response to Commission Staff's Third Request for Information (Staff's Third Request), Item 3, 4, and 6(a)-(d), and for its response to Commission Staff's Post-Informal Conference Request (Staff's Post-IC Request), Item 1, for five years. The designated materials consist of estimated budgets for BREC's defined benefit program, defined compensation program, estimated life insurance premiums, fuel adjustment clause (FAC) and environmental surcharge (ES) projected revenue and expenses, and a projected financial forecast. BREC asserted that much of the information is the same or similar to designated materials contained in pending motions for confidential treatment or is derived from that designated materials. BREC maintained that public disclosure of the designated materials would result in an unfair competitive advantage for BREC's competitors.

In the May 29, 2020 motion for confidential treatment, BREC requested confidential treatment for portions of the Paul G. Smith testimony filed in support of the Settlement, Stipulation, and Recommendation Agreement (Smith Settlement Testimony). Specifically, BREC requested confidential treatment for financial projections for five years. BREC also requested confidential treatment for designated materials related to individual

customer accounts, including usage, for an indefinite period. BREC said that portions of the designated materials are subject to pending motions for confidential treatment. BREC asserted that the designated materials are generally considered confidential or proprietary and that public disclosure would result in commercial harm to BREC.

In the June 3, 2020 motion, BREC requested confidential treatment for its response to Staff's Second Post-Informal Conference Request for Information (Staff's Second Post-IC Request), Item 1, for a period of five years. The designated materials consist of a financial projections that contain revisions of previously submitted financial projections that are subject to another motion for confidential treatment addressed in this order. BREC asserted that the designated materials are generally considered confidential or proprietary, and that public disclosure would result in commercial harm to BREC.

In the June 12, 2020 motion for confidential treatment, BREC requested confidential treatment for its response to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request), Items 2 and 3, which consists of financial projections. BREC requested confidential treatment for the designated materials for a period of five years, asserting that the materials are generally considered confidential or proprietary, and that public disclosure would result in commercial harm to BREC.

Having considered the motion and the materials at issue, the Commission finds that:

1. The designated materials in the April 3, 2020 motion for which BREC requested confidential treatment for an indefinite period meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13; KRS 61.878(1)(c)(1); and KRS 61.878(1)(a).

2. The designated materials in the April 3, 2020 motion for which BREC requested confidential treatment for five years meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

3. The designated materials in the April 15, 2020 motion for which BREC requested confidential treatment for an indefinite period continues to meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13; KRS 61.878(1)(c)(1); and KRS 61.878(1)(m).

4. The designated materials in the April 15, 2020 motion for which BREC requested confidential treatment for five years meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

5. The designated materials in the April 15, 2020 motion for which BREC requested confidential treatment for ten years meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

6. The designated materials in the April 24, 2020 motion for which BREC requested confidential treatment for an indefinite period meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

7. The designated materials in the April 24, 2020 motion for which BREC requested confidential treatment for five years, with the exception of BREC's response to Staff's Second Request, Item 7(b), meet the criteria for confidential treatment and are

exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

8. The designated materials in the April 24, 2020 motion contained in BREC's response to Staff's Second Request, Item 7(b), contains information regarding regulatory exclusions that should be denied confidential treatment based upon principles of transparency regarding the evidence that the Commission relies upon in rendering its determinations. The designated materials concern expenses that, in the Settlement Agreement filed in this proceeding, the parties agreed to exclude in calculating the New Times Interest Earned Ratio (TIER) Credit that the Commission will fully and specifically address in its determination set forth in the final Order. Thus, the Commission must be able to address the regulatory exclusions with transparency.

9. The designated materials in the May 22, 2020 motion for which BREC requested confidential treatment for five years, with the exception of BREC's response to Staff's Third Request, Items 6(a)–(c), meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

10. The designated materials in the May 22, 2020 motion contained in BREC's response to Staff's Third Request, Items 6(a)–(c), contain information regarding projected expense for BREC's defined benefit program, defined compensation program, and life insurance premiums that should be denied confidential treatment based upon principles of transparency regarding the evidence that the Commission relies upon in rendering its determinations. The designated materials concern expenses that the Commission will

fully and specifically address in the final Order. Thus, the Commission must be able to address the regulatory exclusions with transparency.

11. The designated materials in the May 29, 2020 motion for which BREC requested confidential treatment for an indefinite period meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13; KRS 61.878(1)(c)(10); and KRS 61.878(1)(a).

12. The designated materials in the May 29, 2020 motion for which BREC requested confidential treatment for five years meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

13. The designated materials in the June 3, 2020 motion for which BREC requested confidential treatment for five years meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

14. The designated materials in the June 12, 2020 motion for which BREC requested confidential treatment for five years meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

15. BREC's motions include designated materials that pertain to RFPs, decommissioning costs, and asset sales that are granted confidential treatment in this Order because they contain preliminary information and public disclosure could provide a commercial harm to BREC. However, once the RFP has been awarded and when BREC's assets are sold, the information regarding the winning bid and the asset sale



price may no longer qualify for confidential treatment. Similarly, the Commission reserves the right to review and approve future decommissioning costs and such information may no longer qualify for confidential treatment.

IT IS THEREFORE ORDERED that:

1. BREC's April 3, 2020; April 15, 2020; May 29, 2020; June 3, 2020; and June 12, 2020 motions for confidential treatment are granted.

2. BREC's April 24, 2020 and May 22, 2020 motions for confidential treatment are granted in part and denied in part.

3. BREC's April 24, 2020 motion, with the exception of BREC's response to Staff's Second Request, Item 7(b), is granted.

4. BREC's April 24, 2020 motion for confidential treatment of BREC's response to Staff's Second Request, Item 7(b), is denied.

5. BREC's May 22, 2020 motion, with the exception of BREC's response to Staff's Third Request, Items 6(a)-(c), is granted.

6. BREC's May 22, 2020 motion for confidential treatment of BREC's response to Staff's Third Request, Items 6(a)-(c) is denied.

7. The designated materials granted confidential treatment for an indefinite period contained in BREC's April 3, 2020; April 15, 2020; April 24, 2020; and May 29, 2020 motions 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.

8. The designated materials granted confidential treatment for ten years in BREC's April 15, 2020 motion shall not be placed in the public record or made available for public inspection for ten years or until further order of this Commission.

9. The designated materials granted confidential treatment for five years in BREC's April 3, 2020; April 15, 2020; April 24, 2020; May 22, 2020; May 29, 2020; June 3, 2020; and June 12, 2020 motions shall not be placed in the public record or made available for public inspection for five years or until further order of this Commission.

10. Within 30 days of the date of this Order, BREC shall file a revised version of the designated materials in the April 24, 2020 and May 22, 2020 motions for which confidential protection was denied, reflected as unredacted the information that has been denied confidential treatment.

11. The material for which BREC's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of this Order to allow BREC to seek a remedy afforded by law.

12. Use of the materials that were granted confidential treatment in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

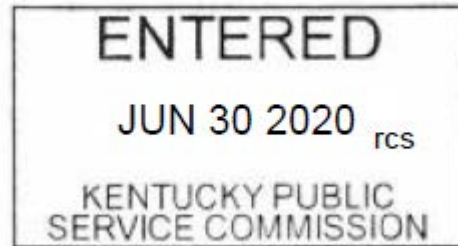
13. BREC shall inform the Commission if the materials in question becomes publicly available or no longer qualify for confidential treatment.

14. If a non-party to this proceeding requests to inspect the materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not expired, BREC shall have 30 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If BREC is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

15. The Commission shall not make the requested materials available for inspection for 30 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow BREC to seek a remedy afforded by law.

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By the Commission



ATTEST:



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