

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR A CERTIFICATE)	CASE NO.
OF PUBLIC CONVENIENCE AND NECESSITY TO)	2022-00012
CONSTRUCT A 161 KV TRANSMISSION LINE IN)	
HENDERSON COUNTY, KENTUCKY)	

ORDER

This matter arises on the motions for confidential treatment filed by Big Rivers Electric Corporation (BREC) on March 21, 2021, and May 17, 2022, pursuant to KRS 61.878 and 807 KAR 5:001, Section 13. The motions are described in further detail below.

MARCH 21, 2021 MOTION FOR CONFIDENTIAL TREATMENT

BREC requested confidential treatment for the following items: (1) a Memorandum of Understanding between Pratt Paper Mill (Pratt), Kenergy Corp. and BREC; (2) Pratt's projected energy usage for a new paper mill and box factory and the cost it will pay for power; and (3) BREC's internal projections of its margins and the Net Present Value (NPV) of the benefits to its members from the Pratt agreement, market energy and capacity prices. At the time BREC filed its March 21, 2021 motion, it had not yet filed the Memorandum of Understanding. Therefore, the Commission will not address the Memorandum of Understanding in the discussion of the March 21, 2021 motion and will discuss only the request for confidential treatment of Pratt's projected energy usage, the price it will pay for power, and BREC's internal projections of its margins and the NPV of

the benefits to BREC's members from the Pratt agreement, market energy and capacity prices.

In support of its motion, BREC argued that an Order¹ recently issued by the Commission is directly applicable to support the confidential treatment of Pratt's projected energy usage. BREC stated that energy usage is confidential and private pursuant to KRS 61.878(1)(a), which excludes "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy" from public disclosure.

In support of its motion, BREC argued its internal projections of margins, the NPV of the benefits to its members from the Pratt agreement, market energy and capacity prices warranted confidential treatment pursuant to KRS 61.878(1)(c)(1), which excludes from public disclosure records confidentially disclosed to an agency that are generally recognized as confidential or proprietary if the public disclosure of the records would permit an unfair commercial advantage to the competitors of the entity that disclosed the records. BREC stated that the disclosure of the information would result in an unfair advantage for BREC's competitors in the marketplace. BREC asserted that this information affects investment and borrowing options. According to the motion, some of this information is known on a need-to-know basis only, making it proprietary as well. BREC also cited to Commission precedent to support its argument.²

¹ Case No. 2022-00028, *Electronic Application of Big Rivers Electric Corporation for Annual Review of Its MRSM Charge for Calendar Year 2021*, (Ky. PSC Mar. 16, 2022), Order.

² Case No. 2018-00181, *Sanctuary of Church v. Louisville Gas and Electric Company* (Ky. PSC Jan. 8, 2019) Order; and Case No. 2020-00064 *Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRSM Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief* (Ky. PSC June 30, 2020), Order.

The Commission, having considered the motion and the material, finds that the projected Pratt energy use, in its entirety, should be given confidential treatment pursuant to KRS 61.878(1)(c)(1). The amount Pratt is paying for its usage of power is confidential and should it become public, could create an unfair advantage and negatively affect BREC's ability to negotiate future contracts.

The Commission, having considered the motion and the material, finds that the internal projections of margins, the NPV of the benefits to BREC's members from the Pratt agreement, and market energy and capacity prices warrants confidential treatment pursuant to KRS 61.878(1)(c)(1). Disclosure of the information would create an unfair advantage for BREC's competitors in the marketplace. Disclosure of this information could also negatively affect investment and borrowing options.

MAY 17, 2022 MOTION FOR CONFIDENTIAL TREATMENT

On May 17, 2022, BREC filed the Memorandum of Agreement between Pratt, Kenergy, and BREC and again requested confidential treatment for the Agreement. In support of its motion, BREC noted that KRS 61.878(1)(a) excludes "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy" from public disclosure.³ BREC asserted that the agreement contained projected power usage as well as expected cost of usage which is private and proprietary to Pratt.

³ BREC cites to the following cases to grant confidentiality based on KRS 61.878(a): 1) Ky. Op. Atty. Gen. 96-ORD-176 (August 20, 1996); 2) Case No. 2021-00021, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC July 25, 2013), Order; 3) Case No. 2022-00028 *Electronic Application of Big Rivers Electric Corporation for Annual Review of Its MRSM Charge for Calendar Year 2021*, (Ky. PSC March 16, 2022), Order.

BREC also argued that the material should be given confidential treatment pursuant to KRS 61.878(1)(c)(1). BREC sells wholesale power and negotiates on the open market. Public consumption of material terms of negotiated contracts with purchasers of power affects BREC both in future negotiations with other purchasers and in its credit. In order for BREC to compete, BREC stated that it needs to keep its supply cost low while obtaining the maximum price for its power. According to BREC, the Memorandum of Agreement is circulated on a need-to-know basis within the company and thus, is proprietary and confidential. BREC cited applicable Commission precedent.⁴

The Memorandum of Agreement filed was expired. However, at the hearing on May 31, 2022, BREC's attorneys and witness indicated that BREC, Kenergy and Pratt have continued to operate under the Agreement. Based on the testimony of Christopher Bradley, BREC expects the terms of the Agreement will be incorporated into the wholesale and retail contracts currently under negotiation. As such, BREC requests confidential treatment of the Agreement.

Having considered the motion and the material at issue, the Commission finds that the Memorandum of Agreement contains material terms generally recognized as confidential or proprietary. Public disclosure of the material would result in an unfair advantage to competitors of BREC, both as a seller electric power and as a company needing credit. The designated materials, therefore, meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001,

⁴ Case 2019-00365 *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), Order; and Case NO. 2017-00472, *Riverside Generating Company, LLC v. Kentucky Power Company* (Ky. PSC May 16, 2019), Order.

Section 13, and KRS 61.878(1)(c)(1) for an indefinite period. BREC did submit the Memorandum with material terms redacted. The Commission finds that the redactions adequately address the confidential material.

IT IS THEREFORE ORDERED that:

1. BREC's March 21, 2022 and May 17, 2022 motions for confidential treatment are granted.

2. The designated materials 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. BREC shall file a redacted version of the Memorandum of Agreement in the public record within 30 days of issuance of this Order, if not having done so.

4. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

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

6. 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.

7. 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.

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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner

ENTERED
JUN 03 2022 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

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

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

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

*Sandra D. Freeburger
Deitz, Shields, & Freeburger, LLP
101 First Street
P.O. Box 21
Henderson, KENTUCKY 42419

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