

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR ANNUAL)	CASE NO.
REVIEW OF ITS MRSM CHARGE FOR)	2022-00028
CALENDAR YEAR 2021)	

ORDER

On March 31, 2022, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for an indefinite period for information customer-specific information contained in BREC’s response to Staff’s First Request for Information (Staff’s First Request), Item 3.

LEGAL STANDARD

KRS 61.878(1)(a) exempts material from open records laws that are of a personal nature and public disclosure would constitute a clearly unwarranted invasion of personal privacy.

KRS 61.878(1)(c)(1) exempts material from open records laws that are generally recognized as confidential, which, if publicly disclosure, would permit an unfair commercial advantage to competitors of the entity that disclosed the material.

KRS 278.160(3) exempts special contracts with rates and conditions of service not filed in a utility’s general schedule from the statutory requirement that such schedules be open to public inspection if the special contract provisions would otherwise be entitled to confidential treatment under KRS 61.878(1)(c)(1).

MOTION

The designated material for which BREC requested confidential treatment contains customer-specific usage and billing information for large industrial customers of BREC and provisions in special contracts between BREC and large industrial customers.

In support of its motion, BREC asserted that public disclosure of the designated material would result in an unwarranted invasion of the customers' personal privacy because it would make public the customer's private usage information, and thus should receive confidential treatment in accordance with KRS 61.878(1)(a). BREC further asserted that public disclosure of the information would provide BREC's competitors with an unfair commercial advantage, and thus should be granted confidential treatment in accordance with KRS 61.878(1)(c)(1). BREC explained that it competes in the wholesale power markets and credit markets, and that public disclosure of the information would impair BREC's ability to negotiate in future transactions. BREC stated that the Commission granted confidential treatment to customers' 2020 power usage data and billing for an indefinite period in Case No. 2021-00061.¹

FINDINGS

Having considered the motion and the material at issue, the Commission finds that the designated material is generally recognized as confidential or proprietary, and of a personal nature, and that public disclosure would result in an unwarranted invasion of personal privacy because it would make private usage data public, and provide an unfair commercial advantage to BREC's competitors because it could adversely impact BREC's

¹ Case No. 2021-00061, *Electronic Application of Big Rivers Electric Corporation for Annual Report on MRSMS Credit* (Ky. PSC Mar. 9, 2021).

ability to negotiate in the future for the most favorable terms possible. The designated material therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13; KRS 61.878(1)(a); and KRS 61.878(1)(c)(1).

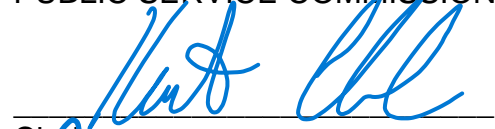
IT IS THEREFORE ORDERED that:

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 an indefinite period 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.

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PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman

Commissioner



ATTEST:



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