

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR APPROVAL OF)	CASE NO.
AMENDMENT TO POWER PURCHASE)	2022-00296
AGREEMENT)	

ORDER

On August 26, 2023, Big Rivers Electric Corporation (BREC), pursuant to KRS 278.400, filed a motion for rehearing for an Order,¹ granting in part and denying in part, confidential treatment for filings BREC made on February 10, 2023.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”² An order can only be unlawful if it violates a state or federal statute or constitutional provision.³ By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the

¹ Order (Ky. PSC Aug. 3, 2023).

² *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

³ *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

BREC'S MOTION FOR REHEARING

In its motion, BREC asks the Commission to grant rehearing with respect to its decision denying confidential treatment to the attachment to BREC's response to Attorney General's First Request for Information, Item 1(AG 1-1). In its motion, BREC asserted that the Commission erred both in denying confidential protection for the attachment based on KRS 61.878(1)(c)(1) and in denying confidential protection based on KRS 61.878(1)(a).

In support, BREC stated that the attachment contained emails regarding contract negotiations and that such negotiations are confidential and proprietary.⁴ According to BREC, these documents contain various proposals, discussions, redlines, comments, and National Grid Resources' (NGR's) analysis of its agreement with BREC and need for Amendment No. 1. BREC argued that public disclosure of such information reveals business strategies of both BREC and NGR with respect to contract terms and internal analyses.

Lastly, BREC stated that the Commission erred in finding that confidential treatment was not pursuant to KRS 61.878(1)(a).⁵ According to the motion, BREC asserted that the Attachment to AG 1-1 warrants confidential treatment pursuant to

⁴ BREC's Motion for Rehearing (filed Aug. 26, 2023) at 2.

⁵ BREC's Motion for Rehearing at 5.

KRS 61.878(1)(a) and KRS 61.878(1)(c)(1).⁶ As a basis for the argument, BREC asserted that the response to AG 1-1 contains sensitive and proprietary information of a third party, including NGR's internal projections and analyses, public disclosure of the attachment would be an unwarranted invasion of personal privacy of National Grid Resources, the company in negotiation with BREC.

BREC concluded its motion, reiterating its position that the entirety of the attachment should be given confidential treatment. BREC noted that it would refile a new motion with the appropriate redactions.

DISCUSSION AND FINDINGS

Based upon a review of the motion and the case record, and being otherwise sufficiently advised, the Commission finds that BREC's motion for rehearing should be granted. The Commission did not make a finding as to confidential treatment of the material other than that the entirety of the attachment did not warrant confidential treatment and thus, denied the original motion. BREC acknowledged, in its own motion, that "[w]ith respect to the two emails containing the final Amendment No. 1, the Commission has already granted confidential treatment to certain terms contained in Amendment No. 1, and those confidential terms should continue to be afforded confidential protection."⁷ The Commission agreed, in its Order, that there are terms that may warrant confidential treatment but the utility is tasked with the responsibility of setting out its specific request.

⁶ BREC's Motion for Rehearing at 5–6.

⁷ BREC's Motion for Rehearing at 8.

As noted in the Order, BREC did not highlight or identify any specific portion of the information that it was requesting to be held confidential. The response includes emails, versions of the contract, both the executed version as well as redlined versions, and a PowerPoint presentation. Commission regulation 807 KAR 5:001, Section 13(2)(a)(3), requires a party to file documents highlighting or using other reasonable means to identify those portions of the designated material for which confidential treatment. If a party requests confidential treatment for an entire document, 807 KAR 5:001, Section 13(2)(a)(3)(b), provides that written notification that the entire document is confidential may be filed instead of the required highlighting or other reasonable means of identifying the designated material.

Consistent with the findings of the Order of August 3, 2023, BREC should file a new motion with the specific redactions related to the Attachment to AG 1-1. The Commission will address BREC's arguments as it relates to KRS 61.878(1)(c)(1) and KRS 61.878(1)(a) in this proceeding.

IT IS THEREFORE ORDERED that:

1. BREC's motion for rehearing is granted.
2. BREC shall file a new motion with specific redactions within 30 days of service of this Order.⁸

⁸ BREC made a filing in this matter on August 31, 2023, at approximately 8:36 p.m. (EST). The Commission acknowledges that this filing may comply with this ordering paragraph.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

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