

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On January 13, 2020, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to 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 to Items 1 and 2 of Commission Staff's (Staff's) Second Request for Information. The information for which BREC seeks confidential protection is more particularly described as internal analyses relating to the special contract for Nucor Corporation (Nucor) that is the subject of this case.

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 states that 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.

Further, 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 pursuant to KRS 61.878(1)(c)(1).¹

BREC states that the information for which it seeks protection is part of confidential internal evaluations of the Nucor contract and public disclosure of this information would provide insight into the terms under which BREC would borrow funds. BREC further maintains that the information for which it seeks protection is also indicative of the market conditions BREC expects to encounter and its ability to compete with competitors. BREC states it is actively seeking to borrow funds for a variety of purposes, including in relation to the Nucor contract, and if confidential protection is not provided, potential lenders would have insight into BREC's anticipated interest rates. Potential lenders could use this information as a benchmark to gain advantage in negotiations, leading to higher costs or less favorable terms to BREC, thereby hurting BREC's ability to compete in the wholesale power and credit markets. Further, BREC maintains any competitive pressure that

¹ 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."

adversely affects BREC's revenue and margins could make the company appear less creditworthy and thus impair its ability to compete in the credit markets.

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 61.878(1)(c)(1), and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. BREC's January 13, 2020 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 27 2020
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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