

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 September 22, 2022, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for specific terms of the proposed amendment as well as testimony from Mark Eacret,¹ including the scheduled commercial operation date, the structure of solar power pricing, pricing proposal alternatives, the average price of the alternative proposals not accepted by BREC, the credit support offered by Nucor Corp. (Nucor) and the calculation of benefits for BREC members.

In support of its motion, BREC argued that the redacted terms of the amendment are both confidential and proprietary. BREC also argued that the Commission ordered similar terms be given confidential treatment in the original case involving the initial power purchase agreement with Unbridled Solar, LLC f/k/a Henderson Solar, LLC.² Disclosure of the terms would allow competitors to see information regarding the terms BREC is willing to sell and purchase power.

¹ Mark Eacret, Vice President of Energy Services, BREC.

² Case No. 2020-00183 *Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts* (Ky. PSC Mar. 25, 2021), Order.

In support of its motion, BREC argued that disclosure of the specific portions of the testimony of Mark Eacret would unreasonably and unnecessarily harm BREC by giving interested third parties an unfair commercial advantage through insight into BREC's business operations and financial strategies. The information also would disclose market conditions BREC expects to encounter and the timing of BREC's need and availability of power in the future. The information and projections could indicate the prices and terms upon which BREC is willing to buy and sell energy, capacity, and renewable energy certificates. The information also would allow potential suppliers to BREC will be able to manipulate the price of power bid to BREC in order to maximize their revenues. Potential market power purchasers could use the information to manipulate their bids, allegedly leading to lower revenues to BREC.

In support of its motion, BREC also argued that the specific terms of the Nucor contract, that BREC requested confidential treatment for, were part of a prior case for which the terms were previously granted confidential treatment.³

Having considered the motion and the material at issue, the Commission finds that the specific terms identified within the amendment are generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). Disclosure of the terms would result in a commercial disadvantage for

³ Case No. 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 Mar. 12, 2020), Order and (Ky. PSC Sept. 30, 2020), Order.

BREC, and this finding is consistent with the underlying case⁴ for which the amendment approval is sought. The information shall be given confidential treatment for an indefinite period of time.

Additionally, the Commission finds that the specific items contained within Mark Eacret's testimony are generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). Consistent with the findings in the underlying case⁵ and the case approving the Nucor contract,⁶ the Commission finds that the information should be given confidential treatment for an indefinite period of time. The public disclosure of such information would give BREC's suppliers, buyers, and competitors insight into its view of future energy, capacity, and renewable energy credit prices. The information would indicate the prices and terms BREC is willing to buy or sell such commodities and as a result, BREC would be disadvantaged in the marketplace.

IT IS THEREFORE ORDERED that:

1. BREC's motion for confidential treatment is granted.

⁴ Case No. 2020-00183 *Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts* (Ky PSC Mar. 25, 2021), Order.

⁵ Case No. 2020-00183 *Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts* (Ky PSC Mar. 25, 2021), Order.

⁶ Case No. 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 Mar. 12, 2020), Order and (Ky. PSC Sept. 30, 2020), Order.

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.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



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