

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 March 10, 2023, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for Attorney General's Second Request for Information, Item 7, for the maximum contract demand amount for Nucor and Attorney General's Second Request for Information, Item 10, an Excel file containing an internal analysis of the Nucor rates.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act,¹ which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.² The exceptions to the free and open examination of public records should be strictly construed.³ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the

¹ KRS 61.870 through 61.884

² KRS 61.872(1).

³ KRS 61.878.

exemptions is applicable.⁴ KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.⁵ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(i) grants confidential protection to preliminary drafts, notes, or correspondence.⁶

DISCUSSION AND FINDINGS

In support of its motion, BREC argued that both responses were granted confidential treatment in Case No. 2019-00365⁷ for an indefinite period and should also be granted similar treatment in this case. The utility also noted that the response to Item 7, Nucor’s maximum contract demand, was exempted from disclosure by KRS 278.160 and KRS 61.878(1)(c)(1). Item 10 contains information including energy and capacity cost projections and proprietary reports and projections from third-party vendors such as ACES and S&P Global Market Intelligence. Release of this information could result in market participants could use this information as a benchmark or to gain an

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ KRS 61.878(1)(a).

⁶ KRS 61.878(1)(i).

⁷ 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 Jan. 22, 2020), Order. The confidential attachment to Item 10 is a copy of the Excel file previously provided in response to Item No. 2 of the Commission Staff’s First Request for Information in Case No. 2019- 00365, which the Commission granted confidential protection for an indefinite period on January 22, 2020.

advantage in negotiations, leading to higher costs lower revenues, or less favorable terms to BREC, hurting BREC's ability to compete in the wholesale power and credit markets.

Having considered the motion and the material at issue, the Commission finds that both Item 7, specifically, maximum contract demand, and Item 10 are generally recognized as confidential or proprietary; the items therefore meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1). This finding is consistent with prior Commission precedent.⁸ Disclosure of either of the items could result in a disadvantage to BREC in future negotiations with other consumers as well as offer insight to competitors about how BREC values energy and capacity.

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 5:001E, 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.

⁸ 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 Jan. 22, 2020), Order.

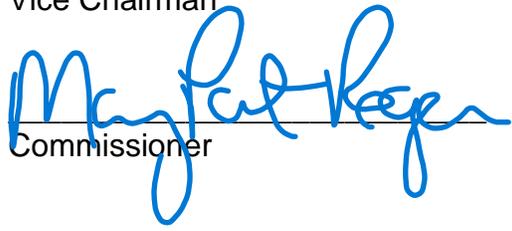
5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, BREC shall have 30 days from receipt of written notice of the request to demonstrate that 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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