

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DOMTAR PAPER COMPANY, LLC)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2023-00017
BIG RIVERS ELECTRIC CORPORATION AND)	
KENERGY CORP.)	
)	
DEFENDANTS)	

ORDER

On January 11, 2023, Domtar Paper Company, LLC (Domtar) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for Attachment 2 filed as part of its complaint against Big Rivers Electric Corporation (BREC) and Kenergy Corp. (Kenergy).

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.”

DISCUSSION AND FINDINGS

In support of its petition, Domtar argued that Attachment 2 of its complaint against BREC/Kenergy is work papers that show the pricing difference between Domtar’s current contract with BREC/Kenergy and the Pilot Large Industrial Standby Service tariff (LICSS). Domtar argued if this information is made public it could face a commercial disadvantage because competitors would know how much energy it uses and what it pays for energy. Domtar also argued it is an unwarranted invasion of personal privacy for pricing information to be disclosed.

Having considered the motion and the material at issue, the Commission finds that the pricing information contained in Attachment 2 of the complaint is generally recognized as confidential or proprietary because disclosure would create an unfair commercial advantage to competitors if the amounts Domtar pays for electricity are disclosed. Therefore, Attachment 2 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).

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ KRS 61.878(1)(a).

IT IS THEREFORE ORDERED that:

1. Domtar's petition 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 five years 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. Domtar 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, Domtar 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 Domtar 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 Domtar to seek a remedy afforded by law.

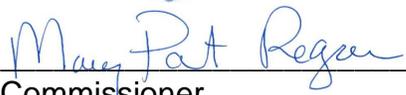
PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner



ATTEST:



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