

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF BIG RIVERS)	
ELECTRIC CORPORATION AND KENERGY)	CASE NO.
CORP. TO REVISE THE LARGE INDUSTRIAL)	2023-00312
CUSTOMER STANDBY SERVICE TARIFF)	

ORDER

On October 27, 2023, Big Rivers Electric Corporation (BREC) filed a motion for confidential treatment, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, followed by a corrected motion for confidential treatment filed on October 30, 2023, requesting that the Commission grant confidential protection for a period of ten years to certain documents and information within its responses (filed jointly with Kenergy Corp.) to the First Requests for Information propounded herein by Commission Staff, Domtar Paper Company, LLC (Domtar), and Kimberly-Clark Corporation, LLC (Kimberly-Clark), respectively. BREC specifically requested confidential treatment for Joint response to Kimberly-Clark's First Request for Information, Items 4, 9, and 24, response to Commission Staff's First Request, Items 1 and 7 and Domtar's First Request for Information, No. 3.

KRS 61.878(1)(c)(1) exempts from public disclosure "[r]ecords 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. KRS 61.878(1)(a) exempts from disclosure "[p]ublic records containing information of a

personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

In support of its motion, BREC argued that documents should be afforded confidential treatment under KRS 61.878(1)(c)(1) because the information contained in the documents describes how BREC operates in competitive environments, such as the wholesale power and credit markets and should be protected from unfair competitive advantage. Further, BREC stated that the information contains confidential and proprietary information critical to its business decisions, and if disclosed would allow competitors a competitive advantage in future negotiations. Therefore, BREC argued, keeping the information confidential is crucial to its ability to negotiate and accept information with third parties; and that Kentucky case law and Commission precedent that a company’s inner workings should be confidential.

Having considered the motion and the material at issue, the Commission finds that BREC’s Motions should be granted in part and denied in part. The Commission finds that the designated material contained in BREC’s Joint Response to Kimberly-Clark’s First Request for Information, Item 4 Attachments, including historical expense data and cost of net energy generated provided in RUS’s Financial and Operating Report- Electric Power Supply are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13. Release of the expense data and cost of net energy generated would result in a competitive disadvantage to BREC in the wholesale energy market.

The Commission further finds that the Joint Response to Kimberly-Clark’s First Request, Items 9 and 24, 2023-2024 MISO Seasonal Accredited Capacity (MW) are

records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant KRS 61.878 (1)(c) and 807 KAR 5:001, Section 13. Disclosure of the proprietary information would result at a competitive disadvantage in the energy market.

The Commission finds that response to Commission Staff's First Request, Item 1, email communications between BREC and either/both Domtar and Kimberly-Clark related to the development and expected implementation of the tariff, are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Commission finds that disclosing the email communications relating to negotiations surrounding the LICSS tariff could result in a competitive disadvantage to BREC in future negotiations. The Commission has granted confidential treatment to negotiations in the past, such as for special contract negotiations.¹

The Commission finds Joint Response to Kimberly-Clark's First Request for Information, Item 4 Attachment containing the names of companies provided in Financial and Operating Report is identifying information relating to power purchases from and sales to specific customers and counterparties are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and KRS 61.878 (1)(a) and 807 KAR 5:001, Section 13. The Commission has previously held that customer-specific usage data and billing

¹ See Case No. 2019-00365, *In the Matter of: Elec. Joint Application of Big Rivers Elec. Corp. & Meade Cty. Rural Elec. Coop. Corp. for (1) Approval of Contracts. for Elec. Serv. with Nucor Corporation; & (2) Approval of Tariff*, (Ky. PSC Jan. 22, 2020), Order.

information, power purchases from and sales to specific counterparties, should be afforded confidential treatment.²

Finally, the Commission finds that BREC's request for confidentiality regarding its response to Domtar's First Request for Information, Item 3, cost of service study (COSS) should be granted in part and denied in part. BREC provided the same cost of service study in case 2021-00061, a large portion of which is in the public record. The Commission has previously held that a portion of COSS in case 2021-00061 was not entitled to confidential protection.³ Therefore, the portion previously entered in the record does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878 and 807 KAR 5:001, Section 13. For the purchased power and the counterparty information provided in the cost-of-service study, the Commission finds that the request for confidential treatment should be granted under KRS 61.878(1)(c) and 807 KAR 5:001, Section 13. In case 2021-00061, the Commission held that this information should be afforded confidential treatment.⁴

IT IS THEREFORE ORDERED that:

1. BREC's October 30, 2023 motion for confidential treatment for Joint Response to Kimberly-Clark's First Request for Information, Items 4, 9, and 24 is granted.
2. BREC's October 30, 2023 motion for confidential treatment for Response to Commission Staff's First Request, Items 1 and 7 is granted.

² See Case No. 2021-00289, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corporation to Implement a New Standby Service Tariff* (Ky. PSC Mar. 3, 2022), Order.

³ Case No. 2021-00061, *Electronic Application of Big Rivers Electric Corporation for Annual Report on MRSB Credit* (Ky. PSC Mar. 9, 2021), Order.

⁴ Case No. 2021-00061, Mar. 9, 2021 Order.

3. BREC's October 30, 2023 motion for confidential treatment for Domtar's First Request for Information, No. 3 COSS, is granted in part and denied in part.

4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further order of this Commission.

5. 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).

6. BREC shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. 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.

8. 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.

9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If BREC objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

11. Within 30 days of the date of service of this Order, BREC shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

12. The designated material for which BREC's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow BREC to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
FEB 29 2024 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Brigid L. Khuri
McNees Wallace & Nurick, LLC
777 North Capitol Street, NE, Suite
Washington, DISTRICT OF COLUMBIA 20002-

*Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419

*Timothy Lindahl
Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419

*Robert A. Weishaar, Jr.
McNees Wallace & Nurick, LLC
777 North Capitol Street, NE, Suite
Washington, DISTRICT OF COLUMBIA 20002-

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Tyson Kamuf
Corporate Attorney
Big Rivers Electric Corporation
710 West 2nd Street
P. O. Box 20015
Owensboro, KY 42304

*J. Christopher Hopgood
Dorsey, Gray, Norment & Hopgood
318 Second Street
Henderson, KENTUCKY 42420

*Big Rivers Electric Corporation
710 West 2nd Street
P. O. Box 20015
Owensboro, KY 42304

*David Giesel
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

*Honorable Robert C Moore
Attorney At Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Daniel E Danford
Stites & Harbison
250 West Main Street, Suite 2300
Lexington, KENTUCKY 40507

*Susan E. Bruce
McNees Wallace & Nurick, LLC
777 North Capitol Street, NE, Suite
Washington, DISTRICT OF COLUMBIA 20002-

*M. Evan Buckley
Dinsmore & Shohl, LLP
City Center, 100 W. Main Street
Suite 900
Lexington, KENTUCKY 40507

*Senthia Santana
Big Rivers Electric Corporation
710 West 2nd Street
P. O. Box 20015
Owensboro, KY 42304

*Jody M Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Edward T Depp
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202