

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 November 27, 2023, Big Rivers Electric Corporation (BREC) and Kenergy Corporation (Kenergy) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment to certain documents and information within the joint responses to the Supplemental Requests for Information propounded herein by Commission Staff and Kimberly-Clark Corporation, LLC (Kimberly-Clark), respectively. Specifically, BREC requested confidential treatment for five years for information related to BREC’s capacity position and portions of a 2019 Cost of Service Study (COSS). Further, BREC requested confidential treatment for an indefinite period for Domtar Paper Company, LLC’s (Domtar) MISO and customer specific information.

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.” Further, 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 disclosure of joint response to Staff's Second Request, Item 3, which addressed BREC's anticipated capacity positions for planning year 2024-2025, would result in an unfair commercial advantage in competitive wholesale power and credit markets. Further, BREC argued that capacity information with respect to MISO planning years is critical to the business decisions and strategy of BREC and therefore proprietary information.

Additionally, BREC argues that disclosure of the joint response to Staff's Second Request, Item 6, specifically MISO registration information of Domtar and Kimberly-Clark regarding whether or not they are registered as load modifying resources, behind the meter generator (LMR-BTMG) would result in an unfair commercial advantage. BREC further argues the information should be held confidential under KRS 61.878(a), because the information is not available to the public and would be an unwarranted invasion of privacy. Additionally, the BREC notes that the Commission has previously held that customer names, account numbers, and usage information are exempt from disclosure pursuant to KRS 61.878(a).

Finally, BREC argued that the joint response to Kimberly-Clark's Second Request, Item 3, Attachment, 2019 COSS-redacted portions, should be confidential as BREC operates in competitive wholesale power and credit markets and disclosure of proprietary information would result in an unfair commercial advantage to its competitors.

Having considered the material at issue, the Commission finds that granting confidential treatment under KRS 61.878(1)(c) to joint response to Staff's Second

Request, Item 3 is proper as disclosure of information related to BREC's capacity position would put BREC at a competitive disadvantage in the energy market. The Commission has previously found that annual capacity position information for BREC should be afforded confidential treatment.¹ Further, the Commission agrees that disclosure of the registration information of Domtar and Kimberly-Clark could result in a competitive disadvantage to BREC in the energy markets. The LMR-BTMG registration could give insight into Domtar and Kimberly-Clark's capacity positioning. The Commission has previously held that "large industrial customers on BREC's system have a right to privacy concerning their power usage and projected needs"² and grants confidential treatment pursuant to KRS 61.878 (1)(c) and KRS 61.878(1)(a). Finally, the Commission grants confidential treatment pursuant to KRS 61.878(1)(c) to joint response to Kimberly-Clark's Second Request, Item 3, Attachment, 2019 COSS- redacted portions and disclosure of such information would give BREC a competitive disadvantage in the wholesale energy marketplace. In Case No. 2021-00061, the Commission held that this same information should be afforded confidential treatment.³

IT IS THEREFORE ORDERED that:

1. BREC's November 27, 2023 motion for confidential treatment is granted by this Order and shall not be placed in the public record or made available for public inspection for the designated period or until further order of this Commission.

¹ Case No. 2023-00045, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corporation for Approval of a Special Contract with Economic Development Rates with Pratt Paper (KY), LLC* (Ky. PSC Feb. 23, 2023), Order.

² Case No. 2021-00289, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff* (Ky. PSC. Mar. 3, 2022), Order at 5.

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

2. 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).

3. 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.

4. 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.

5. 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.

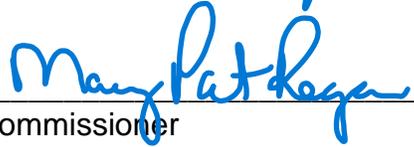
PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
FEB 29 2024 rcs
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