

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 January 3, 2024, Domtar Paper Company, LLC (Domtar) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for a period of five years for certain documents and information provided in its responses to Big Rivers Electric Corporation (BREC) and Kenergy Corporation's (Kenergy) First Request for Information (BREC and Kenergy's First Request). Domtar specifically requested confidential treatment for its responses to Item 8 and Item 12.

LEGAL STANDARD

The Public Service 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

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

establishing that one of the exemptions is applicable.⁴ 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.”

DISCUSSION AND FINDINGS

In support of its motion, Domtar argued that the specified responses, Item 8 and Item 12 should be afforded confidential treatment under KRS 61.878(1)(c)(1), as the information consists of workpapers containing detailed billing information and internal cost modeling produced on behalf of Domtar.⁵ Domtar stated that such data is commercially sensitive, proprietary, and would provide an unfair commercial advantage to competitors of Domtar, if disclosed and should be granted confidential treatment.⁶ Finally, Domtar argued that the internal cost modeling is proprietary to Stephen Baron and should be afforded confidential treatment.⁷

Having considered the motion and the material at issue, the Commission finds that granting confidential treatment under KRS 61.878(1)(c)(1) to Domtar’s response to BREC and Kenergy’s Request for Information, Item 8 and Item 12 is proper as the disclosure of

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ Petition for Confidential Treatment (filed Jan. 3, 2024).

⁶ Petition for Confidential Treatment.

⁷ Petition for Confidential Treatment and Domtar’s Response to BREC and Kenergy’s First Request (filed Jan. 2, 2024), Item 12.

detailed billing information and internal costs would provide an unfair commercial advantage to competitors of Domtar. Further, the Commission finds that the modeling, inputs and calculations created by the witness are proprietary. The Commission has found that “internal costs and analyses of savings” should be granted confidential treatment⁸ and “large industrial customers on BREC’s system have a right to privacy concerning their power usage and projected needs.”⁹ Therefore, the material at issue is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Domtar’s January 3, 2024 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 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. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Domtar shall inform the Commission and file with the Commission an unredacted copy of the designated material.

⁸ Case No. 2013-00148, *Application of Atmos Energy Corporation for an Adjustment of Rates & Tariff Modifications*, (Ky. PSC Nov. 25, 2013), Order at 2-3.

⁹ 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.

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

ENTERED
APR 30 2024
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director *For*

*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