

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| ELECTRONIC 2023 INTEGRATED RESOURCE |) | CASE NO. |
| PLAN OF BIG RIVERS ELECTRIC |) | 2023-00310 |
| CORPORATION |) | |

ORDER

On September 29, 2023, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for certain items contained in its 2023 Integrated Resource Plan (IRP), except for transmission maps detailing BREC’s high-voltage transmission infrastructure, which BREC asked for confidential treatment indefinitely.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³ KRS 61.878(1)(a) exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 12(2)(c).

thereof would constitute a clearly unwarranted invasion of personal privacy.”⁴ 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.”⁵ KRS 61.878(1)(m) permits an exception for records that if disclosed would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act.⁶ The exemption is limited to certain types of records, including:

(f) Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.⁷

(g) the following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps or specifications of structural elements . . . of any building or facility owned, occupied, leased, or maintained by a public agency. ⁸

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁹

⁴ KRS 61.878(1)(a).

⁵ KRS 61.878(1)(c)(1).

⁶ KRS 61.878(1)(m)(1).

⁷ KRS 61.878(1)(m)(1)(f).

⁸ KRS 61.878(1)(m)(1)(g).

⁹ KRS 61.878(1)(m)(2)(b).

DISCUSSION

BREC asked that transmission maps detailing BREC's high-voltage transmission infrastructure in Figure 2.2.6(a) and Appendix C of the IRP be afforded confidential treatment pursuant to KRS 61.878(1)(m).¹⁰ In support of its motion, BREC argued that disclosure would provide the public with a tool to analyze, discover, or create vulnerabilities in BREC's transmission system, and thereby threaten public safety. BREC argued that the Commission previously granted confidential treatment on these grounds to similar maps in BREC's previous IRP cases.¹¹

BREC asked that the following information be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1): BREC's actual and forecasted wholesale rates to its members;¹² detailed operating information concerning BREC's existing generation portfolio, such as heat rates and capacity position;¹³ projected costs and volumes with respect to purchased power, energy and capacity prices, and fuel prices;¹⁴ planned transmission system additions, projected capital costs, projected O&M costs, and Unbridled Solar PPA Option Expiration Date;¹⁵ and projected inflation and discount rates,

¹⁰ Motion of BREC for Confidential Treatment (filed Sept. 29, 2023) at 2-3.

¹¹ Motion of BREC for Confidential Treatment at 2-3 citing Case No. 2020-00299, *Electronic 2020 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Apr. 14, 2022) (note that BREC cited this case as precedent, despite the Order explicitly stating that it shall not be used as precedent in subsequent proceedings); Case No. 2018-00195, *Electronic 2018 Integrated Resource Plan of Duke Kentucky Inc* (Ky. PSC. Sept. 3, 2019), Order.

¹² 2023 IRP, Table 10(a) of the IRP; Appendix A, Load Forecast.

¹³ 2023 IRP, Table 7.1.4(b); Table 7.1.4(c); Figure 7.1.2(a); Figure 7.1.2(b); Figure 7.12(c); Page 149 (description of Table 7.4.1(a) and (b); Figure 7.4.1.(a); Figure 7.4.1.(b); Figure 7.4.1(c); Figure 7.4.2(a); Figure 7.4.(2)(b); Figure 7.4.2(c); Figure 7.4.3(a); Figure 7.4.3(b); Figure 7.4.3(c); Table 7.4.1(a).

¹⁴ 2023 IRP, Figure 7.1.5(a); Figure 7.1.5(b); Table 7.1.5(a).

¹⁵ 2023 IRP, Table 7.1.4(d); page 145; Table 7.3.2.(a); Table 82.(b); Section 7, page 116.

modeling inputs, and detailed Net Present Value (NPV) analysis.¹⁶ BREC argued that competes in the wholesale power market.¹⁷ BREC stated that its ability to successfully compete in the market is dependent on its ability to obtain the maximum price for the power it sells and keep its cost of production or purchase as low as possible and BREC competes in credit markets.¹⁸ BREC argued that a competitor armed with BREC's propriety and confidential information will be able to increase BREC's costs or decrease BREC's revenues, which could affect BREC's creditworthiness.¹⁹ BREC stated that its information should be protected to prevent the imposition of an unfair competitive advantage.²⁰ BREC argued that the information provides insight into BREC's cost of producing and acquiring power and insight into prices information.²¹ BREC also stated its projected rates to its members are indicative of the market conditions BREC expects to encounter and its ability to compete with competitors.²² Information about a company's detailed inner workings is generally recognized as confidential or proprietary.²³ BREC stated that the coal and energy price projections are obtained from third parties and those

¹⁶ 2023 IRP, Table 7.1.4(e); Table 7.1.4(f); page 120; Table 7.1.4(i); Table 7.1.4(j); Page 127; Table 7.4.4.(a); Table 7.4.4.(b); Appendix E, Technical Appendix; Appendix A.

¹⁷ Motion of BREC for Confidential Treatment at 3.

¹⁸ Motion of BREC for Confidential Treatment at 4.

¹⁹ Motion of BREC for Confidential Treatment at 4.

²⁰ Motion of BREC for Confidential Treatment at 4-5.

²¹ Motion of BREC for Confidential Treatment at 6.

²² Motion of BREC for Confidential Treatment at 7.

²³ Motion of BREC for Confidential Treatment at 7.

projections are proprietary products of these third parties.²⁴ BREC cited that the Commission has previously granted confidential treatment to similar information.²⁵

Having considered the motion and the material at issue, the Commission finds that transmission maps detailing BREC's high-voltage transmission infrastructure in Figure 2.2.6(a) and Appendix C of the IRP 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)(m). The transmission maps would be considered critical infrastructure information and disclosing such information would create a risk to public safety. The Commission has previously granted BREC's transmission maps confidential treatment.²⁶

Having considered the motion and the material at issue, the Commission finds that BREC's actual and forecasted wholesale rates to its members;²⁷ detailed operating information concerning BREC's existing generation portfolio, such as heat rates and capacity position;²⁸ projected costs and volumes with respect to purchased power, energy and capacity prices, and fuel prices;²⁹ planned transmission system additions, projected

²⁴ Motion of BREC for Confidential Treatment at 6.

²⁵ Motion of BREC for Confidential Treatment at 7 citing Case No. 2020-00299, *Electronic 2020 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Apr. 14, 2022) (note that BREC cited this case as precedent, despite the Order explicitly stating that it shall not be used as precedent in subsequent proceedings); Case No. 2018-00195, *Electronic 2018 Integrated Resource Plan of Duke Kentucky Inc* (Ky. PSC. Sept. 3, 2019), Order.

²⁶ See Case No. 2017-00384, *2017 Integrated Resource Plan of Big Rivers Electric Corporation*, (Ky. PSC April 25, 2019), Order at 1-2.

²⁷ 2023 IRP, Table 10(a); Appendix A, Load Forecast.

²⁸ 2023 IRP, Table 7.1.4(b); Table 7.1.4(c); Figure 7.1.2(a); Figure 7.1.2(b); Figure 7.12(c); Page 149 (description of Table 7.4.1(a) and (b); Figure 7.4.1.(a); Figure 7.4.1.(b); Figure 7.4.1(c); Figure 7.4.2(a); Figure 7.4.(2)(b); Figure 7.4.2(c); Figure 7.4.3(a); Figure 7.4.3(b); Figure 7.4.3(c); Table 7.4.1(a).

²⁹ 2023 IRP, Figure 7.1.5(a); Figure 7.1.5(b); Table 7.1.5(a).

capital costs, projected O&M costs, and Unbridled Solar PPA Option Expiration Date;³⁰ and projected inflation and discount rates, modeling inputs, and detailed Net Present Value (NPV) analysis³¹ are generally recognized as confidential or proprietary; all items therefore meet 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).

The Commission finds that disclosure of these items would provide a competitive disadvantage for BREC by hindering BREC's ability to compete in the wholesale marketplace and would reveal inner workings of BREC. The Commission also has previously found confidential treatment was warranted to similar information.³²

³⁰ 2023 IRP, Table 7.1.4(d); page 145; Table 7.3.2.(a); Table 82.(b); Section 7, page 116.

³¹ 2023 IRP, Table 7.1.4(e); Table 7.1.4(f); page 120; Table 7.1.4(i); Table 7.1.4(j); Page 127; Table 7.4.4.(a); Table 7.4.4.(b); Appendix E, Technical Appendix; Appendix A.

³² See Case No. 2023-00045, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. For Approval of a Special Contract with Economic Development Rates with Pratt Paper (KY), LLC* (Ky. PSC Feb. 23, 2023), Order (granting confidential treatment to internal projections related to annual capacity positions); 2019-00443, *Electronic 2019 Integrated Resource Planning Report of Kentucky Power Company* (Ky. PSC Mar. 3, 2020) (granting confidential treatment to projected heat rates); Case No. 2022-00098, *Electronic 2022 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 8, 2023), Order at 10 (granting confidential treatment to projected costs and capacity information); Case No. 2020-00350, *Electronic Application of Kentucky Utilities Co. for an Adjustment of Its Electric Rates, A Certificate of Public Convenience & Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, & Establishment of A One-Year Metering Infrastructure, Approval of Certain Regulatory and Accounting. Treatments, & Establishment of A One-Year Surcredit Elec. Application of Louisville Gas & Elec. Co. for an Adjustment of Its Electric & Gas Rates, A Certificate of Public Convenience & Necessity* (Ky. PSC Dec. 6, 2022), Order (granted confidential treatment for fuel price forecasts that used data collected by third parties); Administrative Case No. 387, *Electronic Review of the Adequacy of Kentucky's Generation Capacity & Transmission System*, (Ky. PSC Mar. 9, 2023) (granting confidential treatment to BREC's planned transmission additions); 2018-00195, *Electronic 2018 Integrated Resource Plan of Duke Energy Kentucky, Inc* (Ky. PSC Sept. 3, 2019), Order (granting confidential treatment to projected costs); Case No. 2022-00296, *Electronic Application of Big Rivers Electric Corporation for Approval of Amendment to Power Purchase Agreement* (Ky. PSC Nov. 7, 2022), Order (granting confidential treatment to specific terms of BREC's agreement with Unbridled Solar, including the start date of the contract); 2019-00096, *Electronic 2019 Integrated Resource Plan of East Kentucky Power Cooperative, Inc* (Ky. PSC. Nov. 8, 2019), Order (granting confidential treatment to projected inflation and discount rates); Case No. 2023-00045, *In the Matter of Electronic Tariff Filings of Big Rivers Electric Corporation and Kenergy Corp. For Approval of a Special Contract with Economic Development Rates with Pratt Paper (KY), LLC* (Ky. PSC Feb. 25, 2023) (granting confidential treatment to projected NPV rates).

IT IS THEREFORE ORDERED that:

1. BREC's September 29, 2023 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, except for the transmission maps which shall be granted confidential treatment indefinitely, 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, BREC shall inform the Commission and file with the Commission an unredacted copy of the designated material.
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

ENTERED
MAY 09 2024 bsb
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