

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On September 30, 2024, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to KRS 278.400, requesting reconsideration of the Order entered September 10, 2024, which denied, in part, BREC’s motion for confidential treatment.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”¹ An order can only be unlawful if it violates a state or federal statute or constitutional provision.²

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

² *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

In support of its original motions, BREC argued for the application of KRS 61.878(1)(c)(1), which provides an exception to the requirement for public disclosure for records that are “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.”

MOTION

BREC seeks a review of the denial of confidential treatment to its responses to Joint Intervenors’ First Request for Information (Joint Intervenors’ First Request), Item 9, and Commission Staff’s Post-Hearing Request for Information (Staff’s Post-Hearing Request), Item 1, which included two substantially similar spreadsheets containing generation bid information. BREC argued in its original motion and the present motion that disclosure of bids could result in bidders manipulating their bids. The Order denied the requests on the basis that vendors were not identified and any winning bids, which are not afforded confidential treatment, were not identified.³ In the present motion, BREC noted that none of the bids listed were winning bids, as none were selected—the bids were used only for modeling purposes.⁴

³ Order (Ky. PSC Sept. 10, 2024) at 3-4.

⁴ See Testimony of Dr. Telina Matthews, Hearing Video Transcript of the May 22, 2024 Hearing at 11:39:31, indicating BREC had no immediate plans to add generation.

DISCUSSION AND FINDINGS

Having reviewed the motion and the record, the Commission finds that the motion for reconsideration should be granted, and further finds that confidential treatment should be granted, in part, for portions of the spreadsheet, based on material error. Regardless of vendor identity, the Commission has determined that bidders can use pricing information to manipulate the bidding process, disadvantaging the utility with competitors.⁵ BREC has not provided any justification for anything in the spreadsheet other than data affecting pricing remaining confidential. BREC should redact only columns F through I.

IT IS THEREFORE ORDERED that:

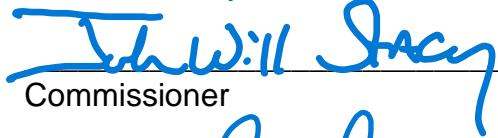
1. BREC's motion for reconsideration is granted.
2. Confidential treatment is granted for columns F through I of the spreadsheets provided in response to Joint Intervenors' First Request, Item 9, and Staff's Post-Hearing Request), Item 1.
3. The remainder of the September 10, 2024 Order not in conflict with this Order remains in effect.
4. This case is closed and removed from the Commission's docket.

⁵ See Case No. 2019-00104, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by P.R. Wastewater Management, Inc., Marshall County Environmental Services, LLC, LH Treatment Company, LLC, Kingswood Development Inc., Airview Utilities, LLC, Brocklyn Utilities, LLC, Fox Run Utilities, LLC, and Lake Columbia Utilities, Inc.* (Ky. PSC Feb. 25, 2021), Order.

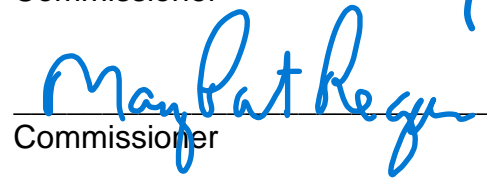
PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ENTERED
OCT 17 2024 AH
KENTUCKY PUBLIC
SERVICE COMMISSION

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