

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 March 8, 2024, 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 to certain documents and information within its responses (filed jointly with Kenergy Corporation (Kenergy)) to the Joint Intervenors' (also known as Kimberly Clark Corp. and Domtar Paper Company, LLC) Third Request for Information (Joint Intervenors' Third Request), Item 3, Item 3-Attachment and Item 14(c).

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, BREC argued that its response to Joint Intervenors’ Third Request, Item 3, contains detailed, proprietary information pertaining to Joint Intervenors’ generators, including MISO accredited capacity information, the generators impact on BREC’s capacity forecasts and generator registration information which impacts BREC’s capacity position.⁵ Further, BREC argued Item 3 contains information that is critical to the effective execution of BREC’s business decisions and strategy and, if disclosed, would allow potential counterparties and competitors to gain an advantage over BREC in the course of ongoing and future negotiations.⁶ BREC stated that allowing counterparties and competitors access to detailed, internal information related to the capacity requirements of its largest customers may impact BREC’s ability to secure the best pricing available in connection with future opportunities.⁷

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ Motion for Confidential Treatment (filed Mar. 8, 2024).

⁶ Motion for Confidential Treatment.

⁷ Motion for Confidential Treatment.

BREC argued that the attachment to Item 3 also should be afforded confidential treatment pursuant to KRS 61.878(1)(a) and KRS 61.878(1)(c)(1) as disclosure would provide insight into Domtar Paper Company, LLC's (Domtar) generation and capacity positioning.⁸ Further, BREC argued the information related to MISO and BREC's registration of Domtar's generators contained in the attachment to Item 3, if released, would disclose information about the usage and projected needs of Domtar.⁹ Finally, BREC argued the attachment to Item 3 contains detailed information on generator capacity developed using MISO's MECT tool.¹⁰

BREC argued that its response to Joint Intervenors' Third Request, Item 14(c) should be afforded confidential treatment as the Commission has previously found that the disclosure of information related to BREC's capacity position would place it at a competitive disadvantage in the energy market and previously granted such information confidential treatment under KRS 61.878(1)(c)(1).¹¹ BREC stated that the disclosure of this information would reveal information about the capacity requirements of some of Kimberly-Clark's facilities and would give competitors insight into BREC's capacity position.¹²

Having considered the motion and material at issue, the Commission finds that the designated material in BREC's response to Joint Intervenors' Third Request, Item 3 which contains non-public MISO registration information describing the status of Joint

⁸ Motion for Confidential Treatment.

⁹ Motion for Confidential Treatment.

¹⁰ Motion for Confidential Treatment.

¹¹ Motion for Confidential Treatment.

¹² Motion for Confidential Treatment.

Intervenors' generators during years relevant to this proceeding, as well as confidential capacity information with respect to both Joint Intervenors' generator should be afforded confidential treatment pursuant to under 61.878(1)(c)(1), KRS 61.878(1)(a) and 807 KAR 5:001, Section 13. The Commission finds that disclosure of the capacity information with respect to both Joint Intervenors' generators could result in a commercial disadvantage in future negotiations to secure best pricing. Further, the Commission granted to treatment to 2023-2024 MISO Seasonal Accredited Capacity (MW) in Order filed entered on February 29, 2024.¹³ 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.¹⁴

Having considered the motion and material at issue the Commission finds BREC's response to Joint Intervenors' Third Request, attachment to 3, includes workbooks developed using MISO's Module E-1 Capacity Tracking ("MECT") tool depicting Seasonal Accredited Capacity and other information for Domtar's generator for specific planning years should be afforded confidential treatment under 61.878(1)(c)(1), KRS 61.878(1)(a) and 807 KAR 5:001, Section 13. The Commission finds that disclosure of Domtar's generation and capacity could place BREC at a commercial disadvantage and usage and disclosure could invade Domtar's right to privacy. The Commission also has previously held that large industrial customers on BREC's system have a right to privacy concerning their power usage and projected needs.¹⁵

¹³ Order (Ky PSC Feb. 29, 2024) at 2-3.

¹⁴ 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.

¹⁵ Case No. 2021-00289, March 3, 2022 Order.

Having considered the motion and material at issue, the Commission finds that BREC's response to Joint Intervenors' Third Request, Item 14(c), should be afforded confidential treatment. The information included the forecasted projection numeric only of Kimberly-Clark's total "take" (load less generation). Confidential treatment should be granted pursuant to KRS 61.878(1)(c)(1) and KRS 61.878(1)(a) as disclosure could also invade Kimberly-Clark's right to privacy as a customer. The disclosure of the capacity requirements of large industrial customers permits an unfair commercial advantage to competitors of the entity that disclosed the records. 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.¹⁶

IT IS THEREFORE ORDERED that:

1. BREC's March 8, 2024 motion for confidential treatment for response to Joint Intervenors' Third Request, Item 3 is granted.
2. BREC's March 8, 2024 motion for confidential treatment for response to Joint Intervenors' Third Request, Attachment to Item 3 is granted.
3. BREC's March 8, 2024 motion for confidential treatment is granted for Joint Intervenors' Third Request, Item 14(c) is granted.
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 five (5) 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).

¹⁶ Case No. 2021-00289, March 3, 2022 Order.

6. 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.

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.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
MAY 09 2024 bsb
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