

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC	)	
CORPORATION FOR A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY TO	)	CASE NO.
CONSTRUCT A 161 KV TRANSMISSION LINE,	)	2019-00270
AND A 345 KV TRANSMISSION LINE IN MEADE	)	
COUNTY, KENTUCKY	)	

ORDER

On August 18, 2022, 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 an indefinite period for detailed as-built drawings of transmission facilities that BREC filed in response to two Commission Orders, one in the present case<sup>1</sup> and another in Case No. 2019-00417.<sup>2</sup>

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.”<sup>3</sup> BREC sought application of one statutory exception to public disclosure. KRS 61.878(1)(m)(1) exempts disclosure of records that “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[.]”

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<sup>1</sup> Order (Ky. PSC Jan. 23, 2020), at 9, ordering paragraph 3.

<sup>2</sup> Case No. 2019-00417, *Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct and Acquire a 345 KV Transmission Line in Meade County, Kentucky* (Ky. PSC May 1, 2020), Order at 7, ordering paragraph 3.

<sup>3</sup> KRS 61.872(1).

The exemption is limited to certain types of records, including “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.”<sup>4</sup> A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the subsection above.<sup>5</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>6</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>7</sup>

In support of its motion, BREC argued that the as-built drawings of its transmission facilities consist of detailed information that exposes its critical energy infrastructure. BREC argued further that the disclosure of these records, thereby exposing the utility’s infrastructure, could be utilized to commit or in furtherance of a terrorist act.

Having considered the motion and the material at issue, the Commission finds that BREC’s motion should be granted. Drawings of transmission facilities are generally recognized as exempt from public disclosure, and earlier versions of these drawings were granted confidential treatment in this case.<sup>8</sup> The drawings at issue here include infrastructure records containing information about public utility critical systems, the

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<sup>4</sup> KRS 61.878(1)(m)(1)(f).

<sup>5</sup> KRS 61.878(1)(m)(2)(b).

<sup>6</sup> See KRS 61.871.

<sup>7</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>8</sup> Order (Ky. PSC Mar. 15, 2021) at 2.

disclosure of which would expose vulnerabilities in those critical systems. Therefore, the designated material meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(m)(1).

IT IS THEREFORE ORDERED that:

1. BREC's 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 an indefinite period 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. 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.
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.

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PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

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