

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR APPROVAL)	
OF ITS 2020 ENVIRONMENTAL COMPLIANCE)	
PLAN, AUTHORITY TO RECOVER COSTS)	
THROUGH A REVISED ENVIRONMENTAL)	CASE NO.
SURCHARGE AND TARIFF, THE ISSUANCE)	2019-00435
OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY FOR)	
CERTAIN PROJECTS, AND APPROPRIATE)	
ACCOUNTING AND OTHER RELIEF)	

ORDER

On February 7, 2020, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(c)(1), and KRS 61.878(1)(m), requesting that the Commission grant confidential protection for certain information contained in BREC’s application. In general, BREC asserts that the information for which confidential treatment is sought contains sensitive estimated and proposed pricing information, financial model outputs, projected budgetary and operations and maintenance (O&M) costs, detailed facility and operational information, proprietary third-party work product, and critical energy infrastructure information.¹

In support of its motion, BREC states that much of the information that it seeks to be protected from disclosure reflects specific estimated cost and savings information related to the proposed environmental projects, including projected capital costs, financing costs, and ongoing fixed and variable O&M costs. BREC contends that Exhibits

¹ BREC’s motion for confidential protection at 1.

Pullen-2, Pullen-3, Pullen-4, and Pullen-5 contain sensitive commercial bids and related budgetary information utilized by BREC in connection with anticipated work and that Exhibit Smith-2 is a proprietary financial modeling developed by BREC as part of its economic evaluation of the proposed environmental projects in this matter. BREC further states that certain information in the Direct Testimony of Michael T. Pullen (Pullen Testimony) and the Direct Testimony of Paul G. Smith (Smith Testimony) relate to projected operating characteristics of BREC's generating facilities and confidential details regarding the special contract with Nucor Corporation. Lastly, BREC asserts that Exhibits Hoydick-2 and Hoydick-3 and Exhibits Yoder-2, Yoder-3, and Yoder-4 contain proprietary reports and data of third-party consultants retained by BREC and that these reports include operational and financial information and conclusions that detail BREC's facilities and other detailed inner workings. BREC maintains that public disclosure of all of this information would permit an unfair commercial advantage to BREC's competitors in the wholesale power market and credit markets. Therefore, BREC contends that this information should be afforded confidential treatment under KRS 61.878(1)(c)(1). BREC requests confidential treatment for an indefinite period for reports developed by third-parties and specific bid information reflected in Exhibits Pullen-2, Pullen-3, Pullen-4, Pullen-5, Hoydick-2, Hoydick-3, Yoder-2, Yoder-3, and Yoder-4. BREC also requests the information relating to the Nucor Corporation special contract be kept confidential for an indefinite period. BREC requests the information contained in Exhibit Smith-2 be kept confidential for five years.

BREC states that Exhibit D² to the application contains detailed information that depicts or describes the location, layout, configuration, and operation of critical energy infrastructure, specifically BREC's generating facilities. BREC asserts that if publicly disclosed, this information could be utilized to commit or further a terrorist act, including the intimidation or coercion of all or part of the civilian population and the disruption of public utility and other critical systems. Therefore, BREC contends that Exhibit D should be afforded confidential treatment pursuant to KRS 61.878(1)(m) for an indefinite period until such time as the relevant facilities are in service.

Having considered the motion and the material at issue, the Commission finds that the information contained in Exhibit D 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). The Commission also finds that Exhibits Pullen-2, Pullen-4, Pullen-5, Hoydick-2, Hoydick-3, Yoder-2, Yoder-3, and Yoder-4 are generally recognized as confidential or proprietary; therefore, these meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

The Commission finds that Exhibit Pullen-3 is also generally recognized as confidential or proprietary except for the information contained on page 1 of 63 on the line that is labeled "Total Alternative." The "Total Alternative" information reflects the estimated total costs of the alternatives evaluated by BREC regarding Project 14 involving the installation of a final cover system for the Wilson Station Phase 1 Landfill and should

² BREC's confidentiality motion refers to Exhibit C as containing maps of critical infrastructure. However, Exhibit C to the application is the 2020 Environmental Compliance Plan Summary. Exhibit D to the application contains the maps of critical infrastructure.

be disclosed for transparency purposes in connection with the Commission's review and evaluation of the alternatives considered by BREC with respect Project 14.

With respect to the Exhibit Smith-2, the Commission finds that information contained on pages 8 through 12 of the exhibit is generally confidential and proprietary and should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The Commission, however, finds that the information contained in Exhibit Smith-2 pages 2, 4, and 7 should be denied confidential treatment and should be disclosed for transparency purposes in connection with the Commission's review and evaluation of the alternatives considered by BREC for all of its proposed projects contained in its 2020 Environmental Compliance Plan.

The Commission finds that the information related to the Nucor Corporation special contract referenced in the Pullen Testimony on page 8 and the Smith Testimony on page 9 as well as the information concerning the projected unplanned outage rate of the Wilson Station referenced in the Pullen Testimony on page 21 are generally recognized confidential and proprietary. Therefore, this information meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Lastly, the Commission finds that the estimated capital costs and O&M costs of the projects contained in BREC's 2020 Environmental Compliance Plan should be denied confidential treatment for purposes of transparency in connection with the Commission's review and evaluation of all of the projects contained in BREC's 2020 Environmental Compliance Plan. A complete list of the information that has been denied confidential treatment is included in the Appendix to this Order.

IT IS THEREFORE ORDERED that:

1. BREC's February 7, 2020 motion for confidential protection for is granted in part and denied in part.

2. BREC's request for confidential treatment for the designated material in the February 7, 2020 confidentiality motion, except for the information listed in the Appendix to this Order, is granted.

3. The materials for which BREC's request for confidential treatment has been granted shall remain confidential for an indefinite period except for the materials contained in Exhibit Smith-2, which shall remain confidential for five years from the date of this Order.

4. BREC's request for confidential treatment for the information listed in the Appendix to this Order is denied. The designated materials contained in the Appendix to this Order are not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

5. If BREC objects to the Commission's determination that the requested information not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

6. Within 30 days of the date of this Order, BREC shall file a revised version of designated materials for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

7. The material for which BREC's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of this Order in order to allow BREC to seek a remedy afforded by law.

8. Use of the materials that were granted confidential treatment in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

9. BREC shall inform the Commission if the materials granted confidential treatment become publicly available or no longer qualify for confidential treatment.

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By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

Acting Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2019-00435 DATED AUG 06 2020

The following materials requested in BREC's February 7, 2020 motion for confidential treatment are denied.

1. Application pages 16–20, 22, and 26 relating to the cost information for each of the projects contained in BREC's 2020 Environmental Compliance Plan (2020 ECP).
2. Application, Exhibit C – 2020 Environmental Compliance Plan Summary.
3. Application, Exhibit D, Direct Testimony of Michael T. Pullen pages 26, 27, 29, 33, 34, 39, 44, 48, 49, 51, and 56.
4. Exhibit Pullen-3, page 1 of 63, the line labeled "Total Alternative."
5. Application, Exhibit F, Direct Testimony of Paul G. Smith, pages 19, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, and 37.
6. Exhibit Smith-2 pages 2, 4, and 7.
7. Application, Exhibit G, Direct Testimony of Michael T. Hoydick, page 9.

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