

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)	CASE NO.
ENVIRONMENTAL SURCHARGE AND)	2019-00435
TARIFF, THE ISSUANCE OF A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY)	
FOR CERTAIN PROJECTS, AND)	
APPROPRIATE ACCOUNTING AND OTHER)	
RELIEF)	

ORDER

This matter arises on a motion filed on August 25, 2020, by Big Rivers Electric Corporation (BREC), pursuant to KRS 278.400, requesting a limited rehearing of the Commission's August 6, 2020 Order denying BREC's request for confidential treatment of certain information submitted as part of its application in this matter. In particular, BREC requests rehearing of the denial of the request to keep confidential the information containing the estimated capital and operations and maintenance (O&M) costs associated with each of the projects that were proposed as part of BREC's 2020 Environmental Compliance Plan. BREC states that the estimated capital and O&M costs reflect internal and external pricing data developed in consultation with third-party experts and potential contractors. BREC contends that the disclosure of this information would undermine competitive bidding incentives and likely result in increased costs to BREC and its distributive cooperative member-owners because the public release of this

information would allow potential vendors to know BREC's internally developed costs for the environmental projects and would, therefore, remove potential vendors' incentives to seek cost-saving opportunities in the development of their bids or proposals. BREC further argues that disclosure of the costs estimates can be used by third parties to inflate proposed pricing. Accordingly, BREC requests the Commission to reconsider the denial of confidential treatment of these costs information and allow them to be not publicly disclosed until each of the projects in its 2020 Environmental Compliance Plan is concluded.¹

Having reviewed the motion and being otherwise sufficiently advised, the Commission finds that KRS 278.400 expressly limits the new evidence that the Commission can consider on rehearing by providing that “[u]pon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing.” As the Commission has previously held, KRS 278.400 “is intended to provide finality to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearing.”² Thus, on rehearing, a party may present “newly discovered evidence” that has been judicially defined to be limited to evidence that existed at the time of the former hearing, not “new evidence” that

¹ BREC contends that the estimated costs for Project 12 (Wilson Station scrubber replacement); Project 13 (Green Station, Coleman Station, and Station Two ash pond closures); Project 14 (Wilson Station landfill Phase 1 final cover); and Project 15 (Green Station landfill perimeter drainage system) should be kept confidential until each of these projects are concluded. BREC states that all projects in connection with Project 16, which consists of a series of compliance efforts undertaken by BREC in the usual course of its business since 2015, are completed and all costs related to Project 16 are finalized. As such, BREC acknowledges that the cost information related to Project 16 should be made public.

² Case No. 2008-00250, *Proposed Adjustment of the Wholesale Water Service Rates of Frankfort Electric and Water Plant Board* (Ky. PSC Apr. 27, 2009), Order at 3.

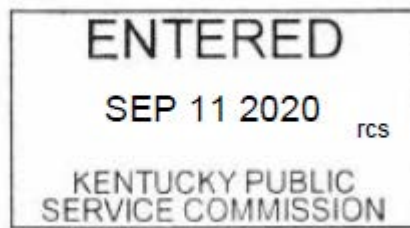
did not exist at the time of the former hearing.³ The Commission finds that BREC has not alleged the existence of any newly discovered evidence to justify granting rehearing. Additionally, the arguments raised by BREC in its rehearing petition are the same arguments that were raised in its original confidentiality petition filed on February 7, 2020, and subsequently rejected by the Commission. Lastly, the Commission notes that BREC publicly disclosed the same type of information in its environmental compliance plan that was proposed in Case No. 2012-00063⁴ for which BREC did not seek confidential treatment.

IT IS THEREFORE ORDERED that BREC's motion for limited rehearing of the August 6, 2020 Order denying confidential treatment to the projected capital and O&M costs associated with each of the projects in its 2020 Environmental Compliance Plan is denied.

³ *Stephens v. Kentucky Utilities Co.*, 569 S.W.2d 155, 158 (Ky. 1978).

⁴ Case No. 2012-00063, *Application of Big Rivers Electric Corporation for Approval of Its 2012 Environmental Compliance Plan, for Approval of Its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish Regulatory Account* (Ky. PSC Oct. 1, 2012).

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be "B" and "A".

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