

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

ORDER

Big Rivers Electrical Corporation (BREC) filed three motions, on April 23, 2021, June 18, 2021, and November 30, 2021, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for as-built drawings of detailed power plant schematics, diagrams, plans, equipment and construction specifications, and photographs of D.B. Wilson Station and K.C. Coleman Station, which were submitted in response to the Commission’s August 6, 2020 Order.

In support of its motion, BREC argued that this information could be used to analyze vulnerable locations in the plants or the interconnected transmission system, which are public utility critical systems, and could threaten public safety if compromised. BREC stated that the Coleman Station plant is retired; however, it asserted that public access to schematics and diagrams could nevertheless be used to damage or destroy the plant structures and injure persons or property at or near the plant, or to locate chemicals and other material that could be used to the detriment of public safety. BREC

also argued that the plans could be used to gain an understanding of the workings of other power plants that are still in operation. It also noted that the interconnected transmission system is still in use, and the detailed wiring diagrams could potentially be used to cause damage to the transmission system. BREC argued that KRS 61.878(1)(m) protects this material from public disclosure.

KRS 61.878(1)(m) exempts public disclosure of “[p]ublic records the disclosure of which 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 .

...”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.²

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.³

Having considered the motion and the material at issue, the Commission finds that under the plain language of KRS 61.878(1)(m), power plants, even retired ones, constitute public utility critical systems, which if compromised, would disrupt electrical service. Detailed power plant schematics, diagrams, plans, equipment and construction specifications, and photographs, if disclosed, could expose vulnerabilities in these systems. This information therefore meets the criteria for confidential treatment and is

¹ KRS 61.878(1)(m)(1).

² KRS 61.878(1)(m)(1)(f).

³ KRS 61.878(1)(m)(2)(b).

exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(m).

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 or 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.

By the Commission



ATTEST:


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