

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	CASE NO.
ELECTRIC CORPORATION FOR APPROVAL)	2020-00183
OF SOLAR POWER CONTRACTS)	

ORDER

This matter arises upon three motions for confidential treatment filed by Big Rivers Electric Corporation (BREC) on June 24, 2020, August 14, 2020, and September 10, 2020. BREC requested confidential treatment for the designated materials pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(a) and KRS 61.878(1)(c)(1).

JUNE 24, 2020 MOTION

In the June 24, 2020 motion, BREC requested confidential protection for an indefinite period for designated materials contained in the exhibits to the application. Those exhibits include three Solar Contracts that BREC entered into with Henderson Solar, LLC; Meade County Solar, LLC; and McCracken County Solar, LLC (collectively, Solar Developers)¹ and the Direct Testimony of Mark Eacret (Eacret Testimony),² which contained information regarding the distribution, responses, screening, and internal analyses of BREC's need for power and the related Request for Proposals (RFP); the construction and operation plans of the Solar Developers; and the terms of special

¹ The Henderson Solar Contract is attached as Exhibit 1 to the application. The Meade County Solar Contract is attached as Exhibit 2 to the application. The McCracken County Solar Contract is attached as Exhibit 3 to the application.

² The Eacret Testimony is attached as Exhibit 4 to the application.

contracts with Nucor Corporation (Nucor Contract) and Owensboro Municipal Utilities (OMU Contract).

In support of its motion, BREC argues that public disclosure of the information would permit an unfair commercial advantage to BREC's competitors, as well as the Solar Developer's competitors. BREC also argues that public disclosure of the price or other significant terms of the Solar Contracts or the OMU Contract and the Nucor Contract will place BREC at a considerable disadvantage when negotiating future contracts. BREC contends that disclosure of the contract terms will provide insight into BREC's cost of producing power and indicate the prices at and terms on which it is willing to sell and purchase power. BREC further contends that potential buyers or sellers of power to BREC could thus use the information as a benchmark in negotiating the terms of a transaction. Similarly, BREC asserts that potential power suppliers or buyers manipulating BREC's bidding process would lead to higher costs or lower revenues to BREC and would place it at an unfair competitive disadvantage in the wholesale power market and credit markets.

The Commission is not persuaded that disclosure of the Contract Price³ for each of the three Solar Contracts would impose an unfair competitive disadvantage on BREC in future negotiations involving wholesale power purchase agreements. These designated materials should be denied confidential treatment based upon principles of transparency regarding the evidence that the Commission relies upon in rendering its determinations. The Contract Price concerns the cost impact that the Commission will fully and specifically address in fuel adjustment clause proceedings. Thus, the

³ As described in the Eacret Testimony, the Contract Price for each of the Solar Contracts is an all-inclusive, energy-only price for the solar energy products. See Eacret Testimony at 19.

Commission must be able to address the payments and cost impact associated with these Solar Contracts with transparency. Accordingly, the Commission finds that confidential treatment should be denied for these designated materials.⁴

The Commission is persuaded the remaining designated materials in the June 24, 2020 motion meet the criteria for confidential treatment under KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13, and therefore should be granted confidential treatment.

AUGUST 14, 2020 MOTION

In the August 14, 2020 motion, BREC requested confidential treatment for five years for certain information contained in its response to Staff's First Request for Information (Staff's First Request), Item 17. The information in BREC's response to Staff's First Request, Item 17, contains projections of energy and capacity market prices, BREC's capacity position, and market prices for renewable energy credits.

BREC also requested confidential treatment for an indefinite period for certain information contained in its responses to Staff's First Request, Items 4, 6, 7, 25, 27, 28, and 29, and for certain information contained in its responses to the Attorney General's First Request for Information (Attorney General's First Request), Items 1, 2, 4, 9, 10, 15, 16, 18, 19, 20, 32, 33, 42, and 43. These designated materials are more specifically described as follows:

1. Response to Staff's First Request, Item 4, contains certain negotiated terms of the Nucor Contract.

⁴ The specific references to the Contract Price amount for each of the three Solar Contracts is located at the top Exhibit 5.1 of each contract. The Contract Price amount is also referenced in the Eacret Testimony at 18 and 23.

2. Response to Staff's First Request, Item 6, contains certain negotiated terms of the Solar Contracts, including projected energy production, and Nucor's energy usage and demand projections.

3. Response to Staff's First Request, Item 7, contains BREC's bid evaluation process to reduce the shortlist of responses to the RFP to the finalists.

4. Response to Staff's First Request, Item 25, contains the economic analysis in electronic format.

5. Response to Staff's First Request, Item 27, contains the calculation of the projected value of projected 2024 energy.

6. Response to Staff's First Request, Item 28, contains negotiated terms of the Nucor Contract.

7. Response to Staff's First Request, Item 29, contains certain negotiated terms of the Nucor Contract and the OMU Contract.

8. Response to the Attorney General's First Request, Item 1, contains information associated with the economic analysis.

9. Response to the Attorney General's First Request, Item 2, contains certain negotiated terms of the Nucor Contract.

10. Response to the Attorney General's First Request, Item 4, contains the Request for Information of Project Storage by an economic development prospect.

11. Response to the Attorney General's First Request, Item 9, contains information associated with the economic analysis.

12. Response to the Attorney General's First Request, Item 10, contains the projected energy production of the solar facilities associated with the three Solar Contracts.

13. Response to the Attorney General's First Request, Item 15, contains customer-specific energy consumption information.

14. Response to the Attorney General's First Request, Item 16, contains certain negotiated terms of the Solar Contracts and BREC's economic analysis of those contracts.

15. Response to the Attorney General's First Request, Item 18, contains BREC's economic analysis.

16. Response to the Attorney General's First Request, Item 19, contains negotiated terms of the Solar Contracts, Nucor Contract, and OMU Contract.

17. Response to the Attorney General's First Request, Item 20, contains BREC's economic analysis.

18. Response to the Attorney General's First Request, Item 32, contains BREC's economic analysis.

19. Response to the Attorney General's First Request, Item 33, contains negotiated terms of the Nucor Contract and projected energy production of the solar facilities associated with the Solar Contracts.

20. Response to the Attorney General's First Request, Item 42, contains BREC's economic analysis.

21. Response to the Attorney General's First Request, Item 43, contains certain negotiated terms of the three Solar Contracts, including the Contract Price for each of those contracts.

With respect to the response to the Attorney General's First Request, Item 15, BREC argues that customer specific energy usage information is protected from public disclosure pursuant to KRS 61.878(1)(a). As to the remainder of the responses, BREC contends that public disclosure of these information would give BREC's competitors a competitive advantage and are therefore protected from public disclosure under KRS 61.878(1)(c)(1). BREC contends that public disclosure of such information would give BREC's suppliers, buyers, and competitors insight into its view of future energy, capacity, and renewable energy credit prices; the contract terms BREC has agreed to in the past; its cost of producing power; BREC's need and availability of power; and the market conditions BREC expects to encounter, all of which would indicate the prices and terms on which BREC is willing to buy or sell such commodities.

With the exception of the Contract Price for each of the three Solar Contract contained in the response to the Attorney General's First Request, Item 43, the Commission finds that designated materials in the August 14, 2020 motion meet the criteria for confidential treatment under KRS 61.878(a), KRS 61.878(1)(c)(1), and 807 KAR 5:001, Section 13, and therefore should be granted confidential treatment. The Commission finds, for the reasons stated above, the Solar Contracts' Contract Price should be denied confidential treatment.

SEPTEMBER 10, 2020 MOTION

In the September 10, 2020 motion, BREC requested confidential treatment for certain information contained in its response to Commission Staff's Supplemental Request for Information (Staff's Supplemental Request), Item 6, and its responses to the Attorney General's Second Request for Information (Attorney General's Second Request), Items 1, 8, and 17. BREC requests that the information contained in its response to the Attorney General's Second Request, Item 17, be kept confidential for five years. BREC requests that the information contained in its responses to Staff's Supplemental Request, Item 6, and the Attorney General's Second Request, Items 1 and 8, be kept confidential for an indefinite period.

In support of its motion, BREC states that the response to Staff's Supplemental Request, Item 6, contains the negotiated terms of the Nucor Contract, the projected energy production of the solar facilities associated with the Solar Contracts, and BREC's hedging strategies. BREC states that the response to the Attorney General's Supplemental Request, Item 1, contains the negotiated terms of the Nucor Contract. BREC states that the response to the Attorney General's Second Request, Item 8, contains the projected energy production of the solar facilities associated with the Solar Contracts. Lastly, BREC states that the response to the Attorney General's Second Request, Item 17, contains projected market prices for renewable energy credits.

BREC argues that public disclosure of the designated materials would allow BREC's competitors to discover, and make use of, confidential contract terms and information concerning BREC's business strategies, to the unfair competitive disadvantage of BREC. BREC further argues that disclosure of the contract terms will

provide insight into BREC's cost of producing power and indicate the prices at and terms on which it is willing to sell and purchase power. BREC contends that potential suppliers or buyers manipulating BREC's bidding process would lead to higher costs or lower revenues to BREC and would place it at an unfair competitive disadvantage in the wholesale power market and credit markets.

The Commission finds that designated materials in the September 10, 2020 motion meet the criteria for confidential treatment under KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13, and therefore should be granted confidential treatment.

IT IS THEREFORE ORDERED that:

1. BREC's June 24, 2020 motion and August 14, 2020 motion are granted in part and denied in part.

2. BREC's request for confidential treatment for the designated materials in the June 24, 2020 motion and the August 14, 2020 motion, with the exception of the Contract Price associated with the Solar Contracts, is granted.

3. BREC's request for confidential treatment for the Contract Price of each of the Solar Contracts in the June 24, 2020 motion and the August 14, 2020 motion is denied.

4. BREC's September 10, 2020 motion is granted.

5. The designated information contained in BREC's responses to Staff's First Request, Item 17, and the Attorney General's Second Request, Item 17, shall not be placed in the public record or made available for public inspection for five years from the date of this Order or until further Order of this Commission. The remaining materials for which BREC's request for confidential treatment has been granted 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.

6. Within 30 days of the date of this Order, BREC shall file a revised version of the designated materials for which confidential protection was denied, reflected 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 to allow BREC to seek a remedy afforded by law.

8. Use of the material in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

9. BREC shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.

10. 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.

11. 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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