

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 2020 INTEGRATED RESOURCE	)	CASE NO.
PLAN OF BIG RIVERS ELECTRIC	)	2020-00299
CORPORATION	)	

ORDER

This matter arises on three motions for confidential treatment filed by Big Rivers Electric Corporation (BREC). On September 21, 2020, BREC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for information redacted from its Integrated Resource Plan (IRP). BREC sought confidential treatment for an indefinite period for IRP Figure 1.5 (also attached as Exhibit E) and redacted portions of IRP Sections 3.2, 8.1.1 and Table 8.4. BREC sought confidential treatment for five years for redacted portions of IRP Sections 3.7, 7.2, 8.2.2, 8.2.3, and 8.3, Figures 8.2, 8.3, and 8.4, Tables 6.2, 8.16, 8.2, 8.3, 8.5, 8.8, 8.9, 8.11, 8.12, 8.14, and 8.15, and Appendices A, F, and G.

On March 19, 2021, BREC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for information redacted from its responses to Commission Staff's First Request for Information (Staff's First Request). BREC sought confidential treatment for an indefinite period for information redacted from its responses to Staff's First Request, Items 1, 10, 13, 43, and 52. BREC sought confidential treatment for five years for information redacted from its responses to Staff's First Request, Items 20 and 62.

On May 11, 2021, BREC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for information redacted from its responses to Commission Staff's Second Request for Information (Staff's Second Request) and Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention's (Attorney General) Second Request for Information (Attorney General's Second Request). BREC sought confidential treatment for an indefinite period for information redacted from its responses to Staff's Second Request, Items 5, 19, 25, 26, and 28. BREC sought confidential treatment for five years for information redacted from its responses to Staff's Second Request, Items 18, 25, and 28 and Attorney General's Second Request, Item 7.

#### LEGAL STANDARD

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>1</sup> In support of its motions, BREC argued the application of two provisions of KRS 61.878. Under KRS 61.878(1)(m), the Open Records Act exempts "[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 . . ."<sup>2</sup> 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

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

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

not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.<sup>3</sup>

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.<sup>4</sup>

KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are “generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>5</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>6</sup>

#### SEPTEMBER 21, 2020 MOTION

BREC argued for indefinite confidential treatment for IRP Figure 1.5/Exhibit E which is a map of its transmission infrastructure. BREC claimed that KRS 61.878(1)(m) exempts disclosure, as this map could be used to analyze vulnerable locations in BREC’s transmission system, which is a public utility critical system, the disclosure of which could threaten public safety.

BREC also asked for indefinite confidential treatment for redacted portions of IRP Sections 3.2, 8.1.1, and Table 8.4, which contain terms of KRS 278.160(3) special

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<sup>3</sup> KRS 61.878(1)(m)(1)(f).

<sup>4</sup> KRS 61.878(1)(m)(2)(b).

<sup>5</sup> See KRS 61.871.

<sup>6</sup> 807 KAR 5:001, Section 13(2)(c).

contracts. BREC argued that these terms are entitled to confidential treatment under KRS 61.878(1)(c)(1) because BREC competes in the wholesale power market and also enters into wholesale agreements with utilities and industrial customers. BREC claimed that competitors could use this information to unfairly compete with BREC in these markets.

BREC sought confidential treatment for five years for information redacted from IRP Section 3.7, 7.2, Table 8.4, and Appendix A containing rate projections. BREC also sought confidential treatment for five years for information redacted from IRP Table 8.3 showing the price BREC projects to purchase power from the Southeastern Power Association (SEPA). BREC argued that competitors could use this information to unfairly compete with BREC in energy markets.

BREC also asked for confidential treatment for five years for information redacted from IRP Sections 3.7, 8.2.2, and 8.2.3, Figures 8.2, 8.3, and 8.4, Tables 8.2, 8.5, 8.8, 8.9, 8.11, 8.12, 8.14, and 8.15, and Appendices F and G, consisting of projected operations and maintenance costs, capacity, fuel prices, inflation, discount rates, production factors, capital project costs, modeling inputs and net present value. Lastly, BREC sought confidential treatment for five years for IRP Table 6.2, consisting of planned transmission system additions. BREC argued that all projected costs depend on obtaining fuel, services, and labor at reasonable prices, which cannot be obtained if contractors or competitors know BREC's plans and expected expenditures. BREC also noted that fuel and energy price projections were provided by third parties who desire to protect their work product.

Having considered the motion and the material at issue, the Commission finds that BREC's September 21, 2020 motion is granted. The transmission map is granted confidential treatment indefinitely because a transmission system is a public utility critical system protected by KRS 61.878(1)(m). The Commission granted indefinite confidential treatment for this information in BREC's two previous IRP cases.<sup>7</sup> The Commission also grants indefinite confidential treatment under KRS 61.878(1)(c)(1) for redacted special contract terms because knowledge of these terms would assist BREC's competitors in energy markets. The Commission has already granted confidential treatment for two of the referenced special contracts.<sup>8</sup>

BREC is further entitled to KRS 61.878(1)(c)(1) protection for five years for projected rate information, projected rate for power purchased from SEPA, projected costs, and planned transmission system additions. Energy market competitors could use this information to their benefit and BREC's disadvantage.<sup>9</sup> Both competitors and contractors could also use expected cost and construction data to BREC's disadvantage.<sup>10</sup>

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<sup>7</sup> Case No. 2014-00166, *2014 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Aug. 26, 2014), Order at 7; Case No. 2017-00384, *2017 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC April 25, 2019), Order at 2.

<sup>8</sup> Case No. 2016-00306, *Filing of Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and the Kentucky Municipal Energy Agency* (Ky. PSC Jan. 2, 2019), Order at 2; Case No. 2019-00365, *Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff* (Ky. PSC Sept. 30, 2020), Order at 2.

<sup>9</sup> The Commission granted confidential treatment to BREC's projected rates in Case No. 2014-00166, *2014 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Aug. 26, 2014), Order at 19–20.

<sup>10</sup> See Case No. 2018-00195, *In the Matter of: Duke Energy Kentucky, Inc.'s Integrated Resource* (Ky. PSC Sept. 3, 2019), Order at 2–3, granting confidential treatment to similar information in Duke Kentucky's IRP.

The designated material therefore 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) or (1)(c)(1).

#### MARCH 19, 2021 MOTION

BREC argued for indefinite confidential treatment for redactions from information it supplied in response to Staff's First Request, Items 1, 13, 43, and 52, which consisted of information about the special contracts referred to in BREC's September 21, 2020 motion. BREC again argued that competitors could use this special contract information to unfairly compete with BREC in wholesale power markets.

BREC also sought indefinite confidential treatment for information redacted from its response to Staff's First Request, Item 10, consisting of variables used in the regression model equations provided by a third party. BREC claimed that this information is the proprietary work product of that third party, which BREC does not have the authority to publicly disclose.

BREC asked for confidential treatment for five years for redacted responses to Staff's First Request, Item 20, consisting of projected avoided costs, cooperative retail rates, operations and maintenance rates, and distribution operations and maintenance costs, all used to calculate total resource benefit. BREC also asked for five years of protection for redacted responses to Staff's First Request, Item 62, including information related to its projected annual energy position. BREC argued, as above, that all projected costs depend on obtaining fuel, services, and labor at reasonable prices, which cannot be obtained if contractors or competitors know BREC's expected plans and expenditures.

Having considered the motion and the material at issue, the Commission finds that BREC's March 19, 2021 motion is granted. Special contract information is entitled to indefinite protection because knowledge of special contract information would assist competitors in those markets.<sup>11</sup> Indefinite confidential treatment is also warranted for regression model variables supplied by a third party and subject to copyright protection.<sup>12</sup>

The Commission grants five years of confidential treatment to the remaining items requested in this motion. BREC would be harmed if contractors and competitors knew what BREC is willing or expected to spend on energy, fuel, and construction.<sup>13</sup>

The designated material therefore 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)(c)(1).

#### MAY 11, 2021 MOTION

BREC argued for indefinite confidential treatment for redactions from information it supplied in responses to Staff's Second Request, Items 5, 19, 25, 26, and 28, which consisted of information about the special contracts referred to in BREC's September 21, 2020 motion. BREC again argued that competitors could use this special contract information to unfairly compete with BREC in wholesale power markets.

BREC asked for five years of confidential treatment for its redacted responses to Staff's Second Request, Items 18, 25, and 28, containing information about projected annual generation, net capacity factors, capacity position, and Planned Reserve Margins

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<sup>11</sup> See footnote 8.

<sup>12</sup> See *Duke Energy Kentucky*, (Ky. PSC Sept. 3, 2019), Order at 2–3.

<sup>13</sup> *Id.*

Requirements (PRMR). Lastly, BREC asked for five years' protection for information redacted from its responses to Attorney General's Second Request, Item 7, consisting of planned transmission system additions. BREC argued, as in the two previous motions, that all projections depend on obtaining fuel, services, and labor at reasonable prices, which cannot be obtained if contractors or competitors know BREC's expected plans and expenditures.

Having considered the motion and the material at issue, the Commission finds that BREC's May 11, 2021 motion is granted. Special contract information is entitled to indefinite protection because knowledge of special contract information would assist competitors in those markets.<sup>14</sup>

The Commission grants five years of confidential treatment to the remaining items requested in this motion. BREC would be harmed if contractors and competitors knew what BREC is willing or expected to spend on energy, fuel, and construction.<sup>15</sup>

The designated material therefore 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)(c)(1).

Although the Commission grants BREC's three motions, this Order shall not be used as precedent in subsequent proceedings. The Commission expects IRP filers to provide its IRP inputs in a way that maximizes the transparency of the filing. BREC, and all electric utilities, are put on notice that information necessary for the Commission to fully and specifically review IRPs, and for the transparency necessary for BREC's

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<sup>14</sup> See footnote 8.

<sup>15</sup> See *Duke Energy Kentucky* (Ky. PSC Sept. 3, 2019), Order at 2–3.

ratepayers to know what information the Commission relied upon in the Commission's review of the IRP, shall be provided with the minimum number of redactions necessary to protect sensitive information.

IT IS THEREFORE ORDERED that:

1. BREC's September 21, 2020, March 19, 2021, and May 11, 2021 motions for confidential treatment are granted.

2. The information redacted from BREC's IRP Figure 1.5 (also attached as Exhibit E), Sections 3.2, 8.1.1, and Table 8.4, Staff's First Request, Items 1, 10, 13, 43, and 52, and Staff's Second Request, Items 5, 19, 25, 26, and 28 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. The information redacted from BREC's IRP Sections 3.7, 7.2, 8.2.2, 8.2.3, 8.3, Figures 8.2, 8.3, 8.4, Tables 6.2, 8.16, 8.2, 8.3, 8.5, 8.8, 8.9, 8.11, 8.12, 8.14, 8.15, and Appendices A, F, and G, Staff's First Request, Items 20 and 62, Staff's Second Request, Items 18, 25, and 28 and Attorney General's Second Request, Item 7 shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

4. 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).

5. 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.

6. 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.

7. 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.

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

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Commissioner



ATTEST:

  
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