

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF BIG RIVERS ELECTRIC)	2021-00058
CORPORATION FROM NOVEMBER 1, 2018)	
THROUGH OCTOBER 31, 2020)	

ORDER

This matter arises on two motions filed by Big Rivers Electric Corporation (BREC). On March 22, 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 five years for BREC's responses to Commission Staff's First Request for Information (Staff's First Request), Items 12, 13, 22, 30, 31, and 32; and redacted portions of the testimony of Natalie Hankins.

On May 26, 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 five years for its responses to Commission Staff's Post-Hearing Request for Information (Post-Hearing Request), Item 1.

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."¹ BREC sought application of

¹ KRS 61.872(1).

KRS 61.878(1)(c)(1), which exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records” and KRS 61.878(1)(a), which exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

MARCH 22, 2021 MOTION

In support of its motion, BREC argued that its responses to Staff’s First Request, Items 12, 22, 30, 31, and 32; and redacted portions of the testimony of Natalie Hankins could be used to provide competitors in the energy sales market with information that could be used to manipulate prices to BREC’s detriment under KRS 61.878(1)(c)(1). This information consisted of forecasts through 2022 including energy purchases, FAC factors, fuel requirements, off-system sales, maintenance outages, and capacity prices, respectively.

BREC also asked for confidential treatment for its response to Staff’s First Request, Item 13, which consisted of redacted special contract energy purchaser identities. BREC argued that revealing the identities of its industrial special contract customers would constitute an unwarranted invasion of personal privacy under

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

KRS 61.878(1)(a). BREC also asserted that the Commission already granted confidential treatment to some of these contracts pursuant to KRS 61.878(1)(c)(1).⁴

Having considered the motion and the material at issue, the Commission finds that BREC's motion is granted. Public disclosure of projected energy purchases would allow energy market competitors to know what BREC is willing or expected to spend on energy.⁵ BREC would also be harmed if energy market competitors knew factors affecting BREC's energy prices, such as FAC factors, off-system sales, and capacity prices. Regarding projected fuel requirements, if fuel demand information was known to fuel sellers, those sellers could manipulate prices to BREC's detriment and the benefit of BREC's competitors. Scheduled outages should be granted confidential treatment because otherwise, other energy market participants would know when BREC's need for purchased power would spike.⁶ Special contract energy purchaser identities also warrant protection under 61.878(1)(c)(1) because competitors could use this information in an attempt to undercut BREC and compete for BREC's customers. 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 26, 2021 MOTION

⁴ Case No. 2014-00134, *In the Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to KRS 278.180 and KAR 5:001 §13* (Ky. PSC Sept. 10, 2014), Order; Case No. 2016-00306, *In the Matter of: 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.

⁵ 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.

⁶ See Administrative Case No. 20000387, *Electronic Review of the Adequacy of Kentucky's Generation Capacity and Transmission System* (Ky. PSC May 28, 2013), Order at 2.

In support of its motion, BREC argued that its response to Post-Hearing Request, Item 1 could be used to provide competitors in the energy sales market with information that could be used to manipulate prices to BREC's detriment under KRS 61.878(1)(c)(1). This information consisted of net hedging positions through 2022.

Having considered the motion and the material at issue, the Commission finds that BREC's motion is granted. BREC would be harmed if energy market competitors knew what BREC's hedging strategies were and manipulated bidding or pricing accordingly.⁷ 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).

IT IS THEREFORE ORDERED that:

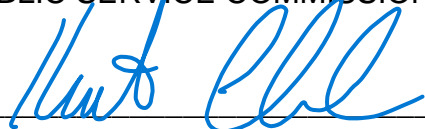
1. BREC's motion for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
3. Use of the designated material 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.

⁷ See Case No. 2012-00169, *Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC* (Ky. PSC Jan. 10, 2022), Order at 2.

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.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner

ENTERED
JUL 01 2022 tsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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