

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS	)	
ELECTRIC CORPORATION FOR A	)	
CERTIFICATE OF PUBLIC CONVENIENCE AND	)	CASE NO.
NECESSITY AUTHORIZING CONSTRUCTION	)	2021-00314
OF A NEW HEADQUARTERS FACILITY AND AN	)	
ORDER AUTHORIZING BIG RIVERS TO SELL	)	
ITS EXISTING HEADQUARTERS FACILITY	)	

ORDER

On August 26, 2021, Big Rivers Electric Corporation (BREC) filed a petition, pursuant to KRS 61.878(1)(m)(1) and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential protection for the following items: cost estimates for specific work in the construction of the proposed headquarters until construction costs are final,<sup>1</sup> current and projected book values and appraised value of the existing headquarters property until the real estate transactions have closed,<sup>2</sup> and the location, structure, and other sensitive information regarding BREC's energy control room for an indefinite period.<sup>3</sup>

On October 22, 2021, BREC filed a petition, pursuant to KRS 61.878(1)(m)(1), and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential protection for the following items: cost estimates for the construction of a new Transmission Operations

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<sup>1</sup> Application Exhibit Toerne-2 an Exhibit Toerne-3.

<sup>2</sup> Application, Direct Testimonies of Paul G. Smith and the Confidential Exhibit Smith-2.

<sup>3</sup> Application, Direct Testimonies of Robert W. Berry and Robert F. Toerne and Exhibit Berry-2.

Center (TOC) for five years,<sup>4</sup> the appraisal reports and estimated current value of BREC existing headquarters properties and related information until such time as the real estate transaction for all BREC existing headquarters properties have closed,<sup>5</sup> and the location, structure, and other sensitive information regarding BREC's energy control room for an indefinite period.<sup>6</sup>

On November 8, 2021, BREC filed a petition, pursuant to KRS 61.878(1)(c)(1), requesting that the Commission grant confidential protection for the following items: cost estimates for the construction of a new TOC for five years,<sup>7</sup> financial analysis comparing the existing headquarters to the proposed headquarters, which includes the projected construction costs of the proposed headquarters, until the construction contract is awarded,<sup>8</sup> the plant in service balance and accumulated depreciation for the existing headquarters until the existing headquarters is sold,<sup>9</sup> and the pricing terms of an agreement between Cooperate Building Solutions to provide a facility planning study for the TOC for an indefinite period.<sup>10</sup>

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<sup>4</sup> BREC's Response to Commission Staff's First Request (Staff's First Request) (filed on 10/22/2021), Item 7.

<sup>5</sup> BREC's Response to Staff's First Request, Items 15, 17, and 18.

<sup>6</sup> BREC's Response to Staff's First Request, Item 21.

<sup>7</sup> BREC's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed 12/7/2021), Item 2, Attachment, and Item 9, Attachment.

<sup>8</sup> BREC's Response to Staff's Second Request, Item 13, Attachment (filed confidentially).

<sup>9</sup> BREC's Response to Staff's Second Request, Item 14.

<sup>10</sup> BREC's Response to Staff's Second Request, Item 17, Attachment.

## 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>11</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.”

KRS 61.878(1)(m)(1) provides an exception if the disclosure “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. . . .”

## AUGUST 26, 2021 MOTION

In support of the August 26, 2021 motion, BREC argued that the cost estimates for specific work in the construction of the proposed headquarters and the current and projected book values and appraised value of the existing headquarters should be exempt from public disclosure pursuant to KRS 61.878(1)(c)(1) until construction costs for the new headquarters are final and the sale of the existing headquarters has closed, respectively. BREC stated that disclosure of the information would give contractors insight into the amounts BREC expects to pay for specific components of the new headquarters and would give potential purchasers of BREC’s existing headquarters insight into how it values the headquarters, which would unfairly raise its costs and give its competitors an unfair commercial advantage. BREC asserted that this type of

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<sup>11</sup> KRS 61.872.(1)

information is generally considered confidential and propriety and has been treated as such by the Commission in the past.<sup>12</sup>

BREC argued that the location, structure, and other sensitive information regarding its energy control room should be exempt from public disclosure pursuant to KRS 61.878(1)(m)(1), as the control room is critical energy infrastructure. BREC asserted that public disclosure of the information regarding the energy control room has a reasonable likelihood of threatening the public safety, because it reflects detailed, precise, and highly technical information about the configuration and operations of valuable infrastructure upon which many individuals and businesses rely.

Having considered the motion and the material at issue, the Commission finds that the cost estimates for specific work at the new headquarters and the current and projected book values and appraised value of the existing headquarters is generally recognized as confidential or proprietary under the circumstances and disclosure of said material would permit an unfair commercial advantage to BREC's competitors; it 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).

The Commission also finds that disclosure of the information regarding the energy control room could reasonably threaten public safety; it 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)(1).

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<sup>12</sup> Case No. 2019-00326, *Electronic Application of Jackson Purchase Energy Corporation for a Certificate of Public Convenience and Necessity to Construct a New Headquarters Facility* (Ky. PSC Oct. 1, 2019), Order.

However, while granting BREC's motion, the Commission notes that the actual and projected book value of a utility's property is not entitled to confidential treatment under most circumstances. Utilities collect depreciation expense and a return or debt service on investments in utility property based, in part, on their plant in service and accumulated depreciation and, therefore, the book value of utilities' property is regularly disclosed publicly and forms a major component of utility rates about which there is a significant public concern. Thus, the Commission is only granting confidential treatment to the current and projected book values of BREC's existing headquarters under this limited circumstance given BREC's intent to sell the headquarters in the near future.

#### OCTOBER 22, 2021 MOTION

In support of the October 22, 2021 motion, BREC argued that the cost estimates for the new TOC should be exempt from public disclosure and that the appraisal reports and estimated current value of BREC's existing headquarters should be exempt from public disclosure pursuant to KRS 61.878(1)(c)(1) for five years when the estimates will be stale and until the existing headquarters is sold, respectively. As above, BREC states that disclosure of the information would give contractors insight into the amounts BREC expects to pay for new TOC and would give potential purchasers of BREC's existing headquarters insight into how it values the headquarters, which would unfairly raise its costs and give its competitors an unfair commercial advantage. BREC asserted this type of information is generally considered confidential and proprietary and has been treated as such by the Commission in the past.<sup>13</sup>

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<sup>13</sup> Case No. 2019-00326, Oct. 1, 2019 Order.

BREC argued that the location, structure, and other sensitive information regarding BREC's energy control room should be exempt from public disclosure pursuant to KRS 61.878(1)(m)(1), as the control room is critical energy infrastructure. As above, BREC asserted that public disclosure of the information regarding the energy control room has a reasonable likelihood of threatening the public safety, because it reflects detailed, precise, and highly technical information about the configuration and operations of valuable infrastructure upon which many individuals and businesses rely.

Having considered the motion and the material at issue, the Commission finds that the cost estimate for the new TOC and the appraisal reports and estimated current value of BREC's existing headquarters is generally recognized as confidential or proprietary under the circumstances and disclosure of said material would permit an unfair commercial advantage to BREC's competitors; it 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). The Commission also finds that disclosure of the information regarding the energy control room could reasonably threaten public safety; it 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)(1).

#### NOVEMBER 9, 2021 MOTION

In support of the November 9, 2021 motion, BREC argued that the estimates for the TOC, the financial analysis comparing the existing and proposed headquarters, the plant in service balance and accumulated depreciation for the existing headquarters, and the pricing terms of the agreement with Cooperate Building Solutions should be exempt from public disclosure pursuant to KRS 61.878(1)(c)(1) for the periods discussed above.

BREC states that disclosure of the information would give contractors and vendors insight into the amounts BREC expects to pay for work and would give potential purchasers of BREC's existing headquarters insight into how it values the headquarters, which would unfairly raise its costs and give its competitors an unfair commercial advantage. With respect to the pricing terms in the agreement with Cooperate Building Solutions, BREC also argued that disclosure of confidential terms in a third party contract could dissuade contractors from working on projects for BREC, which could drive up costs. BREC asserts this information is not publicly available elsewhere and this type of information is generally considered confidential and proprietary and has been treated as such by the Commission in the past.<sup>14</sup>

Having considered the motion and the material at issue, the Commission finds that the information for which confidential treatment is sought is generally recognized as confidential or proprietary under the circumstances and disclosure of said material would permit an unfair commercial advantage to BREC's competitors; it 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).

However, for the reasons discussed above, the Commission is only granting confidential treatment to the very specific information regarding the plant in service and accumulated depreciation for the existing headquarters under the limited circumstance in this case, given BREC's intent to sell the headquarters in the near future. Further, the grant of confidential treatment for certain estimates and pricing terms should not be

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<sup>14</sup> Case No. 2019-00326, Oct. 1, 2019 Order.

construed as a grant of confidential treatment for amounts actually spent that will be included in rates or affect a utilities capital position.

IT IS THEREFORE ORDERED that:

1. BREC's August 21, 2021 motion for confidential treatment is granted.
2. The cost estimates for specific work in the construction of the proposed headquarters shall not be placed in the public record or made available for public inspection until construction costs are final or until further Order of this Commission.
3. The current and projected book values and appraised value of the existing headquarters property shall not be placed in the public record or made available for public inspection until the real estate transactions have closed or until further Order of this Commission.
4. The location, structure, and other sensitive information regarding BREC's energy control room shall not be placed in the public record or made available for public inspection for an indefinity period or until further Order of this Commission.
5. BREC's October 22, 2021 motion for confidential treatment is granted.
6. The cost estimates for the construction of the new TOC shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
7. The appraisal reports and estimated current value of BREC's existing headquarters properties and related information shall not be placed in the public record or made available for public inspection until such time as the estate transactions for all of BREC's existing headquarters properties have closed or until further Order of this Commission.



8. The location, structure, and other sensitive information regarding BREC's energy control room 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.

9. BREC's November 9, 2021 motion for confidential treatment is granted.

10. The cost estimates for the construction of the new TOC shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

11. The financial analysis comparing the existing headquarters to the proposed headquarters, which includes the projected construction costs of the proposed headquarters, shall not be placed in the public record or made available for public inspection until the construction contract is awarded or further Order of this Commission.

12. The plant in service balance and accumulated depreciation for the existing headquarters shall not be placed in the public record or made available for public inspection until the existing headquarters is sold or until further Order of this Commission.

13. The pricing terms of the agreement between Cooperate Building Solutions to provide a facility planning study for the TOC 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.

14. 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).

15. 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.

16. 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.

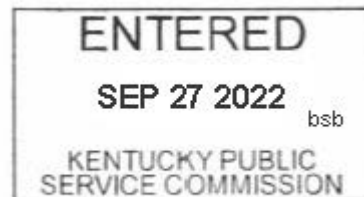
17. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow BREC to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

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