

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	)	2022-00041
CORPORATION FROM MAY 1, 2021 THROUGH	)	
OCTOBER 31, 2021	)	

ORDER

This matter arises on three motions filed by Big Rivers Electric Corporation (BREC). On April 14, 2022, BREC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for two years for redactions from a planned maintenance outage schedule filed as part of BREC's response to the March 31, 2022 Commission Staff's First Request for Information (Staff's First Request), Item 4, and for an indefinite period for redactions from BREC's response to Staff's First Request, Items 4 (excluding outage information), 5, 12, and 13.

On May 19, 2022, 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 redactions from its amended responses to Staff's First Request, Items 5 and 21.

On July 28, 2022, 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 redactions from its second amended responses to Staff's First Request, Items 4 and 21.

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 for the application of KRS 61.878(1)(c)(1), which exempts from disclosure “[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, 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” 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.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

#### APRIL 14, 2022 MOTION

BREC’s response to Staff’s First Request, Item 4, included a reference to scheduling of a planned maintenance outage for the D.B. Wilson generating station.<sup>4</sup> BREC argued that disclosing outage schedules would allow suppliers and competitors to know the timing and capacity needs during those outages. BREC’s response to Staff’s First Request, Items 4 and 5, also included redacted fuel bid analysis. BREC argued that

---

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

<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>4</sup> BREC’s Response to Staff’s First Request, Item 4, at unnumbered 11.

fuel supply bid disclosure would give its suppliers, buyers, and competitors insight into prices and other terms at which BREC is willing to buy fuel and sell and buy power, affecting competition. BREC's response to Staff's First Request, Item 12, consisted of terms of special contracts and other non-member sales. BREC's response to Staff's First Request, Item 13 included identities of individual commercial retail customers paired with their unredacted usage data. BREC argued that parties to special contracts and other non-member sales would be reluctant to have sales information disclosed, and disclosure would likely reduce the pool of parties willing to negotiate. BREC also argued that these parties and individual retail customers are entitled to protect their private information pursuant to KRS 61.878(1)(a).

Having considered the motion and the material at issue, the Commission finds that BREC's motion should be granted. Scheduled outages should be confidential because other energy market participants would know when BREC's need for purchased power would spike.<sup>5</sup> Disclosure of coal solicitation information could affect future bidding, allowing competitors to gain an unfair advantage by having access to BREC's offers. This type of information was previously held confidential by the Commission.<sup>6</sup> BREC sought five years' confidential treatment for similar information in the two subsequent motions resolved in this Order. The fuel solicitation information will become obsolete after a finite time and confidential treatment shall be limited to five years.<sup>7</sup> The terms of special

---

<sup>5</sup> See Case No. ADM 387, *Electronic Review of The Adequacy of Kentucky's Generation Capacity and Transmission System* (Ky. PSC May 9, 2022), Order at 3.

<sup>6</sup> Case No. 2018-00019, *Electronic Examination of the Application of the Fuel Adjustment Clause of East BREC Cooperative, Inc. from May 1, 2017 Through October 31, 2017* (Ky. PSC May 29, 2018), Order at 2.

<sup>7</sup> See Case No. ADM 387, (Ky. PSC May 9, 2022), Order at 3.

contracts and other non-member sales should be granted confidential treatment because public disclosure of this information could harm BREC in negotiating future special contracts.<sup>8</sup> In accordance with Commission precedent, confidential treatment for special contract terms and non-member sales shall be limited to ten years, at which time this data will be obsolete.<sup>9</sup> Regarding individual member usage data, the identified commercial customers participate in a competitive environment and disclosure of cost and consumption information puts them at a disadvantage, which in turn could disadvantage BREC by discouraging companies from locating or expanding in BREC's territory. The Commission finds that the designated materials are records that meet the criteria for confidential treatment and are exempted from public disclosure for two years for BREC's response to Staff's First Request, Item 4, pertaining to scheduled outages, five years for BREC's response to Staff's First Request, Items 4 and 5, pertaining to fuel solicitation, and ten years for BREC's response to Staff's First Request, Items 12 and 13, pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

#### MAY 19, 2022 MOTION

BREC provided an amended response to Staff's First Request, Items 5 and 21, including redacted coal solicitation information.

Having considered the motion and the material at issue, the Commission finds that BREC's motion should be granted. As discussed above, disclosure of coal solicitation information could affect future bidding, allowing competitors to gain an unfair advantage

---

<sup>8</sup> See Case No. 2016-00117, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC Dec. 22, 2021), Order at 2, granting confidential treatment for ten years.

<sup>9</sup> See Case No. 2016-00117, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC Dec. 22, 2021), Order at 2.

by having access to BREC's offers. The Commission finds that the designated materials, are records that meet the criteria for confidential treatment and are exempted from public disclosure for ten years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

JULY 28, 2022 MOTION

BREC provided another amended response to Staff's First Request, Items 5 and 21, including redacted coal solicitation information.

Having considered the motion and the material at issue, the Commission finds that BREC's motion should be granted. As discussed above, disclosure of coal solicitation information could affect future bidding, allowing competitors to gain an unfair advantage by having access to BREC's offers. The Commission finds that the designated materials, are records that meet the criteria for confidential treatment and are exempted from public disclosure for ten years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. BREC's April 14, 2022, May 19, 2022, and July 28, 2022 motions for confidential treatment are granted.
2. Redactions from BREC's response to Staff's First Request, Item 4, pertaining to scheduled outages shall not be placed in the public record or made available for public inspection for two years or until further Order of this Commission.
3. Redactions from BREC's response to Staff's First Request, Items 4 and 5, pertaining to fuel solicitation, and amended responses to Items 5 and 21, 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. Redactions from BREC's response to Staff's First Request, Items 12 and 13, shall not be placed in the public record or made available for public inspection for ten years or until further order of this Commission.

5. 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).

6. 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. 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.

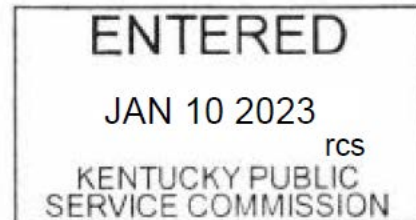
8. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an order finding that the material no longer qualifies for confidential treatment in order to allow BREC to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner



ATTEST:

  
\_\_\_\_\_  
Executive Director

\*Big Rivers Electric Corporation  
201 Third Street  
P. O. Box 24  
Henderson, KY 42420

\*Big Rivers Electric Corporation  
Big Rivers Electric Corporation  
201 Third Street  
P. O. Box 24  
Henderson, KY 42420

\*Tyson Kamuf  
Corporate Attorney  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42420