

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)	2022-00433
OF A NEW TRANSMISSION OPERATIONS)	
CENTER AND AN ORDER AUTHORIZING BIG)	
RIVERS TO DISPOSE OF PROPERTY)	

ORDER

This matter arises on two motions for confidential treatment filed by Big Rivers Electric Corporation (BREC). On January 24, 2023, BREC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for redactions from BREC's application and attached testimony and exhibits.

On March 6, 2023, 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 2, 3(a), 7, 13, and 14.

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 Exceptions to the free and open

¹ KRS 61.872(1).

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

In support of its motions, BREC argued the application of two exceptions to disclosure. 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.” 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”⁴ 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 not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.⁵

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁶

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ KRS 61.878(1)(m)(1).

⁵ KRS 61.878(1)(m)(1)(f).

⁶ KRS 61.878(1)(m)(2)(b).

JANUARY 24, 2023 MOTION

The information redacted from BREC's application and accompanying testimony and exhibits, includes the locations of its data and control centers and security vulnerabilities of these centers, as well as transmission facility plans.

Having considered the motion and the material at issue, the Commission finds that BREC's motion for confidential treatment should be granted. The locations of BREC's data and control centers and security vulnerabilities of these centers, as well as transmission facility plans, may reasonably be expected to expose vulnerabilities in public utility critical systems. It therefore meets the criteria for confidential treatment and should be exempted from public disclosure indefinitely pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(m).

MARCH 6, 2023 MOTION

Information redacted from BREC's responses to Staff's First Request, Items 2, 6, 7, and 14 include the locations of its data and control centers and security vulnerabilities of these centers. Redactions from BREC's responses to Staff's First Request, Items 3, 12, 13, and 14 include estimated values for BREC's old headquarters building and old transmission facility.

Having considered the motion and the material at issue, the Commission finds that BREC's motion for confidential treatment should be granted. The locations of BREC's data and control centers and security vulnerabilities of these centers may reasonably be expected to expose vulnerabilities in public utility critical systems. This information therefore meets the criteria for confidential treatment and should be exempted from public disclosure indefinitely pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(m).

Old headquarters building and old transmission facility valuation information should remain confidential because if this information were disclosed, it would prevent BREC from obtaining the best possible price for the property. This information therefore meets the criteria for confidential treatment and should be exempted from public disclosure for five years or until the property is sold, whichever period is shorter, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. BREC's January 24, 2023, and March 6, 2023, motions for confidential treatment are granted.

2. The designated material in BREC's January 24, 2023 motion granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection indefinitely or until further Order of this Commission for information protected by KRS 61.878(1)(m).

3. BREC's responses to Staff's First Request, Items 2, 6, 7, and 14 shall not be placed in the public record or made available for public inspection indefinitely or until further Order of this Commission for information protected by KRS 61.878(1)(m).

4. BREC's responses to Staff's First Request, Items 3, 12, 13, and 14 shall not be placed in the public record or made available for public inspection for five years or until the property is sold, whichever period is shorter, or until further Order of this Commission, for information protected by KRS 61.878(1)(c)(1).


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

ENTERED
SEP 07 2023 rcs
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