

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF BIG RIVERS)	
ELECTRIC CORPORATION AND KENERGY)	CASE NO.
CORP. FOR APPROVAL OF A SPECIAL)	2023-00045
CONTRACT WITH ECONOMIC DEVELOPMENT)	
RATES WITH PRATT PAPER (KY), LLC)	

ORDER

On January 13, 2023, Big Rivers Electric Corporation (BREC) and Kenergy Corp. (Kenergy) (collectively, Joint Applicants) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for certain redacted terms of a Retail Services Agreement, annual capacity position, a portion of direct testimony referencing the terms, as well as projections of net present value (NPV).

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act,¹ which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.² The exceptions to the free and open examination of public records should be strictly construed.³ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

exemptions is applicable.⁴ KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.⁵ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(i) grants confidential protection to preliminary drafts, notes, or correspondence.⁶

DISCUSSION AND FINDINGS

In support of its motion, Joint Applicants argue that several Orders⁷ issued by the Commission are directly applicable to support the confidential treatment of the information redacted from the specified retail agreements. Joint Applicants stated that energy usage and specific terms related to price and energy demand are confidential and private pursuant to KRS 61.878(1)(a), which excludes “[p]ublic records containing information of

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ KRS 61.878(1)(a).

⁶ KRS 61.878(1)(i).

⁷ Case No. 2022-00012 *Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct a 161 KV Transmission Line in Henderson County* (Ky. PSC Jun. 3, 2022) Order, (granting confidential treatment of the Memorandum of Agreement between Big Rivers, Kenergy, and Pratt, which was incorporated into the Retail Agreement); Case No. 2019-00365 *Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for Approval of Contracts for Electric Service with Nucor Corporation*, (Ky. PSC Jan. 22, 2020), Order; Case No. 2014-00134 *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 *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; TFS 2018-00318; see also Case No. 2021-000079, *In the Matter of: Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity Authorizing the Conversion of the Green Station Units to Natural Gas-Fired Units and an Order Approving the Establishment of a Regulatory Asset*, (Ky. PSC Mar. 5, 2021), Order at 6; See, Case No. 2022-00012, *In the Matter of: Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct a 161 KV Transmission Line in Henderson County, Kentucky* (Ky. PSC June 3, 2022), Order; Case No. 2022-00028, *Electronic Application of Big Rivers Electric Corporation for Annual Review of Its MRSM Charge for Calendar Year 2021*, (Ky. PSC Mar. 16, 2022), Order.

a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy” from public disclosure.

In support of its motion, Joint Applicants argued its internal projections of margins, the NPV of the benefits to its members from the Pratt agreement, market energy and capacity prices warranted confidential treatment pursuant to KRS 61.878(1)(c)(1), which excludes from public disclosure records confidentially disclosed to an agency that are generally recognized as confidential or proprietary if the public disclosure of the records would permit an unfair commercial advantage to the competitors of the entity that disclosed the records.

Joint Applicants argued that internal projections related to its annual capacity position and its marginal production of energy costs, are substantially similar to information which the Commission has previously granted confidential treatment.⁸ Joint Applicants asserted that this information affects investment and borrowing options. According to the motion, some of this information is known on a need-to-know basis only, making it proprietary as well.

BREC sells wholesale power and negotiates on the open market. BREC asserts public consumption of material terms of negotiated contracts with purchasers of power affects BREC both in future negotiations with other purchasers and in its credit. In order for BREC to compete, BREC stated that it needs to keep its supply cost low while obtaining the maximum price for its power.

⁸ See Case No. 2021-00282 *Electronic Tariff Filing of Big Rivers Electric Corporation and Jackson Purchase Energy Corporation for Approval and Confidential Treatment of a Special Contract and Cost Analysis Information and a Request for Deviation from the Commission's September 24, 1990 Order in Administrative Case No. 327*, (Ky. PSC Oct. 14, 2021), Order (granting confidential treatment of BREC's internal projections related to its capacity position, its marginal production energy costs, and its margins and the NPV of the benefits to its members from the proposed contracts for an indefinite period).

Having considered the motion and the material at issue, the Commission finds that the requested material should be given confidential treatment. In following the Commission precedent, as cited in the motion in this case, the material is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1). The Commission notes that the specified terms of each of the agreements should be given confidential treatment because they also meet the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(a).

IT IS THEREFORE ORDERED that:

1. The Joint Applicant'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 an indefinite period 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 5:001E, Section 13(9).
4. BREC or Kenergy shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
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, Joint Applicants 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 the Joint Applicants are 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 Joint Applicants to seek a remedy afforded by law.

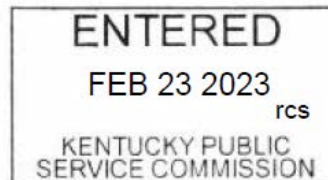
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PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

*Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419

*Jeff Hohn
Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419

*Big Rivers Electric Corporation
710 West Second Street
P. O. Box 20015
Owensboro, KY 42304

*Tyson Kamuf
Corporate Attorney
Big Rivers Electric Corporation
710 West Second Street
P. O. Box 20015
Owensboro, KY 42304