

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 2023 INTEGRATED RESOURCE)	CASE NO.
PLAN OF BIG RIVERS ELECTRIC)	2023-00310
CORPORATION)	

ORDER

On February 16, 2024, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for a period of five years for its response to Commission Staff's Second Request for Information (Staff's Second Request), Items 5, 6, 7, 16, and 24; its response to the Office of Attorney General's Second Request for Information (Attorney General's Second Request), Items 5 and 9; and its response to Joint Intervenors' Second Request for Information (Joint Intervenors' Second Request), Items 10, 27, 28, 35, 36, 43, 46, 58, and 60.

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 61.844."¹ 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

¹ KRS 61.872(1).

² See KRS 61.871.

establishing that one of the exceptions is applicable.³ 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.”⁴

DISCUSSION

In support of its petition, BREC argued the following information should be confidential pursuant to KRS 61.878(1)(c)(1): information related to on-peak and off-peak pricing and saving;⁵ forward capacity curve projections acquired from a third party;⁶ projected energy and capacity costs;⁷ O&M Costs for BREC’s Robert D. Green Generating Station;⁸ revised projections of capacity positions and seasonal accredited capacity;⁹ tables depicting solar generation and capacity factors;¹⁰ specific facts related to solar power purchase agreements (PPAs) and BREC’s request for proposals and Solar ASRFP bids;¹¹ specific details of agreements between BREC and Owensboro Municipal Utilities (OMU) as well as forecasts of OMU’s Total Energy Rate;¹²

³ 807 KAR 5:001, Section 13(2)(c).

⁴ KRS 61.878(1)(c)(1).

⁵ BREC’s Response to Staff’s Second Request, Item 5.

⁶ BREC’s Response to Staff’s Second Request, Item 6.

⁷ BREC’s Response to Staff’s Second Request, Item 7.

⁸ BREC’s Response to Staff’s Second Request, Item 24.

⁹ BREC’s Response to Staff’s Second Request, Item 16 and Attorney General’s Second Request, Item 5.

¹⁰ BREC’s Response to Attorney General’s Second Request, Item 9.

¹¹ BREC’s Response to Joint Intervenors Second Request, Item 10.

¹² BREC’s Response to Joint Intervenors Second Request, Item 27.

information regarding BREC's on member sales projections;¹³ supporting workbooks used to calculate renewable and storage project costs;¹⁴ supporting workbooks used to calculate thermal generation product costs;¹⁵ cost assumptions related to firm gas;¹⁶ workbooks containing data used to calculate Midcontinent Independent System Operator (MISO) seasonable accredited capacity values reported for each of the resources examined in the IRP;¹⁷ calculations and factors related to the estimated greenhouse gas (GHG) reductions submitted in its new Empowering Rural America (ERA) program letter of intent;¹⁸ and revenue projections from fly ash and gypsum sales.¹⁹

BREC argued that it competes in the wholesale power market, including short-term bilateral energy markets, day-ahead, real-time energy markets, ancillary services markets, and capacity markets, which is dependent on its ability to obtain the maximum price for the items it sells and keeping its cost of production or purchase as low as possible.²⁰ BREC stated that it also competes in credit markets; consequently, a competitor armed with BREC's propriety and confidential information would be able to increase BREC's costs or decrease BREC's revenues, which, in turn, affect BREC's

¹³ BREC's Response to Joint Intervenors Second Request, Item 28.

¹⁴ BREC's Response to Joint Intervenors Second Request, Item 35.

¹⁵ BREC's Response to Joint Intervenors Second Request, Item 36.

¹⁶ BREC's Response to Joint Intervenors Second Request, Item 43.

¹⁷ BREC's Response to Joint Intervenors Second Request, Item 46.

¹⁸ BREC's Response to Joint Intervenors Second Request, Item 58.

¹⁹ BREC's Response to Joint Intervenors Second Request, Item 60.

²⁰ BREC's Motion for Confidential Treatment (filed Feb. 16, 2024) at 3.

creditworthiness.²¹ BREC argued that if the information is disclosed, it could give market participants insight into the prices at which BREC is willing to buy fuel and secure other operations and maintenance related goods and services; therefore disclosure could manipulate the bidding processes.²² BREC stated that disclosure of this information would provide insight into cost of producing and acquiring power, indicate the market conditions BREC expects to encounter, and the inner workings of the company.²³

BREC stated this information should be protected to prevent the imposition of an unfair competitive advantage, and competitors having access to information would be disadvantageous to BREC and its Member-Owners.²⁴ BREC also argued that the ability to negotiate the most advantageous power purchases agreements and then offer competitive prices to BREC's members, companies interesting in expanding in Kentucky, and potential new members is fundamental to BREC's continued success.²⁵ BREC cited that the Commission has previously granted confidential treatment to similar information.²⁶

²¹ BREC's Motion for Confidential Treatment at 3.

²² BREC's Motion for Confidential Treatment at 4.

²³ BREC's Motion for Confidential Treatment at 10.

²⁴ BREC's Motion for Confidential Treatment at 4.

²⁵ BREC's Motion for Confidential Treatment at 4.

²⁶ BREC's Motion for Confidential Treatment at 7, citing Case No. 2023-000013, *Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation From November 1, 2020 Through October 31, 2022* (Ky. PSC Jan. 29, 2024); Case No. 2020-00299, *2020, Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Apr. 14, 2022) (note that BREC cited this case as precedent, despite the Order explicitly stating that it shall not be used as precedent in subsequent proceedings); Case No. 2018-00195, *Duke Energy Kentucky, Inc.'s Integrated Resource Plan* (Ky. PSC Sept. 3, 2019).

Having considered the motion and the material at issue, the Commission finds that BREC's motion should be granted. The Commission finds that the designated material, as identified above, contained in BREC's responses to Staff's Second Request, Attorney General's Second Request, and Joint Intervenors' Second Request are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Commission finds that disclosure of these items would provide competitive disadvantage for BREC by hindering BREC's ability to compete in the wholesale marketplace and would reveal inner workings of BREC. The Commission has previously found confidential treatment was warranted for similar information.²⁷

²⁷ See Case No. 2018-00195, *Electronic 2018 Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Ky. PSC Sept. 3, 2019), Order (granting confidential treatment to operations and management costs, power market prices and projected capacity, and resource alternative capital costs); Case No. 2023-00045, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. For Approval of a Special Contract with Economic Development Rates with Pratt Paper (KY), LLC* (Ky. PSC Feb. 23, 2023), Order (granting confidential treatment to internal projections related to annual capacity positions); Case No. 2022-000274, *Electronic Application of Bright Mountain Solar, LLC for a Certificate of Construction for up to 80 Megawatt Merchant Electric Solar Generating Facility and Related Nonregulated Transmission Line of Approximately 4 Miles in Perry County* (Ky. PSC Jan 12, 2024), Order (granting confidential treatment to estimated capital costs for projected and estimated operations and maintenance costs during operation); Case No. 2023-00312, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Revise the Large Industrial Customer Standby Service Tariff* (Ky. PSC Feb. 29, 2024), Order (granting confidential treatment to MISO's seasonal accredited capacity); Case No. 2021-00004, *Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets* (Ky. PSC May 1, 2021), Order (granting confidential treatment to projected capacity factors and variable O&M rates); Case No. 2021-00294, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company November 1, 2020 Through April 30, 2021* (Ky. PSC May 17, 2022), Order (granting confidential treatment to non-winning bids); Case No. 2018-000146, *Application of Big Rivers Electric Corporation for Termination of Contracts and a Declaratory Order and for Authority to Establish a Regulatory Asset* (Ky. PSC Jan. 11, 2019), Order (granting confidential treatment to projected energy and capacity sales); Case No. 2021-00086, *Electronic Back-Up Power Supply Plan of Duke Energy Kentucky, Inc.* (Ky. PSC May 6, 2021), Order (granting confidential treatment to information related to business assumptions and future cost estimations); Case No. 2023-00013, *An Electronic Examination of Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2020 Through October 31, 2022* (Ky. PSC Jan. 29, 2024), Order (granting confidential treatment to sales projections related to the market conditions that would benefit competitors and affect the market).

IT IS THEREFORE ORDERED that:

1. BREC's February 16, 2024 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. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, BREC shall inform the Commission and file with the Commission an unredacted copy of the designated material.
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.

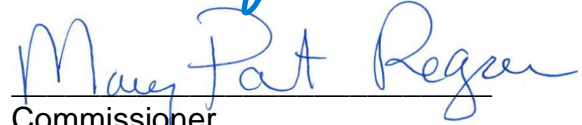
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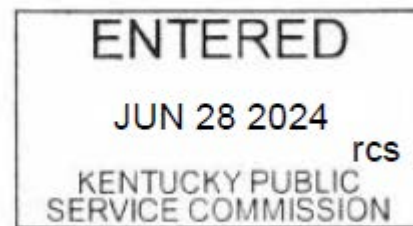
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