

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 June 10, 2024, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to KRS 278.400, requesting a partial rehearing to reconsider the Commission’s Order entered May 20, 2024, regarding BREC’s motion for confidentiality filed on January 5, 2024.

LEGAL STANDARD

Pursuant to KRS 278.400, which establishes the standard of review for a motion for rehearing, the rehearing is limited to new evidence not readily discoverable at the time of the original hearing, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>1</sup> An order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>2</sup>

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<sup>1</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

<sup>2</sup> *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

### DISCUSSION AND FINDINGS

In BREC's January 5, 2024 motion, BREC described the material provided in Commission Staff's First Request for Information (Staff's First Request), Item 8, as information related to BREC's contracts with Kentucky Municipal Energy Agency (KYMEA).<sup>3</sup> The exact line within BREC's response to Staff's First Request, Item 8 stated "KYMEA or its scheduling agent notifies Big Rivers of the amount to be delivered to the [redacted] Commercial Pricing Node, up to the full contract amount, and the hours of delivery for the next operating day."<sup>4</sup>

In the May 20, 2024 Order, the Commission explained that BREC did not meet its burden of proof pursuant to 807 KAR 5:001, Section 13(1)(c), by failing to explain how disclosure of the redacted information would result to a commercial disadvantage to customers or provide the necessary specific grounds for why this information should be confidential. Instead, BREC made a general argument for all the items contained in the motion warranted confidential treatment for under KRS 61.878(1)(c)(1).

As a basis for BREC's June 10, 2024 motion, BREC requested that the Commission grant the rehearing request and grant confidential treatment to BREC's

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<sup>3</sup> BREC's Motion for Confidentiality (filed Jan. 5, 2024) at 5.

<sup>4</sup> BREC's Response to Staff's First Request (filed Jan. 5, 2024), Item 8.

response to Staff's First Request, Item 8, a commercial pricing node relevant to its contractual relationship with KYMEA.<sup>5</sup> BREC argued that the information the Commission denied confidential protection for reflects proprietary commercial pricing terms that, if disclosed, would impair BREC's ability to negotiate and maintain future commercial relationships, resulting in competitive harm.<sup>6</sup> BREC argued that disclosure of the relevant pricing node provides a substantial insight into the actual rates paid by KYMEA under its special contract and allowing interested third parties access to this sensitive pricing information provides them an unfair commercial advantage and harms BREC's ability to effectively compete.<sup>7</sup> BREC also argued that the Commission granted confidential treatment of this same information in connection with the 2016 filing of the special contract with KYMEA,<sup>8</sup> as well as in subsequent matters, recognizing the commercially-sensitive and proprietary nature of the information, and cited to other times information within the KYMEA contract was granted confidential treatment.<sup>9</sup>

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that BREC's rehearing request should be granted due to BREC providing sufficient information indicating that the redacted information was confidentially disclosed, is generally recognized as confidential, and if disclosed would permit an unfair commercial advantage to BREC's competitors. As noted

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<sup>5</sup> BREC's Motion for Partial Rehearing (filed June 10, 2024) at 1.

<sup>6</sup> BREC's Motion for Partial Rehearing at 2.

<sup>7</sup> BREC's Motion for Partial Rehearing at 2.

<sup>8</sup> 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* (filed Aug. 5, 2016).


<sup>9</sup> Case No. 2016-00306, Jan. 2, 2019 Order.

in the motion, the Commission previously granting confidential treatment to the commercial pricing node within BREC and KYMEA's contract. Therefore, the Commission finds that the designated material are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13. The Commission reminds BREC that the rehearing process could have been avoided had BREC made an appropriate argument citing specific grounds for confidential treatment in the January 5, 2024 motion.

IT IS THEREFORE ORDERED that:

1. BREC's motion for reconsideration is granted.
2. BREC's January 5, 2024 motion for confidential treatment for commercial pricing node descriptor contained in BREC's response to Staff's First Request, Item 8, is granted.
3. The remainder of the May 20, 2024 Order not in conflict with this Order remains in effect.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
JUN 27 2024  
rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

\*Angela M Goad  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Jody M Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Ashley Wilmes  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*Joe F. Childers  
Childers & Baxter PLLC  
300 Lexington Building, 201 West Sho  
Lexington, KENTUCKY 40507

\*Nihal Shrinath  
Sierra Club  
2101  
Webster St. , Suite 1300  
Oakland, CALIFORNIA 94612

\*Byron Gary  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*John Horne  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Patrick Woolsey  
Sierra Club  
2101  
Webster St. , Suite 1300  
Oakland, CALIFORNIA 94612

\*Evan Buckley  
Dinsmore & Shohl, LLP  
101 South Fifth Street  
Suite 2500  
Louisville, KENTUCKY 40202

\*John Lavanga  
Dinsmore & Shohl, LLP  
City Center, 100 W. Main Street  
Suite 900  
Lexington, KENTUCKY 40507

\*Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304

\*Tom Fitzgerald  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*Honorable Kerry E Ingle  
Attorney at Law  
Dinsmore & Shohl, LLP  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, KENTUCKY 40202

\*Senthia Santana  
Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304

\*Gregory B Ladd  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Larry Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Edward T Depp  
Dinsmore & Shohl, LLP  
101 South Fifth Street  
Suite 2500  
Louisville, KENTUCKY 40202

\*Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*J. Michael West  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Tyson Kamuf  
Corporate Attorney  
Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304