

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION BY THE PUBLIC)	
SERVICE COMMISSION OF THE)	
ENVIRONMENTAL SURCHARGE MECHANISM)	
OF BIG RIVERS ELECTRIC CORPORATION FOR)	
THE SIX-MONTH BILLING PERIODS ENDING)	
JANUARY 31, 2020, JULY 31, 2020, JANUARY 31,)	CASE NO.
2021, JANUARY 31, 2022, JULY 31, 2022, AND)	2023-00373
JANUARY 31, 2023, THE TWO-YEAR BILLING)	
PERIODS ENDING JULY 31, 2021, AND JULY 31,)	
2023, AND THE PASS-THROUGH MECHANISM)	
OF ITS THREE MEMBER DISTRIBUTION)	
COOPERATIVES)	

ORDER

On March 27, 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 indefinite period for its response to Request No. 1 of Commission Staff’s Second Request for Information (Staff’s Second Request) which requested information about a large increase in Gross Plant in Service and Accumulated Depreciation Expense.

In support of its motion, BREC argued that pursuant to KRS 61.878(1)(c)(1), the requested records are exempted from disclosure under the Kentucky Open Records Act, which states, “[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.¹

BREC also argued that it needs to compete effectively in various wholesale power markets to sell excess energy and meet its members' needs.² BREC stated that it competes for affordable credit, and its ability to secure good credit terms depends on its financial performance and business risks.³ BREC further argued that information concerning the detailed inner workings of a company is generally recognized as confidential or proprietary as supported by cases like *Hoy v. Kentucky Industrial Revitalization Authority*⁴ and *Marina Management Services, Inc. v. Commonwealth*,⁵ where the courts acknowledged that such information, if disclosed, could unfairly advantage competitors.⁶ BREC also stated that some of the information was subject to a non-disclosure agreement with at least one other party.⁷

Having considered the motion and the material at issue, the Commission finds that BREC's response to Request No. 1 of the Staffs Second Request which asked for an explanation in the increase for Gross Plant in Service and Accumulated Depreciation expense categories, is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public

¹ KRS 61.878(1)(c)(1).

² Motion of BREC for Confidential Treatment (Motion) (filed Mar. 27, 2024) at 4.

³ Motion at 4-5.

⁴ *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995).

⁵ *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995).

⁶ Motion at 6.

⁷ Motion at 2.

disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 (1)(c)(1). The Commission notes that, although it is not bound to non-disclosure agreements, the information warrants confidential treatment.

IT IS THEREFORE ORDERED that:

1. BREC's March 27, 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 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 5:001, 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION

Cecile Halton
Chairman

*not
signing
for Chair.
w/ permission*

Vice Chairman

Mary Pat Regan
Commissioner

ENTERED
AUG 20 2024
rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

[Signature] FOR
Executive Director

*Greg Grissom
Jackson Purchase Energy Corporation
6525 US Highway 60 W
Paducah, KY 42001

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

*Meredith Kendall
Jackson Purchase Energy Corporation
6525 US Highway 60 W
Paducah, KY 42001

*Martin Littrel
Pres. CEO
Meade County R.E.C.C.
P. O. Box 489
Brandenburg, KY 40108-0489

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

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