

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                      |   |            |
|--------------------------------------|---|------------|
| ELECTRONIC APPLICATION OF BIG RIVERS | ) |            |
| ELECTRIC CORPORATION FOR ANNUAL      | ) | CASE NO.   |
| REVIEW OF ITS MRSM CHARGE FOR        | ) | 2024-00031 |
| CALENDAR YEAR 2023                   | ) |            |

ORDER

On February 28, 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 an indefinite period for customer specific usage data and billing information contained in the Direct Testimony of Talina R. Mathews (Mathews Direct Testimony) attached as Exhibit B to the application and information related to BREC’s confidential decommissioning bids contained in Exhibits Berry-2(a) and Berry 2(b) attached to the Direct Testimony of Nathaniel A. Berry (Berry Direct Testimony), Exhibit C to the application.

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.”<sup>1</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> KRS 61.878.

party requesting the material be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

In support of its motion, 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.” KRS 61.878(1)(a) exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

### DISCUSSION AND FINDINGS

The Mathews Direct Testimony includes customer specific billing and usage information that was redacted.<sup>4</sup> BREC argued that release of such information would constitute an unwarranted invasion of the industrial customer’s personal privacy and private energy usage information. BREC also argued that the information should be granted confidential treatment because public disclosure of the designated material could provide BREC’s competitors an unfair commercial advantage in the wholesale power and capital markets and negotiating future transactions.

The Berry Direct Testimony includes information relating to decommissioning bids, including pricing and BREC’s analysis of the bids. BREC argued this information should be granted indefinite confidential treatment pursuant to KRS 61.878(1)(c)(1). BREC asserted that the information is generally treated as confidential or proprietary. BREC

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<sup>3</sup> 807 KAR 5:001, Section 12(2)(c).

<sup>4</sup> Application (filed Feb. 28, 2024), Exhibit B.

further asserted that public disclosure of the information would put BREC at a commercial disadvantage in soliciting decommissioning bids in the future and could be used by vendors to manipulate the bidding process.

Having considered the motion and the material at issue, the Commission finds that BREC's motion for confidential treatment should be granted. Customer specific billing and usage information is generally recognized as confidential or proprietary, and of a personal nature, and that public disclosure would result in an unwarranted invasion of personal privacy because it would make private usage and billing data public.

Furthermore, information regarding decommissioning bids and the analysis thereof is generally considered confidential or proprietary and that disclosure of such information would grant BREC's competitors an unfair commercial advantage by placing BREC at a disadvantage when soliciting such bids in the future.

The designated material therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 807 5:001, Section 13; KRS 61.878(1)(a); and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. BREC's February 28, 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 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 5:001, 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 20 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.

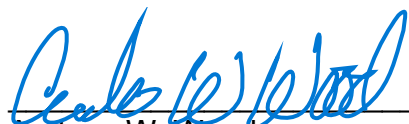
6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow BREC to seek a remedy afforded by law.

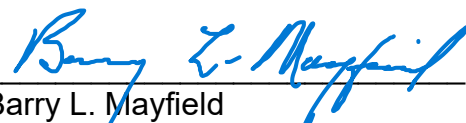
Entered on this 10th day of September, 2026.

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Angie Hatton  
Chair

  
\_\_\_\_\_  
Mary Pat Regan  
Vice Chair

  
\_\_\_\_\_  
Andrew W. Wood  
Commissioner

  
\_\_\_\_\_  
Barry L. Mayfield  
Commissioner

ATTEST:

  
\_\_\_\_\_  
Justin McNeil  
Executive Director

Case No. 2024-00031

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