

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 May 1, 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 and negotiated terms of special contracts contained in the attachment to BREC’s response to Commission Staff’s First Request for Information (Staff’s First Request), Item 2.

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

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

<sup>2</sup> KRS 61.878.

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

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 attachments to BREC’s response to Staff’s First Request, Item 2, includes customer specific billing and usage information that was redacted. 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 attachment to BREC’s response to Staff’s First Request, Item 2, also contains the negotiated terms of special contracts. 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 further asserted that public disclosure of the information would put BREC at a commercial disadvantage in negotiating future transactions.

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 and provide an unfair commercial advantage to BREC's competitors.

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 May 1, 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.

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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

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ATTEST:



Justin McNeil  
Executive Director

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