

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF BIG RIVERS ELECTRIC)	2024-00141
CORPORATION FROM NOVEMBER 1, 2022)	
THROUGH APRIL 30, 2023)	

ORDER

This matter arises upon two motions for confidential treatment filed by Big Rivers Electric Corporation (BREC). On August 26, 2024, BREC filed a motion, pursuant to 807 KAR 5:001, Section 13; KRS 61.878; and KRS 278.160(3), requesting that the Commission grant indefinite confidential treatment for BREC’s redactions from its responses to Commission Staff’s First Request for Information (Staff’s First Request), Items 12, 13, 22, and 23. On September 23, 2024, BREC filed a motion, pursuant to 807 KAR 5:001, Section 13; KRS 61.878; and KRS 278.160(3), requesting that the Commission grant indefinite confidential treatment for BREC’s redactions from its responses to Commission Staff’s Second Request for Information (Staff’s Second Request), Items 4 and 5.

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.”¹ Exceptions to the free and open

¹ KRS 61.872(1).

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 establishing that one of the exceptions is applicable.³ In support of its motions, BREC argued for the application of KRS 61.878(1)(c)(1), which exempts from disclosure “[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” and KRS 61.878(1)(a), which exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

AUGUST 26, 2024 MOTION

BREC’s response to Staff’s First Request, Item 12, includes redacted names of marketing entities through which BREC purchased power from Midcontinent Independent System Operator (MISO) or the Southeast Power Pool (SPP). BREC’s response to Staff’s First Request, Item 13, includes redacted names of non-members that contracted with BREC for off-system sales. BREC’s response to Staff’s First Request, Items 22 and 23, included redacted information regarding terms of a special contract. BREC argued that this information should not be publicly disclosed because disclosure of power transactions would disadvantage BREC compared to energy market competitors and

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

disclosure of special contract terms would affect its ability to fairly negotiate special contracts.⁴

Having considered the motion and the material at issue, the Commission finds that BREC's motion for confidential treatment should be granted in part and denied in part. Off-system sales and special contracts information and the related usage data redacted from BREC's responses to Staff's First Request, Items 13, 22, and 23 should remain confidential. Disclosure of off-system sales information would disadvantage BREC with its competitors, who could use the information in the energy market with knowledge of BREC's energy purchase history.⁵ Furthermore, disclosure of special contract terms could affect BREC's ability to fairly negotiate with other potential special contract partners in the future, disadvantaging BREC compared to its competitors. This information is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). However, in accordance with Commission precedent, confidential treatment for special contract terms and non-member sales should be limited to ten years, at which time this data will be obsolete because demand and pricing will have changed sufficiently.⁶

⁴ BREC's Motion (filed Aug. 26, 2024) at 8.

⁵ See Case No. 2023-00013, *An 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), Order at 3-4.

⁶ Case No. 2016-00117, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC Dec. 22, 2021), Order at 2; Case No 2023-00013, Jan. 29, 2024 Order at 4.

The Commission finds that confidential treatment should be denied for the identities of marketers for purchases from MISO and the SPP redacted from BREC's responses to Staff's First Request, Item 12. BREC has not provided applicable justification for why disclosure of these identities of these entities would place BREC at a competitive disadvantage.

SEPTEMBER 23, 2024 MOTION

BREC's response to Staff's Second Request, Items 4 and 5, included redacted information regarding terms of a three special contracts. BREC argued that this information should not be publicly disclosed because disclosure of special contract terms would affect its ability to fairly negotiate special contracts.⁷

Having considered the motion and the material at issue, the Commission finds that special contract terms should be granted confidential treatment because disclosure could affect BREC's ability to fairly negotiate with other potential special contract partners in the future, disadvantaging BREC compared to its competitors. This information is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). However, in accordance with Commission precedent, confidential treatment for special contract terms should be limited to ten years, at which time this data will be obsolete because each demand and pricing will have changed sufficiently.⁸

⁷ BREC's Motion (filed Sept. 23, 2024) at 9.

⁸ Case No. 2016-00117, Dec. 22, 2021 Order at 2; Case No 2023-00013, Jan. 29, 2024 Order at 4.

IT IS THEREFORE ORDERED that:

1. BREC's August 26, 2024 motion for confidential treatment is granted in part and denied in part.

2. BREC's redactions from its responses to Staff's First Request, Items 13, 22, and 23 are granted confidential treatment.

3. BREC's redactions from its responses to Staff's First Request, Item 12, are denied confidential treatment.

4. BREC's September 23, 2024 motion for confidential treatment is granted.

5. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further order of this Commission.

6. 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).

7. 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.

8. 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, 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.

9. The Commission shall not make the requested material for which confidential treatment was granted 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.

10. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

11. If BREC objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

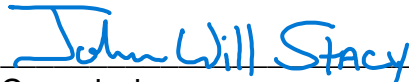
12. Within 30 days of the date of service of this Order, BREC shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

13. The designated material for which BREC's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow BREC to seek a remedy afforded by law.

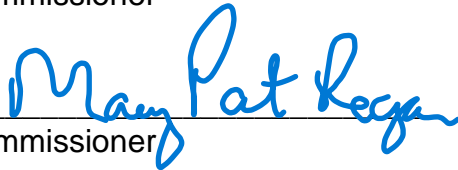
PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:



Executive Director

ENTERED
DEC 4 2024 jdc
KENTUCKY PUBLIC
SERVICE COMMISSION

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