

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE	)	
PROPOSED POLE ATTACHMENT TARIFFS OF	)	CASE NO.
RURAL ELECTRIC COOPERATIVE	)	2022-00106
CORPORATIONS	)	

ORDER

On June 2, 2022, Big Rivers Electric Corporation; Big Sandy Rural Electric Cooperative Corporation (RECC); Blue Grass Energy Cooperative Corp.; Clark Energy Cooperative, Inc.; Cumberland Valley Electric, Inc.; Farmers RECC; Fleming-Mason Energy Cooperative, Inc.; Grayson RECC; Inter-County Energy Cooperative Corporation; Jackson Energy Cooperative Corporation; Jackson Purchase Energy Corporation; Kenergy Corp.; Licking Valley RECC; Meade County RECC; Nolin RECC; Owen Electric Cooperative, Inc.; Salt River Electric Cooperative Corp.; Shelby Energy Cooperative, Inc.; South Kentucky RECC, Taylor County RECC (collectively, RECCs) jointly filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for five years for their responses to Commission Staff's Second Request for Information, Item 5 Attachments, Joint Use Agreements.

In support of its motion, the RECCs argued that the Joint Use Agreements are subject to confidential treatment pursuant to KRS 61.878(1)(c)(1).¹ The RECCs argued that the agreements contain detailed terms and conditions negotiated between private

¹ Motion for Confidential Treatment (filed June 2, 2022) at 3.

parties addressing matters such as maintenance, access, risk allocation, and insurance, as well as the applicable rates and fees to be paid by the parties.² The RECCs explained that some of the agreements even have clauses recognizing and requiring the confidentiality of that agreement's terms and conditions.³ The RECCs argued that potential users seeking pole attachments could use the information to unfairly negotiate terms to the detriment of the RECCs and other users and potential counterparties, or competitors would gain a competitive advantage.⁴ The RECCs explained that the Joint Use Agreements are also subject to renewal and, thus, ongoing negotiation exist with the counterparties.⁵ The RECCs stated that the Commission has previously granted confidential protection to similar agreements.⁶

Having considered the motion and the material at issue, the Commission finds that RECCs' motion should be granted, in part, and denied, in part. The Commission finds that negotiated terms, pricing and financial information, and term differences related to cost-sharing, space allocation, processes, and risk allocation are generally recognized as confidential or proprietary; the material 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). Disclosure of the specific terms of joint agreements

² Motion for Confidential Treatment at 2.

³ Motion for Confidential Treatment at 2.

⁴ Motion for Confidential Treatment at 3.

⁵ Motion for Confidential Treatment at 3.

⁶ Motion for Confidential Treatment at 4 *citing* Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC. Dec. 2, 2015), Order; and Case No. 2016-00371, *Application of Louisville Gas & Electric Company for an Adjustment of its Electric Rates* (Ky. PSC Dec. 10, 2018), Order.

would put RECCs at an unfair commercial disadvantage and could hinder their current and future business relationships. However, the Commission finds that any non-material terms or boilerplate language do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. The RECCs' June 2, 2022 motion for confidential treatment for the designated material is granted, in part, and denied, in part.

2. The RECCs' June 2, 2022 motion for confidential treatment for all material, negotiated, or pricing terms as described above is granted.

3. The RECCs' June 2, 2022 motion for confidential treatment for their joint use agreements is denied for any non-material or boiler plate terms is denied.

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

5. 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).

6. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, RECCs shall inform the Commission and file with the Commission an unredacted copy of the designated material.

7. 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, RECCs 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 RECCs is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. 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 RECCs to seek a remedy afforded by law.

9. 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.

10. If RECCs 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.

11. Within 30 days of the date of service of this Order, RECCs 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.

12. The designated material for which RECCs' 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 RECCs to seek a remedy afforded by law.

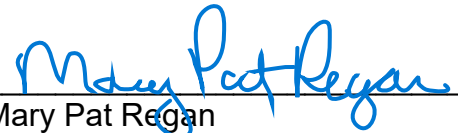
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Entered on this 17th day of September, 2026.

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Chair



Mary Pat Regan
Vice Chair



Andrew W. Wood
Commissioner



Barry L. Mayfield
Commissioner

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Justin McNeil
Executive Director

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