

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>JOINT ELECTRONIC APPLICATION OF</b>	)	
<b>KENTUCKY UTILITIES COMPANY, NOLIN</b>	)	
<b>RURAL ELECTRIC COOPERATIVE</b>	)	
<b>CORPORATION, AND EAST KENTUCKY</b>	)	
<b>POWER COOPERATIVE, INC. FOR</b>	)	
<b>APPROVAL OF AN AGREEMENT</b>	)	<b>CASE NO. 2021-00462</b>
<b>MODIFYING EXISTING TERRITORIAL</b>	)	
<b>BOUNDARY QUADRANT MAPS AND</b>	)	
<b>ESTABLISHING THE RETAIL ELECTRIC</b>	)	
<b>SUPPLIER FOR GLENDALE MEGASITE IN</b>	)	
<b>HARDIN COUNTY, KENTUCKY</b>	)	

**JOINT PETITION  
FOR CONFIDENTIAL PROTECTION**

Kentucky Utilities Company (“KU”), Nolin Rural Electric Cooperative Corporation (“Nolin RECC”), and East Kentucky Power Cooperative, Inc. (“EKPC”) (collectively, the “Joint Petitioners”) hereby petition the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1) to grant confidential protection for the redacted portions of the *Joint Settlement and Transfer of Service Territories Agreement Pursuant to KRS 278.016(6)* (the “*Settlement Agreement*”), which is attached as Exhibit 1 to the Joint Application, filed on December 17, 2021.

**Confidential or Proprietary Commercial Information (KRS 61.878(1)(c)(1))**

1. The Kentucky Open Records Act exempts from disclosure information “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.”<sup>1</sup>

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<sup>1</sup> KRS 61.878(1)(c)(1).

2. Attached to the Joint Application as Exhibit 1 is the Joint Petitioners' *Settlement Agreement*. This agreement is a product of extensive negotiations. The amount of compensation in Section 2 of the Settlement Agreement which KU will pay Nolin RECC in exchange for the modification of three existing territorial boundaries maps and thus the right to serve the new Ford Motor Company facility merits confidential protection because it is confidential business information.

3. The disclosure of this financial information could provide insight into the respective Joint Petitioners' approaches to the recruitment of new customers and additional load and their methodologies for evaluating the cost and value of providing electric service to potential economic development projects. If third parties, such as local or state governments and economic development agencies, are permitted access to this information, they could use this information in the development of their economic incentive packages to unfairly compete against the Joint Petitioners, the Commonwealth of Kentucky, and Kentucky local governments for economic development projects. Similarly, businesses within the Commonwealth that are seeking to expand could use this information to obtain much more favorable terms from any of the Joint Petitioners when negotiating for electric service for plant expansions or other economic development projects.

4. Disclosing the information in issue could place each of the Joint Petitioners at a competitive disadvantage in their efforts to expand their customer base and more efficiently use their existing capacity. These harms may ultimately harm customers of the Joint Petitioners if customer rates increase due to the disclosure of this sensitive information. Thus, the Joint Petitioners are seeking confidential protection for the highlighted portion of Section 2 of the Agreement.

5. The Commission recently granted confidential protection to the portions of a Settlement Agreement relating to compensation in exchange for the modification of an existing territorial boundaries map.<sup>2</sup>

6. To the Joint Petitioners' knowledge, the information for which the Joint Petitioners are seeking confidential treatment is not known outside of the Joint Petitioners and their counsel. It is not disseminated within the Joint Petitioners' organization except to those employees and representatives with a legitimate business need to know and act upon the information.

7. The Joint Petitioners will disclose the confidential information as required by the Commission or as required by law, a court of competent jurisdiction, or any other governmental or administrative agency having supervisory authority over the Joint Petitioners.

8. If the Commission disagrees with this request for confidential protection, however, it must hold an evidentiary hearing (a) to protect the Joint Petitioners' due process rights and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter.<sup>3</sup>

9. In compliance with 807 KAR 5:001, Section 8(3) and 13(2)(e) and the Commission's Order of July 22, 2021 in Case No. 2020-00085, the Joint Petitioners are filing with the Commission one copy of the Settlement Agreement that identifies by highlighting the information for which confidential protection is sought and one copy with the same information obscured.

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<sup>2</sup> *Electronic Joint Application of Louisville Gas and Electric Company, Meade County Rural Electric Cooperative Corporation, and Big Rivers Electric Corporation for (1) Approval of an Agreement Modifying an Existing Territorial Boundary Map and (2) Establishing Meade County Rural Electric Cooperative Corporation as the Retail Electrical Supplier for Nucor Corporation's Proposed Steel Plate Mill in Buttermilk Falls Industrial Park in Meade County, Kentucky*, Case No. 2019-00370, Order (Ky. PSC Mar. 9, 2020) (“[T]he Commission finds that the designated materials described in the joint petition related to the terms of BREC’s settlement payment to LG&E . . . meet the criteria for confidential treatment [sic] and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1)”).


<sup>3</sup> *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

10. Pursuant to the Agreement, KU has agreed to compensate Nolin RECC for the proposed modification of territorial boundary lines. Because of the length of time the proposed modification of the territorial boundary map is expected to last, the Joint Petitioners request that confidential protection be granted for an indefinite period.

**WHEREFORE**, Kentucky Utilities Company, Nolin Rural Electric Cooperative Corporation, and East Kentucky Power Cooperative, Inc. respectfully request that the Commission grant confidential protection for the information described herein.

Dated: December 17, 2021

Respectfully submitted,



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*Counsel for Nolin Rural Electric Cooperative  
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**CERTIFICATE OF COMPLIANCE**

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on December 17, 2021; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



*Kenneth R. Nicks*  
Counsel for Kentucky Utilities Company