

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

JOINT APPLICATION

Pursuant to KRS 278.018(6), Kentucky Utilities Company (“KU”), Nolin Rural Electric Cooperative Corporation (“Nolin RECC”), and East Kentucky Power Cooperative, Inc. (“EKPC”) (collectively, the “Joint Applicants”), apply for approval of an agreement modifying existing territorial boundary maps and designating KU as the exclusive retail electric supplier to serve the location known as the Glendale MegaSite in Hardin County, Kentucky.

In support of the Application, the Joint Applicants state:

1. The full name and business address of KU is: Kentucky Utilities Company, One Quality Street, Lexington, Kentucky 40507. KU may be reached by electronic mail at the electronic mail addresses of its counsel set forth below.

2. KU was incorporated under the laws of Kentucky on August 17, 1912 and is currently in good standing in Kentucky.

3. KU is a utility engaged in the electric business. KU generates and purchases electricity, and distributes and sells electricity at retail in the following counties in Central, Northern, Southeastern, and Western Kentucky:

Adair	Edmonson	Jessamine	Ohio
Anderson	Estill	Knox	Oldham
Ballard	Fayette	Larue	Owen
Barren	Fleming	Laurel	Pendleton
Bath	Franklin	Lee	Pulaski
Bell	Fulton	Lincoln	Robertson
Bourbon	Gallatin	Livingston	Rockcastle
Boyle	Garrard	Lyon	Rowan
Bracken	Grant	Madison	Russell
Bullitt	Grayson	Marion	Scott
Caldwell	Green	Mason	Shelby
Campbell	Hardin	McCracken	Spencer
Carlisle	Harlan	McCreary	Taylor
Carroll	Harrison	McLean	Trimble
Casey	Hart	Mercer	Union
Christian	Henderson	Montgomery	Washington
Clark	Henry	Muhlenberg	Webster
Clay	Hickman	Nelson	Whitley
Crittenden	Hopkins	Nicholas	Woodford
Daviess			

4. The full name and business address of Nolin RECC is Nolin Rural Electric Cooperative Corporation, 411 Ring Road, Elizabethtown, Kentucky. Nolin RECC may be reached by electronic mail at the electronic mail addresses of its counsel set forth below.

5. Nolin RECC was incorporated under the laws of Kentucky on July 19, 1938, and is currently in good standing in Kentucky.

6. Nolin RECC is a rural electric cooperative corporation organized pursuant to KRS Chapter 279 and a cooperative member and owner of East Kentucky Power Cooperative, Inc. Nolin RECC provides retail electric service in Hardin County, Kentucky. Pursuant to KRS 279.210, Nolin RECC is subject to the general supervision of the Kentucky Public Service Commission (“Commission”) and to the provisions of KRS 278.010 to 278.450 and KRS 278.990. Nolin RECC is a retail electric supplier as defined in KRS 278.010(4).

7. The full name and business address of EKPC is: East Kentucky Power Cooperative, Inc. EKPC may be reached by electronic mail at the electronic mail addresses of its counsel set forth below.

8. EKPC was incorporated in Kentucky on July 9, 1941, and is currently in good standing in Kentucky.

9. EKPC is a rural electric cooperative corporation organized pursuant to KRS Chapter 279, is a member-owned, not-for-profit, generation and transmission cooperative owned by sixteen member-owned electricity distribution cooperatives, including Nolin RECC, and supplies the wholesale power needs of its member cooperatives. Pursuant to KRS 279.210, EKPC is subject to the general supervision of the Commission and to the provisions of KRS 278.010 to 278.450 and KRS 278.990.

10. In 1972 the Kentucky General Assembly enacted the Certified Territories Act, KRS 278.016 to KRS 278.020, which divided the Commonwealth of Kentucky into geographical areas within which each retail electric supplier is to provide retail electric service. KRS 278.018(4) prohibits a retail electric supplier from furnishing, making available, rendering, or extending its retail electric service to a consumer for use in electric consuming facilities located within the certified territory of another retail electric supplier, except as provided in KRS 278.018(3).

11. The Commission has on file territorial boundary quadrant maps known as Cecilia (25-G-1), Sonora (25-G-3), and Tonieville (25-G-4).

12. On September 27, 2021, Ford Motor Company (“Ford”) announced its decision, as part of a joint venture with SK Innovation, to construct a large manufacturing facility in Hardin County, Kentucky at a location known as the Glendale MegaSite, consisting of two electric battery plants that create 5,000 jobs and require \$5.8 billion in investment. Commonwealth officials have

expressed the belief that this investment will make Kentucky the nation's largest producer of electric automotive batteries.

13. A dispute existed among the Joint Applicants as to which retail electric supplier – Nolin RECC or KU – has the right to provide retail electric service to potential electric consuming facilities, including the Ford manufacturing facilities at the Glendale MegaSite location (“Split Territory”).

14. After extensive negotiations, the Joint Applicants have entered into the “*Joint Settlement and Transfer of Service Territories Agreement Pursuant to KRS 278.018(6)*,” (“*Settlement Agreement*”) attached hereto as Exhibit 1. In exchange for valuable consideration and to avoid protracted and costly litigation to resolve the territorial dispute, Nolin RECC has agreed to relinquish any claim to serve the Glendale MegaSite property, including the Ford facilities therein and to accept revisions to the territorial boundary maps known as Cecilia (25-G-1), Sonora (25-G-3), and Tonieville (25-G-4). The Joint Applicants consider the specific payment from KU to Nolin RECC in Section 2 of the *Settlement Agreement* to be confidential and proprietary and are by separate petition requesting confidential protection of the amount. Accordingly, this portion of Section 2 of the *Settlement Agreement* is redacted in the attached version of Application Exhibit 1. Pursuant to 807 KAR 5:001, Section 13, the unredacted *Settlement Agreement* is provided under seal with the Joint Applicants’ Petition for Confidential Protection.

15. Upon the Commission’s approval of the *Settlement Agreement*, revised versions of the territorial boundary quadrant maps known as Cecilia (25-G-1), Sonora (25-G-3), and Tonieville (25-G-4), will be substituted for and replace the existing maps. The boundaries depicted on the revised Cecilia (25-G-1), Sonora (25-G-3), and Tonieville (25-G-4) quadrant maps show

portions of the Split Territory, including the proposed Ford manufacturing facilities, as being within KU's certified territory. Settlement Exhibit 1.1 contains the amended territorial boundary quadrant map known as Cecilia (25-G-1); Settlement Exhibit 1.2 contains the amended territorial boundary quadrant map known as Sonora (25-G-3); and Settlement Exhibit 1.3 contains the amended territorial boundary quadrant map known as Tonieville (25-G-4).

16. The modification of these territorial boundary maps is based on a detailed exchange of parcels of land between KU and Nolin RECC. The specific exchange of the parcels of land within the Split Territory is set forth in detail in Section 1 of the *Settlement Agreement*. Detailed maps showing the exchange and allocation of the parcels between KU and Nolin RECC using the reference numbers from the Hardin County Property Value Administrator's Office are contained in Application Exhibits 2.1 through 2.5 and 3.1 through 3.8. Application Exhibits 2.1 through 2.5 show the exchanged parcels of land within the amended territorial boundary quadrant maps known as Sonora (25-G-3) and Tonieville (25-G-4). Application Exhibits 3.1 through 3.8 show the exchanged parcels of land within the amended territorial boundary quadrant map known as Cecilia (25-G-1).

17. Pursuant to Section 3 of the Agreement, KU will additionally compensate EKPC and Nolin RECC for the actual reasonable costs of moving or removing any existing facilities owned or operated by either of them which are currently located in the Split Territory to the extent necessary to accommodate the Ford project. Representatives of KU, EKPC, and Nolin RECC will work in good faith to expeditiously develop a project scope and timeline, accomplish engineering activities such as routing studies and relocations, and complete all removal work, including, without limitation, the 69-kV line owned by EKPC and located in the Split Territory as needed to accommodate the Ford project and its associated timing and schedule. The work will not

commence until the Commission has approved this Agreement in its entirety and without modification. The approximate amount of cost of moving or removing EKPC's and Nolin RECC's facilities is estimated to be \$4 million.

18. KU requests the Commission to authorize a regulatory asset for recording and ultimately recovering in rates the payments referenced in Sections 2 and 3 of the *Settlement Agreement*. These costs are appropriate for Commission approval as a regulatory asset. The Commission has approved regulatory assets for utilities when a utility has incurred "an extraordinary, nonrecurring expense which could not have reasonably been anticipated or included in the utility's planning."¹ The Ford facility represents a significant, extraordinary, and nonrecurring investment in Kentucky. KU could not have predicted the timing or magnitude of this investment and thus could not have included the payments referenced in Sections 2 and 3 of the *Settlement Agreement* in its planning or recent forecast test periods in the most recent rate cases. KU's request for the treatment of these costs as a regulatory asset is consistent with the Commission's approval of a regulatory liability in Case No. 2019-00370 for the payment LG&E received from Big Rivers Electric Corporation in exchange for modifying a territorial boundary map.²

19. The *Stipulation and Recommendation* approved by the Commission in KU's and LG&E's most recent rate cases also does not preclude the approval of such a regulatory asset. Under Section 1.2 of the *Stipulation and Recommendation* approved by the Commission in KU's

¹ *Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with Two 2015 Major Storm Events*, Case No. 2016-00180, Order (Ky. PSC Nov. 3, 2016).

² *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 Feb. 24, 2020)

and LG&E's most recent rate cases, each retains the independent right to seek approval from the Commission of the deferral of extraordinary, nonrecurring expenses that could not have been reasonably anticipated or included in the Utilities' planning or in the alternative expenses in relation to government-sponsored initiative. The payment to Nolin RECC for and in consideration of Nolin RECC's agreement to transfer the parcels of land encompassing the planned Ford facility and KU's reimbursement of EKPC and Nolin RECC for their actual reasonable costs of moving or removing their existing facilities currently located in the Split Territory to allow Ford to construct its large battery manufacturing facilities at the Glendale MegaSite constitute extraordinary, nonrecurring expenses that could not have been reasonably anticipated or included in KU's planning. In the alternative, the Commonwealth's attraction of Ford to build the battery manufacturing facilities at the Glendale MegaSite constitutes a government-sponsored initiative that is causing KU to incur the costs for moving and removing EKPC's and Nolin RECC's existing facilities currently located in the Split Territory to allow Ford to construct its large battery manufacturing facility.

20. The *Settlement Agreement* is consistent with and promotes the purposes of KRS 278.016 by allowing orderly development of retail electric service to the Split Territory, avoiding wasteful duplication of facilities and unnecessary encumbering of the landscape, preventing the waste of materials and natural resources, and minimizing disputes over electric service in these areas in the future. It is a fair, just, and reasonable resolution to the Joint Applicants' dispute, serves the interests of the public and all interested parties, including Ford, avoids prolonged and costly litigation, and ensures that the Split Territory, including the proposed Ford facility, will receive adequate and reasonable service in a timely manner.

21. Given the urgency to resolve the Joint Applicants' dispute and allow for the planning and construction of the facilities necessary to serve the Glendale MegaSite and to assure Ford that electric power will be available to the proposed facility at its scheduled start of commercial operations, the Joint Applicants request that the Commission place this matter at the head of its docket and render a final decision on this Application no later than February 1, 2022. To help facilitate the Commission's review of this matter, the Joint Applicants are also filing a separate Motion for Informal Conference in this docket.

WHEREFORE, the Joint Applicants respectfully request that the Commission:

1. Approve the *Joint Settlement and Transfer of Service Territories Agreement Pursuant to KRS 278.016(6)* in its entirety and without modification or revision;
2. Authorize the replacement of the existing the territorial boundary maps known as Cecilia (25-G-1), Sonora (25-G-3), and Tonieville (25-G-4) with the revised version of these maps set forth in Settlement Agreement Exhibits 1.1, 1.2, and 1.3, subject to the terms of the *Settlement Agreement* pursuant to KRS 278.016(6);
3. Authorize KU to record a regulatory asset for the payments to Nolin RECC and EKPC referenced in Sections 2 and 3 of the *Settlement Agreement*;
4. Place this matter to the top of its docket and render a final decision on this Application no later than February 1, 2022; and
5. Grant any other relief deemed necessary and appropriate.

Dated: December 17, 2021

Respectfully submitted,

By: 

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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.



Counsel for Kentucky Utilities Company