

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)	
APPROVAL OF AN AGREEMENT)	CASE NO. 2021-00462
MODIFYING EXISTING TERRITORIAL)	
BOUNDARY QUADRANT MAPS AND)	
ESTABLISHING THE RETAIL ELECTRIC)	
SUPPLIER FOR GLENDALE MEGASITE IN)	
HARDIN COUNTY, KENTUCKY)	

**NOLIN RURAL ELECTRIC COOPERATIVE CORPORATION’S
AND EAST KENTUCKY POWER COOPERATIVE, INC.’S
MOTION FOR CONFIDENTIAL TREATMENT**

Comes now Nolin Rural Electric Cooperative Corporation (“Nolin”) and East Kentucky Power Cooperative, Inc. (“EKPC”) (collectively, “Movants”), by counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, and for their Motion requesting that the Kentucky Public Service Commission (“Commission”) afford confidential treatment to certain information filed in Responses to the Commission’s First Request for Information (“First Information Requests”) in the above-captioned proceeding, respectfully state as follows:

1. The Application in the above-styled proceeding was jointly filed by Nolin, EKPC and Kentucky Utilities Company (“KU”) on December 17, 2021. Nolin, EKPC and KU are collectively referred to as the “Joint Applicants.”

2. On January 5, 2022 Commission Staff issued its First Information Request to the Joint Applicants.

4. Contemporaneous with this Motion, Movants are providing responses to the First Information Requests that include information that was developed in the course of preparing a bid to serve the new load at the Glendale MegaSite and information related to the negotiation of the Joint Settlement Agreement tendered to the Commission as part of the Joint Applicants' December 17, 2021 Application. The foregoing information is hereinafter referred to as the "Confidential Information."

3. Request No. 3 of the First Information Request states as follows: "Provide projected costs for Nolin RECC extending service to the Glendale MegaSite."

4. In its response to Request No. 3, Movants are filing a document which contains a high-level cost-estimate for extending service to the Glendale MegaSite. This information was a preliminary engineering estimate for the work to be done and is based upon several assumptions as to the intended customer's needs. Although the estimate is preliminary, it nevertheless provides important details of the Movants' understanding of the project, cost estimates, project schedules and infrastructure requirements. This document is confidential, proprietary and maintained by Nolin and EKPC on a "need-to-know" basis. Its disclosure would harm both Nolin and EKPC in future economic development efforts by giving third parties inside information as to the Movants' costs and engineering assumptions. Accordingly, Nolin and EKPC seek confidential treatment for the entirety of the document.

5. Request No. 4 of the First Information Request states as follows: "Provide all documents, studies, and workpapers supporting the projected costs for Nolin RECC extending service to the Glendale MegaSite."

6. In its response to Request No. 4, EKPC is providing two cost estimates in its response and additional documents containing sensitive information with specific pricing for labor,

overtime, benefits, taxes, travel, consulting, equipment and materials, site acquisition and contingency estimates to extend service to the Glendale MegaSite. As with the response to Request No. 3, this information is a preliminary engineering estimate for the work to be done and assumptions as to the intended customer's needs. Although the estimate is preliminary, it nevertheless provides important details of the Movants' understanding of the project, cost estimates, project schedules and infrastructure requirements. The figures included in the response and the attached documents are confidential, proprietary and maintained by EKPC on a "need-to-know" basis. Their disclosure would harm both Nolin and EKPC in future economic development efforts by giving third parties inside information as to the Movants' costs and engineering assumptions. Accordingly, Nolin and EKPC seek confidential treatment for the entirety of the documents provided.

7. Request No. 5b. of the First Information Requests states as follows: "Refer to the Application, Exhibit 1, Joint Settlement Agreement, page 5 ... [p]rovide all documents, studies, and workpapers supporting the determination of the settlement sum."

8. In its response to Request No. 5b, Nolin is providing a chart containing sensitive rate information used to derive an estimate of future margins if it were to serve the anticipated load at the Glendale MegaSite and a document that details the parcels of property considered for a territorial swap. These documents were foundational to the negotiation of the Joint Settlement Agreement and reveal Nolin's calculations and strategies in determining whether the proposed swap was fair to its members. Disclosure of the information would have a severe chilling effect on Nolin's ability to negotiate any future territorial disputes and would give other utilities with whom Nolin must compete for economic development projects a tremendous advantage in such negotiations. The information is held by Nolin on a "need-to-know" basis and generally regarded

as proprietary and confidential. Accordingly, Nolin seeks confidential treatment for the attachments to Request 5b.

9. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of EKPC's responses and the Confidential Information is so pervasive that confidential treatment should be afforded for the entire set of documents.

10. As set forth above, the Confidential Information is retained by Nolin and/or EKPC on a "need-to-know" basis and is not publicly available. This information constitutes a trade secret under Kentucky law and should be further protected from disclosure on that basis. *See* KRS 365.880.

11. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1). Moreover, the Kentucky Supreme Court has stated, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). Because the Confidential Information is critical to Nolin's and EKPC's effective execution of economic development decisions and strategy and the strategy for negotiating a fair and reasonable settlement of the dispute over the Glendale MegaSite, it satisfies both the statutory and common law standards for being afforded confidential treatment.

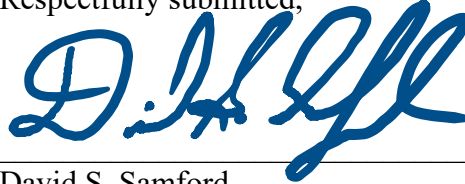
12. Normally, Nolin and EKPC would not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, with other parties in a docket. However, it would be inappropriate to permit such disclosure to KU in this docket given the nature of the Confidential Information. Accordingly, the Confidential Information is only being provided to the Commission under seal.

13. In accordance with the provisions of 807 KAR 5:001, Section 13(3), Nolin and EKPC respectfully request that the Confidential Information be withheld from public disclosure for an indefinite period of time.

WHEREFORE, on the basis of the foregoing, Nolin and EKPC respectfully request the Commission to enter an Order granting this Motion for Confidential Treatment and to afford protection from public disclosure to the unredacted copies of Confidential Information, which are filed herewith under seal, for the period set forth herein.

This 12th day of January 2022.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on January 12, 2022; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be filed.



Counsel for Nolin Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc.