

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
LOUISVILLE GAS AND ELECTRIC COMPANY,)	
MEADE COUNTY RURAL ELECTRIC)	
COOPERATIVE CORPORATION, AND BIG)	
RIVERS ELECTRIC CORPORATION FOR (1))	CASE NO.
APPROVAL OF AN AGREEMENT MODIFYING)	2019-00370
AN EXISTING TERRITORIAL BOUNDARY MAP)	
AND (2) ESTABLISHING MEADE COUNTY)	
RURAL ELECTRIC COOPERATIVE)	
CORPORATION AS THE RETAIL ELECTRIC)	
SUPPLIER FOR NUCOR CORPORATION'S)	
PROPOSED STEEL PLATE MILL IN)	
BUTTERMILK FALLS INDUSTRIAL PARK IN)	
MEADE COUNTY, KENTUCKY)	

ORDER

This matter arises upon a petition filed on October 18, 2019, by Louisville Gas and Electric Company (LG&E), Meade County Rural Electric Cooperative Corporation, and Big Rivers Electric Corporation (BREC) (collectively Joint Petitioners), pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1), seeking confidential treatment of certain portions of the Settlement Agreement and Contract Pursuant to KRS 278.018(6) (Settlement Agreement), which was attached as Exhibit 1 to the joint application. The petition also sought confidential treatment for the current and proposed territorial boundary maps, which were attached as Exhibits 1 and 2 to the Settlement Agreement, and BREC's wires-to-wires interconnection request as of June 5, 2019, which was attached as Exhibit 3 to the Settlement Agreement. Joint Petitioners request that the

designated materials filed with the Commission be afforded confidential treatment for an indefinite period.

In support of their petition, Joint Petitioners state that portions of the Settlement Agreement should not be publicly disclosed because they contain confidential business information related to the amount of compensation and the term over which BREC will compensate LG&E for the modification of an existing territorial boundary map. Joint Petitioners assert that disclosure of this financial information could provide insight into their approaches to 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. Joint Petitioners contend that if third parties, such as local or state governments and economic development agencies, are permitted access to this information, they could use this information to develop their own economic incentive packages to unfairly compete against Joint Petitioners, the Commonwealth of Kentucky, and Kentucky local governments for economic development projects. Joint Petitioners further contend that disclosure of this information 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.

With respect to the two territorial boundary maps, Joint Petitioners state that the Commission considers the information contained on such maps to constitute critical infrastructure records under KRS 61.878(1)(m)(1)(f)¹ and thus excluded from the application of the Kentucky Open Records Act, KRS 61.870 et al.

¹ KRS 61.878(1)(m) provides in full as follows:

1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:

With respect to BREC's interconnection request, the joint petition states that the information contained in that request constitutes nonpublic transmission information, which cannot be publically disclosed under the Federal Energy Regulatory Commission (FERC) Standards for Conduct for Transmission Providers under FERC Order No. 717.² The joint petition asserts that the "no-conduit" rule under FERC Order No. 717 prohibits passing nonpublic transmission function information to marketing function employees and that the public disclosure of BREC's interconnection request could cause Joint Petitioners to violate this prohibition.

Having reviewed the petition and being otherwise sufficiently advised, the Commission finds that the designated materials described in the joint petition related to the terms of BREC's settlement payment to LG&E and BREC's interconnection request meet the criteria for confidential treated and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and FERC Order No. 717, respectively. The Commission, however, finds that the Joint Petitioners have failed to establish that the current and proposed territorial boundary maps, attached as Exhibits 1 and 2 to the Settlement Agreement, contain any critical infrastructure information that would be entitled to confidential protection under KRS 61.878(1)(m)(1)(f).

f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.

² FERC Docket No. RM07-1-000 (Oct. 16, 2008).

IT IS THEREFORE ORDERED that:

1. Joint Petitioners' October 18, 2019 petition for confidential protection is granted in part and denied in part.

2. The designated materials contained in the Settlement Agreement related to the terms of BREC's settlement payment to LG&E and BREC's interconnection request are granted confidential protection and shall not be placed in the public record or made available for public inspection for an indefinite period, or until further Orders of this Commission.

3. The designated materials, contained in the Settlement Agreement related to the two territorial boundary maps, attached as Exhibits 1 and 2 to the Settlement Agreement, are denied confidential protection.

4. Use of the designated materials granted confidential protection by this Order in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

5. Joint Petitioners shall inform the Commission if the designated materials granted confidential protection by this Order become publicly available or no longer qualifies for confidential treatment.

6. If a non-party to this proceeding requests to inspect the designated materials granted confidential protection by this Order and the period during which the materials have been granted confidential treatment has not expired, Joint Petitioners shall have 30 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Joint Petitioners are unable to make such demonstration, the requested

materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. The Commission shall not make the designated materials granted confidential protection herein available for inspection for 30 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Joint Petitioners to seek a remedy afforded by law.

8. The designated materials contained in the Settlement Agreement related to the two territorial boundary maps, attached as Exhibits 1 and 2 to the Settlement Agreement, are not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

9. If Joint Petitioners object to the Commission's determination that the two territorial boundary maps, attached as Exhibits 1 and 2 to the Settlement Agreement, not be granted confidential treatment, they 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 should be granted confidential treatment.

10. Within 20 days of the date of this Order, Joint Petitioners shall file a revised version of the two territorial boundary maps, attached as Exhibits 1 and 2 to the Settlement Agreement, for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

11. The material for which Joint Petitioners' 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 this Order in order to allow Joint Petitioners to seek a remedy afforded by law.

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By the Commission

ENTERED
MAR 09 2020
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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