

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))	
APPROVAL OF AN AGREEMENT MODIFYING AN)	CASE NO.
EXISTING TERRITORIAL BOUNDARY MAP AND)	2019-00370
(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

On January 2, 2020, Big Rivers Electric Corporation (BREC) and Meade County Rural Electric Corporation (Meade County RECC) jointly filed a motion, pursuant to KRS 278.160(3), KRS 61.878(1)(a), KRS 61.878(1)(c)(1), and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection indefinitely for certain information contained in BREC's and Meade County RECC's responses to Items 1 and 4 and the attachments to the response in Item 1 of Commission Staff's Second Request for Information (Staff's Second Request). The information for which BREC and Meade County RECC seek confidential protection is more particularly described as information pertaining to the terms of a special contract between Meade County RECC and Nucor Corporation (Nucor) filed under a petition for confidential treatment in Case No. 2019-00270, projections of a single customer's energy usage and bills, BREC's confidential

projections related to its cost and strategies to serve Nucor, and the confidential terms of a settlement agreement filed under a petition for confidential treatment in this case.

In support of their motion, BREC and Meade County RECC point out that their response to Item 1 of Staff's Second Request contains projected energy use and related revenues of a single retail customer, Nucor, and as such is protected from disclosure by KRS 61.878(1)(a).¹ BREC and Meade County RECC argue that publicly revealing this information would constitute an unwarranted invasion of Nucor's privacy.

In addition BREC and Meade County RECC argue that their responses to Items 1 and 4 of Staff's Second Request, along with the attachments to their response to Item 1, are entitled to confidential protection under KRS 278.160(3)² and KRS 61.878(1)(c)(1)³ because public disclosure would reveal the terms of a special contract between Meade County RECC and Nucor, BREC's internal projections of its costs and strategies to serve Nucor, and the confidential terms of a settlement agreement filed under a petition for confidential treatment in this case. BREC and Meade County RECC contend that the

¹ KRS 61.878(1)(a) states: "The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery: ... public records containing information of a personal nature where public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

² KRS 278.160(3) states: "The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.844 under the provisions of KRS 61.878(1)(c)(1)."

³ KRS 61.878(1)(c)(1) states: "The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery: ... records confidentially disclosed to an agency or required by an agency to be disclosed to it, 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."

special contract and the settlement agreement were the products of extensive negotiation and that disclosing the confidential terms of those agreements would discourage such negotiated agreements and likely suppress future economic development projects in Kentucky. BREC and Meade County RECC also argue they would likely suffer competitive injury if the information for which they seek confidential protection is publicly disclosed. Potential customers of BREC or Meade County RECC could use the confidential terms of the Nucor contract as a benchmark to gain an unfair competitive advantage in negotiating future contracts with BREC or Meade County RECC. BREC and Meade County RECC maintain that the information sought to be protected is not publicly available, is not disseminated within BREC or Meade County RECC except to those with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information. As such, BREC and Meade County RECC argue the information is generally recognized as confidential and proprietary, and should be granted confidential protection.

Having considered the motion and the material at issue, the Commission finds that the materials meet the criteria for confidential treatment and are exempt from public disclosure pursuant to KRS 278.160(3), KRS 61.878(1)(a), KRS 61.878(1)(c)(1), and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. BREC and Meade County RECC's January 2, 2020 motion for confidential protection is granted.

2. The designated materials for which BREC and Meade County RECC seek confidential protection shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

3. Use of the material in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

4. BREC or Meade County RECC shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.

5. If a non-party 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, BREC and Meade County RECC shall have 30 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 BREC or Meade County RECC is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 30 days following an Order finding that the material no longer qualifies for confidential treatment in order to allow BREC or Meade County RECC to seek a remedy afforded by law.

By the Commission

ENTERED
JAN 27 2020
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director
for *Gov. R. Pearson*

*Honorable Allyson K Sturgeon
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Meade County R.E.C.C.
P. O. Box 489
Brandenburg, KY 40108-0489

*Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

*Rick E Lovekamp
Manager Regulatory Affairs
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

*Robert M Conroy
Director, Rates
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

*Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010