

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On January 12, 2022, Kentucky Utilities Company (KU) filed a petition requesting that the Commission grant confidential treatment for an indefinite period for information redacted from KU's responses to Commission Staff's First Request for Information (Staff's First Request) Items 1 and 2 pursuant to 807 KAR 5:001, Section 13, and KRS 61.878. Also on January 12, 2022, Nolin Rural Electric Cooperative Corporation (Nolin RECC) and East Kentucky Power Cooperative, Inc. (EKPC) jointly filed a motion for confidential treatment for an indefinite period for jointly provided redacted information filed in response to Staff's First Request Items 3, 4, and 5b.

This matter arose from Ford Motor Company's September 27, 2021 announcement that it would be constructing an automotive battery manufacturing facility in Hardin County, Kentucky at a location known as the Glendale MegaSite. KU and Nolin RECC disputed which electric utility territory the Glendale MegaSite was located within and therefore which utility was entitled to serve the site. KU, Nolan RECC, and EKPC

entered into a settlement agreement, which included KU compensating Nolin RECC in exchange for Nolin RECC modifying the existing territorial boundaries map and foregoing Nolin RECC's right to provide electric service in the territory. The settlement also included KU agreeing to bear the cost of relocating Nolin RECC and EKPC equipment.

KU MOTION

In support of its petition, KU argued that information redacted from its responses to Staff's First Responses is exempt from public disclosure under KRS 61.878(1)(c)(1) which exempts "[r]ecords 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." Item 1 asked for estimated costs of KU extending service to the Glendale MegaSite. KU provided redacted figures representing total estimated cost for extending service and for relocating EKPC equipment. Item 2 asked for documents, studies, and workpapers supporting those projected costs. In response KU provided supporting spreadsheets with redacted figures. KU argued that disclosure of the estimated costs and the data from the supporting documentation could harm KU by revealing the amount it expects to pay to extend service by disclosing to third parties information as to costs and engineering assumptions. KU further stated that disclosure could place each of the parties at a competitive disadvantage in their efforts to expand their customer base and more efficiently use their existing capacity.

Having considered the petition and the material at issue, the Commission finds that KU's petition is granted. KU's estimated cost information could result in contractor bid

manipulation.¹ However, the Commission finds that five years confidential treatment is an adequate period of time to render this data obsolete.² The information redacted from KU's responses to Staff's First Requests Items 1 and 2 is generally recognized as confidential or proprietary and therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

NOLIN RECC/EKPC MOTION

In support of their motion, Nolin RECC and EKPC also argued application of KRS 61.878(1)(c)(1). Staff's First Request, Items 3 and 4 asked for estimated costs of Nolin RECC extending service to the Glendale MegaSite and supporting documents, including an analysis of construction needs. Nolin RECC and EKPC provided redacted figures and spreadsheets in response. Nolin RECC and EKPC argued that estimated cost information should remain confidential because competitors could use this information to compete with Nolin RECC for future customers.

Staff's First Request, Item 5b asked for documents, studies, and workpapers supporting the determination of the sums agreed upon in the settlement agreement. Nolin RECC and EKPC provided redacted spreadsheets containing projected cost and revenue associated with serving the Glendale Megasite. Nolin RECC and EKPC argued that disclosure of calculations and strategies in determining whether the proposed swap was fair to its members would have a severe chilling effect on Nolin RECC's ability to negotiate

¹ See Case No. 2019-00269, *Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (Ky. PSC Dec. 8, 2021), Order at 2–3.

² *Id.* at 3.

any future territorial disputes and would give other utilities with whom Nolin RECC competes with for economic development projects an advantage in such negotiations.

Having considered the motion and the material at issue, the Commission finds that Nolin RECC and EKPC's motion is granted, but not for the reason advanced by Nolin RECC and EKPC. Estimated cost information could not be used by competitors to compete for potential customers, due exactly to the reason this case is required. KRS 278.016 grants retail electric suppliers the exclusive right to furnish electricity to all customers within its defined service territory. As such, EKPC and Nolin RECC do not have competitors. However, the Commission nevertheless grants confidential protection to the information that protection is sought for the same reason it granted this treatment to KU. The information provided under confidential seal could result in contractor bid manipulation, to the detriment of the utility and its customers.³ Further, the Commission finds that five years confidential treatment for responses to Staff's First Requests, Items 3 and 4 is an adequate period to render this data obsolete. The Commission finds that the information supporting the settlement agreement sum is granted confidential treatment indefinitely. This information constitutes internal strategic business information that could harm the parties if used by competitors.⁴ If other electric utilities had knowledge of the compensation amount, that information could be used in future territorial boundary negotiations to the detriment of KU or Nolin RECC and their respective customers. The

³ *Id.*

⁴ See Case No. 2019-00370, *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 Electric Supplier for Nucor Corporation's Proposed Steel Plate Mill in Buttermilk Falls Industrial Park in Meade County, Kentucky* (Ky. PSC Mar. 9, 2020) Order, finding that a similar settlement agreement payment was entitled to confidential treatment.

redacted information provided by Nolin RECC and EKPC in response to Staff's First Request, Items 3, 4, and 5b therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. KU's petition for confidential treatment is granted.
2. Nolin RECC and EKPC's motion for confidential treatment is granted.
3. Information provided by KU in response to Staff's First Request, Items 1 and 2, and provided by Nolin RECC and EKPC in response to Staff's First Request 3, and 4 and granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
4. Information provided by Nolin RECC and EKPC in response to Staff's First Request, Items 5b and granted confidential treatment by this Order 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.
5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).
6. KU, Nolin RECC, and EKPC shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
7. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been

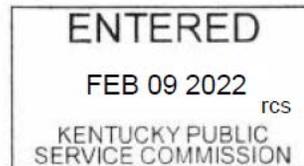
granted confidential treatment has not expired, KU, Nolin RECC, or EKPC shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If KU, Nolin RECC, or EKPC is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow KU, Nolin RECC, or EKPC to seek a remedy afforded by law.

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By the Commission

Commissioner Marianne Butler did not participate in the deliberations or decision concerning this case.



ATTEST:


Executive Director

Case No. 2021-00462

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