

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
AMERICAN ELECTRIC POWER COMPANY, INC.,)	
KENTUCKY POWER COMPANY AND LIBERTY)	CASE NO.
UTILITIES CO. FOR APPROVAL OF THE)	2021-00481
TRANSFER OF OWNERSHIP AND CONTROL OF)	
KENTUCKY POWER COMPANY)	

ORDER

On January 24, 2022, Liberty Utilities Co. (Liberty) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for its responses to Commission Staff's First Request for Information (Staff's First Request) Items 9, 19, 57, and 68 and its responses to the Attorney General's First Request for Information (Attorney General's First Request), Items 25, 44, 53, 63, 80, and 100.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act,¹ which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884."² The exceptions to the free and open examination of public records should be strictly construed.³ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

exemptions is applicable.⁴ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

In support of its motion, Liberty argued that the information provided in response to the Requests for Information. Liberty stated the responses to Staff’s First Request Items 9, 19, 57, and 68 provide information about financial statements, credit profiles, financial information about Liberty’s parent company, presentations given to the board of directors regarding the acquisition of Kentucky Power, and cost estimates for transitioning services provided by American Electric Power Company, Inc. (AEP) to Kentucky Power staff.

Liberty stated the responses to the Attorney General’s First Request Items 25, 44, 53, 63, 80, and 100 provide information relating to planned uses of renewable fuels, documents filed with other regulatory agencies including a horizontal market analysis, due diligence reports, copies of debt instruments between Liberty and a subsidiary, and information about the decision-making process of Liberty’s Board of Directors.

Liberty argued if this information were disclosed it could allow an unfair commercial advantage to competitors because they would gain insight into Liberty’s operational strategies and financial strength. The information would allow competitors to understand how Liberty undertakes acquisitions and could price items or services differently than without the information. Additionally, Liberty argued the market horizontal market analysis report was created by a third party at the request of Liberty and was provided

⁴ 807 KAR 5:001, Section 13(2)(c).

confidentiality in another regulatory filing. Liberty argued all the information requested to be granted confidential protection is generally held to be confidential and proprietary.

Having considered the motion and the material at issue, the Commission finds that responses to Staff's First Request Items 9, 19, 57, and 68 and Attorney General's First Request Items 25, 44, 53, 63, 80, and 100 are 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).

IT IS THEREFORE ORDERED that:

1. Liberty's motion for confidential treatment is granted.
2. The designated material 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.
3. 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).
4. Liberty shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
5. 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, Liberty 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 Liberty 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 from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Liberty to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION



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Commissioner



ATTEST:



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