

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 31, 2022, American Electric Power Company, Inc. (AEP), Kentucky Power Company (Kentucky Power), and Liberty Utilities Co. (Liberty) (collectively as the Joint Applicants) filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for the supplement responses to Attorney General’s First Request for Information (Attorney General’s First Request) Item 49 and Commission Staff’s First Request for Information (Staff’s First Request) Item 67.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act,<sup>1</sup> 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.”<sup>2</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>3</sup> The party requesting that the

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<sup>1</sup> KRS 61.870 through 61.884.

<sup>2</sup> KRS 61.872(1).

<sup>3</sup> KRS 61.878.

materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.<sup>4</sup> 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. KRS 61.878(1)(k) exempts records where disclosure is prohibited by federal statute or regulation.<sup>5</sup>

### JOINT APPLICANTS’ ARGUMENTS

In support of the motion, the Joint Applicants argued that the supplemental response to the Attorney General’s First Request Item 49 provided documents filed with the United States Department of Justice and Federal Trade Commission pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a. The Joint Applicants stated 15 U.S.C. §18a(h) prohibits disclosure of Hart-Scott-Rodino filings. The request was for the documents to be held confidential indefinitely.

The supplemental response to Staff’s First Request Item 67 contained information about a presentation made to the AEP Board of Directors about the sale of Kentucky Power. The Joint Applicants argued that the information disclosed confidential business strategy and financial information. If the information were made public, it could create an unfair commercial advantage to competitors. The Joint Applicants requested the information be held confidential for three years.

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<sup>4</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>5</sup> KRS 61.878(1)(k).

## FINDINGS

Having considered the motion and the material at issue, the Commission finds that the supplemental responses to Attorney General's First Request Item 49 and Staff's First Request Item 67 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) and KRS 61.878(1)(k).

IT IS THEREFORE ORDERED that:

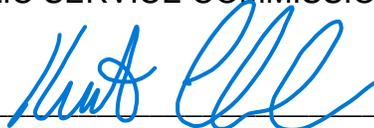
1. The Joint Applicants' motion for confidential treatment is granted.
2. The supplemental response to Attorney General's First Request Item 49 shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.
3. The supplemental response to Staff's First Request for Information Item 67 shall not be placed in the public record or made available for public inspection for three years or until further Order of this Commission.
4. 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).
5. Joint Applicants shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
6. 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, Joint Applicants 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 Joint Applicants are unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. 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 Joint Applicants to seek a remedy afforded by law.

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Chairman

  
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Vice-Chairman

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