

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 April 15, 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 protection for an indefinite period for its responses to Items 1, 2(b), and 3 of Commission Staff’s Second Post-Hearing Data Request (Staff’s Second Post-Hearing Request).

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 exemptions is applicable.⁴ KRS 61.878(1)(c)(1) provides an exception to the requirement

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

⁴ 807 KAR 5:001, Section 13(2)(c).

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.”

DISCUSSION AND FINDINGS

In support of its motion, Liberty argued that its response to Item 1 of Staff’s Second Post-Hearing Request required it to provide private loans Liberty has acquired to finance the transaction. Liberty argued the terms of these loans are highly sensitive, confidential, and proprietary. Liberty stated if it was required to publicly disclose these documents it would be placed at a severe commercial disadvantage. Liberty also stated the Commission has precedent of granting confidential protection to loan documents. Liberty requested the response to Item 1 of Staff’s Second Post-Hearing Request be granted confidential protection in perpetuity.

The response to Item 2(b) of Staff’s Second Post-Hearing Request required Liberty to provide financing documents between Liberty and regulated utility subsidiaries. Liberty stated these documents contain detailed information about intercompany financing including interest and rates. Liberty argued if this information was required to be disclosed it would allow other companies to gain insight into the economic structure of Liberty and the subsidiaries, putting them at a commercial disadvantage. Liberty requested these documents be granted indefinite confidential protection.

Finally, Liberty stated the response to Item 3 of Staff’s Second Post-Hearing Request should be granted confidential protection because it is a comprehensive organization chart of Algonquin Power & Utilities Corp. (Algonquin). Liberty stated that Algonquin maintains this chart confidentiality and it has never been disclosed. Liberty

argued that disclosure would release sensitive proprietary information about Algonquin's corporate structure and would create a commercial disadvantage to the company. Competitors would get insight into the internal workings of Algonquin that they would not otherwise be entitled to.

Having considered the motion and the material at issue, the Commission finds that Liberty's motion is granted in part and denied in part. The Commission finds that the designated material contained in Liberty's responses to Items 1 and 2(b) of Staff's Second Post-Hearing Request are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1). and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment is denied for a portion of the organizational chart provided in response to Item 3 of Staff's Second Post-Hearing Request. The portion of the organizational chart that details the relationship between Algonquin and Liberty Utilities Finance GP1 is not granted confidential protection. This information is essential to the final determination of the case and should be part of the public record. However, the rest of the organizational chart is granted confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Liberty's motion for confidential treatment for responses to Staff's Second-Post Hearing Request is granted in part and denied in part.
2. Liberty's motion for confidential treatment for its responses to Items 1 and 2(b) of Staff's Second Post-Hearing Request is granted.

3. Liberty's motion for confidential treatment for the portion of the organizational chart provided in response to Item 3 of Staff's Second Post-Hearing Request that details the relationship between Algonquin and Liberty Utilities Finance GP1 is denied.

4. Liberty's motion for confidential treatment of the remainder of the organization chart provided in response to Item 3 of Staff's Second Post-Hearing request is granted.

5. 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.

6. 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).

7. Liberty shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

8. 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.

9. The Commission shall not make the requested material for which confidential treatment was granted 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.

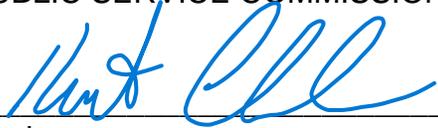
10. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

11. If Liberty objects to the Commission's determination that the requested material not be granted confidential treatment, it 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 shall be granted confidential treatment.

12. Within 30 days of the date of service of this Order, Liberty shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

13. The designated material for which Liberty's 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 service of this Order to allow Liberty to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner



ATTEST:



Executive Director

*L Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Hector Garcia
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Kenneth Tillotson
,

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*John C. Crespo
,

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Brian West
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*James W Gardner
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Kentucky Power Company
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Barry Alan Naum
Spilman Thomas & Battle, PLLC
1100 Brent Creek Blvd., Suite 101
Mechanicsburg, PENNSYLVANIA 17050

*Jody M Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Carrie H Grundmann
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NORTH CAROLINA 27103

*Joe F. Childers
Childers & Baxter PLLC
300 Lexington Building, 201 West Sho
Lexington, KENTUCKY 40507

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Christen M Blend
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Matthew Miller
Sierra Club
50 F Street, NW, Eighth Floor
Washington, DISTRICT OF COLUMBIA 20001

*Dmitry Balashov
,

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Mark David Goss
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Peter Eichler
,

*Sarah Knowlton
,

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Tanner Wolfram
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216