

**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 UTILITIES CO. FOR APPROVAL OF	)	Case No. 2021-00481
THE TRANSFER OF OWNERSHIP AND	)	
CONTROL OF KENTUCKY POWER COMPANY	)	

**American Electric Power Company, Inc. and Kentucky Power Company's**  
**Motion For Confidential Treatment**

American Electric Power Company, Inc. ("AEP") and Kentucky Power Company ("Kentucky Power") (collectively, "Movants") move the Public Service Commission of Kentucky ("Commission") pursuant to 807 KAR 5:001, Section 13(2), and KRS 61.878(1)(c) for an Order granting confidential treatment to the identified portions of the following attachments to its data request responses:

- (1) Attachments 1, 2, 3, and 4 to Joint Applicants' response to Attorney General Data Request 1-8 ("AG 1-8") (credit opinions prepared by Moody's Investor Service);
- (2) Attachments 1 and 2 to Joint Applicants' response to Attorney General Data Request 1-34 ("AG 1-34") (information related to individual employee compensation);
- (3) Attachment 1 to Joint Applicants' response to Kentucky Industrial Utility Customers, Inc.'s ("KIUC") Data Request 1-32 ("KIUC 1-32") (historical individual generating unit performance during PJM capacity performance ("CP") events);
- (4) Attachment 1 to Joint Applicants' response to KIUC Data Request 1-68 ("KIUC 1-68") (information related to separation planning); and
- (5) Attachment 1 to Joint Applicants' response to Commission Staff Data Request 1-67 ("KPSC 1-67") (materials from a presentation made to the AEP Board of Directors).

Pursuant to 807 KAR 5:001, Section 13, Movants are filing under seal those portions of the attachments containing confidential information with the confidential portions highlighted in yellow. Movants are also filing redacted versions of the affected documents. Where Movants are filing the entirety of the affected documents under seal, they also are filing public versions indicating the relevant documents are redacted in their entirety. Movants will notify the Commission when they determine the information for which confidential treatment is sought is no longer confidential.

## **I. MOTION FOR CONFIDENTIAL TREATMENT**

### **A. The Requests and the Statutory Standard.**

Movants do not object to filing the identified information for which it is seeking confidential treatment, but request that the identified portions of the responses be excluded from the public record and public disclosure.

KRS 61.878(1) excludes from the Open Records Act:

(c) (1) Upon and after July 15, 1992, records confidentially disclosed to an agency or required 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.

This exception applies to the following information for which Movants are seeking confidential treatment:

### **1. Attachments 1, 2, 3, and 4 to AG 1-8 .**

Movants seek confidential treatment for the entirety of the credit opinions prepared by Moody's Investor Service ("Moody's") supplied as Attachments 1, 2, 3, and 4 to AG 1-8. The credit opinions are prepared by Moody's and available to Kentucky Power pursuant to its paid subscription agreement with Moody's. The subscription agreement prohibits Kentucky Power from copying, transferring, or disseminating the credit opinions "unless authorized under a

contract with Moody's or otherwise authorized in writing by Moody's." The credit opinions are the property of Moody's; they are not the property Kentucky Power or its parent, AEP. However, Kentucky Power has been authorized by Moody's to produce these exhibits if granted confidential treatment. The breach of the subscription agreement by the public disclosure of the information for which confidential treatment is requested could result in competitive commercial injury to Kentucky Power through the Company's loss of the ability to obtain the information in future for use in managing its credit metrics.

In addition, the subject information, if disclosed to Liberty Utilities, Co. ("Liberty"), could result in competitive commercial injury to Kentucky Power and AEP vis-à-vis Liberty. Accordingly, Joint Applicants have agreed not to exchange certain documents and/or information between each other. Attachments 1, 2, 3, and 4 to AG 1-8 are not being produced to Liberty pursuant to this agreement. The material is being produced to the Commission and those intervenors who have signed a non-disclosure agreement. In accordance with this agreement between the Joint Applicants, Commission Staff, and those intervenors who have signed a non-disclosure agreement, the confidential versions of these attachments will not be shared with Liberty and will be produced to Commission Staff and those intervenors who have signed a non-disclosure agreement in hard copy form (either in paper form or on a disc or USB) on pink paper to signify the documents' status as withheld from Liberty.

Movants seek confidential treatment of the credit opinions indefinitely.<sup>1</sup> The identified information belongs to Moody's and not Movants. Absent a waiver of confidential treatment by

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<sup>1</sup> The information may be disclosed to Liberty upon its acquisition of Kentucky Power if the Joint Application is approved.

Moody's, the information should remain confidential indefinitely. The Commission previously granted confidential protection to similar information indefinitely.<sup>2</sup>

**2. Attachments 1 and 2 to AG 1-34.**

Movants seek confidential treatment for the indicated portions of Attachment 1 to AG 1-34, and for the entirety of Attachment 2 to AG 1-34. Attachments 1 and 2 to AG 1-34 contain information related to individual employee compensation. Attachment 1 contains specific amounts of compensation for certain employees. Attachment 2 comprises portions of Section 2.13(f) of the Seller Disclosure Letter attached to the Stock Purchase Agreement between AEP and Liberty, for which the Joint Applicants have also sought confidential protection as part of their Application herein, and for which Kentucky Power has previously sought confidential treatment in another case.<sup>3</sup>

The information contained in both Attachment 1 and Attachment 2 to AG 1-34 is confidential given that disclosure of this information could reveal both individual compensation arrangements and private information, and could trigger an increase in employee attraction and retention costs as well as increase operational risk for the Company, while undermining employee relations. The disclosure of individual employee names, compensation payments and signatures would give other employers who are not subject to such disclosures an advantage in attracting and retaining those employees, and competitors could use this information to attract

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<sup>2</sup> See Order, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Accounting Practices To Establish Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief*, Case No 2020-00174 (Ky. P.S.C. Nov. 16, 2020).

<sup>3</sup> See Motion for Confidential Treatment filed herein (Jan. 4, 2021); see also Kentucky Power's Motion for Confidential Treatment, *In the Matter of: Electronic Investigation Of The Service, Rates And Facilities Of Kentucky Power Company*, Case No. 2021-00370 at 7-8 (Dec. 14, 2021). The Commission has not yet ruled upon either motion for confidential treatment.

and retain current and potential employees. This would enable other employers to negotiate lower rates for these employees and attract better and more suitable employees.

Moreover, these compensation arrangements, if disclosed to those employees not receiving similar compensation packages, could adversely affect AEP's ability to manage its compensation arrangements, to limit its compensation costs, and to retain and incent its employees. Public disclosure of these employee benefits and pay also could increase future employee attraction and retention costs for the Company due to increased risk that employees' names and compensation will become public information, and removing those who value the privacy of this information from the Company's perspective workforce.

In addition, the subject information, if disclosed to Liberty, could result in competitive commercial injury to Kentucky Power and AEP vis-à-vis Liberty. Accordingly, Joint Applicants have agreed not to exchange certain documents and/or information between each other. Attachment 1 to AG 1-34 is not being produced to Liberty pursuant to this agreement. The material is being produced to the Commission and those intervenors who have signed a non-disclosure agreement. In accordance with this agreement between the Joint Applicants, Commission Staff, and those intervenors who have signed a non-disclosure agreement, the confidential version of this attachment will not be shared with Liberty and will be produced to Commission Staff and those intervenors who have signed a non-disclosure agreement in hard copy form (either in paper form or on a disc or USB) on pink paper to signify the document's status as withheld from Liberty.

The confidential information identified in Attachment 1 to AG 1-34 should be kept confidential for seven years, after which time the information will be of little or no competitive value.

The confidential information identified in Attachment 2 to AG 1-34 should be kept confidential for five years, after which time the information will be of little or no competitive value.

**3. Attachment 1 to KIUC 1-32.**

Movants seek confidential treatment for the entirety of Attachment 1 to KIUC 1-32. Attachment 1 to KIUC 1-32 contains historical individual generating unit performance data during PJM CP events. Disclosure of this information could cause competitive harm to Movants because the information pertains to Kentucky Power's generating units' performance during CP events in PJM, which could be used by others to form predictions on the likelihood of future unit outages, and other competitively sensitive information. The rise of competitive markets such as PJM has placed a premium on generating unit data. Public disclosure of information about unit availability or outages could adversely affect Kentucky Power's customers by providing data that could provide a competitive advantage to Kentucky Power's direct competitors thereby affecting Kentucky Power's ability to minimize costs for its rate paying customers.

Unit availability information is especially useful for competition as savvy marketers can estimate Kentucky Power's generation position and raise generation offers if the marketers believe Kentucky Power will be energy short, resulting in the Company paying higher prices to procure energy to serve its customers. This type of data is highly valued by competing energy marketers and traders who speculate in forward energy transactions. Using this data, other parties could improve their forecast accuracy of future Kentucky Power operations and utilize the resulting intelligence to influence negatively the Company's costs of providing electricity to its customers. Such actions would ultimately raise the cost to Kentucky Power's customers.

No other market participant discloses this information, nor does PJM. Movants seek confidential treatment of the information contained in Attachment 1 to KIUC 1-32 indefinitely.

**4. Attachment 1 to KIUC 1-68.**

Movants seek confidential treatment for the entirety of Attachment 1 to KIUC 1-68. Attachment 1 to KIUC 1-68 contains information related to separation planning in connection with the sale of Kentucky Power to Liberty.

AEP and Kentucky Power have invested a substantial amount of time and resources in developing the process and timeline for separation in connection with the sale of Kentucky Power to Liberty. This has commercial value to consultants and entities considering similar sales and acquisitions. The dissemination of this information publicly would allow consultants and entities to use the work products for free and thereby take AEP's property without compensation. Competitors divesting assets in which AEP is interested also could also gain unfair insight and advantage into AEP's processes in these types of transactions (albeit from the other side) for responding.

Movants seek confidential treatment of the information contained in Attachment 1 to KIUC 1-68 for a period of three years, at which time such information will become outdated.

**5. Attachment 1 to KPSC 1-67.**

Movants seek confidential treatment for the entirety of Attachment 1 to KPSC 1-67. Attachment 1 to KPSC 1-67 is comprised of materials from a presentation made to the AEP Board of Directors. The presentation contains sensitive information relating to the transaction to inform the Board of Directors' decision-making process. It also contains financial and other confidential business information not available to the public, including financial information relating to AEP and/or Kentucky Power that are not publicly available. As such, Attachment 1 to KPSC 1-67 contains sensitive commercial or proprietary information, the disclosure of which could be used by Movants' competitors to gain a competitive advantage. The Commission has

previously granted confidential treatment to materials presented to boards of directors in transfer-of-control cases.<sup>4</sup>

Further, Attachment 1 to KPSC 1-67 contains information protected from disclosure by attorney-client privilege and the work-product doctrine. Attachment 1 to KPSC 1-67 was prepared by AEP counsel, or at his or her direction, and the presentation included communications to the Board of Directors by AEP counsel. As such, the portions of the attachment protected by attorney client privilege and/or the work product doctrine have not been disclosed, and have been redacted from the public and confidential versions of Attachment 1 to KPSC 1-67.

In addition, the subject information, if disclosed to Liberty, could result in competitive commercial injury to Kentucky Power and AEP vis-à-vis Liberty. Accordingly, Joint Applicants have agreed not to exchange certain documents and/or information between each other. Attachment 1 to KPSC 1-67 is not being produced to Liberty pursuant to this agreement. The material is being produced to the Commission and those intervenors who have signed a non-disclosure agreement. In accordance with this agreement between the Joint Applicants, Commission Staff, and those intervenors who have signed a non-disclosure agreement, the confidential version of this attachment will not be shared with Liberty and will be produced to

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<sup>4</sup> See Order, *In the Matter of: The Joint Petition Of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, Rwe Aktiengesellschaft, Thames Water Aqua Us Holdings, Inc., And American Water Works Company, Inc. For Approval Of A Change In Control Of Kentucky-American Water Company*, Case No. 2006-00197 (Ky. P.S.C. Aug. 29, 2006); See also Staff Letter, *In the Matter of: Application Of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas And Electric Company, And Kentucky Utilities Company For Approval Of An Acquisition Of Ownership And Control Of Utilities*, Case No. 2010-00204 (Ky. P.S.C. Sept. 30, 2010) (granting confidential treatment for minutes of the board of directors and other due diligence materials); Staff Letter, *In the Matter of: Joint Application Of Duke Energy Corporation, Duke Energy Holding Corp., Deer Acquisition Corp., Cougar Acquisition Corp., Cinergy Corp., The Cincinnati Gas & Electric Company And The Union Light, Heat And Power Company For Approval Of A Transfer And Acquisition Of Control*, Case No. 2005-00228 (Ky. P.S.C. Oct. 10, 2005) (confirming approval of Joint Applicants' Petition for Confidential Treatment of Information filed on August 30, 2005, including confidential treatment for minutes of the board of directors).



Commission Staff and those intervenors who have signed a non-disclosure agreement in hard copy form (either in paper form or on a disc or USB) on pink paper to signify the document's status as withheld from Liberty.

The confidential information identified in Attachment 1 to KPSC 1-67 should be kept confidential for three years, after which time the information will be of little or no competitive value.

B. The Identified Information is Generally Recognized as Confidential and Proprietary and Public Disclosure of it Will Result in an Unfair Commercial Advantage for Kentucky Power's Competitors.

The identified information required to be disclosed by Kentucky Power in response to AG 1-8, AG 1-34, KIUC 1-32, KIUC 1-68, and KPSC 1-67 is highly confidential. Dissemination of the information for which confidential treatment is being requested is restricted by Kentucky Power, its parent, AEP, and its affiliates (including American Electric Power Service Corporation). The Kentucky Power, AEP, and its affiliates (and third party vendors where applicable) take all reasonable measures to prevent its disclosure to the public as well as persons within Kentucky Power and third-party vendors who do not have a need for the information. The information is not disclosed to persons outside Kentucky Power, AEP, or its affiliates. Within those organizations, the information is available only upon a confidential need-to-know basis that does not extend beyond those employees with a legitimate business need to know and act upon the identified information.

C. The Identified Information is Required to be Disclosed to an Agency.

The identified information is by the terms of the Commission's Order required to be disclosed to the Commission. The Commission is a "public agency" as that term is defined in KRS 61.870(1). Any filing should be subject to a confidentiality order and any party requesting such information should be required to enter into an appropriate confidentiality agreement.

WHEREFORE, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. According confidential status to and withholding from public inspection for the periods indicated on **Exhibit 1** the information identified on the exhibit; and
3. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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COUNSEL FOR AMERICAN ELECTRIC  
POWER COMPANY, INC. AND KENTUCKY  
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<b>Attachment</b>	<b>Brief description of confidential material</b>	<b>Information for which confidential treatment is sought</b>	<b>Withheld from Liberty?</b>	<b>Time period to be kept confidential</b>
Attachments 1, 2, 3, and 4 to AG 1-8	Credit opinions prepared by Moody's Investor Service	Entire document	Yes	Indefinitely
Attachment 1 to AG 1-34	Information related to individual employee compensation	Highlighted portions	Yes	7 years
Attachment 2 to AG 1-34	Information related to individual employee compensation	Entire document	No	5 years
Attachment 1 to KIUC 1-32	Historical individual generating unit performance during PJM CP events	Entire document	No	Indefinitely
Attachment 1 to KIUC 1-68	Information related to separation planning	Entire document	No	3 years
Attachment 1 to KPSC 1-67	Materials from a presentation made to the AEP Board of Directors	Entire document	Yes	3 years