

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.	)	CASE NO.
FOR APPROVAL OF THE TRANSFER OF OWNERSHIP	)	2021-00481
AND CONTROL OF KENTUCKY POWER COMPANY	)	

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**JOINT APPLICANT’S  
MOTION FOR CONFIDENTIAL TREATMENT**

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American Electric Power Company, Inc. (“AEP”), Kentucky Power Company (“Kentucky Power” or the “Company”), and Liberty Utilities Co. (“Liberty”) (collectively, “Joint Applicants”), by counsel, moves the Public Service Commission of Kentucky (the “Commission”) for an order granting confidential treatment to certain information and documents filed in the supplemental response to the initial requests for information. Specifically, the Joint Applicants request confidential treatment for information or documents related to the supplemental response for Item 49 of the Attorney General’s First Set of Data Requests and Item 67 of the Commission Staff’s First Request for Information. In support of this motion, the Joint Applicants state as follows:

Administrative Regulation 807 KAR 5:001, Section 13(2) sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “specific grounds pursuant to KRS 61.878 [the Kentucky Open Records Act] for classification of that material as confidential.” 807 KAR 5:001, Section 13(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(k) exempts from disclosure “all public records or information the disclosure of which is prohibited by federal law or regulation . . . .” Federal law prohibits disclosure of the Hart-Scott-Rodino Act filings. *See* 15 U.S.C. § 18a(h); *see also* 16 C.F.R. § 803.1(b).

In addition, KRS 61.878(1)(c)(1) exempts from disclosure:

Records 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 present an unfair commercial advantage to competitors of the entity that disclosed the records.

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997).

In their Supplemental Response to Item 49 of the Attorney General’s First Set of Data Requests, the Joint Applicants are providing documents confidentially filed with the Department of Justice and Federal Trade Commission, pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a. The information and documents referenced below are all highly-sensitive confidential and proprietary information that Joint Applicants do not otherwise disclose, and the disclosure of which would cause substantial injury to Joint Applicants’ respective competitive positions. Moreover, as discussed above, federal law prohibits disclosure of the Hart-Scott-Rodino Act filings. *See* 15 U.S.C. § 18a(h); *see also* 16 C.F.R. § 803.1(b). Accordingly, the Supplemental Response to Item 49 of the Attorney General’s First Set of Data Requests are entitled to confidential protection, pursuant to KRS 61.878(1)(c) and (k).

The Commission has previously determined in prior transfer-of-control cases that Hart-Scott-Rodino Act filings are entitled to confidential treatment. *See Electronic Joint Application Of Aqua America, Inc., Steelriver Infrastructure Fund North America LP, Steelriver LDC Investments LP, LDC Parent LLC, LDC Funding LLC, LDC Holdings LLC, PNG Companies LLC, Peoples Gas Ky LDC, And Delta Natural Gas Company, Inc. For Approval Of An Acquisition Of Ownership And Control Of PNG Companies LLC And Delta Natural Gas Company, Inc.*, Case No. 2018-00369 (Ky. PSC Feb. 12, 2019); *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 PSC Staff Letter Sept. 30, 2010)(granting confidential treatment Hart-Scott Rodino filings, as requested by the applicants by motion filed July 6, 2010). Accordingly, the Joint Applicants respectfully requests confidential treatment of the above-referenced information and documents in perpetuity.

AEP is also filing a confidential supplemental response to Item 67 of the Commission Staff's First Request for Information ("KPSC 1-67"). The attachment being filed as part of AEP's confidential supplemental response to KPSC 1-67 is the same document that was filed as part of AEP's initial confidential response to Item 67. However, AEP has since withdrawn its claim of privilege as to portions of the attachment, and is supplementing its response with an unredacted version of the attachment. As such, AEP adopts and incorporates its arguments presented on pages 7-9 of its Motion for Confidential Treatment filed on January 24, 2022, to support the confidentiality of its supplemental response to this item. The confidential information identified in the supplemental response to Item 67 should be kept confidential for three years, after which time the information will be of little or no competitive value.

Respectfully submitted,

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