

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)	

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

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 response to the supplemental requests for information. Specifically, the Joint Applicants request confidential treatment for information or documents related to Items 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, and 41 of the Attorney General’s Supplemental Data Requests and Items 34 and 40 of Kentucky Industrial Utility Customers’ Supplemental Data Requests. In support of this motion, the Joint Applicants state as follows:

Legal Standard

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)(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). One “obvious disadvantage” is created when proprietary information is disclosed “without the hurdles systematically associated with acquisition of such information about privately owned organizations.” *See Marina Management Service, Inc. v. Commonwealth of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995). The information and documents referenced below are all highly-sensitive confidential and proprietary information that AEP, Kentucky Power, Liberty, and Algonquin Power & Utilities Corp. (“Algonquin”)—Liberty’s ultimate parent—do not otherwise disclose, and the disclosure of which would cause substantial injury to AEP’s, Kentucky Power’s, Liberty’s, and/or Algonquin’s respective competitive positions.

Analysis

On July 16, 2010, the Attorney General filed his Supplemental Request for Information containing information in the questions themselves that is the subject of the pending Motions for Confidential Treatment. Thus, Liberty seeks protection of the questions themselves (the Attorney

General redacted the confidential information in the questions from the publicly filed document) and the responses thereto (including attachments to those responses) on the same basis set forth in Liberty's pending Motion for Confidential Treatment filed on January 24, 2022. The Joint Applicants incorporate by reference herein all arguments set forth in the pending Petition for Confidential Treatment.

Specifically, Joint Applicants seek confidential treatment of its responses to AG 2-31, 2-32, 2-39, 2-40, and 2-41 which are premised on its response to KPSC 1-68 and AG 1-44 seeking information about minutes and presentations to Liberty's and Algonquin's Board of Directors. The questions and responses to these items in the Second Data Request elaborate on the deliberations of the two Boards of Directors. Joint Applicants also seek confidential treatment of its responses to AG 2-33, 2-34, 2-35, 2-36, 2-37, 2-38, and KIUC 34, which are all premised on its response to AG 1-63 seeking due diligence reports. The questions to these items in the Second Data Requests ask for confirmation or elaboration on these reports that contain highly confidential business information and analyses. The Commission has previously granted confidential treatment for this type of due diligence analysis in prior acquisition cases.¹

The Joint Applicants also seek confidential treatment for the entirety of the credit opinion prepared by Moody's Investor Service ("Moody's") supplied as Attachment 1 to KIUC 2-40. The credit opinion was prepared by Moody's and is available to AEP and Kentucky Power pursuant to a paid subscription agreement with Moody's. The subscription agreement prohibits AEP and

¹ See *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by P.R. Wastewater Management, Inc., Marshall County Environmental Services, LLC, LH Treatment Company, LLC, Kingswood Development Inc., Airview Utilities, LLC, Brocklyn Utilities, LLC, Fox Run Utilities, LLC, and Lake Columbia Utilities, Inc.*, Case No. 2019-00104 ([Ky. PSC Feb. 25, 2021](#)); *Application Of Atmos Energy Corporation For An Adjustment Of Rates And Tariff Modifications*, Case No. 2013-00148 ([Ky. PSC Dec. 3, 2013](#)); *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 for minutes of the board of directors and other due diligence materials).

Kentucky Power from copying, transferring, or disseminating the credit opinion “unless authorized under a contract with Moody’s or otherwise authorized in writing by Moody’s.” The credit opinion is the property of Moody’s; it is not the property Kentucky Power or AEP. However, Kentucky Power has been authorized by Moody’s to produce this exhibit 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. Absent a waiver of confidential treatment by Moody’s, the information should remain confidential indefinitely. The Commission previously granted confidential protection to similar information indefinitely.²

Public disclosure of the confidential information being produced in accordance with this Petition for Confidential Treatment would result in competitive commercial injury to the Joint Applicants. In addition, even interparty disclosure could result in competitive commercial injury to Kentucky Power and AEP vis-à-vis Liberty, or commercial injury to Liberty vis-à-vis Kentucky Power and AEP. Accordingly, Joint Applicants have agreed not to exchange certain documents and/or information between each other. The material is being produced to the Commission and those intervenors who have signed a non-disclosure agreement. In accordance with the agreement between the Joint Applicants, Commission Staff, and those intervenors who have signed a non-disclosure agreement, the confidential versions of applicable information³ will not be shared

² See *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. PSC Nov. 16, 2020](#)).

³ In regard to responses to the supplemental requests for information, Attachment 1 to KIUC 2-40 is not being produced to Liberty pursuant to this agreement. Similarly, Liberty is not producing to AEP and Kentucky Power the following confidential responses: AG 2-31, 2-32, 2-33, 2-34, 2-35, 2-36, 2-37, 2-38, 2-39, 2-40, and 2-41, and KIUC 34.

between the Joint Applicants, but will be produced to Commission Staff and those intervenors who have signed a non-disclosure agreement (either in paper form or on a disc or USB) on pink paper to signify the document's status as withheld from Liberty or yellow paper to signify the document's status as withheld from AEP and Kentucky Power.

Information related to the aforementioned questions and responses contain sensitive due diligence information associated with the transaction, which would reveal the Kentucky Power's, AEP's, Liberty's, or Algonquin's financial information, as well as their respective Boards of Directors' deliberations and decision-making processes. All of this information is confidential business information not available to the public and would cause damage to the respective entities if disclosed. As such, the documents responsive to these requests contain sensitive confidential and proprietary information, the disclosure of which could be used by the respective entities' competitors to gain a competitive advantage over it.

In addition, most of the questions and responses thereto that are discussed above derive from prior responses regarding information exchanged between the transacting parties, as well as information provided to the respective Boards of Directors. The Commission has previously determined that responses requesting confirmation and elaboration on previously produced confidential documents are entitled to confidential protection.⁴ Accordingly, the Commission should give reciprocal treatment to Liberty.

For the foregoing reasons, the Joint Applicants respectfully request confidential treatment of the above-referenced information and documents in perpetuity.

⁴ *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 for responses to supplemental requests related to minutes of the board of directors and other due diligence materials).

Respectfully submitted,

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