

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)	

LIBERTY’S MOTION FOR CONFIDENTIAL TREATMENT

Liberty Utilities Co. (“Liberty”), by counsel, moves the Public Service Commission of Kentucky (the “Commission”) for an order granting confidential treatment to information and documents filed in its response to Commission Staff’s Second Post-Hearing Data Requests. Specifically, Liberty requests confidential treatment for information or documents related to Items 1, 2, and 3. 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. 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).

Item 1 seeks financing terms contained in private loans that Liberty has acquired. The Commission has consistently held that terms of financing agreements, specifically terms in loans, are entitled confidential treatment. *See, e.g., Electronic Application of Citipower, LLC for (1) an Adjustment of Rates Pursuant to 807 KAR 5:076; (2) Approval for A Certificate of Public Convenience & Necessity to Purchase Pipeline & Other Related Assets; & (3) Approval of Financing*, No. 2019-00109, 2019 WL 3893119, at *3 (Aug. 14, 2019); *Application of East Kentucky Power Cooperative, Inc. for the Approval of the Amendment and Extension of an Unsecured Revolving Credit Agreement in an Amount Up to \$800,000,000 of Which Up to \$100,000,000 May Be in the Form of an Unsecured Renewable Term Loan & \$200,000,000 of Which Will Be in the Form of A Future Increase Option*, No. 2016-00116, 2016 WL 4073426 (July 28, 2016); *Application of East Kentucky Power Cooperative, Inc. for Approval of the Amendment & Extension or Refinancing of an Unsecured Revolving Credit Agreement in an Amount UP to \$800,000,000 of Which Up to \$100,000,000 May Be in the Form of an Unsecured Renewable Term Laon & \$200,000,000 of Which Will Be in the Form of A Future Increase Option*, No. 2016-00116, 2019 WL 1099808 (Mar. 5, 2019); *Electronic Application of Bluegrass Water Utility Operating Company, LCL for an Adjustment of Rates & Approval of Construction*, No. 2020-00290, 2021 WL 6145508, at *8 (Dec. 27, 2021); *Electronic Application of Navitas KY NG, Johnson County Gas Company, and B&H Gas Company for Approval of Acquisition, Transfer of Ownership, and Control of Natural Gas Utility Systems*, No. 2020-00396, 2021 WL 1734757 (Apr. 28, 2021). The

terms of Liberty's privately sourced loan agreements constitute highly sensitive, confidential, proprietary information. Liberty does not otherwise disclose the financing terms or the names of the lenders therein. Given that these loans are sourced in a private market, these documents are not otherwise mandated to be publicly disclosed, and such disclosure would cause Liberty a severe commercial disadvantage, Liberty respectfully moves the Commission to treat the responsive documents to Item 1 confidentially.

Item 2(b) requests copies of confidential financing documents between Liberty and regulated utility subsidiaries. In response, Liberty is submitting responsive intercompany debt agreements between Liberty and its regulated utility subsidiaries, which are confidential and are not publicly disclosed by parties to those agreements. These agreements reveal detailed information about intercompany financing, including interest rates and processes. If disclosed, Liberty and its subsidiaries would suffer commercial disadvantage. In *Marina Management Services, Inc. v. Cabinet for Tourism*, 906 S.W.2d 318 (Ky. 1995), the Supreme Court held that a state agency properly withheld information on notes payable and related-party transactions. The Court reasoned that disclosure would provide an unfair advantage to competitors by allowing them to ascertain the economic status of private companies "without the hurdles systematically associated with acquisition of such information about privately owned organizations." *Id.* at 319. The Commission has granted confidential treatment to similar debt instruments that were filed in this matter in response to Item 80 of the Attorney General's Initial Request for Information. Accordingly, the Commission should grant confidential treatment to the debt agreements that are related-party transactions between Liberty and a subsidiary that are the subject of Item 2(b).

The Commission Staff next seeks a comprehensive organizational chart for Algonquin Power & Utilities Corp., Liberty's parent company, and its subsidiaries in Item 3. It is important

to recognize that Commission Staff has requested an organization chart of an unregulated entity with unregulated affiliates. Algonquin Power & Utilities Corp. (“Algonquin”) maintains its detailed organizational chart confidentially and has never publicly disclosed it. Public disclosure of Algonquin’s corporate organization chart would release sensitive, proprietary information into the competitive sphere that would work a commercial disadvantage against the company. Specifically, disclosure of this detailed organization chart would provide Algonquin’s competitors specific information regarding its corporate structure. This information would further provide a glimpse into the internal workings of Algonquin—again, an unregulated corporation—and the organizational best practices to be gleaned from its structure and hierarchy.

This type of private corporate information has been deemed to be afforded confidential treatment by courts. For example, in *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that certain documents “concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary’” and, thus, subject to the exemption found in KRS 61.878(1)(c)(1).

Similarly, Commission precedent instructs that the requested information is sensitive and proprietary, and it is not subject to public disclosure. For example, in *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of A Certificate of Public Convenience & Necessity; & Other Relief*, No. 2021-00183, 2021 WL 4657674 (Oct. 4, 2021), the Commission agreed that the organizational chart was entitled to confidential treatment. Because disclosure of Algonquin’s detailed organizational chart would reveal the inner workings of Algonquin, it is exempt from disclosure under KRS 61.878(1)(c)(1), and therefore, the Commission should afford confidential treatment to Liberty’s Attachment to Item 3.

Public disclosure of the confidential information being produced in accordance with this Petition for Confidential Treatment would result in competitive commercial injury to Liberty. In addition, even interparty disclosure could result in competitive commercial injury to Liberty vis-à-vis Kentucky Power Company (“Kentucky Power”) and American Electric Power Company, Inc. (“AEP”). Accordingly, Liberty, AEP, and Kentucky Power (collectively the “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 nondisclosure agreement, the confidential versions of applicable information will not be shared between the Joint Applicants but will be produced to Commission Staff and those intervenors who have signed a non-disclosure agreement.

For the foregoing reasons, Liberty respectfully requests confidential treatment of the above-referenced information and documents in perpetuity.

RESPECTFULLY SUBMITTED,

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