

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 January 24, 2022, American Electric Power Company, Inc. (AEP) and Kentucky Power Company (Kentucky Power), (collectively, Joint Movants) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for Attachments 1, 2, 3, and 4 to Joint Movants' responses to the Attorney General's First Request for Information (Attorney General's First Request), Item 8, Attachments 1 and 2 to Joint Movants' responses to Attorney General's First Request, Item 34, Attachment 1 to Joint Movants' responses to Kentucky Industrial Utility Customers, Inc. (KIUC) First Request for Information (KIUC's First Request), Item 32, and Attachment 1 to the Joint Movants' responses to KIUC's First Request, Item 68.¹

LEGAL STANDARD

¹ Joint Movants also requested confidential protection of Attachment 1 to Joint Movants' response to Commission Staff's First Request for information Item 67 in this motion. However, a subsequent motion amends this request. This request will be addressed in a later order relating to the additional motion.

The Commission is a public agency subject to Kentucky Open Records Act,² which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.³ The exceptions to the free and open examination of public records should be strictly construed.⁴ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁵ KRS 61.878(1)(c)(1) provides an exception to the requirement 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.

JOINT MOVANTS’ ARGUMENTS

The Joint Movants requested confidential protection of Attachments 1, 2, 3, and 4 to the response to Attorney General’s First Request, Item 8. This response required the Joint Movants to provide credit opinions prepared by Moody’s Investor Service (Moody’s). The Joint Movants argued this subscription agreement with Moody’s prevents Kentucky Power from disclosing the information, but there has been an agreement the information can be shared with the Commission and intervenors that have signed a non-disclosure agreement. The Joint Movants requested indefinite confidential treatment.

The Joint Movants requested confidential treatment for portions of Attachment 1 and the entirety of Attachment to the response to Attorney General’s First Request,

² KRS 61.870 through 61.884.

³ KRS 61.872(1).

⁴ KRS 61.878.

⁵ 807 KAR 5:001, Section 13(2)(c).

Item 34. The attachments contain information related to individual employee compensation. The Joint Movants argued if this information were disclosed it could create an increase in employee attraction and retention costs. The Joint Movants also argued that if the compensation arrangements were disclosed it could harm AEP's ability to manage its compensation arrangements for other employees. The Joint Movants requested the information be held confidential for seven years.

The Joint Movants requested confidential protection for the entirety of Attachment 1 of the response to KICU's First Request, Item 32. This response contains individual generating unit performance data during PJM CP events. The Joint Movants argued that the information should be held confidential because others could form predictions on the likelihood of future outages. This could lead to an unfair commercial advantage harming Kentucky Power's ability to minimize costs for rate payers. The Joint Movants requested the information be held confidential indefinitely.

The Joint Movants requested confidential protection of Attachment 1 to the response to KIUC's First Request, Item 68. This attachment provides information related to the separation planning in connection with the sale of Kentucky Power to Liberty Utilities Co. (Liberty). The Joint Movants argued that substantial time and resources have been expended in developing the timeline and process for separation in connection with the sale of Kentucky Power to Liberty. If this was disclosed consultants and entities considering similar sales and acquisitions could use the free work product. Additionally, it was argued competitors dividing assets AEP is interested in could gain unfair insight into AEP's processes.

FINDINGS

Having considered the motion and the material at issue, the Commission finds that Joint Movants' motion is granted in part and denied in part. The Commission finds that the designated material contained in Attachments 1, 2, 3, and 4 to Joint Movants' responses to Attorney General's First Request, Item 8, Attachment 1 to Joint Movants' responses to KIUC First Request for Information, Item 32, and Attachment 1 to the Joint Movants' responses to KIUC's First Request, Item 68 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 Attachments 1 and 2 to Joint Movants' responses to Attorney General's First Request, Item 34. The Commission has previously held that executive salaries are not entitled to confidential protection because of the public interest in disclosure.⁶ Therefore,

⁶ The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Jan. 20, 2016); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC Aug. 31, 2016); Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of the Electric Rates; 2) Approval of an Environment Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All other Required Approvals and Relief* (Ky. PSC June 12, 2018); Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC Oct. 8, 2019); Case No. 2019-00268, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC Dec. 3, 2019); Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All other Required Approvals and Relief* (Ky. PSC May 4, 2020); Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Dec. 27, 2021); Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC Dec. 7, 2021); Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of One-Year Surcredit* (Ky. PSC Dec. 7, 2021); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public*

Attachments 1 and 2 to Joint Movants' responses do not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Commission further warns Joint Movants that, as a result of the long-standing precedent denying confidential treatment to executive compensation, it will not look kindly on subsequent motions for confidential treatment of executive compensation.

IT IS THEREFORE ORDERED that:

1. Joint Movants' motion for confidential treatment for responses to requests for information is granted in part and denied in part.

2. Joint Movants' motion for confidential treatment for Attachments 1, 2, 3, and 4 to Joint Movants' responses to Attorney General's First Request, Item 8, Attachment 1 to Joint Movants' responses to KIUC First Request for Information, Item 32, and Attachment 1 to the Joint Movants' responses to KIUC's First Request, Item 68 is granted.

3. Joint Movants' motion for confidential treatment for Attachments 1 and 2 to Joint Movants' responses to Attorney General's First Request, Item 34 is denied.

4. 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.

5. 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).

Convenience and Necessity; and Other Relief (Ky. PSC Oct. 5, 2021); Case No. 2021-00185, *Electric Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 8, 2021).

6. Joint Movants shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. 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, Joint Movants 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 Joint Movants are unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. 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 Joint Movants to seek a remedy afforded by law.

9. 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.

10. If Joint Movants 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.

11. Within 30 days of the date of service of this Order, Joint Movants 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.

12. The designated material for which Joint Movants' 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 Joint Movants to seek a remedy afforded by law.

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By the Commission



ATTEST:



Executive Director

Case No. 2021-00481

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