

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 4, 2022, American Electric Power Company, Inc. (AEP), Kentucky Power Company (Kentucky Power), and Liberty Utilities Co. (Liberty), (collectively as the Joint Applicants) filed a motion pursuant to 807 KAR 5:001, Section 13 and KRS 61.878 requesting that the Commission grant confidential protection for portions of the Seller’s Disclosure Letter provided as Exhibit 5 to the Application.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act,¹ which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.² The exceptions to the free and open examination of public records should be strictly construed.³ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

exemptions is applicable.⁴ 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. KRS 61.878(1)(k) provides an exception to the requirement for public disclosure of, “all public records or information the disclosure of which is prohibited by federal law or regulation, or state law.” KRS 61.878(1)(l) provides an exception for tax information.⁵

JOINT APPLICANTS’ ARGUMENTS

The Joint Applicants request confidential protection of multiple sections of the Seller’s Disclosure Letter provided as Exhibit 5 to the Application. Section 2.4(b) contain information regarding the Big Sandy Firm Transportation Service Agreement between Kentucky Power and Columbia Gas Transmission, LLC, references to Master Lease agreements, and tower lease agreements. The Joint Applicants argued that this information should receive confidential protection because it would provide an unfair commercial advantage if other corporations. Other corporations could use the information undermine Kentucky Power’s contract negotiations. The Joint Applicants requested confidential treatment until the end of September 2022 for the Big Sandy Firm Transportation Service Agreement. The Joint Applicants requested confidential treatment for five years for the lease documents.

The Joint Applicants requested confidential treatment for portions of Section 2.7(c) of the Seller’s Disclosure Letter. This section contains the dollar book value of coal lands

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ KRS 61.878(1)(l).

owned by Indian Michigan Power and Kentucky Power. The Joint Applicants argued if this information were made public it would place Kentucky Power at a commercial disadvantage if the property was placed for sale. Others could use the information to tailor offers lower than what they would normally if the book value was known. The Joint Applicants requested the information be kept confidential until January 2026.

The Joint Applicants requested confidential protection for portions of Section 2.8(a) of the Seller's Disclosure Letter. The section contains information about a solar project development, a piece of real property that is for sale, and the sale of a non-AEP subsidiary. The Joint Applicants requested the information regarding the solar project and the real property be held confidential for five years. The information about the sale of a non-AEP subsidiary to be held confidential for one year. The Joint Applicants argued if this information is disclosed it will create an unfair advantage because others will be able to use the information to get more favorable pricing harming Kentucky Power.

The Joint Applicants requested confidential protection for all of Section 2.8(b) of the Seller's Disclosure Letter. This section contains information related to a contract issue with one of Kentucky Power's suppliers. It was argued that if this information was disclosed publicly, it could cause all of Kentucky Power's suppliers to price their resources differently causing Kentucky Power to pay more. This would create an unfair commercial advantage to the company's doing business with Kentucky Power. The Joint Applicants requested this information be kept confidential indefinitely.

The Joint Applicants requested confidential protection for Section 2.13(f) of the Seller's Disclosure Letter. The information is employee benefits that would be triggered if Kentucky Power is sold. The Joint Applicants argued this information is generally seen

as confidential and if disclosed could cause retention issues with other employees. The Joint Applicants argued that if disclosed it could create problems hiring other employees because they would request the same salary. The Joint Applicants requested confidential protection for five years.

The Joint Applicants request confidential protection for the entirety of Section 2.15 of the Seller's Disclosure Letter. This section provides the tax information of Kentucky Power. The Joint Applicants argued this is exempt from disclosure pursuant to 26 U.S.C. § 6103(a)(2), and KRS 131.190. The Joint Applicants requested confidential protection indefinitely.

The Joint Applicants requested confidential protection for portions of Section 4.1(a) of the Seller's Disclosure Letter. This includes information about the solar development, the sale of real property, information about forecasted fuel costs and needs, and tax related information regarding Kentucky Power and Wheeling Power. The information related to the solar development and the sale of real property is the same information from Section 2.8(a) of the Seller's Disclosure Letter and the Joint Applicants again requested confidential protection for 5 years. The information regarding the tax situation of Kentucky Power and Wheeling Power is the same information from Section 2.15 of the Seller's Disclosure Letter and the Joint Applicants again request indefinite confidential protection. The Joint Applicants argued the information about the forecasted fuel costs and needs is highly sensitive and if disclosed competitors could use the information to gain a competitive advantage over Kentucky Power in the daily PJM energy markets. The request was for the information to be held confidential for five years.

The Joint Applicants requested confidential protection of portions of Section 4.8(b) of the Seller's Disclosure Letter which contains the capacity position of Kentucky Power in the Bridge Power Coordination Agreement. The Joint Applicants argued that if this information is disclosed publicly, it could place Kentucky Power at a competitive disadvantage if it needed to purchase third party power. The third party could price capacity higher if they had access to Kentucky Power's capacity position or its need in PJM for certain years. The Joint Applicants requested confidential protection of this information until May 2024, which is the end of the 2023/2024 PJM Capacity Period.

The Joint Applicants requested confidential protection of portions of 4.20(a) of the Seller's Disclosure Letter. This is information related to a third-party letter agreement which is an ongoing negotiation with the third-party. The Joint Applicants argued that if this information was disclosed it could negatively impact the negotiations with the third-party harming Kentucky Power. The information was requested to be held confidential for five years.

The Joint Applicants requested confidential protection for the entirety of Section 4.20(e) of the Seller's Disclosure Letter, including the title of the section. The Joint Applicants argued that this information relates to agreements made between Kentucky Power and AEP Generation Resources in the event that the Mitchell Plant is transferred to Wheeling Power. The Joint Applicants claimed public disclosure could lead entities that Kentucky Power had contracted with in the past to seek additional consideration for past agreements placing Kentucky Power at a disadvantage. The Joint Applicants requested confidential protection until December 2028.

The Joint Applicants requested confidential protection for the entirety of Section 9.2(a) of the Seller's Disclosure Letter. This section provides information about potential claims against Kentucky Power. The Joint Applicants argued that this information is generally considered confidential and contains information about legal positions. If it is disclosed, it could harm Kentucky Power's legal positions and be considered admissions. The Joint Applicants requested confidential protection for five years.

FINDINGS

Having considered the motion and the material at issue, the Commission finds that the Joint Applicants' motion is granted in part and denied in part. The Commission finds that the designated material contained in Sections 2.4(b), 2.7(c), 2.8(a), 2.8(b), 2.15, 4.1(a), 4.8(b), the information in 4.20(e) but not the title, and 9.2(a) 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 finds that the designated material contained in Sections 2.15 and the portion of 4.1(a) that is related to tax information are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(l) and 807 KAR 5:001, Section 13.

The Commission finds that the request for confidential treatment is denied for Section 2.13(f). The Commission has previously held that executive compensation is not entitled to confidential protection. The information provided in the motion and documents do not specify which employee's compensation agreements confidential protection is sought for. Therefore, Section 2.13(f) of the Seller's Disclosure Letter does 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 finds that the request for confidential treatment is denied for the title of the Section 4.20(e) of the Seller's Disclosure Letter. The title of the section does not meet the criteria for confidential protection and not exempted from public disclosure pursuant to KRS 61.871(1)(c)(1) and 807 KAR 5:001, Section 13. Public disclosure of the title of the section does not place the Joint Applicants, or specifically Kentucky Power, at an unfair commercial disadvantage.

IT IS THEREFORE ORDERED that:

1. Joint Applicants' motion for confidential treatment for portions of the Seller's Disclosure Letter is granted in part and denied in part.

2. Joint Applicants' motion for confidential treatment for Sections 2.4(b), 2.7(c), 2.8(a), 2.8(b), 2.15, 4.1(a), 4.8(b), the information in 4.20(e) but not the title, and 9.2(a) of the Seller's Disclosure Letter is granted.

3. Joint Applicants' motion for confidential treatment for Section 2.13(f) and the title of 4.20(e) is denied.

4. The designated material granted confidential treatment in the portion of 2.8(a) regarding the sale of a subsidiary of the Seller's Disclosure Letter by this Order shall not be placed in the public record or made available for public inspection for one year or until further Order of this Commission.

5. The designated material granted confidential treatment in the portion of 2.4(b) regarding the Big Sandy Firm Transportation Agreement of the Seller's Disclosure

Letter by this Order shall not be placed in the public record or made available for public inspection until September 2022 or until further Order of this Commission.

6. The designated material granted confidential treatment in Section 4.8(b) of the Seller's Disclosure Letter by this Order shall not be placed in the public record or made available for public inspection until May 2024 or until further Order of this Commission.

7. The designated material granted confidential treatment in Section 2.7(c) of the Seller's Disclosure Letter by this Order shall not be placed in the public record or made available for public inspection until January 2026 or until further Order of this Commission.

8. The designated material granted confidential treatment in Section 4.20(e) of the Seller's Disclosure Letter by this Order shall not be placed in the public record or made available for public inspection until December 2028 or until further Order of this Commission.

9. The designated material granted confidential treatment in portions of Section 2.4(b), portions of Section 2.8(a), portions of Section 4.1(a), Section 4.20(a), and Section 9.2(a) of the Seller's Disclosure Letter by this Order shall not be placed in the public record or made available for public inspection until five years or until further Orders of this Commission.

10. The designated material granted confidential treatment in Sections 2.8(b), 2.15, and the portion of 4.1(a) regarding tax information of the Seller's Disclosure Letter 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.

11. 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).

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

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

14. 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 the Joint Applicants to seek a remedy afforded by law.

15. 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.

16. If the Joint Applicants object 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.

17. Within 30 days of the date of service of this Order, the Joint Applicants 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.

18. The designated material for which the Joint Applicants' 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 the Joint Applicants to seek a remedy afforded by law.

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By the Commission



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