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December 28, 2007

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PUBLIC SERVICE  
COMMISSION

Hon. Elizabeth A. O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

Re: *Application of Big Rivers Electric Corporation, E.ON U.S., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing Inc., P.S.C. No. 2007-00455; The Application of Big Rivers Electric Corporation for Approval of Environmental Compliance Plan and Environmental Surcharge Tariff, P.S.C. No. 2007-00460*

Dear Ms. O'Donnell:

Enclosed for filing are the following documents, which seek a series of regulatory approvals required for Big Rivers Electric Corporation ("Big Rivers"), Western Kentucky Energy Corp., and LG&E Energy Marketing Inc. to consummate transaction between and among them that have become known as the "Unwind Transaction." More specifically, we enclose:

1. An original and ten copies of the Application of Big Rivers Electric Corporation, E.ON U.S., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing Inc., in a case predesignated as P.S.C. Case No. 2007-00455;
2. An original and ten copies of the Application of Big Rivers Electric Corporation for an environmental surcharge in a case predesignated as P.S.C. Case No. 2007-00460;
3. Petition of Western Kentucky Energy Corp. for Confidential Protection; and
4. Motion of Big Rivers Electric Corporation, E.ON U.S., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing Inc. for An informal conference on January 4, 2008.

I certify that a copy of this letter and each of the foregoing documents has been served on the Kentucky Attorney General, Rate Intervention Division, and the persons identified on the attached service list.

Please note that, in response to a request from Commission staff, the applicants have proposed a procedural schedule for this matter. A copy of that proposed procedural

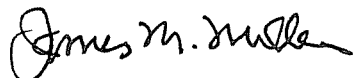
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Hon. Elizabeth A. O'Donnell  
December 28, 2007  
Page Two

schedule is attached as Exhibit 4 to the Application, and for your convenience, an additional copy is attached to this letter. The procedural schedule contemplates an initial informal conference with Commission staff on Friday, January 4, 2008.

Sincerely yours,

A handwritten signature in black ink that reads "James M. Miller". The signature is written in a cursive style with a large initial "J" and "M".

James M. Miller  
Counsel for Big Rivers Electric Corporation

Enclosures

c: Mr. Michael H. Core  
Mr. Paul W. Thompson  
Hon. Allyson Sturgeon  
Hon. Kendrick Riggs  
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PSC CASE NOS. 2007-00455 AND 2007-00460

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PSC CASE NOS. 2007-00455 AND 2007-00460

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

THE APPLICATIONS OF BIG RIVERS )  
ELECTRIC CORPORATION FOR: )  
(I) APPROVAL OF WHOLESALE TARIFF )  
ADDITIONS FOR BIG RIVERS ELECTRIC ) CASE NO. 2007-00455  
CORPORATION, (II) APPROVAL OF )  
TRANSACTIONS, (III) APPROVAL TO ISSUE )  
EVIDENCES OF INDEBTEDNESS, AND )  
(IV) APPROVAL OF AMENDMENTS TO )  
CONTRACTS; AND )  
)  
)  
OF E.ON U.S., LLC, WESTERN KENTUCKY )  
ENERGY CORP. AND LG&E ENERGY MARKETING,) )  
INC. FOR APPROVAL OF TRANSACTIONS )

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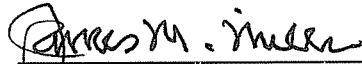
PUBLIC SERVICE  
COMMISSION

**Motion for Informal Conference**

Big Rivers Electric Corporation ("Big Rivers"), E.ON U.S., LLC ("E.ON U.S."), Western Kentucky Energy Corporation ("WKEC") and LG&E Energy Marketing, Inc. ("LEM") (E.ON U.S., WKEC and LEM are collectively referred to herein as the "E.ON Entities"), by counsel, move the Public Service Commission to enter an order scheduling an informal conference at the Commission's offices for Friday, January 4 at 1:30 p.m. E.S.T. for the purpose of allowing the Big Rivers and the E.ON Entities the opportunity to review their joint application with the parties and Commission Staff, discuss the proposed procedural schedule, answer any questions and discuss any issues associated with this proceeding.

WHEREFORE, Big Rivers and the E.ON Entities respectfully request that the Commission enter its order scheduling the informal conference as requested herein.

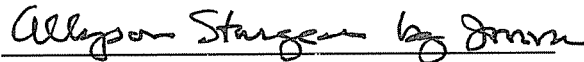
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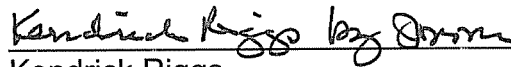
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CORP. AND LG&E ENERGY  
MARKETING INC.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

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PUBLIC SERVICE COMMISSION

THE APPLICATIONS OF BIG RIVERS )
ELECTRIC CORPORATION FOR: )
(I) APPROVAL OF WHOLESALE TARIFF )
ADDITIONS FOR BIG RIVERS ELECTRIC )
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TRANSACTIONS, (III) APPROVAL TO ISSUE )
EVIDENCES OF INDEBTEDNESS, AND )
(V) APPROVAL OF AMENDMENTS TO )
CONTRACTS; AND E.ON U.S., LLC, )
WESTERN KENTUCKY ENERGY CORP., AND )
LG&E ENERGY MARKETING, INC. FOR )
APPROVAL OF TRANSACTIONS )

CASE NO. 2007-00455

PETITION OF WESTERN KENTUCKY ENERGY CORPORATION
FOR CONFIDENTIAL PROTECTION

Western Kentucky Energy Corporation ("WKEC") hereby petitions the Kentucky Public Service Commission ("Commission") pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c) to grant confidential protection for certain of WKEC's fuel and fuel-related contracts, including coal contracts, pet coke contracts, barge contracts, and reagent contracts (the "Contracts"), to which the Application in this case refers and which Big Rivers Electric Corporation ("Big Rivers") proposes to assume once the Unwind Transaction contemplated in this proceeding is complete.

WKEC recognizes that the Commission has an interest in reviewing these Contracts and taking into consideration the terms and conditions thereof in the context of this case, because a regulated entity, Big Rivers, proposes to assume the Contracts pursuant to the transactions contemplated in the Application. However, because WKEC is an unregulated entity, the Contracts are confidential commercial information, the disclosure of which before the

completion of the Unwind Transaction could cause WKEC significant competitive harm. Disclosure would, among other things, permit WKEC's competitors and other fuel suppliers to learn the quantities and types of fuel purchased by WKEC, to WKEC's competitive detriment. Moreover, the Contracts contain confidentiality provisions designed to prevent the disclosure of such information. Accordingly, at least until the date upon which Big Rivers assumes the Contracts at the consummation of the proposed Unwind Transaction, the Contracts should not be subject to public disclosure and should be withheld from the public record.

In further support of this Petition, WKEC states as follows:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of the party seeking confidentiality.

2. The Contracts contain, among other information, the price, quantities, and types of fuel purchased by WKEC, as well as the identities of the suppliers and other important terms under which the suppliers provide fuel and fuel-related items to WKEC. The disclosure of such information would confer an unfair advantage upon WKEC's competitors with relation to both purchases of fuel-related items and wholesale power sales. In addition, disclosure would provide an unfair advantage to fuel suppliers. Any impairment of WKEC's ability to obtain the most advantageous price possible from suppliers will necessarily erode WKEC's competitive position among other wholesale power generators with which WKEC competes.

3. This damage would be exacerbated by the interstate nature of the competition WKEC faces in the wholesale power market. Competitors of WKEC in this market are not subject to the Commission's regulations regarding the filing of fuel-related information.



4. The information for which WKEC seeks confidential treatment is not known outside of WKEC, and the Contracts contain confidentiality provisions to prevent the information from being disclosed. Moreover, the information contained in the Contracts is not disseminated within WKEC except to those employees with a legitimate business need to know and act upon the information.

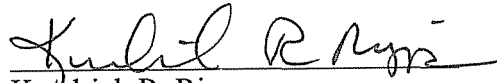
5. If the Commission does not agree that the Contracts should receive confidential protection at least through the completion of the Unwind Transaction, however, it must hold an evidentiary hearing (a) to protect WKEC's due process rights, and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. Utility Regulatory Commission v. Kentucky Water Service Company, Inc., Ky. App., 642 S.W.2d 591, 592-94 (1982).

6. WKEC will disclose the confidential information, pursuant to a protective agreement, to intervenors and others with a legitimate interest in this information and as required by the Commission. In accordance with the provisions of 807 KAR 5:001 Section 7, one copy of the confidential information contained in each of the Contracts is highlighted in yellow; the contents and identity of each contract is considered to be confidential.

**WHEREFORE**, Western Kentucky Energy Corporation respectfully requests that the Commission grant confidential protection for the information at issue at least until the completion of the Unwind Transaction, or in the alternative, schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Dated: December 28, 2007

Respectfully submitted,



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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

THE APPLICATIONS OF BIG RIVERS )  
ELECTRIC CORPORATION FOR: )  
(I) APPROVAL OF WHOLESALE TARIFF )  
ADDITIONS FOR BIG RIVERS ELECTRIC )  
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)  
OF E.ON U.S., LLC, WESTERN KENTUCKY )  
ENERGY CORP. AND LG&E ENERGY MARKETING,) )  
INC. FOR APPROVAL OF TRANSACTIONS )

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PUBLIC SERVICE  
COMMISSION

CASE NO. 2007-00455

**APPLICATION**

Big Rivers Electric Corporation ("Big Rivers"), E.ON U.S., LLC ("E.ON U.S."), Western Kentucky Energy Corporation ("WKEC") and LG&E Energy Marketing, Inc. ("LEM") (E.ON U.S., WKEC and LEM are collectively referred to herein as the "E.ON Entities"), by counsel, hereby submit their Joint Application pursuant to KRS 278.020(5) and (6), KRS 278.218, KRS 278.030, KRS 278.455, 807 KAR 5:001, 807 KAR 5:011, and all other applicable statutes and regulations, seeking various approvals required by one or more of them (i) to terminate certain transactions approved by the Kentucky Public Service Commission ("Commission") in Case Numbers 97-204<sup>1</sup> and 98-267<sup>2</sup> (the "1998

<sup>1</sup> *The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction, PSC Case No. 97-204 (Final Order dated April 30, 1998).*

1 Transactions”), (ii) to position Big Rivers to resume operational control of its  
2 generating units, (iii) for Big Rivers to provide the wholesale power required for  
3 Kenergy Corp. to serve the current retail electric service requirements of Century  
4 Aluminum of Kentucky General Partnership (“Century”) and Alcan Primary  
5 Products Corporation (“Alcan”), aluminum smelters located in Western Kentucky  
6 (individually, a “Smelter,” and collectively, the “Smelters”), (iv) to implement  
7 certain rate mechanisms and enter into certain wholesale power contract  
8 amendments necessary to ensure fair, just and reasonable rates in the interim  
9 between the closing of the “Unwind Transaction” (as defined in paragraph 10  
10 below) and the date the Commission approves new rates for Big Rivers pursuant  
11 to a general rate review application Big Rivers will file no later than three years  
12 from the date of a final order in this proceeding, (v) to issue certain evidences of  
13 indebtedness, and (vi) to terminate and reschedule Big Rivers’ pending IRP  
14 proceeding.

## 15 **PARTIES**

16 1. The Applicant, Big Rivers, is a rural electric cooperative corporation  
17 organized pursuant to KRS Chapter 279. Its mailing address is P.O. Box 24, 201  
18 Third Street, Henderson, Kentucky, 42419. 807 KAR 5:001, Section 8(1). Big  
19 Rivers owns electric generation facilities, and purchases, transmits and sells  
20 electricity at wholesale. It exists for the principal purpose of providing the  
21 wholesale electricity requirements of its three distribution cooperative members

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<sup>2</sup> *The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson, P.S.C. Case No. 98-267 (Final Order dated July 14, 1998).*

1 ("Members"), which are: Kenergy Corp. ("Kenergy"), Meade County Rural  
2 Electric Cooperative Corporation ("Meade County"), and Jackson Purchase  
3 Energy Corporation ("Jackson Purchase"). The Members in turn provide retail  
4 electric service to approximately 110,000 consumer/members located in 22  
5 Western Kentucky counties, to wit: Ballard, Breckenridge, Caldwell, Carlisle,  
6 Crittenden, Daviess, Graves, Grayson, Hancock, Hardin, Henderson, Hopkins,  
7 Livingston, Lyon, Marshall, McCracken, McLean, Meade, Muhlenberg, Ohio,  
8 Union and Webster.

9       2.       The Applicant, E.ON U.S., is a Kentucky limited liability company  
10 and an indirect subsidiary of E.ON AG, a German company. The mailing address  
11 of E.ON U.S. is P.O. Box 32010, 220 West Main Street, Louisville, Kentucky  
12 40232. 807 KAR 5:001, Section 8(1). LG&E Energy LLC changed its name to  
13 E.ON U.S. LLC on December 1, 2005.<sup>3</sup>

14       3.       The Applicant, WKEC, is a Kentucky corporation whose mailing  
15 address is P.O. Box 32010, 220 West Main Street, Louisville, Kentucky 40232.  
16 WKEC is regulated by the Federal Energy Regulatory Commission, is an indirect  
17 subsidiary of E.ON U.S, is the lessee under the 1998 Transactions of the electric  
18 generating facilities owned or operated by Big Rivers at the time of the 1998  
19 Transactions and currently is engaged in the business of leasing and operating  
20 electric generation assets owned or leased by Big Rivers or the City of  
21 Henderson. 807 KAR 5:001, Section 8(1).

22       4.       The Applicant, LEM, is an Oklahoma corporation authorized to do

---

<sup>3</sup> LG&E Energy LLC was created by the merger on December 30, 2003, of LG&E Energy Corp. with LEC LLC, following which LEC LLC changed its name to LG&E Energy LLC.

1 business in Kentucky, is an indirect subsidiary of E.ON U.S, and is currently  
2 engaged in the business of purchasing and selling electric power. Among other  
3 things, LEM is WKEC's power marketing affiliate, and was a party to the Power  
4 Purchase Agreement entered into by Big Rivers in connection with the 1998  
5 Transactions, under which Big Rivers currently purchases its principal source of  
6 wholesale power. LEM assigned its obligations under the Purchase Power  
7 Agreement and its agreements with Kenergy to WKEC in 2006 (although it was  
8 not released from those obligations). LEM's mailing address is P.O. Box 32010,  
9 220 West Main St., Louisville, Kentucky 40232. 807 KAR 5:001, Section 8(1).

10 5. The articles of incorporation of Big Rivers, and all amendments  
11 thereto, are attached as Exhibit 1 to the Application of Big Rivers in *In the Matter*  
12 *of: Application of Big Rivers Electric Corporation, LG&E Energy Marketing Inc.,*  
13 *Western Kentucky Energy Corp., WKE Station Two Inc., and WKE Corp.,*  
14 *Pursuant to the Public Service Commission Orders in Case Nos. 99-450 and*  
15 *2000-095, for Approval of Amendments to Station Two Agreements, PSC Case*  
16 *No. 2005-00532, and are incorporated by reference. 807 K.A.R. 5:001 Section*  
17 *8(3).*

18 6. The articles of incorporation of E.ON U.S. and all amendments  
19 thereto are made a part of the public record as an exhibit to the application filed  
20 in *Joint Verified Application of E.ON AG, Powergen Ltd., and E.ON U.S. LLC for*  
21 *Waiver of Certain Merger Commitments, P.S.C. Case No. 2007-00466, and are*  
22 *incorporated by reference. 807 K.A.R. 5:001 Section 8(3).*

23 7. The articles of incorporation of WKEC and LEM and all

1 amendments thereto are collectively attached as Exhibit 1 to this Application.  
2 807 K.A.R. 5:001, Section 8(3).

3 8. Although the E.ON Entities are affiliated with Louisville Gas and  
4 Electric Company and Kentucky Utilities Company, both of which are regulated  
5 utilities as defined in KRS 278.010(3), neither of the regulated utilities will be  
6 affected by the proposed Unwind Transaction.

7 9. A chart of the statutory and regulatory compliance requirements for  
8 this Application, cross-referenced to the information in the Application that  
9 satisfies those requirements, is attached to this Application as Exhibit 2.

#### 10 **INTRODUCTION**

11 10. Big Rivers implemented its bankruptcy plan of reorganization  
12 ("Plan") in 1998 by leasing eight generating units, transferring its responsibility to  
13 operate two additional generating units owned by the City of Henderson, acting  
14 through Henderson Municipal Power and Light ("Henderson"), and entering into  
15 the 1998 Transactions. These transactions, as the Commission found in Case  
16 No. 97-204, were reasonable and proper, and permitted Big Rivers to put behind  
17 it a period of financial difficulty. But circumstances have changed. Big Rivers  
18 proposes to resume all aspects of its mission as an electric generation and  
19 transmission cooperative with the financial strength to control its own destiny, to  
20 respond to the changing power needs of Western Kentucky, and to finance  
21 electricity infrastructure improvements vital to the economic development efforts  
22 of its Members and the communities in which they reside. The combined  
23 transactions by which Big Rivers and the E.ON Entities propose to terminate and

1 unwind the 1998 Transactions is referred to in this Application as the “Unwind  
2 Transaction.” The document that memorializes the related agreements between  
3 Big Rivers and the E.ON Entities is the Transaction Termination Agreement  
4 dated as of March 26, 2007 (as amended, the “Termination Agreement”), a copy  
5 of which is attached as Exhibit 3 to this Application.

6           11. The proposed Unwind Transaction also is consistent with the  
7 business plan of E.ON U.S. to focus on its regulated lines of business rather than  
8 on wholesale generation. Furthermore, the proposed Unwind Transaction will  
9 enable the Smelters to obtain long-term contracts for their load of approximately  
10 850 megawatts of electricity that is critical to their operations -- and to the  
11 Western Kentucky economy. In short, the proposed Unwind Transaction is in the  
12 best interests of all the parties and consistent with the public interest.

13           12. The closing date for the Unwind Transaction contemplated by the  
14 Termination Agreement is April 30, 2008. If the closing does not occur by that  
15 date, the parties may walk away from the Termination Agreement, and the  
16 Unwind Transaction. The parties to the Termination Agreement and this  
17 Application propose an expedited procedural schedule for this proceeding, which  
18 is attached as Exhibit 4. The closing date for the Unwind Transaction is also the  
19 proposed effective date for many of the actions for which Commission approval  
20 and authority is sought in this Application, including the effective date of the  
21 agreements by which electric service will be provided by Big Rivers through  
22 Kenergy to the Smelters.

23



1                   The 1998 Transactions and Commission Approvals Received

2           13.     Prior to the effective date of the 1998 Transactions, Big Rivers  
3 operated its generators in Western Kentucky known as Wilson Station, Coleman  
4 Station, Green Station, and Reid Station. It also operated, pursuant to a series of  
5 1970 contracts (as amended, collectively the "Station Two Contracts"),  
6 Henderson's Station Two generating plant ("Station Two") that is part of the  
7 municipal utility resources managed by the City of Henderson Utility Commission.  
8 The locations and descriptions of the subject power plants are given in the  
9 Testimony of Mark A. Bailey, attached hereto as Exhibit 5. Under one of the  
10 Station Two Contracts, prior to the effective date of the 1998 Transactions Big  
11 Rivers also purchased power produced by Station Two that was surplus to the  
12 immediate needs of the City of Henderson and its inhabitants.

13           14.     By orders dated April 30, 1998 in P.S.C. Case No. 97-204, and July  
14 14, 1998 in P.S.C. Case No. 98-267, the Commission approved and authorized  
15 the 1998 Transactions among Big Rivers, LG&E Energy Corp. (now E.ON U.S.)  
16 and subsidiaries or affiliates of LG&E Energy Corp. (the "E.ON Subsidiaries").  
17 Copies of these orders are attached as Exhibit 6 to this Application.

18           15.     As a result of various mergers and assignments, the interests of the  
19 E.ON Subsidiaries created in the documents approved by the Commission as  
20 part of the 1998 Transactions are now consolidated in WKEC and LEM. A  
21 schedule of the documents entered into by Big Rivers, the E.ON Subsidiaries  
22 and others in connection with the 1998 Transactions, is attached as Exhibit 7,

1 and complete copies of the 1998 Transactions documents are contained in  
2 Appendix A, attached to this Application.

3 16. The substance of the 1998 Transactions can be more particularly  
4 summarized as follows. First, Big Rivers leased its generating facilities to WKEC  
5 for a term of approximately 25 years. WKEC agreed to pay rent and the “Monthly  
6 Margin Payments” (defined below) to Big Rivers (or in the case of the Monthly  
7 Margin Payments, to the “RUS” (as defined below) on behalf of Big Rivers), and  
8 pursuant to this lease, agreed to operate and maintain the generating facilities  
9 and secured the right to the power produced by such facilities. By separate  
10 agreement, WKEC arranged to sell the output of those generating facilities to  
11 LEM. In addition, pursuant to a 1998 Agreement and Amendments to Agreement  
12 among the E.ON Entities, Big Rivers, and Henderson (the “Station Two  
13 Agreement”), Big Rivers also assigned to WKE Station Two Inc. (“Station Two  
14 Subsidiary”), one of the E.ON Subsidiaries and a Kentucky corporation that has  
15 since been merged into WKEC, Big Rivers’ contractual rights and obligations,  
16 pursuant to the Station Two Contracts, to perform operation and maintenance  
17 services with respect to Station Two. It further assigned to Station Two  
18 Subsidiary Big Rivers’ contractual rights and obligations, pursuant to the Station  
19 Two Contracts, regarding the purchase of power generated from the facility in  
20 excess of the needs of the City of Henderson. At the same time, those  
21 underlying 1970 Station Two Contracts were further amended. Big Rivers was  
22 not, however, released from its obligations under its original contractual  
23 obligations under the Station Two Contracts. Subsequently, LEM assigned its

1 rights under the Station Two Agreement (and its corresponding rights under the  
2 Station Two Contracts) to WKEC, which assumed LEM's obligations thereunder,  
3 although LEM was not released therefrom. The documents establishing the  
4 rights and obligations described in this paragraph are identified in Exhibit 7, and  
5 the related 1998 Transactions documents are contained in Appendix A attached  
6 to this Application.

7         17. Big Rivers, as part of the 1998 Transactions, contracted to  
8 purchase power from LEM in an amount sufficient to cover the anticipated needs  
9 of Big Rivers' Members, other than the amounts of power required by two of Big  
10 Rivers' members to supply the retail requirements of their respective aluminum  
11 smelter customers. As part of the 1998 Transactions, LEM contracted directly to  
12 supply those Big Rivers Members a portion of the Smelters' power requirements  
13 through 2010, for one Smelter, and 2011 for the other Smelter. Pursuant to  
14 these contracts, Kenergy, the successor by consolidation to the two Big Rivers  
15 members which supplied retail service to the Smelters in 1998, currently sells  
16 substantially fixed-rate power to the Smelters. LEM's assumption of these  
17 obligations in 1998 relieved Big Rivers of its obligation to provide such power  
18 during this period. The balance of the Smelters' power requirements are  
19 acquired by Kenergy from the wholesale power market. LEM also agreed in  
20 1998 (pursuant to the lease described above) to pay directly to Big Rivers'  
21 principal secured creditor, the United States Rural Utilities Service ("RUS"), the  
22 level of net margins that Big Rivers had anticipated, prior to the 1998  
23 Transactions from sales through 2010 and 2011, respectively, of power to its

1 Members for resale to the Smelters (“Monthly Margin Payments”). LEM  
2 subsequently assigned its rights under those contracts to WKEC, which assumed  
3 LEM’s obligations under those contracts, although LEM was not released  
4 therefrom. The documents establishing the rights and obligations described in  
5 this paragraph are identified in Exhibit 7, and the related 1998 Transactions  
6 documents are contained in Appendix A attached to this Application.

7 18. Also in 1998, in connection with the 1998 Transactions, Big Rivers  
8 restructured its debt with the RUS, and replaced the credit providers for its  
9 pollution control bond obligations. The arrangements with the non-RUS creditors  
10 required authorization from the Commission for the issuance of evidences of  
11 indebtedness by Big Rivers.

12 Genesis of the Unwind Transaction

13 19. Big Rivers began meeting with the Smelters in early 2001 to  
14 explore what role Big Rivers might play in helping the Smelters find a suitable  
15 source of power following the expiration of their respective retail power supply  
16 arrangements in 2010 and 2011. Big Rivers has always had a strong interest in  
17 preserving the economic benefits of these large industrial customers for Western  
18 Kentucky. Big Rivers concluded, however, that it did not have sufficient  
19 resources under its contract with LEM, over and above the other requirements of  
20 its Members, to make a meaningful contribution to the Smelters’ looming power  
21 needs. Big Rivers was also unable to finance significant new generation  
22 construction to meet the Smelters’ needs because of the borrowing restrictions in  
23 its existing financing documents, and an unattractive balance sheet. Even if Big

1 Rivers could finance construction of new base load facilities, the cost of power  
2 from those facilities would likely not be cost-effective for the Smelters.

3         20. Then, in early 2003, Big Rivers was approached by representatives  
4 of E.ON U.S., inquiring whether Big Rivers would entertain a proposal to take  
5 back the operational responsibility for its generating assets and Station Two, and  
6 the corresponding entitlement to all the power from those assets (other than that  
7 reserved from Station Two for Henderson), or in effect to “unwind” the 1998  
8 Transactions. This inquiry provided a unique opportunity for the E.ON Entities,  
9 the Smelters, Big Rivers, its Members and the economy of Western Kentucky.

10         21. E.ON AG, the ultimate parent company of E.ON U.S., was seeking  
11 to exit its transactions with Big Rivers, which had not proven advantageous to  
12 E.ON U.S., to allow E.ON U.S. to focus on its regulated lines of business rather  
13 than on unregulated wholesale generation. The Smelters needed a lower cost  
14 supply of power than they foresaw. Big Rivers recognized that an unwind of the  
15 transactions with the E.ON Entities was the only way Big Rivers could position  
16 itself to supply all or a significant portion of the Smelters’ power needs. Big  
17 Rivers also recognized there were other potential advantages to resuming control  
18 of the operation and maintenance of its units and Station Two, which included an  
19 opportunity to restructure its restrictive financing arrangements to allow future  
20 borrowing. Accordingly, the potential “unwind” of the 1998 Transactions gave all  
21 these parties an opportunity to achieve important objectives.

22         22. Under these circumstances, in 2003 Big Rivers began discussions  
23 on these subjects, first with E.ON U.S., and later with the Smelters. As a result

1 of those talks, in December of 2005 Big Rivers, Kenergy and E.ON U.S.  
2 announced that they had signed a letter of intent to negotiate a transaction  
3 termination agreement, and Big Rivers and the Smelters announced agreement  
4 on a memorandum of understanding to attempt to negotiate power supply  
5 arrangements for the Smelters.

6           23. Big Rivers, LEM and WKEC (LEM and WKEC collectively, the  
7 "WKEC Parties") signed the Termination Agreement as of March 26, 2007,  
8 establishing the terms and conditions on which the 1998 Transactions would  
9 terminate and unwind. In December of 2007, Big Rivers, Kenergy, Alcan and  
10 Century came to substantial agreement over wholesale and retail service  
11 agreements that provide for a supply of power sufficient to meet the Smelters'  
12 current needs (the "Smelter Agreements"). Copies of the executed documents  
13 will be filed as they become available. Big Rivers and its Members agreed to and  
14 signed amendments to their respective wholesale power contracts to extend their  
15 terms in recognition of the longer maturities anticipated for the evidences of  
16 indebtedness Big Rivers plans to issue in connection with the Unwind  
17 Transaction.

18           24. The Termination Agreement, the Smelter Agreements and the  
19 Member wholesale contract amendments contemplate and will, as of the unwind  
20 closing, implement transactions that are admittedly complex in the details, but  
21 are fundamentally simple in concept. They are also the result of thousands of  
22 hours of careful and extensive negotiations, research and drafting. The terms of  
23 the Smelter Agreements, in particular, are very carefully balanced with the

1 interests of the Smelters, Big Rivers, Big Rivers' Members, and the other retail  
2 customers of Big Rivers' Members. For this reason, Big Rivers and Kenergy seek  
3 approval of the Smelter Agreements, and Big Rivers and its Members request  
4 approval of their respective tariff and contract changes, without alteration, to  
5 maintain that critical and delicate balance. The parties to the Termination  
6 Agreement and the Smelter Agreements may, of course, refuse to close if the  
7 Commission's order changes the terms of their agreements and tariffs.

#### 8 The Unwind Transaction

9 25. The terms of the Termination Agreement and the Smelter  
10 Agreements interrelate with and are dependent upon each other, and with the  
11 terms in other agreements and tariffs to which one or more of Big Rivers'  
12 Members or its creditors or Henderson are or may be parties. Together, these  
13 documents lay out the series of transactions and events that must occur for the  
14 Unwind Transaction to occur, and for Big Rivers to reassume operating  
15 responsibility for its generating assets and Station Two. This section of the  
16 Application provides an overview of the Unwind Transaction by describing in  
17 summary form the interrelationships among certain of the documents and actions  
18 for which Commission approval is sought.

#### 19 (1) The Unwind Financial Model

20 26. The "Unwind Financial Model," attached to this Application as  
21 Exhibit 8, is the principal financial evidence Big Rivers submits in support of its  
22 Application and the various approvals sought herein. See Testimony of Robert  
23 S. Mudge, Exhibit 9, pages 4 through 20, and C. William Blackburn, Exhibit 10,

1 pages 25 through 30. Because Big Rivers seeks no general adjustment in its  
2 base rates, it submits no “test year.” A test year would be practically impossible  
3 to assemble, in any event. Big Rivers has not operated its generating units since  
4 July 17, 1998; it has been a transmission utility that purchases all its power  
5 requirements under contract. The Unwind Financial Model results from extensive  
6 financial modeling performed by Big Rivers to project Big Rivers’ future rate path  
7 based on the terms of the Unwind Transaction and expected future conditions.  
8 The actual modeling was principally performed by Robert S. Mudge of CRA  
9 International, Inc. with inputs developed by Big Rivers from the best available  
10 sources. Mr. Mudge, who has extensive experience modeling transactions  
11 involving utilities (see Testimony of Robert S. Mudge, Exhibit 9, Exhibit RSM-1),  
12 developed the Unwind Financial Model in Excel, using production inputs  
13 prepared by Aces Power Marketing employing the Henwood production costing  
14 model. The reasonableness of the Unwind Financial Model has not only been  
15 scrutinized by Big Rivers, but by its Members and their consultant. Big Rivers is  
16 convinced that the Unwind Financial Model provides the best available financial  
17 information that can be assembled to predict future operating results of Big  
18 Rivers following the closing of the Unwind Transaction. Testimony of C. William  
19 Blackburn, Exhibit 10, at pages 25 through 26.

20 (2) The Termination Agreement

21 27. The Termination Agreement establishes the terms on which Big  
22 Rivers, WKEC and LEM have agreed to terminate the 1998 Transactions, and  
23 outlines the requirements that must be met for the parties to close the



1 transactions contemplated by the Termination Agreement. The Termination  
2 Agreement is analyzed in Exhibit 11 and summarized in Exhibit 12 to this  
3 Application, and, as noted above, a full copy of the executed document is  
4 attached as Exhibit 3.

5 28. The subjects covered in the Termination Agreement are those that  
6 one would expect in an agreement by which a series of agreements relating to a  
7 lease of generating stations and sale of power are terminated. Under the terms  
8 of the Termination Agreement, none of the obligations between Big Rivers and  
9 the E.ON Entities under the 1998 Transactions would survive beyond the dates  
10 contemplated in the Termination Agreement. An explanation of the disposition of  
11 the documents from the 1998 Transactions and an analysis of the termination  
12 provisions in those documents are attached as Exhibit 11 to this Application. An  
13 explanation of the effect of the Termination Agreement on the documents by  
14 which Big Rivers consummated a leveraged lease of three of its generating units  
15 in 2000, which was approved by the Commission in P.S.C. Case No. 99-450, is  
16 contained in Exhibit 13 to this Application.

17 29. If the Unwind Transaction is consummated, Big Rivers will be  
18 compensated for accepting early termination of the 1998 Transactions, and will  
19 be put in a position to operate its generating plants immediately upon closing.  
20 Subject to certain potential adjustments, Big Rivers will receive \$301,500,000 in  
21 cash (the "Closing Payment") at closing plus other value which, together with the  
22 Closing Payment totals, in the aggregate, approximately \$623 million. This  
23 consideration will cause Big Rivers' equity to improve from a negative 13.6%

1 before closing, to a positive 24.4% immediately after closing, based upon current  
2 forecasts. A more detailed and complete explanation of the consideration that  
3 changes hands is contained in the Termination Agreement, Exhibit 3, Section  
4 3.3, page 11; the Testimony of Michael H. Core, Exhibit 14, pages 7 through 8;  
5 11 through 13 and 16; and the Testimony of Paul W. Thompson, Exhibit 15,  
6 pages 11 through 15.

7 30. The Termination Agreement establishes mechanisms for valuing  
8 inventory and personal property that are transferred to Big Rivers at closing. See  
9 Testimony of C. William Blackburn, Exhibit 10, pages 71 through 74. Big Rivers  
10 will also purchase back from WKEC a building and parcel of property previously  
11 sold to WKEC (Termination Agreement, Exhibit 3, Section 3.2(e), page 8), and  
12 will purchase another tract acquired by a third party on behalf of WKEC for use in  
13 connection with the Coleman Station (*Id.*).

14 31. Since the Termination Agreement was signed as of March 26,  
15 2007, and the closing was not anticipated to occur for several months, there are  
16 specific arrangements between Big Rivers and WKEC in the Termination  
17 Agreement concerning operation of the plants by WKEC during that interim  
18 period.

19 32. Big Rivers and certain of the E.ON Entities have negotiated two  
20 agreements by which the E.ON Entities will facilitate the transition of the  
21 generating units from the control of WKEC to Big Rivers' control: (1) the  
22 Generation Dispatch Support Services Agreement and (2) the Information  
23 Technology Support Services Agreement. Big Rivers seeks Commission

1 approval of the Generation Dispatch Support Services Agreement (attached to  
2 this Application as Exhibit 16). Big Rivers believes no Commission authorization  
3 is required for the Information Technology Support Services Agreement, which  
4 has been signed by the parties, and is attached to this Application as Exhibit 17.  
5 But if the Commission disagrees with this conclusion, in the alternative Big Rivers  
6 also requests approval of the Information Technology Support Services  
7 Agreement. The terms and purposes of these agreements are more particularly  
8 described in the Testimony of Mark A. Bailey, Exhibit 5, at pages 11 through 12.

9 33. The WKEC Parties will transfer to Big Rivers the various contracts,  
10 agreements, leases, subleases, licenses, sublicenses, permits, and other rights  
11 and obligations related to operation, maintenance or repair of the Big Rivers'  
12 generating plants and Station Two. WKEC is negotiating with Henderson  
13 regarding the responsibility of the WKEC Parties for the results of the operation  
14 of Station Two by WKEC since 1998. See Testimony of Paul W. Thompson,  
15 Exhibit 15, page 9. Big Rivers is negotiating with Henderson regarding the  
16 demands Henderson has made as conditions to giving its consent to early  
17 termination of its 1998 contractual arrangements with the E.ON Entities regarding  
18 the operation of Station Two and the sales of excess power generated by Station  
19 Two. See Testimony of David A. Spainhoward, Exhibit 18, pages 5 through 10.  
20 If these discussions result in amendments to the Station Two Contracts, under  
21 which Big Rivers has historically operated Henderson's Station Two and taken  
22 the power generated by Station Two that is excess to the needs of the City of  
23 Henderson's residents, those amendments will be submitted for Commission

1 approval. The E.ON Entities do not believe Commission approval of the  
2 reversion of the contract rights to Big Rivers is required, and request the  
3 Commission to determine that such approval is not required; or in the alternative,  
4 that if the Commission finds that such approval is required, that such approval be  
5 granted.

6 34. At the closing the parties will also execute and deliver the actual  
7 documents that will terminate the various contractual arrangements that  
8 constitute the 1998 Transactions between Big Rivers and the E.ON Entities as  
9 well as the related contractual arrangements between the E.ON Entities, on the  
10 one hand, and Henderson, Kenergy, the Smelters and Big Rivers' other secured  
11 creditors, on the other hand. After the Unwind Transaction closing, the only  
12 obligations between Big Rivers and the E.ON Entities will be those identified in  
13 the Termination Agreement, the Termination Agreement itself and the other  
14 documents executed in connection with the Unwind Transaction.

15 35. The Termination Agreement includes extensive terms relating to  
16 representations, warranties, indemnities and releases. All obligations of the  
17 WKEC Parties under the Termination Agreement and the other Unwind  
18 Transaction documents entered into by a WKEC Party in favor of Big Rivers for  
19 the Unwind Transaction will be guaranteed by E.ON U.S.

20 36. There are also extensive terms in the Termination Agreement  
21 regarding personnel matters, as Big Rivers will make offers of employment to all  
22 employees of WKEC, and to some employees of E.ON U.S. or its affiliate who  
23 have been devoted primarily to WKEC activities. The vice president of

1 production for Big Rivers will be Robert Berry, who is currently WKEC's general  
2 manager at the Reid/Green/Henderson Station Two Generating Station. See  
3 Testimony of Mark A. Bailey, Exhibit 5, at page 8.

4 37. The Termination Agreement contains numerous conditions to  
5 closing that must be satisfied (or waived by the appropriate party) before the  
6 Unwind Transaction will be consummated, which Big Rivers and the WKEC  
7 Parties are working to achieve. See Testimony of Michael H. Core, Exhibit 14,  
8 pages 19 through 22, and Testimony of Paul W. Thompson, Exhibit 15, pages  
9 15, 17 and 18; Termination Agreement, Exhibit 3, Article 10, page 48. Those  
10 closing conditions include (among others):

- 11 a. Both parties are seeking certain tax rulings regarding the Unwind  
12 Transaction. Sections 10.2(cc) and 10.3(m). The requests for  
13 those rulings have been filed with the appropriate taxing authorities.
- 14 b. Certain acts and approvals are required to assure that Big Rivers  
15 has the right to improve its transmission system as required to  
16 export from its system the load of both Smelters in the event they  
17 cease operations, and the legal authority to sell that much electric  
18 power. Section 10.3 (nn) and (oo). The governmental approvals  
19 aspects of these requirements have been satisfied.
- 20 c. The changes anticipated in Big Rivers' financing arrangements  
21 must have been negotiated, and Big Rivers must have received  
22 appropriate consents and approvals to permit those changes to be  
23 implemented at the closing of the Unwind Transaction. For

1 example, see Sections 10.3(n), (o), (q), (r) and (u). Negotiation of  
2 these financing arrangements and work on related activities are  
3 underway, and Big Rivers will propose an amendment to this  
4 Application to seek the necessary approvals to issue the required  
5 evidences of indebtedness when that effort is concluded.

6 d. Big Rivers must conclude its remaining due diligence of the  
7 generating facilities, and resolve any issues disclosed by those  
8 examinations and tests. For example, see Sections 10.3(l), (w), (y),  
9 (dd), (ee) and (ff).

10 e. Big Rivers, WKEC and LEM must obtain certain approvals and  
11 releases from Henderson to implement the Unwind Transaction.  
12 Sections 10.2(q) and 10.3(o). Discussions with Henderson are  
13 ongoing, and Henderson has disclosed most of the demands that it  
14 states are prerequisites to the approvals and releases requested of  
15 it. If these discussions result in any amendments to agreements  
16 with Henderson that have previously been approved by the  
17 Commission, those amendments will be submitted to the  
18 Commission for approval.

### 19 (3) The Smelter Agreements

20 38. A principal reason Big Rivers' board of directors and management  
21 agreed to consider the Unwind Transaction was to position Big Rivers to help  
22 meet the electric power needs of Kenergy's two aluminum Smelter customers,  
23 whose jobs and economic contributions are so critical to the economy of Western

1 Kentucky, if not the Commonwealth of Kentucky as a whole. See Testimony of  
2 Michael H. Core, Exhibit 14, pages 15 through 16. In this Application, Big Rivers  
3 seeks approval of the wholesale Smelter Agreements. These wholesale power  
4 contracts with Kenergy implement innovative power supply arrangements that  
5 are intended to provide the Smelters with energy at a cost that is lower than  
6 otherwise might be available without imposing undue risk on the Smelters, yet  
7 mitigate the inherent risks of the Smelter load to Big Rivers' remaining system.  
8 Those agreements are summarized in Exhibit 19 to this Application, and in the  
9 Testimony of C. William Blackburn, Exhibit 10, pages 35 through 70.

10 39. Full copies of the substantially complete Smelter Agreements,  
11 including the agreements that establish the terms on which Alcan and Century  
12 will purchase electric power at retail from Kenergy through December 31, 2023,  
13 are attached as Exhibit 20 to this Application. Execution of these agreements by  
14 the Smelters awaits receipt of corporate authorizations, resolution of an  
15 outstanding issue with Kenergy, and resolution of the outstanding issues  
16 between Big Rivers and Henderson. Execution of these agreements by Big  
17 Rivers will follow resolution by the Smelters and Big Rivers of a Big Rivers  
18 concern, and some minor wording issues in the Security and Lock Box  
19 Agreements.

20 40. The Smelters are currently obtaining approximately two-thirds of  
21 their electric power needs through Kenergy under retail agreements entered into  
22 in connection with the 1998 Transactions that expire at the end of 2010 with  
23 respect to Century, and at the end of 2011 with respect to Alcan. Kenergy

1 obtains the majority of the wholesale power required to meet the needs of each  
2 Smelter from LEM under contracts that expire concurrently with the respective  
3 Smelter retail contract. The balance of a Smelter's power requirement is met  
4 through "Tier 3" purchases by Kenergy in the open power market from the best  
5 available sources, which has included Big Rivers on occasion. Big Rivers has  
6 contracted with Kenergy for a portion of the Smelters' 2008 Tier 3 Energy  
7 requirements.

8 41. A new, affordable wholesale power supply source is critical to the  
9 continued existence of the Smelters' operations in Western Kentucky. As the  
10 Smelters noted in their pre-filed comments in P.S.C. Case No. 2005-00090, if  
11 Kenergy must meet 100% of the Smelters' supply needs with wholesale market  
12 power purchased at anticipated market prices after 2010/2011, they will not be  
13 able to continue operations.<sup>4</sup> The Commission acknowledged this problem in  
14 granting Big Rivers a certificate of public convenience and necessity to construct  
15 transmission improvements that will allow Big Rivers to export power that could  
16 be stranded on Big Rivers' system after the Unwind Transaction closing if the  
17 Smelters ever cease operation. See Order dated October 30, 2007 in  
18 *Application of Big Rivers Electric Corporation for a Certificate of Public*

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<sup>4</sup> See, e.g., Smelter Comments filed June 8, 2005 in PSC Case No. 2005-00090, *An Assessment of Kentucky's Electric Generation, Transmission and Distribution Needs* (explaining that, absent affordable rates, continued operation is problematic; that power costs constitute approximately a third of the cost to produce aluminum; that high electricity costs have caused the closure of other smelters; and that other state commissions have taken action to preserve smelters in their states). See also *National-Southwire Aluminum Co. v. Big Rivers Electric Corp.*, 785 S.W.2d 503, 508 (Ky. App. 1990), in which the Kentucky Court of Appeals discussed the importance of ensuring rates that would enable Western Kentucky's smelters to remain financially viable, noting that the PSC had held that, in setting Big Rivers' rates, "the long-term existence of NSA and Alcan must be considered" and that Big Rivers' financial well being was "inextricably linked to the health of the smelters."



1 *Convenience and Necessity to Construct a 161 kV Transmission Line in Ohio*  
2 *County, Kentucky*, P.S.C. No. 2007-00177, at page 12.

3         42. The Smelter Agreements solve this intractable problem of finding  
4 an acceptable power supply for Century after 2010, and Alcan after 2011. The  
5 existing Smelter power supply arrangements, including the 2008 Tier 3 Energy  
6 wholesale agreements between Big Rivers and Kenergy (Appendix E), will  
7 terminate as of the Unwind Transaction closing, and under the terms of the  
8 Smelter Agreements and the Smelter Termination and Release Agreements (to  
9 be executed at the closing among the Smelters, WKEC and Kenergy), the  
10 Smelters will immediately commence purchasing power under the new Smelter  
11 Agreements.

12         43. The Smelters will take in the aggregate the energy related to  
13 approximately 850 MW. They will pay, as a starting point, a rate that is \$0.25 per  
14 MWh above the wholesale rate charged by Big Rivers to its Members for power  
15 for resale to other dedicated delivery point large industrial customers, assuming a  
16 98% load factor. The Smelters will also pay, among other amounts, the fuel  
17 adjustment clause charges and environmental surcharge amounts applicable to  
18 all Big Rivers' Member sales, the TIER Adjustment Charge (a contractual charge  
19 more fully described below in paragraph numbers 44 through 46), and the  
20 Smelter Surcharges (contractual charges more fully described below in  
21 paragraph number 47). The TIER Adjustment Charge and the Smelter  
22 Surcharges paid by the Smelters under the Smelter Agreements are highlighted  
23 here because of the interplay between those special contractual charges and

1 other aspects of the Unwind Transaction.

2 44. The TIER Adjustment Charge is a unique mechanism by which the  
3 Smelters make additional payments that are intended, in general, to help Big  
4 Rivers achieve a 1.24 TIER each fiscal year. Big Rivers' management and  
5 financial advisors have determined that Big Rivers should earn a 1.24 TIER to  
6 have a reasonable opportunity to obtain and maintain the investment grade  
7 financial ratings that are critical to Big Rivers' proposed financing arrangements.  
8 See Testimony of Mark W. Glotfelty, Exhibit 21, pages 6 through 9. Under the  
9 TIER Adjustment mechanism, the Smelters support Big Rivers' earnings by  
10 paying an amount above base rates in order to cover 100% of Big Rivers' cost  
11 increases, under certain circumstances and within certain limitations, in the form  
12 of a TIER Adjustment Charge. There are specified limitations, adjustments and  
13 assumptions that apply to this payment obligation, and a ceiling on the level of  
14 rate increase to which the Smelters are exposed as a direct result of the TIER  
15 Adjustment Charge. But subject to those adjustments and assumptions, the  
16 mechanism works as follows.

17 45. The TIER Adjustment is the amount of incremental revenue,  
18 whether positive or negative, calculated with respect to each Fiscal Year after  
19 determination of Net Margins for such Fiscal Year (excluding the revenue that  
20 results from the TIER Adjustment), that is necessary for Big Rivers to achieve a  
21 defined TIER of 1.24 for that Fiscal Year, subject to several heavily negotiated  
22 provisions intended to address certain circumstances in which the parties have  
23 agreed it would be inappropriate for Big Rivers to charge the Smelters. To the

1 extent the TIER Adjustment is positive there will be a TIER Adjustment Charge  
2 payable by the Smelters. Based on Big Rivers' budget for a Fiscal Year, and as  
3 adjusted quarterly, Big Rivers will charge the Smelters each month 1/12th of the  
4 additional amount, if any, Big Rivers estimates will be necessary for it to achieve  
5 a defined 1.24 TIER during the current Fiscal Year. No later than 120 days after  
6 the end of each Fiscal Year, Big Rivers will re-calculate the TIER Adjustment  
7 Charge for the prior Fiscal Year, and true-up the payments for the year.

8         46. The TIER Adjustment Charge can move the Smelters' charges from  
9 the basic charge upward within a contractually specified bandwidth. So long as  
10 the Smelters' charges are within the bandwidth, they pay 100% of the additional  
11 amounts required to enable Big Rivers to maintain a 1.24 TIER as defined. The  
12 TIER Adjustment Charge can fluctuate up or down so long as the resulting  
13 Smelter rates remain within the bandwidth, but it cannot be negative. If Big  
14 Rivers determines at the time the TIER Adjustment Charge true up is calculated  
15 that it would earn more than a 1.24 TIER as defined, and that the TIER  
16 Adjustment Charge is already reduced to zero, the Smelters' rate can be driven  
17 down even below the bandwidth, by a rebate. Under those latter circumstances,  
18 Big Rivers has the right to extend a corresponding rebate to the Members for  
19 their non-Smelter sales so that those rates will be correspondingly reduced when  
20 the Smelter rates fall below the bandwidth floor. Big Rivers is proposing a tariff  
21 rebate mechanism that will serve as the vehicle to pass along to its Members any  
22 rebate applicable to its Members' non-Smelter customers under those  
23 circumstances. See Application paragraph 76, and Testimony of C. William

1 Blackburn, Exhibit 10, pages 97 through 100.

2           47.     Big Rivers proposes to restore a fuel adjustment clause (“FAC”)  
3 and an environmental surcharge (“Environmental Surcharge”) to its wholesale  
4 tariff. See paragraphs 73 and 77, below; Exhibit 23, Sheets 71 and 72;  
5 Testimony of William Steven Seelye, Exhibit 25; Testimony of David A.  
6 Spainhoward, Exhibit 18, pages 31 through 48; and *The Application of Big Rivers*  
7 *Electric Corporation for Approval of Environmental Compliance Plan and*  
8 *Environmental Surcharge Tariff*, P.S.C. Case No. 2007-00460. The FAC and the  
9 Environmental Surcharge will apply to all sales by Big Rivers to its Members,  
10 except for certain limited sales to Kenergy for resale to the Smelters, and are in  
11 forms that are consistent with the Commission’s regulatory requirements. See  
12 Testimony of C. William Blackburn, Exhibit 10, pages 88 through 94. The  
13 Smelter Surcharges (Testimony of C. William Blackburn, Exhibit 10, pages 57  
14 through 58) are extra amounts the Smelters will pay each month under the  
15 Smelter Agreements that will apply as a credit to fuel charges payable by Big  
16 Rivers’ non-Smelter Member load through a new Big Rivers tariff device called  
17 the Unwind Surcredit. See Testimony of William Steven Seelye, Exhibit 25,  
18 pages 5, and 23-25. The beginning aggregate amount of the Smelter  
19 Surcharges payable by the Smelters as projected in the Unwind Financial Model  
20 is \$1.90 per MWh. That amount increases to \$2.20 per MWh in 2012, and to  
21 \$2.60 per MWh in 2017 through the end of the terms of the Smelter Agreements  
22 in 2023. See Unwind Financial Model, Exhibit 8, page 4, lines 94 and 95.

23           48.     The Smelters will also pay a non-FAC purchased power adjustment

1 (“PPA”) under a PPA clause that is part of the Smelter Agreements. See, for  
2 example, Exhibit 20, Kenergy Wholesale Power Agreement (Alcan), Section  
3 4.8.2, and explanation in Testimony of C. William Blackburn, Exhibit 10, at page  
4 57. The PPA clause causes the Smelters to pay, on a current basis, the  
5 proportion of the Big Rivers’ non-FAC purchased power expenses attributable to  
6 the Smelters’ proportionate energy consumption. To prevent a disproportionate  
7 share of purchased power costs from being paid by the Smelters through a  
8 combination of the PPA clause and the TIER Adjustment, Big Rivers has agreed  
9 with the Smelters to request authority from the Commission to establish  
10 regulatory accounts (a deferred asset and deferred liability) which would accrue  
11 any positive or negative PPA adjustments attributable to Member non-Smelter  
12 energy usage. See Testimony of C. William Blackburn, Exhibit 10, at pages 80  
13 through 84.

14 (4) Effect on Members, and Amendments to Wholesale Power Contracts

15 49. The Unwind Transaction benefits Big Rivers’ Members in several  
16 respects, including strengthening Big Rivers financially, and allowing the  
17 Members to resume control of their own destiny by virtue of their wholly-owned  
18 wholesale power supplier resuming operational control of its generating  
19 resources. See Testimony of Burns E. Mercer, Exhibit 26, pages 11 through 12.  
20 As a result, the Members unanimously support the Unwind Transaction. *Id.*,  
21 page 3. But the Members are under no illusions about the risks of the Unwind  
22 Transaction. They have been intimately involved in and informed about the  
23 negotiation and development of the Unwind Transaction, including the Smelter

1 Agreements. Id., pages 4 through 6. They recognize that the Unwind  
2 Transaction Model shows them having rate increases over the period covered by  
3 the model, and exposes them to risks that did not exist for them so long as the  
4 existing transaction with the E.ON Entities remained in place. Id., pages 7  
5 through 11. They carefully weighed the benefits and risks of the Unwind  
6 Transaction in independently making the informed decision to support it.

7 50. Big Rivers and its Members are proposing amendments to their  
8 respective long-term, all-requirements contracts.<sup>5</sup> See Exhibit 27. As described  
9 briefly above, these amendments extend the terms of the Members' wholesale  
10 power contracts with Big Rivers to December 31, 2043. This term extension will  
11 accommodate the maturities of new debt or debt refinancing that Big Rivers  
12 anticipates in connection with the Unwind Transaction, and may allow for the  
13 maturity of any other debt that Big Rivers might incur in the near term without  
14 another round of Member wholesale power contract amendments. These  
15 amendments also include language typical of language the RUS is requiring to  
16 protect the assets of its borrower generation and transmission cooperatives from  
17 the potential departure of a member from their systems.

#### 18 (5) Financial Abilities of Big Rivers Post-Closing

19 51. One of the principal benefits Big Rivers and its Members realize  
20 from the Unwind Transaction is restoration of Big Rivers' ability to finance system  
21 additions, power purchases or other arrangements to meet growth associated  
22 with system expansion and economic development, an ability Big Rivers has

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<sup>5</sup> Kenergy's wholesale power contract is actually a partial requirements contract because of Kenergy's continuing right to purchase power from third-party sources for the Smelters.

1 lacked since 1998. See Testimony of Michael H. Core, Exhibit 14, page 14. Big  
2 Rivers will continue to labor under this disadvantage for many years if the  
3 Unwind Transaction does not close. While the precise financing arrangements  
4 under which Big Rivers will operate are still being negotiated and will be filed with  
5 the Commission for approval in this proceeding at a later time, they will include a  
6 much more flexible indenture in place of the RUS mortgage, plus other changes  
7 that reflect the dramatic improvement in Big Rivers' finances that will result from  
8 the Unwind Transaction. See Testimony of C. William Blackburn, Exhibit 10,  
9 pages 110 through 130.

10           52. The restructuring of Big Rivers' financing arrangements is  
11 inextricably linked to a number of the approvals sought in this Application. Big  
12 Rivers proposes amendments to its Member wholesale power contracts that  
13 have been described above. The need to obtain financing at reasonable rates  
14 drives the condition to closing in the Termination Agreement that Big Rivers  
15 obtain an investment grade rating. The TIER Adjustment mechanism in the  
16 Smelter Agreements supports a 1.24 TIER, which Big Rivers and its financial  
17 advisors believe is important to achieve the appropriate investment grade ratings.

18           53. One of the challenges Big Rivers faces is the risk that rating  
19 agencies and creditors recognize in Big Rivers having 56% of its Members'  
20 demand associated with two large, energy-intensive customers who are part of a  
21 single industry. The mechanisms to mitigate the risks associated with serving  
22 the large Smelter load (see paragraph 43 of this Application) are required for  
23 credit purposes as well as for the protection of Big Rivers and its Members. In

1 P.S.C. Case No. 2007-00177, Big Rivers sought and obtained a certificate of  
2 public convenience and necessity to construct transmission facilities that will give  
3 it sufficient transmission export capacity to move the load of both Smelters and  
4 Big Rivers' excess energy to Big Rivers' border for sale in the wholesale market  
5 until that load can be absorbed by growth on Big Rivers' system. The Kentucky  
6 General Assembly, at Big Rivers' urging, amended KRS 279.120 in 2006 to  
7 eliminate a potential legal obstacle to a non-member sale of power of that  
8 magnitude. Big Rivers' plans to segregate \$35 million from the consideration it is  
9 receiving under the Termination Agreement to hold in a "Transition Reserve  
10 Account" that will be available to offset any temporary revenue shortfalls that  
11 could arguably occur if one or both Smelters cease operation and terminate their  
12 contracts. See Testimony of C. William Blackburn, Exhibit 10, pages 84 through  
13 87. The Smelters have agreed that they will receive no benefit from this account.

14 (6) Response to Items in Commission's Letter of May 2, 2007

15 54. Big Rivers and the E.ON Entities requested and were granted an  
16 informal conference with Commission staff on April 4, 2007, for purposes of  
17 presenting the status of the parties' efforts in connection with the proposed  
18 Unwind Transaction, and a list of the various approvals the parties expected to  
19 seek from the Commission. Based upon that presentation, Commission staff  
20 offered to compile a preliminary list of information that Big Rivers and the E.ON  
21 Entities could provide in their application that would assist in the Commission's  
22 review.

23 55. By letter dated May 2, 2007, from the Executive Director of the



1 Commission to Michael H. Core, the Commission staff provided a list of nine  
2 items of information. A copy of that letter, and the response of Big Rivers to the  
3 Commission staff's list of information items are attached as Exhibit 28 to this  
4 Application.

### 5 RELIEF REQUESTED BY THE APPLICANTS

6 56. This section of the Application reviews the relief the parties seek  
7 from the Commission in this Application. A summary chart of the approvals  
8 requested is attached as Exhibit 29 to this Application.

#### 9 (1) Change in Control and Documents Implementing Change in Control

10 57. Big Rivers seeks an order of the Commission generally approving  
11 the reversion from WKEC to Big Rivers of control over the generating units  
12 owned by Big Rivers, or operated by Big Rivers under the Station Two Contracts  
13 with Henderson prior to the 1998 Transactions. More specifically, Big Rivers  
14 seeks findings from the Commission that (i) following the change of control Big  
15 Rivers will have the financial, technical, and managerial ability to provide  
16 reasonable service to its Members, and (ii) the proposed change in control is  
17 made in accordance with law, for a proper purpose, and is consistent with the  
18 public interest.

19 58. Big Rivers further seeks the following approvals as being integral to  
20 the foregoing change of control: (i) approval of the Termination Agreement, as  
21 amended, and all related documents and transactions, including approval to  
22 terminate all the agreements from the 1998 Transactions as contemplated in the  
23 Termination Agreement; (ii) approval of any amendments to the 1970 Station

1 Two Contracts with the Henderson that may be submitted following the  
2 conclusion of the negotiations between Big Rivers and Henderson, and (iii)  
3 approval of all other documents and transactions related to the Unwind  
4 Transaction.

5 59. The approvals sought are authorized by KRS 278.020(4) and (5),  
6 KRS 278.040, KRS 278.200 and KRS 278.218. Certain of the approvals  
7 requested herein are further required by the finding of the Commission in its April  
8 30, 1998 order in P.S.C. Case No. 97-204 (Exhibit 6, page 30) that the lease of  
9 Big Rivers' generating units constitutes a "change in control within the  
10 parameters of KRS 278.020(4) and KRS 278.020(5)."

11 60. Approval by the Commission of modifications to the documents the  
12 Commission authorized Big Rivers to execute in connection with the 1998  
13 Transactions is sought because the Commission has further held that  
14 modifications to documents previously approved by the Commission require  
15 Commission approval. *In the Matter of Big Rivers Electric Corporation*, P.S.C.  
16 Case No. 99-460, Order of November 24, 1999, page 10. Exhibit 7 to this  
17 Application details the disposition made of every document comprising the 1998  
18 Transactions between Big Rivers and the E.ON Subsidiaries expressly approved  
19 by the Commission, and of other such documents from the 1998 Transactions  
20 that may not have received explicit Commission approval.

21 61. Big Rivers easily meets the standards required for Commission  
22 authorization of change of control under KRS 278.020(4) and (5), and KRS  
23 278.218. Almost every Western Kentucky based employee of WKEC will

1 become an employee of Big Rivers, including the plant managers and personnel,  
2 most of whom were employees of Big Rivers prior to 1998, bringing with them a  
3 thorough knowledge of the operation of the Big Rivers generating stations and  
4 Station Two. The Big Rivers management team is primarily composed of long-  
5 term Big Rivers employees who were employees of Big Rivers when it was  
6 operating its plants. And the person who will become president and chief  
7 executive officer of Big Rivers after the Unwind Transaction closing, Mark A.  
8 Bailey, has significant investor-owned and cooperative utility experience. The  
9 management team Big Rivers will have post-closing, and the capabilities of that  
10 team, are described in detail in the Testimony of Mark A. Bailey, Exhibit 5, at  
11 pages 7 through 10.

12           62. After the Unwind Transaction closing, Big Rivers will be a financially  
13 sound utility, which will easily have the capability to finance the generating and  
14 transmission operations of the cooperative. As shown in the Unwind Financial  
15 Model (Exhibit 8, page 8, line 234), immediately after the unwind closing Big  
16 Rivers will have a positive equity of \$377 million, or approximately 24%, and cash  
17 of \$125 million. See also Testimony of Michael A. Core, Exhibit 14, page 11. Its  
18 debt will be investment-grade rated by Standard & Poor's and Moody's rating  
19 agencies. As a result of this dramatic improvement in Big Rivers' financial status,  
20 Big Rivers' credit terms will be restructured to allow it to borrow money in the  
21 ordinary course of business. The obvious risks associated with the concentration  
22 of native load sales in two Smelter customers have been carefully mitigated  
23 through contracts and system improvements, as described above in paragraphs

1 43 through 48 and 53. Transfer of the generating operations from the control of  
2 WKEC to Big Rivers has been carefully planned to assure a smooth transition.  
3 Big Rivers' post-closing financial strengths, financing capabilities and its risk  
4 management and transition plans are described in the testimony of C. William  
5 Blackburn (Exhibit 10, pages 12 through 25), and Mark A. Bailey (Exhibit 5,  
6 pages 10 through 23).

7 63. Big Rivers seeks specific approval of the Termination Agreement,  
8 which establishes the detailed terms on which the relationships between Big  
9 Rivers and the E.ON Entities will be reversed and terminated. A summary of that  
10 agreement is contained in Exhibit 12 to this Application, and a detailed analysis  
11 of the Termination Agreement is attached as Exhibit 11. A discussion of that  
12 agreement is found in the Testimony of Michael H. Core, Exhibit 14, pages 17  
13 through 22, and in the Testimony of C. William Blackburn, Exhibit 10, pages 71  
14 through 75. Among other things, the Termination Agreement identifies the  
15 agreements between Big Rivers and the E.ON Parties that will be terminated or  
16 otherwise disposed of at the Unwind Transaction closing. That list of agreements  
17 is found in the table of the disposition made of all the Commission-approved  
18 agreements from the 1998 Transactions that is attached as Exhibit 7.

19 64. As noted in paragraph 33 of this Application and in the Testimony  
20 of David A. Spainhoward, Exhibit 18, pages 5 through 10, WKEC and Big Rivers  
21 are separately negotiating with Henderson regarding the conditions under which  
22 Henderson will give the approvals, releases and/or consents required by each  
23 party for the Unwind Transaction to close. If those discussions result in

1 amendments to the Station Two Contracts, Big Rivers will submit the  
2 amendments to the Commission for approval.

3 (2) Financing

4 65. Big Rivers will seek approvals in this matter to issue evidences of  
5 indebtedness, and amendments to certain evidences of indebtedness previously  
6 approved by the Commission and issued by Big Rivers, that are required to  
7 provide Big Rivers the financing capability to resume control of its generating  
8 facilities and finance its operations. In general terms, Big Rivers expects to  
9 request approval to issue evidences of indebtedness as follows: (i) an indenture  
10 to replace its existing mortgage as the instrument that secures its long-term  
11 obligations; (ii) a note to the RUS restructuring the payment schedule in the  
12 existing New RUS Note, or bonds or other public obligations; (iii) certain  
13 operating lines of credit; (iv) an amended intercreditor agreement; and (v) related  
14 amendments to some of the documents in the defeased sale/leaseback  
15 transaction approved by the Commission and entered into by Big Rivers in 2000.

16 66. At the time of this filing, Big Rivers is still negotiating with its  
17 creditors. Before making a formal application for approval of issuance of the  
18 specific evidences of indebtedness negotiated with its creditors, Big Rivers will  
19 complete these negotiations, reduce the results to writing, and begin the process  
20 to obtain investment grade credit ratings on the debt secured by its generating  
21 assets from Standard & Poor's and Moody's rating agencies.

22 67. Big Rivers expects its financing arrangements to reflect, in part, that  
23 Big Rivers has used proceeds from the Unwind Transaction to prepay

1 approximately \$440 million of its RUS debt. Big Rivers anticipates that it will  
2 issue approximately \$264 million of public debt which, along with the RUS debt,  
3 will be secured by a new indenture that will replace the existing RUS Mortgage.  
4 See Testimony of Robert S. Mudge, Exhibit 9, page 9. For purposes of its  
5 Unwind Financial Model filed with this Application (Exhibit 8), Big Rivers has  
6 assumed that it will have approximately \$351 million of the RUS debt carried at  
7 an annual interest rate of 5.82%, and two offerings of public debt in the amounts  
8 of \$82 million and \$181.50 carried at an average annual interest rate of 5.82%  
9 and 5.92%, respectively. See Testimony of C. William Blackburn, Exhibit 10,  
10 pages 127 through 128. Big Rivers will advise the Commission when the date for  
11 filing the financing application is established.

12 (3) Tariffs, Wholesale Contracts and Accounting Issues

13 68. Big Rivers seeks authority to revise its tariffs and wholesale  
14 contracts as described in the following paragraphs, and to adopt the special  
15 accounting treatment of certain funds as described below. Notice of this  
16 Application was given to the Commission consistent with 807 KAR 5:011, Section  
17 8(1). A copy of that notice is attached as Exhibit 30.

18 69. Written notice of these tariff changes was mailed to each of Big  
19 Rivers' Members, who constitute all of Big Rivers' customers subject to its tariff,  
20 prior to the filing of this Application consistent with 807 KAR 5:007, Section 1(7),  
21 and 807 KAR 5:011, Section 8(2). A copy of that notice is attached as Exhibit 31.

22 70. Big Rivers seeks findings by the Commission that (i) Big Rivers'  
23 existing rates combined with the proposed changes to its existing tariff are fair,

1 just and reasonable, and that after the closing of the Unwind Transaction, Big  
2 Rivers' existing rates without the proposed changes to its existing tariff would not  
3 be fair, just and reasonable; (ii) the special accounting treatment Big Rivers  
4 seeks for the three accounts described below should be approved; (iii) the  
5 proposed amendments to Big Rivers' wholesale power contracts with its  
6 Members should be approved; (iv) the wholesale Smelter Agreements should be  
7 approved; and (v) Big Rivers' Open Access Transmission Tariff ("OATT") rate  
8 revisions are fair, just and reasonable. The Commission's authority to make  
9 these findings is found in KRS 278.180 and related sections, KRS 278.190, KRS  
10 278.455, 807 KAR 5:001§10, 807 KAR 5:011§§6, 8, 9 and 13, and 807 KAR  
11 5:056.

12           71.     Big Rivers' proposed tariff is attached as Exhibit 23, its existing  
13 tariff is attached as Exhibit 22, and a black-line comparison of the proposed and  
14 existing tariffs is attached as Exhibit 24. A detailed discussion of each change in  
15 the existing tariff, and the justification for each change, is contained in the  
16 Testimony of C. William Blackburn, Exhibit 10, pages 88 through 103, and the  
17 Testimony of David A. Spainhoward, Exhibit 18, pages 11 through 17. The  
18 changes proposed by Big Rivers to its tariff are described in the following  
19 paragraphs numbered 72 through 87.

20           72.     The basic tariff demand and energy rates for electric service to Big  
21 Rivers' Members remain the same as those approved by the Commission in  
22 1998.

23           73.     Big Rivers proposes to implement a FAC in its tariff to adjust for the

1 incremental change in the cost to Big Rivers of fossil fuels consumed, along with  
2 other items allowed by the Commission's regulations. 807 KAR 5:056. See  
3 Exhibit 23, Sheet 73 through 75, Testimony of William Steven Seelye, Exhibit 25,  
4 pages 3 and 11 through 17. Without the FAC, Big Rivers' rates will be  
5 insufficient to produce the revenues required under Big Rivers' financial model to  
6 achieve the financial results it requires to accomplish the Unwind Transaction.  
7 The fossil fuel contracts under which Big Rivers will purchase fuel are currently in  
8 the name of WKEC, as the purchaser. Accordingly, those contracts are being  
9 filed by WKEC in this proceeding, along with a request for confidential treatment  
10 of those contracts. Big Rivers incorporates those fossil fuel contracts by  
11 reference into this Application. 807 KAR 5:056, Section 1(7).

12           74. Big Rivers proposes amendments to its "Member Discount  
13 Adjustment" tariff (see Big Rivers' Proposed Tariff, Exhibit 23, Sheet 64) to  
14 continue that tariff in its current form until Big Rivers' first general rate review,  
15 which Big Rivers has committed to seek within three years from the date of the  
16 Commission's final order in this matter. The Member Discount Adjustment was  
17 first placed into effect in 2000 for a period of two years to return to Big Rivers'  
18 Members the annual sum of \$3.68 million that Big Rivers realizes in debt service  
19 interest savings from prepayment on its RUS debt of amounts it received from a  
20 leveraged lease of three of its generating units in 2000. Big Rivers has extended  
21 that revenue discount from year-to-year without making the revenue discount  
22 permanent because of the uncertainty associated with future demands on Big  
23 Rivers for capital, and the inability of Big Rivers to borrow money on a long-term,



1 secured basis. Because Big Rivers is not seeking a general rate adjustment in  
2 this proceeding, Big Rivers believes it is appropriate to postpone final disposition  
3 of the Member Discount Adjustment tariff as proposed. See Testimony of C.  
4 William Blackburn, Exhibit 10, pages 100 through 102.

5 75. Big Rivers' Existing Tariff has been revised extensively to remove  
6 the references and connections to the Smelters and the E.ON Entities that are no  
7 longer relevant and appropriate. Those changes are described in the Testimony  
8 of David A. Spainhoward, Exhibit 18, pages 10 through 12 and pages 15 through  
9 16.

10 76. Big Rivers' Proposed Tariff includes a Rebate Adjustment (Exhibit  
11 23, Sheets 69 through 70) under which amounts proposed by Big Rivers and  
12 approved by the Commission to flow back to Big Rivers' Members in the form of  
13 a rebate can be returned to the Members. The Rebate concept originates in the  
14 Smelter Agreements. See above, paragraph 46. The Smelters commit to pay  
15 100% of Big Rivers' increases in expenses (with certain exceptions and  
16 limitations) through a TIER Adjustment Charge to support a 1.24 TIER if the  
17 Smelters' rates are within the TIER Adjustment "bandwidth" described in the  
18 Smelter Agreements. If in a fiscal year the TIER Adjustment Charge is zero and  
19 Big Rivers' TIER remains in excess of a 1.24 TIER resulting in an "Excess TIER  
20 Amount," as defined in the Smelter Agreements, there will be a "Rebate." The  
21 Smelters will receive an energy allocated share of the Excess TIER Amount as a  
22 Rebate pursuant to the Smelter Agreements. The amount of the Excess TIER  
23 Amount not paid to the Smelters as a Rebate is available for Big Rivers to rebate

1 to the Members for their non-Smelter wholesale load. The proposed Rebate  
2 Adjustment provides a platform for the rebate that would be made for the non-  
3 Smelter Member load, although the amount of the rebate to the Members' non-  
4 Smelter wholesale load is subject to approval by the Commission. The Rebate  
5 Adjustment mechanism will reduce the rates of Big Rivers' Members, and may  
6 therefore be implemented through the procedure contained in KRS 278.455(1).  
7 The Rebate Adjustment mechanism is described in the Testimony of Testimony  
8 of William Steven Seelye, Exhibit 25, pages 6, 25 and 26.

9 77. Big Rivers seeks an Environmental Surcharge in a companion  
10 proceeding, P.S.C. Case No. 2007-00460 (See Exhibit 23, Sheets 71 and 72).  
11 The Testimony of David A. Spainhoward and William Steven Seelye supporting  
12 the Environmental Surcharge are also filed in this case. See Testimony of David  
13 A. Spainhoward, Exhibit 18, pages 31 through 48, and Testimony of William  
14 Steven Seelye, Exhibit 25, pages 3, and 17-23. Without the Environmental  
15 Surcharge proposed, Big Rivers' rates will be insufficient to produce the  
16 revenues required under Big Rivers' financial model to achieve the financial  
17 results it must have to accomplish the Unwind Transaction.

18 78. Big Rivers proposes an "Economic Reserve" regulatory account in  
19 the initial amount of not less than \$75 million, and a "Member Rate Stability  
20 Mechanism" for its tariff (Exhibit 23, Sheets 76 and 77) to apply the amounts in  
21 the Economic Reserve account to charges in the FAC and the Environmental  
22 Surcharge applicable to non-Smelter Member load so long as funds remain in the  
23 Economic Reserve. The Member Rate Stability Mechanism will reduce the rates

1 of Big Rivers' non-Smelter Members, and may therefore be implemented through  
2 the procedure contained in KRS 278.455(1). The Economic Reserve and the  
3 operation of the Member Rate Stability Mechanism are described in detail in the  
4 Testimony of C. William Blackburn, Exhibit 10, pages 75 through 80, and the  
5 Testimony of William Steven Seelye, Exhibit 25, pages 3 and 27-32.

6         79. As described in paragraph 48, above, the Smelters will also pay a  
7 non-FAC purchased power adjustment under a PPA clause that is part of the  
8 Smelter Agreements, but is not reflected in the tariffs applicable to Big Rivers'  
9 non-Smelter customer load. See, for example, Exhibit 20, Kenergy Wholesale  
10 Power Agreement (Alcan), Section 4.8.2, and explanation in Testimony of C.  
11 William Blackburn, Exhibit 10, at page 57. The PPA clause causes the Smelters  
12 to pay, on a current basis, the portion of Big Rivers' non-FAC purchased power  
13 expenses attributable to the Smelters' proportionate energy consumption. To  
14 prevent a disproportionate share of purchased power costs from being paid by  
15 the Smelters through a combination of the PPA clause and the TIER Adjustment,  
16 Big Rivers has agreed with the Smelters to request authority from the  
17 Commission to establish regulatory accounts (a deferred asset and deferred  
18 liability) which would accrue any positive or negative PPA adjustments  
19 attributable to Member non-Smelter energy usage. This mechanism will allow  
20 purchase power costs attributable to Big Rivers' non-Smelter customers to be  
21 segregated and recovered from them during general rate proceedings. See  
22 Testimony of C. William Blackburn, Exhibit 10, at pages 80 through 84.

23         80. Big Rivers also proposes an "Unwind Surcredit" that will also be

1 applied to reduce amounts otherwise due for service to Big Rivers' non-Smelter  
2 Member load under Big Rivers' tariff. See Exhibit 23, Sheets 78 and 79. The  
3 Unwind Surcredit is funded by the Smelter Surcharges, described above in  
4 paragraph 47, and in the Testimony of C. William Blackburn, Exhibit 10, pages  
5 57 through 58. It will reduce the rates of Big Rivers' non-Smelter Members, and  
6 may therefore be implemented through the procedure contained in KRS  
7 278.455(1). The Unwind Surcredit mechanism and the funding of that  
8 mechanism through the Smelter Surcredit are described in detail in the  
9 Testimony of C. William Blackburn, Exhibit 10, pages 94 through 97, and the  
10 Testimony of William Steven Seelye, Exhibit 25, pages 23-25.

11 81. The proposed amendments to Big Rivers' wholesale power  
12 contracts with its Members are attached as Exhibit 27. As previously noted,  
13 these amendments extend the terms of the Members' wholesale power contracts  
14 with Big Rivers to December 31, 2043, and include language typical of language  
15 the RUS requires to protect the assets of its borrower generation and  
16 transmission cooperatives from the potential departure of a member from their  
17 system. Big Rivers requests approval of these wholesale contract amendments.

18 82. The Smelter Agreements, attached in draft form as Exhibit 20, are  
19 comprised of eight agreements: four relating to each Smelter. Six of those  
20 agreements are: Wholesale Power Agreement (Alcan) by and between Big  
21 Rivers Electric Corporation and Kenergy Corp.; Retail Service Agreement by and  
22 between Kenergy Corp. and Alcan Primary Products Corp.; Lock Box Agreement  
23 (Alcan) between and among Big Rivers, Kenergy, Alcan and the agent bank;

1 Wholesale Power Agreement (Century) by and between Big Rivers Electric  
2 Corporation and Kenergy Corp.; Retail Service Agreement between Kenergy  
3 Corp. and Century Aluminum of Kentucky General Partnership; and Lock Box  
4 Agreement (Century) between and among Big Rivers, Kenergy, Century and the  
5 agent bank.

6           83. Big Rivers will also directly enter into separate agreements with  
7 each of the two Smelters to coordinate the complex relationships that are created  
8 in the Smelter-related wholesale and retail power agreements, and to resolve  
9 other issues between and among the parties. While Big Rivers does not believe  
10 these agreements require Commission approval, copies of these agreements are  
11 attached as follows: Coordination Agreement by and between Big Rivers Electric  
12 Corporation and Alcan Primary Products Corporation (Exhibit 20); and  
13 Coordination Agreement by and between Big Rivers Electric Corporation and  
14 Century Aluminum of Kentucky General Partnership (Exhibit 20). If the  
15 Commission finds that these agreements do require Commission approval, Big  
16 Rivers requests that approval be granted.

17           84. Some of the concepts and details of the Smelter Agreements have  
18 been described above in paragraphs 38 through 48. The Smelter Agreements  
19 are explained in more detail in the Testimony of C. William Blackburn, Exhibit 10,  
20 pages 35 through 70, and in the summary of the Smelter Agreements, found in  
21 Exhibit 19. Mr. Blackburn's testimony demonstrates the reasonableness of the  
22 Smelter wholesale agreements, which are entered into by Big Rivers as third-  
23 party sales agreements, not as sales to Kenergy under the Kenergy all-

1 requirements contract with Big Rivers. Big Rivers requests approval of the  
2 Smelter Agreements.

3 85. Big Rivers and Kenergy currently have wholesale power  
4 agreements related to “Tier 3 Service” to the Smelters. Those agreements are in  
5 Appendix E. These agreements will automatically terminate as of the Unwind  
6 Transaction closing date. See Testimony of C. William Blackburn, Exhibit 10,  
7 page 106.

8 86. Big Rivers’ OATT must be amended to include rates based upon  
9 Big Rivers’ costs rather than LEM’s costs, particularly for generation-based  
10 ancillary services which currently are a pass-through of LEM’s tariff. In addition,  
11 the FERC has issued Order No. 890, which has changed the pro forma  
12 requirements for a tariff meeting FERC’s reciprocity requirements. In 1998, the  
13 Commission asserted jurisdiction over Big Rivers’ transmission rates “to the  
14 extent that FERC has not asserted jurisdiction over Big Rivers’ OATT.” See  
15 Exhibit 6, Order dated July 14, 1998, P.S.C. Case No. 98-267, page 19. Big  
16 Rivers’ Existing OATT is attached as Exhibit 32, its Proposed OATT is attached  
17 as Exhibit 33, and a black-line comparison of the Proposed OATT against the  
18 current OATT is attached as Exhibit 34. The reasonableness of the proposed  
19 OATT and rates is justified in the Testimony of Ralph L. Luciani, Exhibit 35,  
20 pages 3 through 9, and in the Testimony of David A. Spainhoward, Exhibit 18,  
21 pages 18 through 27. While the proposed tariff increases Big Rivers’ network  
22 transmission revenue requirement and point-to-point transmission rates and  
23 ancillary service rates, neither Big Rivers’ non-Smelter Member load nor the

1 Smelters, to the extent of the 850 MW purchased from Big Rivers through  
2 Kenergy, will realize any rate increase because transmission is bundled in the  
3 rates for those sales. See Testimony of C. William Blackburn, Exhibit 10, pages  
4 104 through 105.

5 87. Big Rivers requests that the Commission expressly relieve Big  
6 Rivers of the reporting and other requirements imposed upon it by the  
7 Commission in connection with the 1998 Transactions in the orders dated April  
8 30, 1998 in P.S.C. Case No. 97-204, and July 14, 1998 in P.S.C. Case No. 98-  
9 267, attached as Exhibit 6 to this Application. These reporting and other  
10 requirements are discussed in the testimony of David A. Spainhoward, Exhibit  
11 18, pages 29 through 31.

12 **E.ON U.S. LLC'S REQUEST FOR RELIEF**

13 88. The E.ON Entities request the Commission to determine that the  
14 Termination Agreement and associated transaction documents are for a proper  
15 purpose and are consistent with the public interest based on the evidence  
16 submitted in support of this Joint Application and for the reasons stated herein,  
17 and approve the Unwind Transaction in its entirety for purposes of KRS 278.218.

18 89. The E.ON Entities further request the Commission to relieve E.ON  
19 AG, PowerGen plc, E.ON U.S. LLC (fka LG&E Energy Corp.), Louisville Gas and  
20 Electric Company and Kentucky Utilities Company of the commitments  
21 numbered 40, 41 and 44 in the Commission's August 6, 2007 Order in Case No.  
22 2001-104, *In the Matter of: Joint Application For Transfer of Louisville Gas and*  
23 *Electric Company and Kentucky Utilities Company In Accordance With E.ON*

1 A.G.'s Planned Acquisition of PowerGen PLC on the ground that these  
2 commitments are no longer required once the Unwind Transaction is closed.

3 **CONCLUSION**

4 90. The Joint Applicants acknowledge that they seek a significant list of  
5 approvals from the Commission to implement a transaction that is vitally  
6 important to the economy of Western Kentucky. As noted above, a chart of that  
7 list of approvals sought is attached as Exhibit 29.

8 91. The approvals sought fall within the scope of approvals that are  
9 routinely sought from the Commission. The background details are voluminous  
10 because of the unique circumstances that led to this Application, and there are  
11 some unusual twists to Big Rivers' proposals. But as the Commission noted in  
12 its order of October 30, 2007 approving a certificate of public convenience and  
13 necessity required for the transmission improvements related to the Unwind  
14 Transaction, "the circumstances arising from the Unwind Transaction do not lend  
15 themselves to replication in future cases."<sup>6</sup> Moreover, Big Rivers commits that it  
16 will return to the Commission with a general rate adjustment case within three  
17 years from the date of the order approving the Unwind Transaction in this  
18 proceeding, assuring a timely review of any of the unique tariff provisions the  
19 Commission may approve in this case at the request of Big Rivers.

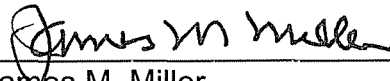
20 WHEREFORE, Big Rivers and the E.ON Entities respectfully request that  
21 the Commission enter its order granting the relief sought herein, and for all other  
22 relief to which they may appear entitled.

---

<sup>6</sup> Order dated October 30, 2007, in *Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct a 161 kV Transmission Line in Ohio County, Kentucky*, P.S.C. No. 2007-00177, at page 11.



December 28, 2007.

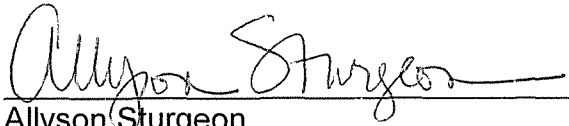


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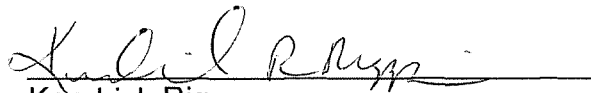
James M. Miller  
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Sullivan, Mountjoy, Stainback  
& Miller, P.S.C.  
100 St. Ann Street  
P.O.Box 727  
Owensboro, Kentucky 42302-0727  
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(202) 637-5600

COUNSEL FOR BIG RIVERS  
ELECTRIC CORPORATION



Allyson Sturgeon  
Senior Corporate Counsel  
E.ON U.S. LLC  
220 West Main Street  
Louisville, Kentucky 40202  
Telephone No. (502) 627-2088



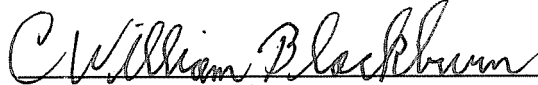
Kendrick Riggs  
Stoll, Keenon, Ogden PLLC  
Suite 2000, 500 W. Jefferson Street  
Louisville, Kentucky 40202-2874  
Telephone No. (502) 333-6000

COUNSEL FOR E.ON U.S., LLC,  
WESTERN KENTUCKY ENERGY  
CORP. AND LG&E ENERGY  
MARKETING INC.

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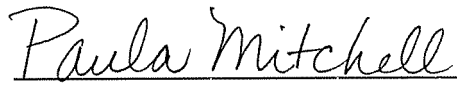
**Verification**

I, C. William Blackburn, Vice President and Chief Financial Officer for Big Rivers Electric Corporation, hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 27th day of December, 2007.

  
\_\_\_\_\_  
C. William Blackburn  
Vice President and Chief Financial Officer  
Big Rivers Electric Corporation

COMMONWEALTH OF KENTUCKY )  
COUNTY OF HENDERSON )

The foregoing verification statement was SUBSCRIBED AND SWORN to before me by C. William Blackburn, as Vice President and Chief Financial Officer of Big Rivers Electric Corporation, on this the 27th day of December, 2007.

  
\_\_\_\_\_  
Notary Public, Ky., State at Large  
My commission expires: 1-12-09



## TABLE OF CONTENTS TO EXHIBITS AND APPENDICES

<u>No.</u>	<u>Contents</u>
1.	Articles of Incorporation of Western Kentucky Energy Corp and LG&E Energy Marketing, Inc.
2.	Chart of Regulatory Compliance Requirements Cross-Referenced to Application
3.	Transaction Termination Agreement dated as of March 26, 2007, among Big Rivers Electric Corporation, LG&E Energy Marketing Inc. and Western Kentucky Energy Corp., as amended
4.	Proposed Procedural Schedule
5.	Testimony of Mark A. Bailey
6.	Final orders dated April 30, 1998, in <i>The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&amp;E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction</i> , PSC Case No. 97-204 (Final Order dated April 30, 1998), and July 14, 1998, in <i>The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson</i> , P.S.C. Case No. 98-267 (Final Order dated July 14, 1998).
7.	Analysis of 1998 Transaction Document Termination Clauses and List of 1998 Transaction Documents Affected by Unwind Transaction in Response to May 2, 2007 Letter from Beth O'Donnell
8.	Unwind Financial Model dated as of December 22, 2007
9.	Testimony of Robert S. Mudge
10.	Testimony of C. William Blackburn

<u>No.</u>	<u>Contents</u>
11.	Summary and Analysis of Terms and Conditions of the Termination Agreement in Response to May 2, 2007 Letter from Beth O'Donnell
12.	Summary of Termination Agreement
13.	Identification of Amendments Required to Leveraged Lease Transaction by Unwind Transactions in Response to May 2, 2007 Letter from Beth O'Donnell
14.	Testimony of Michael H. Core
15.	Testimony of Paul W. Thompson
16.	Generation Dispatch Support Services Agreement dated as of December 1, 2007
17.	Information Technology Support Services Agreement dated as of December 1, 2007
18.	Testimony of David A. Spainhoward
19.	Summary of New Smelter Arrangements
20.	Smelter Agreements
21.	Testimony of Mark W. Glotfelty
22.	Current Tariff
23.	Proposed Tariff
24.	Comparison of Current and Proposed Tariff
25.	Testimony of William Steven Seelye
26.	Testimony of Burns E. Mercer
27.	Amendments to Wholesale Power Contracts Between Big Rivers and its Member Distribution Cooperatives

<u>No.</u>	<u>Contents</u>
28.	(i) Letter dated May 2, 2007, from Beth O'Donnell, Executive Secretary of KPSC, to Michael H. Core, and (ii) Response of Big Rivers to that letter
29.	Summary Chart of Approvals Requested
30.	Notice to Commission of Proposed Filing for Approval of Unwind Transaction
31.	Notice to Customers of Proposed Tariff Changes
32.	Current Open Access Transmission Tariff (OATT)
33.	Proposed Open Access Transmission Tariff (OATT)
34.	Comparison of Proposed OATT Against Current OATT
35.	Testimony of Ralph L. Luciani
36.	Certificate of good standing or certificate of authorization (Big Rivers)
37.	Independent Auditor's Annual Opinion Report
38.	FERC Form 1 (Big Rivers)
39.	List of all computer software, programs and models used in the development of the filing
40.	Prospectuses for the most recent stock or bond offerings
41.	Annual report to members for 2005 & 2006
42.	Fuel Contracts
43.	System Map

<u>No.</u>	<u>Contents</u>
	Appendix A: 1998 Transaction Documents and Amendments and Supplements
	Appendix B: Station Two Contracts and Amendments (other than Station Two Agreements from 1998 Transaction)
	Appendix C: Defeased Sale/Leaseback Documents
	Appendix D: Most recent RUS Form 12
	Appendix E: Smelter 2008 Tier 3 Contracts
	Appendix F: Miscellaneous Documents
	<ul style="list-style-type: none"> <li>a. Orders dated November 24, 1999 and January 28, 2000, in <i>Big Rivers Electric Corporation's Application for Approval of a Leveraged Lease of Three Generating Units</i>, P.S.C. Case No. 99-450</li> <li>b. Order dated March 29, 2000 in <i>The Application of Big Rivers Electric Corporation, LG&amp;E Energy Marketing Inc., Western Kentucky energy Corp., WKE Station Two Inc., and WKE Corp. for Approval of Amendments to Transactions Documents</i>, P.S.C. Case No. 2000-118</li> <li>c. Orders dated November 28, 2000 and December 21, 2000 in <i>Big Rivers Electric Corporation's Application for Approval to Amend Evidences of Indebtedness</i>, P.S.C. Case No. 2001-486</li> <li>d. Order dated November 15, 2001, in <i>Application of Big Rivers Electric Corporation, LG&amp;E Energy Marketing Inc., Western Kentucky energy Corp., WKE Station Two Inc., and WKE Corp. for Approval of Amendments to Transactions Documents</i>, P.S.C. Case No. 2001-00305</li> <li>e. Orders dated July 12, 2002 and October 30, 2002 in <i>Application of Big Rivers Electric Corporation, LG&amp;E Energy Marketing Inc., Western Kentucky energy Corp., WKE Station Two Inc., and WKE Corp. for Approval of Amendments to Transactions Documents</i>, P.S.C. Case No. PSC Order 2002-000195</li> </ul>



- f. Order dated March 9, 2005 in *Application of Big Rivers Electric Corporation, LG&E Energy Marketing Inc., Western Kentucky energy Corp., WKE Station Two Inc., and WKE Corp. for Approval of Amendments to Transactions Documents*, P.S.C. Case No. 2005-00029



COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

THE APPLICATIONS OF BIG RIVERS )  
ELECTRIC CORPORATION FOR: )  
(I) APPROVAL OF WHOLESALE TARIFF )  
ADDITIONS FOR BIG RIVERS ELECTRIC ) CASE NO. 2007-00455  
CORPORATION, (II) APPROVAL OF )  
TRANSACTIONS, (III) APPROVAL TO ISSUE )  
EVIDENCES OF INDEBTEDNESS, AND )  
(IV) APPROVAL OF AMENDMENTS TO )  
CONTRACTS; AND )

E.ON-U.S., LLC, WESTERN KENTUCKY ENERGY )  
CORP. AND LG&E ENERGY MARKETING, )  
INC. FOR APPROVAL OF TRANSACTIONS )

EXHIBIT 1

Articles of Incorporation of  
Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc.

December 17, 2007

0429033

RECEIVED & FILED

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50.00

8 31 AM '97

JOHN W. SPENCER III  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY

**ARTICLES OF INCORPORATION  
OF  
WESTERN KENTUCKY ENERGY CORP.**

The undersigned, acting as incorporator of a corporation under the Kentucky Business Corporation Act, adopts the following Articles of Incorporation for such corporation:

**ARTICLE I**

**Name**

The name of the Corporation is Western Kentucky Energy Corp.

**ARTICLE II**

**Purposes**

The purposes for which the Corporation is organized are to transact any or all lawful business for which corporations may be incorporated under the Kentucky Business Corporation Act, and to exercise any and all powers that corporations may now or hereafter exercise under the Kentucky Business Corporation Act.

**ARTICLE III**

**Duration**

The duration of the Corporation shall be perpetual.

**ARTICLE IV**

**Shares**

The total number of shares which the Corporation is authorized to issue is 1,000 common shares, having no par value per share (the "Common Shares"). The Common Shares shall have all voting power of the Corporation, shall be entitled to receive the net assets of the Corporation upon dissolution, and shall be without distinction as to powers, preferences and rights.

Each whole share shall be entitled to one vote, which one vote may not be split or divided into fractional votes. Each fractional share shall be entitled to its fractional vote, which fractional vote may not be split or divided into lesser fractional votes.

## ARTICLE V

### No Preemptive Rights

The shareholders of the Corporation shall not have a preemptive right to acquire the Corporation's unissued shares or securities of the Corporation convertible into or carrying a right to subscribe for or acquire shares.

## ARTICLE VI

### Number of Directors: Distributions

All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation managed under the direction of, its Board of Directors. The number of directors shall be fixed by resolution of the Board of Directors from time to time.

The Board of Directors of the Corporation, to the extent not prohibited by law, shall have the power to cause the Corporation to repurchase its own shares and shall have the power to make distributions, from time to time, to the Corporation's shareholders.

## ARTICLE VII

### Initial Directors

The number of directors constituting the initial Board of Directors is three and the name and address of each person who is to serve as director is as follows, each such person to serve until the first annual meeting of the shareholders and until his successor in office is elected and shall qualify:

George W. Basinger  
220 West Main Street  
Louisville, Kentucky 40202

Victor A. Staffieri  
220 West Main Street  
Louisville, Kentucky 40202

John R. McCall  
220 West Main Street  
Louisville, Kentucky 40202

## ARTICLE VIII

### Registered Office: Registered Agent

The address of the initial registered office of the Corporation is 220 West Main Street, Louisville, Kentucky 40202 and the name of the initial registered agent at such address is John R. McCall.

## ARTICLE IX

### Principal Office

The address of the principal office of the Corporation is 220 West Main Street, Louisville, Kentucky 40202.

## ARTICLE X

### Incorporator

Patrick R. Northam, whose address is 220 West Main Street, Louisville, Kentucky 40202, is the sole incorporator of the Corporation.

## ARTICLE XI

### Indemnification of Directors and Officers

To the fullest extent permitted by, and in accordance with the provisions of, the Kentucky Business Corporation Act, as the same exists or may hereafter be amended (the "Act"), the Corporation shall indemnify each director or officer of the Corporation against expenses (including attorneys' fees), judgments, taxes, penalties, fines (including any excise tax assessed with respect to any employee benefit plan) and amounts paid in settlement (collectively "Liability"), incurred by him in connection with defending any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative) to which he is, or is threatened to be made, a party because he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans. A director or officer shall be considered to be serving an employee benefit plan at the Corporation's request if his duties to the Corporation also impose duties on or otherwise involve services by him to the plan or to participants in or beneficiaries of the plan. To the fullest extent authorized or permitted by, and in accordance with the provisions of, the Act, the Corporation shall pay or reimburse expenses (including attorneys' fees) incurred by a director or officer who is a party to a proceeding in

advance of final disposition of such proceeding.

The indemnification against Liability and advancement of expenses provided by, or granted pursuant to, this Article XI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement may be entitled under any By-Law, agreement, action of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office of the Corporation, shall continue as to a person who has ceased to be a director or officer of the Corporation, and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee or agent of the Corporation, or who, while a director, officer, employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against Liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee or agent, whether or not the Corporation would have power to indemnify him against the same Liability under the provisions of this Article XI or the Act.

Any repeal or modification of this Article XI by the Board of Directors or shareholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation under this Article XI with respect to any act or omission occurring prior to the time of such repeal or modification.

## ARTICLE XII

### Elimination of Certain Liability of Directors

A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of his duties as a director, provided that this provision shall not eliminate or limit the liability of a director for the following: (i) for any transaction in which the director's personal financial interest is in conflict with the financial interests of the Corporation or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be a violation of law; (iii) for any vote for or assent to an unlawful distribution to shareholders as prohibited under KRS 271B.8-330; or (iv) for any transaction from which the director derived an improper personal benefit. This Article XII shall continue to be applicable with respect to any such breach of duties by a director of the Corporation as a director notwithstanding that such director thereafter ceases to be a director and shall inure to the personal benefit of his heirs, executors and administrators.

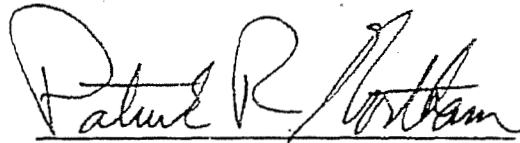
ARTICLE XIII

Severability of Provisions

If any provision of these Articles of Incorporation or its application to any person or circumstances is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of these Articles of Incorporation that can be given effect without the invalid provision or application, and to this end the provisions of these Articles of Incorporation are severable.

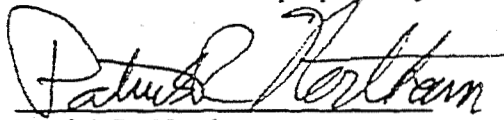
IN TESTIMONY WHEREOF, witness the signature of the sole incorporator, this 24th day of February, 1997.

By:



Patrick R. Northam, Incorporator

This instrument was prepared by:



Patrick R. Northam, Esq.  
220 West Main Street  
Louisville, Kentucky 40202  
(502) 627-2664

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Trey Grayson  
Secretary of State  
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**ARTICLES OF MERGER  
OF  
WKE CORP.  
AND  
WKE STATION TWO INC.  
AND  
WESTERN KENTUCKY ENERGY CORP.**

---

Pursuant to the provisions of KRS 271B.11-050, the undersigned corporations ("Constituent Corporations") hereby adopt the following Articles of Merger for the purpose of merging WKE Corp., a Kentucky corporation ("WKE Corp."), and WKE Station Two Inc., a Kentucky corporation ("Station Two Subsidiary"), with and into Western Kentucky Energy Corp., a Kentucky corporation ("WKEC"), which shall be the surviving corporation in the merger ("Merger"):

- FIRST:** The Plan of Merger adopted by each of the Constituent Corporations is attached hereto as Exhibit A and is incorporated by reference herein and made a part of these Articles of Merger.
- SECOND:** WKE Corp. has issued and outstanding 100 shares of common stock, no par value per share, each of which shares was entitled to one vote per share on the Plan of Merger. WKEC has issued and outstanding 100 shares of common stock, no par value per share, each of which shares was entitled to one vote per share on the Plan of Merger. Station Two Subsidiary has issued and outstanding 100 shares of common stock, no par value per share, each of which shares was entitled to one vote per share on the Plan of Merger.
- THIRD:** WKE Corp. is the sole shareholder of each of WKEC and Station Two Subsidiary. WKE Corp. voted all issued and outstanding shares of the common stock of each of WKEC and Station Two Subsidiary in favor of the Plan of Merger, by a written consent in lieu of a special meeting on March 30, 2006. E.ON U.S. Capital Corp. ("E.ON") is the sole shareholder of WKE Corp. E.ON voted all issued and outstanding shares of the common stock of WKE Corp. in favor of the Plan of Merger, by a written consent in lieu of a special meeting on March 30, 2006.
- FOURTH:** The number of shares cast for the Plan of Merger by the respective shareholders of each of the Constituent Corporations was sufficient for approval by each voting group.
- FIFTH:** The Merger shall be effective on April 30, 2006.

*[Signatures Appear on the Following Page]*

DATED: April 28, 2006

APP

WESTERN KENTUCKY ENERGY CORP.

By: Daniel K. Arbough

Name: DANIEL K. ARBOUGH

Title: TREASURER

WKE STATION TWO INC.

By: Daniel K. Arbough

Name: DANIEL K. ARBOUGH

Title: TREASURER

WKE CORP.

By: Daniel K. Arbough

Name: DANIEL K. ARBOUGH

Title: TREASURER

This instrument was prepared by:



Tate M. Bombard  
Greenebaum Doll & McDonald PLLC  
3500 National City Tower  
101 South Fifth Street  
Louisville, KY 40202-3197  
502/588-1322

1066730\_5

## EXHIBIT A

### PLAN OF MERGER

THIS PLAN OF MERGER ("Plan") is entered into as of this 28<sup>th</sup> day of April, 2006, by and among (i) WESTERN KENTUCKY ENERGY CORP., a Kentucky corporation ("WKEC"), (ii) WKE STATION TWO INC., a Kentucky corporation ("Station Two Subsidiary"), and (iii) WKE CORP., a Kentucky corporation and the parent company of WKEC and Station Two Subsidiary ("WKE Corp."). WKEC, Station Two Subsidiary and WKE Corp. are sometimes collectively referred to herein as the "Parties."

#### RECITALS:

A. In furtherance of the Parties' agreements pursuant to that certain Agreement dated as of April 28, 2006, by and among WKEC, Station Two Subsidiary, WKE Corp., and LG&E Energy Marketing Inc., an Oklahoma corporation, the Parties desire that each of WKE Corp. and Station Two Subsidiary be merged with and into WKEC, with WKEC to survive the Merger as the surviving corporation, in accordance with applicable law and upon the terms set forth in this Plan.

B. Each of the Board of Directors of WKEC, WKE Corp. and Station Two Subsidiary, respectively, has approved the merger of WKE Corp. and Station Two Subsidiary with and into WKEC, upon and subject to the terms of this Plan, and has recommended such merger to its shareholders.

#### AGREEMENT:

NOW, THEREFORE, the Parties hereby agree as follows:

##### 1. MERGER.

*1.1 Merger of Station Two Subsidiary and WKE Corp. With and Into the Surviving Corporation.* Subject to the terms and conditions of this Plan, at the Effective Time (as defined in Section 1.2), each of WKE Corp. and Station Two Subsidiary shall be merged with and into WKEC ("Merger"). At the Effective Time, the separate corporate existence of WKE Corp. and Station Two Subsidiary, respectively, shall thereupon cease, WKEC shall be the surviving corporation (the "Surviving Corporation") and the separate corporate existence of WKEC, with all its purposes, objects, rights, privileges, powers, franchises and interests, shall continue unaffected and unimpaired by the Merger. The Merger shall be pursuant to the provisions of, and with the effect provided in, the Kentucky Business Corporation Act.

*1.2 Effective Time of the Merger.* WKEC, WKE Corp. and Station Two Subsidiary shall cause the Merger to be consummated by the filing of this Plan and the Articles of Merger with the Secretary of State of the Commonwealth of Kentucky in accordance with the Kentucky Business Corporation Act. The Merger shall become effective on April 30, 2006 (the "Effective Time"), which is a date subsequent to the date of filing of the Articles of Merger with the Secretary of State of the Commonwealth of Kentucky.

**1.3 Additional Actions.** If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any further assignments or assurances in law or any other acts are necessary or desirable to (i) vest, perfect or confirm of record, or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of WKE Corp. or Station Two Subsidiary, respectively, acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger, or (ii) otherwise carry out the purposes of this Plan, each of WKE Corp. and Station Two Subsidiary, and the proper officers and directors of WKE Corp. and Station Two Subsidiary, respectively, shall be deemed to have granted to the Surviving Corporation an irrevocable power of attorney to (a) execute and deliver all such proper deeds, assignments and assurances in law, (b) do all acts necessary or proper to vest, perfect or confirm title to and possession of such rights, properties or assets in the Surviving Corporation, and (c) otherwise carry out the purposes of this Plan. The appropriate officers of the Surviving Corporation are fully authorized in the name of WKE Corp. and Station Two Subsidiary, respectively or otherwise, to take any and all such actions.

**2. CONVERSION AND CANCELLATION OF SHARES.** At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof:

**2.1 Conversion of WKE Corp. Common Stock.** Each share of common stock, no par value per share, of WKE Corp. (“WKE Corp. Common Stock”) which is issued and outstanding immediately prior to the Effective Time shall become and be converted into one share of fully paid and non-assessable common stock, no par value per share, of WKEC (“WKEC Common Stock”).

**2.2 WKEC Common Stock.** Each share of common stock, no par value per share, of WKEC, which is issued and outstanding immediately prior to the Effective Time shall be cancelled without payment or delivery of any further consideration therefore.

**2.3 Station Two Subsidiary Common Stock.** Each share of common stock, no par value per share, of Station Two Subsidiary, which is issued and outstanding immediately prior to the Effective Time shall be cancelled without payment or delivery of any further consideration therefor.

**3. EXCHANGE OF STOCK.** As soon as practicable after the Effective Time, and after surrender to Surviving Corporation of any certificate which prior to the Effective Time shall have represented any shares of WKE Corp Common Stock, Surviving Corporation shall cause to be issued to the person in whose name such certificate shall have been registered a certificate for the number of shares of WKEC Common Stock into which the shares of WKE Corp. Common Stock previously represented by the surrendered certificate shall have been converted at the Effective Time. Until surrendered as contemplated by the preceding sentence, each certificate which immediately prior to the Effective Time shall have represented any shares of WKE Corp. Common Stock shall be deemed at and after the Effective Time to represent only the right to receive the WKEC Common Stock into which it shall have been converted.

**4. CERTAIN CORPORATE CHANGES.**

**4.1 Articles of Incorporation and Bylaws of Surviving Corporation.** The Articles of Incorporation and Bylaws of WKEC, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation and Bylaws of the Surviving Corporation at and after the Effective Time.

**4.2 Board of Directors of Surviving Corporation.** The members of the Board of Directors of WKEC immediately prior to the Effective Time shall be the members of the Board of Directors of the Surviving Corporation from and after the Effective Time.

**4.3 Officers of Surviving Corporation.** The officers of WKEC immediately prior to the Effective Time shall be the officers of the Surviving Corporation from and after the Effective Time.

**5. SHAREHOLDER APPROVAL.** It shall be a condition to the consummation of the Merger that the Merger and this Plan be submitted to the shareholders of WKEC, WKE Corp. and Station Two Subsidiary, respectively, and be approved by a majority vote of the shareholders of each of such corporations.

**6. GOVERNING LAW.** This Plan shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Kentucky, without regard to the conflicts of laws rules of that state.

**7. AMENDMENTS.** This Plan may not be amended except by an instrument in writing signed on behalf of each of the Parties.

**8. COUNTERPARTS.** This Plan may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties hereto. It shall not be necessary, in making proof of this Plan or any counterpart hereof, to produce or account for any of the other counterparts.

*[Signatures Appear on the Following Page]*

IN WITNESS WHEREOF, the Parties have executed this Plan as of the date first written above.

JPF

WESTERN KENTUCKY ENERGY CORP.

By: [Signature]

Name: Paul W. Thompson

Title: President

WKE STATION TWO INC

By: [Signature]

Name: Daniel K. Arbough

Title: Treasurer

WKE CORP.

By: [Signature]

Name: Daniel K. Arbough

Title: Treasurer

LOU:1081693.1

0429033

RECEIVED & FILED

ARTICLES OF MERGER

OF

50.00  
JUL 10 12 09 PM '98

WESTERN KENTUCKY LEASING CORP. 0433827

WITH AND INTO

WESTERN KENTUCKY ENERGY CORP. 0429033

JOHN  
SECRETARY  
COMMONWEALTH OF KENTUCKY

Pursuant to the provisions of KRS 271B.11-040 and 271B.11-050. Western Kentucky Energy Corp., a Kentucky corporation ("WKEC"), hereby adopts the following Articles of Merger for the purpose of merging Western Kentucky Leasing Corp., a Kentucky corporation and a wholly-owned subsidiary of WKEC ("WKLC"), with and into WKEC, which shall be the surviving corporation to the merger.

**FIRST:** Attached hereto as Exhibit A is a copy of the Plan of Merger adopted by the WKEC (the "Plan of Merger"), which Plan of Merger is incorporated by reference herein.

**SECOND:** Shareholder approval of this merger is not required pursuant to KRS 271B.11-040(1).

IN WITNESS WHEREOF, WKEC has executed these Articles of Merger by its duly authorized officer this 7th day of July, 1998.

WESTERN KENTUCKY ENERGY CORP.

By George W. Basinger  
George W. Basinger, President

This instrument was prepared by:

Daniel E. Fisher

Daniel E. Fisher  
Greenebaum Doll & McDonald  
3300 National City Tower  
Louisville, KY 40202  
(502) 589-4200

Exhibit A

PLAN OF MERGER

THIS PLAN OF MERGER ("Plan of Merger") is made this 7th day of July, 1998, by WESTERN KENTUCKY ENERGY CORP., a Kentucky corporation ("Surviving Corporation").

RECITALS:

A. The Surviving Corporation owns all of the issued and outstanding stock of Western Kentucky Leasing Corp., a Kentucky corporation ("Subsidiary").

B. The Surviving Corporation desires to liquidate the Subsidiary by means of a merger of the Subsidiary into the Surviving Corporation.

AGREEMENT:

NOW, THEREFORE, in accordance with the provisions of KRS 271B.11-040, at the Effective Time (as hereinafter defined), the Subsidiary shall be merged into the Surviving Corporation, which shall be the surviving corporation, upon the following terms and conditions.

**FIRST:** At the Effective Time, the Subsidiary shall be merged into the Surviving Corporation, the separate existence of the Subsidiary shall cease and the separate corporate existence of the Surviving Corporation, with all of its purposes, objects, rights, privileges, powers, franchises and interests, shall continue unaffected and unimpaired by the merger. The merger shall be pursuant to the provisions of, and with the effect provided in, the Kentucky Business Corporation Act.

**SECOND:** At the Effective Time, the Surviving Corporation shall possess all of the respective rights, privileges, powers, franchises and interests of both the Subsidiary and the Surviving Corporation (hereinafter collectively referred to as the "Constituent Corporations") in and to any type of property (real, personal and mixed), and choses in action, all of which shall be transferred to, and vested in, the Surviving Corporation by virtue of the merger without any deed or other transfer and without reversion or impairment. Any action or proceeding, whether civil, criminal or administrative, pending by or against any of the Constituent Corporations may be continued as if the merger did not occur, or the Surviving Corporation may be substituted in the proceeding for the Subsidiary in such action or proceeding.



**THIRD:** The Surviving Corporation shall be liable for all liabilities of the Constituent Corporations and all debts, liabilities, obligations and contracts of the Constituent Corporations, whether matured or unmatured, whether accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on the respective balance sheet, books of account or records of the Constituent Corporations, shall be those of the Surviving Corporation, and shall not be released or impaired by the merger.

**FOURTH:** At the Effective Time, all certificates representing shares of stock of the Subsidiary shall be surrendered to the secretary of the Surviving Corporation and shall be cancelled, and no shares of stock of the Surviving Corporation shall be issued in exchange therefor.

**FIFTH:** The merger shall become effective at the time of filing ("Effective Time"), on the date of filing, of Articles of Merger with the Secretary of State of the Commonwealth of Kentucky, as evidenced by the Secretary of State's date and time endorsement on the original of the Articles of Merger.

**IN WITNESS WHEREOF**, the Surviving Corporation has executed this Plan of Merger on the day and year first above written.

**WESTERN KENTUCKY ENERGY CORP.**

By George W. Basinger  
George W. Basinger, President



OFFICE OF THE SECRETARY OF STATE



CERTIFIED COPY OF ALL DOCUMENTS ON FILE

CERTIFICATE

*I THE UNDERSIGNED, Secretary of State of the State of Oklahoma, do hereby certify that, to the date of this certificate, the attached is a true and correct copy of all documents on file in this office as described below of:*

NAME OF ENTITY  
LG&E ENERGY MARKETING INC.

<i>DOCUMENT TYPE</i>	<i>DOCUMENT FILING DATE</i>
<i>Certificate of Correction</i>	<i>May 26, 1998</i>
<i>Certificate of Merger</i>	<i>December 31, 1997</i>
<i>Certificate of Merger</i>	<i>December 31, 1997</i>
<i>Amended Certificate of Incorporation</i>	<i>March 29, 1996</i>
<i>Amended Certificate of Incorporation</i>	<i>February 10, 1994</i>
<i>Resignation of Registered Agent Coupled with Appointment of Successor Agent</i>	<i>January 08, 1991</i>
<i>Amended Certificate of Incorporation</i>	<i>October 23, 1986</i>
<i>Certificate of Incorporation</i>	<i>April 18, 1984</i>



*IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the Great Seal of the State of Oklahoma, done at the City of Oklahoma City, this 3rd, day of October, 2007.*

Secretary Of State



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**CERTIFICATE OF CORRECTION  
OF  
LG&E ENERGY MARKETING INC.  
(formerly LG&E NATURAL MARKETING INC.)  
AND  
LG&E POWER MARKETING INC.**

**FILED**

**MAY 26 1998**

**OKLAHOMA SECRETARY  
OF STATE**

Pursuant to the provisions of Section 1007(F) of the Oklahoma General Corporation Act (the "OGCA"), **LG&E ENERGY MARKETING INC.** (formerly LG&E Natural Marketing Inc.), an Oklahoma corporation, and **LG&E POWER MARKETING INC.**, a California corporation, certify that:

1. (a) **LG&E Natural Marketing Inc.** ("Natural") is incorporated in the state of Oklahoma ("Natural"); and

(b) **LG&E Power Marketing Inc.** ("Power"), was incorporated in the state of California and qualified to transact business in Oklahoma.

2. On June 9, 1997, Power changed its name in California, its state of incorporation, to "LG&E Energy Marketing Inc." Due to an oversight, notice of such change was not filed with the Oklahoma Secretary of State. Concurrent with the filing of this Certificate of Correction, Power is this day filing an Amended Certificate of Qualification with the Oklahoma Secretary of State to reflect its prior name change as described above. A copy of such instrument is attached hereto as Exhibit A.

3. On December 31, 1997, Power, then called "LG&E Energy Marketing Inc." merged with and into Natural with Natural as the surviving corporation. Furthermore, pursuant to the merger, Natural amended its articles of incorporation to change its name to "LG&E Energy Marketing Inc." A Certificate of Merger effecting the merger was filed with the Oklahoma Secretary of State on December 31, 1997 and a copy of such instrument is attached hereto as Exhibit B.

4. Because the records of the Oklahoma Secretary of State did not indicate the prior name change of Power to "LG&E Energy Marketing Inc." on December 31, 1997, the merger transaction was not reflected in such records as a merger of Power into Natural. Rather, the merger has been reflected as a merger of "LG&E Energy Marketing Inc., a California corporation not qualified in Oklahoma, into Natural.

5. Pursuant to Section 1007(F) of the OGCA, this Certificate of Correction shall operate to correct such inaccurate or defective records, with the result being correct recordation the merger of Power into Natural, as survivor, with such survivor to be named "LG&E Energy Marketing Inc."

**RECEIVED**

**MAY 26 1998**


**OKLAHOMA SECRETARY  
OF STATE**

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6. Pursuant to Section 1007(F) and except as otherwise provided therein, the Certificate of Merger, as may be corrected herein, shall be effective as of December 31, 1997, the date of the original instrument was filed.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Correction on behalf of Power and Natural on this \_\_\_ day of May 1998.

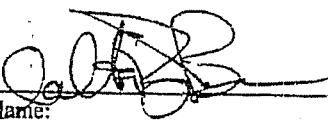
**LG&E ENERGY MARKETING INC.**  
(formerly LG&E Natural Marketing Inc.)

By:   
Name: \_\_\_\_\_  
Title:

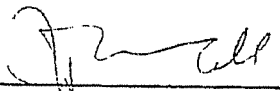
**ATTEST:**

  
Name: \_\_\_\_\_  
Title:

**LG&E POWER MARKETING INC.**

By:   
Name: \_\_\_\_\_  
Title:

**ATTEST:**

  
Name: \_\_\_\_\_  
Title:

OFFICE OF THE SECRETARY OF STATE



CERTIFICATE OF MERGER

WHEREAS,

**LG&E ENERGY MARKETING INC.**  
Formerly: **LG&E NATURAL MARKETING INC.**

*a corporation organized under the laws of the State of OKLAHOMA, has filed in the office of the Secretary of State duly authenticated evidence of a merger whereby said corporation is the survivor, as provided by the laws of the State of Oklahoma.*

*NOW THEREFORE, I, the undersigned Secretary of State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this Certificate evidencing such merger.*

*IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.*



Filed in the City of Oklahoma City this 31ST  
day of DECEMBER, 1997.

*Sam Cole*  
Secretary of State

By: *Bruce Blucher*

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6. Agreement and Plan of Merger on File. The executed Plan of Merger is on file at the principal place of business of the Surviving Corporation, the address of which as of the date hereof is as follows:

220 West Main Street  
Louisville, KY 40202


7. Copies of Agreement and Plan of Merger. A copy of the Plan of Merger will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any of the aforementioned constituent corporations.

8. Service of Process. Natural hereby agrees that it may be served with process in California in any proceeding for enforcement of any obligation of Energy, as well as for enforcement of any obligation of Natural arising from the merger, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to Section 1091 of the Oklahoma General Corporation Act, and Natural hereby irrevocably appoints the Secretary of State of the State of Oklahoma as its agent to accept service of process in any such suit or other proceedings and a copy of such process shall be mailed by the Secretary of State to Natural at the following address:

220 West Main Street  
Louisville, KY 40202

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Merger on behalf of Natural on this 29th day of December, 1997.

LG&E NATURAL MARKETING INC.

By:   
Walter Z. Berger, President

ATTEST:



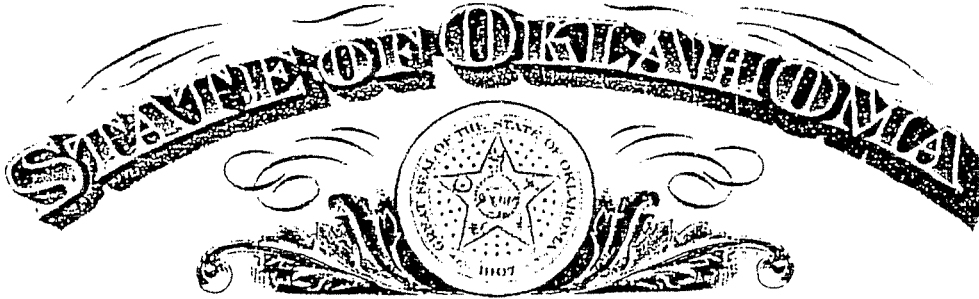
John R. McCall, Secretary

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OFFICE OF THE SECRETARY OF STATE



CERTIFICATE OF MERGER

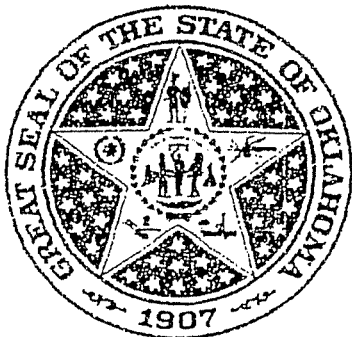
WHEREAS,

LG&E ENERGY MARKETING INC.  
Formerly: LG&E NATURAL MARKETING INC.

a corporation organized under the laws of the State of OKLAHOMA,  
has filed in the office of the Secretary of State duly authenticated evidence of a merger  
whereby said corporation is the survivor, as provided by the laws of the State of  
Oklahoma.

NOW THEREFORE, I, the undersigned Secretary of State of Oklahoma, by virtue  
of the powers vested in me by law, do hereby issue this Certificate evidencing such  
merger.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the  
Great Seal of the State of Oklahoma.



Filed in the City of Oklahoma City this 31ST  
day of DECEMBER, 1997.

*Sam Cole*  
Secretary of State  
By: *Patricia S. ...*

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CERTIFICATE OF MERGER  
OF  
LG&E ENERGY MARKETING INC.  
AND  
LG&E NATURAL MARKETING INC.

**FILED**

DEC 31 1997

OKLAHOMA SECRETARY  
OF STATE

Pursuant to the provisions of Section 1082 of the Oklahoma General Corporation Act, LG&E NATURAL MARKETING INC., an Oklahoma corporation, certifies that:

1. Constituent Corporations. The constituent business corporations participating in the merger herein certified are:

(a) LG&E ENERGY MARKETING INC., which is incorporated under the laws of the State of California ("Energy"); and

(b) LG&E NATURAL MARKETING INC., which is incorporated under the laws of the State of Oklahoma ("Natural").

2. Approval of Agreement and Plan of Merger. An Agreement and Plan of Merger dated as of December 29, 1997 ("Plan of Merger"), has been approved, adopted, certified, executed and acknowledged by each of the aforementioned constituent corporations in accordance with the applicable provisions of the California General Corporation Law and the Oklahoma General Corporation Act, respectively.

3. Surviving Corporation. The surviving corporation (the "Surviving Corporation") in the merger herein certified is Natural.

4. Articles of Incorporation. The Articles of Incorporation of Natural as in effect immediately prior to the effective time of the merger shall be the Articles of Incorporation of the Surviving Corporation, provided however, that, as of the effective time of the merger, the following amendment shall be made to such Articles of Incorporation:

The text of Article I is hereby deleted in its entirety and amended to read:

"The name of the corporation is "LG&E Energy Marketing Inc.""

5. Effective Time. The Plan of Merger shall be effective at 3 p.m. Eastern Standard Time on December 31, 1997.

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6. Agreement and Plan of Merger on File. The executed Plan of Merger is on file at the principal place of business of the Surviving Corporation, the address of which as of the date hereof is as follows:

220 West Main Street  
Louisville, KY 40202

7. Copies of Agreement and Plan of Merger. A copy of the Plan of Merger will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any of the aforementioned constituent corporations.

8. Service of Process. Natural hereby agrees that it may be served with process in California in any proceeding for enforcement of any obligation of Energy, as well as for enforcement of any obligation of Natural arising from the merger, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to Section 1091 of the Oklahoma General Corporation Act, and Natural hereby irrevocably appoints the Secretary of State of the State of Oklahoma as its agent to accept service of process in any such suit or other proceedings and a copy of such process shall be mailed by the Secretary of State to Natural at the following address:

220 West Main Street  
Louisville, KY 40202

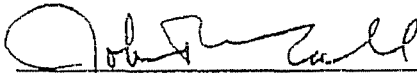
IN WITNESS WHEREOF, the undersigned has executed this Certificate of Merger on behalf of Natural on this 29th day of December, 1997.

LG&E NATURAL MARKETING INC.

By: 

Walter Z. Berger, President

ATTEST:



John R. McCall, Secretary

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is made and entered into as of this 29<sup>th</sup> day of December, 1997, between LG&E ENERGY MARKETING INC., a California corporation ("Energy"), and LG&E NATURAL MARKETING INC., an Oklahoma corporation ("Natural") (both hereinafter sometimes collectively referred to as the "Constituent Corporations").

RECITALS:

WHEREAS, Energy and Natural now share a common sole shareholder and perform similar functions, through direct and indirect subsidiaries, in the electrical power and natural gas industries, respectively, which industries are converging and consolidating; and

WHEREAS, the Boards of Directors of the Constituent Corporations have determined that the merger of Energy into Natural will promote certain accounting, legal, tax, and organizational efficiencies and better reflect current operations and anticipated future operations; and

WHEREAS, the Boards of Directors and Shareholders of the Constituent Corporations, respectively, have approved this Agreement and Plan of Merger, authorized its execution and have approved and adopted the merger of Energy into Natural in the manner prescribed by the provisions of the California General Corporation Law and the Oklahoma General Corporation Act.

AGREEMENT:

NOW, THEREFORE, the parties hereby agree as follows:

1. The Merger. Energy shall be merged with and into Natural (the "Merger") upon the filing of the Certificates of Merger with the Secretaries of State of California and Oklahoma, and in accordance with any specified effective date or time therein set forth, (the "Effective Time").

2. Effect of the Merger. At and after the Effective Time:

(a) The separate corporate existence of Energy shall thereupon cease. Natural shall be the surviving corporation with all its purposes, objects, rights, privileges, powers, franchises, licenses and interests continuing unaffected and unimpaired by the Merger. The Merger shall be pursuant to the provisions of, and with the effect provided in, the California General Corporation Law and the Oklahoma General Corporation Act. For purposes of reference to Natural at and after the Effective Time, Natural is sometimes hereinafter referred to as the "Surviving Corporation."

(b) The Surviving Corporation shall continue its corporate existence under the laws of the State of Oklahoma, possessing all the respective rights, privileges, powers, franchises, licenses and interests of the Constituent Corporations in and to every personal, real and mixed property and choses in action (the "Interests"). The Interests shall be transferred to and be vested in the Surviving Corporation by virtue of the Merger without any deed or other transfer. The Surviving Corporation, without any order or other action on the part of any court or otherwise, shall hold and enjoy all the Interests in the same manner and to the same extent as all the Interests were held or enjoyed respectively by the Constituent Corporations immediately prior to the Effective Time.

(c) Any action or proceeding, whether civil, criminal or administrative, pending by or against either of the Constituent Corporations may be prosecuted as if the Merger had not taken place. All rights of creditors and all liens on property of both Constituent Corporations shall be preserved and remain unimpaired, with all of their respective debts, liabilities and duties attaching to the Surviving Corporation enforceable against it to the same extent as if those debts, liabilities and duties had been incurred and contracted by the Surviving Corporation.

3. Articles of Incorporation, By-laws and Management of Surviving Corporation. At and after the Effective Time:

(a) The Articles of Incorporation of Natural, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation of the Surviving Corporation until further amended in accordance with the Oklahoma General Corporation Act; provided however, that, as of the Effective Time, the following amendments shall be made to such Articles of Incorporation:

The text of Article 1 is hereby deleted in its entirety and amended to read:

"The name of the Corporation is "LG&E Energy Marketing Inc."

(b) The By-laws of Natural, as in effect immediately prior to the Effective Time, shall be the By-laws of the Surviving Corporation until duly amended in accordance with the provisions of the Oklahoma General Corporation Act, and the Surviving Corporation's Articles of Incorporation and By-laws.

(c) The directors of the Surviving Corporation shall consist of those persons who are the directors of Natural immediately prior to the Effective Time. Each such person shall serve as a director of the Surviving Corporation until the next regular annual meeting of its shareholders and until his or her successor is elected and has qualified.

(d) The officers of the Surviving Corporation shall be those persons who were the officers of Natural immediately prior to the Effective Time. The officers of the Surviving Corporation shall hold office subject to the provisions of the Oklahoma General Corporation Act, and the Surviving Corporation's Articles of Incorporation and By-laws.

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4. Conversion of Shares. At the Effective Time each common share, \$0.01 par value, of Energy, which is issued and outstanding immediately prior to the Effective Time ("Energy Shares") shall be converted into a right to receive one common share, \$1.00 par value, of the Surviving Corporation ("Surviving Corporation Shares").

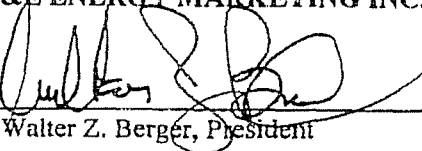
5. Exchange of Stock Certificates. As soon as practical after the Effective Time, the holders of the certificates theretofore representing Energy Shares shall surrender the certificates to the Surviving Corporation. Upon surrender of the certificates, the Surviving Corporation shall issue to the holders certificates representing the number of Surviving Corporation Shares to which the holders are entitled to receive by virtue of the merger.

IN WITNESS WHEREOF, the Constituent Corporations have caused their duly


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authorized officers to execute and deliver this Agreement and Plan of Merger on and as of the date first written above.

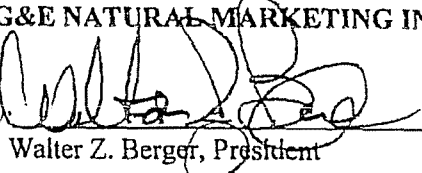
LG&E ENERGY MARKETING INC.

By:   
Walter Z. Berger, President

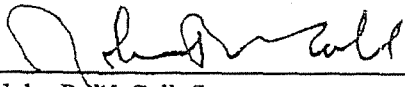
ATTEST:

  
John R. McCall, Secretary

LG&E NATURAL MARKETING INC.

By:   
Walter Z. Berger, President

ATTEST:

  
John R. McCall, Secretary

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COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

Before the undersigned, a Notary Public, in the aforesaid County and State, this 29<sup>th</sup> day of December, 1997, personally appeared Walter Z. Berger, in his capacity as President of LG&E ENERGY MARKETING INC. and acknowledged the execution of the foregoing Agreement and Plan of Merger.

WITNESS, my hand and notarial seal.

Kathy L. Wilson  
Notary Public, State at Large  
KENTUCKY

Kathy L. Wilson  
Notary Public  
State at Large, KY

My commission expires: January 22, 2001 Commission Expires: 01-22-2001

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

Before the undersigned, a Notary Public, in the aforesaid County and State, this 29<sup>th</sup> day of December, 1997, personally appeared Walter Z. Berger, in his capacity as President of LG&E NATURAL MARKETING INC. and acknowledged the execution of the foregoing Agreement and Plan of Merger.

WITNESS, my hand and notarial seal.

Kathy L. Wilson  
Notary Public, State at Large  
KENTUCKY

Kathy L. Wilson  
Notary Public  
State at Large, KY

My commission expires: January 22, 2001 Commission Expires: 01-22-2001

This Instrument Prepared By:

John P. Fendig  
John P. Fendig  
LG&E Energy Corp.  
220 West Main Street  
Louisville, KY 40202  
(502) 627-2608

n:\fendig\lem-merg\agmpln.doc



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# OKLAHOMA TAX COMMISSION

December 31, 1997

(405) 521-3161

Secretary of State  
Room 101  
State Capitol Building  
Oklahoma City, OK 73105

RE: LG&E NATURAL MARKETING INC.

Qualification Date: 04/18/1984

Dear Secretary:

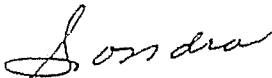
This is to certify that the files of this office show the referenced corporation has filed a Franchise Tax return of the fiscal year ending June 30, 1998 and has paid the Franchise Tax as shown by said return.

No certification is made as to any corporate Franchise Taxes which may be due but not yet assessed, nor which have been assessed and protested.

This letter may not therefore be accepted for purposes of dissolution or withdrawal.

Sincerely,

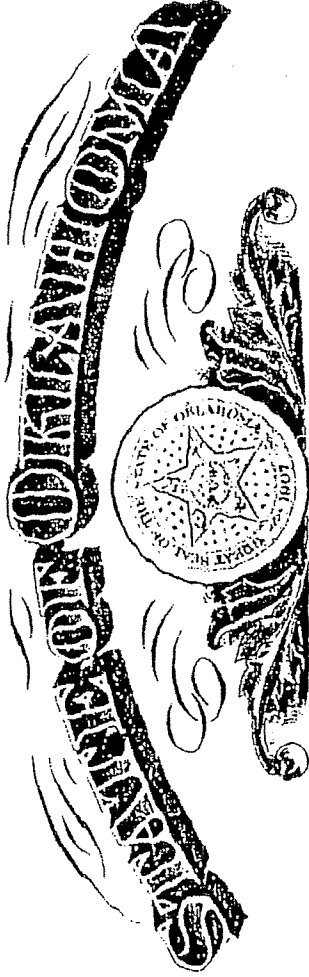
OKLAHOMA TAX COMMISSION



Taxpayer Assistance Division

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OFFICE OF THE SECRETARY OF STATE



**AMENDED  
CERTIFICATE OF INCORPORATION**

WHEREAS, the Amended Certificate of Incorporation of

**LG&E NATURAL MARKETING INC.**

has been filed in the office of the Secretary of State as provided by the laws of the State of Oklahoma.

*NOW THEREFORE, I, the undersigned, Secretary of State of the State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this certificate evidencing such filing.*

*IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.*



Filed in the City of Oklahoma City this 29th  
day of March, 1996.

*Sam Cole*  
Secretary of State  
By: *Ray L. D. Hall*

DB418419-004

FEE: \$50.00  
(Minimum)

FILE IN DUPLICATE  
PRINT CLEARLY

SOS CORP. KEY:  
DS 418417-004

7 2 9 0 9 0 1 0  
**AMENDED**  
**CERTIFICATE OF INCORPORATION**  
(After Receipt of Payment of Stock)

**FILED**  
MAR 29 1996  
OKLAHOMA SECRETARY  
OF STATE

FOR OFFICE USE ONLY

PLEASE NOTE: This form MUST be filed with a letter from the Oklahoma Tax Commission stating the franchise tax has been paid for the current fiscal year. If the authorized capital is increased in excess of fifty thousand dollars (\$50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such increase.

TO THE SECRETARY OF STATE OF THE STATE OF OKLAHOMA, 101 State Capitol Bldg., Oklahoma City, OK 73102:

The undersigned Oklahoma corporation, for the purpose of amending its certificate of incorporation as provided by Section 1077 of the Oklahoma General Corporation Act, hereby certifies:

1. A. The name of the corporation is: Hadson Gas Systems, Inc.

B. As Amended: The name of the corporation has been changed to:

LG&E Natural Marketing Inc.

2. A. No change, as filed X.

B. As amended: The address of the registered office in the State of Oklahoma and the name of the registered agent at such address is:

NAME	STREET ADDRESS (P.O. BOXES ARE NOT ACCEPTABLE)	CITY	COUNTY	ZIP CODE
------	---	------	--------	----------

3. A. No change, as filed X.

B. As amended: The duration of the corporation is: \_\_\_\_\_

4. A. No change, as filed X.

B. As amended: The purpose or purposes for which the corporation is formed are:

5. A. No change, as filed X.

B. As amended: The aggregate number of the authorized shares, itemized by class, par value of shares, shares without par value, and series, if any, within a class is:

NUMBER OF SHARES	SERIES	PAR VALUE PER SHARE
------------------	--------	---------------------

Common \_\_\_\_\_

Preferred \_\_\_\_\_

TOTAL NO. SHARES: \_\_\_\_\_ TOTAL AUTHORIZED CAPITAL: \_\_\_\_\_

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That at a meeting of the Board of Directors, a resolution was duly adopted setting forth the foregoing proposed amendment(s) to the Certificate of Incorporation of said corporation, declaring said amendment(s) to be advisable and calling a meeting of the shareholders of said corporation for consideration thereof.

That thereafter, pursuant to said resolution of its Board of Directors, a meeting of the shareholders of said corporation was duly called and held, at which meeting the necessary number of shares as required by statute were voted in favor of the amendment(s).

SUCH AMENDMENT(S) WAS DULY ADOPTED IN ACCORDANCE WITH 18 O.S., §1077.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be signed by its X President and attested by its X Secretary, this 2<sup>nd</sup> day of March, 19 96.

HADSON GAS SYSTEMS, INC.  
(EXACT CORPORATE NAME)  
David R. Carey  
By X President  
DAVID R. CAREY  
(PLEASE PRINT NAME)

ATTEST:

TERRI MCGUIRE WATSON  
X Secretary

TERRI MCGUIRE WATSON  
(PLEASE PRINT NAME)



## OKLAHOMA TAX COMMISSION

ROBERT E. ANDERSON, Chairman  
ROBERT V. CULLISON, Vice-Chairman  
DON KILPATRICK, Secretary-Member

STATE OF OKLAHOMA  
2501 LINCOLN BLVD.  
OKLAHOMA CITY, OKLAHOMA 73194

FRX

405-521-3161

MARCH 29, 1996

Secretary of State  
Room 101, State Capitol Building  
Oklahoma City, OK 73105

RE: HADSON GAS SYSTEMS, INC.

Qualification date: APRIL 18, 1984

Dear Secretary:

This is to certify that the files of this office show the referenced corporation has filed a Franchise Tax return of the fiscal year ending June 30, 1996 and has paid the Franchise Tax as shown by said return.

No certification is made as to any corporate Franchise Taxes which may be due but not yet assessed, nor which have been assessed and protested.

This letter may not therefore be accepted for purposes of dissolution or withdrawal.

Sincerely,

OKLAHOMA TAX COMMISSION

Business Tax Division  
Registration Section

FEE: \$10.00

CHANGE OR  
DESIGNATION  
OF  
REGISTERED AGENT  
AND/OR  
LOCATION OF  
REGISTERED OFFICE  
(OKLAHOMA CORPORATION)

**FILED**  
FEB 10 1994  
OKLAHOMA SECRETARY  
OF STATE

FOR OFFICE USE ONLY

DB 418417-005

PLEASE PRINT CLEARLY  
FILE IN DUPLICATE

TO: THE OKLAHOMA SECRETARY OF STATE  
101 State Capitol  
Oklahoma City, OK 73105

**PLEASE NOTE:** This form **MUST** be filed with a letter from the Oklahoma Tax Commission stating the franchise tax has been paid by the corporation for the current fiscal year.

The Board of Directors of Hadson Gas Systems, Inc.

a corporation organized and existing under the laws of the State of Oklahoma, do hereby resolve that the location of the registered office of this corporation be changed to:

735 First National Building, Oklahoma City, Oklahoma 73102

Street Address City County Zip Code  
(P.O. Boxes are **NOT** acceptable.)

The name of the registered agent at such address upon whom process against this corporation may be served is:

THE CORPORATION COMPANY

The undersigned corporation does hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Directors of the corporation, as provided by Section 1023/1026.B. of the Oklahoma General Corporation Act.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed by its President and attested by its Asst. Secretary, this 18 day of January, 1994.

By Greg G. Jenkins President

Greg G. Jenkins  
(Please Print Name)

ATTEST:

By Helen Coffman Asst. Secretary

Helen Coffman  
(Please Print Name)



OKLAHOMA TAX COMMISSION  
STATE OF OKLAHOMA

ROBERT E. ANDERSON, Chairman  
ROBERT L. WADLEY, Vice-Chairman  
DON KILPATRICK, Sec'y-Member

2501 LINCOLN BLVD.  
OKLAHOMA CITY, OKLAHOMA 73194

FRX

405-521-4592

February 2, 1994

John Kennedy  
Secretary of State  
Room 101, State Capitol Building  
Oklahoma City, OK 73105

RE: HADSON GAS SYSTEMS, INC.

Qualification date: 04 18 84

Dear Mr. Kennedy:

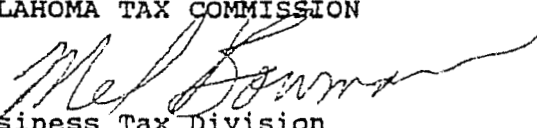
This is to certify that the files of this office show the referenced corporation has filed a Franchise Tax return of the fiscal year ending June 30, 1994 and has paid the Franchise Tax as shown by said return.

No certification is made as to any corporate Franchise Taxes which may be due but not yet assessed, nor which have been assessed and protested.

This letter may not therefore be accepted for purposes of dissolution or withdrawal.

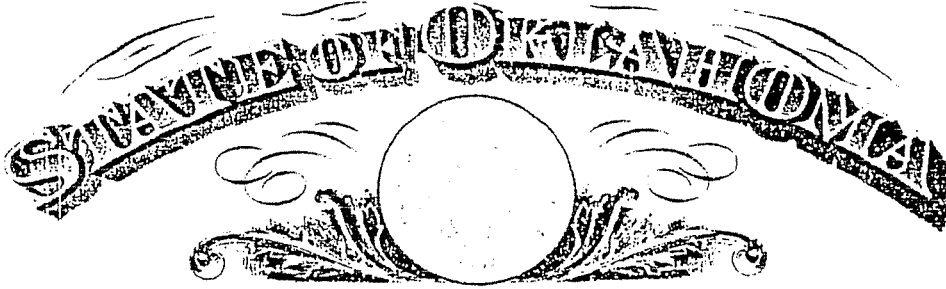
Sincerely,

OKLAHOMA TAX COMMISSION

  
Business Tax Division  
Permit and Licensing Section

DB 418417-002

OFFICE OF THE SECRETARY OF STATE



**CERTIFICATE OF SUCCESSOR REGISTERED AGENT**

*To all to Whom these Presents shall Come, Greetings:*

**WHEREAS,** *A Certificate of Resignation of Registered Agent Coupled With Appointment of Successor Agent, duly signed and verified, in the name of:*

HADSON GAS SYSTEMS, INC.

*a corporation organized and existing under the laws of* OKLAHOMA *has been filed in the office of the Secretary of State as provided by the Laws of the State of Oklahoma.*

**NOW THEREFORE,** *I, the undersigned, Secretary of State of the State of Oklahoma, by virtue of the powers vested in me by law, do hereby certify that*

JEANETTE C. TIMMONS

*at* %DIAMOND, STUART & TIMMONS, 101 PARK AVE. #1102, OKLA. CITY, OK *has become the successor registered agent of said corporation so ratifying and approving such change.*

**IN TESTIMONY WHEREOF,** *I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.*



*Filed at the City of Oklahoma City this* 8TH *day of* JANUARY *, A.D., 19* 91

Hannah D. Atkins  
*Secretary of State*

*By* [Signature]

63094001 01/08/91C



DB 418417-002

FILED

JAN 8 1991

RESIGNATION OF REGISTERED AGENT  
COUPLED WITH  
APPOINTMENT OF SUCCESSOR

OKLA. SECRETARY OF STATE

TO THE SECRETARY OF STATE OF THE STATE OF OKLAHOMA, 101 State Capitol Bldg., Oklahoma City, OK 73105:

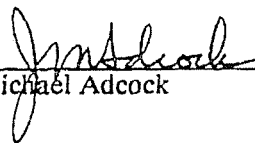
The undersigned, for the purpose of changing the name of the registered agent and address of the registered office of the corporation identified below, as provided by Section 1025 of the Oklahoma General Corporation Act, hereby certifies:

1. The name of the Corporation is: Hadson Gas Systems, Inc. organized and existing under the laws of the State of Oklahoma.
2. The undersigned, designated registered agent in the State of Oklahoma, is unwilling to continue to act as agent of said corporation for service of process.
3. Upon the filing of this statement with the Secretary of State, the capacity of the undersigned as such registered agent shall terminate, and the successor agent and the address of the registered office for said corporation shall be:

Jeanette C. Timmons  
Diamond, Stuart & Timmons  
101 Park Avenue  
Suite 1102  
Oklahoma City, OK 73102

IN WITNESS WHEREOF, the undersigned has caused this statement to be executed this 31<sup>st</sup> day of December, 1990.

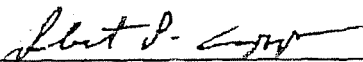
INDIVIDUAL ACKNOWLEDGMENT

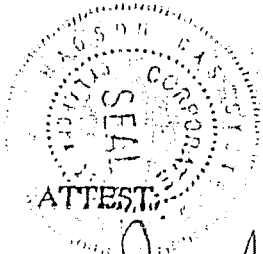
  
\_\_\_\_\_  
J. Michael Adcock

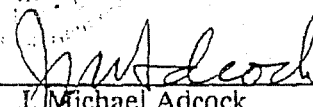
The undersigned corporation does hereby ratify and approve the foregoing change of registered agent on this 31<sup>st</sup> day of December, 1990.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed by its Vice President and attested by its Secretary.

HADSON GAS SYSTEMS, INC.

  
\_\_\_\_\_  
By: Robert P. Capps  
Vice President



  
\_\_\_\_\_  
By: J. Michael Adcock  
Secretary



OKLAHOMA TAX COMMISSION  
STATE OF OKLAHOMA

ROBERT E. ANDERSON, Chairman  
ROBERT L. WADLEY, Vice Chairman  
DON KILPATRICK, Sec'y-Member

2501 LINCOLN BLVD  
OKLAHOMA CITY, OKLAHOMA 73104

BUSINESS TAX  
DIVISION

(405) 521-4592

12/27/90

HANNAH D. ATKINS  
SECRETARY OF STATE  
ROOM 101, STATE CAPITOL BUILDING  
OKLAHOMA CITY, OK 73105

RE: Hadson Gas Systems, Inc.

QUALIFIED: 4/18/84

DEAR MS. ATKINS:

THIS IS TO CERTIFY THAT THE FILES OF THIS OFFICE SHOW THE REFERENCED CORPORATION HAS FILED A FRANCHISE TAX RETURN OF THE FISCAL YR ENDING JUNE 30, 1991 AND HAS PAID THE FRANCHISE TAX AS SHOWN BY SAID RETURN.

NO CERTIFICATION IS MADE AS TO ANY CORPORATE FRANCHISE TAXES WHICH MAY BE DUE BUT NOT YET ASSESSED, NOR WHICH HAVE BEEN ASSESSED AND PROTESTED.

THIS LETTER MAY NOT THEREFORE BE ACCEPTED FOR PURPOSES OF DISSOLUTION OR WITHDRAWAL.

SINCERELY,

BUSINESS TAX DIVISION

A handwritten signature in cursive script that reads "Donald J. Woody".

DONALD J. WOODY, ADMINISTRATOR  
PERMIT AND LICENSING SECTION

DJW/

5 1 2 0 1 1 7 0 0 0 0

**FILED**

OCT 23 1986

OKLAHOMA SECRETARY  
OF STATE  
FOR OFFICE USE ONLY

FEE: \$10.00  
FILE IN DUPLICATE  
PRINT CLEARLY  
SOS CORP. KEY:  
\_\_\_\_\_

APPOINTMENT OR CHANGE  
OF  
REGISTERED AGENT AND/OR OFFICE

TO THE SECRETARY OF STATE OF THE STATE OF OKLAHOMA:

The undersigned corporation, organized and existing under the laws of the State of Oklahoma, for the purpose of changing or appointing its registered agent or its registered office, or both, in Oklahoma, as provided by the "Business Corporation Act" of Oklahoma, hereby submits:

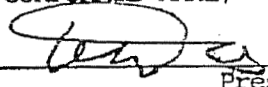
1. The name of the corporation is: Hadson Gas Systems, Inc.

2. The name of its former registered agent and the address of its former registered office is:  
J. Michael Adcock, 200 City Center Building, Oklahoma City, Oklahoma County, OK 73126  
NAME STREET ADDRESS CITY COUNTY ZIP CODE

3. The name of the registered agent and the address of the registered office in the State of Oklahoma is changed to:  
J. Michael Adcock, 116 N. Bell, Shawnee, Pottawatomie County, OK 74801  
NAME STREET ADDRESS CITY COUNTY ZIP CODE  
(P.O. BOXES ARE NOT ACCEPTABLE)

IN WITNESS WHEREOF, the undersigned corporation has caused this statement to be executed in its name by its \_\_\_\_\_ President, attested by its \_\_\_\_\_ Secretary, this 21st day of October, 1986.

HADSON GAS SYSTEMS, INC.  
(EXACT CORPORATE NAME)



By its \_\_\_\_\_ President

(CORPORATE SEAL)

ATTEST:

J. Michael Adcock  
By its \_\_\_\_\_ Secretary

**RECEIVED**

OCT 23 1986

Secretary of State

State of: Oklahoma  
County of: Pottawatomie

The foregoing instrument was acknowledged before me this 21st day of October 1986, by Vinod K. Darg, President of Hadson Gas Systems

Dakota Bauhous  
(NOTARY PUBLIC)

My Commission expires: 5/2/87  
(NOTARY SEAL)

5874A001 10/23/862

SEE FORM 1000 10 00

0 8 0 5 7 2 0 0 7 2 6

718-717

OFFICE OF THE SECRETARY OF STATE



**CERTIFICATE OF INCORPORATION**

*To all to Whom these Presents shall Come, Greetings*

**WHEREAS,** *Articles of Incorporation duly signed and witnessed of*

**HADSON GAS SYSTEMS, INC.**

*have been filed in the office of the Secretary of State as provided by the Laws of the State of Oklahoma.*

**NOW THEREFORE,** *I, the undersigned, Secretary of State of the State of Oklahoma by virtue of the powers vested in me by law, do hereby issue this Certificate of Incorporation.*

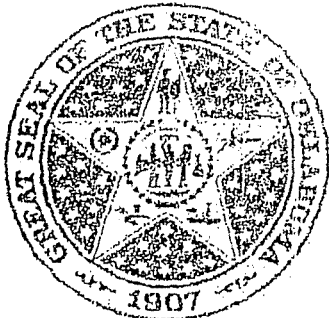
**IN TESTIMONY WHEREOF,** *I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.*

*Filed at the City of Oklahoma City, this 18th*

*day of April, A.D. 19 84*

*Joannette B. Edwards*  
*Secretary of State*

*By: Brandon J. Young*



OKLAHOMA

ARTICLES OF INCORPORATION

STATE OF OKLAHOMA )  
 ) SS.  
COUNTY OF OKLAHOMA )

TO THE SECRETARY OF STATE OF THE STATE OF OKLAHOMA:

We, the undersigned Incorporators,

J. Michael Adcock  
P. O. Box 26770  
Oklahoma City, OK 73126

Kathy Fischer  
200 City Center Building  
P. O. Box 26770  
Oklahoma City, OK 73126

Terry L. Toole  
200 City Center Building  
P. O. Box 26770  
Oklahoma City, OK 73126

for the purpose of forming a corporation under "The Business Corporation Act" of the State of Oklahoma, hereby adopt the following Articles of Incorporation:

ARTICLE 1

CORPORATE NAME. The name of the Corporation is Hadson Gas Systems, Inc.

*By consent*

ARTICLE 11

CORPORATE PURPOSES. To own, operate and maintain, and to construct, acquire by purchase, lease or otherwise, pipelines, gathering systems for the transportation and gathering of natural gas, casinghead gas, or liquids associated therewith and any other elements susceptible to transportation and gathering of every kind and nature, and to conduct, engage, and carry on the business of gathering and transporting such elements of every class and description; and to own, operate, maintain, hold and use, purchase, construct, establish, lease or otherwise acquire, mortgage, create security interests in, and sell, or otherwise dispose of or deal with pipelines, gathering systems and such products as

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CERTIFICATE OF PAID IN CAPITAL

STATE OF OKLAHOMA, COUNTY OF OKLAHOMA, SS.

J. Michael Adcock, Kathy Fischer, and Terry L. Toole of lawful age, upon oath state:

That they constitute all of the Incorporators of Hadson Gas Systems, Inc., a proposed Corporation: that the amount of stated capital with which said Corporation will be in business, as set out in the Articles of Incorporation which are attached, has been fully paid to them as Incorporators, and that they hold said amount as Trustees for said Corporation.

J. Michael Adcock  
J. Michael Adcock

Kathy Fischer  
Kathy Fischer

Terry L. Toole  
Terry L. Toole

Subscribed and sworn to before me this 17<sup>th</sup> day of April, 1984.

Janet S. Porter  
Notary Public

My Commission Expires:

My Commission Expires Oct. 17, 1987

0 0 0 7 1 2 0 0 7 3 0

CONSENT TO SIMILAR NAME

TO THE SECRETARY OF STATE, STATE OF OKLAHOMA:

The undersigned corporation, in compliance with Section 11(c) of the "Business Corporation Act" of the State of Oklahoma, hereby consent to the use of the name or a similar name.

1. The name of the consenting corporation is: Hadson Petroleum Corporation and is organized under the laws of the State of Delaware but authorized to do business in the State of Oklahoma.

2. The consenting corporation is the parent of the corporation about to be formed and will own 100% of the outstanding shares of said corporation.

3. The name of the corporation to which this consent is given is HADSON GAS SYSTEMS, INC. and is about to be organized under the laws of the State of Oklahoma.

IN WITNESS WHEREOF, this corporation has caused this consent to be executed this 17th day of April 1984.

HADSON PETROLEUM CORPORATION

BY: Terry L. Toole  
Terry L. Toole, Vice President

ATTEST:

J. Michael Adcock  
J. Michael Adcock, Secretary





0 0 0 7 3 0 0 7 3 1

To purchase, take, own, hold, deal in, mortgage, lease, sell, exchange, convey, transfer, or in any other manner whatsoever, dispose of real or personal property, within or without the State of Oklahoma.

To enter into partnerships, associations or joint ventures in connection with the foregoing and to do any and all things incidental to any of the foregoing which is not specifically prohibited by law.

To buy, loan money upon, sell, transfer, assign, discount, borrow money upon, pledge collateral, and otherwise deal as principal, agent, or broker in bills of lading, warehouse receipts, evidence of deposit, bonds, stocks, promissory notes, choses in action, contracts, mortgages, or other evidences of indebtedness of persons, firms, or corporations, and owning, holding or conveying such real estate as may be necessary in the operation of the business, and purchasing, acquiring and holding shares of stock in other corporations and enterprises; and to do all things incidental thereto; to act as agent, factor, or broker of any person, firm or corporation provided, however, that the foregoing shall not be for the purpose of carrying on the business of banking or insurance.

To manufacture, sell, deal in and to engage in, to conduct and carry on the business of manufacturing, buying, selling and dealing in goods, wares, and merchandise of every class and description.

To engage in the general contracting business, dirt moving, and more especially general oil field contracting, and to do any and all things necessary and in connection therewith and pertaining thereto.

To acquire oil, gas, coal, salt, sulphur, gypsum, and other mineral interests in lands, and in any minerals, mineral substances, metals, or metallic substances therein and thereunder; to acquire by purchase, lease, or otherwise, lands or interest in lands in any locality for the purpose of prospecting for, obtaining, producing, refining, transporting and marketing oil, gas, coal, salt, sulphur, gypsum, or other minerals or metals; to lease its own lands and mineral interests for such purposes, to drill, or cause to be drilled, oil or gas wells, and to sink, or cause to be sunk, shafts for mining, and to buy, lease or otherwise acquire, or contract for, drilling rigs, and other machinery, equipment or apparatus necessary to fully accomplish said purposes; and if oil, gas, coal, salt, sulphur, gypsum, or other minerals or metals are found, then to produce, store, refine and market the same to the best advantage.

To engage in the general oil field well servicing and contracting business, the construction business, construction work, construction contracting and dirt moving, the production acquiring, handling, manufacturing and selling, both a wholesale and retail, or crude oil and crude oil products, building and construction materials and supplies of every kind and character, and any and all other materials, minerals and chemicals used in the oil field construction and contracting business or in the use and manufacture and production of petroleum product and construction work.

To purchase or otherwise acquire, either for cash, or by exchange at fair cash value thereof for its shares, or both, and to own and hold, any and all machinery, manufacturing equipment and other equipment, buildings, lands, leases, automotive equipment, transportation equipment, mechanical equipment, factories, plants, supplies, stock in trade and other property, real or personal, or both, necessary or incident to the purposes of these Articles set forth.

To buy, sell, store, deal in, hold and sell, either at wholesale or retail, or both, and to transport and deliver, coal, oil, fuel oil, liquified gases, and any and all other fuels.

To acquire, install, maintain, and operate, all machinery and equipment, and all transportation facilities and delivery services necessary or incident to any and all of its purposes herein enumerated.

To do and perform any and all other things necessary, desirable or incident to the accomplishment of the purposes set forth herein.

To engage in petroleum, oil, gas and mining business.

To produce, acquire, import, export, transport, buy, sell and otherwise dispose of and turn to account and deal and trade in petroleum of all grades, oil, sulphur, gas, carbon black, asphalt, bitumen and bituminous substances of all kinds, carbon and hydrocarbon products of all kinds, coal, salts, nitrates, phosphates, natural gas, thermal and medicinal waters, gold, silver, iron, copper, lead, zinc, uranium, and all other metals, minerals and metallic substances, and in general products of earth and deposits, both subsoil and surface, of every nature and description.

To prospect, explore for, discover, drill for, extract, produce, mine, mill, separate, convert, smelt, concentrate, evaporate, refine, reduce, treat, manufacture, store, buy, sell, deal in, transport, handle and otherwise turn to account or dispose of each and every of the substances herein specified whether in their natural forms or any altered, refined, or manufactured form, whether in the shape of by-products or combinations or otherwise.

( 3 ) 1 1 0 1 7 3 1

To carry on such other businesses pertaining to oil, gas, coal, salt, sulphur, gypsum, or other minerals, or metals, as may be found necessary and desirable.

To manufacture, buy, sell, export, construct, erect, fabricate, treat, deal in, and traffic in oil, gas, coal, iron, steel, manganese, zinc, lead, aluminum, coke, copper, lumber, gypsum, stone, and any and all other minerals, metals, and materials, and all products thereof, and all or any articles consisting or partly consisting of combinations or fabrications thereof, and all or any derivations or by-products thereof.

To make, purchase, and acquire, materials for the construction of buildings, and other structures, to erect and construct buildings and other structures, to own, manage, operate, lease and sell buildings, and other structures, to buy, subdivide, improve, develop, and sell lands, tenements and hereditaments, and any and all kinds of real and personal property in connection with the improvement, development, promotion and sale thereof.

To carry on the business of distributors, wholesalers, factors, agents, commission merchants, or merchants, to buy, sell, deal in, or otherwise handle, at wholesale or retail, or both, machinery, equipment, tools, merchandise, goods, wares, motor vehicles, products and commodities of every sort, kind or description and to carry on any other business, whether manufacturing, wholesale, retail or otherwise, which can be conveniently carried on within any of the objects of this Corporation.

To manufacture, purchase, or otherwise acquire, and to hold, own, mortgage, or otherwise lien, pledge, encumber, lease, sell, assign, exchange, transfer or in any manner dispose of, and to

invest, deal and trade in and with goods, wares, merchandise, machinery, motor vehicles and any other personal property, of every class, kind and description.

To open stores, offices, yards or agencies throughout the United States and elsewhere, or to allow or cause the legal estate and interest in any properties or business acquired, established or carried on by this corporation to remain or to be vested in the name of any other person, firm, corporation, or association, and either in trust for, or as agents or nominees of this Corporation, and to manage the affairs or take over and carry on the business of any such other company formed or to be formed, and to exercise all or any of the powers of any such company, or of holders of shares of stock or securities thereof, and to receive and to distribute as profits and dividends and interest on such shares of stock and securities.



11 0 3 1 3 2 0 0 7 3

Registered Agent: J. Michael Adcock  
200 City Center Building  
P. O. Box 26770  
Oklahoma City, OK 73126

ARTICLE V

CAPITAL STOCK. The aggregate number of shares of capital stock which the corporation shall have the authority to allot is 25,000 shares. The designation of each class, the number of shares of each class and the par value of the shares of each class are as follows:

<u>Class</u>	<u>Number of Shares</u>	<u>Par Value</u>
Common	25,000	\$1.00

The aggregate par value of the authorized capital stock is: \$25,000.00

ARTICLE VI

SHARES ALLOTTED. The number of shares to be allotted by the Corporation before it shall begin business, and the consideration to be received by the Corporation therefor, which consideration constitutes the Corporation's initial stated capital, is:

<u>Class</u>	<u>Number of Shares</u>	<u>Stated Capital</u>	<u>Consideration Received</u>
Common	500	\$500	\$500

ARTICLE VII

COMMON STOCK. The holder of each share of issued and outstanding Common Stock shall be entitled to one vote on any corporate matter and shall be entitled to all rights which are implied or granted by law, unless such rights are restricted or removed by resolution duly adopted by the holders of all outstanding shares of the capital stock of the Corporation, which action shall be binding on all persons.

ARTICLE VIII

TREASURY STOCK. Treasury Stock, which is defined as Common Stock allotted and thereafter acquired by the Corporation, other than shares redeemed or purchased for redemption, and specifically cancelled, extinguished, retired or restored to the status of unallotted shares, may be disposed of by the Corporation for not less than the par value or fair market value of such shares, whichever is greater.

10000000711

ARTICLE IX

ALLOTMENT OF CAPITAL STOCK. Capital stock of the Corporation shall be allotted only in consideration of money or property, including intangibles actually received, labor or services actually performed, shares and securities or obligations of the Corporation actually surrendered, cancelled or reduced, or assets transferred from surplus to stated capital upon the allotment of a share dividend.

The Board of Directors shall, prior to the execution of any subscription agreement, or in any event prior to the allotment of any capital stock, determine, and state by resolution in monetary terms, the fair market value to the Corporation of any consideration other than money for which any capital stock is to be allotted. The time and manner of payment of the subscription price for capital stock shall be determined by the Board of Directors.

No subscription agreement shall be entered into by the Board of Directors, nor shall capital stock of the Corporation be allotted, unless the consideration therefore is equal to or exceeds the par value of said stock.

Acceptance or rejection of subscriptions for the allotments and issuance of capital stock of the Corporation made after incorporation shall be made by the Board of Directors.

ARTICLE X

NUMBER AND TERM OF DIRECTORS. The number of Directors of the Corporation, which Directors shall be elected at the organizational meeting of the Shareholders, shall be three (3). The number of directors may be changed by providing for such change in the by-laws of the Corporation, but at no time shall the number of directors be less than three (3). All directors shall serve for a term of one (1) year.

ARTICLE XI

CORPORATE BY-LAWS. The Board of Directors may adopt, alter or repeal the by-laws, except they shall not adopt, alter or repeal any provision fixing their number, qualification, classification or term of office.

The foregoing power of the Board of Directors shall not be exclusive of the rights of the Shareholders to adopt, alter or repeal the by-laws. The by-laws may be so adopted, altered, or amended at any regular or special meeting of the Shareholders or Board of Directors.

0 0 9 1 3 2 0 0 7 1 7

The undersigned, being all the Incorporators of Hadson Gas Systems, Inc. hereunto set our hands and seal this 17<sup>th</sup> day of April, 1984.

J. Michael Adcock  
J. Michael Adcock

Kathy Fischer  
Kathy Fischer

Terry L. Toole  
Terry L. Toole

STATE OF OKLAHOMA, COUNTY OF OKLAHOMA, SS.

Before me, the undersigned, on the 17<sup>th</sup> day of April, 1984, personally appeared, J. Michael Adcock, Kathy Fischer, and Terry L. Toole, to me known to be the identical persons who executed the foregoing Articles of Incorporation as Incorporators and acknowledged to me that they executed the same voluntarily for the purposes stated therein.

My Commission Expires:

My Comm. Expires 12/31/87

Sandra S. Porter  
Notary Public





**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**In the Matter of:**

**THE APPLICATIONS OF BIG RIVERS )  
ELECTRIC CORPORATION FOR: )  
(I) APPROVAL OF WHOLESALE TARIFF )  
ADDITIONS FOR BIG RIVERS ELECTRIC ) CASE NO. 2007-00455  
CORPORATION, (II) APPROVAL OF )  
TRANSACTIONS, (III) APPROVAL TO ISSUE )  
EVIDENCES OF INDEBTEDNESS, AND )  
(IV) APPROVAL OF AMENDMENTS TO )  
CONTRACTS; AND )**

**E.ON-U.S., LLC, WESTERN KENTUCKY ENERGY )  
CORP. AND LG&E ENERGY MARKETING, )  
INC. FOR APPROVAL OF TRANSACTIONS )**

**EXHIBIT 2**

**Chart of Regulatory Compliance Requirements Cross-Referenced to Application**

**December 2007**

<b>REFERENCES FOR COMPLIANCE WITH STATUTORY AND REGULATORY FILING REQUIREMENTS</b>		
<u>Law/Regulation</u>	<u>Filing Requirement</u>	<u>Location in Application</u>
<b>IN GENERAL</b>		
807 KAR 5:001 Section 8(1)	The full name and post office address of the Applicants	Paragraphs 1-4
807 KAR 5:001 Section 8(1)	A request for the order, authorization, permission or certificate desired	See Exhibit 29
807 KAR 5:001 Section 8(1)	A reference to the particular provision of law authorizing the relief requested	See Exhibit 29
807 KAR 5:001 Section 8(3)	The Articles of Incorporation for the Applicants and all amendments thereto, or a reference to the Public Service Commission proceeding in which the Articles of Incorporation have been filed	Paragraphs 5-7
<b>APPROVAL OF NEW TARIFFS AND TARIFF CHANGES</b>		
807 KAR 5:007 Section 1(1); 807 KAR 5:011 Section 6(3)(b)	The new or revised tariffs	Exhibits 23, 25, and 33
807 KAR 5:007 Section 1(2)	The name and address of Big Rivers Electric Corporation	Paragraph 1
807 KAR 5:007 Section 1(3)	A brief statement of the facts demonstrating that the filing is made pursuant to the authority of KRS 278.455	Paragraphs 76, 78, and 80
807 KAR 5:007 Section 1(4)	A comparison of the current and proposed rates	Exhibits 10, 18, 24, and 34
807 KAR 5:007 Section 1(5)(a)	An analysis demonstrating that the rate change does not change the rate design currently in effect	Exhibit 10, CWB-8; Exhibit 25, WSS-15
807 KAR 5:007 Section 1(5)(b)	An analysis demonstrating that the revenue change has been allocated to each class and within each tariff on a proportional basis	Exhibits 10, CWB-8; Exhibit 25, WSS-15
807 KAR 5:007 Section 1(6)	A certification that a complete copy of the materials filed with the Public Service Commission has been sent to the Attorney General's Office of Rate Intervention	Exhibit 31
807 KAR 5:007 Section 1(7)	A statement that notice of the new or revised tariffs has been given to all customers	Exhibit 31
807 KAR 5:007 Section 1(8); 807 KAR 5:011 Section 8(2); 807 KAR 5:051(2)	A copy of the notice given to customers	Exhibit 31
807 KAR 5:011 Section 8(1)	A notice of intent to the Public Service Commission of the filing of the new or revised tariffs	On file with the Public Service Commission
807 KAR 5:056 Section 1(7)	For Fuel Adjustment Clause, a copy of each fossil fuel purchase contract not otherwise on file with the Public Service Commission and all other agreements, options or similar such documents, and all amendments and modifications thereof related to the procurement of fuel supply and purchased power.	Exhibit 42

<u>Law/Regulation</u>	<u>Filing Requirement</u>	<u>Location in Application</u>
	<b>ENVIRONMENTAL SURCHARGE</b>	
KRS 278.183(2)	For environmental surcharge, a notice of intent to file environmental surcharge application	On file with the Public Service Commission
KRS 278.183(2)	For environmental surcharge, an environmental compliance plan	Exhibits A and B to the Application filed in PSC Case No. 2007-00460
KRS 278.183(2)	For environmental surcharge, an environmental surcharge tariff	Exhibit WSS-5 to Exhibit B to the Application filed in PSC Case No. 2007-00460
	<b>APPROVAL OF CHANGE OF CONTROL</b>	
KRS 278.020(6)	Verified application in writing	Application
	<b>APPROVAL OF SPECIAL CONTRACTS</b>	
807 KAR 5:011 Section 13	Copy of special contracts	Exhibit 20