

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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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 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)

CASE NO.
2007-00455

MOTION TO COMPEL E.ON ENTITIES TO PROVIDE DISCOVERY

The City of Henderson Utility Commission, d/b/a Henderson Municipal Power & Light (HMPL), by counsel, moves for an order compelling E.ON U.S., LLC (E.ON), Western Kentucky Energy Corporation (WKEC) and LG&E Energy Marketing Inc. (LEM), collectively referred to as the "E.ON Entities" to provide all documents submitted to the Commission pursuant to the petition for confidentiality.

The E.ON Entities filed a motion for confidentiality for certain documents responsive to the Attorney General's Initial Data Request, items 83, 100 and 101 on February 14, 2008. None of that confidential information was provided to HMP&L.

Consistent with Commission practice, HMP&L requested a confidentiality agreement with the E.ON Entities to obtain all documents filed under the motion for confidentiality. E.ON responded that it would provide some but not all requested confidential documents. Specifically, E.ON refused to provide the response to Attorney General Request 1-83. That response includes

a letter agreement among E.ON and the smelters for a payment of money upon closing of the transaction proposed in this matter.

HMP&L believes that it is entitled to that document and all other confidential information relied on by E.ON and any other party. HMP&L was granted full intervention on January 23, 2008. The order granting the intervention states that HMP&L is entitled to the full rights of a party and shall be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. There is no exception to confidential documents and there is no provision giving discretion to any party to selectively provide documents to HMP&L.

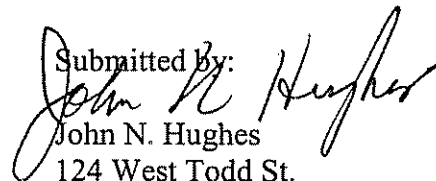
807 KAR 5:001 §7 says that when a party petitions for confidential treatment for any material, it must serve a copy of that material on all parties, with those portions for which confidentiality is sought obscured. HMP&L was not provided even a redacted copy of the information. The regulation goes on to say that any party to the proceeding may obtain access to the material by entering into a protective agreement with the party seeking the confidential treatment. Significantly, the regulation prohibits withholding confidential documents from parties:

No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

HMP&L has offered to execute a protective agreement, however, the agreement provided to it by E.ON restricts the materials to be provided to HMP&L to Attorney General Responses 100 and 101.

Nothing in the regulation allows a party to determine what documents are to be provided. The E.ON Entities provided all confidential documents to the Attorney General. Nothing in the Petition for Confidential Treatment filed by the E.ON Entities seeks to limit the use of the confidential documents to selected parties and does not address the nature of the information in item 83 that warrants exclusion from the disclosure provisions of the Commission's regulation. This selective dissemination of information prejudices HMP&L to the extent that other parties are aware of issues it is not, preventing HMP&L from being fully informed of the issues in the case and inhibiting its meaningful participation in the case.

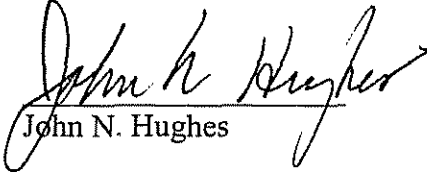
For these reasons, HMP&L requests an order directing the E.ON Entities to provide the response to Attorney General item 83 as well as 100 and 101 upon the execution by HMP&L of a mutually satisfactory confidentiality agreement consistent with 807 KAR 5:001(7).

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Certificate of Service:

I certify that a copy of this pleading was served on the parties below by first class mail the 4th day of March, 2008.


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