

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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

PETITION FOR CONFIDENTIAL TREATMENT

E.ON U.S. LLC (“E.ON U.S.”), Western Kentucky Energy Corp. (“WKEC”) and LG&E Energy Marketing, Inc. (“LEM”) (the “E.ON Entities”), by counsel, for their Petition for Confidential Treatment filed pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(c), state as follows:

BACKGROUND

By this Petition, the E.ON Entities request that the Public Service Commission (“Commission”) grant confidential protection to 2008-2010 budget information filed by the E.ON Entities in response to Data Requests 63 and 64 of the Attorney General’s Supplemental Request for Information to Joint Applicants, and to the E.ON Entities’ responses to the Attorney General’s Supplemental Request for Information, Data Requests 1 through 62 and Data Request 73. The Attorney General in these Data Requests seeks further explication related to the confidential budget information previously provided in response to the Attorney General’s Initial Data Request, items 100 and 101. That information was previously provided to the Commission

under seal with a Petition for Confidential Protection. The additional responses for which confidential protection is sought herein relate to that information and therefore are equally entitled to be withheld from public disclosure.

GROUNDS FOR PETITION

1. KRS 61.878(1)(c) protects commercial information, generally recognized as confidential or proprietary, if its public disclosure would cause competitive injury to the disclosing entity. Competitive injury occurs when disclosure of the information would give competitors an unfair business advantage. The Commission has taken the position that the statute and the regulation require the party requesting confidentiality to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed. Here, there is actual competition, as the information in question concerns confidential and proprietary information related to nonregulated businesses that are competitive and that are not rate-protected by the regulatory compact. The confidential business information disclosed to the Commission in response to Attorney General Supplemental Data Requests 1 through 64 and 73, concerning the E.ON Entities' operating and capital budgets, is the type of information the public disclosure of which would enable the E.ON Entities' competitors to discover, and make use of, confidential information concerning the E.ON Entities' financial condition and business strategies, to the unfair competitive disadvantage of the E.ON Entities.

2. The information for which confidential treatment is sought is maintained internally by the E.ON Entities and by other parties to this case who have a business need to know this information. This information is not on file with the FERC, SEC or other public agency, is not available from any commercial or other source outside of the E.ON Entities and the parties to this case with a business need to know this information, and is limited in distribution to those employees who have a business reason to have access to such information.

Further, the information concerns nonregulated rather than regulated activities. Thus, the public interest to be served by its disclosure is minimal at best. By imposing unfair competitive injury upon the E.ON Entities, disclosure in fact harms the public interest.

3. Disclosure of the information sought to be protected in this matter would make available to the E.ON Entities' competitors information concerning its financial and business strategies, and its costs and revenues, that such competitors could use to the E.ON Entities' competitive disadvantage. The E.ON Entities' competitors are not required to file, or to make public, similar proprietary information.

4. The confidential and proprietary budget information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 61.878(1)(c)1. In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’” *Id.* at 768. Similarly, the Kentucky Supreme Court applied the KRS 61.878(1)(c)1. “competitive injury” exemption to financial information that was in the possession of Kentucky’s Parks Department in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995): “These are records of privately owned marina operators, disclosure of which would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such information

about privately owned organizations.” The same reasoning applies here. Moreover, the damage that would accrue to the E.ON Entities would be exacerbated by the interstate nature of the competition in the wholesale power market. Competitors in this market are not subject to Commission regulations regarding the filing of sensitive financial information.

5. The confidential information clearly merits confidential protection pursuant to *Hoy, Marina Management*, and KRS 61.878(1)(c)1. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of the E.ON Entities and 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).

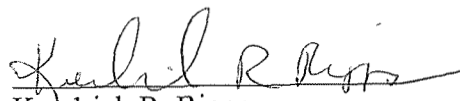
6. The E.ON Entities have provided the information for which confidential treatment is sought to the Attorney General pursuant to a protective agreement.

7. In accordance with the provisions of 807 KAR 5:001(7), the E.ON Entities file herewith, under seal, one (1) highlighted set of the confidential information provided in response to Attorney General Supplemental Data Requests 1 through 64 and 73, and also file on this date an original and ten copies of the Response of E.ON U.S., LLC to the AG’s Supplemental Request for Information to Joint Applicants in redacted form for filing in the public record.

CONCLUSION

For the reasons stated, the E.ON Entities respectfully request that the Commission grant confidential protection for the information at issue, or schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Confidential Treatment was served via U.S. mail, first-class, postage prepaid, this 6th day of March 2008, upon the following persons:

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