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April 23, 2008

VIA HAND DELIVERY

Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RECEIVED
APR 23 2008
PUBLIC SERVICE
COMMISSION

RE: The Application 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

Dear Ms. Stumbo:

Enclosed please find and accept for filing the original and ten copies each of the unexecuted Rebuttal Testimonies of Paul W. Thompson and Ralph Bowling on behalf of E.ON U.S. LLC in the above-referenced matter. Verified signature pages will be filed with your Office on or before Friday, April 25, 2008. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions please contact me at your convenience.

Yours very truly,



Kendrick R. Riggs

KRR:ec

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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APR 23 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

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

CASE NO: 2007-00455

REBUTTAL TESTIMONY OF
PAUL W. THOMPSON
SENIOR VICE PRESIDENT - ENERGY SERVICES
E.ON U.S. LLC

Filed: April 23, 2008

1 **Q. Please state your name, position and business address.**

2 A. My name is Paul W. Thompson. I am the Senior Vice President - Energy Services for
3 E.ON U.S. LLC, which provides services to Western Kentucky Energy Corp. and LG&E
4 Energy Marketing, Inc. My business address is 220 West Main Street, Louisville,
5 Kentucky 40202.

6 **Q. Did you previously file direct testimony previously in this proceeding?**

7 A. Yes.

8 **Q. What is the purpose of your rebuttal testimony?**

9 A. The purpose of this testimony is to respond to certain issues raised in the Direct
10 Testimony of David Brevitz on behalf of the Attorney General of the Commonwealth of
11 Kentucky filed on April 3, 2008, in this proceeding.

12 **Q. In his testimony, Mr. Brevitz describes E.ON's explanation of its motives for**
13 **entering into the transactions that are the subject of this proceeding variously as**
14 **"limited" and "cryptic."¹ Do you believe that such a description of E.ON's**
15 **explanation is warranted?**

16 A. No. The record in this case reflects E.ON's efforts to lay before the Commission a full
17 explanation of E.ON's purposes for, and its role in, seeking an unwind to the lease
18 transactions, and related transactions, it entered into in 1998. To that end, E.ON has
19 explained that its current contracts contain fixed prices that have not kept pace with rising
20 costs, including costs of fuel, capital, operation, maintenance, and environmental
21 compliance. I discussed E.ON's interests in the transactions at pages 18 and 19 of my
22 Direct Testimony, explaining that E.ON's goals were to free itself from "current
23 obligations and costs associated with the generating plants and power sales commitments

¹ Direct Testimony of David Brevitz, at 7.

1 to big rivers and Kenergy Corp,” and further stating that termination of these
2 commitments would “bring financial certainty to what would otherwise be an
3 uneconomic set of contracts that could expose the Company to uncertain and unfavorable
4 financial results through 2023.” E.ON explained its desire to free itself from these
5 uneconomic contracts once again in its Response to the AG’s Request for Information
6 Dated February 1, 2008, Question No. 87, wherein it stated that operating costs have
7 outpaced the fixed contract prices, rendering the contracts uneconomic. These
8 explanations have been repeated, and expanded upon, in the meeting with the Attorney
9 General on March 20.

10 **Q. Do you agree with Mr. Brevitz that his concerns, including the lack of consents of**
11 **certain persons and the status of Big Rivers’ intention to obtain an investment grade**
12 **credit rating, render the Application materially incomplete such that it is subject to**
13 **being held in abeyance?²**

14 A. No, I do not. The terms and conditions upon which the transaction will be consummated,
15 as well as the contingencies whose nonoccurrence will prevent the transaction from
16 taking place, are fully explained and are before the Commission. The Commission may
17 approve the application on the terms presented without concern that different terms will
18 be substituted later. The Order approving the transaction may, and consistent with
19 Commission practice, will, specify the parameters of the approval. For example, Mr.
20 Brevitz notes that various required consents that have not yet been obtained, specifically
21 citing that of the City of Henderson.³ However, without the consent of the City of
22 Henderson, the transaction cannot take place in any event. That, and other necessary

² Direct Testimony of David Brevitz, at 47-48.

³ Direct Testimony of David Brevitz, at 47.

1 consents, may be cited by the Commission as conditions to its approval. The
2 Commission may also condition its approval on Big Rivers' obtaining an investment
3 grade credit rating, another concern cited by Mr. Brevitz as justification for holding this
4 case in abeyance.⁴ In this transaction, it is imperative to obtain regulatory approvals in a
5 timely manner since all the involved parties and third parties, e.g., creditors, need to
6 know that such approval is there in order to move to final actions and consents that allow
7 a closing. A decision to hold the case in abeyance before final consents are obtained
8 would unreasonably slow the process, endangering the closing without any corresponding
9 benefit.

10 **Q. Do you agree that the Commission should condition its approval upon E.ON's or the**
11 **Smelters' commitment to fund future shortfalls in order to preserve the "base case"**
12 **results of Big Rivers' financial model?**

13 A. Absolutely not. E.ON would not agree to such a condition, and is unaware of any law
14 authorizing the Commission to order it. The transaction, and the consideration to be paid
15 pursuant to it, are the result of many years of negotiations and give-and-take among the
16 parties. The record demonstrates that E.ON has already agreed to provide very substantial
17 consideration to various stakeholders, including Big Rivers. The record also demonstrates
18 that Big Rivers and its Members have concluded that the consideration offered is
19 sufficient and will enable Big Rivers to provide service on reasonable terms and
20 conditions. The agreements between the parties are presented to the Commission as they
21 are and should not be renegotiated through the regulatory approval process. A
22 Commission decision to implement such a condition would wreck the bargain struck after
23 many years of negotiations by the parties to the Unwind Transactions, and would

⁴ Direct Testimony of David Brevitz, at 47.

1 therefore be tantamount to disapproval, ending Big Rivers' opportunity to regain control
2 over its generation with the assistance of the millions of dollars' worth of consideration
3 E.ON U.S. has already agreed to provide, and placing at severe risk the Smelters'
4 opportunity to continue operating with a stable, cost-based supply of power.

5 **Q. What is your recommendation?**

6 A. The E.ON Parties ask the Commission issue an order by the end of May this year
7 approving the proposed Unwind Transaction and the relief requested in the Joint
8 Application. The E.ON Parties and Big Rivers have scheduled July 15, 2008 as the
9 Scheduled Unwind Closing Date pursuant to the Transaction Termination Agreement.
10 Time is of the essence for the successful consummation of this transaction.

11 **Q. Does this conclude your rebuttal testimony?**

12 A. Yes, it does.

