



STOLL · KEENON · OGDEN  
PLLC

Raff  
RECEIVED

OCT 24 2008

PUBLIC SERVICE  
COMMISSION

2000 PNC PLAZA  
500 WEST JEFFERSON STREET  
LOUISVILLE, KY 40202-2828  
MAIN: (502) 333-6000  
FAX: (502) 333-6099  
www.skofirm.com

KENDRICK R. RIGGS  
DIRECT DIAL: (502) 560-4222  
DIRECT FAX: (502) 627-8722  
kendrick.riggs@skofirm.com

October 24, 2008

**VIA HAND DELIVERY**

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

RECEIVED  
OCT 27 2008  
GENERAL COUNSEL

**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:

The Applicants ("Joint Applicants"), Big Rivers Electric Corporation ("Big Rivers"), E.ON U.S. LLC ("E.ON U.S."), Western Kentucky Energy Corp. ("WKEC") and LG&E Energy Marketing, Inc. ("LEM," and collectively with E.ON U.S. and WKEC, the "E.ON Parties") present to the Public Service Commission ("Commission") with this letter a proposed procedural schedule in this matter, and ask that the Commission accept this procedural schedule, including the proposed hearing dates of December 2 and 3, 2008. During the October 20, 2008 Informal Conference, the Joint Applicants and the E.ON Parties presented their reasons for proceeding with a hearing in this case on December 2, 2008, as proposed by and in their Motion to Amend and Supplement Application filed October 9, 2008 (the "October 9 Amendment"), rather than unnecessarily postponing the hearing, and thus the resolution of this case until certain extraneous issues are resolved. At the request of Staff Counsel, the Joint Applicants are submitting this letter to confirm these reasons in writing.

It is imperative that this case be expeditiously processed. The transaction as proposed in the October 9 Amendment constitutes a delicate balance of competing interests, negotiated and renegotiated over a number of years and preserved despite the numerous serious financial issues that have arisen during the time that this matter has been on the Commission's docket. Those issues, which resulted principally from the recent upheaval in the nation's financial markets, are of record and need not be repeated here. Resolution of those issues as they affect this transaction

has been achieved in ways that are highly beneficial to Big Rivers and its member-customers. Delay could cost the parties, the Commonwealth and the economy of western Kentucky the advantages this transaction will confer upon them, leaving Big Rivers in a difficult position and the smelters without a resolution of their energy supply needs.

At the informal conference held on October 20, 2008, Commission Staff indicated that the Commission may nonetheless wish to postpone the hearing, and thus the final order and the closing of the Unwind Transaction, because [1] Henderson Municipal Power & Light (“HMP&L”) has not yet consented to the transaction; and [2] Standard & Poors and Moody’s Investment Service have not yet issued credit ratings for Big Rivers. Neither justifies delay of this case.

The proposed Unwind Transaction is a complex commercial transaction. Like any such transaction, it is subject to scores of contingencies that could derail it up to the moment the closing is consummated. For example, the Termination Agreement between the E.ON Entities and Big Rivers contains 43 conditions to Big Rivers’ obligation to close. The Henderson consent, the financial ratings for Big Rivers and the Commission approvals are only three of those conditions. A complex transaction can only reach closing if the contingencies are pursued on parallel paths, rather than consecutively.

Commission-imposed delay at this stage of the proceedings will create additional risks for the transaction and the Joint Applicants, while eliminating none. The quicker the Joint Applicants can get this transaction to closing, the quicker they will know whether all issues can be resolved and the transaction will close. The Joint Applicants and the smelters have had to plan for a future both with and without the Unwind Transaction, and many decisions cannot be made until there is certainty about the final direction. Certain elements of those plans, such as favorable bids for future services or other purchases, have a shelf life. For these reasons and many others, anyone who deals in complex commercial transactions will say that time is always “of the essence” to a successful transaction.

As for the two issues Commission Staff says may concern the Commission, the Joint Applicants are pursuing the paths they believe to be optimum to achieve resolutions of those matters. The October 9 Amendment includes proposed amendments to the Station Two Contracts with HMP&L that Joint Applicants believe will provide reasonable terms and conditions to obtain HMP&L’s consent. In the event that HMP&L refuses to consent except upon terms that are outside the parameters of these amendments, the Commission will of course be asked to approve those terms, and the parties of record will have an opportunity to review and comment on the changes. Approval of these amendments does not alter HMP&L’s existing ability to consent or decline to consent to the transaction. However, HMP&L itself has made it clear that “the issues being discussed” by HMP&L, Big Rivers and E.ON “are independent of and unrelated to any action the Commission may take in approving the unwind” [September 3, 2008 letter of John H. Hughes, attorney for HMP&L, to Stephanie Stumbo]. In short, the status of

HMP&L's consent to the transaction is a simple factual issue. The authority sought by the Joint Applicants to obtain that consent is limited by and clearly defined in the October 10 Amendment. Thus the issue of the HMP&L consent is unrelated to the other issues the Commission is deciding in this case. The Commission may cite HMP&L's consent as a condition of approval, specifying that the parameters of its approval are limited to the authority requested in the October 9 Amendment. Therefore, there is no reason whatsoever to delay the hearing on the October 9 Amendment.

Nor is there any reason to delay hearing this case until a definitive decision regarding Big Rivers' credit ratings has been made. As Big Rivers has advised the Commission, the credit rating agencies have stated that the decision should be made toward the conclusion of this proceeding rather than well in advance of the hearing. Meetings with the rating agencies are being scheduled for New York during the week of December 8, 2008. This date was chosen so that the credit analysts would have the benefit of knowing how the hearing actually proceeded, rather than having to make assumptions about what might happen in the hearing. This information is helpful for obtaining the credit rating. With the intervention of the holidays, Big Rivers does not expect to have its ratings until the week of January 26, 2009, so awaiting receipt of the credit ratings would involve enormous unnecessary delay. The Commission has the option of conditioning its approval upon Big Rivers' receipt of the appropriate credit rating, thereby ensuring that the financial model's projections are not rendered inaccurate as a result of failure to obtain the necessary rating.

Now is the time for action, not inaction. On October 9, 2008, the Joint Applicants updated and refreshed the record with an eight-volume filing. The Commission has not historically delayed decisions on matters within its own jurisdiction until other entities have reached decisions on issues that are within their sole purview. This case, *in which time is of the essence*, is certainly not the proper vehicle for reversal of the Commission's long-held practice of not allowing unnecessary delay in acting on matters properly before it. This transaction, as presented, will not withstand an indefinite delay under the current market conditions and economy. One of the major objectives of this transaction is to develop a framework that provides a reasonable opportunity for the smelters to survive, and more importantly, to protect more than 5000 jobs, an annual payroll of \$193 million, \$16.7 million in state and local taxes and the economic vitality of western Kentucky. This transaction provides the best hope of achieving that objective. The indefinite delay in the hearing of this case places these jobs at great risk.

Stephanie L. Stumbo  
October 24, 2008  
Page 4

We respectfully ask the Commission to exercise its jurisdiction, adopt the proposed procedural schedule and hear this case beginning December 2, 2008.

Yours very truly,



Kendrick R. Riggs



James M. Miller

KRR:ec

cc: Parties of Record

**PROPOSED PROCEDURAL SCHEDULE**

Filing Motion to Amend Application	10/9/08
Informal Conference	10/20/08
Data requests on filing to applicants filed	10/24/08
Applicants' responses to data requests filed	11/7/08
Supplemental intervenor testimony filed	11/21/08
Informal Conference (if needed)	11/25/08
Hearing commences in Hearing Room 1 at 9:00 a.m.	12/2/08
Simultaneous briefs of parties filed	12/16/08
Commission order issued	1/23/09