

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

FILED
OCT 30 2007
PUBLIC SERVICE
COMMISSION

In the Matter of:

JOINT VERIFIED APPLICATION OF)
E.ON AG, POWERGEN LTD., AND)
E.ON U.S. LLC FOR WAIVER OF)
CERTAIN MERGER COMMITMENTS)

CASE NO. 2007- 00466

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PUBLIC SERVICE
COMMISSION

PETITION OF E.ON AG
FOR CONFIDENTIAL PROTECTION

E.ON AG, by counsel, 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 the entirety of the Stock Purchase Agreement between E.ON AG and Airtricity Holdings, Limited (“Airtricity”), by which Agreement E.ON AG committed to purchase one hundred percent of the stock of Airtricity’s North American holding companies, Airtricity, Inc. and Airtricity Holdings (Canada), Limited (collectively “Airtricity NA”). In support of this Petition, E.ON AG states as follows:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c).¹ 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. E.ON AG, Powergen Ltd., and E.ON U.S. LLC (“Applicants”) are filing an Application in this proceeding to seek from the Commission a waiver of certain merger commitments the Applicants made to the Commission during its proceeding concerning E.ON

¹ KRS 61.878(1)(c)(1) provides, “[R]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

AG's acquisition of Powergen.² The Applicants seek a waiver in connection with E.ON AG's pending acquisition of Airtricity NA. At the heart of the acquisition is a Stock Purchase Agreement between E.ON AG and Airtricity, which sets out the terms and conditions of E.ON AG's acquisition of one hundred percent of Airtricity, Inc.'s stock.

3. The Stock Purchase Agreement merits confidential protection because it contains sensitive commercial and financial information that is confidential in nature and not publicly available. If the Agreement becomes public, it would likely harm E.ON AG and Airtricity in future negotiations for similar transactions and in structuring future investments. If the Commission disagrees, however, it must hold an evidentiary hearing (a) to protect the due process rights of E.ON AG and Airtricity, 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).

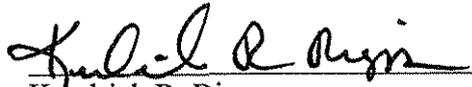
4. E.ON AG will disclose the confidential information, pursuant to a protective agreement, to intervenors and others with a legitimate interest in this information and as required by the Commission. One copy of the Stock Purchase Agreement, the entirety of which is confidential information, is herewith filed with the Commission.

WHEREFORE, E.ON AG respectfully requests that the Commission grant confidential protection for the information at issue, 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.

² The merger commitments are set out in their entirety in: *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company in Accordance with E.ON AG's Planned Acquisition of Powergen Plc*, Case No. 2001-00104, Order at Appx. A (Aug. 6, 2001).

Dated: October 30, 2007

Respectfully submitted,



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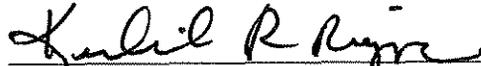
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Confidential Protection was served via U.S. mail, first-class, postage prepaid, this 30th day of October 2007, upon the following persons:

Dennis G. Howard II
Lawrence W. Cook
Assistant Attorneys General
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