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December 10, 2007

**VIA HAND DELIVERY**

Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

RECEIVED  
DEC 10 2007  
PUBLIC SERVICE  
COMMISSION

**RE: 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**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten copies of a Motion for Leave to File an Amended Joint Verified Application and Submit this Matter for Decision and Amended Joint Verified Application in the above-referenced matter. 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.

Sincerely,

W. Duncan Crosby III

WDC:ec

Enclosures as mentioned

cc: Dennis G. Howard II, Asst Attorney General  
Lawrence Cook, Asst Attorney General

400001.128465/502075.1

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**

DEC 10 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            ) CASE NO. 2007-00466**  
**CERTAIN MERGER COMMITMENTS        )**

**MOTION FOR LEAVE TO FILE AN AMENDED JOINT VERIFIED APPLICATION  
AND SUBMIT THIS MATTER FOR DECISION**

Pursuant to 807 KAR 5:001, Section 3(5), E.ON AG, Powergen Ltd., and E.ON U.S. LLC (collectively, the “Applicants”) hereby move the Kentucky Public Service Commission (“Commission”) to issue an order granting leave to amend their Joint Verified Application to include an offer by the Applicants, contingent upon receiving the requested waiver, to extend certain merger commitments (as presented in the Amended Application) for an additional five years and to affirm that granting the requested waiver will not impede the ability of Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, the “Companies”) to pursue prudent renewable energy resources in Kentucky. Also, the Amended Application expressly states that the Stock Purchase Agreement is an exhibit to the Joint Verified Application. The Stock Purchase Agreement was submitted to the Commission in this proceeding pursuant to a petition for confidential treatment and is referenced in paragraph numbers 14 and 18, but is not attached to and expressly identified as an exhibit offered in support of the Joint Verified Application.

All other exhibits referenced in the Amended Application are the same as those attached to the original Joint Verified Application and are incorporated by reference in the Amended Application.

Applicants further move the Commission upon granting them leave to file the tendered amended application to then take this matter under submission for consideration and decision and issue an order on or before December 17, 2007.

**WHEREFORE**, E.ON AG, Powergen Ltd., and E.ON U.S. LLC respectfully request that the Commission enter an order granting the Applicants leave to amend their Joint Verified Application as set forth herein. The Amended Joint Verified Application is tendered with this motion.

Dated: December 10, 2007

Respectfully submitted,



Kendrick R. Riggs  
W. Duncan Crosby III  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
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Telephone: (502) 333-6000

Allyson K. Sturgeon  
Senior Corporate Counsel  
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220 West Main Street  
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Louisville, Kentucky 40232  
Telephone: (502) 627-2088

Counsel for E.ON AG, Powergen Ltd.,  
and E.ON U.S. LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Leave was sent to the following parties of record by U.S. mail, postage prepaid, on this 10th day of December 2007.

Dennis G. Howard II  
Lawrence W. Cook  
Assistant Attorneys General  
Office of the Attorney General  
Office of Rate Intervention  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204



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Counsel for E.ON AG, Powergen Ltd.,  
and E.ON U.S. LLC

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE 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            ) CASE NO. 2007-00466**  
**CERTAIN MERGER COMMITMENTS        )**

**AMENDED JOINT VERIFIED APPLICATION**

E.ON AG, Powergen Ltd., and E.ON U.S. LLC (collectively “Applicants”), by counsel, and pursuant to 807 KAR 5:001, hereby petition the Commission for limited waiver of certain merger commitments concerning E.ON AG’s U.S.-based acquisitions, which commitments the Applicants made when the Commission approved the transfer of ownership of Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “the Companies”) from Powergen plc (now Powergen Ltd.) to E.ON AG as part of E.ON AG’s acquisition of Powergen.<sup>1</sup> Specifically, the Applicants respectfully request limited waiver of the commitment to have all of E.ON AG’s U.S.-based acquisitions report to the Companies’ headquarters in Louisville.

The Applicants request this limited waiver with respect to E.ON AG’s acquisition of Airtricity, Inc., a U.S. developer and operator of renewable (wind) power. The acquisition of Airtricity North America (including Airtricity, Inc.) is part of E.ON AG’s publicly announced initiative to generate at least twenty percent of primary energy from renewable sources by 2020. Because of the international scope of its renewable energy initiative, and to achieve the most efficient control and coordination of its renewable energy assets, E.ON AG plans to direct and

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<sup>1</sup> *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 ¶ 57 (Aug. 6, 2001) (the “E.ON Acquisition Proceeding”).

manage those assets, including Airtricity, Inc., from Düsseldorf, Germany, through its new E.ON Climate & Renewables (“EC&R”) market unit.

In support of their Application, if the Commission grants the requested waiver, the Applicants will commit to extend the term of the merger commitments quoted at ¶ 5 of this Amended Application for an additional five years (as qualified in ¶ 25 herein), making them effective until June 30, 2017. The Applicants further affirm in ¶ 26 that granting the requested waiver will not impede the Companies’ ability to pursue prudent renewable energy resources in Kentucky.

In further support of their petition, the Applicants state:

**The Applicants**

1. E.ON AG: The full name and mailing address of E.ON AG is: E.ON AG, E.ON-Platz 1, 40479 Düsseldorf, Federal Republic of Germany. A copy of E.ON AG’s corporate articles is attached hereto as Exhibit A.

E.ON AG is a diversified energy and utility company, headquartered in Düsseldorf, Germany, with the following current market units: Central Europe, Pan-European Gas, U.K., Nordic, and U.S. Midwest, as well as a Corporate Center. E.ON AG is an Aktiengesellschaft, the equivalent of a U.S. stock corporation, formed under the laws of the Federal Republic of Germany. E.ON AG is the largest industrial group in Germany, measured on the basis of market capitalization at year-end of 2006.

2. Powergen Ltd. (f/k/a Powergen plc): The full name and mailing address of Powergen Ltd. is: Powergen Ltd., Westwood Way, Westwood Business Park, Coventry, CV4 6JF, England. A certified copy of Powergen’s corporate articles is attached hereto as Exhibit B.

Powergen Ltd. (f/k/a Powergen plc), is a United Kingdom company and holding company for E.ON UK plc, E.ON’s United Kingdom market unit operating parent. E.ON AG

acquired Powergen on July 1, 2002. As discussed in the E.ON Acquisition Proceeding, E.ON AG, Powergen, and E.ON U.S. LLC (“E.ON U.S.”), completed an administrative reorganization to move the E.ON U.S. group from an indirect Powergen subsidiary to an indirect E.ON AG subsidiary. This reorganization was effective in March 2003.<sup>2</sup> In early 2004, E.ON U.S. began direct reporting arrangements to E.ON AG.

3. E.ON U.S. LLC: The full name and mailing address of E.ON U.S. LLC is: E.ON U.S. LLC, Post Office Box 32010, 220 West Main Street, Louisville, Kentucky 40232. A certified copy of E.ON U.S. LLC’s corporate articles is attached hereto as Exhibit C.

E.ON U.S. is a Kentucky limited liability company and is the sole stockholder of Louisville Gas and Electric Company and Kentucky Utilities Company. E.ON U.S. is an indirect subsidiary of E.ON AG and was acquired through E.ON AG’s acquisition of Powergen plc, now Powergen Ltd.<sup>3</sup> E.ON U.S. is the lead company of E.ON AG’s U.S. Midwest market unit.

4. Copies of all orders, pleadings and other communications related to this proceeding should be directed to:

Allyson K. Sturgeon  
Senior Corporate Counsel  
E.ON U.S. LLC  
220 West Main Street  
Louisville, Kentucky 40202

Lonnie E. Bellar  
Vice-President of State Regulation and Rates  
E.ON U.S. LLC  
220 West Main Street  
Louisville, Kentucky 40202

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<sup>2</sup> Because E.ON U.S. LLC no longer reports or is otherwise accountable to Powergen, the Applicants believe it is appropriate at some point in time for Powergen to be relieved of its merger commitments and to cease being a party to E.ON U.S. LLC’s or the Companies’ proceedings before the Commission.

<sup>3</sup> E.ON U.S. LLC was formerly known as LG&E Energy LLC and is the successor, since December 2003, to LG&E Energy Corp. In December 2005, LG&E Energy LLC changed its name to E.ON U.S. LLC.

Kendrick R. Riggs  
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Stoll Keenon Ogden PLLC  
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500 West Jefferson Street  
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**The Merger Commitments**

5. By Order dated August 6, 2001 (“Merger Order”), the Commission approved the transfer of ownership of LG&E and KU (collectively “the Companies”) from Powergen plc to E.ON AG as part of E.ON AG’s acquisition of Powergen.<sup>4</sup> The Commission conditioned the Merger Order on the Applicants’ acceptance of a number of Merger Commitments,<sup>5</sup> including:

36. E.ON, Powergen, LG&E Energy [now E.ON US], LG&E, and KU commit to maintaining their respective headquarters in Kentucky for a period of 10 years following the consummation of the acquisition of Powergen by E.ON. KU’s headquarters shall be maintained in Lexington, Kentucky; LG&E Energy’s and LG&E’s headquarters shall be maintained in Louisville, Kentucky; and E.ON’s and Powergen’s United States headquarters shall be maintained in Louisville, Kentucky.

...

57. As part of their commitment to maintaining the corporate headquarters of LG&E Energy and the U.S. headquarters of Powergen and E.ON in Louisville, Kentucky, E.ON, Powergen, and LG&E Energy commit that these corporate headquarters will include the corporate management personnel of LG&E Energy and the corporate management personnel of United States operations of Powergen and E.ON. Further, E.ON, Powergen, and LG&E Energy commit that the CEO and subordinate officers of those U.S. offices shall reside in Kentucky, including the Louisville metropolitan area. This commitment will remain in effect for a period of 10 years following the consummation of the acquisition of Powergen by E.ON.<sup>6</sup>

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<sup>4</sup> *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 (Aug. 6, 2001).

<sup>5</sup> 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).

<sup>6</sup> *Id.* at Appx. A ¶ 36 (a ten-year commitment commencing July 1, 2002, and expiring June 30, 2012).



As qualified in ¶ 24 herein, these are the merger commitments to which the Applicants will commit for an additional five years (i.e., until June 30, 2017) if the Commission grants the waiver requested herein.

6. By letters dated August 14, 2001, the Chief Executive Officers of E.ON AG and Powergen accepted all of the Merger Commitments.<sup>7</sup> In accepting the Merger Commitments, E.ON AG clarified its acceptance of Merger Commitment No. 36:

Following the consummation of the acquisition, E.ON will incorporate a new company which holds all of E.ON's shares in LG&E Energy. This company will be located and headquartered in Louisville, Kentucky and its officers will reside in Kentucky, including the Louisville metropolitan area.

E.ON's current New York office (E.ON North America Inc.) is not now a headquarter for any U.S. business nor will it be in the future and thus should not be affected by the Commission's order. E.ON North America today already has a very limited scope of personnel and activity, which is defined by holding shares in E.ON's subsidiaries Viterro Energy Service (real estate services only), Veba Oil Supply & Trading (crude oil trading) and MEC (silicon wafer company). The New York office has no activities whatsoever related to the energy or utility business. As E.ON is committed to completing the disposal of its non-energy assets and accomplishing its goal of becoming a pure play utility, these activities of E.ON North America will even decrease.<sup>8</sup>

7. In an August 17, 2001 Order, the Commission, expressing concern about the role E.ON AG's New York office could play in the future, determined E.ON AG's August 14, 2001 Letter to be only a conditional acceptance of the Merger Commitments.<sup>9</sup>

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<sup>7</sup> Letter from E.ON AG (Ulrich Hartmann and Dr. Erhard Schipporeit) to KPSC (Thomas Dorman) (Aug. 14, 2001); Letter from Powergen plc (Nick Baldwin) to KPSC (Thomas Dorman) (Aug. 14, 2001).

<sup>8</sup> Letter from E.ON AG (Ulrich Hartmann and Dr. Erhard Schipporeit) to KPSC (Thomas Dorman) at 1-2 (Aug. 14, 2001).

<sup>9</sup> *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 1-2 (Aug. 17, 2001).

8. After an exchange of correspondence with the Commission, by letter dated September 7, 2001, E.ON AG clarified the role that the Louisville headquarters would play in E.ON AG's future in the United States:

E.ON U.S. headquarters will be located in Louisville, Kentucky for ten years from the date of consummation of E.ON's acquisition of Powergen. The Louisville office will perform typical headquarters functions, including for example, planning, controlling, finance, tax and legal. The U.S. headquarters will oversee development of synergies from future U.S. acquisitions.

The management of the next U.S. companies acquired by E.ON will report to E.ON's U.S. headquarters in Louisville, Kentucky.<sup>10</sup>

9. The Commission took E.ON AG's clarification to be sufficient acceptance of Merger Commitment Nos. 36 and 57, stating in a September 17, 2001 Order:

E.ON subsequently filed on September 7, 2001 a supplemental letter committing to establish its United States headquarters in Louisville, Kentucky for 10 years following its acquisition of Powergen. E.ON's letter specifies the functions to be performed at this headquarters, including overseeing the development of synergies from future acquisitions in this country. Management of all future acquisitions will report to this headquarters. ...

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that E.ON's August 14, 2001 letter, as supplemented by its filings on August 29, 2001 and September 7, 2001 constitute in their entirety an unconditional acceptance of all the commitments set forth in the Commission's August 6, 2001 Order.<sup>11</sup>

10. The Applicants are currently in compliance with all Merger Commitments.

11. The above-discussed Merger Commitments are set to expire on their own terms on June 30, 2012.

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<sup>10</sup> Letter from E.ON AG (Ulrich Hartmann and Dr. Erhard Schipporeit) to KPSC (Thomas Dorman) at 1 (Sept. 7, 2001).

<sup>11</sup> *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 2 (Sept. 17, 2001). This commitment will expire under its current terms on June 30, 2012.

12. It is from the requirements of the above-discussed Merger Commitments, as set out and clarified in the Orders and letter discussed in ¶¶ 5-9 above, that the Applicants seek a limited waiver with respect to the below-described Airtricity NA transaction.

### **The Airtricity Transaction**

13. E.ON AG is dedicated to contributing to climate protection by expanding its renewable business. On July 31, 2007, in furtherance of this objective, E.ON AG announced it was setting a target of generating at least 20 percent of primary energy from renewable sources by 2020.<sup>12</sup> To facilitate the achievement of this important objective, on August 21, 2007, E.ON AG announced that it had established a new company, Renewables & Climate Protection (now EC&R), based in Düsseldorf, Germany, to be responsible for globally steering and developing renewables and managing projects for environmental protection.<sup>13</sup>

14. On October 4, 2007, E.ON AG announced it had entered into a stock purchase agreement with Airtricity Holdings, Limited (“Airtricity”) to purchase Airtricity’s North American wind farm development business (“Airtricity NA”) for approximately \$1.4 billion, with consummation of the acquisition expected to occur by year’s end. Airtricity NA comprises Airtricity, Inc., which is the holding company for Airtricity’s U.S.-based wind farm development business, and Airtricity Holdings (Canada), Limited, which is the holding company for Airtricity’s Canadian wind farm development business.<sup>14</sup> Airtricity is an Irish renewable energy

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<sup>12</sup> See, e.g., E.ON Press Release of July 31, 2007 (“In the long-term, i.e. by 2030, E.ON aims to halve its specific carbon dioxide emissions against 1990. E.ON is dedicated to taking a leading international role in climate protection in the future and is committed to supporting the EU target of generating at least 20 percent of primary energy from renewables by 2020.”). Available at: <http://www.eon.com/en/presse/news-show.do?id=8109>.

<sup>13</sup> See, e.g., E.ON Press Release of August 21, 2007 (“In the future two new E.ON companies are to be based in Düsseldorf, one will be in charge of trading and the other of renewables and environmental protection. ... The new unit for Renewables and Climate Protection [now EC&R] will be responsible for steering and developing E.ON’s renewable energy business, and for managing projects in the field of climate protection.”). Available at: <http://www.eon.com/en/presse/news-show.do?id=8142>.

<sup>14</sup> Airtricity Holdings Canada, Ltd has no operating power projects and has had no sales in or into the U.S. in its most recent fiscal year, nor does it currently hold any assets located in the United States.

company with wind farms in operation, under construction, and in development in Europe and North America. Airtricity NA's assets include 210 MW of operational wind farm generation in Texas, with additional wind farms under construction in Texas and New York, as well as wind farms in development in nine U.S. states (not including Kentucky) and Canada.

15. Airtricity, Inc. is an exempt holding company pursuant to the regulations of the Federal Energy Regulatory Commission ("FERC") and is in the business of developing or acquiring, through subsidiaries, wind-power electric generation facilities. Airtricity, Inc. is wholly owned by Airtricity Holdings, Ltd. Pursuant to the Transaction, E.ON AG will purchase 100 percent of the stock of Airtricity, Inc. from Airtricity Holdings, Ltd. A complete copy of the stock purchase agreement is being submitted pursuant to a Petition for Confidential Treatment and is incorporated by reference to this Application as Exhibit E

16. The U.S. Organization Chart for Airtricity, Inc. is attached hereto as Exhibit D. Though the Organization Chart shows a considerable number of entities falling under the Airtricity, Inc. umbrella, most of the subsidiaries are not operating companies and were formed for legal and financial reasons. Each project typically requires as many as three or more separate entities to accomplish the project's specific financial, business and tax objectives.

17. Because Airtricity, Inc.'s principal business is wind power development across a number of states and regions, it is a relatively horizontal and decentralized business with a dispersed employee base, which is unlike the Companies' business model and workforce. Airtricity, Inc. and all of its subsidiaries currently employ sixty-six people, spread over six locations. Each of the two largest Airtricity, Inc. offices (Austin, Texas, and Chicago, Illinois) employs twenty-six people. Although Airtricity, Inc. anticipates growing its work force as it builds out its wind farm projects, due to the nature of wind farm development and construction,

many of those additional employees will be spread across the U.S., stationed at development and construction sites.

18. Airtricity, Inc., which is part of Airtricity NA, is not a public utility with a certified territory and is not in the load-serving regulated utility business. Airtricity, Inc. is the indirect owner of a controlling interest in Airtricity Munnsville Wind Farm LLC (“Munnsville”).<sup>15</sup> Munnsville is a Delaware limited liability company and “exempt wholesale generator” under the Federal Power Act that is engaged in the business of constructing and owning a wind power facility which will sell electric power exclusively at wholesale.<sup>16</sup> Munnsville has market-based rate authority,<sup>17</sup> and is, therefore, FERC-jurisdictional and a “public utility” for the purposes of Sec. 203 of the Federal Power Act.<sup>18</sup> Munnsville, however, is neither Kentucky Public Service Commission-jurisdictional, nor is it a “utility” as defined in KRS 278.010(3)(a) because it does not provide, “generation, production, transmission, or distribution of electricity to or for the public . . . .”<sup>19</sup>

19. On November 6, 2007, E.ON AG and Airtricity filed with FERC an application requesting authorizations necessary under Federal Power Act Sections 203(a)(1) and 203(a)(2) for the indirect disposition of FERC-jurisdictional facilities (i.e., Munnsville) that will result from E.ON AG’s purchase of one-hundred percent (100%) of the equity interests in Airtricity,

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<sup>15</sup> In addition to its interest in Munnsville, Airtricity also owns interests in two non-FERC-jurisdictional projects, Airtricity Forest Creek Wind Farm, LLC and Airtricity Sand Bluff Wind Farm, LLC, wind generating facilities that are located in, and sell energy only in, the Electric Reliability Council of Texas (“*ERCOT*”) market. Airtricity Sand Bluff Wind Farm, LLC (Docket No. EG07-33-000) and Airtricity Forest Creek Wind Farm, LLC (Docket No. EG07-34-000) are exempt wholesale generators.

<sup>16</sup> *Airtricity Munnsville Wind Farm, LLC et al.*, Docket No. EC07-131-000, 121 FERC ¶ 62,044 (Oct. 18, 2007). On July 17, 2007, Munnsville filed a notice of self-certification of exempt wholesale generator status (Docket No. EG07-73-000) pursuant to section 1266 of the PUHCA 2005 and Section 366.7 of the Commission’s regulations, 18 C.F.R. § 366.7 (2007).

<sup>17</sup> *Airtricity Munnsville Wind Farm, LLC*, Docket No. ER07-1199-000 (letter order issued Sept. 10, 2007).

<sup>18</sup> See *Airtricity Holdings, Ltd.*, Docket No. HC07-1-000, Notification of Holding Company Status at 3 (Sept. 20, 2007).

<sup>19</sup> Emphasis added.

Inc. from Airtricity, pursuant to the stock purchase agreement referenced in ¶ 14 above. (The Applicants will serve on the Commission a copy of the FERC filing.)

**The Airtricity Acquisition Does Not Affect Certain Merger Commitments**

20. The Applicants affirm that E.ON AG's acquisition of Airtricity NA will in no way impact the Applicants' commitment to maintain the headquarters of E.ON U.S. and LG&E in Louisville, and to maintain the headquarters of KU in Lexington, for the remainder of the Merger Commitment term. All of the headquarters and management functions of E.ON U.S. and the Companies currently performed in the Kentucky headquarters will continue to be performed in those same Kentucky headquarters after E.ON AG completes its acquisition of Airtricity NA. Likewise, all of the management departments, staffs and activities currently stationed in Louisville and Lexington will not be impacted by the Airtricity acquisition.

21. Another important component of Merger Commitment Nos. 36 and 57, as clarified in E.ON AG's September 7, 2001 Letter to the Commission, and in the Commission's September 17, 2001 Order concerning the Merger Commitments, is, "The U.S. headquarters [in Louisville] will oversee development of synergies from future U.S. acquisitions." The Applicants and the Companies will explore potential synergies and other benefits among E.ON's U.S. operations (including E.ON U.S. and Airtricity, Inc.) that could result from the Airtricity NA acquisition. No later than six months after the consummation of the Airtricity acquisition, E.ON AG and E.ON U.S. LLC will issue a report to the Commission transaction concerning their analysis, findings, and views as to potential synergies or other benefits, consistent with the concept that it is appropriate and efficient for the Airtricity NA business to be managed and overseen by the EC&R (as defined in ¶ 22 below) market unit.

### **Grounds for Limited Waiver**

22. E.ON AG is dedicated to working for climate protection by expanding its renewable business by setting a target of generating at least 20 percent of primary energy from renewable sources by 2020. Under the terms of the planned acquisition, the Airtricity NA business will become part of E.ON AG's rapidly growing EC&R market unit. The Airtricity NA acquisition will augment EC&R's current renewable portfolio in Germany, Spain, Portugal, Sweden, Denmark, and Great Britain.

23. In order to ensure that E.ON AG's global approach is most efficiently managed, it is important that Airtricity NA report directly to EC&R in Düsseldorf, through which E.ON AG plans to manage its global renewable energy efforts. Because E.ON AG will house significant renewable energy technical and management expertise in EC&R, having Airtricity NA report to E.ON U.S. will not create any efficiencies or synergies. Therefore, to achieve increased efficiencies and because the planned Airtricity NA acquisition will have Airtricity NA reporting directly to EC&R in Düsseldorf, the Applicants request a limited waiver of the Merger Commitments so that Airtricity NA may report directly to EC&R (including subsequent or successor organizations) in Düsseldorf.

24. Airtricity NA currently has no plans to develop, build, or acquire any assets in Kentucky. E.ON U.S. currently has no wind-generation assets, and is in the process of withdrawing from its existing unregulated merchant power businesses to focus more on its regulated utilities. There is therefore no present shared business purpose or physical relationship between the Companies and Airtricity NA, which likely would make inefficient the Companies' management of Airtricity NA.

25. In addition to the foregoing, if the Commission grants the requested waiver, the Applicants will extend the effect of the merger commitments quoted in ¶ 5 of this Amended Application for an additional five years (i.e., until June 30, 2017). The Companies offer this extension with the understanding that the requested waiver, if granted, applies to Airtricity NA and other renewables efforts of E.ON AG in the United States, including their current or future subsidiaries, successors, assigns, acquisitions, or spin-offs that are operated from outside of the United States as part of E.ON AG's EC&R market unit.

26. If the Commission grants the requested waiver, the Applicants will also commit that the Airtricity NA acquisition will not impede the Companies' ability to pursue prudent renewable energy resources in Kentucky. E.ON AG commits that if any of its subsidiaries or business units, including EC&R, considers a potential renewable energy project in Kentucky, the subsidiary or business unit will inform E.ON U.S. of the potential project and will allow the utility operations of E.ON U.S. to make a reasonable business judgment on whether to pursue the project as a generation resource for their customers.


27. Finally, if the Commission grants the requested waiver, the Applicants will commit that neither they nor their subsidiaries or successors will cite the waiver as precedent in any other Commission proceeding, except in proceedings regarding the enforcement or interpretation of this Application.

**WHEREFORE**, E.ON AG, Powergen Ltd., and E.ON U.S. LLC respectfully request that the Commission issue an order by December 17, 2007, granting them a limited waiver of Merger Commitment Nos. 36 and 57, as set out in Appendix A to the Commission's Merger Order, dated August 6, 2001, and clarified in the Commission's Order dated September 17, 2001, in Case No. 2001-00104.



Dated: December 10, 2007

Respectfully submitted,



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Kendrick R. Riggs  
W. Duncan Crosby III  
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Allyson K. Sturgeon  
Senior Corporate Attorney  
E.ON U.S. LLC  
220 West Main Street  
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Louisville, Kentucky 40232  
Telephone: (502) 627-2088

Counsel for E.ON AG, Powergen Ltd.,  
and E.ON U.S. LLC

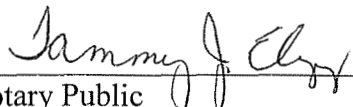
VERIFICATION

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

The undersigned, **Lonnie E. Bellar**, being duly sworn, deposes and says he is Vice-President of State Regulation and Rates for E.ON U.S. LLC, and that he has personal knowledge of the matters set forth in the foregoing application, and the statements contained therein are true and correct to the best of his information, knowledge and belief.

  
\_\_\_\_\_  
**LONNIE E. BELLAR**

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 10th day of December 2007.

 (SEAL)  
\_\_\_\_\_  
Notary Public

My Commission Expires:

November 9, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Amended Joint Verified Application was sent to the following parties of record by U.S. mail, postage prepaid, on this 10th day of December 2007.

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