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July 21, 2011

Via Federal Express

Jeff DeRouen
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

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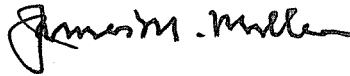
PUBLIC SERVICE
COMMISSION

Re: In the Matter of: Notice and Application of Big Rivers
Electric Corporation for a General Adjustment in Rates,
PSC Case No. 2011-00036

Dear Mr. DeRouen:

Enclosed for filing are an original and ten (10) copies of Big Rivers Electric Corporation's Reply to Kentucky Industrial Utility Customers, Inc.'s response to Big Rivers' motion to compel. I certify that a copy of this letter and a copy of the reply have been served on all parties of record.

Sincerely yours,



James M. Miller

JMM/ej
Enclosures

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PSC CASE NO. 2011-00036

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1 COMMONWEALTH OF KENTUCKY

2
3 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

4
5
6 In the Matter of:

7
8 Notice and Application of Big Rivers Electric)
9 Corporation for a General Adjustment in Rates) Case No. 2011-00036

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11
12 **BIG RIVERS ELECTRIC CORPORATION'S**
13 **REPLY REGARDING ITS MOTION TO COMPEL**
14

15 Big Rivers Electric Corporation ("Big Rivers") filed a motion on July 11, 2011,
16 requesting the Kentucky Public Service Commission ("Commission") to issue an order
17 compelling Kentucky Industrial Utility Customers, Inc. ("KIUC") to fully respond to Items 1 and
18 41 of Big Rivers Electric Corporation's First Request for Information to Kentucky Industrial
19 Utility Customers, Inc. dated June 8, 2011 ("Big Rivers' Information Request"). Big Rivers and
20 KIUC have resolved the dispute over KIUC's response to Item 1. They have not, however,
21 resolved the issue over KIUC's refusal to fully respond to Item 41. On or about July 20, 2011,
22 KIUC filed a response to the Motion to Compel arguing that (i) the information requested by
23 Item 41 is not relevant and (ii) Big Rivers is collaterally estopped or barred by res judicata from
24 discovering the information requested by Item 41. For its reply to KIUC's response, Big Rivers
25 states as follows:

26 **A. KIUC's Response to Big Rivers' Motion to Compel Relates to Only Part of the**
27 **Information Requested in Item 41, and KIUC Should be Compelled to Fully Respond to**
28 **the Entire Request**

29 Item 41 of Big Rivers' Information Request asks:

30 Please identify and provide, by Smelter and by month, a list of the cash payments
31 received by each Smelter from Big Rivers, Kenergy Corp., or a subsidiary or

1 affiliate of the former E.ON U.S., LLC arising out of, related to, or in connection
2 with the Big Rivers unwind transaction as referred to by Mr. Fayne on page 21 of
3 his testimony.
4

5 Big Rivers' Information Request, Item 41. In its response to Item 41, KIUC stated that it
6 received no payments from Kenergy Corp., but it refused to respond to the remainder of the
7 request. *See* KIUC Response dated June 22, 2011, to Big Rivers' Information Request, Item 41.
8 Big Rivers' Motion to Compel sought a full response to the request. KIUC should be compelled
9 to fully respond to Item 41 for the reasons stated in the Motion to Compel.

10 **B. The Information Requested by Item 41 is Relevant to this Proceeding**

11 In its response to the Motion to Compel, KIUC argues that the information requested by
12 Item 41 are not relevant to this proceeding. However, the amounts of the payments received by
13 the Smelters from an E.ON subsidiary at the closing of the unwind transaction are relevant to this
14 proceeding because KIUC has made them relevant. KIUC has made the viability of the
15 Smelters' operations an issue in this proceeding. Mr. Fayne says in his testimony that the E.ON
16 subsidiary payments to the Smelters "allowed the continued operations of the smelters under the
17 new power arrangement now in effect." Direct Testimony of Henry W. Fayne, p. 20, lines 2-4.
18 Mr. Leblanc refers to the compensation from E.ON as contributing to the "opportunity to extend
19 the life of the smelter." Direct Testimony of Stephane Leblanc, p. 7, lines 2-5. As KIUC states
20 on page 3 of its response to Big Rivers' Motion to Compel, "[t]he payments made to the
21 Smelters from E.ON were intended in large part to compensate the Smelters for relinquishing the
22 remaining period of their favorable retail contracts with E.ON's unregulated subsidiary." The
23 amounts of payments that make the Smelters more viable, and that in effect subsidize the Smelter
24 rates during the test year are very relevant to these proceedings.
25

1 **C. Collateral Estoppel and Res Judicata are Inapplicable**

2 KIUC argues in its response to the Motion to Compel that Big Rivers is collaterally
3 estopped or barred by res judicata from discovering the confidential payment from E.ON to the
4 Smelters because the Commission granted a petition for confidential treatment filed by E.ON in
5 Case No. 2007-00455 (the “Unwind Case”) covering the same information. A copy of the letter
6 granting confidential treatment is attached hereto. In its response to the Motion to Compel,
7 KIUC notes that the doctrines of collateral estoppel and res judicata preclude the re-litigation of
8 certain issues involved in prior litigation. But Big Rivers is not re-litigating anything, and so,
9 those doctrines are simply inapplicable.

10 The April 29, 2008, letter from the Commission’s Executive Director granting E.ON’s
11 petition for confidential treatment in the Unwind Case and the Commission’s Order dated March
12 6, 2009, in that case (which incorporated the April 29 letter) do nothing more than grant
13 confidential treatment to the payment amount. Big Rivers has not argued that the information is
14 not entitled to confidential treatment. Thus, Big Rivers is not re-litigating any issue decided in
15 the Unwind Case.

16 Further, and despite KIUC’s statements in its response to the contrary, the April 29 letter
17 and the March 6 Order do not purport to be a ruling that Big Rivers is precluded from having the
18 information. In fact, the Commission’s regulations recognize that even if a petition for
19 confidential treatment is granted, parties may nevertheless request that the Commission allow
20 them access to the information. *See* 807 KAR 5:001 Section 7(5)(b). So, the granting of
21 confidential treatment cannot be a ruling that Big Rivers is precluding from accessing the
22 information. Thus, Big Rivers’ requests for the information in this proceeding are not a re-
23 litigation of any issue decided in the Unwind Case.

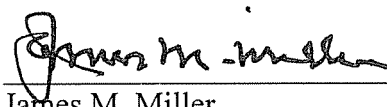
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Finally, confidentiality is not an appropriate ground for objecting to a request for information. The Commission's regulations provide, in pertinent part:

No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

807 KAR 5:001 Section (5)(a). Even if Big Rivers is not allowed access to the confidential information, KIUC should nevertheless be required to respond so that the information will at least be in the record in this proceeding.

On this the 21st day of July, 2011.


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April 29, 2008

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John W. Clay
Vice Chairman

Caroline Pitt Clark
Commissioner

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Hon. Deborah T. Eversole
Hon. Douglas F. Brent
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Hon. Allyson K. Sturgeon
E.ON U.S. LLC
220 West Main Street
P.O. Box 32010
Louisville, Kentucky 40232

Re: E.ON U.S., LLC; Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc.'s
Petition for Confidentiality, PSC Case No. 2007-00455

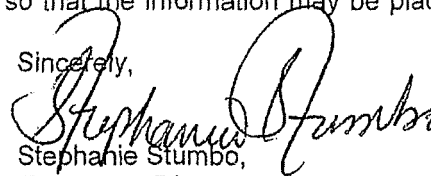
Sirs/Madams:

The Public Service Commission has received E.ON Entities' Petition for confidential treatment requesting to protect as confidential certain information in its Response to Items 83, 100 and 101 of the Attorney General's initial Request for Information dated February 1, 2008. This information is identified in the Petition as consisting of the amount paid to the Smelters in consideration for consent to transactions; E.ON\LEM's view of operating budgets, costs and revenues; and E.ON Entities' capital budget, respectively.

Based upon a review of the information, I have determined that it is entitled to the protection requested on the grounds relied upon in the Petition and should be withheld from public inspection.

If the information contained in Responses to Item Nos. 83, 100 or 101 becomes publicly available or no longer warrants confidential treatment, E.ON Entities are required by 807 KAR 5:001, Section 7(9)(a), to inform the Commission so that the information may be placed in the public record.

Sincerely,


Stephanie Stumbo,
Executive Director

kg/

cc: Parties of Record