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November 13, 2008

VIA HAND DELIVERY

Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

RECEIVED

NOV 13 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:

On November 12, 2008, E.ON U.S. LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing Inc. filed a Petition for Confidential Treatment in the above-referenced matter. A presentation and an excel spreadsheet containing confidential material were attached to that petition. Several pages of those documents, however, were inadvertently stamped "Confidential" when, in fact, no confidential material was present.

Enclosed are an original and ten copies of corrected pages 1-4, 8 and 9 of the presentation, and pages 2 and 4 of the spreadsheet. Please indicate receipt of this filing by placing your file stamp on the extra copy and returning it to me via our runner.

Sincerely,

Sarah K. M. Adams

SKMA: jms
Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATIONS OF BIG RIVERS)	
ELECTRIC CORPORATION FOR:)	
(I) APPROVAL OF WHOLESALE TARIFF)	
ADDITIONS FOR BIG RIVERS ELECTRIC)	CASE NO. 2007-00455
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)	

PETITION FOR CONFIDENTIAL TREATMENT

E.ON U.S. LLC (“E.ON U.S.”), Western Kentucky Energy Corp. (“WKEC”) and LG&E Energy Marketing, Inc. (“LEM”) (the “E.ON Entities”), by counsel, for their Petition for Confidential Treatment filed pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(c), state as follows:

BACKGROUND

By this Petition, the E.ON Entities request that the Public Service Commission (“Commission”) grant confidential protection to the November 7, 2008 update of certain documents presented at a meeting of representatives of the E.ON Entities, the Office of the Attorney General, Big Rivers Electric Corporation, Alcan Primary Products Corporation and Century Aluminum of Kentucky held at the offices of the Attorney General in Frankfort on March 20, 2008 and filed with the Commission. Specifically, the November 7, 2008 updated documents (hereinafter, the “Updated Documents”) include certain specific financial information of WKE; and a prepared set of documents comparing the financial issues affecting the E.ON

Entities to those that will affect Big Rivers Electric Corporation subsequent to the transaction in this case. The Updated Documents all concern confidential and proprietary information relevant to the *financial conditions affecting an unregulated entity, similar to information previously filed with the Commission on April 21, 2008 and granted confidential treatment by the Commission in this case.* (See The Commission's June 9, 2008 letter granting confidential protection attached hereto.) The E.ON Entities submit that the Updated Documents filed today also are entitled to confidential protection and for the same reasons.

GROUNDS FOR PETITION

1. KRS 61.878(1)(c) protects commercial information, generally recognized as confidential or proprietary, if its public disclosure would cause competitive injury to the disclosing entity. Competitive injury occurs when disclosure of the information would give competitors an unfair business advantage. The Commission has taken the position that the statute and the regulation require the party requesting confidentiality to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed. Here, there is actual competition, as the *information in question concerns confidential and proprietary information related to nonregulated businesses that are competitive and that are not rate-protected by the regulatory compact.* The confidential business information disclosed to the Commission is information the public disclosure of which would enable the E.ON Entities' competitors to discover, and make use of, confidential information concerning the E.ON Entities' financial condition and business strategies, to the unfair competitive disadvantage of the E.ON Entities.

2. The information for which confidential treatment is sought is maintained internally by the E.ON Entities and by other parties to this case who have a business need to know this information. This information is not on file with the FERC, SEC or other public

agency, is not available from any commercial or other source outside of the E.ON Entities and the parties to this case with a business need to know this information, and is limited in distribution to those employees who have a business reason to have access to such information. Further, the information concerns nonregulated rather than regulated activities. Thus, the public interest to be served by its disclosure is minimal at best. By imposing unfair competitive injury upon the E.ON Entities, disclosure in fact would harm the public interest.

3. Disclosure of the information sought to be protected in this matter would make available to the E.ON Entities' competitors information concerning their financial and business strategies, and costs and revenues, that such competitors could use to the E.ON Entities' competitive disadvantage. The E.ON Entities' competitors are not required to file, or to make public, similar proprietary information.

4. The confidential and proprietary budget information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 61.878(1)(c)1. In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’” *Id.* at 768. Similarly, the Kentucky Supreme Court applied the KRS 61.878(1)(c)1. “competitive injury” exemption to financial information that was in the possession of Kentucky’s Parks Department in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995): “These are records of

privately owned marina operators, disclosure of which would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such information about privately owned organizations.” The same reasoning applies here. Moreover, the damage that would accrue to the E.ON Entities would be exacerbated by the interstate nature of the competition in the wholesale power market. Competitors in this market are not subject to Commission regulations regarding the filing of sensitive financial information.

5. The confidential information clearly merits confidential protection pursuant to *Hoy, Marina Management*, and KRS 61.878(1)(c)1. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of the E.ON Entities and 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).

6. The E.ON Entities have provided the information for which confidential treatment is sought to the Attorney General pursuant to a protective agreement.

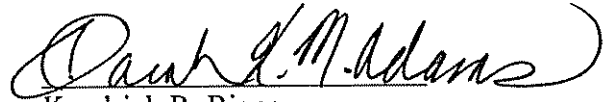
7. In accordance with the provisions of 807 KAR 5:001 Section 7, one copy of the Updated Documents with the confidential information is highlighted on yellow paper and ten (10) copies of the Updated Documents without the confidential information is herewith filed with the Commission.

CONCLUSION

For the reasons stated, the E.ON Entities respectfully request that the Commission grant confidential protection for the information at issue, or schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Dated: November 12, 2008

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sarah K. M. Adams", enclosed in a large, sweeping right-hand flourish.

Kendrick R. Riggs
Sarah K. M. Adams
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000

Allyson K. Sturgeon
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E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088

Counsel for E.ON U.S. LLC, Western
Kentucky Energy Corp. and LG&E Energy
Marketing, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Confidential Treatment was served via U.S. mail, first-class, postage prepaid, this 12th day of November 2008, upon the following persons:

C. William Blackburn
Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202

David Brown
Stites & Harbison, PLLC
1800 Providian Center
400 West Market Street
Louisville, KY 40202

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Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
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Assistant Attorney General
Office of the Attorney General
Office of Rate Intervention
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Counsel for E.ON U.S. LLC, Western
Kentucky Energy Corp. and LG&E Energy
Marketing, Inc.



Steven L. Beshear
Governor

Robert D. Vance, Secretary
Environmental and Public
Protection Cabinet

Larry R. Bond
Commissioner
Department of Public Protection

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
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psc.ky.gov

June 9, 2008

David L. Armstrong
Chairman

John W. Clay
Commissioner

STOLL KEENON OGDEN, PLLC
Attention: Hon. Kendrick R. Riggs
and Hon. Deborah T. Eversole
2000 PNC Plaza, 500 W. Jefferson St
Louisville, Kentucky 40202-2838

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

Re: E.ON Entities - Petition for confidentiality received 3/25/08 and Amended
Petition received April 21, 2008 - PSC Case No. 2007-00455

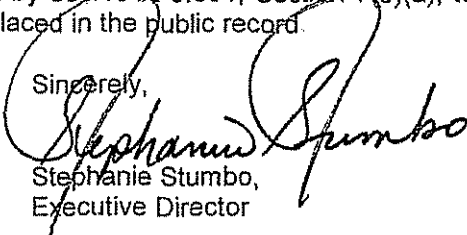
Sir/Madam:

The Commission has received the Petition filed on March 25, 2008 and the Amended Petition filed on April 21, 2008, by E.ON US LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc. (collectively E.ON Entities) requesting confidential protection of certain information contained in documents that were presented at a March 20, 2008 meeting among representatives of the E.ON Entities, the Office of the Attorney General, Big Rivers Electric Corporation, Alcan Primary Products Corporation, and Century Aluminum of Kentucky, and which documents are being filed in the record of this case. The information requested to be confidential is identified in the Petitions as specific financial information of unregulated E.ON Entities. By the Amended Petition, the E.ON Entities seek to protect as confidential less of the information set forth in the documents being filed.

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 Amended Petition and should be withheld from public inspection.

If the information becomes publicly available or no longer warrants confidential treatment, the companies known as 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/

November 7, 2008 Update to March 20, 2008
Presentation to Kentucky Attorney General

E.ON U.S. LLC and Big Rivers Electric Corporation

WKE Unwind Transaction

Is WKE transferring any of its current problems to BREC under this proposed transaction? How does BREC make the proposed transaction work going forward, given WKE's experience under the current lease arrangement?

Existing and post 2011 Power Sale Obligations

Present Obligations - WKE

Party	Load Obligation MW
BREC	597
Alcan Aluminum	233
Century Aluminum	339
HMP&L	95
Maximum capacity for sale to market*	357

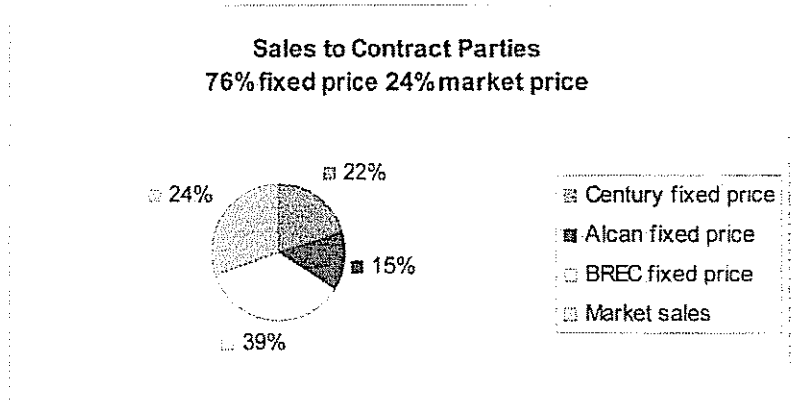
Post 2011 Obligations - WKE

Party	Load Obligation MW
BREC	800
Alcan Aluminum	0
Century Aluminum	0
HMP&L	95
Maximum capacity for sale to market*	726

* Excludes Reid units and reserves

WKE Transaction & New BREC Contrast

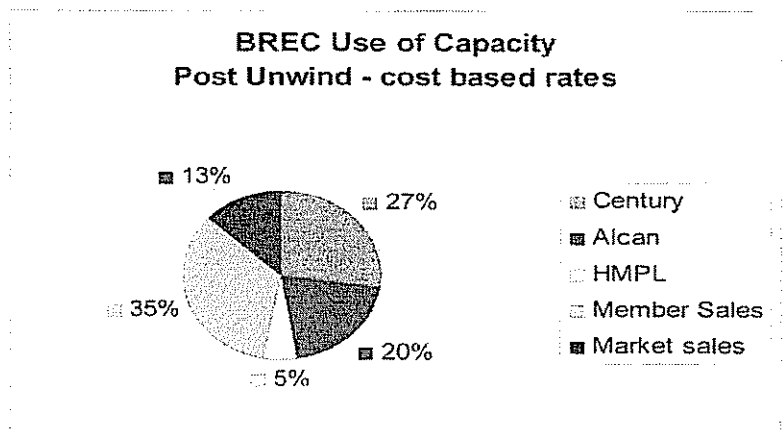
Present WKE Use of Capacity



WKE Economic Drivers

- Lease Payments
- Smelter Margin Payments
- Minimum Level of Transmission Payments
- Sales at below cost fixed prices
- Fuel Risk
- Purchased Power Risk
- Minimal Environmental Cost Recovery
- No Access to SEPA Power

BREC Use of Capacity Post Unwind



BREC Economic Drivers

- Total benefit to BREC \$950 million
- No Smelter Margin payments
- No minimum level of Transmission payments
- Sales at Cost Based Rates
- Fuel Adjustment Clause
- Smelter premium rates to maintain TIER
- Purchased Power Adjustment / Regulatory Account
- Environmental Cost Recovery
- Access to 178 MW of SEPA Power
- BREC assumes no existing WKE obligations

See AG Update of 4-08 Meeting
11-6-08 Excel Spreadsheet

Can BREC remain viable if the smelters subsequently leave in the future?

It is likely market prices for electricity will have increased in an amount to place BREC in a favorable economic position (See Supplemental Testimony of C. William Blackburn in October 9, 2008 filing). After market sales, BREC has the additional safeguard of the \$35 million transition reserve plus interest. Further, the Leveraged Leases are no longer in place.

1 **Estimate of E.ON Revenue Short-Fall Lease Transaction**

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
50 Big Rivers										
51 Smelter Rate	\$ 40.67	\$ 43.42	\$ 48.44	\$ 54.47	\$ 59.77	\$ 55.05	\$ 64.30	\$ 50.77	\$ 56.32	\$ 58.53
52 Non-Smelter Member Rate	\$ 47.01	\$ 47.40	\$ 47.64	\$ 49.04	\$ 50.54	\$ 50.84	\$ 52.67	\$ 52.88	\$ 53.57	\$ 53.88
53 Market Price	\$ 62.13	\$ 63.43	\$ 63.52	\$ 64.53	\$ 66.02	\$ 68.95	\$ 67.21	\$ 67.80	\$ 69.01	\$ 69.73
54										
55 Total Revenues	\$ 609,498,306	\$ 614,177,213	\$ 617,771,025	\$ 624,234,022	\$ 649,155,001	\$ 675,027,650	\$ 681,591,640	\$ 704,124,921	\$ 703,233,512	\$ 727,442,153
56 Total Expenses	\$ 596,558,740	\$ 601,545,747	\$ 605,402,721	\$ 612,181,910	\$ 627,306,833	\$ 633,202,510	\$ 670,132,935	\$ 692,930,540	\$ 697,365,240	\$ 716,040,040
57										
58 Net Margins	\$ 12,939,566	\$ 12,631,467	\$ 12,368,304	\$ 12,102,113	\$ 11,788,000	\$ 11,805,142	\$ 11,458,694	\$ 11,194,381	\$ 10,600,267	\$ 10,001,327
59 Line 05 + Line 06										

71 **Value Received by Big Rivers**

- 72 E.ON Termination Value
- 73
- 74 Smelter Premium
- 75
- 76 Total

78 **Risk Mitigation**

- 79 Transition Reserve
- 80
- 81 Economic Reserve
- 82
- 83 Fuel Adjustment Clause
- 84
- 85 Environmental Clause
- 86
- 87 E.ON can't change contract
- 88 rates, Big Rivers can
- 89 request rate adjustments
- 90
- 91 Under the Unwind Big Rivers
- 92 will have the ability to
- 93 access the public financial markets

1 Estimate of E.ON Revenue Short-Fall Lease Transaction

	2009	2010	2011	2012	2013
59 Big Rivers					
60					
61 Smelter Rate	\$ 43.11	\$ 42.98	\$ 49.19	\$ 52.33	\$ 53.92
62 Non-Smelter Member Rate	\$ 35.30	\$ 35.78	\$ 40.98	\$ 41.20	\$ 44.14
63 Market Price	\$ 62.04	\$ 59.20	\$ 63.59	\$ 60.81	\$ 70.25
64					
65 Total Revenues	\$ 578,219,374	\$ 594,903,056	\$ 633,040,528	\$ 672,578,117	\$ 702,551,893
66 Total Expenses	\$ 564,126,410	\$ 581,602,397	\$ 619,861,015	\$ 658,674,605	\$ 689,329,970
67					
68 Net Margins					
69 Line 65 - Line 66	\$ 14,252,967	\$ 13,291,404	\$ 13,235,447	\$ 13,903,500	\$ 13,227,923
70					
71 Value Received by Big Rivers					
72 E.ON Termination Value	\$ 755,000,000				
73					
74 Smelter Premium	\$ 327,000,000				
75					
76 Total	\$ 1,082,000,000				
77					
78 Risk Mitigation					
79 Transition Reserve	\$ 35,000,000				
80					
81 Economic Reserve	\$ 157,000,000				
82					
83 Fuel Adjustment Clause					
84					
85 Environmental Clause					
86					
87 E.ON can change contract					
88 rates, Big Rivers can					
89 request rate adjustments					
90					
91 Under the Unsettled Big Rivers					
92 will have the ability to					
93 access the public financial markets					