

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATIONS OF BIG RIVERS ELECTRIC )  
CORPORATION, E.ON U.S., LLC, WESTERN )  
KENTUCKY ENERGY CORP., AND LG&E ) CASE NO. 2007-00455  
ENERGY MARKETING, INC. FOR APPROVAL )  
OF TRANSACTIONS; AND APPLICATION OF )  
BIG RIVERS ELECTRIC CORPORATION FOR )  
APPROVAL OF WHOLESALE TARIFF )  
ADDITIONS; AND APPROVAL TO ISSUE )  
EVIDENCES OF INDEBTEDNESS )

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**BRIEF ON BEHALF OF THE UNION**

**I. THE COMMISSION SHOULD INTERPRET ITS  
ENABLING STATUTE AS REQUIRING CONSIDERATION  
OF ECONOMIC IMPACT THROUGH EXISTING JOB  
PRESERVATION AS A NECESSARY ELEMENT OF  
APPROVAL OF THE UNWIND TRANSACTION.**

The issue of fiscal responsibility through job preservation must be considered by the Commission as a necessary element of the Unwind transaction as being in the public interest. KRS 278.020(5) governs the Commission's authority to approve a change in utility ownership. Such an interpretation is consistent with the legislative expression of intent in the Merchant-Power statute, KRS 278.706(2)(j), which expressly requires an economic impact analysis. *Query:* If an economic impact analysis is a necessary feature for approval of an unregulated private corporation utility construction project, how can it not be a relevant consideration for a regulated private company utility transaction such as the Unwind? This Commission has the authority to enforce its own enabling legislation for conditions that preserve jobs as a benefit of economic impact.

KRS 278.020(5), governs the Commission's authority to approve a change in utility ownership, when any proposed acquisition would be "in accordance with law, for a proper purpose and is consistent with the public interest." The Unwind involves E.ON, through WKE, which is a utility that has been subject to economic development conditions in past cases. As demonstrated in the Commission's approval of the LG&E/KU - E.ON merger, and the LG&E/KU - PowerGen merger, the Commission has interpreted the public interest to include economic development and impact. The Commission proposed and PowerGen accepted a stipulation that the LG&E corporate headquarters would be maintained in Louisville for ten years. There can be no more direct example of the nexus between economic impact and the public interest, which the PSC is charged with protecting.

In the subsequent application for merger approval with E.ON (Case 2000-095), LG&E presented the testimony of Dr. Paul Coomes regarding the positive economic benefits potentially flowing from merger. LG&E's CEO, Mr. Stafferi, testified in support of the positive economic impact at the Commission hearing, touting improved opportunities for international trade. Dr. Coomes promoted the prospect of attracting more energy intensive industry to the state.

The Commission made specific findings regarding the economic benefits related to merger and retention of the corporate headquarters in Kentucky:

The Commission finds that retaining these headquarters in Kentucky is indeed significant. Having corporate officers and senior management working and living in the communities served by LG&E and KU helps ensure E.ON that service quality remains at superior levels and *economic development in Kentucky is given a top priority.* (Order, May 15, 2000) (Our emphasis)

The Commission made specific findings under the heading "Economic/Community Development": "Economic development and investment in the communities served by LG&E

and KU are of paramount importance to the public interest and these communities extend far beyond the urban centers of Louisville and Lexington.” (Order, p. 33) The Commission went on to impose monitoring to determine whether the merged companies were keeping their commitments to promote economic development in the Commonwealth. LG&E/KU must annually file a report demonstrating total expenditures for economic development activities, and a report detailing economic development efforts within respective service areas. (Order, p. 33)

Under the reporting requirements of the merger case (2000-095), LG&E must file an annual report which detailed the Trimble County II construction project as one of its economic development initiatives. The entire purpose of such a report was to allow the Commission to monitor whether LG&E, as a part of PowerGen/E.ON, was meeting expectations with regard to continued promotion of economic opportunities in the Commonwealth.

Certainly economic impact has been the determining issue in the proposed Unwind. The fear and specter of hundreds of lost jobs with the smelters has been invoked by several parties to underscore the need for PSC approval. Protecting the existing utility jobs at WKE/BREC should be an equally paramount objective. Not only is such protection warranted from the viewpoint of economic impact, but the issue of service and reliability is directly affected by maintaining a stable complement of plant operational and transmission employees to assure continuity of service.

The Attorney General has proposed a job preservation condition through the testimony of Mr. Brevitz:

9. BREC will continue to employ at least the same level of workforce, with comparable if not better skill and expertise, as it currently does, or notify the Commission if BREC has concluded it would be imprudent to do so, stating the reasons why BREC believes it to be imprudent. (Brevitz original testimony)

When cross examined, Mr. Bailey stated his willingness to agree to a condition that was entirely non-committal:

13. Big Rivers would commit to continue to employ in the conduct of its business the level of workforce required to safely and professionally operate its facilities. (Draft Settlement Concepts June 19, 2008)

While not directing his testimony directly at union jobs, Mr. Brevitz reiterated the importance of maintaining employment opportunities in his Supplemental testimony:

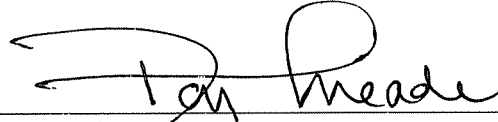
I am very much concerned about this issue (loss of jobs) and the Attorney General has advised me that he is as well. However, even if the Commission approves the application and the proposed transaction occurs, there is no guarantee that the smelters will continue their operations in Kentucky. In fact, the smelters have negotiated terms which would allow them to terminate their contracts as soon as 2011 and would allow the closing of a potline depending on the market for a period of up to 12 months and then re-selling the electricity that would have otherwise been used." Obviously the possibility of a loss of jobs exist regardless of the Commission's actions in this matter. Accordingly, because the smelters have this agreement in place, it appears self-evident that the smelters anticipate the possibility, if not the likelihood that there will be a loss of jobs. (Brevitz Supplemental Testimony)

While the Commission may not have any control over the future of aluminum industry jobs in Western Kentucky, it does have the power to assure that the unwind will not result in immediate or short term job losses as a feature of management fiat- an otherwise predictable consequence of a combination of operations.

For all the foregoing reasons, Intervenor IBEW urges the adoption of Condition #9 in any Order that approves the Unwind transaction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE AND FILING**

I certify that an original and ten copies of the foregoing Brief on Behalf of the Union were served and filed with Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Blvd., Frankfort, KY 40601 by mailing same to her this 22<sup>nd</sup> day of December, 2008. I further certify that true and accurate copies of the foregoing were mailed the same day via First Class U.S. Mail, postage pre-paid, to:

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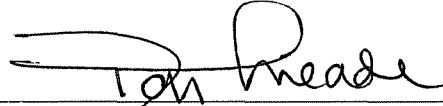
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A handwritten signature in black ink that reads "Don Meade". The signature is written in a cursive style with a large, looped "D" and "M".

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Don Meade