



STOLL · KEENON · OGDEN
PLLC

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099
www.skofirm.com

SARAH K.M. ADAMS
DIRECT DIAL: (502) 560-4232
DIRECT FAX: (502) 627-8772
sarah.adams@skofirm.com

July 14, 2009

RECEIVED

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

JUL 14 2009

**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 Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of a Petition for Confidential Treatment on behalf of E.ON U.S. LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc. in the above-referenced matter. Under separate cover, E.ON U.S. LLC filed redacted versions of the documents referenced in the attached Petition with the Commission on July 13, 2009. The confidential versions of the referenced documents are attached to the Petition and filed under seal. 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 envelope.

Should you have any questions please contact me at your convenience.

Yours very truly,

Sarah K.M. Adams

SKA:ec
Enclosures
cc: Parties of Record

400001.358719/586750.1

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 certain information contained in the “E.ON Swap Agreement” and “July 8, 2009 Summary of Projected Payments at Closing Date July 16” (“Summary of Closing Payments”) which were filed with the Commission under separate cover on Monday, July 13, 2009. This request for confidential protection is made on the grounds that the E.ON Swap Agreement and the Summary of Closing Payments contain information that is confidential and proprietary and relevant to the financial conditions affecting an unregulated entity. The information is similar to the information contained in the E.ON Entities’ updated

response to Data Request No. 83 of the Attorney General's Initial Request for Information dated February 1, 2008 which was filed on December 1, 2008 and granted confidential treatment by the Commission in this case. (See The Commission's April 29, 2008 letter granting confidential protection attached hereto.) The E.ON Entities submit that the attached E.ON Swap Agreement and Summary of Closing Payments are also entitled to confidential protection and for the same reasons.

GROUND 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 and is limited in distribution to those employees who have a business reason to have access to such information. This information is not on file with the FERC, SEC

or other public agency. It 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. 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 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 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, Big Rivers Electric Corporation, Alcan and Century pursuant to a protective agreement.

7. In accordance with the provisions of 807 KAR 5:001 Section 7, one copy of the pages from the documents with the unredacted confidential information is attached to this Petition and filed with the Commission. The confidential information is highlighted. Ten copies of the documents with the confidential information redacted were filed with the Commission under separate cover on July 13, 2009.

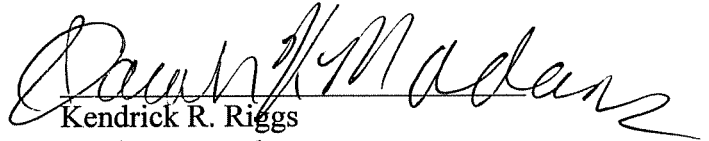
CONCLUSION

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: July 14, 2009

Respectfully submitted,



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
Senior Corporate Attorney
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 14th day of July 2009, 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

James M. Miller
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KY 42302-0727

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

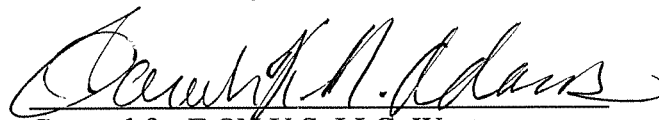
Douglas L. Beresford
George F. Hobday Jr.
Hogan & Hartson, LLP
555 Thirteenth Street, N.W.
Washington, DC 20004-1109

John N. Hughes
Attorney at Law
124 West Todd Street
Frankfort, KY 40601

Melissa D. Yates
Denton & Keuler, LLP
555 Jefferson Street
P. O. Box 929
Paducah, KY 42002-0929

Frank N. King, Jr.
Dorsey, King, Gray, Norment & Hopgood
318 Second Street
Henderson, KY 42420

Don C. Meade
Priddy Cutler Miller & Meade
800 Republic Building
429 West Muhammad Ali Blvd.
Louisville, Kentucky 40202



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
Fax: (502) 564-3460
psc.ky.gov

April 29, 2008

Mark David Goss
Chairman

John W. Clay
Vice Chairman

Caroline Pitt Clark
Commissioner

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

Hon. Allyson K. Sturgeon
E.ON U.S. LLC
220 West Main Street
P.O. Box 32010
Louisville, Kentucky 40232

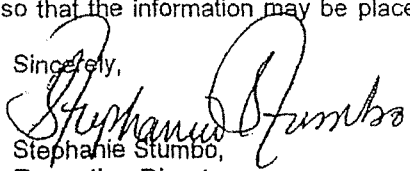
Re: E.ON U.S., LLC; Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc.'s
Petition for Confidentiality, PSC Case No. 2007-00455

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.ONLEM'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