

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

In The Matter Of: The Application of Big Rivers Electric Corporation, E.ON US., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing Inc., For Approval to Unwind Lease and Power Purchase Transactions	:	Case No. 2007-00455
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**PETITION FOR CONFIDENTIAL TREATMENT OF  
ALCAN PRIMARY PRODUCTS CORPORATION AND  
CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP**

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Alcan Primary Products Corporation and Century Aluminum of Kentucky General Partnership (herein “the Smelters”) hereby petition the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c) to grant confidential protection for certain internal documents of the Smelters that consist of confidential and proprietary information including analysis and discussions pertaining to electricity and other production costs. A memorandum in support of this Petition is attached.

**MEMORANDUM IN SUPPORT**

The Smelters request that the Commission grant confidential protection to certain information (herein “the Information”) filed in response to data requests on the grounds that the Information is confidential and proprietary and should not be in the public domain. The Information includes analysis and discussions pertaining to electric and other production costs that are not shared as between Century and Alcan and are not relevant to the issues in this proceeding. The Information include facts, opinions, analyses, strategies, recommendations that are strictly internal and reflect the inner workings of the companies and as such should not be disclosed to Big Rivers Electric Corporation, the City of Henderson or E.ON US without the permission of the Smelters. (The Stone & Webster report which the

Smelters consider to be confidential and proprietary has been disclosed to Big Rivers Electric Corporation, the City of Henderson and E.ON US as a confidential document for their internal use only.)

Disclosure of the Information could cause the Smelters significant competitive harm in a variety of ways. Aluminum manufacturing is a highly competitive business in which slight changes in the price of electricity and other commodities required for production can have an enormous effect on a manufacturer's ability to compete. With respect to cost information, disclosure could, among other things, allow the Smelters' competitors to learn pricing information to the Smelters' competitive detriment. Accordingly, the Information should not be subject to public disclosure and should be withheld from the public record. For the reasons stated below the Commission should grant the Smelters' Petition:

1. KRS 61.878(1)(c), a part of the Kentucky Open Records Act, protects from public disclosure of information that is "*generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.*"

2. The information for which the Smelters seek confidential treatment is treated as confidential and proprietary in the ordinary course of business. The Information is not disseminated except to Smelter employees and business associates and with a legitimate business need to know and act upon the information.

3. The Information contains, among other things, price speculation, analysis and strategies, as well as other important terms under which the Smelters propose to purchase electricity. The disclosure of such information would confer an unfair advantage upon the Smelters' competitors and

erode the Smelters' competitive position among other aluminum manufacturers with which the Smelters compete.

4. Protection of the Information as confidential serves the economic development goals of the Commonwealth by ensuring that Kentucky businesses do not suffer competitive harm through the disclosure of sensitive business information.

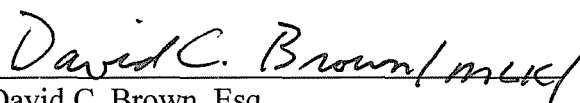
5. The Kentucky Supreme Court has held that the type of information for which confidential protection is sought is protected by KRS 61.878(1)(c). In Hoy v. Kentucky Industrial Revitalization Authority, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by 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.”

6. If the Commission does not agree that the Information should receive confidential protection, it must hold an evidentiary hearing (a) to protect the Smelters' due process rights, and (b) to 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).

7. The Smelters' will disclose the confidential information, pursuant to a Confidentiality Agreement, to the Attorney General. In accordance with the provisions of 807 KAR 5:001(7), the Smelters file herewith, under seal, one (1) highlighted set of the Information in responses to Items 3, 6, 8, 10 and 11 of the Attorney General's Initial Request for Information.

**WHEREFORE**, Alcan Primary Products Corporation and Century Aluminum of Kentucky General Partnership respectfully requests that the Commission grant confidential protection for the information at issue or in the alternative, schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing. Respectfully submitted,



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