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

KENDRICK R. RIGGS
DIRECT DIAL: (502) 560-4222
DIRECT FAX: (502) 627-8722
kendrick.riggs@skofirm.com

June 13, 2008

Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

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:

This is to notify the Commission of the issuance by the Federal Energy Regulatory Commission ("FERC") of the FERC approvals necessary to the consummation of the transaction that is the subject of this case. First, on May 9, 2008, FERC issued a Notice of Cancellation of certain Western Kentucky Energy Corp. ("WKEC") rate schedules and agreements effective on the date the unwind transaction is consummated. See *Western Kentucky Energy Corp.*, Docket No. ER08-677-000 (Letter Order of May 9, 2008) [Exhibit 1 hereto]. Second, on May 13, 2008, FERC entered its Order on Jurisdiction in *LG&E Energy Marketing, Inc.*, Docket No. ER08-678-000, 123 FERC ¶ 61,147 (May 13, 2008) [Exhibit 2 hereto], disclaiming jurisdiction over the Generation Dispatch Support Services Agreement between LG&E Energy Marketing and Big Rivers. On May 22, 2008, FERC entered its Order Authorizing Disposition of Jurisdiction Facilities in *Western Kentucky Energy Corp., E.ON U.S. LLC*, Docket No. EC08-54-000, 123 FERC ¶ 62,153 (May 22, 2008) [Exhibit 3 hereto].

Please confirm your receipt of this letter by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Stephanie L. Stumbo
June 13, 2008
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Should you have any questions please contact me at your convenience.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kendrick R. Riggs". The signature is written in a cursive style with a long horizontal flourish at the end.

Kendrick R. Riggs

KRR:ec

cc: Parties of Record

EXHIBIT 1

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Western Kentucky Energy Corp.
Docket No. ER08-677-000

May 9, 2008

Attention: John Fendig
Senior Corporate Attorney
E.ON U.S. LLC
220 West Main Street
Louisville, KY 40202

Re: Notice of Cancellation

Dear Mr. Fendig,

On March 14, 2008, Western Kentucky Energy Corp. (WKEC) submitted for filing with the Commission a Notice of Cancellation of a rate schedule, a tariff and four service agreements. WKEC proposed to cancel the following: (1) Rate Schedule FERC No. 2; (2) FERC Electric Tariff, Original Volume No. 2; (3) Power Purchase Agreement with Big Rivers designated as Original Service Agreement No. 1 under the Ancillary Service Tariff; (4) Power Purchase Agreement with Kenergy Corp. designated as Original Service Agreement No. 2 under the Ancillary Services Tariff; (5) Power Purchase Agreement with Kenergy designated as Original Service Agreement No. 3 under the Ancillary Services Tariff; and (6) An Agreement with Respect to Operating Reserves and Amendment No. 1 to System Reserves Agreement with Big Rivers and the City of Henderson Utility Commission designated as Original Service Agreement No. 4 under the Ancillary Services Tariff.

Simultaneously with this filing, WKEC filed in Docket No. EC08-54 jointly with E.ON U.S. LLC, an application under Section 203 of the Federal Power Act (FPA) seeking disclaimer of jurisdiction with respect to or, in the alternative, authorization of a disposition of assets by WKEC, which is a public utility, to Big Rivers, a rural cooperative that is not subject to Section 203 of the FPA (the "Transaction"). The Transaction consists of the termination of WKEC's lease, an operating agreement and associated other documents pursuant to which operating control over five generation facilities, and ownership of the output of the facilities (or right to purchase power), will revert to Big Rivers, which previously operated the facilities. In connection with transfer

of operating control over the generating facilities from WKEC to Big Rivers, WKEC will stop making sales to certain customers that it presently supplies from those generating facilities.

Pursuant to authority delegated to the Director, Division of Tariffs and Market Development – Central under 18 C.F.R. § 375.307, the submittal in Docket No. ER08-677 is accepted for filing as requested, effective on the date the Transaction is consummated, subject to the outcome of Docket Nos. EC08-54-000 and subject to further compliance filing in order to comport with Order No. 614.¹

Notice of the filing was published in the Federal Register, with comments, protests, or interventions due on or before April 4, 2008. No adverse comments or protests were filed. Under 18 C.F.R. § 385.210, interventions are timely if made within the time prescribed by the Secretary. Under 18 C.F.R. § 385.214, the filing of a timely motion to intervene makes the movant a party to the proceeding, if no answer in opposition is filed within fifteen days.

This action does not constitute approval of any service, rate, charge, classification or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicant(s).

This order constitutes final agency action. Request for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Sincerely,

Penny S. Murrell, Director
Division of Tariffs and Market
Development - Central

¹ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000). As filed, the tariff sheets do not specify an effective date and must be updated once the date of Transaction is known.

EXHIBIT 2

123 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

LG&E Energy Marketing, Inc.

Docket No. ER08-678-000

ORDER ON JURISDICTION

(Issued May 13, 2008)

1. On March 14, 2008, LG&E Energy Marketing, Inc. (LG&E Marketing) submitted for filing pursuant to section 205 of the Federal Power Act (FPA)¹ a Generation Dispatch Support Services Agreement (Support Services Agreement), requesting that the Commission determine that acceptance of the Support Services Agreement is not necessary because the services provided under the Support Services Agreement are not jurisdictional; or in the alternative, that the Commission accept the Support Services Agreement for filing.

2. In this order we find that the Support Services Agreement is not jurisdictional under normal circumstances under section 205 of the FPA and did not have to be filed with us. The Support Services Agreement does not normally involve services that affect or relate to charges, classifications or services over which the Commission has jurisdiction.

Background

3. In the mid-1990s, Big Rivers Electric Corporation (Big Rivers), a rural electric cooperative that is not a public utility as defined in section 201(e) of the FPA,² was operating under Chapter 11 of the Bankruptcy Code.³ During that time, four indirect, wholly-owned subsidiaries of LG&E Energy Corp., Western Kentucky Energy Corp.

¹ 16 U.S.C. § 824d (2000)

² 16 U.S.C. § 824f (2000 & Supp. V 2005).

³ 11 U.S.C. § 1101 *et seq.* (1988).

(WKEC),⁴ WKE Station Two Inc. (WKE Station), Western Kentucky Leasing Corp. (WKLC), and LG&E Marketing (collectively, Original Applicants) entered into an agreement (Reorganization Plan) with Big Rivers. Among other things, the Reorganization Plan provided for the disaggregation of Big Rivers' generating facilities⁵ from its transmission and power supply business and for the leasing and/or assigning of Big Rivers' generation interests to the Original Applicants.

4. The Original Applicants asked the Commission to disclaim jurisdiction under section 203 of the FPA⁶ regarding: (1) the merger of WKLC and WKEC;⁷ (2) operation of Big Rivers' Facilities pursuant to the Western Kentucky Lease;⁸ and (3) the assignment of certain contractual rights and obligations from Big Rivers to WKE Station,

⁴ WKEC is a jurisdictional public utility with market-based rate authority. *See WKE Station Two Inc. and Western Kentucky Energy Corp.*, 82 FERC ¶ 61,178 (1998).

⁵ Big Rivers' facilities consisted of four generating plants owned and operated by Big Rivers (Big Rivers' Facilities) and a generating plant operated by Big Rivers under contract (Station Two Facility) that is owned by the City of Henderson, Kentucky.

⁶ Big Rivers' facilities consisted of four generating plants owned and operated by Big Rivers (Big Rivers' Facilities) and a generating plant operated by Big Rivers under contract (Station Two Facility) that is owned by the City of Henderson, Kentucky.

⁷ The merger of WKLC and WKEC was proposed to occur immediately prior to the commencement of the Western Kentucky Lease. Prior to the merger, Original Applicants stated that WKLC's activities relate solely to non-jurisdictional facilities and services and that it would not own or operate any type of transmission facilities or services.

⁸ The Western Kentucky Lease involved only generating facilities and generation-related assets and all other physical assets owned by Big Rivers and used in connection with the ownership or operation of those generation facilities. The Original Applicants stated that all transmission facilities, transmission-related equipment, contracts for the sale of power, and/or Big Rivers' books and records would not be transferred to WKEC.

pursuant to the Station Two Agreement.⁹ Among other things, Western Kentucky and WKE Station would obtain title to electric energy and capacity produced by Big Rivers' Facilities. They also requested that the Commission accept for filing the rates, terms and conditions for LG&E Marketing's sale of generation-based ancillary services at cost-based rates.

5. In *Western Kentucky Energy Corporation*,¹⁰ the Commission disclaimed jurisdiction under section 203 of the FPA, as requested, and accepted for filing LG&E Marketing's proposed cost-based rates for generation-based ancillary services that Big Rivers had been providing to itself and others.

Proposed Support Services Agreement

6. LG&E Marketing requests that the Commission disclaim jurisdiction or, in the alternative, accept for filing the Support Services Agreement between it and Big Rivers.¹¹ LG&E Marketing states that after the Operating Documents terminate, it will perform services under the Support Services Agreement pursuant to Big Rivers' direction and control. Under the Support Services Agreement, LG&E Marketing will: (1) monitor load signals provided by Big Rivers for each load and any off-system purchase and/or

⁹ Under the Station Two Agreement, WKE Station would operate and maintain the Station Two Facility and certain joint use facilities of Big Rivers and the City of Henderson located at the Reid Facility. WKE Station would also provide operation and maintenance (O&M) services to the Reid Facility and the Common Facilities owned by Big Rivers, as a subcontractor to WKEC. In addition to these services, WKEC would be responsible for preserving and maintaining books, records, and other accounts for procuring and maintaining insurance, and for administering fuel contracts, but Big Rivers would continue to exercise a right of control, review, and approval with respect to these functions. Big Rivers' existing obligations with respect to the transmission facilities at the Station Two Facility were expressly excluded from WKE Station's functions as an assignee.

¹⁰ 83 FERC ¶ 61,336 (1998) (*Western Kentucky*).

¹¹ On March 14, 2008, WKEC, jointly with E.ON U.S. LLC (Applicants), filed an application pursuant to section 203 of the FPA seeking disclaimer of jurisdiction with respect to or, in the alternative, authorization of a disposition of assets by WKEC to Big Rivers (the Transaction). The Transaction is the termination of WKEC's lease, an operating agreement and associated other documents (Operating Documents) so that operational control over Big Rivers' Facilities and ownership of the output of the Facilities (or right to purchase power) will revert to Big Rivers. This filing will be addressed in an order in Docket No. EC08-54-000.

sales commitments implemented by Big Rivers; (2) monitor Big Rivers' balancing authority Area Control Error and regulate Big Rivers' plants to maintain acceptable imbalance error consistent with North American Electric Reliability Corporation (NERC) requirements; (3) assist Big Rivers in regulating its plants so as to economically dispatch those plants' units; (4) assist Big Rivers in allocating spinning and operating reserves among the Big Rivers plants' generation units consistent with the direction of Big Rivers and Southeastern Electric Reliability Council, Inc. and NERC requirements; (5) assist Big Rivers in taking any corrective action during the loss of generation resources from Big Rivers' Facilities consistent with NERC reliability guidelines; (6) assist Big Rivers in implementing generation-based ancillary services from Big Rivers' Facilities in accordance with the direction of Big Rivers; and (7) assist Big Rivers in balancing its inadvertent account.¹² LG&E Marketing states that it will provide these services because it already has in place or has access to the software systems and communication systems necessary to remotely dispatch the generating plants and because Big Rivers will not have these capabilities immediately following the Transaction closing, but must develop them over time.¹³

7. LG&E Marketing emphasizes that Big Rivers will have operational control over the generating plants and that those facilities will be staffed with Big Rivers' personnel. LG&E Marketing also states that all sales decisions and the ultimate decision whether to operate a plant, including the ability to declare a plant to be off-line or out-of-service, will be made by Big Rivers. Only if Big Rivers fails to provide direction with respect to the services described and the failure is likely to result in a system reliability issue, does the Support Services Agreement give LG&E Marketing the limited right to independently dispatch and operate the generating facilities.¹⁴ This limited right terminates when Big Rivers again begins providing LG&E Marketing with the data necessary for LG&E Marketing to perform its functions under Big Rivers' direction.¹⁵

Notice and Pleadings

8. Notice of LG&E Marketing's filing was published in the *Federal Register*, 73 Fed. Reg. 16,000 (2008), with interventions and protests due on or before April 4, 2008. None were filed.

¹² Transmittal Letter at p. 2, citing Support Services Agreement Section 2.1.

¹³ *Id.* at 3.

¹⁴ *Id.* at p. 2, citing Support Services Agreement Section 2.5.

¹⁵ *Id.* at p. 3.

Discussion

9. We find that the Support Services Agreement is not jurisdictional under ordinary circumstances. The issue raised by this filing is whether the Support Services Agreement is required to be filed with the Commission pursuant to section 205 of the FPA. Section 205(c) of the FPA requires public utilities to file “schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations *affecting* such rates and charges, together with all contracts which in any manner *affect or relate* to such rates, charges, classifications, and services.”¹⁶ In *Prior Notice and Filing Requirements Under Part II of the Federal Power Act (Prior Notice)*,¹⁷ the Commission set forth a two-part test for deciding whether an agreement is subject to the Commission’s jurisdiction under section 205 of the FPA. First, is the service at issue tied to wholesale sales or to transmission in interstate commerce or does it in any manner affect or relate to jurisdictional rates or services? Second, does a public utility provide the service? If the answer to both questions is yes, then the agreement is jurisdictional.¹⁸

10. Thus, the relevant question here is whether the Support Services Agreement is a contract that affects or relates to charges or rates over which the Commission has jurisdiction. We find that it is not. LG&E Marketing will perform duties that will help Big Rivers, a non-public utility, to serve its load. Thus, this case is quite different from *Entergy*, where the Commission found that:

[T]he Lease Agreement must be filed under section 205 of the FPA. The O&M services provided by Entergy via the Lease Agreement will affect and relate to jurisdictional transmission services. . . . Under the Lease Agreement, Entergy will operate facilities used to provide transmission services in interstate commerce that are jurisdictional to the Commission under section 205 of the FPA.¹⁹

¹⁶ 16 U.S.C. § 824d(c) (2000) (emphasis added).

¹⁷ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh’g and clarification*, 65 FERC ¶ 61,081 (1993). *See also Entergy Mississippi, Inc.*, 117 FERC ¶ 61,200 (2006) (*Entergy*).

¹⁸ *Entergy*, 117 FERC ¶ 61,200 at P 26.

¹⁹ *Id.* P 27.

11. Here in contrast, the service that is affected by the Support Services Agreement is not under the Commission's jurisdiction.

12. The Support Services Agreement provides that under rare circumstances, LG&E Marketing may be required to perform certain functions that may be jurisdictional. However, LG&E Marketing maintains that these rare instances will be short-lived. Because LG&E Marketing will only perform functions under the Agreement that may be jurisdictional in rare circumstances for a limited time, under the "rule of reason," we will not require it to file the Support Services Agreement with us if it temporarily assumes these functions.²⁰

The Commission orders:

LG&E Marketing's request that the Commission disclaim jurisdiction over the Support Services Agreement is hereby granted in part, for the reasons stated herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁰ The Commission's policy is to apply the "rule of reason" to determine which jurisdictional agreements must be filed with it. See *Pacific Gas and Electric Company*, 7 FERC ¶ 61,267, at 61,565 (1979) (*Pacific Gas*), *aff'd sub nom. Pacific Gas and Electric Co. v. FERC*, 679 F.2d 262 (D.C. Cir. 1982). See also *Commonwealth Edison Company, order on remand*, 21 FERC ¶ 61,096, at 61,294 (1982) (*Commonwealth Edison*). Such an action by the Commission does not make an agreement non-jurisdictional; it merely means that the Commission has decided that it does not need a public utility to file the agreement. Cf. *Public Service Company of Colorado*, 67 FERC ¶ 61,371 (1994).

EXHIBIT 3

UNITED STATES OF AMERICA 123 FERC ¶ 62,153
FEDERAL ENERGY REGULATORY COMMISSION

Western Kentucky Energy Corp.
E. ON U.S. LLC

Docket Nos. EC08-54-000

ORDER AUTHORIZING DISPOSITION OF
JURISDICTION FACILITIES

(Issued May 22, 2008)

On March 14, 2008 Western Kentucky Energy Corp. (WKEC) and E. ON U.S. LLC (E. ON U.S.) on behalf of an affiliate that is not yet formed (E. ON U.S. Sub) (collectively, Applicants) filed an application under section 203 of the Federal Power Act (FPA)¹ requesting the Commission authorize or, in the alternative, disclaim jurisdiction over the disposition of certain generation facilities from WKEC and E. ON U.S. to Big Rivers Electric Corporation (Big Rivers). The disposition consists of the termination of WKEC's lease, an operating agreement and associated documents (Operating Documents), pursuant to which operating control over five generation facilities, and ownership of the output of the facilities (or right to purchase power), will revert to Big Rivers.

Although Applicants state that the proposed transaction may not require Commission approval under section 203, they ask the Commission to approve their application if such approval is required. This order approves the transaction without making any determination of jurisdiction.²

WKEC, a power marketer that sells energy and capacity at market-based rates, is an indirect, wholly-owned subsidiary of E. ON U.S., which in turn, is an indirect, wholly-owned subsidiary of E. ON AG, an international energy company. E. ON U.S. also owns, among others, two wholly-owned franchised utility subsidiaries, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU). While both LG&E and KU provide wholesale electric service in portions of Kentucky and Virginia, neither have retail customers nor requirements or partial requirements wholesale customers in the Big Rivers control area.

¹ 16 U.S.C. § 824b (2000), amended by the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594 (2005) (EPAAct 2005).

² See, *Ocean State Power*, 47 FERC ¶ 61,321 (1989).

E ON U.S. anticipates creating a new subsidiary for the sole purpose of participating in a “put” agreement with Bluegrass Leasing. The E ON U.S. Sub will neither own, operate nor control generation or transmission assets, and will not be a holding company as such term is defined in the Public Utility Holding Company Act of 2005 (PUHCA 2005).³

In the instant transaction, WKEC and Big rivers propose to terminate the lease and power purchase transactions (among others) entered into in 1998. WKEC, Big Rivers and the City of Henderson, Kentucky and the City of Henderson Utility Commission doing business as Henderson Municipal Power & Light (jointly, the City) will terminate the arrangements under which WKEC operates the City’s Station Two and purchases Station Two power from the City (Station Two Agreement). According to the terms of the Station Two Agreement, the operating agreement and related agreements between Big Rivers and the City that were in effect prior to the execution of the Station Two Agreement in 1998 would be reinstated.⁴ Thus, control of all of the generating units presently operated by WKEC, and ownership of the generating output from all of the units would return to Big Rivers.

In addition, an ancillary component of the proposed transaction is E. ON U.S. Sub’s grant of a “put” right to Bluegrass Leasing. Bluegrass Leasing holds passive, indirect, partial leasehold interests in two of Big Rivers’ units through three financing trusts and it will continue to hold these interests following the transaction. Under the “put” arrangements, Bluegrass Leasing will have the option to assign to E. ON U.S. Sub all of its passive investment interests in those trusts upon the occurrence of certain credit-related trigger events set forth in the Put Agreement Term Sheet. If Bluegrass Leasing exercises its “put” right, then the E. ON U.S. Sub will step into Bluegrass Leasing’s role as a passive, upstream owner. If Bluegrass Leasing exercises its put right, provided there is an existing trigger event permitting it to do so, E. ON U.S. Sub intends to immediately transfer the passive interests in the trusts via an existing swap agreement to Ambac Credit Products, LLC as soon as possible.

Following termination of the 1998 lease, power purchase and related transactions, LG&E Energy Marketing Inc. (LEM) and WKEC will commence providing certain services to Big Rivers to aid it with the transition of the generating plant responsibilities.

³ Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594 (2005).

⁴ Big Rivers and the City, according to the application, continue their negotiations regarding the reinstatement of these agreements.

LEM will perform certain services under the Generation Dispatch Support Services Agreement (GSSA), for Big Rivers up to 18 months following the transaction closing. LEM will: (a) monitor load signals provided by Big Rivers for each load and any off-system purchase and/or sales commitments implemented by Big Rivers; (b) monitor Big Rivers' balancing authority Area Control Error and regulate Big Rivers' plants to maintain acceptable imbalance error consistent with NERC requirements; (c) assist Big Rivers in regulating its plants so as to economically dispatch those plants' units; (d) assist Big Rivers to allocate spinning and operating reserves among the Big Rivers plants' generation units consistent with the direction of Big Rivers and SERC and NERC requirements; (e) assist Big Rivers to take any corrective action during the loss of generation resources from the Big Rivers plants consistent with NERC reliability guidelines; (f) assist Big Rivers to implement generation-based ancillary services from Big Rivers plants in accordance with the direction of Big Rivers; and (g) assist Big Rivers in balancing its inadvertent account.

WKEC will make certain software and associated systems available under the Information Technology support Services Agreement (ITA), for Big Rivers' use to assist in the operation of the business. WKEC will also provide certain services to Big Rivers in support of its use of that software and associated systems up to 18 months following the transaction closing.

Applicants state that the proposed transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation, nor will it result in any cross-subsidization or the pledge or encumbrance of utility assets to any associated company. With respect to the effect on competition, the Applicants state that returning operational control of the generating facilities to Big Rivers will not result in any increase in concentration of control over generation in Big Rivers balancing authority area. In support, Applicants assert that Big Rivers does not presently own or control any generation other than its existing interest in the generation facilities that are under lease to WKEC and its right to operate Station Two upon termination of WKEC's contractual right to operate Station Two for the duration of the 1998 lease transaction.

With respect to vertical market power concerns, Applicants argue that no transmission facilities are being transferred as part of the transaction and Big Rivers provides service on its transmission system under an Open Access Transmission Tariff (OATT). Applicants conclude that the proposed transaction will not result in any increase in market power or create an ability to erect barriers to entry by others.

In regard to rates, Applicants state that the transaction will not affect rates because it is subject to the consent of all affected wholesale requirements customers including the City. They note that all wholesale requirements customers will continue to receive service at regulated rates. In addition, they state that Big Rivers' power contracts with its members and the City are subject to the approval of the Kentucky Public Service

Commission (KPSC) and the Rural Utilities Service (US Department of Agriculture) (RUS).⁵

With respect to regulation, Applicants state that regulation by the Commission over WKEC will not change as a result of the transaction. In addition, Applicants state that the transaction will not affect state jurisdiction because Big Rivers will remain subject to regulation by the KPSC and RUS.

Applicants assert that based on facts and circumstances known or that are reasonably foreseeable, the transaction will not result in, at the time of the transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. Applicants assert that the transaction falls within one of the “safe Harbors” adopted by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required.⁶ Applicants more specifically state that they are not franchised public utilities with captive customers, and no franchise public utility affiliates are involved in the transaction.

The filing was noticed on March 20, 2008, with comments, protests, or interventions due on or before April 4, 2008. Big Rivers filed a timely motion to intervene and comments in support of the filing. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

After consideration, it is concluded that the proposed transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the

⁵ Application at 24-25.

⁶ FPA *Section 203 Supplemental Policy Statement* (Docket No. PL07-1-000) 120 FERC ¶ 61,060 (2007) at P. 19.

Commission;

- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (5) If the transaction results in changes in the status or the upstream ownership of Applicants' affiliated Qualifying Facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the transaction; and
- (7) Applicants shall notify the Commission within 10 days of the date that the merger has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Tariffs and Market Development - West, under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Steve P. Rodgers
Director
Division of Tariffs and Market Development - West