

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)	
CORPORATION, (II) APPROVAL OF)	
TRANSACTIONS, (III) APPROVAL TO ISSUE)	CASE NO. 2007-00455
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)	

COMMISSION STAFF'S FIRST DATA REQUEST TO
THE ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY

The Attorney General of the Commonwealth of Kentucky ("AG"), pursuant to 807 KAR 5:001, is to file with the Commission the original and 6 copies of the following information, with a copy to all parties of record. The information requested herein is due on or before April 17, 2008. Responses to requests for information shall be appropriately bound, tabbed and indexed. Each response shall include the name of the witness responsible for responding to the questions related to the information provided.

Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and

accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

The AG shall make timely amendment to any prior responses if he obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect. For any requests to which the AG fails or refuses to furnish all or part of the requested information, he shall provide a written explanation of the specific grounds for his failure to completely and precisely respond.

Careful attention should be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request. When applicable, the requested information shall be separately provided for total company operations and jurisdictional operations.

1. For each of the mechanisms or rate-making treatments listed below, state "yes" if the AG is of the opinion that the Commission has the statutory authority to approve and allow its implementation or state "no" if the AG's opinion is that the Commission lacks such authority. For each "yes" response, identify the specific statute(s) under which the Commission's approval authority is based.

- a. Smelter Times Interest Earned Ratio ("TIER") Adjustment.
- b. Smelter Non-Fuel Adjustment Clause Purchased Power Adjustment ("Non-FAC PPA").
- c. Smelter Surcharge 1.
- d. Smelter Surcharge 2.

- e. Smelter Equity Development Credit.
- f. Non-Smelter Member Discount Adjustment.
- g. Non-Smelter “GRA.”
- h. Non-Smelter Unwind Surcredit.
- i. Non-Smelter Member Rate Stability Mechanism, related to the Economic Reserve.
- j. Non-Smelter TIER-Related Rebate.
- k. Non-Smelter Non-FAC Purchased Power Regulatory Assets and Regulatory Liabilities.
- l. Non-Smelter Non-FAC PPA.¹
- m. Fuel Adjustment Clause.

2. If the AG is unable to respond to each sub-part of Item 1 above, by definitively stating either “yes” or “no,” explain in detail when the AG will be able to provide a definitive “yes” or “no” answer.

3. Is it the AG’s recommendation that the Commission grant final approval of the proposed Unwind Transaction, including approval of each rate mechanism and rate treatment enumerated in Item 1 above, before the AG expresses an opinion in this case on the Commission’s statutory authority to approve and implement each rate mechanism and rate treatment? If no, explain in detail when and how the AG intends to express such an opinion in this case.

¹ See Application Exhibit 10, page 84 of 130; Big Rivers’ Response to the Commission Staff’s First Data Request, Item 34; and Big Rivers’ Response to the Commission Staff’s Supplemental Data Request, Item 15.

4. Does the AG believe that it would be prudent and reasonable for Big Rivers Electric Corporation (“Big Rivers”) to consummate the proposed Unwind Transaction prior to a final, non-appealable decision on the Commission’s statutory authority to approve rate surcharges in the case of Public Service Commission, et al. v. Commonwealth of Kentucky ex rel. Stumbo, 2007-CA-001635 (Ky. App.)? If yes, explain in detail why an affirmation of the underlying Franklin Circuit Court decision would not negate the Commission’s authority to approve and implement the proposed rate mechanisms and rate-making treatments enumerated in Item 1 above.

5. Is the full position of the AG on the Unwind Transaction reflected in the direct testimony of his witness, David Brevitz? If no,

a. Explain why the AG has not revealed his full position on the proposed Unwind Transaction to the Commission and the parties.

b. Explain in detail when and how the AG will reveal his full position on the Unwind Transaction to the Commission and the parties.

6. Refer to the Direct Testimony of David Brevitz (“Brevitz Testimony”), pages 47 through 50. Mr. Brevitz states eight conclusions based on his review of the case record. In conclusion No. 1 on pages 47-48, Mr. Brevitz notes the absence of several significant items from the record. He also states, “The Commission could reasonably hold this proceeding in abeyance until these matters have been accomplished and addressed through additional discovery and analysis presented before the Commission.” However, at page 50, Mr. Brevitz makes a “provisional recommendation” that the Commission approve the Unwind Transaction, subject to 17 specific conditions.

a. Explain what Mr. Brevitz means when he says that his recommendation is “provisional.”

b. Given the outstanding issues noted in Mr. Brevitz’s conclusion No. 1 on page 47, lines 21-28, explain in detail why he is making a provisional recommendation to approve the Unwind Transaction rather than making a recommendation to hold the proceeding in abeyance until there is a final resolution of the outstanding issues.

c. In making his “provisional recommendation” and proposed condition No. 1 on page 50, is Mr. Brevitz assuming that additional procedural steps will be established to afford discovery, supplemental testimony, and a hearing on the resolution of the outstanding issues, or is the AG waiving any right to such additional procedural steps?

7. Refer to the Brevitz Testimony, pages 50 through 52. Mr. Brevitz has recommended that 17 conditions be included as part of the Commission’s approval of the proposed Unwind Transaction.

a. In condition Nos. 3, 11, 14, and 16, Mr. Brevitz requires that Big Rivers advise the AG of the occurrence of certain material changes or events. None of the remaining 13 conditions include this requirement. Explain in detail why Mr. Brevitz believes the AG needs to be advised of these particular changes or events.

b. Explain why Mr. Brevitz does not believe that the AG needs to be advised on other changes included in the recommendations, such as changes in environmental regulations that would have a material financial effect on Big Rivers, changes in the Smelter contracts, or changes in labor union agreements.

c. In condition No. 1, on page 50, Mr. Brevitz states that if the resolution of a pending matter would unfavorably impact the Unwind Financial Model base case rates and results, "E.ON and/or the smelters must step forward to fund and eliminate those unfavorable impacts in order to restore the 'base case' projections." Explain in detail how the Commission can make and enforce such a requirement on "E.ON and/or the smelters."

d. Condition No. 6 on page 51 appears to be missing some text. Provide the complete text of the condition.

e. Condition No. 9 on page 52 states in part that Big Rivers will continue to employ at least the same level of workforce as it currently employs. Does Mr. Brevitz mean the workforce level discussed in the application or the workforce level actually in place after the consummation of the Unwind Transaction? Explain the response.



Stephanie Stumbo
Executive Director
Public Service Commission
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DATED: April 10, 2008

cc: Parties of Record