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PUBLIC SERVICE
COMMISSION

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, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc. (collectively "Applicants" or "E.ON Entities") 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 to certain information the Applicants seek to provide in response to the Attorney General's ("AG") October 24, 2008 Supplemental Request for Information Nos. 4 and 10, as well as, No. 1 which requests an update of information provided in response to the Attorney General's Initial Request for Information Dated February 1, 2008, Item No. 100, and information provided in response to the Attorney General's Supplemental Request for Information dated February 27, 2008, Item Nos. 8, 10, 13, 14, 16, 20, 22, 24, 26, 28, 33, 36, 37, 41, 43, 46, 58, 59. In support of this Petition, the Applicants state as follows:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the

confidentiality of the information, a party must demonstrate that disclosure of the commercial information would permit an unfair advantage to competitors of the party seeking confidentiality. Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The Attorney General's October 24, 2008 Supplemental Request for Information, Item No. 4 seeks information regarding the "resolution" of four "Existing Contract Disputes." Item No. 10 seeks copies of communications regarding the unwind transaction between the Applicants and the City of Henderson/ Henderson Municipal Power and Light. These documents contain confidential information regarding potential claims, contract rights, costs, plant conditions and offers of settlement and compromise which are typically kept confidential between counterparties so as to avoid the appearance of concession. This information is confidential and proprietary and its public disclosure would permit an unfair commercial advantage to the Applicants' competitors in the wholesale power market.

3. The Attorney General also seeks an update of the information that the Applicants provided in response to Item No. 100 of the Attorney General's February 1, 2008 Initial Request for Information concerning the E.ON/LEM view of operating budgets, including costs and revenues. This information concerns confidential and proprietary information related to nonregulated businesses that are competitive and that are not rate-protected by the regulatory compact. This is the type of information which would enable the Applicants' competitors to discover, and make use of, confidential information concerning its financial condition and business strategies, to the unfair competitive disadvantage of the E.ON Entities. The Applicants are not required to file, or make public, similar proprietary information. Indeed, the Commission has agreed that such information warrants protection and granted confidential protection to the

Applicants' original response to this data request. (See The Commission's April 29, 2008 letter granting confidential protection attached hereto.)

4. Additionally, an update of the information the Applicants provided in response to the Attorney General's February 27, 2008 Supplemental Request for Information, Item Nos. 8, 10, 13, 14, 16, 20, 22, 24, 26, 28, 33, 36, 37, 41, 43, 46, 58, 59 contain further explication related to the confidential budget information provided in response to the Attorney General's Initial Data Request, No. 100. As above, the confidential business information disclosed to the Commission in response to these data requests, concerning the E.ON capital budgets, is the type of 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. The Commission also granted confidential protection to the Applicants' original responses to these data request. (The Commission's May 15, 2008 letter granting confidential protection is also attached hereto.)

5. The confidential and proprietary financial and business information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 6 1.878(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.

6. The information for which the Applicants are seeking confidential treatment is maintained internally by the E.ON Entities and by other parties to this case who have a business need to know this information. It is not on file with the FERC, SEC or other public agency.

7. The information provided in the Applicants’ response to the Attorney General’s October 24, 2008 Supplemental Data Requests demonstrates on its face that it merits confidential protection. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of the Applicants 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).

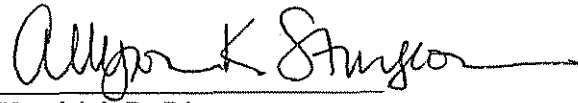
8. The Applicants do not object to disclosure of the confidential information, pursuant to a protective agreement, to intervenors and others with a legitimate interest in this information. In accordance with the provisions of 807 KAR 5:001 Section 7, one copy of the confidential information contained in the Applicants’ response to the Attorney General’s Supplemental Request for Information Nos. 4 and 10, as well as, No. 1 which requests an update of information provided in response to the Attorney General’s Initial Request for Information Dated February 1, 2008, Item No. 100, and information provided in response to the Attorney

General's Supplemental Request for Information dated February 27, 2008, Item Nos. 8, 10, 13, 14, 16, 20, 20, 22, 24, 26, 28, 33, 36, 37, 41, 43, 46, 58, 59 is highlighted on yellow paper and ten (10) copies of the response without the confidential information is herewith filed with the Commission.

WHEREFORE, E.ON U.S. LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc. respectfully request 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.

Dated: November 7, 2008

Respectfully submitted,



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CERTIFICATE OF SERVICE

It is hereby certified that this 7th day of November, 2008, I have served the foregoing by U.S. Mail, postage prepaid, upon the following:

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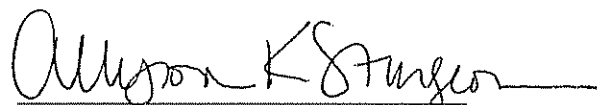
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