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December 1, 2008

VIA HAND DELIVERY

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RECEIVED

DEC 01 2008

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 Ms. O'Donnell:

Enclosed for filing in the above-referenced case are an original and ten copies of E.ON U.S. LLC's Petition for Confidential Treatment. Please acknowledge receipt of this filing by placing your file-stamp on the extra copy and returning to us via our runner.

Yours very truly,

Sarah K. M. Adams

SKA: jms

cc: Parties of Record

400001 358719/552683 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)	

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DEC 01 2008

**PUBLIC SERVICE
COMMISSION**

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 filed 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 (“Updated Response”) on the grounds that the information is confidential and proprietary. The Updated Response contains confidential and proprietary information relevant to the financial conditions affecting an unregulated entity, similar to information previously filed with the Commission on February 14, 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 Updated Response filed today is also entitled to confidential protection and for the same reasons.

GROUNDS 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. This information is not on file with the FERC, SEC or other public agency, 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, and is limited in distribution to those employees who have a business reason to have access to such 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 and Big Rivers Electric Corporation pursuant to a protective agreement.

7. In accordance with the provisions of 807 KAR 5:001 Section 7, one copy of the Updated Response with the confidential information is highlighted on yellow paper and ten (10) copies of the Updated Response without the confidential information is herewith filed with the Commission.

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: December 1, 2008

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sarah K. M. Adams".

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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 1st day of December 2008, upon the following persons:

C. William Blackburn
Big Rivers Electric Corporation
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Boehm, Kurtz & Lowry
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Counsel for E.ON U.S. LLC, Western
Kentucky Energy Corp. and LG&E Energy
Marketing, Inc.

E.ON U.S. LLC

**UPDATED Response to the AG's Request for Information
Dated February 1, 2008**

Updated Response filed December 1, 2008

Case No. 2007-00455

Question No. 83

Witness: Paul Thompson

Q-83. Please reference the testimony of Paul W. Thompson, page 13, regarding "WKEC has agreed to pay to the smelter customers, collectively, at the closing a sum of money in immediately available funds." State the amount of that sum of money.

A-83. Please see the attached.

Amount	Notes	Supplemental Documentation
<p>\$70 million (Escrow)</p> <p><u>Allocation</u></p> <p>Alcan: \$30,305,882.40</p> <p>Century: \$39,694,117.60</p>	<p>Paid into Escrow at Closing into separate Fuel Subaccounts; Portions may be withdrawn monthly to the extent the actual fuel adjustment factor exceeds an index factor (to compensate Smelters for higher than anticipated fuel costs; if one Smelter terminates the Smelter Retail Agreement (i.e. shuts down), then the remaining balance in the Fuel Subaccount of the withdrawing Smelter shall be transferred to the remaining Smelter. If the remaining Smelter shuts down (or if both Smelters shut down at the same time), then any amounts remaining in the Fuel Subaccount will be disbursed to that Smelter (or the amounts remaining in each Fuel Subaccount will be disbursed to each of the Smelters).</p>	<p>“In addition, WKE will deliver to a financial institution at closing a cash payment in the amount of \$70,000,000 to be held in escrow by a financial institution for a ten-year period following the date of the closing, for the purpose of providing the smelter load a financial source for monthly rebates associated with the recent increases in the forecasted costs of fuel required for the operation of the generation stations to serve the smelter load.” Revisions to the Testimony of Paul Thompson, submitted June 11, 2008, page 3, lines 17-22.</p> <p>“1. Incremental Fuel Costs. In April 2008, Big Rivers and Western Kentucky Energy Corporation, a subsidiary of E.ON, confirmed from new bids received from coal suppliers that the price of coal for 2009-11 had risen significantly over the projected cost set forth in the financial model prepared by Big Rivers and filed with the Kentucky Public Service Commission (“KPSC”) in Case No. 2007-00455 (the “December Model”), which costs were also carried over to the April, 2008 financial model. The incremental fuel costs presented an impediment for both the Smelters and the Non-Smelter Members of Big Rivers (the “Members”) to proceed with the Unwind Transaction. Good faith negotiations were undertaken which concluded with the following agreements to become effective with consummation of the Unwind Transaction (but not before):... (ii) E.ON would fund a fuel reserve of \$70,000,000 for the benefit of the Smelters...” Supplemental Testimony of Paul A. Thompson, submitted October 9, 2008, Exhibit PWT-4, Memorandum of Understanding.</p>
<p>\$ 17.5 million (Escrow)</p> <p><u>Allocation</u></p> <p>Alcan \$15 million</p> <p>Alcan and Century</p> <p>Approximately</p>	<p>\$15 million to be paid into Escrow at Closing into Alcan Reserve Subaccount B. Account to be distributed to Alcan as follows: 6 months after Closing - \$5 million; 18 months after Closing - \$5 million; and 30 months after Closing - \$5 million. If Alcan withdraws (i.e. shuts down) prior to 30 months after Closing, then remaining balance in Alcan Reserve Subaccount B will be transferred to Century’s Fuel Subaccount. If Century has already shut down at the time Alcan gives Withdrawal Notice, then account disbursed as provided for Fuel Subaccount.</p> <p>\$2.5 million paid into escrow at Closing into separate Century</p>	<p>“In addition to the consideration as described in my original testimony on December 17, 2007 and in my revised testimony on June 11, 2008; the E ON Parties have agreed to make a lump sum payment, to the smelters’ escrow agent under the escrow agreement; and those funds will be distributed by the escrow agent to the smelters pursuant to the escrow agreement (in proportions agreed between them) over a thirty month period following the date of the closing.” Supplemental Testimony of Paul A. Thompson, submitted October 9, 2008, page 9, lines 11-16</p> <p>“2. Escrow Funds. Contemporaneously with the Closing, the <u>aggregate</u> amount of Eighty-Seven Million Five Hundred Thousand Dollars (\$87, 500,000) has been deposited by E.ON in escrow with the Escrow Agent,</p>



<p>\$2.5 million (amount to be finalized at closing)</p>	<p>Reserve Subaccount A and Alcan Subaccount A Each of the accounts to be distributed to the corresponding Smelter 6 months after Closing. If a Smelter gives a Withdraw Notice (i.e. shuts down) during the 6 month period, then the account of the Smelter or Smelter so withdrawing is disbursed to the Northwest Kentucky Forward Economic Development.</p>	<p>by delivery of wire transfers in immediately available funds to the Escrow Account, pursuant to agreement with the Smelters.” (emphasis added) Supplemental Testimony of Paul A. Thompson, submitted October 9, 2008, Exhibit PWT-4, Smelter Agreement.</p>
<p>\$ [REDACTED] (in immediately available funds)</p> <p><u>Allocation</u></p> <p>Alcan \$ [REDACTED]</p> <p>Century \$ [REDACTED]</p>	<p>Paid to Smelters at Closing.</p>	<p>“Therefore, WKEC, Alcan and Century hereby agree that, upon the Closing and, as contemplated in the Termination Agreement... WKEC shall pay to Alcan and Century, collectively, the aggregate sum of [REDACTED] in immediately available funds (the “Closing Payment”) such amount to be divided between Alcan and Century in the manner directed jointly by Alcan and Century to WKEC in writing prior to the Closing...” Letter Dated November 5, 2007 from Western Kentucky Energy to Alcan Primary Products Corporation and Century Aluminum of Kentucky General Partnership.</p>



Steven L. Beshear
Governor

Robert D. Vance, Secretary
Environmental and Public
Protection Cabinet

Larry R. Bond
Commissioner
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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
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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

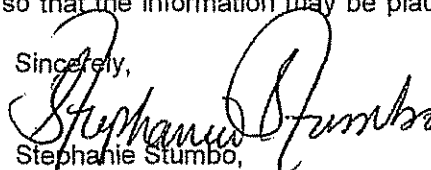
Sirs/Madams:

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.ON\LEM'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