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April 14, 2009

RECEIVED

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**PUBLIC SERVICE
COMMISSION**

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 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 Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of E.ON U.S. LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing Inc.'s Petition for Confidential Treatment in the above-referenced matter. Please confirm your receipt of this filing 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.

Should you have any questions please contact me at your convenience.

Yours very truly,

Kendrick R. Riggs

KRR:ec
Enclosures
cc: Parties of Record

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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 (“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 in the attached Summary distributed in a redacted form to the parties and Commission Staff at the April 9, 2009 Informal Conference (the “Confidential Information”). Specifically, the Confidential Information concerns specific financial details with regard to a form of consideration to be conveyed by the E.ON Entities to Big Rivers Electric Corporation in connection with securing the consents of certain interested, non-jurisdictional parties to the transaction that is the subject of this case. The Confidential Information is proprietary information relevant to the potential financial issues

between unregulated entities. Thus, it is similar to information previously filed herein by the E.ON Entities under confidential seal in this case. The E.ON Entities submit that the Confidential Information filed today also is entitled to confidential protection and for the same reasons.

GROUND 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 Confidential Information is commercial and proprietary information related to the potential financial issues between E.ON Entities' nonregulated business and other non-jurisdictional, non-regulated counter-parties that is competitive and that is not rate-protected by the regulatory compact. Public disclosure of the Confidential Information would enable the E.ON Entities' competitors to discover, and make use of, confidential information concerning the E.ON Entities' financial and business strategies, to the unfair competitive disadvantage of the E.ON Entities.

2. The Confidential Information 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 the

E.ON Entities' nonregulated rather than regulated activities. 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 transactional competitors could use to the E.ON Entities' competitive disadvantage. The E.ON Entities' transactional competitors are not required to file, or to make public, similar proprietary information.

4. The Confidential Information 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 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 Confidential Information to the Attorney General pursuant to a protective agreement.

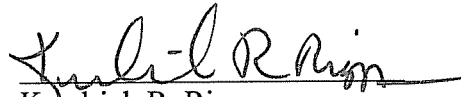
7. In accordance with the provisions of 807 KAR 5:001(7), the E.ON Entities file herewith, under seal, one (1) highlighted version of their Confidential Information and also file on this date an original and ten copies of the Confidential Information redacted for placement in the public record.

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: April 14, 2009

Respectfully submitted,



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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 14th day of April 2009, upon the following persons:

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Counsel for E.ON U.S. LLC, Western
Kentucky Energy Corp. and LG&E Energy
Marketing, Inc.

Summary Description of Proposed Indemnity in favor of Big Rivers

1. E.ON U.S. would indemnify Big Rivers against certain financial consequences of an interpretation of the Excess Henderson Energy provisions of the Station Two Power Sales Contract, adopted by a court, arbitrator or the KPSC prior to December 31, 2023, that is contrary to Big Rivers' and E.ON's understanding of the intended meaning and scope of those provisions (despite the fact that both parties believe there is little or no risk that a suit, arbitration or other action by HMPL asserting such a contrary interpretation would be successful).

2. The scope of the indemnity would be limited to financial consequences associated with Excess Henderson Energy that is generated between the unwind closing date and December 31, 2023 (or the date of an earlier termination of the Power Sales Contract).

3. In the event and to the extent that Big Rivers makes payments or delivers Excess Henderson Energy prior to the court, arbitration or KPSC decision described above, E.ON would protect Big Rivers from 75% of certain financial consequences of that performance, pending the issuance of the court, arbitration or KPSC decision described above. However, once Big Rivers' 25% share reached \$ [REDACTED], E.ON would be responsible for 100% of those financial consequences thereafter. If a court, arbitrator or the KPSC thereafter adopts the contrary interpretation described in Paragraph 1 above, E.ON would also indemnify Big Rivers against that initial \$ [REDACTED] outlay.

4. The financial consequences that would be the subject to the indemnity would exclude the costs that would have been incurred by Big Rivers to acquire the Excess Henderson Energy had Big Rivers and HMP&L executed at the unwind closing the amendment to the Power Sales Contract that was previously proposed by Big Rivers (and approved by the KPSC) but rejected by HMP&L (generally, \$2.50 per Mwh plus the costs for fuel, reagent, allowances, carbon taxes (if enacted) and sludge disposal).

5. The indemnity, payment and reimbursement obligations described above would be subject to an aggregate maximum cap of \$ [REDACTED].

6. The indemnity commitment could not be expanded by amendments or modifications to the Power Sales Contract following the unwind closing, and any increases in HMP&L's capacity share from Station Two (which would correspondingly increase the pool of potential Excess Henderson Energy) would be limited to increases permitted by the existing contract.

7. Big Rivers would commit to initiate a declaratory judgment action or other action, suit or proceeding to resolve any dispute with HMP&L over the parties' rights and obligations under the Excess Henderson Energy provisions, if requested by WKE. WKE would have the right to control that action, as well as the defense of any similar action, suit or proceeding initiated by HMP&L or any other party. WKE would reimburse Big Rivers for 75% of its litigation costs, up to \$ [REDACTED].

8. The indemnity would contain standard exclusive remedies language and disclaimers of incidental and consequential damages.