

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

THE APPLICATION OF THOROUGHBRED)	
GENERATING COMPANY, LLC FOR A MERCHANT)	CASE NO.
POWER PLANT CONSTRUCTION CERTIFICATE)	2002-00150
IN MUHLENBERG, COUNTY, KY)	

REBUTTAL TESTIMONY
OF
JACOB WILLIAMS, VICE PRESIDENT OF
PEABODY HOLDING COMPANY, INC.

October 13, 2003

1 **Q. What is the purpose of your Prefiled Rebuttal Testimony?**

2 A. The primary purpose of my Prefiled Rebuttal Testimony is to respond to certain
3 statements in the Prefiled Testimony of David Spainhoward and Travis Housely filed on
4 behalf of Big River Electric Corporation ("BREC").

5 **Q. Do you agree with the concerns expressed by BREC regarding the cost of the**
6 **upgrades needed to its transmission system to support Thoroughbred's proposed**
7 **Facility?**

8 A. No, I do not. Thoroughbred is prepared to pay for the cost of any new
9 transmission or other facilities required for interconnection to the BREC transmission
10 system in which case Thoroughbred will receive transmission credits to recover these
11 costs until all such costs are recovered. After such time as the transmission credits are
12 fully used, Thoroughbred, or its customers, will pay BREC its approved transmission tariff
13 for service. The described arrangement ensures that BREC does not bear the risk of the
14 cost of these facilities during their construction and initial use by Thoroughbred. In an
15 e-mail dated April 22, 2003, BREC, after consulting with its counsel, appears to agree
16 with this form of crediting mechanism for transmission, a copy of BREC's April 22, 2003
17 e-mail is attached hereto as Exhibit A.

18 However, Thoroughbred is not required to pay the cost of the new transmission or
19 other facilities required to interconnect to the BREC transmission system and then pay a
20 transmission service charge without receiving any transmission credits. Many of the
21 transmission facilities that will be added to BREC's transmission system will benefit
22 BREC and the Kentucky Transmission Grid. The transmission system upgrades are
23 required for BREC to collect the up to \$9 Million per year in revenues that transmission

1 service from Thoroughbred will generate for BREC. Thoroughbred does not understand
2 BREC's concern because BREC will be building facilities paid for by Thoroughbred for
3 which it will then receive transmission revenues from Thoroughbred (or its customers).

4 Moreover, BREC's concern that the cost to maintain these facilities is a risk for
5 BREC is misplaced. Again, the construction of the necessary facilities will have been
6 paid for completely by Thoroughbred. In the unlikely event that the constructed facilities
7 are not being used by Thoroughbred or its customers, BREC will not be required to
8 maintain them and may abandon them as appropriate.

9 Finally, BREC seems to express concern that Thoroughbred will somehow bypass
10 the use of these facilities. However, there is no scenario in which Thoroughbred's
11 proposed Facility is constructed and in operation by which Thoroughbred could bypass
12 the use of BREC's transmission facilities. In any event, the transmission facilities will
13 have already been paid for by Thoroughbred and be owned by BREC.

14 **Q. Do you agree with Mr. Spainhoward's characterization of the meeting between the**
15 **parties described at pages 4 and 5 of his Prefiled Testimony?**

16 **A.** No, I do not. Mr. Spainhoward mischaracterizes the position taken by
17 Thoroughbred representatives on locating Thoroughbred's proposed Facility at BREC's
18 D.B. Wilson site at the February 27, 2001 meeting between the parties. Thoroughbred
19 representatives indicated they would not stop the air permitting process for
20 Thoroughbred's proposed Facility (there was no siting law until April of 2002).
21 Thoroughbred representatives indicated they would continue to discuss any potential
22 expansion of the D.B. Wilson site, but would continue their parallel effort of obtaining an

1 air permit for Thoroughbred's proposed Facility. Thoroughbred did not foreclose the
2 possibility that the expansion at the D.B. Wilson site might serve some of its needs,
3 although any such expansion would not likely be of the scale Peabody desired for
4 Thoroughbred to take advantage of economics of scale for work force mobilization and
5 state of the art coal plant technology. Given that after almost three years, BREC has not
6 filed an application for an air permit for a D.B. Wilson site expansion, and therefore is
7 several years behind in the development process of any such expansion, Thoroughbred's
8 decision to proceed with permitting the proposed Facility appears extremely prudent.

9 Peabody Energy and its affiliates continue to be supportive of BREC's expansion
10 of the D.B. Wilson site along with any other well-conceived new coal project in Kentucky
11 and throughout the rest of the nation. In our Prefiled Testimony, we indicated concerns
12 over how BREC could develop such a project. Peabody continues to have those concerns
13 most of which do not appear to be disputed by BREC. Having concerns about how a
14 project will be developed does not mean Peabody would not like such a project
15 developed. Peabody Energy participated in good faith efforts with BREC, Western
16 Kentucky Energy, ALCAN, Century and Kenergy in discussing how to develop the
17 proposed expansion of the D.B. Wilson site.

18 Again, as mentioned in my Prefiled Testimony, on or about February 23, 2001,
19 Peabody, BREC and others executed a Confidentiality Agreement to share information
20 regarding Thoroughbred's proposed Facility and the generation opportunities in the area
21 and would not have done so if these conversations had been as casual as BREC implies.
22 Peabody Energy provided significant development insights for the effort in the area of air

1 permitting, capital cost of the project, development cost and timeframes, all based on our
2 Thoroughbred experience. In addition, Peabody Energy agreed to allow BREC to review
3 the transmission interconnection results from the Thoroughbred analysis to provide the
4 group an insight into the transmission that would be required to interconnect the D.B.
5 Wilson plant to the existing Transmission Grid in Kentucky. Peabody Energy
6 legitimately indicated its continued participation was premised on all of the parties
7 refraining from negatively intervening in Thoroughbred's Application in this proceeding.

8 **Q. Do you have any comments to Mr. Housley's concerns about Thoroughbred's**
9 **proposed Facility adversely impacting the reliability of service for BREC's retail**
10 **customers expressed at page 7, lines 16 to 24 of his Prefiled Testimony?**

11 A. Yes, I do. Mr. Housley states that if the transmission systems improvements
12 identified in the Commonwealth Associates study are not constructed then
13 Thoroughbred's proposed Facility will adversely impact BREC's retail customers.
14 However, Thoroughbred has never deviated from its willingness to pay for the facilities
15 identified in the Commonwealth Associates study. Mr. Housley continues at page 4,
16 line 22 of his Prefiled Testimony that if "reality" requires additional facilities then
17 Thoroughbred should pay for them as well. If by "reality" Mr. Housley means
18 operational results, then Thoroughbred is committed to paying for all necessary
19 transmission facilities and receiving the transmission credit referred to previously.

20 **Q. Do you believe Thoroughbred's proposal for the payment of the construction of the**
21 **transmission facilities and subsequent receipt of a transmission credit is consistent**
22 **with state and federal law?**

1 A. Yes, I do. On page 5 of Mr. Housley's Prefiled Testimony, he expresses his
2 understanding of the requirements of Kentucky law as requiring Thoroughbred to pay for
3 the cost of interconnection and network facilities upgrades required by Thoroughbred's
4 proposed Facility with which Thoroughbred agrees. However, what is less clear from Mr.
5 Housley's Prefiled Testimony is whether BREC is contending Thoroughbred is not
6 entitled to a transmission credit once it begins using BREC's facilities, and to the extent
7 Mr. Housley is contending that providing transmission credits to Thoroughbred is
8 violative of Kentucky law, Thoroughbred strongly disagrees.

9 **Q. Do you believe that Mr. Housley accurately portrays the benefits to BREC resulting**
10 **from the transmission upgrades to its transmission network at pages 6 and 7 of his**
11 **Prefiled Testimony?**

12 A. No I do not. Mr. Housley generally ignores or downplays the tangible benefits to
13 BREC from the transmission system upgrades paid for by Thoroughbred. Thoroughbred
14 will provide a significant revenue stream to BREC. BREC should be able to sell
15 additional transmission service over and above that provided to Thoroughbred and its
16 customers. The construction of transmission upgrades to BREC's transmission system
17 will allow BREC to better respond to any unexpected contingencies. These benefits to
18 BREC far outweigh the operating and maintenance costs of the upgraded facilities which
19 will be borne by BREC. Finally BREC's concern about Thoroughbred's failure to use the
20 transmission system upgrades is misplaced because Thoroughbred will be paying for the
21 system up front and only receiving transmission credits as the system is used by
22 Thoroughbred.

1 **Q. What is your response to the answers provided by Mr. Housley to Questions 11, 12**
2 **and 13 contained on pages 7 through 12 of his Prefiled Testimony?**

3 A. I do not believe Questions 11, 12 and 13 interpreting the application of FERC
4 policy to BREC are the appropriate subject of Prefiled Testimony and are more
5 appropriately addressed in the Post-Hearing Briefs of the parties contemplated by the
6 Board's Procedural Schedule. Nevertheless, FERC policy does not impose any burdens
7 on BREC and, in fact, ensures that Thoroughbred will pay for all costs associated with the
8 interconnection and transmission upgrades to the BREC transmission system required by
9 Thoroughbred's proposed Facility.

10 **Q. Does this conclude your Prefiled Rebuttal Testimony?**

11 A. Yes, it does.

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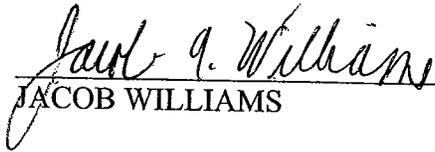
VERIFICATION

STATE OF Missouri)

COUNTY OF St. Louis)

SS:

The undersigned, Jacob Williams, being duly sworn, deposes and says that he is Vice President of Generation Development of Peabody Holding Company, Inc., that he has personal knowledge of the matters set forth in the foregoing rebuttal testimony and exhibits, and the answers contained therein are true and correct to the best of his information, knowledge and belief.



JACOB WILLIAMS

Subscribed and sworn to before me, a Notary Public in and before said County and State this 10th day of October, 2003.

My commission expires: 1-21-2006



Notary Public

Lex. 632300.1

ANTHONY J. KAZDA
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: Jan. 21, 2006

EXHIBIT A

EXHIBIT A



"Chris Bradley"
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oop>

04/22/2003 02:03 PM

To: Scott Yaeger/STL/Peabody@PeabodyEnergy
cc: <dcrockett@bigrivers.com>, Dianna
Tickner/STL/Peabody@PeabodyEnergy, Jacob
Williams/STL/Peabody@PeabodyEnergy,
<thousley@bigrivers.coop>

Subject: Re: Action Items from 4/3/03 Meeting Between BREC and Peabody

Scott,

We have been working on items 1 and 2. After discussing item 1 internally, and with our attorney, we have found nothing that would prevent us from providing a credit mechanism as discussed. As you know, Big Rivers and Peabody have many details to work through (agreements/contracts to ensure our customers are protected, etc) before this credit mechanism can be completed.

Due to a possible conflict of interest (it appears that Big Rivers and Peabody are represented by the same legal firm), we have been unable to address item 2. As soon as this issue is resolved, we hope to get a legal opinion and move forward.

After I speak to Burns and McDonnell, I'll call and provide an update on the facilities study and the other items.

Thank You,

Chris Bradley
Senior Planning Engineer
Big Rivers Electric Corporation
270-827-2561 x2226

----- Original Message -----

From: "Scott Yaeger" <ScottYaeger@peabodyenergy.com>
To: "Chris Bradley" <cbradley@bigrivers.coop>
Cc: <dcrockett@bigrivers.com>; "Dianna Tickner"
<DTickner@PeabodyEnergy.com>; "Jacob Williams"
<JWilliams@PeabodyEnergy.com>; <thousley@bigrivers.coop>
Sent: Tuesday, April 22, 2003 10:09 AM
Subject: Re: Action Items from 4/3/03 Meeting Between BREC and Peabody

>
> Chris,
> Thanks for the e-mail. As we stated in the meeting, we are very
> comfortable with Burns and McDonnell. I would proceed and when you get a
> rough scope document pulled together for contract services for the
> facility
> study, let us take a look. We may have some input.
>
> Also, please keep us posted on your findings on items 1 & 2 below. These
> are very critical issues to our project and we are anxious to work out the
> details. Any idea when your preliminary review of the issues might be
> near
> completion on items 1 & 2? I know that there are many details to be
> worked
> out over time, however both sides will be reluctant to move forward until
> Peabody is sure that a transmission credit mechanism can be put in place
> and BREC is sure that their customers will not be negatively impacted by
> such a mechanism.
>
> If we can be of assistance on any front, please let us know. Most of the
> action items are on your plate right now and the few that Peabody has all

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the forgoing was sent by United States First Class Mail, sufficient postage prepaid, to the following this the 13th day of October, 2003.

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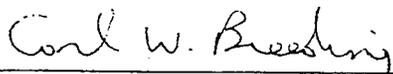
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