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June 26, 2013

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Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

PUBLIC SERVICE  
COMMISSION

*Via Courier*

**Re: CASE NO. 2012-00535, Post-Hearing Brief of Ben Taylor and Sierra Club**

Dear Mr. Derouen:

Enclosed are 10 redacted copies of the *Post-Hearing Brief of Ben Taylor and Sierra Club* and a certificate of service in docket 2012-00535 before the Kentucky Public Service Commission. The unredacted original was filed earlier today via hand delivery.

Sincerely,

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**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**Application of Big Rivers Electric Corporation                    )**  
**For a General Adjustment in Rates                                    )**   **CASE NO. 2012-00535**  
**)**

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**POST-HEARING BRIEF OF BEN TAYLOR AND SIERRA CLUB**

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The Kentucky Public Service Commission (“Commission”) is faced with the difficult task of ensuring that Big Rivers Electric Corporation’s (“BREC” or “Company”) electric rates remain “fair, just, and reasonable” to ratepayers during a time when BREC is in serious financial straits due to the Company’s loss of nearly two-thirds of its load. BREC proposes to respond to this loss through idling of some existing electric generating units combined with rate increases that would lead to 71% and 111% higher rates for rural and industrial customers, respectively, within the next two years. BREC also holds out hope that it will be able to mitigate its significant loss of load in a few years by attracting new customers and profitably selling its excess generation into the energy market. The record, however, shows that the rate increases requested here and in a second rate case that BREC recently filed would be onerous to BREC’s remaining customers, would not put BREC back on firm financial footing, and would instead hinder the ability of the Company to rationally negotiate with its lenders for a more reasonable plan out of this financial situation. In addition, BREC’s long term plan to mitigate the loss of load through new customers and increased market sales ignores the significant glut of capacity that exists in the region, hinges on an unsupported and unreasonable projection of rapidly increasing market energy prices, and turns a blind eye towards significant costs likely facing

BREC's generating units. As such, the Commission should find that BREC's rate increase proposal is neither just nor reasonable, and should decline to grant the requested increase in full.

BREC has presented this rate increase request to the Commission as an all-or-nothing proposition. Namely, BREC contends that either the full rate increase must be granted or the Company will have to go into bankruptcy. But the record shows that the options presented to the Commission here are not nearly so stark. Instead, a far more just and reasonable outcome would be a middle ground that seeks to right-size BREC through retirement or sale of some of the Company's existing generating capacity. Such an outcome would be better for both ratepayers and the Company's long-term fiscal health. As such, Sierra Club urges the Commission to provide BREC only temporary and limited relief that is sufficient to ensure BREC's fiscal viability through to the next rate proceeding, and to urge the Company to work in advance of the second rate hearing with its creditors, the parties, and other interested stakeholders to reach a solution to the present fiscal troubles that is just and reasonable for all involved.

## **I. FACTUAL BACKGROUND**

### **A. BREC and the Hawesville Smelter Departure**

BREC is an electric generation and transmission cooperative that currently serves 112,000 rural customers, 18 industrial customers, and two smelters in Western Kentucky. BREC provides such service through three distribution cooperatives – Kenergy Corp., Jackson Purchase Energy Corporation, and Meade County Rural Electric Cooperative Corporation. BREC owns and operates four coal-fired electric generating plants – Wilson, Coleman, R.D. Green, and Reid – and also has contractual rights to HMP&L Station 2 and to capacity from the Southeast Power Administration (“SEPA”). The coal plants have a total capacity of 1,444MW, while BREC has

contractual rights to an additional 375MW through HMP&L and SEPA, bringing the Company's total capacity to 1,819MW. BREC's projected peak load for 2013 is 1,529MW.<sup>1</sup>

The present rate proceeding grows out of the August 20, 2012 announcement from the Century Aluminum Company that, as of August 20, 2013, it was terminating its agreement to purchase power from BREC for the Century's aluminum smelter located in Hawesville, Kentucky. The Hawesville smelter uses a total load of 482MW and purchased [REDACTED] terawatt hours ("TWh")<sup>2</sup> of energy from BREC in 2012.<sup>3</sup>

### **B. BREC's Present Rate Increase Application**

In response to the Hawesville smelter termination, BREC filed on January 15, 2013 an application under KRS 278.180 and 807 KAR 5:011, Section 6(3)(b), to increase its base rates and change its tariffs for electric service. Pursuant to KRS 278.192, BREC based its rate increase request on a 12-month future forecasted period extending from August 31, 2013 to August 31, 2014.<sup>4</sup> As initially proposed, BREC sought a net increase in operating revenue of approximately \$74.5 million per year, which would be an approximately 21.4% increase in wholesale rates.<sup>5</sup> After some revisions to correct mathematical errors and to reflect the rate impact of the Commission's ruling on rehearing in BREC's previous rate increase, Case No. 2011-00036, the base rate increase being sought in this proceeding is reduced to approximately \$68.6 million, or a 19.7% increase in wholesale rates.<sup>6</sup> The requested rate increase is intended primarily to address the revenue deficiency that BREC would suffer from the departure of the Hawesville smelter from its system.<sup>7</sup> Approximately \$11 million of BREC's requested rate increase is to address

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<sup>1</sup> Direct Testimony of Frank Ackerman at pp. 5-6.

<sup>2</sup> A terawatt hour is one million megawatt hours.

<sup>3</sup> SC Confidential Ex. 3 at line 7.

<sup>4</sup> BREC Application at p. 4.

<sup>5</sup> BREC Application at p. 4.

<sup>6</sup> Rebuttal Testimony of John Wolfram, at p. 24 lines 11-19.

<sup>7</sup> Direct Testimony of Mark Bailey, p.8.

revenue deficiencies caused by a decline in off-system sales revenues and changes to depreciation rates.<sup>8</sup>

### **C. The Sebree Smelter Departure and BREC's Second Rate Increase Request**

Two weeks after BREC filed the present rate increase application, its second largest customer – the Sebree smelter – announced its intent to terminate its power purchase agreement as of January 31, 2014. The Sebree smelter has a total load of 382MW and purchased [REDACTED] TWhs of energy from BREC in 2012.<sup>9</sup> As a result of the Sebree smelter departure, BREC filed a second rate increase proceeding on June 30, 2013, which has been docketed in Case No. 2013-00199. In that filing, BREC seeks to make up for a \$70.4 million revenue deficiency created by the departure of the Sebree smelter,<sup>10</sup> through an increase in wholesale rates of 29.4%.<sup>11</sup> According to BREC's filing in 2013-00199, the combined impact on wholesale rates of the two rate proceedings, gross of reserve funds, would be an increase of 62.4% for rural customers and 44.9% for industrial customers.<sup>12</sup>

### **D. Total Impact on Rates of BREC's Rate Increase Requests**

The record includes a number of different ways to measure the size of the rate increases at issue in this proceeding and in BREC's second filing. The resulting percent increases vary depending on whether you are considering wholesale or retail rates, changes to base rates or total effective rates, and inclusive or exclusive of the use of various reserve funds that BREC is proposing to spend down in order to temporarily reduce the impact of its rate increases. Rather than getting lost in the morass of different numbers, the most straightforward way to evaluate the impact to ratepayers is to compare the per kilowatt hour ("kWh") price ratepayers are paying

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<sup>8</sup> Direct Testimony of Mark Bailey, p.8.

<sup>9</sup> SC Confidential Ex. 3 at line 8.

<sup>10</sup> Ex. AG-5, Direct Testimony of Billie Richert, Case No. 2013-00199, at p. 16 line 19.

<sup>11</sup> Exhibit Wolfram-6, Case No. 2013-00199.

<sup>12</sup> BREC Application, Case No. 2013-00199, Tab 6

today versus what they will be paying if BREC’s proposed rate increases are approved. The following chart presents that information for both rural and industrial customers:

**Table 1: Proposed Changes to Retail Rates**

	<b>Rural Rate (cents per kWh)</b>	<b>% Increase Over Current</b>	<b>Industrial Rate (cents per kWh)</b>	<b>% Increase Over Current</b>
<b>Current rates<sup>13</sup></b>	7.8	--	3.74	--
<b>Hawesville Increase Incl. Reserves<sup>14</sup></b>	9.56	22.6%	4.96	32.6%
<b>Hawesville Increase After Reserves<sup>15</sup></b>	10.55	35.3%	5.89	57.5%
<b>Sebree Increase Incl. Reserves<sup>16</sup></b>	9.56	22.6%	4.96	32.6%
<b>Sebree Increase After Reserves<sup>17</sup></b>	13.46	71.8%	7.91	111.5%

**E. BREC’s Proposed Idling of Excess Generating Capacity**

As a result of the departure of the Hawesville and Sebree smelters, BREC will soon have far more capacity than it needs to serve its native load. BREC currently owns or has rights to 1,819MW of capacity to serve an expected peak demand in 2013 of 1,529MW.<sup>18</sup> As a result, BREC currently has a reserve margin of 19%, which significantly exceeds the 14.2% reserve margin required by the Midcontinent Independent System Operators (“MISO”).<sup>19</sup> After the Century smelter leaves the BREC system, the Company’s load will decline to 1,047MW leading to a 74% reserve margin.<sup>20</sup> The departure of the Sebree smelter will take BREC’s peak load down to 679MW, which leads to a reserve margin of 168%.<sup>21</sup> Without the retirement or sale of

<sup>13</sup> Direct Testimony of Lane Kollen at Ex. LK-2.

<sup>14</sup> Wolfram Rebuttal Ex. 1.

<sup>15</sup> *Id.*

<sup>16</sup> SC Hearing Ex. 6, Case No. 2013-00199 Exhibit Wolfram 8.

<sup>17</sup> *Id.*

<sup>18</sup> Direct Testimony of Frank Ackerman at pp. 5-6.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

some capacity, BREC will have the same amount of capacity to serve only approximately 44% of its previous peak load.

In response to this capacity excess, BREC has not evaluated retiring any of its existing generating units.<sup>22</sup> Instead, the Company has proposed to idle some of its capacity for approximately five years. In its application in this proceeding, BREC said it planned to idle the Wilson plant, but in rebuttal testimony the Company announced that it is instead planning to idle the Coleman plant in response to the Hawesville smelter departure and will then idle the Wilson plant in response to the Sebree smelter departure. The idling proposal is based on the projection that BREC can save approximately [REDACTED] idling each plant,<sup>23</sup> while selling energy produced by those plants into the market would generate only approximately [REDACTED] [REDACTED] in revenue.<sup>24</sup> BREC expects to return both the Wilson and Coleman plants into service in 2019 on the theory that market energy prices will escalate in 2019 thereby making market sales more profitable than the savings that can be achieved through idling.<sup>25</sup>

## II. LEGAL STANDARD

Under Kentucky law, the fundamental principle in Commission rate making is ensuring that the utility's rates are "fair, just, and reasonable." KRS § 278.030(1); KRS § 278.040; *Kentucky Public Service Comm'n v. Com. ex rel. Conway*, 324 S.W.3d 373, 377 (Ky. 2010). The setting of such rates requires a careful balancing of the interests of ratepayers and those of utilities and their investors. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *National-Southwire Aluminum Co. v. Big Rivers Electric Corp.*, 785 S.W.2d 503,

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<sup>22</sup> BREC Resp. to SC 1-23.

<sup>23</sup> KIUC Confidential Ex. 2.

<sup>24</sup> KIUC Confidential Ex. 3.

<sup>25</sup> KIUC Ex. 1, BREC Resp. to AG 1-113.

514 (Ky. Ct. App. 1990) (upholding Commission rate determination in which “interests of all parties are reasonably balanced.”). Generally, a utility should be authorized to charge only the “lowest reasonable rate” that allows the utility to “operate successfully, to maintain its financial integrity, to attract capital and to compensate its investors for the risks assumed even though they might produce only a meager return on the so-called ‘fair value’ rate base.” *Comm. ex rel. Stephens v. South Central Bell Tel. Co.*, 545 S.W.2d 927, 931 (Ky. 1976) (citing *Hope Natural Gas*, 320 U.S. at 605). Courts have made clear, however, that rescuing a utility from a precarious financial situation does not justify charging customers rates that are so high as to be “exploitative,” as “exploitative rates are illegal . . . even in cases where the utility pleads acute financial distress.” *Jersey Central Power & Light Co. v. Federal Energy Regulatory Comm’n*, 810 F.2d 1168, 1180-81 (D.C. Cir. 1987) (citing *Hope Natural Gas*, 320 U.S. at 611). Even a utility that “is unable to survive without charging exploitative rates has no entitlement to such rates.” *Id.* at 1181 (citing *Market Street Ry. v. Railroad Comm’n of Cal.*, 324 U.S. 548 (1945)).

Throughout this proceeding, BREC bears the burden of proving that its proposed increased rates would be fair, just, and reasonable. KRS 278.190(3). Because jurisdiction lies “exclusively and primarily” with the Commission to “fix rates [and] establish reasonable regulation of service,” *Public Serv. Comm’n of Kentucky v. Comm. of Kentucky*, 320 S.W. 3d 660, 665 (2010), the Commission is not bound to any particular methodology in reviewing BREC’s application, but instead has “some discretion” in choosing the best methodologies for setting rates. *National-Southwire*, 785 S.W.2d at 517. As such, the critical question with regards to a rate determination is whether the result is fair, just, and reasonable, rather than the specific methodologies used to reach that result. *Kentucky Public Serv. Comm’n v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 383 (2010) (citing *Hope Natural Gas*, 320 U.S. at 602).



### III. ARGUMENT

Faced with the loss of nearly two-thirds of its customer load, BREC is seeking the Commission's assent to the first of a series of requests that would have its remaining customers bail the Company out by paying electric rates that would more than double between now and mid-2015. As BREC's own testimony makes clear, the rate increase pending in this proceeding is just the first step in a long-term plan under which BREC would maintain substantial amounts of excess capacity on the hope that it will be able to attract new customers to fill the gap left by the departing smelters and/or once again profitably sell power from its existing Coleman and Wilson generating units starting in 2019. The record shows that the requested rate increase, and the proposed strategy that such increase is part of, is neither justified nor just, and neither reasoned nor reasonable.

The rate increase requested in this proceeding is premised upon three major flawed assumptions that should prevent the Commission from approving it in full. First, numerous relevant facts and circumstances have changed substantially since BREC filed its application and, therefore, much of the evidence offered by the Company in this proceeding no longer reflects reality for the 12-month forecasted period and beyond. Second, granting the present rate increase request would not put BREC on solid financial footing, but it would foreclose any opportunity that BREC could have to rationally negotiate with its lenders a plan out of the present financial situation. Third, the wisdom of the requested rate increase depends largely on a long-term strategy that has little chance of succeeding and, instead, will likely subject BREC's remaining ratepayers to ever higher costs.

BREC portrays this proceeding as providing a stark choice between the Commission granting the requested rate increase in full versus the Company being forced into bankruptcy.

But the reality is much different. With a second rate increase proceeding to be decided by the end of January 2014, and BREC having at least [REDACTED]<sup>26</sup> a temporary and smaller rate increase than requested would be sufficient to preserve the Company's financial solvency. Such an approach would enable the evaluation of BREC's two rate increase requests on the basis of a more accurate and up-to-date record that is reflective of the full impact of the Company's plan on its ratepayers. The approach of granting only a temporary and smaller rate increase would also provide BREC, its creditors, the parties, and other relevant stakeholders time to develop a more balanced plan for helping BREC out of its precarious financial situation through right-sizing excess generation capacity while avoiding the doubling of electric rates for the Company's rural and industrial customers. As such, Sierra Club recommends that the Commission provide only a temporary and partial rate increase, and require BREC to begin the process of developing a workout plan with its creditors, the parties, and other relevant stakeholders to right-size and restore long term financial viability to the Company.

**A. The Commission Should Provide BREC With Only Temporary and Partial Relief in this Proceeding Because Conditions Have Changed Significantly Since BREC Filed Its Application.**

A primary reason why the Commission should decline to grant BREC all of its requested rate increase is that the Company's application no longer reflects the conditions that will exist during the 12-month forecasted period and beyond. Instead, critical facts have changed since BREC filed its application, and additional open issues are expected to be resolved in advance of the hearing on BREC's second request rate increase. Such relevant changed conditions and open issues include:

- Two weeks after BREC filed the present application, its second biggest customer, the Sebree smelter, issued a 12-month termination notice. As a result, BREC will lose an

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<sup>26</sup> SC Confidential Exhibit 2 at lines 5 and 6.

additional 368MW of native load and [REDACTED] TWhs of annual energy sales as of January 31, 2014.

- In response to the Sebree termination, BREC filed, on the Friday before the hearing started in this proceeding, for a second rate increase that would take effect on January 31, 2014, which is just over five months into the forecasted test year in this proceeding. In the second rate proceeding, BREC is requesting a 29.4% increase in wholesale rates.
- In the second rate filing, BREC is proposing the accelerated depletion of the Economic Reserve and Rural Economic Reserve funds by July 2014 and April 2015, respectively. As a result, the long term financial forecast in this proceeding, which assumed that such reserves would offset increases in the Fuel Adjustment Charge and environmental surcharge until 2018 for rural customers and 2016 for industrial customers, is no longer accurate.<sup>27</sup> Under BREC's proposed second rate increase, ratepayers will experience higher rates much sooner than BREC projected in this proceeding.
- After BREC developed the long term financial forecast it used in this proceeding, the Commission approved BREC's request to transform the Transition Reserve fund into a Capital Reserve Fund.<sup>28</sup> While BREC's long term financial forecast projected that the Company would maintain a balance of approximately [REDACTED] in the Transition Reserve fund through [REDACTED] now that the fund can be used for capital investments, the Company is planning to [REDACTED]<sup>29</sup>
- While BREC's application was predicated on the idling of the Wilson plant starting in August 2013, the Company announced in its rebuttal testimony that it is now planning to idle the Coleman plant instead.
- BREC is in the process of obtaining a determination from MISO as to whether the Coleman plant would need to be operated beyond BREC's proposed August 2013 idling date in order to address transmission reliability impacts of such idling. If MISO identifies some or all of the Coleman units to be "System Support Resources" ("SSR"), then BREC will have the opportunity to negotiate an SSR agreement to cover various costs related to the continued operation of the Coleman unit. The need for, details of, and duration of any such SSR agreement are uncertain on this record.
- BREC and Kenergy have negotiated a set of proposed agreements with Century to provide power purchased from the MISO market to the Hawesville smelter. Those agreements are before the Commission in Case No. 2013-00221, and are still pending approval by Century, Kenergy, and BREC.

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<sup>27</sup> Cross Examination of Billie Richert, July 2 Hearing Tr. at 10:10:50 to 10:12:00 (acknowledging that reserve balances listed on Ex. SC-2 need to be updated to reflect quicker depletion of reserves proposed in second rate case).

<sup>28</sup> Cross Examination of Billie Richert, July 2 Hearing Tr. at 10:01:45 to 10:02:31

<sup>29</sup> Cross Examination of Billie Richert, July 2 Hearing Tr. at 10:03:00 to 10:03:19.

In short, the situation facing BREC and its ratepayers is far different from what is reflected in the Company's application and the long term financial forecast presented in this record. BREC faces a far larger loss of load, ratepayers face significantly higher base and effective rates, the reserve funds that are intended to mitigate rate impacts to customers will be depleted sooner than expected, the plans for idling units have changed and may be delayed, and BREC may enter into a long term agreement to provide the Hawesville smelter with market power. While each of these changes is known and open issues are likely to be resolved soon, the ramifications of such developments are largely unexplored in the present proceeding. As such, the record in this case does not provide a basis for granting the permanent rate increase that BREC is seeking. Instead, the Commission should provide only limited and temporary relief in this proceeding so that a fuller evaluation of the entirety of the situation facing BREC and potential solutions can occur in the context of the upcoming second rate proceeding.

At hearing, BREC repeatedly contended that it could not factor any of these changed conditions into the present rate filing, presumably because Commission rules provide that "after an application based on a forecasted test period is filed, there shall be no revisions to the forecast" except to correct mathematical errors or in response to statutory or regulatory changes. 807 KAR 5:001 Section 16(11)(d). But that rule simply forecloses a utility from changing midstream the forecast upon which a particular rate increase is sought. It would not have prevented BREC from filing an amended application in light of the Sebree smelter termination. And, more fundamentally, nothing in the rules requires the Commission to turn a blind eye to changed conditions or other relevant information that directly impact the reasonableness of BREC's pending rate increase and overall strategy for dealing with the smelter departures. Instead, a reasoned decision on what, if any, permanent rate increases are justified in response to

the smelter termination can only be made on a record in which all of the changed conditions and open issues identified above have been fully explored. That is not the record in this case.

**B. The Commission Should Consider the Total Rates that Ratepayers Would Be Paying Under BREC's Proposal, Rather than Only the Specific Base Rate Increase Being Requested.**

As explained in Section I.D. above, the apparent size of the rate increases requested in this proceeding and in BREC's second rate proceeding varies depending on the framework that is used to measure the increases. Throughout this proceeding, BREC has sought to minimize the impact of its requests by focusing solely on the change in retail base rates that it is specifically requesting in this proceeding. Under that frame of reference, BREC's present request is to increase rural retail rates by 17% and industrial retail rates by 15%.<sup>30</sup> In the second rate increase proceeding, rural retail rates would increase an additional 21.4% and industrial retail rates would increase another 25%.<sup>31</sup>

As KIUC witness Kollen explained in his testimony,<sup>32</sup> and BREC witness Wolfram acknowledged during cross examination,<sup>33</sup> however, those BREC figures do not take into account increases in the fuel adjustment charge, environmental surcharges, and other rate aspects that are included in BREC's filings. BREC's percentage increases also do not account for the impact that the depletion of the various reserve funds will have on the rates that would actually be charged to ratepayers. Once those other elements are factored in, it becomes readily apparent, as demonstrated in Section I.D above, that under BREC's proposal, residential customers would experience a 22.6% rate increase over their current rates starting in September 2013. The total increase would be 35.3% once the reserve funds are depleted by 2018. If BREC's second rate

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<sup>30</sup> Wolfram Rebuttal Ex. 7.3.

<sup>31</sup> Case No. 2013-00199, Exhibit Wolfram 5.

<sup>32</sup> Direct Testimony of Lane Kollen at pp. 12-17.

<sup>33</sup> Cross Examination of John Wolfram, July 3 Hearing Tr. at 12:34:15 to 12:35:12.

increase were also granted, the 22.6% rate increase would last only until April 2015, at which time the depletion of the reserves would lead to a total rate increase of 71.8% over current rates. Similarly, industrial customers would experience a 32.6% increase over their current rates starting in September 2013 that would go up to 57.5% by 2016 when the reserves are depleted. If BREC's second rate increase were also granted, the 32.6% increase would last only until June 2014, at which time the depletion of the reserves would lead to a total rate increase of 111.5% over current rates.

BREC asserts that only the lower percent increases that it posits should be considered because the rest of the increases would occur even if its rate increase request were denied. But this argument is unsupported by the relevant legal standard, which provides that a utility must “show that the increased rate or charge” proposed by the utility is just and reasonable.<sup>34</sup> In other words, the Commission must consider the rate or charge that customers would actually be paying, not just the specific base rate increase that the utility seeks. To focus on the utility's request in isolation without attending to the actual impacts on the utility's customers would provide an incomplete basis upon which to determine the justness and reasonableness of BREC's rates. In addition, BREC's attempt to minimize the size of the rate increase at issue is factually flawed because it ignores the fact that the Company is proposing to accelerate the depletion of the reserve funds in this proceeding, and even more so in the second rate case. As a result, the increase in rates experienced by rural and industrial customers as a result of the depletion of the reserve funds will occur sooner if BREC's application here and/or in Case No. 2013-00199 are approved.

**C. The Requested Rate Increase Will Not Solve BREC's Financial Problems and Could Hinder the Development of a More Comprehensive Solution**

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<sup>34</sup> KRS 278.190(3) (emphasis added).

In testimony, BREC has portrayed the rate increase requested here as being sufficient to solve the Company's financial problems. For example, BREC President and CEO Mark Bailey testified in rebuttal that the granting of this rate increase would make BREC "viable on an ongoing basis," and contended that:

The increase proposed in this case is sufficient to enable it to withstand the departure of Century's Hawesville Smelter and maintain relatively low electric rates, even without any further mitigation and even under the continued downturn in the wholesale power market.<sup>35</sup>

Unfortunately, the available evidence suggests a far different reality.

The favorable view painted by BREC of a future with the requested rate increase ignores a number of critical challenges facing the Company. Most immediate is the fact that the Sebree smelter termination will lead to another significant revenue deficiency that BREC is seeking to address through a second requested rate increase in Case No. 2013-00199. As such, it is clear that the currently requested rate increase would be insufficient to make BREC "viable on an ongoing basis." Instead, as BREC witness Billie Richert acknowledged at hearing, the rate increase in this proceeding would, at best, make the Company viable for five months.<sup>36</sup>

In the second rate proceeding, BREC echoes the positive outlook portrayed here by claiming that if it receives the full increases requested in both proceedings, the Company will "be on a path to recovery and will be reasonably well-positioned for the future."<sup>37</sup> But, again, the reality is much different. For one thing, such claims are in tension with BREC's claim that it has requested "the bare minimum possible" to meet its obligations.<sup>38</sup> This suggests that there is virtually no margin for error and that BREC will likely need to come back for yet another rate increase if circumstances unfold for BREC in any way less favorable than projected. Second,

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<sup>35</sup> Rebuttal Testimony of Mark Bailey, at p. 11 lines 18-21 and p. 9 lines 6-8.

<sup>36</sup> Cross Examination of Billie Richert, July 2 Hearing Tr. at 11:32:06 to 11:32:55

<sup>37</sup> AG Hearing Ex. 5, Direct Testimony of Billie Richert, Case No. 2013-00199, at p. 8 line 22 to p. 9 line 1.

<sup>38</sup> Direct Testimony of Mark Bailey at p. 4 lines 5-7.

BREC's plan is to deplete its reserve funds by June 2014 for industrial customers and April 2015 for rural customers, meaning that ratepayers will have no further protection from additional rate increases and will experience significant rate shock within the next year or two.

Third, the claim that BREC will be viable with the rate increases "even without any further mitigation" is undermined by the fact that the Company's long term financial forecast specifically assumes that BREC will be able to mitigate the loss of the smelters by profitably selling all of the energy produced by all of its generating units starting again in 2019. As explained in Section III.D below, the mitigation plan is based on a series of questionable and unsupported assumptions that, if they turn out to be incorrect, will lead to significantly lower revenues for BREC than projected. BREC has not provided any evidence of continued viability if such profitable sales do not materialize, but such revenue shortfalls would presumably need to be made up for with even further rate increases. Finally, even if the mitigation plan succeeds and the two requested rate increases end up being sufficient, BREC's long term financial forecast projects that the Company's [REDACTED]

[REDACTED]<sup>39</sup> In other words, even with electric rates paid by rural and industrial customers increasing by 71% and 111%, respectively, and assuming the rosiest of scenarios regarding future energy sales, BREC would be, at best, trading water for the next fifteen years. That is not the hallmark of a utility that is "viable on an ongoing basis" or "on a path to recovery."

While the requested rate increase does not appear to be the panacea to BREC's long term financial challenges, the record is clear that granting of the full increase would interfere with BREC's ability to develop a workout plan with its creditors. BREC's own witness William Snyder, a Restructuring Principal with Deloitte Financial Advisory Services, testified at hearing that there are a number of steps – such as reducing interest rates and providing amortization

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<sup>39</sup> SC Confidential Ex. 2 at line 24.



relief – that BREC’s lenders could take to help address the Company’s precarious financial situation.<sup>40</sup> Mr. Snyder opined that BREC’s lenders would be “likely” to make concessions<sup>41</sup> because those lenders “absolutely” have an incentive to work with the Company to find a solution to the present situation in order to avoid the far worse outcome of having to write down some of BREC’s debt.<sup>42</sup> According to Mr. Snyder, however, the lenders’ incentive to work with BREC would “absolutely” disappear if the Commission were to grant all of the requested rate increase, as BREC’s remaining ratepayers would then be on the hook for ensuring that the Company can continue making its debt payments.<sup>43</sup> As such, the granting of BREC’s full rate increase request here would limit, rather than enhance, the Company’s options for achieving long term financial viability without unjustly and unreasonably putting the entire burden of the smelter departures on its remaining ratepayers.

**D. BREC’s Rate Increase Request is Premised on a Long-Term Strategy That Has Little Chance of Succeeding.**

The fundamental problem facing BREC and its ratepayers is that the Company has far more capacity than it needs to serve its remaining rural and industrial customers. In 2012, BREC made total energy sales of ████████ terawatt hours (“TWh”).<sup>44</sup> Of that amount, ████████ TWh of sales were to the Hawesville smelter, ████████ TWhs were to the Sebree smelter, ████████ TWhs were to market sales, ████████ TWhs were to industrial customers, and ████████ TWhs were to rural customers.<sup>45</sup> Based on these numbers, the departure of the Hawesville smelter represents a loss of 34.6% of

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<sup>40</sup> Cross Examination of William Snyder, July 2 Hearing Tr. at 11:58:00 to 12:05:30.

<sup>41</sup> Redirect of William Snyder, July 2 Hearing Tr. at 12:53:48 to 12:54:03.

<sup>42</sup> Cross Examination of William Snyder, July 2 Hearing Tr. at 12:05:50 to 12:06:04.

<sup>43</sup> Cross Examination of William Snyder, July 2 Hearing Tr. at 12:06:05 to 12:06:25.

<sup>44</sup> SC Confidential Ex. 3 at line 10.

<sup>45</sup> *Id.* at lines 5 to 9.

BREC's total 2012 energy sales, while the Sebree smelter departure is another 26.1% loss, for a combined total loss of 60.7% of 2012 sales.

BREC seeks to address this significant loss of load through its Load Concentration Analysis and Mitigation Plan ("LCAMP"). Pursuant to the LCAMP, BREC is proposing a short term strategy of the two rate increases combined with the idling of its Wilson and Coleman coal plants. In the longer run, the Company hopes that it will be able to replace the load lost from the smelter departures through the addition of new customers, power purchase agreements, and/or by profitably selling energy from the Wilson and Coleman coal plants into the MISO energy market. Unfortunately, there is little credible evidence in the record to support the viability of such a long term strategy.

**1. BREC has not evaluated the potential of retiring some of its excess generating capacity.**

The most straightforward way for BREC to reduce its excess capacity is to retire some of its generating units. BREC could retire any two of the following four generating resources – Coleman, R.D. Green, Wilson, and the contractual rights to power from HMP&L and SEPA – and still have sufficient capacity to satisfy MISO's reserve margin requirements.<sup>46</sup> The most likely options for retirement are the Coleman and Wilson plants, which will not be profitable to operate after the smelters depart given low market energy prices and will likely face significant future environmental compliance costs. Yet BREC did not evaluate retiring any of its generating units as an option for helping to mitigate the loss of the Hawesville or Sebree smelters.<sup>47</sup>

BREC contends that it did not evaluate generating unit retirements because the Company will purportedly "be able to reap significant benefits from the units in the future."<sup>48</sup> BREC

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<sup>46</sup> Direct Testimony of Frank Ackerman at p. 6.

<sup>47</sup> KIUC Ex. 9, BREC Resp. to SC 1-23.

<sup>48</sup> KIUC Ex. 9, BREC Resp. to SC 1-23(b).

conceded, however, that it has not quantified the purported “significant benefits” that it can reap from its generating units, and has not assessed the economics or net present value of the continued operation of each of its generating units.<sup>49</sup> Instead, BREC appears to simply assume that, starting in 2019, it will be able to profitably sell the energy generated by the Coleman and Wilson plants to new customers of BREC and/or into the MISO energy market.<sup>50</sup> As discussed below, such assumption is unreasonable and unsupported.

**2. BREC’s efforts to replace its lost load have failed to date and are unlikely to succeed given the glut of capacity in the MISO region.**

BREC’s first strategy is to try to replace its lost load by entering into power purchase agreements with new customers, attracting new energy users to the BREC service territory, and/or selling or leasing existing assets. To date, however, these efforts have been almost entirely unsuccessful. While the Company has approached approximately [REDACTED] about power purchase agreements, responses to requests for proposals, and/or the purchasing or leasing of BREC generating assets, to date those efforts have only netted [REDACTED]

[REDACTED].<sup>51</sup>

The lack of success for BREC’s load replacement efforts is not surprising given that the Company is operating in a MISO system that is awash in excess capacity. For example, MISO’s 2013 Summer Resource Assessment reported that the MISO region has more than 25,700MW of excess capacity.<sup>52</sup> The resulting reserve margin is 28.1% in MISO, which is nearly double the 14.2% that is required.<sup>53</sup> The North American Electric Reliability Corporation recently forecast that capacity in the MISO region would remain at or above applicable reserve margins through

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<sup>49</sup> KIUC Ex. 9, BREC Resp. to SC 2-22(b) and SC 1-32(b); Cross Examination of Robert Berry, July 2 Hearing Tr. at 15:20:01 to 15:20:54.

<sup>50</sup> KIUC Ex. 9, BREC Resp. to SC 1-23(b).

<sup>51</sup> Confidential Exhibit SC-1

<sup>52</sup> KIUC Ex. 12.

<sup>53</sup> *Id.*

2021.<sup>54</sup> As a result of this sizable capacity surplus, the first ever MISO annual planning resource auction led to an extremely low capacity price of just \$1.05 per MW-day for the 2013-2014 planning period.<sup>55</sup> While BREC submitted the results of two projections showing the MISO capacity price rising substantially between now and the 2016-2017, the accuracy of those projections is called into question by the fact that they [REDACTED]

[REDACTED]<sup>6</sup> The existence of ample capacity in the region, combined with low natural gas prices and the increasing implementation of demand side management provides significant evidence that BREC's efforts to replace the substantial amounts of load lost with the smelter terminations are likely to continue to be unsuccessful.<sup>57</sup>

**3. BREC's projection that it will be able to profitably sell energy from its idled coal plants into the MISO market starting in 2019 is based on an unreasonable and unsupported energy price projection.**

As a second posited justification for not retiring any generating capacity, BREC's long term financial forecast projects that the Company will be able to profitably sell energy from its idled Coleman and/or Wilson coal plants into the MISO market starting in 2019. As noted above, BREC made approximately [REDACTED] TWhs of such market sales in 2012.<sup>58</sup> BREC's long term financial forecast projects that such level of annual market sales will [REDACTED] [REDACTED], but will then [REDACTED]

[REDACTED].<sup>59</sup> The financial forecast produced in this proceeding reflects the termination of only the Hawesville smelter. If the Sebree smelter departure is factored in, then an additional [REDACTED] of energy would need to be sold into the market starting in 2019 under BREC's market sales

<sup>54</sup> Direct Testimony of Frank Ackerman at pp. 7-8.

<sup>55</sup> Direct Testimony of Frank Ackerman at p. 7; Cross Examination of Robert Berry, July 2 Hearing Tr. at 15:28:50 to 15:29:05.

<sup>56</sup> Berry Rebuttal Ex. 1; Cross Examination of Robert Berry, July 2 Hearing Tr. at 15:36:00 to 15:36:30.

<sup>57</sup> Direct Testimony of Frank Ackerman at pp. 7-8.

<sup>58</sup> SC Confidential Ex. 3, line 9.

<sup>59</sup> *Id.*

strategy.<sup>60</sup> That would bring total projected market sales to [REDACTED] TWhs in 2019 and [REDACTED] TWhs in 2020, which are both [REDACTED] the annual sales in each of 2012 through 2018.

BREC explains that its forecast that it will be able to profitably sell energy from the Coleman and Wilson plants into the market starting in 2019 is based on a comparison of the costs savings that the Company achieves through idling those plants versus the revenue it can generate through such market sales.<sup>61</sup> And that latter factor is based on the market price forecast that BREC received from ACES, which shows [REDACTED]

[REDACTED] In particular, [REDACTED] [REDACTED] 62

As shown in the chart below, which is Figure 1 from the supplemental testimony of Dr. Frank Ackerman, BREC's energy price forecast [REDACTED] forecasts from the Energy Information Administration's 2013 Annual Energy Outlook and from Indianapolis Power and Light [REDACTED] [REDACTED] but then has a [REDACTED] that is not found in those other projections. Such a [REDACTED]

[REDACTED] 63

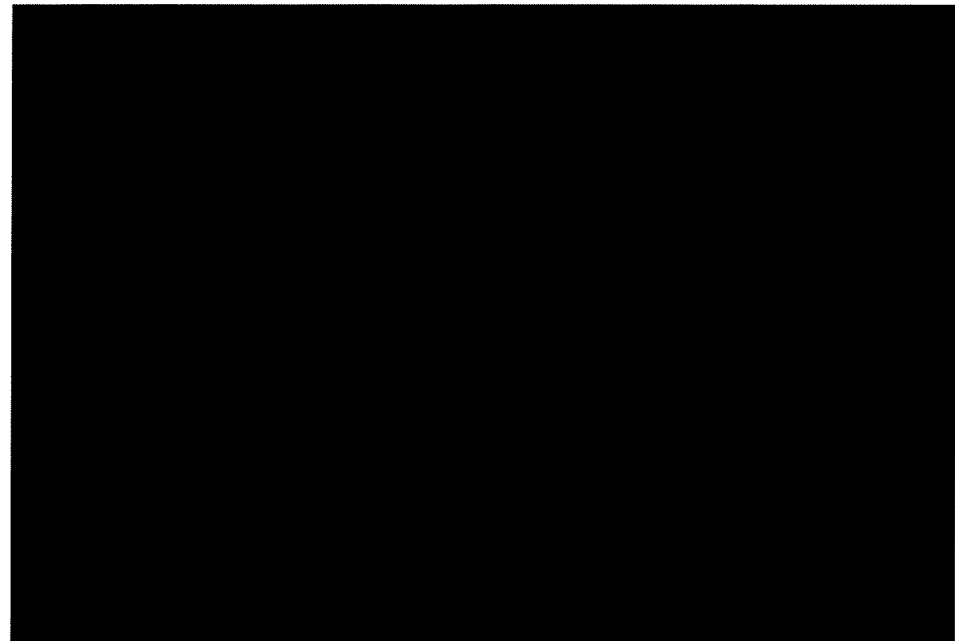
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<sup>60</sup> SC Confidential Ex. 3, line 8.

<sup>61</sup> BREC Resp. to SC 1-21.

<sup>62</sup> SC Confidential Ex. 3, line 79.

<sup>63</sup> Case No. 2012-00063, BREC Resp. to KIUC 2-20c.



Despite the significant inconsistency between the ACES energy price forecast in this proceeding and that provided by ACES in the 2012 CPCN, BREC did not compare the current ACES price projection to those from other sources or otherwise attempt to validate it.<sup>64</sup> In an effort to explain the [REDACTED], BREC witness Robert Berry speculated that he “expect[s]” that it is the result of retirements stemming “from the MATS rule and the economics related to compliance with that rule.”<sup>65</sup> But that explanation makes little sense, as the deadline for MATS compliance is April 2015 or April 2016 if a utility obtains a one-year extension. BREC was unable to provide any explanation for why a rule that requires compliance in 2015 or 2016 would cause a [REDACTED]. Regardless, an unexplained and significant spike in projected energy prices [REDACTED] timeframe does not provide a reasonable basis for assuming that BREC is going to be able to profitably [REDACTED]



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<sup>64</sup> Cross Examination of Robert Berry, July 2 Hearing Tr. at 19:08:10 to 19:08:30.

<sup>65</sup> Supplemental Rebuttal Testimony of Robert Berry at p. 8.

**4. BREC's long-term forecast ignores the impact that the significant increase in its electric rates will have on reducing demand for rural and industrial customers.**

An additional problem with BREC's long term strategy is that it ignores the price elasticity of demand, which is the fact that as energy rates increase total energy usage tends to decrease. Such reductions occur because customers respond to higher rates by using less electricity, finding ways to increase the efficiency of their energy use, and in the case of industrial customers, potentially restricting or even ceasing operations. In its 2011 load forecast, BREC assumed a price elasticity of demand of -0.14, -0.25, and -0.26, respectively, for residential customers in its three cooperative members.<sup>66</sup> What those numbers mean is that as BREC's customer rates increase by 1%, their energy use will decline by an average of between 0.14% and 0.26%.<sup>67</sup> Yet while BREC used the 2011 load forecast as the basis for its long term financial forecast, it did not factor in such price elasticity of demand for the increased rates that customers would experience after the present rate case or the second rate case.<sup>68</sup> Instead, BREC unreasonably assumed that the substantial rate increases that its rural and industrial customers would be experiencing over the next few years would have no impact on their energy usage.<sup>69</sup>

In reality, the significant rate increases that BREC's customers are facing would impact their energy use which, in turn, means the Company would have to make up additional lost revenue through some combination of more rate increases and/or market sales than it is currently projecting. For example, BREC assumes that rural customers will purchase █████ TWWhs of energy from BREC in 2013, and that such figure will steadily increase to █████ TWWhs by 2027.<sup>70</sup> Yet under the current rate proceeding, those same customers would experience a 22.6% increase in

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<sup>66</sup> Ex. SC-5, BREC Revised Resp. to KIUC 1-35.

<sup>67</sup> Cross Examination of Lindsay Barron, July 3 Hearing Tr. at 9:55:30 to 9:56:10.

<sup>68</sup> Cross Examination of Lindsay Barron, July 3 Hearing Tr. at 9:56:11 to 9:58:00.

<sup>69</sup> *Id.*

<sup>70</sup> SC Confidential Ex. 6 at line 5.

their electric rates starting in September 2013, and a total increase of 35.3% by 2018. Using a price elasticity of demand of -0.25 means that such rate increase would lead to a decline in demand of 5.65% after the September 2013 rate increase and 8.825% after the 2018 increase, which equates to a decline in rural demand of [REDACTED] TWhs and [REDACTED] TWhs, respectively. If BREC's second rate filing were also improved, the resulting 71.8% increase over current rates after the reserve funds are depleted in April 2015 would equate to a 17.95% decline in demand and a [REDACTED] TWhs reduction in energy sales to rural customers.

Similarly, BREC assumes that energy usage by its industrial customers is going to remain steady at [REDACTED] TWhs per year from 2013 through 2027,<sup>71</sup> even though under the current application industrial customers would experience a 32.6% increase in rates starting in September 2013, and a total increase of 57.5% by 2016. Assuming a price elasticity of demand of -0.25, those rate increases would lead to a decline in energy demand from industrial customers of 8.15% after the September 2013 increase, and 14.4% after the 2016 increase. Such reduced demand represents a decline in energy sales to industrial customers of [REDACTED] TWhs and [REDACTED] TWhs, respectively. If BREC's second rate increase were also granted, the resulting 111.5% increase in rates starting in June 2014 would lead to a 27.875% decline in demand, which equates to a reduction of [REDACTED] TWhs of energy sales to industrial customers.

Given BREC's failure to factor the price elasticity of demand into its long term financial forecast, the numbers presented here are necessarily approximate and would change if it would be more reasonable to use different price elasticity assumptions. But the above calculations provide a rough estimate of the impact that the significant rate increases facing BREC's customers could have on BREC's total energy sales. In particular, under the current rate proceeding, BREC could experience an unaccounted for decline of [REDACTED] TWhs of energy sales

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<sup>71</sup> SC Confidential Ex. 3 at line 6.



to its native load, which is a 10.4% loss that BREC would have to make up for with even further rate increases and/or market energy sales. And under the second rate proceeding, BREC could experience an unaccounted for decline of [REDACTED] TWhs of energy sales to its native load, which is a 20.7% loss that BREC would have to make up for with even further rate increases and/or market sales. BREC's failure to factor any price elasticity of demand into its long term financial forecast calls further into question the reasonableness of its strategy for dealing with the smelter departures.

**5. BREC's long term forecast unreasonably ignored the long term costs facing its coal fired generating units.**

Another serious flaw in BREC's long term financial forecast is the Company's assumption that it will incur zero capital costs for environmental compliance at any of its electric generating units after it completes installation of pollution controls needed to comply with the federal Mercury and Air Toxics Standard. Such approach ignores the fact that, as explained by Sierra Club witness Frank Ackerman, proposed and expected environmental regulations will likely require significant additional investments in BREC's generating units in the coming years.<sup>72</sup> BREC witness Robert Berry dismissed Ackerman's testimony on this point as mere:

speculat[ion] about 'anticipated' replacement rules, 'recently-proposed' regulation, potential "future" regulations, and "widely anticipated" environmental standard changes.<sup>73</sup>

Yet BREC previously, in the context of the Company's 2012 CPCN filing, asked the consulting firm of Sargent & Lundy to engage in exactly the kind of analysis that the Company now dismisses as speculation. As Sargent & Lundy explained in its resulting report:

Big Rivers Electric Corporation (BRECE) requested Sargent & Lundy, L.L.C. (S&L) to perform a comprehensive compliance study addressing the recently

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<sup>72</sup> Direct Testimony of Frank Ackerman at pp. 11-13.

<sup>73</sup> Rebuttal Testimony of Robert Berry at p. 15.

issued, proposed and pending environmental regulations and legislation, and the potential impacts these initiatives may have on operations at BREC's Kenneth C. Coleman, D.B. Wilson, and Sebree (Reid, Henderson and Green units) generating stations.<sup>74</sup>

Even after having commissioned such an analysis, BREC has inexplicably failed to incorporate the results of that report into its long term financial forecasting or other analyses regarding the most reasonable and prudent response to the smelter departures.

By failing to incorporate pending and anticipated environmental regulations into its long term planning, BREC has ignored significant capital costs that its generating units will likely face. For example, the Sargent & Lundy report identified the potential need for \$94 million in investments for compliance with coal combustion waste rules, \$14 million for compliance with Clean Water Act 316(b) standards, and as much as \$338 million for compliance with the Cross State Air Pollution Rule ("CSAPR")<sup>75</sup> and National Ambient Air Quality Standards ("NAAQS").<sup>76</sup> \$75.6 million of that spending would be at the Coleman plant, while \$139 million would be at Wilson. In addition, the Sargent & Lundy report did not account for potential costs of complying with the recently proposed Clean Water Act Effluent Limitation Guidelines, which could require additional investments at BREC's generating units.<sup>77</sup> BREC acknowledged that it has no estimate of the potential costs for complying with the ELGs.<sup>78</sup>

BREC also failed to incorporate into its projections any estimate of the cost to its generating units for complying with anticipated federal regulations of greenhouse gas

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<sup>74</sup> Direct Testimony of Frank Ackerman at Ex. 3, Sargent & Lundy Report at p. 1-1.

<sup>75</sup> While CSAPR was vacated by the U.S. Court of Appeals for the D.C. Circuit, the U.S. Supreme Court recently granted certiorari in a challenge to the D.C. Circuit's decision. Even if the D.C. Circuit's decision stands, a regulatory program similar to CSAPR is likely to return, as CSAPR was designed to implement NAAQS that are still in place and are expected to become more stringent, which is why the D.C. Circuit specifically called on U.S. EPA to "proceed expeditiously" to replace the vacated CSAPR program. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 n. 35 (D.C. Cir. 2012).

<sup>76</sup> Direct Testimony of Frank Ackerman at p. 13.

<sup>77</sup> *Id.*

<sup>78</sup> BREC Resp. to SC 2-9.

emissions.<sup>79</sup> On June 25, 2013, President Obama announced a comprehensive plan to cut the carbon pollution that causes climate change and endangers public health.<sup>80</sup> Noting that nearly 40 percent of this pollution is produced by the power sector, the President directed the EPA to revise its proposal for carbon pollution standards for new power plants by September 20, 2013, to issue proposed standards, regulations, or guidelines addressing carbon pollution from existing power plants by June 1, 2014, and to finalize those limits within a year.<sup>81</sup>

The President's announcement only confirmed and publicized a regulatory process that has been underway for years. In 2007, the Supreme Court held that carbon dioxide and other greenhouse gases are covered by the Clean Air Act's broad definition of "air pollutant" and that the EPA must decide whether greenhouse gases endanger public health. *Massachusetts v. Env'tl. Prot. Agency*, 127 S. Ct. 1438, 1462–63 (2007). After analyzing the available climate science, the EPA issued a formal finding that current and projected emissions of six greenhouse gases, including CO<sub>2</sub>, threaten the public health and welfare of current and future generations.<sup>82</sup> This finding has since been upheld by the U.S. Court of Appeals for the District of Columbia Circuit. *See Coal. for Responsible Regulation v. Env'tl. Prot. Agency*, 684 F.3d 102, 120–22 (D.C. Cir. 2012). That court also confirmed that the Clean Air Act requires the EPA to address greenhouse gas emissions under its stationary source permitting programs. *Id.* at 134–36. As confirmed by these decisions, Section 111 of the Clean Air Act requires the EPA to issue performance

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<sup>79</sup> Direct Testimony of Frank Ackerman at p. 13; Supplemental Rebuttal Testimony of Robert Berry at p. 10.

<sup>80</sup> The White House, Fact Sheet: President Obama's Climate Action Plan (June 25, 2013), *available at* <http://www.whitehouse.gov/the-press-office/2013/06/25/fact-sheet-president-obama-s-climate-action-plan>; Executive Office of the President, The President's Climate Action Plan (June 2013), *available at* <http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>.

<sup>81</sup> *Id.*; The White House, Presidential Memorandum – Power Sector Carbon Pollution Standards (June 25, 2013), *available at* <http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards>.

<sup>82</sup> U.S. EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009).

standards for air pollutants from both new and existing electric generating units. *See* 42 U.S.C. § 7411(b) & (d).<sup>83</sup> While the precise details of these rules are still uncertain, it is clear that utilities will need to meet new regulatory requirements (and their associated costs) in the near future. In light of these regulatory developments, BREC's assumption that it will have no future costs associated with carbon dioxide emissions from its coal-fired generating units is patently unreasonable.

#### IV. CONCLUSION

For the foregoing reasons, Sierra Club respectfully requests that the Commission reject BREC's requested rate increase and the unjust and unreasonable rates that would result. The Commission should, in addition, provide BREC with only temporary and limited relief and urge the Company to work with its creditors, the parties, and other interested stakeholders to develop a plan to right-size BREC so that unjust and unreasonable rate increases can be avoided while the Company is returned to a more solid financial footing.

Respectfully submitted,



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<sup>83</sup> 42 U.S.C. § 7411(d) provides that the EPA Administrator "shall prescribe regulations which shall establish a procedure" for states to submit proposed "standards of performance for any existing source for any air pollutant," such as CO<sub>2</sub>, "for which air quality criteria have not been issued" but for which new source performance standards have been established. Then-Acting EPA Administrator Robert Perciasepe recently stated that he expects that the Agency will develop these standards of performance for carbon dioxide emissions from existing power plants during fiscal year 2014. Jean Chemnick, "EPA official: Carbon rules for existing power plants 'on the table' in 2014," *Environment & Energy Daily* (Apr. 12, 2013), available at <http://www.midwestenergynews.com/2013/04/12/epa-official-carbon-rules-for-existing-power-plants-on-the-table-in-2014/>.

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## CERTIFICATE OF SERVICE

I certify that I had served a copy of the foregoing Post-Hearing Brief of Ben Taylor and Sierra Club via first class mail and electronic mail on July 26, 2013 to the following:

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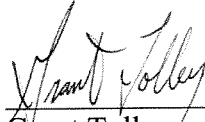
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