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AUG 27 2014
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION FILING OF WHOLESALE CONTRACTS PURSUANT TO KRS 278.180 and KAR 5:011 § 13	)))	CASE NO. 2014-00134

ATTORNEY GENERAL'S COMMENTS IN LIEU OF TESTIMONY
PUBLIC REDACTED VERSION

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and submits the following comments in lieu of filing testimony regarding Big Rivers Electric Corp. ["Big Rivers"]'s instant filing.

A. Background

Historically, Big Rivers' two largest customers have been two aluminum smelters, which together had 850 MW of the company's load. However, both smelters have now left Big Rivers' system, having obtained market-based electric service. Big Rivers had foreseen the smelters' potential departure, and as a result developed and subsequently implemented its Load Concentration Analysis and Mitigation Plan ["Mitigation Plan"].[1] Among other items, the Mitigation Plan provides for a large-scale increase in Big Rivers' off-system sales to make-up for the lost retail sales revenues received by serving the smelters. The instant filing represents the first in what Big

[1] The Mitigation Plan was one of the primary issues facing the Commission and the parties in the two base rate cases Big Rivers filed (Case Nos. 2012-00535 and 2013-00199) in an attempt to replace revenues the company lost as a result of the two smelters' departure from the company's system.

Rivers has previously indicated would be a series of contracts for the sale of wholesale power in an effort to replace revenues the company lost when the smelters departed its system.

On April 4, 2014, Big Rivers filed its petition in the instant matter, in which it seeks Commission approval of three wholesale contracts for the sale of power to: The City of Wayne, Nebraska; the City of Wakefield, Nebraska; and the Northeast Nebraska Public Power District ["NEPPD"]. The NEPPD contract would commence January 1, 2018, while the other two contracts would commence January 1, 2019. The initial term for all three contracts would expire December 31, 2026. If approved, power supplied under these contracts will flow through two regional transmission organizations ["RTOs"], the Midcontinent Independent System Operator ["MISO"] and the Southwest Power Pool ["SPP"].

B. Comments

Although the proposed contracts represent efforts on the part of Big Rivers to replace the lost smelter load, nonetheless the record reflects that revenue projected to be received under these contracts is less than that assumed for replacement load in the forecasts provided in Big Rivers' filing. While the forecasted revenue figures are apparently greater in the early years (when sales under the contract are lower), toward the later years of the contract the degree to which forecasted revenues depart from the sales forecasts becomes significant. An analysis of this difference between forecasted revenues and sales is provided in the attached "Comparison of Nebraska Contracts Revenues to Replacement Load."

This analysis reveals the following ramifications, upon fulfillment of the contracts as forecasted:

(1) Big Rivers' replacement load sales assumptions may be suspect. The projected Nebraska contracts margin is [redacted][2] during the 2017-2026 time span, which is less than the [redacted] margin the same sales would create during the same time period if the same sales volumes were at the forecasted "replacement load" prices.[3] In essence, the very first long-term replacement load sales to implement the Mitigation Plan already falls short of the assumed replacement load benefits;

(2) These contracts, which together represent Big Rivers' first major post-smelter departure sale in an effort to implement its Mitigation Plan, will achieve less revenue overall than assumptions used to defend the plan in its last rate proceeding;

(3) It is likely that replacement load sales will be carried out in the face of significant risks such as transmission costs, LMP [4] differential basis pricing, and the potential for carbon pricing,[5] the latter of which could fundamentally alter the expectations of the contracting parties. These risks include the fact that the contract rate is tied in part to the Nebraska Public Power District ["NPPD"]'s rates, which could fluctuate based on NPPD's own risks.

Moreover, it appears that Big Rivers' Mitigation Plan, under which wholesale sales of power are being implemented, contains multiple internal inconsistencies, at least two of which are highly significant for purposes of the instant case. First, the Mitigation Plan is premised upon the sale of the Coleman and/or Wilson generating plants, while at the same time increasing the level of long-term off-system capacity and

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[2] While the contracts as stated in the application do not start until 2018, Big Rivers' response to AG 1-12 provided studies that were conducted using the assumptions that the contracts would start in 2017. In fact, delaying the contracts for one year only increases the difference between the assumed replacement load pricing and the forecasted Nebraska contracts pricing.

[3] See rows 85 to 87 of the "base case" tab of the spreadsheet provided in Big Rivers' confidential response to AG 1-12.

[4] Locational Marginal Price.

[5] *See, e.g.,* "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Unites." 79 Fed. Reg. 34,830 (June 18, 2014) (Docket ID: EPA-HQ-OAR-2013-0602).

energy sales. These two goals will inevitably clash at some future point. Although the volumes of capacity and energy involved in the Nebraska sales are neither large enough in volume nor long enough in duration to prevent the sale of unneeded generation plants, and assuming Big Rivers continues to enter into additional wholesale long-term contracts for the sale of capacity and energy, eventually there will be a tipping point where the company will no longer be able to sell Coleman (and/or Wilson for that matter) due to "replacement load" commitments. Second, and perhaps most importantly, if Big Rivers continues with its plan to increase off-system sales, Big Rivers (as a regulated utility) will be engaging in unregulated merchant generation and related operations, ***funded entirely*** by the company's Kentucky ratepayers. Any merchant operation is exposed to enormous risks and it is unlikely that Big Rivers, a fairly small utility, will be able to shield its ratepayers from the burdens and uncertainties associated with those risks.

Finally, Big Rivers has not committed to depositing margins from these sales into its Economic Reserve fund.[6] The Attorney General believes Big Rivers should be required to do so, since the intent of the Mitigation Plan is to protect ratepayers by mitigating the scope and scale of rate increases resulting from the departure of the smelter load. If the ratepayers are exposed to risk from merchant generation and off-system-sales, they should be guaranteed any margins that may result if the contracts do, in the end, produce profit.

[6] See responses to AG 1-13 and KIUC 2-3.

C. Conclusion

As discussed above, the contracts which are the subject of the instant filing are intrinsically tied to the Mitigation Plan. In Case 2013-00199, the Commission ordered a focused management audit of Big Rivers to scrutinize the company's efforts to mitigate the impact of the loss of the smelter loads (which doubtlessly will encompass the Mitigation Plan).[7] Any approval of the subject contracts at this point in time would likely hamper the conduct of the audit. Therefore, the Attorney General believes that any approval of the contracts should be held in abeyance pending the completion of the audit, including the issuance of the auditor's final report. The subject contracts are not scheduled to begin until 2018, leaving ample time for the Commission to issue a final order. Alternatively, the Attorney General suggests that the Commission could conditionally approve the contracts, making them subject to the audit process.

Respectfully submitted,
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[7] Case No. 2013-00199, Final Order dated April 25, 2013, p. 51.

Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

Hon. James M Miller
Sullivan, Mountjoy, Stainback & Miller,
PSC
P.O. Box 727
Owensboro, KY 42302-0727

Hon. Michael L. Kurtz
Boehm, Kurtz & Lowry
36 E. 7th St.
Ste. 1510
Cincinnati, Ohio 45202

this 27th day of August, 2014

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Assistant Attorney General

COMPARISON OF NEBRASKA CONTRACT REVENUES TO PROJECTED REPLACEMENT LOAD

PUBLIC REDACTED VERSION

Rates ($/MWH) from the "Rates" tab , rows 85 to 87 of the base case spreadsheet in confidential response to AG 1-12

	2017	2018	2019	2020	2021	2022	2023
Market	[redacted]						
Replacement Load							
Nebraska							

Sales Volumes (GWH) from the "PCM" tab , rows 10 to 12 of the base case spreadsheet in confidential response to AG 1-12

	2017	2018	2019	2020	2021	2022	2023
Market	[redacted]						
Replacement Load							
Nebraska							

Total Projected Revenue "Peak and Energy Sales Base Case" Tab of confidential spreadsheet in response to AG 2-1, rows 92-101

	2017	2018	2019	2020	2021	2022	2023
Energy Revenue	[redacted]						
Demand Revenue							
Capacity Payment to Loads							
Total Revenue							
Generation Costs							
Gross Margin							
Transmission Costs*							
Admin Fees							
Annual Net Margin							

Estimated Margin if Nebraska Revenue Equalled "Replacement Load" Value Assumptions (multiply by Ratio of Replacement Load to Nebraska Contract rates)

	2017	2018	2019	2020	2021	2022	2023
Total Revenue	[redacted]						
Generation Costs							
Gross Margin							
Transmission Costs*							
Admin Fees							
Annual Net Margin							

	2024	2025	2026
Market	[redacted]		
Replacement Load			
Nebraska			

	2024	2025	2026
Market	[redacted]		
Replacement Load			
Nebraska			

	2024	2025	2026	Total
Energy Revenue	[redacted]			
Demand Revenue				
Capacity Payment to Loads				
Total Revenue				
Generation Costs				
Gross Margin				
Transmission Costs*				
Admin Fees				
Annual Net Margin				

	2024	2025	2026	Total
Total Revenue	[redacted]			
Generation Costs				
Gross Margin				
Transmission Costs*				
Admin Fees				
Annual Net Margin				