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December 29, 2008

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**PUBLIC SERVICE
COMMISSION**

Ms. Stephanie Stumbo
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

Re: PSC Case No. 2007-00455

Dear Ms. Stumbo:

Enclosed herewith for filing please find the original and 10 copies of brief on behalf of Big Rivers' Members.

Your assistance in this matter is appreciated.

Very truly yours,

DORSEY, KING, GRAY, NORMENT & HOPGOOD

By


Frank N. King, Jr.

FNKJr/cds

Encls.

COPY/w/encls.: Service List
Mr. Burns Mercer
Mr. G. Kelly Nuckols
Mr. Sanford Novick
Mr. Jack D. Gaines
Ms. Melissa Yates

Kentucky. The Members have a vital stake in this proceeding. Through their boards of directors they have a fiduciary responsibility to act in the best interests of their customers, and they support the Unwind.

The Members have been closely involved as this transaction has unfolded since 2003. Burns Mercer, President and CEO of Meade County RECC, was selected to take the lead for the Members and he became part of the Big Rivers negotiating team. He has filed testimony twice in this proceeding, first direct testimony as Exhibit 26 to the initial Application and subsequently supplemental direct testimony as Exhibit 101 to the Amended and Supplemental Application dated October 9, 2008.

Early in the process the Members retained the consulting services of Jack Gaines of JDG Consulting LLC to be their representative as this matter moved forward. Mr. Gaines has a lengthy history of involvement in financial, contractual and both wholesale and retail rate matters affecting the Members (Mercer testimony, Exhibit 26, p. 6, l. 1). As the Commission is aware, Mr. Gaines designed the five (5) pass through riders that have received conditional approval by the Commission in Case Nos. 2007-00470, 2008-00009 and 2008-00010.

Big Rivers' Finances

Mr. Mercer's testimony emphasizes the importance that the Members attach to the restoration of Big Rivers' financial stability and flexibility if the Unwind is approved. At present Big Rivers is hamstrung in its operations should an unexpected event cause significant financial expenditures. If Members' loads increase significantly, be it from a new industrial customer or increases from a customer's load, Big Rivers

simply does not have the financial ability to undertake new investments in generation assets to meet these load increases (Mercer testimony, Exhibit 26, p. 11, l. 7 and p. 12, l. 1). The Unwind shifts Big Rivers' equity from a negative 11% to a minimum positive 26%¹. In October 2008 Big Rivers had a negative equity of \$139 million and is expected to have a positive equity of \$372 million after closing². Without question, this favorable shift in equity will bode well for Big Rivers and the Members in meeting challenges and opportunities that lie ahead.

The Members have shown their support for strengthening Big Rivers' financial condition. Upon request by Big Rivers each of the Members unanimously agreed to extend its all-requirements wholesale power contract through the year 2043 (see Exhibit 27 to Application). The extension of these wholesale power contracts obviously will be of assistance to Big Rivers' obtaining an investment grade rating, which is a condition of Big Rivers being able to proceed following Unwind approval.

Rates and the Smelters

At or near the top of the list of issues in this case is the question of rates. It has been generally acknowledged by all involved that there are risks associated with rates if the Unwind is approved. However, the Members submit that the relevant questions are not whether there are risks, but whether the risks are reasonable when considered against

¹ In Mercer testimony attached to the original application, Exhibit 26, p. 10, l. 13, these percentages were stated to be 13.6% and 24% respectively. In Big Rivers' amended filing the above current percentages are found in Exhibit 102, supplemental direct testimony of Michael H. Core, Exhibit MHC-2 and supplemental direct testimony of Robert S. Mudge, Exhibit 98, at p. 14.

² In Mercer testimony attached to the original application, Exhibit 26, p. 10, l. 13, these amounts were stated to be \$288.4 million before initial filing and \$377 million after closing. In Big Rivers' amended filing the above current amounts are found in Exhibit 102, supplemental direct testimony of Michael H. Core, Exhibit MHC-2.

continuing with the existing contractual relationships, and whether prudent steps have been taken in attempting to identify the risks and taking actions to mitigate them.

There are two (2) general categories of rates under consideration in this case, the rates for the two (2) Smelters and the rates for the non-smelter ratepayers. Determined efforts have been made to protect the non-smelter ratepayers following the closing of the Unwind. Big Rivers' will be financially strengthened by the infusion of cash and other monetary considerations paid by E.ON totaling approximately \$756 million (Amended and Supplemental Application Exhibit 78, Third Supplemental Direct Testimony of C. William Blackburn, Exhibit CWB-15). From these proceeds, Big Rivers is setting aside \$157 million in an Economic Reserve account which will be used to offset future potential rate increases to the non-smelter Members that may arise under Big Rivers' fuel charge and environmental surcharge (Mercer testimony, Exhibit 26, p. 8, l. 7; Supplemental Direct Testimony of William Steven Seelye, Exhibit 103 at page 6). Additionally, the Smelters will pay monthly surcharges to reduce the fuel and environmental amounts to be paid by the non-smelter ratepayers, and the Smelters will be required to make additional payments annually as necessary to enable Big Rivers to achieve a 1.24 TIER. In total, consideration from the Smelters is expected to be approximately \$327 million through their contract term (Tab 11B to November 7, 2008, updated response to AG Data Request No. 67). All of these payments obviously will help forestall the need for any rate increases of the non-smelter customers (Mercer testimony, Exhibit 26, p. 9, l. 1).

In the future Big Rivers' wholesale rates, and consequently the Members' retail rates, are expected to increase regardless of whether the Unwind is approved. It cannot be stated definitively whether these increases will be greater if the Unwind occurs. Nevertheless, prudent, responsible steps have been taken to mitigate risks in the Unwind and there are compelling reasons not associated with the rates that support approval of the Unwind.

One of these compelling reasons is to enable the two (2) Smelters to remain in business after the expiration of their current service agreements in 2010 and 2011. No one questions that if new agreements with below market rates are not in place, there is a high probability that the Smelters will have to close their doors. The loss of jobs and income, with the inevitable ripple effect, would be simply devastating to the economies in the Members' service territories. As Mr. Mercer put it, "We want the Smelters to stay in business." (Mercer testimony, Exhibit 26, p. 12, l. 20).

As expressed above, determined efforts have been made to protect all affected ratepayers, both non-smelter and the Smelters. The Smelters have negotiated their contracts and support the Unwind, so the ultimate question is whether the proposal before the Commission achieves a good balance for all ratepayers. The rate proposals in this case are the result of lengthy and intense negotiations and the Members submit that a good balance has been achieved for all of the Members' customers, smelter and non-smelter alike. The proposed rates satisfy the requirement of being fair, just and reasonable and they are non-discriminatory.

THE AG'S POSITION

It is not clear whether the AG's witness David Brevitz changed his mind and the AG followed, or whether the AG influenced Mr. Brevitz's change. Either way it greatly diminishes the effectiveness of the AG's position. On the one hand the AG's position is suspect if the AG did accede to the change of heart of a single person, and on the other hand the creditability of this witness is lost if he succumbed to outside influence. Moreover, Mr. Brevitz's conclusions are ill-founded because he fails to recognize that the terms with HMPL are locked-in insofar as what the Commission is requested to approve, and it clearly was improper for him to take sides with respect to the condition of HMPL's Station Two since Mr. Brevitz did not have any expertise in this area. Further, Mr. Brevitz qualifications to give opinions in this proceeding appear to be rather thin.

The Members submit that the testimony of Mr. Brevitz should be given very minimal weight, if any, by the Commission. Regardless of the weight to be given Mr. Brevitz's testimony, he does not recommend disapproval of the Unwind, but simply does not recommend its approval (Brevitz Supplemental Testimony, p. 3, l. 20). His position and that of the AG should not be an impediment to the Commission's approval of this transaction.

CONCLUSION

The reasons to approve the Unwind vastly outweigh any reasons or considerations to the contrary. The Commission can and should keep regulatory oversight after Unwind approval. The Members respectfully request the Commission's approval of the Unwind.

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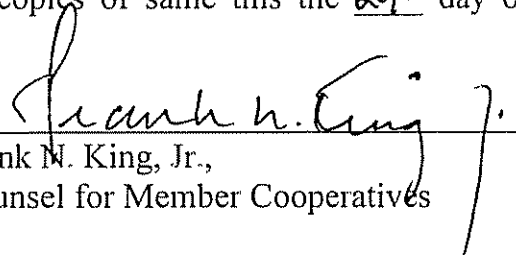
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on the persons named in the attached service list by mailing true and correct copies of same this the 29th day of December, 2008.


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