

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)
CORPORATION FOR A GENERAL) CASE NO. 2009-00040
AN ADJUSTMENT OF RATES)

APR 08 2009
PUBLIC SERVICE
COMMISSION

ATTORNEY GENERAL'S POST HEARING BRIEF

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and submits his comments regarding the above referenced action.

BACKGROUND

Big Rivers Electric Corporation ("BREC" or "Big Rivers") filed its application for an increase in its base rates on March 2, 2009 and requested, by way of a Motion for Interim Relief incorporated into the application, that the increase in rates reflected in the application be put into effect on April 1, 2009. BREC based the request on the historical test year ending November 30, 2008 and requested an increase of 21.6% to be applied equally across all its customer classes. Pursuant to 807 KAR 5:001, Section 14, BREC requested a deviation from the filing requirements of 807 KAR 5:001, Section 10(6)(u), which requires a cost of service study to be provided with its rate application. BREC states that given the urgent need to place the requested rates into effect, it had insufficient time to perform a cost of service study with its members. The Commission, in its Order entered March 16, 2009, granted BREC's request for a deviation and found that an investigation would be necessary to determine the reasonableness of the proposed rates and suspended the proposed rates pending that investigation until August 31, 2009. A hearing on BREC's request for interim relief was held on March 26, 2009.

With respect to its request for interim relief, BREC states that the relief requested is

necessary as its cash reserves are depleted as a result of its buy-out of the leveraged leases of Phillip Morris Capital Corporation (“PMCC”) and the increase in interest BREC must pay on its pollution control bonds (“PCB”).¹

The buy-out of these leases was necessitated under the terms of the leases by the downgrade of the credit rating of AMBAC Corporation (“AMBAC”), the guarantor of the leases.² The buyout of the PMCC leases included a cash payment to PMCC of \$109.3 million and a promissory note due December 15, 2009 in the amount of \$12.4 million.³

Additionally, the downgrade of AMBAC has caused the interest rate on the PCB’s to increase from approximately 3.74% to 18% due to the fact that AMBAC was also the surety on the pollution control bonds.⁴ This increase has dramatically increased the annual interest payments BREC must pay to the bond holders. Given the restrictions on its ability to borrow, BREC states that it would be difficult to refinance this debt in today’s market⁵, limiting BREC’s ability to obtain relief through refinancing of this debt.

Finally, BREC is required to make its quarterly interest payment of \$15.8 million to RUS on January 4, 2010.⁶

In the application, BREC asserts that unless its request for interim relief is granted, its cash reserves will be depleted to the point that its operations will be materially impaired or damaged and projects that if its proposed rate increase is not granted it will have a projected cash

1 See Application, Paragraph 5, Page 3, Line 15.

2 See Application, Paragraph 5, Page 4, Line 3.

3 Testimony of C. William Blackburn, Page 21, Line 18.

4 Testimony of C. William Blackburn, Page 49, Line 20.

5 Testimony of C. William Blackburn, Page 50, Line 10.

6 Testimony of C. William Blackburn, Page 41, Line 10.

deficit of \$7.5 million on January 5, 2010.⁷ BREC projects that if it obtains the interim (and permanent) rate increase requested, it will collect \$16.0 million between April 1, 2009 and January 5, 2010, which would allow its cash reserve balance to be a positive \$8.5 million on January 5, 2010.⁸

The interim and permanent rate increase is sought by BREC on the assumption that the proposed Unwind Transaction, which is outlined in Case No. 07-00455, does not close. If the Unwind Transaction closes, the proceeding will become moot and BREC will withdraw its Notice and Application.⁹

ARGUMENT

As an initial matter, the Attorney General states that due to the abbreviated procedural schedule with regard to BREC's request for interim relief, along with the current workload of his office, he was unable to perform a detailed review of the application for interim relief. Nevertheless, based upon his truncated review of the application and his participation at the hearing of this matter, the Attorney General agrees that a rate increase will be necessary to allow BREC to build sufficient cash reserves to meet its obligations should the unwind transaction not be closed as anticipated. However, his office does not agree with the timing and amounts of such rate relief as proposed by BREC in its application. The Attorney General supports the arguments proposed by Kentucky Industrial Utility Customers, Inc. ("KIUC") and states as follows:

⁷ See BREC Direct Exhibit No.2, "Projected Cash Balances."

⁸ See BREC Direct Exhibit No.2, "Projected Cash Balances."

1. Big Rivers Has Taken Appropriate Cost Deferral and Cost Containment Actions To Allow It To Delay The Requested Interim Relief Until Such Time As It Is Clear That The Propose Unwind Transaction Will Not Occur

In its application, BREC initially projected that, assuming the full rate relief requested effective of April 1, 2009, it would have only \$2.8 million cash balance available on January 5, 2010. Clearly from the application it was BREC's position that a cash balance of \$2.8 million on January 5, 2010 was sufficient to ensure it suffered no material impairment in its operations.

However, at the March 26, 2009 hearing BREC was able to update its projection to include the effect of a number of budget cuts and costs deferrals approved by its board on March 20, 2009.¹⁰ As a result of these cost cutting efforts, BREC now projects that, should the proposed interim relief be effective April 1, 2009, it will have \$8.5 million in cash available to it on January 5, 2010.¹¹ As the proposed rate increase will increase BREC's cash position by approximately \$2.0 million per month, a delay of the proposed increase for three months simply restores BREC to the position it would have been in under the original application, with a cash balance of \$2.5 million on January 5, 2010 (\$8.5 million per the updated projection less \$6.0 million from a 3 month delay).

BREC filed the current application based on the expectation that the Unwind Transaction does not close, however, if the Unwind Transaction closes, BREC admits that this proceeding will become moot and that it will withdraw its Notice and Application.¹² From the testimony of its witnesses at the hearing, BREC still expects the Unwind to close and continues to work toward a closing date in the near future. The Commission should recognize that progress

9 See Application, Paragraph 4, Page 3, Line 5.


10 See KIUC Cross Examination Exhibit No. 1, "Cash Based Revenue Requirement."

11 See BREC Direct Exhibit No. 2, "Projected Cash Balances."

continues to be made toward a closing of the Unwind Transaction in that the Joint Applicants in the Unwind case just recently obtained the consent of the City of Henderson¹³. In fact, concerning the Unwind closing, C. William Blackburn testified that BREC will only assume the closing will not take place if the transaction still has not closed on June 30, 2009.¹⁴ Even discounting the current dismal economic conditions, a rate increase of nearly 22% is obviously a significant increase to ratepayers, and while such a large increase is not completely unprecedented, such relief is extraordinary and only considered under extreme circumstances. In this case, there is some flexibility before BREC must begin to recover for future payments. Therefore, the Commission should take advantage of that flexibility on behalf of the ratepayers of Big Rivers and ensure that the Unwind has been abandoned by BREC before approving a large rate interim increase, under which the proceeds may need to be refunded only a few weeks later.

Respectfully submitted,

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ATTORNEY GENERAL OF KENTUCKY



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12 See Application, Paragraph 4, Page 3, Line 5.

13 See March 31, 2009 article from the Henderson Gleaner at <http://www.courierpress.com/news/2009/mar/31/city-approves-unwind-documents/>.

14 See Hearing Video, March 26, 2009, 1:50 pm.

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CERTIFICATE OF SERVICE AND NOTICE OF FILING

I hereby give notice that this the 8th day of April, 2009, I have filed the original and ten copies of the foregoing with the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 and certify that this same day I have served the parties by mailing a true copy of same, postage prepaid, to those listed below.

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