

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS	)	
ELECTRIC CORPORATION FOR APPROVAL OF	)	CASE NO.
AMENDMENT TO POWER PURCHASE	)	2022-00296
AGREEMENT	)	

ORDER

On September 22, 2022, Big Rivers Electric Corporation (BREC) filed an application for approval of amendments to a power purchase agreement between BREC and Unbridled Solar, LLC, (Unbridled Solar) (Unbridled PPA) formerly known as Henderson Solar, LLC, entered on May 26, 2020. Unbridled Solar is a wholly owned subsidiary of Geronimo Energy, LLC, which is owned by National Grid Renewables (NGR). The Unbridled PPA was one of three renewable energy-solar power purchase agreements originally approved by the Commission by Order dated September 28, 2020, in Case No. 2020-00183.<sup>1</sup> The other two Solar Contracts are between BREC and Community Energy Solar, LLC (Community Energy), which is now a subsidiary of the AES Corporation (AES). The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), filed a motion to intervene on October 3, 2022. The Commission granted the motion on October 14, 2022.

On December 22, 2022, the Commission established a procedural schedule for the orderly processing of the case. BREC responded to one data request from

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<sup>1</sup> Case No. 2020-00183, *Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts* (Ky. PSC Sept. 28, 2020), Order.

Commission Staff and two data requests from the Attorney General. On March 20, 2023, BREC filed a request for a decision based on the record. However, the Attorney General asked for an opportunity to brief the issues.<sup>2</sup> On March 31, 2023, the Commission established a procedural briefing schedule. On April 12, 2023, BREC and the Attorney General filed initial briefs and on April 19, 2023, BREC filed a response brief. The record is complete, and the matter stands ready for a decision.

### LEGAL STANDARD

In Case No. 2020-00183, the Commission discussed whether these solar contracts required Commission approval. BREC relied on Case No. 2020-00016<sup>3</sup> to argue that it was not required to obtain approval pursuant to KRS 278.300 or KRS 278.020(1) in that matter. However, BREC sought to justify the Solar Contracts, in significant part, based on the argument that they are necessary to satisfy its obligation to provide adequate, efficient and reasonable service to its native load, particularly with regard to capacity requirements. BREC argued that capacity from the Solar Contracts is required to meet BREC's obligation of service, either on a system basis or to fulfill agreements previously approved by the Commission. For those reasons, and because the facilities are being constructed at the direction of BREC to provide power exclusively to BREC, the Commission found the Solar Contracts are an alternative to incurring debt to construct generation directly. Thus, the Commission found that it must review the contracts pursuant to KRS 278.300 and KRS 278.020(1).

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<sup>2</sup> Attorney Generals' Response to Request for a Decision (filed on Mar. 21, 2023).

<sup>3</sup> Case No. 2020-00016, *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3* (Ky. PSC May 8, 2020).

## BACKGROUND

BREC was incorporated in the Commonwealth of Kentucky on June 14, 1961, and is currently in good standing.<sup>4</sup> BREC owns generating assets and purchases, transmits and sells electricity at wholesale. Its principal purpose is to provide the wholesale electricity requirement of its three distribution cooperative members: Jackson Purchase Energy Corporation (Jackson Purchase Energy), Kenergy Corp. (Kenergy), and Meade County Rural Electric Cooperative Corporation (Meade RECC). The utilities, in turn, provide retail electric service to approximately 121,000 consumer/retail members located in Ballard, Breckenridge, Caldwell, Carlisle, Crittenden, Daviess, Graves, Grayson, Hancock, Hardin, Henderson, Hopkins, Livingston, Lyon, Marshall, McCracken, Mclean, Meade, Muhlenberg, Ohio, Union and Webster counties, Kentucky.<sup>5</sup>

As mentioned above, the Commission approved a total of three solar contracts in Case No. 2020-00183. Under the Unbridled PPA, BREC would receive all of the capacity, energy, ancillary services, and environmental attributes of a 160 MW solar facility (Unbridled Project) to be located on the Henderson/Webster County line just south of Henderson, Kentucky for a total price of \$29.60/MWh that would be fixed for 20 years; BREC would be responsible for interconnection costs above \$10 million, with a right to terminate the contract if the costs became prohibitive.<sup>6</sup>

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<sup>6</sup> Direct Testimony of Mark Eacret (Eacret Direct Testimony) at 6.

On April 11, 2022, representatives of NGR met with BREC and provided informal notice that NGR would not honor the terms of the PPA.<sup>7</sup> NGR asserted that it would not be able to finance the project without “mutually beneficial revisions” to the contract.<sup>8</sup> Without these revisions, NGR would abandon the project and surrender the [REDACTED] in credit support that it had provided.<sup>9</sup> NGR cited supply chain issues, delay in the MISO Generator Interconnection Agreement (GIA) Queue, and anti-dumping and countervailing duties pertaining to solar panels.<sup>10</sup> Community Energy, the developer of two other solar contracts totaling 100 MW, informed BREC that it would be unable to honor those contracts.<sup>11</sup> AES acquired Community Energy in December 2021 and informed BREC that it would not honor those contracts either; BREC has not yet reached an agreement with AES.<sup>12</sup>

Relatedly, BREC requested approval of a special contract between Meade RECC and Nucor Corporation.<sup>13</sup> The Commission approved the special contract between BREC and Nucor, BREC serves Nucor at a fixed price for ten years, beginning in 2022. That fixed price was predicated upon a low-priced solar resource, and the Unbridled PPA

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<sup>7</sup> Eacret Direct Testimony at 9.

<sup>8</sup> Application at 5, Eacret Direct Testimony at 9.

<sup>9</sup> Application at 5.

<sup>10</sup> Eacret Direct Testimony at 9-10.

<sup>11</sup> Application at 5.

<sup>12</sup> Application at 5-6.

<sup>13</sup> Case No. 2019-00365 *Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff* (Ky. PSC Aug. 17, 2020).

serves as a partial hedge of the cost of the capacity and energy required to serve Nucor over that ten-year period.

#### PROPOSED AMENDMENT

BREC and NGR agreed to amend the Unbridled PPA in order to move forward with the Unbridled Project. The amendment proposed increasing the contract price from \$29.60 to \$38.10/MWh to address inflation and part of the supply chain issues, according to BREC.<sup>14</sup> The amendment allows for NGR and BREC to apply for a provisional generator interconnection (PGIA), which will allow the network upgrades to commence prior to MISO completing the traditional interconnection process.<sup>15</sup> BREC has agreed to accept all of the Network Upgrade Cost risk created by moving ahead with the PGIA.<sup>16</sup> Unbridled Solar will remain responsible for all interconnection facilities.<sup>17</sup> The parties also agreed to a delayed Commercial Operation Date and lower capacity and volumes due to the use of domestically developed solar panels, which are slightly less efficient than the original imported panels.<sup>18</sup> Prior to commercial operation, Unbridled Solar will increase its credit support from [REDACTED] to [REDACTED].<sup>19</sup>

BREC asserted that, with the new contract terms and updated assumptions, the value of the PPA to the members of BREC, excluding [REDACTED], actually increases to [REDACTED], an increase of [REDACTED] from the original estimate, due

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<sup>14</sup> Application at 7.

<sup>15</sup> Eacret Direct at 13-14.

<sup>16</sup> Eacret Direct at 14.

<sup>17</sup> Application at 7.

<sup>18</sup> Eacret Direct Testimony at 14.

<sup>19</sup> Eacret Direct at 18.

mainly to an [REDACTED].<sup>20</sup> BREC still forecasts a capacity deficit in 2025-2026.<sup>21</sup>

BREC filed an initial brief and a response brief in this matter. BREC reiterated that the Amendment preserves two-thirds of the economic benefit of the Unbridled PPA for its members and itself.<sup>22</sup> BREC argued that the PPA will not survive without Commission approval of an amended agreement and this amendment “makes the best out of a bad situation.”<sup>23</sup> BREC argued that while the terms are less favorable than the original agreement, they are still generally favorable and the Unbridled PPA will provide benefits such as capacity during a short-term deficit, satisfaction of BREC’s solar obligations to Nucor, and diversification of BREC’s resource portfolio.<sup>24</sup>

The Attorney General, as an intervenor, did not file testimony but along with requesting information, filed a brief in the matter. In response to BREC’s arguments, the Attorney General stated that the Commission has held in the past that

[s]pecial contracts entered into to promote corporate sustainability goals should ensure that non-participating customers are no worse off than if the special contracts for renewable energy did not exist. Non-participating customers must not bear additional costs that arise from a jurisdictional utilities['] actions in attempting to meet a corporation’s own self-imposed sustainability goal.<sup>25</sup>

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<sup>20</sup> Eacret Direct Testimony, Exhibit Eacret -7

<sup>21</sup> Application at 8.

<sup>22</sup> BREC’s Initial Brief at 2.

<sup>23</sup> BREC’s Initial Brief at 3-4.

<sup>24</sup> BREC’s Initial Brief at 4.

<sup>25</sup> Case No. 2020-00016 *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3* (Ky. PSC May 8, 2020), Order at 17.

The Attorney General argued that the PPA in this case procures more energy than BREC needs so BREC is allowing outside interests to influence its decision.<sup>26</sup> The Attorney General took issue with BREC's reasoning for the PPA, namely the value of "environmental attributes" and Environmental, Social, and Governance (ESG) criteria from credit rating agencies.<sup>27</sup> The Attorney General argued that ESG criteria has a fundamental goal, to destroy the fossil fuel industry.<sup>28</sup> The Attorney General also argued that "the Commission should not allow credit rating agencies to jeopardize the reliability of Kentucky's electric grid."<sup>29</sup>

The Attorney General stated that the underlying policy considerations of Senate Bill 4 (SB 4), which requires utilities to gain approval to retire fossil fuel generation and creates a rebuttal presumption against the retirement, are implicated by the proposed PPA, because the solar facility will not be dispatchable.<sup>30</sup> The Attorney General proposed that the Commission should conditionally approve the amended PPA if, and only if, BREC and NGR are willing to amend it to limit its scope to allow for the purchase of only the amount of solar output needed to meet the obligations of the Nucor contract.<sup>31</sup>

In response to the Attorney General's assertions, BREC stated that SB 4 is not relevant because BREC is not proposing to retire any generation in this case.<sup>32</sup> BREC

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<sup>26</sup> Attorney General's Brief at 3.

<sup>27</sup> Attorney General's Brief at 4.

<sup>28</sup> Attorney General's Brief at 4.

<sup>29</sup> Attorney General's Brief at 5.

<sup>30</sup> Attorney General's Brief at 7-8.

<sup>31</sup> Attorney General's Brief at 9.

<sup>32</sup> BREC's Response Brief (filed on Apr. 19, 2023) at 5.

argued that the issue of resource reliability was addressed in BREC's 2020 Integrated Resource Plan (IRP)<sup>33</sup> and according to BREC, that IRP's plan to increase renewable generation sources was praised by the Attorney General as a risk reduction and economic development attraction.<sup>34</sup> BREC concluded by asking the Commission to approve the amendment to the Unbridled PPA as reasonable and cost-effective.<sup>35</sup>

### DISCUSSION AND FINDINGS

Based on the evidence in the record, the Commission finds that the amendment to the Unbridled PPA, as requested by BREC, should be approved. As noted in the original Order approving the solar contracts, the primary purpose of the PPAs was to satisfy a requirement in the Nucor contract and to address an expected capacity deficit.<sup>36</sup> This purpose remains unchanged. The Commission addressed the Attorney General's concerns regarding the excess energy BREC is contracted to receive in the same Order. The Commission notes that the capacity that exceeds that required by the Nucor Contract will fill other needs identified by BREC in this matter, including a capacity shortfall that is expected when BREC begins serving Nucor's load, the hedging of price risk related to the Nucor Contract, demand from potential economic development candidates seeking to meet corporate sustainability goals, and credit risks arising from BREC's heavy dependence on coal-fired generation.<sup>37</sup>

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<sup>33</sup> Case No. 2020-00299, *Electronic 2020 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC May 13, 2022).

<sup>34</sup> BREC's Response Brief at 5-6.

<sup>35</sup> BREC's Response Brief at 9.

<sup>36</sup> Case No. 2020-00183 (Ky. PSC Sept. 28, 2020), Order at 12.

<sup>37</sup> Case No. 2020-00183 (Ky. PSC Sept. 28, 2020), Order at 13.

The Commission finds that the proposed amendment does not materially change those two findings from the previous decision. Although the amendment does result in BREC paying a higher price per kWh,<sup>38</sup> both parties made concessions and the amendment still benefits the utility as well as its members. Prior to commercial operation, Unbridled Solar will increase its credit support from [REDACTED] to [REDACTED].<sup>39</sup> BREC estimated that with the new contract terms and updated assumptions, the value of the PPA to the members of BREC, excluding [REDACTED], increases to [REDACTED], an increase of [REDACTED] from the original estimate, due mainly to an [REDACTED] [REDACTED].<sup>40</sup>

For the reasons discussed above, and having reviewed the record and being otherwise sufficiently advised, the Commission finds that the amendment for which BREC requests approval is for a lawful object within the corporate purposes of BREC's utility operations, is necessary and appropriate for and consistent with the proper performance of BREC's utility operations, and will not impair BREC's ability to the perform that service, are reasonably necessary and appropriate for such purposes. However, the Commission's approval herein is based upon statements made by BREC in its request and its responses to requests for information. Thus, the Commission notes that its approval is conditioned on BREC acting in a manner consistent with representations made in this matter.

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<sup>38</sup> Application at 7.

<sup>39</sup> Eacret Direct at 18.

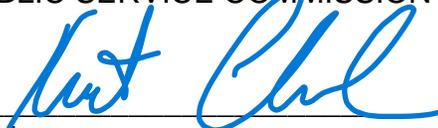
<sup>40</sup> Eacret Direct Testimony, Exhibit Eacret -7.

IT IS THEREFORE ORDERED THAT:

1. BREC's request for approval of the amendment to the Unbridled PPA is granted.
2. BREC is authorized to enter into the amendment to the Unbridled PPA subject to the conditions discussed herein.
3. This matter is closed and shall be removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
JUN 13 2023  
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SERVICE COMMISSION

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