

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

THE APPLICATION OF THOROUGHBRED)
GENERATING COMPANY, LLC FOR A) CASE NO. 2002-00150
MERCHANT POWER PLANT CONSTRUCTION)
CERTIFICATE IN MUHLENBERG, COUNTY, KY)

O R D E R

On September 3, 2003, Big Rivers Electric Corporation ("Big Rivers") filed a motion to deny the pending application of thoroughbred Generating Company, LLC ("Thoroughbred") on the grounds that it fails to satisfy the minimum filing requirements set forth in KRS 278.706(2)(g) and 278.706(2)(j). The former requires the applicant to summarize its efforts to collocate the proposed facility with existing electric generating facilities, while the latter requires the applicant to analyze the proposed facility's economic impact on the affected region and the state.

Big Rivers states that Thoroughbred's application fails to include a discussion of its efforts to collocate at an existing generating site, discussing instead economic factors supporting its chosen site. On the requirement for an analysis of the economic impact of the proposed facility, Big Rivers faults the application for analyzing only positive impacts without discussing or considering any negative impacts. Big Rivers suggests that the emissions and discharges from the proposed facility could adversely affect the surrounding economy and that, due to a finite limit on certain emissions, future economic development in the region could be negatively impacted.

Thoroughbred filed a response to Big Rivers' motion, arguing that its application does satisfy the minimum statutory filing requirements and is consistent with prior applications filed with the Board. Thoroughbred claims that Big Rivers is confusing the level of evidence necessary to satisfy the minimum filing requirements with the higher level necessary to persuade the Board to grant a construction certificate. Further, Thoroughbred notes that Big Rivers' motion relies upon extensive facts that are not in the record and that a hearing is necessary to present and test those facts, as well as to allow Thoroughbred an opportunity to present its evidence in response. Finally, Thoroughbred asserts that since the Board lacks jurisdiction over any emissions or discharges from a merchant generating plant, the Board cannot consider the economic impact of emissions and discharges on the region and the state.

Big Rivers filed a reply urging that the application be denied now as incomplete, rather than requiring the parties to participate in an evidentiary hearing. Big Rivers claims that the applicant has withheld critical information on the two filing requirements that is critical to Big Rivers' analysis. Finally, Big Rivers notes that the economic analysis required to be filed pursuant to KRS 278.706(j) does not exclude the economic impacts of environmental factors.

Based on the motion, the response and reply, and being otherwise sufficiently advised, the Board finds that Big Rivers' motion is based on extensive facts that have not yet been subject to testing at a hearing. Thus, the parties should be required to file prepared testimony prior to the hearing and have an opportunity to conduct cross-examination at a hearing. The record developed by this procedure will then form the basis for the Board's ruling on Big Rivers' motion. Further, the Board finds that one of


the factors to be considered in deciding whether to grant a construction certificate is the economic impact of the facility on the region and the state. See KRS 278.710(1)(c). Nothing in the statute indicates that the economic impact analysis is limited to any specific factors or that the economic impact of emissions and discharges are to be excluded in such an analysis. To the extent that emissions and discharges from a merchant generating plant have an economic impact on the region and the state, that impact can be considered by the Board.

IT IS THEREFORE ORDERED that a decision on Big Rivers' motion to deny the Thoroughbred application is deferred until after an evidentiary hearing is held to afford all parties an opportunity to present facts and cross-examine witnesses.

Done at Frankfort, Kentucky, this 1st day of October, 2003.

By the Board

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas H. Doherty", written over a horizontal line.

Executive Director
Public Service Commission
on behalf of The Kentucky State Board on
Electric Generation and Transmission Siting

Case No. 2002-00150