

**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 MERCHANT	)	CASE NO.
POWER PLANT CONSTRUCTION CERTIFICATE	)	2002-00150
IN MUHLENBERG, COUNTY, KY	)	

**REBUTTAL TESTIMONY  
OF  
DIANNA TICKNER, PRESIDENT  
THOROUGHBRED GENERATING COMPANY, LLC**

**October 13, 2003**

1 **Q. What is the purpose of your Prefiled Rebuttal Testimony?**

2 A. The primary purpose of my Prefiled Rebuttal Testimony is to respond to certain  
3 statements made in the Prefiled Testimony of filed on behalf of Big Rivers Electric  
4 Corporation (“BREC”).

5 **Q. Do you have any comments to the reasons Mr. Spainhoward listed on page 3 of his**  
6 **Prefiled Testimony for BREC’s Intervention in this matter?**

7 A. Yes, I do. Thoroughbred has made clear from the outset of its discussions with  
8 BREC, as well as in its Application and other filings in this proceeding, that its proposed  
9 Electric Generating Facility will not adversely impact the ratepayers of BREC. In fact, as  
10 Thoroughbred has demonstrated throughout this proceeding, the converse is true as  
11 Thoroughbred will be paying for infrastructure and facilities that will ultimately be owned  
12 by BREC and will improve BREC’s transmission network and revenue generating  
13 opportunities.

14 BREC states its preference for the expansion of its D.B. Wilson site, but does not  
15 dispute the impediments to such a project stated in Thoroughbred’s Prefiled Testimony,  
16 including the existence of operating and lease agreements with other parties that would  
17 complicate expansion plans. BREC has failed to provide its lease agreement with  
18 Western Kentucky Energy (“WKE”) which Thoroughbred understands imposes  
19 significant limitations on expansion opportunities at the D.B. Wilson site. In fact, the  
20 article attached to Mr. Spainhoward’s Prefiled Testimony (although hearsay) noted that  
21 BREC will need significant financial assistance for any expansion of the D.B. Wilson  
22 site.

23 Thoroughbred has committed to pay for any transmission facilities needed for the

1 proposed Facility and BREC will not pay for any such facilities.

2 As has been demonstrated, and as discussed in my Prefiled Testimony and in the  
3 Prefiled Rebuttal Testimony of Michael T. Debusschere, Thoroughbred's proposed  
4 Facility is not realistically expected to limit any proposed expansion at the D.B. Wilson  
5 site. However, even if it would have an impact, BREC cannot be allowed to prevent  
6 construction by Thoroughbred, or any other industrial entity, so that it might pursue  
7 expansion of the D.B. Wilson site some day for which there has been much discussion  
8 but little substantive activity.

9 Finally, Thoroughbred has demonstrated the substantial positive economic  
10 benefits provided by the proposed Facility and BREC has not presented anything other  
11 than conclusory statements to the contrary. The reason BREC has not presented any such  
12 evidence is because no credible evidence exists demonstrating any negative economic  
13 impact from Thoroughbred's proposed Facility as set forth in the Prefiled Rebuttal  
14 Testimony of Dr. Glenn D. Meyers.

15 **Q. Could you please respond to that portion of Mr. Spainhoward's Prefiled Testimony**  
16 **contending that Thoroughbred Generating Company, LLC's ("Thoroughbred")**  
17 **Application is incomplete?**

18 A. Yes, I can. At pages 3 and 4 of Mr. Spainhoward's Prefiled Testimony, he  
19 contends that Thoroughbred's Application is incomplete for two reasons: (i)  
20 "Thoroughbred fails to summarize in its application the efforts it made to locate the  
21 proposed facility on a site where existing electric generating facilities are located"; and  
22 (ii) "contains an incomplete analysis of the economic impact of the proposed facility on

1 the affected region and the state.” Testimony of David A. Spainhoward, October 6, 2003,  
2 p. 3, l. 24-25 & p. 4, l. 1-2.

3 As for a summary of Thoroughbred’s efforts to locate its proposed Facility on a  
4 site where existing generating facilities are located as required by KRS 278.706(g),  
5 Thoroughbred provided in Section 9 of its Application and the Board found  
6 Thoroughbred’s Application sufficient on August 5, 2003. In addition, Thoroughbred  
7 explained in its September 12, 2003 Response to BREC’s Motion to Deny  
8 Thoroughbred’s Application the reasons its Application is complete. Nevertheless,  
9 although not required to do so but in order to remove this issue from discussion at the  
10 Hearing, Thoroughbred Supplements and Amends Section 9 of its Application to include  
11 the information contained in its Response to BREC’s Motion to Deny Thoroughbred’s  
12 Application as well as in the Prefiled Testimony of Jacob Williams. A copy of the  
13 Supplemented and Amended Section 9 to Thoroughbred’s Application is attached hereto  
14 as Exhibit A.

15 As for Mr. Spainhoward’s contention that Thoroughbred did not include evidence  
16 of negative economic impacts in its economic analysis, Thoroughbred’s analysis was  
17 prepared using accepted methodology. BREC has offered no economic experts to support  
18 its position and instead has based its position on speculation. Finally, there is no  
19 evidence of negative economic impact to consider as explained in detail in the Prefiled  
20 Rebuttal Testimony of Dr. Glenn D. Meyers and the Prefiled Rebuttal Testimony of  
21 Michael T. Debusschere, P.E., CIH, QEP.

22 **Q. What is Thoroughbred’s response to BREC’s claim that Thoroughbred’s proposed**

1           **Facility could have the “potential” for an adverse economic impact on BREC as**  
2           **expressed at pages 5 and 6 of Mr. Spainhoward’s Prefiled Testimony?**

3    A.           Thoroughbred’s proposed Facility will not adversely impact BREC. Mr.  
4           Spainhoward states on page 5, line 12 of his Prefiled Testimony that Thoroughbred’s  
5           proposed Facility presents some unknown “potential” for an adverse economic impact on  
6           BREC. However, no witness for BREC quantifies a method by which to calculate any  
7           such adverse economic impact on BREC and therefore it should not be considered by the  
8           Board.

9           Mr. Spainhoward alludes to the cost of transmission facilities and need for  
10          additional environmental controls for the D.B. Wilson site, at page 5, lines 13 to 22, of  
11          his Prefiled Testimony, but provides no evidence to support his assertions. As explained  
12          in greater detail in both the Prefiled Testimony and Prefiled Rebuttal Testimony of Jacob  
13          Williams, Thoroughbred will pay up front for any necessary upgrades to BREC’s  
14          transmission system. As for environmental controls, Mr. Spainhoward provides no  
15          details to support the alleged need for additional environmental controls on BREC’s  
16          existing D.B. Wilson site.

17          Mr. Spainhoward contends that Thoroughbred’s proposed Facility “could” prevent  
18          construction of an addition to the D.B. Wilson site and refers to the article attached to his  
19          testimony apparently to prove the need for the expansion of the D.B. Wilson site.  
20          However, the article (besides being hearsay as noted above) also indicates that BREC  
21          cannot construct any such expansion absent significant assistance from its largest  
22          industrial customers and a governmental subsidy.

1           Finally, it is important to note that Mr. Spainhoward's concern about additional  
2 costs to BREC, and possible limitation of its ability to expand, as a result of emissions  
3 and discharges from Thoroughbred's proposed Facility would not be limited to the  
4 proposed Facility but would apply to any other industrial facility. Under BREC's view,  
5 no company should be allowed to build a new industrial facility or expand an existing  
6 plant because any new industrial plant or plant expansion might impose (as yet to be  
7 defined) costs upon BREC for environmental controls and impact BREC's future  
8 expansion plans. I do not believe the General Assembly intended for the siting legislation  
9 to be applied in this way and urge the Board to reject BREC's position.

10 **Q. What is Thoroughbred's response to Mr. Spainhoward's claim that Thoroughbred**  
11 **ignored the negative economic impact of its proposed facility?**

12 **A.**           Mr. Spainhoward's contention that Thoroughbred ignored the negative economic  
13 impact of the proposed facility, expressed primarily at pages 6 and 7 of his Prefiled  
14 Testimony implies that such a negative impact exists when it does not. As explained in  
15 more detail in the Prefiled Rebuttal Testimony of Dr. Glenn D. Meyers, and in the  
16 Prefiled Rebuttal Testimony of Michael T. Debeusschere, P.E., CIH, QEP, there is no  
17 negative economic impact from Thoroughbred's proposed Facility. BREC has made  
18 conclusory claims on that issue without evidentiary support. Finally, BREC would have  
19 the Board consider the alleged negative impact on BREC's alleged expansion plans when  
20 few, if any, steps have been taken to proceed on any such expansion.

21 **Q. What is your response to BREC's claim that a delay in the Board's consideration of**  
22 **this matter will not prejudice Thoroughbred?**

1 A. BREC is mistaken as to the impact of any delay on Thoroughbred. Any delay in  
2 the consideration of its Application by the Board will prejudice Thoroughbred. Initially,  
3 Thoroughbred must begin construction of the proposed Facility by April 11, 2004  
4 because the air permit for the proposed Facility was issued on October 11, 2002 and  
5 construction must begin within 18 months of issuance or the authorization to construct  
6 becomes invalid absent the granting of an extension by the Division of Air Quality.  
7 Moreover, any delay to a project of the scope of Thoroughbred's proposed Facility  
8 includes significant economic costs based on the significant monetary investment by  
9 Thoroughbred to date.

10 Mr. Spainhoward's comments regarding the lack of investors or partners for  
11 Thoroughbred's proposed Facility are untrue, although the sensitive and confidential  
12 nature of those discussions prevent Thoroughbred from providing the Board with  
13 significant detail.

14 Finally, the development of Thoroughbred's proposed Facility is substantially  
15 more advanced than any proposed expansion of BREC's D.B. Wilson site. BREC has not  
16 provided a concrete plan for the proposed expansion of its D.B. Wilson site and  
17 Thoroughbred is unaware of any permits or other applications filed by BREC for any such  
18 expansion. On the other hand, as evidenced by Thoroughbred's Application and  
19 subsequent filings, Thoroughbred has taken significant and substantial steps to pursue the  
20 proposed Facility. Therefore, BREC should not be allowed to impede Thoroughbred's  
21 proposed Facility based on sheer conjecture and speculation about a project that may not  
22 occur and will not be adversely impacted in any event.

1 **Q. Mr. Durham suggests at page 12, lines 5 through 8 of his Prefiled Testimony that**  
2 **Thoroughbred's Facility could result in degradation of water quality. Do you know**  
3 **if the impact of the Thoroughbred discharges on receiving streams has been**  
4 **addressed?**

5 A. Yes. The discharges of wastewater from the Facility are subject to permitting by  
6 the NREPC Division of Water. Thoroughbred will discharge to Nelson Creek and to the  
7 Green River. It is my understanding that in issuing a KPDES permit for discharges from  
8 the Thoroughbred Facility, the Division imposes requirements it determines are needed so  
9 that the standards for water quality of the receiving stream are met. Those standards are  
10 part of the Division's regulations and include standards for temperature. The Division  
11 issued a draft KPDES permit for the Thoroughbred Facility earlier this year that was  
12 subject to public notice and comment. The public comment period closed on August 26,  
13 2003 and BREC submitted no comments on the draft permit. Since the permit will  
14 contain restrictions on the discharges from the Facility sufficient to meet instream water  
15 quality standards, there will be no adverse impact downstream.

16 **Q. Mr. Durham discusses water withdrawal rates from the Thoroughbred plant. What**  
17 **requirements has Thoroughbred had to meet with respect to its proposed water**  
18 **withdrawal from the Green River?**

19 A. As Mr. Durham recognized, Thoroughbred is subject to restrictions on the rate of  
20 water it can withdraw under state law. In addition, as a result of new federal regulations  
21 for power plant water withdrawals, Thoroughbred, as a new facility, has been subject to  
22 additional requirements. As discussed in the statement of basis for the draft KPDES



1 permit issued by the Kentucky Division of Water under the new regulations, the  
2 maximum allowed withdrawal rate is 5 percent of the source water annual mean flow.  
3 Thoroughbred's maximum designed withdrawal rate is well below the allowable and  
4 represents 0.9 percent of the annual mean flow of the Green River. Thoroughbred will  
5 also have storage impoundments that will provide a minimum of a 15-day storage  
6 capacity in the event the Division of Water determines that water withdrawal must be  
7 curtailed. Finally, it is my understanding that the 7Q10 low flow is defined as the  
8 lowest flow for 7 consecutive days in a 10 year period. Mathematically, flow would be  
9 above the 7Q10 value 99.8 percent of the time. Ironically, if the future expansion of the  
10 D.B. Wilson site were adversely affected by water withdrawal rates of upstream users, it  
11 would probably be the result of utilities withdrawing water since they are not required to  
12 go through the state water withdrawal permitting process. For example, the TVA  
13 Paradise facility, which is upstream of both the D.B. Wilson site and Thoroughbred's  
14 proposed Facility, withdraws up to 350 million gallons of water a day from Green River  
15 as found by the NREPC, more than 14 times the amount to be withdrawn by the proposed  
16 Facility.

17 **Q. Does this conclude your Prefiled Rebuttal Testimony?**

18 **A.** Yes, it does.

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**VERIFICATION**

STATE OF Missouri )

SS:

COUNTY OF St. Louis )

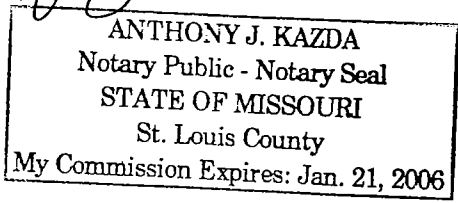
The undersigned, Dianna Tickner, being duly sworn, deposes and says that she is President of Thoroughbred Generating Company, LLC, that she has personal knowledge of the matters set forth in the foregoing rebuttal testimony and exhibits, and the answers contained therein are true and correct to the best of her information, knowledge and belief.

  
DIANNA TICKNER

Subscribed and sworn to before me, a Notary Public in and before said County and State this 10<sup>th</sup> day of October, 2003.

My commission expires: 1-21-2006

  
Notary Public



# EXHIBIT A

## EXHIBIT A

### 9. Efforts to Utilize Existing Electric Generating Facility Sites – SB257, Section 4(2)(g)

Thoroughbred Generating Company, LLC began the selection and the permitting processes for a Kentucky site on which to locate a power plant in early 2000, approximately two years before the passage of SB 257. The Muhlenberg County site was selected for a number of reasons, including its rural location, large area of land control (over 7,000 acres), close proximity to the coal reserves which will fuel the plant, the proximity of the Green River for cooling water and barge access, and rail lines to the site for delivery of materials for construction and operation of the facility. Although existing generating facilities are not present on the site, the site has already been utilized for an industrial purpose, surface mining. The majority of the site pre-dates, and thus was not subject to, the Surface Mining and Reclamation Control Act of 1977. The installation of the plant in this area will result in beneficial use of the disturbed area and have an overall positive impact on land use of the site and surrounding area.

As noted above, the process of preparing required permit applications for the plant began approximately two years before the passage of SB 257. The applications for the air permit, FAA permit and Corps of Engineer permit required specific information about the plant location which necessitated a firm commitment to the plant location at the time of submittal. Permit applications which fixed the site location were filed at least a year before passage of the siting legislation at significant expense. As a result, efforts to relocate the plant to a site with existing electric generating facilities, assuming a site that otherwise meets the project needs could be found, are no longer practicable.

With respect to the suitability for the Thoroughbred plant of the D.B. Wilson site, which is owned by Big Rivers Electric Corporation (“BREC”) and at which an existing electric generation facility is located, the D.B. Wilson site is not an appropriate location for Thoroughbred’s plant because of the following:

1. BREC did not in 2000, and may not now, have the financial viability to serve as a partner on the proposed project with Thoroughbred.
2. BREC has not developed any new plant in the last 20 years and would not be an appropriate partner on the project proposed by Thoroughbred.
3. BREC has discussed a plant expansion for many years without taking any affirmative steps to do so based, in part, on its precarious financial position and a lack of need for the power to meet its own customers needs. As stated above and in the response to BREC Data Request No. 19 (filed September 8, 2003), the permitting process for Thoroughbred’s proposed plant began in 2000, two years before the siting legislation was enacted. Thoroughbred has aggressively pursued the permits needed for its project to proceed.
4. Any proposed expansion of BREC’s D.B. Wilson has been suggested to be about one-third of the capacity of Thoroughbred’s proposed plant and would be

insufficient to meet Thoroughbred's needs.

5. The agreement reached to remove BREC from bankruptcy created a 25-year operating lease with Western Kentucky Energy ("WKE") for all BREC facilities including any expansions thereof as well as a power sales agreement with BREC which would serve as an additional impediment to the proposed project being located at BREC's D.B. Wilson site. It is Thoroughbred's understanding that the operating lease creates an exclusive right for WKE to operate any plant expansion and would require WKE's approval of and participation in such an expansion. This arrangement raised the specter of a significant potential for future operational conflicts and was yet one more complication for such a project to move forward within a reasonable timeframe. Additionally, it was Thoroughbred's understanding that LG&E's approval would be needed and that such approval would likely be conditioned on a re-evaluation of the terms of the existing power sales agreement with BREC in order to make the terms more financially beneficial to LG&E. Thoroughbred was concerned that the need for these separate negotiations among other parties would make the project development process even more complex and prone to delay.

6. The past problems at BREC, and previous issues between BREC and Thoroughbred's parent entity, make BREC an inappropriate partner for the present project.

Peabody and Thoroughbred have been involved in numerous discussions with BREC and others in the industry regarding the possibility of the expansion of electric generating capacity. These discussions may be summarized as follows:

1. As early August 23, 2000, representatives of Thoroughbred toured the entire Thoroughbred site, and the area surrounding TVA's Paradise, LG&E's Green River and BREC's D.B. Wilson power plant site, to review the feasibility of alternate sites and transmission interconnection issues.

2. On or about February 23, 2001 a Confidentiality Agreement was executed between Thoroughbred's parent and BREC to share information on the Thoroughbred Energy Campus as well as other generation opportunities in the area.

3. On February 27, 2001, representatives of Thoroughbred met with representatives of BREC to discuss the Thoroughbred Energy Campus. These discussions included the potential of adding additional units at BREC's D.B. Wilson facility but, for the reasons set forth above, it was apparent that the D.B. Wilson facility was not a viable option for Thoroughbred.

4. Although Thoroughbred determined that it would proceed with its proposed project, Thoroughbred participated in approximately ten additional meetings, six of which specifically involved Thoroughbred or its affiliates' interest in participating in an expansion of BREC's D.B. Wilson facility.

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the forgoing was sent by United States First Class Mail, sufficient postage prepaid, to the following this the 13<sup>th</sup> day of October, 2003.

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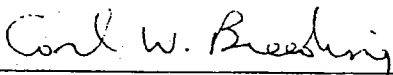
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