

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)
POWER PLANT CONSTRUCTION CERTIFICATE)
IN MUHLENBERG, COUNTY, KY)

CASE NO.
2002-00150

POST-HEARING BRIEF OF
THOROUGHBRED GENERATING COMPANY, LLC

INTRODUCTION

Applicant, Thoroughbred Generating Company, LLC (“Thoroughbred”), pursuant to the request of the Kentucky State Board on Electric Generation and Transmission Siting (the “Board”) at the conclusion of the November 10, 2003 Evidentiary Hearing in this matter, hereby submits its Post-Hearing Brief addressing the criteria for a decision by the Board set forth in KRS 278.710 and other matters raised by the Board and the Intervenors. The Board should grant Thoroughbred a Construction Certificate for the 1500 MW electric generating facility proposed in this proceeding.

PROCEDURAL HISTORY

On July 17, 2003, Thoroughbred filed, pursuant to KRS 278.706(1), an application with the Board for approval to construct a 1500 MW coal-fueled electric generation facility on previously surface-mined property located in Muhlenberg County, Kentucky. As proposed, the plant will be located on the 2,900 acre Thoroughbred Energy Campus one and one-half miles northeast of Central City, and will be comprised of two 750 MW generators in a split bus arrangement. One generator will interconnect with the Big Rivers Electric Corporation through a 345 KV connection. The other generator will interconnect with the Tennessee Valley Authority (“TVA”) transmission grid by way of a 500 KV interconnection.¹ The plant will be fueled by coal from an adjacent mine also in Muhlenberg County.

The Application was filed in three Binders comprising ten sections corresponding to each specific requirement of KRS 278.706. In particular, Section 5 of Thoroughbred’s Application

¹ Pursuant to KRS 278.714, the construction of transmission lines is the subject of separate application requirements.

contains five separate interconnection studies providing an Electric Transmission Grid Analysis; Section 6 contains an Economic Impact Analysis from KPMG and also includes an analysis of the Economic Benefits of Coal-Fueled Power Plants prepared by Hill & Associates; Section 8 contains the Site Assessment Report; and finally, Section 10 provides a discussion of the status of other permits required for the plant.² On August 5, 2003, after Thoroughbred corrected one Application deficiency identified by the Board on July 25, 2003, the Board found that Thoroughbred's Application "now meets the minimum filing requirements set by our regulations." Letter from Board to Applicant, August 5, 2003. On September 4, 2003, MACTEC Engineering & Consulting, Inc., a consultant retained by the Board, filed in the record its Review and Evaluation of Thoroughbred's Site Assessment Report.

By Orders dated August 19, 2003, September 11, 2003 and September 30, 2003, Big Rivers Electric Corporation ("BREC"), Louisville Gas & Electric ("LG&E"), Kentucky Utilities ("KU"), Western Kentucky Energy ("WKE"), and Louisville, Kentucky architect, Gary Watrous ("Watrous"), were granted intervention in this proceeding with full party status. At the request of the Board, Thoroughbred conducted a visit of the proposed plant site for the parties and interested public on September 29, 2003. At the two-hour site tour, Thoroughbred provided each attendee with a Site Tour Map identifying each stop on the site tour. At each stop (approximately seven), the particular part of the facility site was explained and any questions from the attendees were answered. Approximately 26 people attended the site tour including

² A certificate to construct granted by the Board is, pursuant to KRS 278.704(1), "conditioned upon the applicant obtaining necessary air, water and waste permits." As Thoroughbred has noted, the unreclaimed land where the plant will be locate was mined prior to enactment of the Surface Mining Control and Reclamation Act ("SMCRA") of 1970. Prefiled Testimony of Tickner, October 6, 2003 ("Tickner Prefiled Testimony") p.5, ls. 2-4. Therefore, the SMCRA requirements, including permitting requirements, do not apply to the Facility site. The mine that will ultimately supply coal to the electric generation plant will also be able to supply coal to others and thus, is a separate source for permitting purposes and will be permitted separately from the plant. Transcript of Evidence, November 10, 2003 ("Transcript II") p. 47, ls. 14-17.

members of the Board as well as representatives from Intervenor BREC. No other Intervenor attended.

On September 3, 2003, BREC moved to deny Thoroughbred's Application. BREC's motion alleged that Thoroughbred's application was deficient because, although it addressed the numerous positive impacts the plant will bring, it failed to address certain alleged adverse economic impacts of Thoroughbred's plant.³ By Order dated October 1, 2003, the Board deferred ruling on BREC's motion until the Evidentiary Hearing.

Both BREC's motion to deny Thoroughbred's application and Watrous' September 3, 2003 motion to intervene, revealed that BREC and Watrous sought to raise in this proceeding certain issues related to the impacts of Thoroughbred's air emissions, which had already been authorized by the permit issued by the Kentucky Natural Resources and Environmental Protection Cabinet ("NREPC"). In responding to those motions, Thoroughbred contended that such issues were not appropriate for this proceeding and instead were within the jurisdiction of the NREPC and specifically, the NREPC Division for Air Quality ("DAQ"). Thoroughbred Response to BREC Motion to Deny Application, September 12, 2003. In issuing its September 30, 2003 Order on Watrous' motion to intervene, the Board expressly recognized that certain issues were beyond the scope of this proceeding:

[S]ome of the issues raised by Mr. Watrous are beyond the scope of the Board's jurisdiction under KRS 278.700 – 278.716. . . . The [NREPC] . . . has jurisdiction over factors such as air pollutants and other emissions and discharges from a proposed merchant generating facility. The Board has no jurisdiction over

³ BREC's motion also alleged that Thoroughbred's application failed to summarize the efforts made to locate the proposed facility at a site where existing electric generating facilities are located. However, and as acknowledged by BREC's counsel at the evidentiary hearing, any issue regarding Thoroughbred's summary of efforts to locate at an existing electric generating facility site has since been addressed by Thoroughbred's Amendment to Section 9 of its Application. Transcript II, p. 34, ls 4-8.; Prefiled Testimony of Williams, October 6, 2003 ("Williams Prefiled Testimony"), pp. 2-4; Transcript II, pp. 58-59 & Rebuttal Testimony of Dianna Tickner, October 13, 2003 ("Tickner Rebuttal"), Exhibit A; Transcript II, pp. 24-25.

emissions or discharges and can consider such factors only to the extent they **directly impact** a factor enumerated in KRS 278.710.

Order, September 30, 2003, p. 2 (Emphasis added). Again, in its October 1, 2003 Order on BREC's motion to deny Thoroughbred's Application the Board similarly found that emissions and discharges from Thoroughbred's proposed Facility could **only** be considered by the Board to the extent they are shown to have an economic impact on the region or the state. Order, October 1, 2003, p. 3.

Pursuant to the Board's Order requiring prefiled testimony to be filed by October 6, 2003, Thoroughbred, BREC and Watrous submitted testimony to the Board. Dianna Tickner ("Tickner"), the President of Thoroughbred Generating Company and Vice-President-Generation Development of Peabody Holding Company, and Jacob Williams ("Williams"), Vice-President-Generation and Development for Peabody Holding Company, filed Prefiled Testimony on behalf of Thoroughbred. David Spainhoward ("Spainhoward"), Travis Housley ("Housley") and Mick Durham ("Durham") filed Prefiled Testimony on behalf of BREC. On October 13, 2003, Thoroughbred rebutted BREC's testimony with testimony from Tickner and Williams, as well as experts Mike DeBusschere ("DeBusschere") and Dr. Glenn Meyers ("Meyers"). BREC rebutted Thoroughbred's testimony with additional testimony from Spainhoward, Housley and their expert, Durham. Watrous did not file rebuttal testimony with the Board.

Thereafter, on October 20, 2003 Thoroughbred moved to strike Durham's and Watrous' Prefiled Testimony, reasserting that the environmental impact issues raised by their testimony, related to issues within the jurisdiction of the NREPC and should not be considered by the Board. Thoroughbred Generating Company's Motion To Strike The Testimony Of Durham And Watrous, October 20, 2003, pp. 3-7. In addition, Thoroughbred contended, the Prefiled Testimony of Durham and Watrous showed that their claims of adverse impacts were unduly

speculative and did not provide proof as to any factor enumerated in KRS 278.710(1). Id., pp. 7-9. The Board permitted the testimony but found, “[t]he objections raised by Thoroughbred are sufficient to affect the weight accorded such testimony”. (Emphasis added.) Order, October 30, 2003, p. 2.

By the same Order, the Board granted a Joint Motion rescheduling the Evidentiary Hearing based on the lack of appropriate public notice and ordered that the prior public comments taken on October 21, 2003 be entered into the public comment portion of the record. Order, October 30, 2003, pp. 2-3. At the October 21, 2003 public hearing, both Central City Mayor Hugh Sweatte and Muhlenberg County Judge Executive Rodney Kirtley spoke in support of Thoroughbred’s proposed Facility. Mayor Sweatte said that the citizens of Central City were “nearly 100% in support of” Thoroughbred’s proposed Facility. Transcript Of Evidence, October 21, 2003, p. 9. Mayor Sweatte stated that the proposed plant was needed for the economy because no new businesses have been attracted and the number of business establishments declined between 1993 and 2000. Id. The work force in the area has barely grown in the last few years and unemployment in August of 2003 for Muhlenberg County was 7.9%. Id. Mayor Sweatte stated that the proposed plant “is going to generate more spending” at existing businesses and “contribute significantly to the tax base and local and corporate income.” Id., p. 10. Finally, Mayor Sweatte noted that Thoroughbred’s proposed Facility “will increase competition in the regional electricity generation market, bringing lower and more stable prices for electricity to the region and increasing the reliability of electric service in the region.” Id. County Judge Kirtley noted that the “people [in Muhlenberg County] were trained to work in the mines,” and that Thoroughbred’s proposed Facility “is a beautiful site for what we need . . . that’s on reclaimed land.” Id., pp. 15, 16. County Judge Kirtley continued “[t]he main thing we

like about the site it's where the coal is." Id., p. 16. County Judge Kirtley concluded that "[o]ur skill level is for this industry, and we feel like we can produce this coal at the lowest price for customers and be very competitive in the generation of electricity." Id., p. 18.

Additional public comment was taken prior to the Evidentiary Hearing on November 10. Again, the support for the Thoroughbred plant was overwhelming. In fact, not one person asked the Board to deny the Thoroughbred Application. State Senator Jerry Rhodes spoke in favor of Thoroughbred's proposed Facility noting that "all of the ingredients [are available] to support a plant of this scope. The labor, the coal, the infrastructure, and, most importantly and very importantly, the support of the community." Transcript Of Evidence ("Transcript II"), November 10, 2003, p. 10. Three individuals, Bobby Mayhugh, Kenneth Mayhugh and Mark Beard, spoke in favor of the project, but emphasized the need for the proposed Facility to utilize local labor. Id., pp. 15-21. These concerns were satisfied by Tickner's subsequent Testimony that Thoroughbred will require its contractors to "hire locally to the extent there are qualified individuals available." Id., p. 50.

At the Evidentiary Hearing, Thoroughbred introduced the Prefiled Testimony and Rebuttal Testimony of Tickner, Williams, DeBusschere and Meyer and made each witness available for cross-examination. BREC introduced prefiled direct and rebuttal testimony for Housley (who also adopted Spainhoward's prefiled testimony due to Spainhoward's health issues) and Durham. Both Housley and Durham were presented for cross examination. Watrous likewise introduced his prefiled testimony and was available for cross. Intervenors, LG&E/KU/WKE, although participating in cross-examination of witnesses at the Evidentiary Hearing, presented no witnesses. At the conclusion of the Evidentiary Hearing, Post-Hearing Data

Requests were issued by the Board. On November 17, 2003, Responses to the Data Requests were filed by Thoroughbred, BREC and LG&E/KU/WKE.

ARGUMENT

Pursuant to KRS 278.706(1), no person shall commence to construct a merchant electrical generating facility until that person has applied for and obtained a Construction Certificate for the proposed facility from the Board. KRS 278.710(1) requires the Siting Board to grant or deny Thoroughbred's application for a certificate to construct a merchant electric generating facility based upon an assessment of the following nine criteria:

- (a) Impact of the facility on scenic surroundings, property values, the pattern and type of development of adjacent property, and surrounding roads;
- (b) Anticipated noise levels expected as a result of construction and operation of the proposed facility;
- (c) The economic impact of the facility upon the affected region and the state;
- (d) Whether the facility is proposed for a site upon which existing generating facilities, capable of generating ten megawatts (10MW) or more of electricity, are currently located;
- (e) Whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed;
- (f) Whether the additional load imposed upon the electricity transmission system by use of the merchant electric generating facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Public Service Commission;
- (g) [Whether the exhaust stack of Thoroughbred's proposed Electric Generating Facility will be at least 1,000 feet from the property boundary or any adjoining property owner and 2,000 feet from any residential neighborhood, school, hospital, or nursing home Facility;]
- (h) The efficacy of any proposed measures to mitigate adverse impacts that are identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the construction or operation of the proposed facility; and
- (i) Whether the applicant has a good environmental compliance history.

In addition, Kentucky law expressly provides that in determining whether a certificate to construct a merchant electric generating facility is appropriate under these criteria, it is proper for the Board to “consider the policy of the General Assembly to encourage the use of coal as a principal fuel for electricity generation.” KRS 278.710(2). Thoroughbred’s comprehensive application, responses to data requests, and evidence presented at the November 10, 2003 evidentiary hearing, together with the overwhelming public support that has been voiced for this project, demonstrate, that under an assessment of the above criteria, it is proper to grant Thoroughbred a certificate to construct the 1500 MW Electric Generating Facility it has proposed for construction in Muhlenberg County, Kentucky.

Intervenors BREC and Watrous have presented evidence in this proceeding which they contend shows that certain adverse economic impacts may result from Thoroughbred’s plant, thereby, they contend, making criteria KRS 278.710(1)(c) weigh against the grant of a Construction Certificate to Thoroughbred.⁴ LG&E/KU/WKE, while not presenting evidence, have made similar contentions in response to the Board’s post-hearing data requests. Thoroughbred has demonstrated that Intervenors’ claims do not have merit, and do not warrant the denial of, or imposition of any conditions on, Thoroughbred’s Construction Certificate to construct other than those to which Thoroughbred has already agreed. Intervenors have not

⁴ As stated supra on page 2, early in this proceeding BREC also alleged that because Thoroughbred did not include an analysis of these negative impacts in its Application, Thoroughbred’s Application is deficient. Section 6 of Thoroughbred’s Application contains analyses of the plant’s economic impact to the state and region by KMPG (using the IMPLAN Model) and Hill & Associates. Thoroughbred’s Application is complete and was deemed so by the Board on August 5, 2003. To the extent BREC or Watrous presently advance a position that Thoroughbred’s application is deficient or fails to consider impacts outside Muhlenberg County, Thoroughbred incorporates its Response to BREC’s Motion to Deny Thoroughbred’s Application, filed with the Board on September 12, 2003, as if fully stated herein. In addition, Thoroughbred states that the testimony presented at the hearing does not support such a claim. As economist Meyers testified, negative economic impacts of air emissions are not the type of impacts appropriate for consideration as part of an economic analysis of the impacts of an industrial project. Transcript II, pp. 180-181.

claimed that any of the other eight KRS 278.710(1) criteria weigh against granting a Construction Certificate to Thoroughbred.

I. THOROUGHbred'S INTERCONNECTION WITH THE KENTUCKY TRANSMISSION GRID WILL NOT RESULT IN ADVERSE ECONOMIC IMPACT TO AREA UTILITIES, INCLUDING BREC.

Utility Intervenors contend that they and their customers could suffer adverse economic impacts as a result of certain issues related to Thoroughbred's interconnection with the transmission grid. The primary issue of concern raised by BREC, and which was the subject of Post-Hearing Data Requests, is whether Thoroughbred will bear all costs associated with the necessary transmission upgrades as required by KRS 278.212.⁵ Thoroughbred relies on its Response to the Board's Post-Hearing Data Requests for much of the discussion set forth below and reasserts that it will comply with all requirements of Kentucky law if it is granted a Construction Certificate for its facility. Thoroughbred will seek only that to which it is entitled under Kentucky law. Thoroughbred Response to Board Post-Hearing Data Request No. 1, November 17, 2003, ("Thoroughbred Response to Post-Hearing Data Req."). Williams' Testimony on this issue is the same. Transcript II, p. 72, ls. 4-5. ("[w]e will comply with the statutes of the state of Kentucky; yes").

A. Thoroughbred's Receipt Of Transmission Credits Does Not Violate Kentucky Law.

The issues relating to the costs associated with Thoroughbred's interconnection with the Kentucky Transmission Grid and any transmission credits for which Thoroughbred will be eligible will be addressed in negotiations for Interconnection Agreements between Thoroughbred

⁵ At the Evidentiary Hearing, Housely also expressed his concern that BREC could be adversely impacted if transmission system improvements are required as a result of power displacement issues. He acknowledged, however, that such concerns are "quite speculative." Transcript II, p. 223, ls. 3-15. For this reason they are not appropriate for consideration by the Board.

and the appropriate parties such as BREC, KU or LG&E. Thoroughbred has agreed to accept responsibility for the upfront payment of all costs associated with interconnection and any network upgrades necessitated because of the addition of Thoroughbred's proposed Facility to Kentucky's Transmission Grid. Thoroughbred Response to Post-Hearing Data Req. No. 1; see also Transcript II, pp. 65-66 (where Williams responded to the following cross examination from counsel for BREC. "Q. Thoroughbred is committing to pay for all network transmission and interconnection costs up front, subject to some kind of crediting mechanism based upon Thoroughbred's use of the Big Rivers transmission system for the network costs; is that correct? A. That is correct").

Thoroughbred has committed to pay upfront for the cost of any new transmission or other facilities required for interconnection to the transmission system of any utility whether they are direct assign or network upgrades. Thoroughbred expects to receive transmission credits for the payment of network upgrades. Such credits can be applied to transmission delivery from the utility providing delivery service until such time as the credits are extinguished. Thoroughbred will not waive its right to collect transmission credits for its use of any transmission facilities for which it has paid for the network upgrades because no such waiver is required by Kentucky law. However, in response to the Board's inquiry, Thoroughbred has committed to waive any rights or claims it might have to a cash refund from BREC, KU or LG&E for such transmission credits. Thoroughbred Response to Post-Hearing Data Req. No. 1.

BREC recognized the propriety of transmission credits both in the Rebuttal Testimony of Travis Housley ("Big Rivers will require up-front funding of these facilities from Thoroughbred. Consistent with BREC's open access transmission tariff, Big Rivers would provide Thoroughbred with Transmission credits (pre-paid transmission service) in return." Prefiled

Rebuttal Testimony of Travis Housley, October 13, 2003, p. 2, ls. 12-14; Transcript II, pp. 191-92) and in previous correspondence between the parties (“after discussing item 1 internally [transmission credits], and with our attorney, we have found nothing that would prevent us from providing a credit mechanism as discussed.” Prefiled Rebuttal Testimony of Jacob Williams, October 13, 2003 (“Williams Prefiled Rebuttal”), Exhibit A, E-mails between BREC and Thoroughbred, April 22, 2003; Transcript II, pp. 58-59). If the transmission credits are not extinguished at the end of a five-year period commencing on the commercial operation date of Thoroughbred’s proposed Facility, the utility would not be obligated to make a cash refund to Thoroughbred but would be required to continue to provide transmission credits so long as they are not extinguished. Thoroughbred Response To Post-Hearing Data Req. No. 1. BREC’s position, as expressed by Housley, is consistent with Thoroughbred’s position because Thoroughbred has agreed to waive any claim to cash refunds for unused transmission credits. Transcript II, pp. 210-13.

As for KU, in its response to Utility Data Request No. 1, KU requests that Thoroughbred's Construction Certificate be conditioned on KU's receipt and Thoroughbred's acceptance of a FERC Order waiving FERC's refund/credit rules applicable to network upgrades required by an affected system as part of a generator interconnection. KU Response to Post-Hearing Data Req. No. 1. In the alternative, KU suggests a FERC Order for Thoroughbred to assign back to KU any credits it receives pursuant to Order 2003. Id. KU, as it concedes, is a public utility subject to regulation by the FERC pursuant to the Federal Power Act. Issues regarding FERC's interconnection policy can only be addressed by the FERC.

As the applicant, Thoroughbred is required to comply with the applicable requirements of KRS Chapter 278. KRS 278.212(2) requires that costs or expenses associated with upgrading

the existing electricity transmission grid, as a result of additional load from the merchant generating facility, shall be borne solely by the person constructing the merchant electric generating facility and shall not be borne by the retail electric customers. Thoroughbred has stated that it will comply with the statute. Although not required, Thoroughbred has further committed to waive any right to cash refunds after five years. In short, Thoroughbred has committed to do what it can in this proceeding to address the concerns that have been raised.

However, despite these commitments, KU now wants the Board to hold Thoroughbred's certificate to construct hostage to a federal agency's action.⁶ There is no provision of KRS Chapter 278 that authorizes the Board to issue a construction certificate contingent upon issuance of a federal agency order or rulemaking. Thoroughbred submits that such action is inappropriate under the Kentucky Constitution since the Board as a state agency should not abdicate its power to a federal agency. Dawson v. Hamilton, Ky., 314 S.W.2d 532, 536 (1958). If the dilemma anticipated by KU arises, then the parties may seek review of that agency determination. In short if the General Assembly had intended that applicants get FERC approval as part of the Construction Certificate process, the General Assembly would have included such a provision in the statute but it did not.

Additionally, KU contends that the 345 network upgrades needed for Thoroughbred are for delivery of power from the Facility. As discussed in Order 2003, paragraph 118, the FERC continues to treat interconnection and delivery as separate parts of transmission service. The Board lacks the authority to revise, modify or amend KU's transmission obligations pursuant to the Federal Power Act and cannot consider these issues in this proceeding. Dept. of Natural Resources v. Stearns Coal, Ky., 563 S.W.2d 471, 473 (1978) ("It is fundamental that

⁶ KU has had ample opportunity to express its views concerning FERC's interconnection policy through participation in the rulemaking process that resulted in Order 2003.

administrative agencies are creatures of statute and must find within the statute warrant for the exercise of any authority they claim.”)

In summary, the substantial evidence in the record demonstrates that the Thoroughbred project will have a positive impact on the state and on the transmission system – the Board should issue the construction certificate without conditions requiring federal agency action.

B. Thoroughbred’s Receipt Of Transmission Credits Will Not Adversely Impact Retail Customers.

There is no adverse impact to retail customers if Thoroughbred receives transmission credits allowed both pursuant to FERC Order No. 2003 and Kentucky law. Thoroughbred’s receipt of transmission credits does not require that retail electric customers bear any cost of the network upgrades associated with Thoroughbred’s proposed facility because Thoroughbred only receives any such credit if it obtains transmission service from those utilities that install network upgrades in order to accommodate Thoroughbred’s interconnection request. Thoroughbred’s Interconnection Agreement negotiations with BREC, LG&E, KU and any other necessary utility will address these issues in detail. Thoroughbred Response To Post-Hearing Data Req. No. 1. At the Evidentiary Hearing, Williams explained, in response to a question from Chairman Huelsmann, how Thoroughbred’s position is entirely consistent with Kentucky law and will not adversely impact retail customers which is set forth below:

We will agree that we will pay for those up front and, if we use the transmission system, we could get network credits across that transmission system up to the funds we paid. So, in effect, the state of Kentucky’s consumers would not be impacted because we’re giving other revenues to offset the costs that were originally incurred.

Transcript II, p. 81, ls. 6-12.

To the contrary, the network transmission upgrades to BREC’s system paid for by Thoroughbred will result in an economic benefit to BREC, BREC’s retail customers, and other

utilities by improving the overall reliability of BREC's Transmission System. These transmission upgrades will allow BREC to collect up to \$9 million per year in transmission service revenue from Thoroughbred and provide BREC the ability to generate additional revenue streams. Finally, the construction of transmission upgrades will allow BREC to better respond to unexpected contingences. These benefits provide a positive impact for the retail customers of BREC or any other utility and cannot be ignored. Thoroughbred Response To Post-Hearing Data Req. No. 1. As noted by Williams, "LG&E's and BREC's own transmission employees have pointed out [that the proposed transmission systems upgrades] would be of value to their loads for a number of years." Transcript II, p. 90, ls. 10-12.

Thoroughbred's position, as expressed during the Evidentiary Hearing, in Post-Hearing Data Requests and in this Post-Hearing Brief, does not run afoul of Kentucky law and does not result in adverse impact to Kentucky electric retail customers. BREC has conceded that any remaining concerns on these issues can be addressed and resolved in the parties' negotiations for an Interconnection Agreement. Id., p. 210. Moreover, BREC has no evidence that the studies to date have not adequately identified all costs (which Thoroughbred has agreed to pay). Id., pp. 214-16. This issue should not prevent the Board's grant of a Construction Certificate to Thoroughbred.

II. BREC'S AND WATROUS' CLAIMS OF ADVERSE ECONOMIC IMPACT RESULTING FROM THOROUGHbred'S EMISSIONS DO NOT WARRANT DENIAL OF A CONSTRUCTION CERTIFICATE TO THOROUGHbred.

Separately, BREC and Watrous also argue that certain negative economic consequences could result from certain possible "environmental impacts" of the emissions from Thoroughbred's proposed Facility. Filed Testimony of Mick Durham, October 6, 2003 ("Durham Filed Testimony"), p. 2; Transcript II, pp. 238-39. Intervenors' position in no way

warrants the denial of a Construction Certificate to Thoroughbred. First, the evidence demonstrates that Intervenor's argument has no basis in economic policy and should not be considered by the Board. However, even if proper for consideration, Intervenor has presented no evidence that the impacts they claim may occur. Furthermore, the unsupported argument they do present is based upon incorrect environmental conclusions. Finally, even at face value, and as shown by an analysis of the hypotheticals posed by the Board, the arguments on which Intervenor rely for their claim of adverse impact are wholly speculative in nature. In short, Intervenor's claim that adverse economic impacts will result from Thoroughbred's emissions is entitled to no weight in the Board's assessment of the KRS 278.710(1) criteria.

A. Alleged Economic Impacts Of Thoroughbred's Emissions Should Not Be Considered By The Board.

As previously held by the Board, environmental impacts of Thoroughbred's plant are proper for consideration in this proceeding only to the "extent they directly impact a factor enumerated in KRS 278.710." Order, September 30, 2003, p. 2. BREC's claim that adverse economic impact will be a "direct" result of Thoroughbred's air emissions is based entirely on the testimony of BREC witness, Durham, who testified in both his prefiled testimony and at the Evidentiary Hearing, that Thoroughbred's emissions would have certain environmental regulatory impacts that, in turn, would have an adverse economic impact on the region. Durham holds a Bachelors Degree in Meteorology, and is an environmental consultant with Stanley Consulting from Coralville, Iowa. Durham Prefiled Testimony, p. 1, ls. 8-14. He holds no degree in economics or any related study. Id. Watrous, without expert testimony, also makes generalized allegations of adverse economic impacts resulting from Thoroughbred's emissions, but fails to support his claims with any expert analysis whatsoever.

Thoroughbred's witness, Meyers rebuts the testimony of Watrous and Durham. Meyers, who holds a Ph.D. in economics from Columbia University, is a consulting economist with over thirty years experience specializing in the application of economic/financial theory and statistical procedure to issues of corporate planning, public policy, and industry regulation. Prefiled Rebuttal Testimony of Dr. Glenn Meyers, October 13, 2003 ("Meyers Prefiled Rebuttal"), p. 1, ls. 3-25. As stated by Meyers, the view expressed that the approval of Thoroughbred's Facility will lead to a "possible contraction in local investment opportunity" or "increase in environmental compliance costs as a result of a narrowed margin between actual and maximum permitted air pollution levels . . . has neither a basis in economic science nor a place in [this] proceeding." Meyers Prefiled Rebuttal, p. 3, ls. 10-13, p. 4, l. 11.⁷ Instead, Meyers states, BREC has confused the possible "social cost of a project with the possible social cost of a policy." Id., p. 4, ls. 19-20. As noted by Meyers, the adverse economic consequences alleged by BREC "are more accurately attributed to past decisions of government than to current proposals by Thoroughbred. Id. p. 5, ls. 6-7. Meyers made these same points in response to cross-examination by counsel for BREC. Transcript II, p. 178, ls. 8-12 (concluding that consumption of air increment is not a negative consequence that should be considered by the Board). "Put simply, I don't see a competing alternative to the Thoroughbred project that's a better alternative from the point of view of economic development and that is also being prevented in one way or another from realization as a consequence of the Thoroughbred project." Id., p. 179, ls. 1-6. This position is consistent with the Board's prior determinations regarding Kentucky Pioneer

⁷ As previously raised by Thoroughbred, the environmental economic impact issues Watrous and BREC assert are not proper in this forum for the additional reason that they are within the jurisdictional scope and expertise of another agency, the Kentucky Division for Air Quality. See supra pp. 3-4. Thoroughbred incorporates and reasserts its argument on this issue as contained in Thoroughbred's September 12, 2003 Response to BREC's Motion to Deny Thoroughbred's Application and Response to Watrous' Motion to Intervene, as well as Thoroughbred's October 20, 2003 Motion to Strike the Testimony of Duham and Watrous as if fully set forth herein.

Energy and Kentucky Mountain Power's applications to the Board for construction certificates. In neither of those proceedings did the Board consider air emission impacts, including increment consumption, as a type of economic impact to be evaluated by the Board. See generally, In the Matter of The Application of Kentucky Mountain Power, Case No. 2002-00149; In the Matter of The Application of Kentucky Pioneer Energy, Case No. 2002-00312.

Even without Meyers' compelling testimony, the Board has previously held that Durham's and Watrous' testimony be afforded less weight on these issues due to the speculative nature of their conclusions. Order, October 30, 2003. Watrous' and BREC's essentially lay opinion that an adverse economic impact may result from Thoroughbred's air emissions should not be considered by the Board. Rather, the Board should find Meyers' testimony persuasive as the only true expert testimony on the economic impact issue.

B. Watrous And BREC Have Presented No Evidence Demonstrating That The Thoroughbred Proposed Facility Will Have An Adverse Economic Impact On The Region Or The State.

Even if the Board affords Durham's and/or Watrous' testimony some weight notwithstanding the testimony of Meyers, their testimony wholly fails to show any "direct" negative economic impact that should be considered by the Board. Order, September 30, 2003, p. 2, ("The Board has no jurisdiction over emissions or discharges and can consider such factors only to the extent they directly impact a factor enumerated in KRS 278.710"). Meyers testified that one may consider a project to have negative economic consequences if it is determined "with reasonable certainty" that the project in question will "foreclose the opportunity for other investments that would yield greater benefits in terms of employment and income." Meyers Rebuttal, p. 6, ls. 2-4. Neither BREC nor any other party has presented any such evidence to the Board. Id., p. 6, ls. 6-8. In fact, Meyers reviewed both the economic performance of the area and opinions expressed by local government officials (which were repeated in detail in public

comments immediately preceding the evidentiary hearing set forth above) and concluded to the contrary stating, “the likelihood that the area will be seriously considered as a site for another investment project of a scale comparable to the Thoroughbred Facility . . . appears to be negligible.” Id., p. 6, ls. 16-19. Again, Meyers’ Testimony provides empirical evidence that no development will be precluded by Thoroughbred’s proposed Facility.

1. BREC presents no evidence of any adverse economic impact from Thoroughbred’s proposed Facility.

Housley admitted that BREC had provided no study or analysis of any financial impact to BREC from Thoroughbred’s proposed Facility relating to the costs of any alleged environmental controls, alleged increase in rates, or anything else.

Q. Big Rivers did not present a study or analysis of the financial or economic impact to Big Rivers from Thoroughbred’s proposed facility; did it?

A. **Not to my knowledge.**

* * * *

Q. Big Rivers has not presented any study or analysis of the financial impact to Big Rivers from any other proposed industrial facility; has it?

A. **Not to my knowledge.**

* * * *

Q. Big Rivers has not presented any study or analysis to identify the costs of any alleged environmental controls that [it] will be required to implement because of Thoroughbred’s proposed facility; has it?

A. **We have speculated on the effect of it, but, if you’re asking studied and learned evaluation, I don’t think so.**

* * * *

Q. Big Rivers has not presented any study or analysis in this proceeding to identify the costs of any environmental controls that would be incurred as a result of regulatory programs pursuant to the Clean Air Act; has it?

A. **I don’t think there has been any presented; that’s correct.**

* * * *

Q. Big Rivers has not presented any study, analysis, or other document that would show or demonstrate that Big Rivers will have to raise its rates as a result of Thoroughbred's proposed facility; has Big Rivers?

A. **That's correct.**

Transcript II, pp. 193-96 (Emphasis added). BREC has simply presented no evidence that BREC, or any other party, will suffer any "direct" adverse economic impact from Thoroughbred's emissions.

2. Watrous presents no evidence of any adverse economic impact from Thoroughbred's proposed Facility.

Similarly Watrous, although expressing concerns regarding the impact of Thoroughbred's proposed Facility on the environment in Jefferson County and around Mammoth Cave National Park ("MCNP"), and the resulting negative economic impact from potential environmental problems, could point to no study or analysis providing any support for his concern either in terms of environmental problems or any relationship of the alleged problems to an economic impact.

Q. And you're not aware of any businesses that have decided not to locate in Kentucky because of Thoroughbred's proposed facility; have you?

A. **No.**

Q. And you're not aware of any businesses that have delayed or terminated expansion plans because of Thoroughbred's facility?

A. **No.**

Q. But did you present any study that showed that there would be a change in the number of visitors to Mammoth Cave as a result?

A. I did no study, **no.**

Id., pp. 232-34. Watrous' testimony likewise wholly fails to show any "direct" adverse economic impact from Thoroughbred's emissions.

3. Furthermore, the argument presented by BREC is based upon incorrect environmental conclusions.

Notwithstanding the lack of any study empirically showing any likelihood of the adverse economic impact that Intervenors claim “may” result from Thoroughbred’s emissions, the unsupported argument that BREC does present is based upon incorrect environmental conclusions. Thoroughbred witness DeBusschere, in both his Rebuttal Testimony and responses to cross-examination from counsel for BREC demonstrated the weakness in BREC’s reasoning that Thoroughbred’s proposed Facility will impact any proposed expansion by BREC. DeBusschere notes that “major point sources have not suffered under the [first-come first-served] approach [of the NREPC] in that subsequent applicants were able to secure permits.” Filed Rebuttal Testimony of Mike DeBusschere, October 13, 2003 (“DeBusschere Prefiled Rebuttal”), p. 5, ls. 3-4. DeBusschere made this point again in responding to a question from counsel for BREC that increment consumption will not restrict economic growth. Transcript II, p. 143, ls. 22-25. (Q. “Would you agree that increment consumption can restrict economic growth?” A. “I have not seen that, in my experience, to be a problem to date”).

DeBusschere notes that the reason increment consumption (even if it occurs) will not restrict economic growth is because increment consumption is based on modeled impacts at discrete receptor sites for multiple years of meteorological data. DeBusschere Prefiled Rebuttal, p. 5, ls. 4-6. “The fact that one source will consume some increment at one receptor at one point in time does not preclude another new source from consuming increment at a different receptor during the same time or at the same receptor during a different time.” Id., p. 5, ls. 6-9. DeBusschere concludes that the probability of two point sources, such as Thoroughbred’s proposed Facility and BREC’s proposed D.B. Wilson expansion, having a significant impact at

the same receptor at the same time is very small. Id., p. 5, ls. 10-11.⁸ Therefore, contrary to BREC's claim, increment consumption by Thoroughbred's proposed Facility (assuming it were to occur) will not impact the issuance of any air permit to BREC. Id., p. 5, ls. 16-17.

DeBusschere also testified that BREC has overstated any requirement that its modeling for air permit purposes will necessarily be based on Thoroughbred's permitted emissions.

DeBusschere noted the position of the EPA as follows:

In making its decision to use actual emissions in determining increment consumption, EPA specifically addressed economic development concerns when it stated, "EPA believes it is unwise to restrict source growth based only on emissions of sources permitted to emit but which, in many instances, have not been and are not likely to be emitted. Increment calculation based on best prediction of actual emissions links PSD permitted more closely to actual air quality deterioration than calculations based on allowable 'paper' emissions. . . . Increment calculations will generally be based on actual emissions as reflected by normal operation for a period of two years.

Id., p. 15, ls. 8-16 (citing 45 Federal Register 52,676 at 52,718 (August 7, 1980)). Thus, after the Thoroughbred facility has been in operation any potential new source will be able to use the actual emissions for purposes of the increment consumption analysis. Though in the interim, potential to emit is typically used, DeBusschere noted that the details of the emission assumptions would be addressed in the modeling protocol and in discussions with EPA and DAQ. Transcript II, p. 145, ls. 6, 20-23. For example, the permit applicant would presumably point to the Updated Statement of Basis which shows the Class I SO₂ increment consumption to be 1.16 ug/m³ out of 5 ug/m³ when modeled at the permit limit of 0.167 lb/mmBTU. BREC Hearing Exh. 4, at p. 33 ; Transcript II, p. 252, ls. 1-6.

⁸ As Durham admitted, the modeling conducted by BREC also showed maximum impacts on different dates. Transcript II, p. 25, l. 252.

C. The Economic Impacts BREC And Watrous Allege Are Speculative And Should Not Be Considered The Board.

Finally, even taking BREC's and Watrous' position at face value, the evidence presented in this matter demonstrates that BREC's and Watrous' argument that adverse economic impacts may result from Thoroughbred's emissions is nothing more than pure speculation. Durham's and Watrous' testimony simply provides no causal connection between the environmental issues they raise and any alleged economic impact from Thoroughbred's proposed Facility. Accordingly, their contentions should not be afforded any weight by the Board. See Order September 30, 2003, p. 2, ("The Board has no jurisdiction over emissions or discharges and can consider such factors only to the extent they directly impact a factor enumerated in KRS 278.710"); see also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 551 (1978) (holding that under the National Environmental Protection Act ("NEPA"), an agency is not required to consider environmental effects that cannot be readily ascertained and are deemed only remote and speculative possibilities); Limerick Ecology Action, Inc. v. United States Nuclear Regulatory Comm., 869 F.2d 719, 745 (3d. Cir. 1989) (holding, in an action also under NEPA, that economic consequences that were "speculative, both in terms of their occurrence and in terms of any reasonable quantification, even given that occurrence, and . . . remote" should not be considered by the agency); Natural Resources Defense Council v. EPA, 859 F.2d 156, 210 (D.C. Cir. 1986) (agency actions based upon speculation are arbitrary and capricious). An analysis of the hypotheticals posed by the Board only further demonstrate this fact, and support Thoroughbred's position that its plant will not preclude industry from locating in the Western Kentucky region.

1. Durham's testimony is speculative.

A review of Durham's testimony demonstrates the lack of concrete connection between Durham's environmental assertions and any adverse economic impact caused by Thoroughbred's proposed Facility. The majority of Durham's Testimony does not make any connection to any adverse economic impact. Durham's Testimony attempting to advance a so-called adverse economic impact from Thoroughbred's proposed Facility is speculative and based on a series of assumptions he did not show to be more probable than not:

The effect of a nonattainment designation **can** be very significant. . . . In some circumstances, a new source **could** be completely prohibited, unless the new source obtains offsetting emission reductions by reducing or eliminating another source of similar emissions in the area.

* * * *

If Ohio County is in nonattainment status for PM_{2.5} **when** a second Unit is proposed to be installed at the Wilson Station, Big Rivers **will likely** be forced to reduce emissions from Wilson Unit 1 and **may** also be required to attempt to secure reductions in PM_{2.5} emissions from other sources in the area, including Thoroughbred. Big Rivers would be expected to pay the cost of reducing such emissions. If forced to install additional control technology on Unit 1 to control PM_{2.5} emissions, or obtain offsetting emissions from other sources in the area, the cost to Big Rivers would be in the millions of dollars.

Durham Prefiled Testimony, p. 4, ls. 4-8 & p. 6, ls. 6-12 (Emphasis added). The speculative nature of Durham's Testimony can be summarized below:

- Durham makes assumptions regarding the impacts of emissions of particulate matter less than 2.5 microns in size ("PM_{2.5}") when: (i) nonattainment areas for PM_{2.5} have not yet been designated; and (ii) a State Implementation Plan for PM_{2.5} is not required until the end of 2007. Moreover, he fails to recognize that emission reductions required by other programs will affect PM_{2.5} levels. DeBusschere Prefiled Rebuttal, p. 8, ls. 11-18, pp. 9-10.

- Durham assumes an expansion of BREC's D.B. Wilson site will occur although no financing has been obtained for any such expansion. Transcript II, pp. 202-05.⁹
- Durham assumes an expansion of BREC's D.B. Wilson site will occur although no permit applications have been filed for any such expansion. Big Rivers Response to Thoroughbred's Data Requests, October 21, 2003, at Response No. 1.
- Durham assumes that the "baseline [for environmental modeling] has to be triggered," which DeBusschere doubts would occur due to the smaller size of D.B. Wilson's proposed expansion. Transcript II, pp. 141-44.
- Durham agreed that reductions in pollutant emissions under other programs could expand increment. Transcript II, pp. 240-41.
- Also, Durham does not identify and thus does not assess costs that will be incurred by BREC to meet Best Available Control Technology ("BACT") or Maximum Achievable Control Technology for a possible new Wilson unit.

In response to DeBusschere's prefiled testimony, Durham and BREC attempted to cure deficiencies in their analysis by modeling to show impacts of the existing Wilson unit with a proposed new unit. However, the modeling analysis was flawed. Durham admitted that the modeling he conducted for BREC did not use the CALPUFF Model, as recommended by the EPA, contending that the CALPUFF Model is proprietary and unavailable even though 40 CFR Part 51, Appendix W states that "the model code and its documentation are available at no cost for download from the model developers' web site." Transcript II, pp. 243-44 & 258. In fact, Durham conceded on redirect examination that he did not have all the necessary data to run the newer, more accurate CALPUFF Model. Id., pp/ 259-60.

⁹ Although whether an applicant has secured financing is not a criteria to be considered by the Board under KRS 278.710(1) when determining whether it is appropriate to grant a Construction Certificate, financing is relevant to Thoroughbred's argument that many of the economic impact issues raised by intervenors are speculative. BREC's Wilson II project is not the subject of pending permit applications, is unfinanced and is otherwise uncertain and thus, its argument is speculative and should not be considered by the Board.

The modeling Durham did conduct showed a greater impact from BREC's D.B. Wilson plant than for Thoroughbred's proposed Facility, even though D.B. Wilson is substantially smaller. Id., pp. 244-48 & 251. The modeling was also extremely conservative. For example, Durham admitted that his modeling assumed 80 sources instead of the 64 sources that the Kentucky Division for Air Quality required Thoroughbred to model. Id., pp. 248-49. His modeling also assumed that auxiliary boilers and emergency diesel generators would be running continuously (when they will not). As he recognized, it is not possible for Thoroughbred's proposed facility to emit continuously at 0.41 lb./mmBTU SO₂ limit because such emissions would exceed the 0.167 lb/mmBTU 30-day rolling limit set by Thoroughbred's air permit. Id., pp. 249-51. Durham's modeling also used allowable emissions rather than actual emissions for existing sources, adding a further conservative layer to his conclusions of impacts from Thoroughbred's proposed Facility. Id., p. 253.

Finally, although Durham's Prefiled Testimony raised concerns about water withdrawal for the Thoroughbred Facility and potential impacts, he admitted that he had conducted no studies or evaluations that would contradict the finding by the Kentucky Division of Water that Thoroughbred's impact on flow of the Green River would be minimal. Id., p. 255; Thoroughbred Hearing Exh. 3; Durham Prefiled Testimony, p. 11.

In conclusion, Durham's testimony does not have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence" as set forth in Kentucky Rule of Evidence 401. Durham's Testimony has no probative value and should not be relied upon by the Board for its decision in this matter.

2. Watrous' testimony is speculative.

Similarly, Watrous' testimony also provides no causal link between his concerns about the quality of the environment and any economic impact. Watrous concludes that "[t]he economic health of the Louisville Metro region is dependent on the quality of our environment" and continues by noting "[t]he adverse economic effects of the additional emissions on the Mammoth Cave area are of concern" but provides absolutely no analysis of the connection between these issues and any resulting environmental impact on the region. Prefiled Testimony Of Watrous, October 6, 2003, p. 2, 1s. 2-3 & 18-19; Transcript II, pp. 231-32. Watrous provides no evidence to support the conclusion that negative economic impacts may result from Thoroughbred's proposed Facility and his testimony should be given no weight by the Board. The total lack of support for Watrous' testimony is shown by his responses to cross-examination by counsel for Thoroughbred as set forth below:

Q. You have not presented any study with your testimony that Thoroughbred's facility will impact Jefferson County; have you?

A. No, but I have concerns.

* * * *

Q. You didn't submit a study that Thoroughbred's facility would impact Mammoth Cave; did you?

A. No.

* * * *

Q. And you have not presented any studies regarding changes in air quality around Mammoth Cave and the effect on the economic health of the area; have you?

A. No.

Q. And you haven't or are not presenting any studies comparing changes in air quality to any number of visitors or other economic indicators at Mammoth Cave; have you?

A. No.

* * * *

Q. And you have not presented any study that Thoroughbred's facility will lower air quality within the Mammoth Cave area; have you?

A. **I have not presented that study; no.**

Transcript II, pp. 232-34.

3. An analysis of the hypotheticals posed by the Board only further demonstrates that claims of adverse economic impact are speculative and must be disregarded by the Board.

At the evidentiary hearing, Chairman Huelsmann requested that parties' Briefs address two hypothetical fact patterns not raised by the parties to assist in the Board's assessment of the anticipated regional economic impact of Thoroughbred's proposed plant. Transcript II, p. 236. The first hypothetical concerned whether the construction of Thoroughbred's proposed Facility would preclude the construction of the Cash Creek power plant, which is reported to be a 1000 MW coal-fired facility planned for Henderson County.¹⁰ The second hypothetical concerned whether the construction of Thoroughbred might preclude a new Toyota plant in Paducah. As noted above, speculation aside, **no** party has presented **any** evidence that Thoroughbred's Facility will preclude any presently proposed future development. Regardless, however, an analysis of the two hypotheticals serves only to further demonstrate that the proposed Thoroughbred Facility in Muhlenberg County will not prevent the location of new industry in this region.

Two aspects of the air permitting requirements have been relied upon to by the opponents to the Thoroughbred project as support for their argument that Thoroughbred's development will

¹⁰ A proposed Cash Creek plant of this type is identified by the NREPC in *A Cumulative Assessment of the Environmental Impacts Caused by Kentucky Electric Generating Units*, at 19 (Dec. 17, 2001). However, a Notice of Intent to File an Application for a Construction Certificate, as required by 807 KAR 5:110, was not found on the Board's website.

necessarily preclude development of other industrial projects. First, under the Clean Air Act, a proposed source could be denied an air permit if its emissions were determined to cause an exceedance of available Class I increment, and the source was unable to otherwise lower its expected emissions or purchase emission reductions from other existing sources to expand the available increment. Specifically, in this action, concern has been raised about the amount of SO₂ increment in the MCNP Class I area that is available and the amount of that available increment consumed by Thoroughbred. Second, a proposed source in an area designated as attainment for a given NAAQS could be denied an air emission permit if its emissions when modeled show an exceedance of an NAAQS.

Although Thoroughbred's analysis of the hypotheticals will focus on these issues, it must also be noted that the air permitting process itself is complex and involves meeting numerous requirements. For example, as the Updated Statement of Basis for the Thoroughbred air permit shows (BREC Hearing Exh. 4), over 40 submittals were made to the Division for Air Quality in connection with Thoroughbred's permit application. The Updated Statement of Basis (a 36-page document, excluding attachments) simply summarizes the various elements of the air permitting program that were implicated, including the requirement that BACT be utilized to control emissions. There are multiple points in the permitting process where, through the implementation of Clean Air Act programs, decisions are made by the permitting authority and permittee that affect the level of air emissions the source can emit, the types of air emissions the source can emit, and even the mode or manner of emission. Each of these decisions have the potential to drastically change the course or scope of a project and may even prevent a project from going forward at all regardless of Thoroughbred's Facility.

- a. Neither the Henderson Cash Creek plant nor a proposed Paducah Toyota plant would be precluded due to consumption of a portion of the Class I SO₂ increment.

Under the current Clean Air Act Prevention of Significant Deterioration (“PSD”) regulatory scheme, Thoroughbred’s alleged consumption of 4.98 ug/m³ of the available 5 ug/m³ Class I 24 hour SO₂ increment¹¹ would not preclude a future Toyota plant in Paducah or the Henderson County Cash Creek plant.¹² First, increment consumption analysis is pollutant specific and is only required for “major” emitters of the subject pollutant. Assuming the increment baseline for MCNP was set, a future plant seeking an air permit to construct a plant within 100 km of MCNP would only be required to consider its impact on Class I increment consumption for those specific pollutants that it emits in significant amounts. In this case, the pollutant of concern for the Class I increment evaluation is SO₂. The primary pollutant of concern for automobile manufacturers, such as Toyota, is Volatile Organic Compounds (“VOCs”), not SO₂. Thus, even if the increment baseline for the MCNP Class I area had been set and Toyota was required to conduct an increment analysis, Toyota would not be precluded from construction in the Paducah area as a result of Thoroughbred’s partial consumption of Class I SO₂ increment.

Cash Creek, as a proposed electric generating station, however, is expected to be a major source of SO₂ and thus, if the baseline for the MCNP Class I area were set, Cash Creek would be

¹¹ Intervenors have not disputed that modeling of actual emissions after Thoroughbred’s Facility is in operation would result in less than 4.98 ug/m³ of the increment being consumed. DeBusschere Prefiled Rebuttal, pp. 13-14. Moreover, the 4.98 ug/m³ modeled level of consumption is based on continuous emission of 0.41 lb/mmBTU SO₂, which can occur only for a limited period without exceeding the 30-day limit of 0.167 lb/mmBTU. DeBusschere Prefiled Rebuttal, pp. 13- 14. The Updated Statement of Basis determines that 1.16 ug/m³ of 5 ug/m³ increment is consumed when emissions are modeled at 0.167 lb/mmBTU 30-day limit. BREC Hearing Exh. 4, at p. 33.

¹² As pointed out by the testimony of DeBusschere, a question exists as to whether Thoroughbred has actually consumed Class I increment because consumption of increment does not occur until the baseline date in a county is triggered. The baseline date in Edmonson County has not been triggered. However, Thoroughbred conducted modeling for increment consumption because it was requested by the state. A new source would be free to make the argument that an increment consumption evaluation would not be required on that basis.

required to conduct an increment analysis for SO₂. However, Cash Creek will still not be precluded if Thoroughbred is considered as having consumed either 1.16 ug/m³ (using the 0.167 lb/mmBTU permit limit) or 4.98 ug/m³ (using the 0.41 lb/mmBTU permit limit) of SO₂ increment. Indeed, if the analysis were required, Cash Creek's SO₂ emissions would have to be several times the SO₂ emissions from Thoroughbred to even risk using up the available SO₂ increment. In fact, Cash Creek, being subject to BACT and being 33% smaller than Thoroughbred, would be expected to emit less SO₂ than Thoroughbred and hence, consume even less SO₂ increment than that modeled as consumed by Thoroughbred. Transcript II, pp. 115-116; DeBusschere Prefiled Rebuttal, p. 12, ls. 11-17.

Even if the baseline were set for the MCNP Class I area and SO₂ increment consumption were a concern for Cash Creek or a hypothetical Toyota plant, the multitude of intervening causes that independently contribute to whether an SO₂ increment exceedance occurs make predicting any SO₂ increment exceedance difficult, much less an exceedance attributable to Thoroughbred's SO₂ increment consumption. Indeed, even for a significant SO₂ emitting source, to assume an SO₂ increment exceedance at all is a great leap, considering that it is undisputed in this proceeding that the available Class I SO₂ increments are likely to expand (not reduce) in the future due to other ongoing regulatory program controls as well as Thoroughbred's own anticipated lower actual emissions. DeBusschere Prefiled Rebuttal, pp 5, 9-10, 13-14; Transcript II, pp. 240-246.

Moreover, to fairly state that Thoroughbred contributed to an exceedance any more than any other SO₂ source in the area, raises the time space issue testified to at length by Thoroughbred. For example, even if the hypothetical Toyota plant was required to conduct a Class I SO₂ increment analysis and the results of that analysis showed an exceedance prohibiting

construction, in order for the exceedance to be fairly attributable to Thoroughbred, the modeling results for the proposed source would have show Toyota's greatest modeled SO₂ emission impact at the same receptor and at the same time that Thoroughbred has its most significant impact. DeBusschere Prefiled Rebuttal, p. 13. As testified by DeBusschere, such a result is highly unlikely, at best. "The fact that one source will consume some increment at one receptor at one point in time does not preclude another new source form consuming increment at a difference receptor during the same time or at the same receptor during a difference time." DeBusschere Prefiled Rebuttal, p. 5, ls. 3-12. Moreover, it cannot be ignored that there are other SO₂ sources in the area potentially contributing to increment consumption. For example, as BREC's own evidence in this case has shown, emissions from BREC's existing and proposed second Wilson station would consume more SO₂ increment than emissions from Thoroughbred. Transcript II, pp. 244-48 & 258.

- b. Neither the Henderson Cash Creek nor a proposed Paducah Toyota plant would be precluded by an NAAQS exceedance attributable to Thoroughbred's emission impact.

As stated above, a proposed source could also be denied an air emission permit if its modeled emissions showed an exceedance of an NAAQS. It is not likely, however, that Thoroughbred's emissions would result in modeling an exceedance of an NAAQS when permitting either Cash Creek or a hypothetical Paducah Toyota plant.

With respect to the hypothetical Toyota plant in Paducah, it is not possible for Thoroughbred to cause any potential modeled NAAQS exceedance. Paducah is 150 km from Thoroughbred's proposed plant site. Under an NAAQS analysis, a proposed source is required to model its own emissions 50 km beyond the area of its emissions Significant Impact Area ("SIA") which is defined by the permitting authority. 40 C.F.R. Part 51, App.W., 9.2.3(b). In the case of an industrial source with short stacks, like an automobile manufacturing plant, a

typical SIA is rarely over 10 km. Assuming an SIA of 10 km for purposes of the hypothetical, Toyota would be required to model its NAAQS compliance for a 60 km radius around its facility. The NAAQS analysis would include Toyota's projected emissions plus the emissions from all major sources within that 60 km radius to determine whether an NAAQS exceedance would occur. Because Thoroughbred is located 150 km from Paducah, Thoroughbred's emissions would not be included in such an analysis and therefore, would have absolutely no bearing on Toyota's analysis of whether its emissions would cause an NAAQS exceedance.

The site of the Henderson, Kentucky Cash Creek plant is believed to be about 60 km from Thoroughbred's proposed site. Thus for purposes of this hypothetical, it is anticipated that Thoroughbred's emissions would be included in Cash Creek's NAAQS compliance analysis. Even so, however, an NAAQS exceedance is not projected to occur. Thoroughbred's NAAQS analysis, which included Thoroughbred's permitted emissions, emissions from other power plants as required by DAQ, and substantial assumed SO₂ background levels, did not show an NAAQS exceedance. BREC Hearing Exh. 4, Updated Statement of Basis, pp. 30-32. The Cash Creek power plant is only a 1000 MW plant and so would be expected to have a third less emissions than the 1500 MW Thoroughbred Generating Station. Thus, for purposes of this hypothetical analysis, it is reasonable to expect the plant to have an SIA less broad than Thoroughbred's 50 km SIA. Therefore, the radius for Cash Creeks' NAAQS analysis would include fewer sources than Thoroughbred's analysis. An NAAQS exceedance is simply not expected to be an issue for the Cash Creek plant.

Aside from this however, the spatial variance of the SO₂ sources that would be involved in a Cash Creek NAAQS analysis makes it even less likely that emissions from Thoroughbred's plant would disadvantage Cash Creek's NAAQS analysis. Indeed, Thoroughbred is much

further from Cash Creek than TVA, KU and BREC Wilson were from Thoroughbred when it conducted its analysis.

III. THOROUGHbred'S PROPOSED FACILITY WILL HAVE AN OVERALL POSITIVE ECONOMIC IMPACT ON THE REGION AND STATE.

Intervenors have not disputed the substantial and important positive economic impacts the Thoroughbred plant will provide for the Muhlenberg County area that are evidenced by Thoroughbred's Application, Tickner's testimony, Williams' testimony, and the overwhelming public support for this project. The Thoroughbred plant will drive economic growth in an economically depressed area. As testified by Tickner and as set forth in KPMG's Kentucky Economic Impact Analysis provided with Thoroughbred's application:¹³

- Thoroughbred will employ approximately 1,500 workers on average during the construction of the Facility with a peak of 2,900 workers.
- When operational, Thoroughbred's power plant and mine will employ approximately 450 full-time workers, 400 of whom will reside in Kentucky.
- An estimate of the indirect and induced jobs created by the Facility adds an additional 633 job years annually for the region.
- KPMG estimates that \$3.345 billion in new spending will be created over the first approximately 30 years of construction and operation of the Facility.

Tickner Prefiled Testimony, p. 9; Transcript II, pp. 24-25; Transcript II, p. 108, ls. 20-25 (where Williams stated, "[e]conomic development will be enhanced by the job creation and the economic growth that will occur as a result of" Thoroughbred's proposed Facility and other development will be able to occur). In addition, as noted by Meyers "an important 'positive economic consequence' of the Thoroughbred Facility not included in [the KPMG Analysis] is

¹³ Thoroughbred's Application for a Construction Certificate is part of the record pursuant to KRS 13B.130.

the favorable impact of these Facilities on competition in the regional generation market.”
Meyers Prefiled Rebuttal, p. 8, ls. 23-24, & p. 9, ls. 1-2; Transcript II, pp. 173-74.

Again, there is no dispute that Thoroughbred’s proposed Facility will provide significant economic benefits to the region and the state in the form of jobs, spending, lower energy costs, and increased reliability of service. As set forth above, Intervenors have not established that any negative economic impacts will result from this project, much less any negative economic impacts sufficient to override the Thoroughbred Facility’s demonstrated positive impacts. The evidence demonstrates that an assessment of the economic impacts of this project under KRS 278.710(1) weighs in favor of granting a Construction Certificate to Thoroughbred.

IV. AN ASSESSMENT OF THE REMAINING CRITERIA WEIGHS IN FAVOR OF GRANTING A CONSTRUCTION CERTIFICATE TO THOROUGHNBRED.

The Prefiled Testimony of Tickner addressed all the criteria contained in KRS 278.710(1) and, other than the issues addressed above, there appears to be no dispute that an assessment of the remaining KRS 278.710(1) criteria (in conjunction with the mitigating measures agreed to by Thoroughbred), supports the granting of a construction certificate to Thoroughbred.

A. Thoroughbred’s Proposed Facility Will Have Minimal Adverse Impact On Scenic Surroundings, Property Values, The Pattern Or Type Of Development Of Adjacent Property And Thoroughbred Will Pay For Any Necessary Improvements To The Surrounding Road.

1. Scenic surroundings.

Thoroughbred’s Application includes a Site Assessment Report addressing the impact, if any, of the proposed Facility on the surrounding area. The MACTEC Report reviewed Thoroughbred’s Site Assessment Report and concludes that “[t]he vegetation and topography within the existing, disturbed coal mining area, and the absence of any direct views to the site leave the proposed [Facility] compatible with its scenic surroundings. The color scheme chosen

for the stack and the plant seem to fit or strive to minimize the dominance of the building and stack according to the meteorological conditions typical of the area.” MACTEC Report, September 4, 2003, p. 7;¹⁴ Tickner Prefiled Testimony, p. 6, ls. 9-17.

2. Surrounding property values.

The MACTEC Report concludes that Thoroughbred’s proposed Facility will not decrease property values stating “[b]ased upon BTM’s team review of the subject site, the study sites and the analysis of Mr. Pritchett’s study, the team concurs that adjacent property values will not be adversely affected.” MACTEC Report, p. 28. In fact, the MACTEC Report concludes that the need for temporary housing caused by the construction of the proposed Facility will likely at least temporarily increase the value of residential property in the area. Id.; Tickner Prefiled Testimony, pp. 6-7.

3. The pattern and type of development of adjacent property.

Thoroughbred’s proposed Facility will have no impact on the pattern or type of development of adjacent property because most of the adjacent property has been used primarily for surface mining and ancillary facilities. The nearest residence is approximately 1.2 miles from the proposed Facility and no residence or residential development will be impacted by the proposed Facility. Moreover, the Green River Correctional Facility is about 1.5 miles from the proposed Facility. As noted in the MACTEC Report, the “construction of the proposed generating station would appear to result in the further reclamation of the previously strip-mined property” and “will provide an opportunity to attract industrial uses . . .” to the area. MACTEC Report, p. 25. MACTEC also noted the distance of the facility from residences and concluded

¹⁴ The MACTEC Report is part of the record pursuant to KRS 13B.130.

that “the proposed generating station will have very limited impact on surrounding non-industrial properties.” Id., pp. 25-26; Tickner Prefiled Testimony, p. 7, ls. 7-18.

4. Thoroughbred has agreed to pay for certain improvements to the access road to the proposed Facility.

Access to Thoroughbred’s proposed Facility will be from U.S. Highway 62. Thoroughbred has consulted with the Kentucky Transportation Cabinet, Department of Highways and certain improvements will be made to U.S. Highway 62 at Thoroughbred’s expense which should be more than sufficient to accommodate the traffic generated by Thoroughbred’s proposed Facility. U.S. Highway 62 will be widened from 22 feet to 36 feet and a 320 foot long turning lane will be added for vehicles coming to the Facility from either direction. The entrance and access roads within the site are still under design. Finally, the MACTEC Report concurs with Thoroughbred’s Site Assessment Report Traffic Evaluation and contains certain minor recommendations that will be provided by Thoroughbred to the Highway Department but are within the discretion of the Highway Department to approve. MACTEC Report, pp. 9-11; Tickner Prefiled Testimony, pp. 7-8.

- B. The Anticipated Noise Levels Expected As A Result Of Construction And Operation Of Thoroughbred’s Proposed Facility Will Be Minimal.

MACTEC agrees with Thoroughbred’s conclusion “that the construction and operation of the [Facility] site should have minimal noise impact upon nearby residences and other sensitive receptors.” MACTEC Report, p. 9. MACTEC’s only recommendation related to noise is that “silencers be utilized during start-up ‘steam blows’ as that operation should generate the greatest noise levels.” Id. As discussed in Section 8.5 of the Application, at the closest property boundary, the sound level will be 52 dBA during construction, about the same noise level as a private office. At the nearest residence, the level will be 47 dBA, equivalent to a farm field with soft breeze. During plant operations, noise levels at the same locations will be 57 dBA and

51dBA respectively. Outside the plant boundary, there should be no noticeable increase in noise levels as a result of plant operations. Tickner Prefiled Testimony, p. 8, ls. 11-21.

C. Thoroughbred Has Made Attempts to Locate Its Facility On a Site Upon Which Existing Generating Facilities are Currently Located.

As Section 9 of Thoroughbred's Application details, Thoroughbred did not locate its proposed facility at a site with existing electric generation facilities. The Thoroughbred Facility site, is however, industrial in nature as it has already been utilized for mining purposes.

Initially in this proceeding, Intervenor BREC contended that Thoroughbred had failed to adequately summarize its efforts to locate its facility on BREC's existing D.B. Wilson site. Thoroughbred has since amended Section 9 of its Application to include those efforts, and BREC's counsel has acknowledged that the amended Section evidences that Thoroughbred did in fact make efforts to locate its plant at a site with existing facilities. Transcript II, p. 34, ls 4-8.; Williams Prefiled Testimony, pp. 2-4; Transcript II, pp. 58-59 & Rebuttal Testimony of Dianna Tickner, October 13, 2003, Exhibit A; Transcript II, pp. 24-25.

D. Thoroughbred's Proposed Facility Will Meet All Local Planning And Zoning Requirements.

As described in the July 7, 2003 letter from County Judge Kirtley, and attached as Section 3 to Thoroughbred's Application, Thoroughbred's proposed Facility is in compliance with the current Muhlenberg County, Kentucky Comprehensive Plan and complies with all local planning and zoning requirements. The MACTEC Report concurs that "the project is in accordance with all existing local governance" and refers to County Judge Kirtley's letter. MACTEC Report, p. 6; Tickner Prefiled Testimony, p. 10, ls. 13-19.

- E. The Exhaust Stack For Thoroughbred's Proposed Facility Will Be At Least 1,000 Feet From The Property Boundary Or Any Adjoining Property Owner And 2,000 Feet From Any Residential Neighborhood, School, Hospital, Or Nursing Home Facility.

As described in Section 8.2.7 of Thoroughbred's Application, the exhaust stack for Thoroughbred's proposed Facility will be at least 1,000 feet from the property boundary of any adjoining property owner and at least 2,000 feet from any residential neighborhood, school, hospital or nursing home facility. MACTEC has confirmed that the "nearest site property boundary is at least 2,500 feet from the proposed stack location, the nearest of any one of the listed facilities to the proposed stack location is approximately 8,200 feet." MACTEC Report, p. 6; Tickner Prefiled Testimony, p. 11, ls. 8-14.

- F. The Additional Load Imposed Upon the Electricity Transmission System By Thoroughbred's Proposed Facility Will Not Adversely Effect the Reliability of Service for Retail Customers of Electric Utilities Regulated by the Commission.

As demonstrated by the Prefiled Testimony of Jacob Williams, Thoroughbred's proposed Facility "will provide significant improvements to Kentucky's Transmission Grid, at Thoroughbred's expense, and ensure the continued reliability of service to Kentucky retail customers." Williams Prefiled Testimony, p. 5, ls. 13-15. No party has disputed that the improvements to Kentucky's Transmission Grid identified in the various studies submitted by Thoroughbred in connection with its Application, and described in detail in the Prefiled Testimony of Jacob Williams, will ensure continued reliability of service to retail customers of Kentucky's regulated utilities.

- G. Thoroughbred Has Reviewed Each MACTEC Recommendation And Has Agreed to Appropriate Mitigative Measures.

The MACTEC Report provides certain minor recommendations for the Facility at pages 44 and 45. Thoroughbred will provide the Highway Department with the MACTEC recommendation related to highway access. The recommendation will be within the discretion

of the Highway Department. Thoroughbred is willing to follow industry standards on security, labeling and signage and will follow all OSHA and other legal requirements in the construction and operation of the proposed Facility. A chart listing each MACTEC recommendation and Thoroughbred's specific response is attached as Exhibit A and was previously included with Tickner's Testimony. Tickner Prefiled Testimony, pp. 11-12.

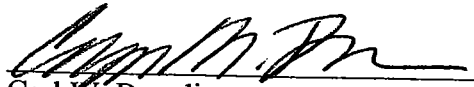
H. Neither Thoroughbred Nor Its Parent, Peabody Energy, Are in Violation Of Federal Or State Environmental Rules Or Administrative Regulations.

Neither Thoroughbred nor Peabody Energy has any violations of federal or state environmental rules or administrative regulations, regardless of magnitude of the penalty. Further, there are no judicial or administrative actions pending against Thoroughbred or Peabody Energy for environmental violations. Id., p. 12, ls. 3-6.

CONCLUSION

An assessment of the criteria at KRS 278.710(1) clearly supports the grant of a Construction Certificate to Thoroughbred for its proposed merchant electric generating facility in Muhlenberg County, Kentucky. For all of the above reasons, Thoroughbred's Application for a Construction Certificate should be granted.

Respectfully submitted,



Carl W. Breeding
Holland N. McTyeire, V
Carolyn M. Brown

GREENEBAUM DOLL & MCDONALD PLLC
229 West Main Street
Suite 101
Frankfort, Kentucky 40601-1879
Telephone: (502) 875-0050
Facsimile: (502) 875-0850

COUNSEL FOR THOROUGHBRED
GENERATING COMPANY, LLC

EXHIBIT A

**THOROUGHbred GENERATING COMPANY'S RESPONSE TO
RECOMMENDATIONS ADDED IN REVISED SEPTEMBER 4, 2003
MACTEC REVIEW AND EVALUATION OF SITE ASSESSMENT REPORT**

	MACTEC REPORT RECOMMENDATION¹	THOROUGHbred RESPONSE
1.	Fenced, lighted plant perimeter.	Per Section 8.2.3 of the Application, the perimeter will be fenced. Although not explicitly stated in the Application, lighting was planned and will be installed. Thoroughbred accepts the recommendation.
2.	Storage buildings with hazardous or dangerous materials must be locked.	Recommendation as written does not define "hazardous materials" or "dangerous materials." Thoroughbred will comply with applicable industry and regulatory standards for storage of hazardous materials. Those standards would include, for example, 29 C.F.R. 1910 Subpart H which sets forth OSHA standards for "hazardous materials," including standards related to storage.
3.	Only personnel who have attended a safety and security induction course will be permitted to work on-site.	Thoroughbred expects to require safety and security training for personnel as appropriate for the job function. Thoroughbred will comply with all applicable industry and regulatory standards. Those standards would include, for example, training standards applicable to the electric power generation industry under OSHA standard, 29 C.F.R. 1910.269.
4.	All employees and subcontractors working at the site must have a site security pass (proper identification), which must be carried at all times.	As noted in Section 8.2.3 of the Application, only authorized persons with proper identification will be allowed to enter the plant. Thoroughbred will require proper identification on-site and will comply with industry practice and regulatory standards governing security.
5.	Access for site personnel and visitors will be through a security gate controlled by security personnel.	Accepted.

¹ See Section D of the MACTEC Report at pages 43-46.

	MACTEC REPORT RECOMMENDATION¹	THOROUGHbred RESPONSE
6.	All vehicles entering/leaving the site should be subject to search by TGS security at the discretion of the security officer.	Thoroughbred will comply with applicable industry and regulatory standards. Thoroughbred will advise persons entering the site that their vehicles may be subject to search whether by its security personnel or law enforcement, in accordance with applicable legal requirements.
7.	Speed limit signs should be posted to reflect safe and appropriate speeds in the access road and on roads throughout the site.	Accepted.
8.	Any utility service not already under contract should ensue under compliance with all state and federal requirements, including required mitigation.	Thoroughbred will comply with applicable federal and state requirements.
9.	TCG should notify the Board to seek a permit for construction of any additional major construction item, such as new gas transmission lines and new electric transmission lines, and through proper submittals and reviews, assure the Board that any significant impact is effectively mitigated.	Thoroughbred will provide notice and submit any required application in accordance with KRS 278.700 – 278.716.
10.	TGC must clarify if the change in interconnection requires the modification of the aforementioned map.	Accepted.
11.	It is highly recommended that silencers be used during start-up “steam blows” as that operation should generate the greatest noise levels.	Thoroughbred will agree to use silencers during start-up “steam blows”.

	MACTEC REPORT RECOMMENDATION¹	THOROUGHBRED RESPONSE
12.	TGC plans to stagger arrival and departure times of construction workers. In order for the intersection of US 62 and the new access road to operate safely and efficiently, staggered arrivals and departures need to be maintained as planned - - spread over two hours - - especially during heavy construction months.	Accepted.
13.	The new access road from US 62 to the site should allow for two inbound lanes in the AM and two outbound lanes in the PM during heavy construction months.	Thoroughbred has no objection to this change but notes that any adjustment must be approved by the Kentucky Department of Transportation.
14.	The intersection of new access road and US 62 should be monitored during construction for the possible need for manual (police) traffic control during AM and PM peak periods.	Accepted.
15.	Roadway geometrics on US 62 at the access road could be modified as detailed in this report with approval of KYTC, District 2. Particular recommendations would include elimination of pavement for a westbound left turn lane, and consideration of three 14-foot wide lanes.	Thoroughbred has no objection to this change but notes that any adjustment must be approved by the Kentucky Department of Transportation.

Lex.632070.1 (word)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the Post-Hearing Brief Of Thoroughbred Generating Company, LLC was sent by United States First Class Mail, sufficient postage prepaid, to the following this the 24th day of November, 2003.

Hank List
Secretary
Natural Resources and Environmental
Protection Cabinet
5th Floor, Capital Plaza Tower
500 Mero Street
Frankfort, Kentucky 40601
hank.list@mail.state.ky.us

Nick Schmitt
Milo Eldridge
Mactec Engineering & Consulting, Inc.
13425 Eastpoint Centre Drive
Suite 122
Louisville, Kentucky 40223
ngschmitt@mactec.com
mbeldridge@mactec.com

James M. Miller
Sullivan, Mountjoy Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, Kentucky 42302
jmiller@smsmlaw.com

Gregory J. Cornett
Ogden, Newell & Welch, PLLC
1700 Citizens Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
gcornett@ogdenlaw.com

Gary Watrous
2711 West Main Street
Louisville, KY 40202
Gbwatrous@aol.com

Honorable Rodney Keith Kirtley
Judge/Executive
Muhlenberg County Courthouse
P.O. Box 137
Greeneville, Kentucky 42345
cojudge@muhlon.com

David G. Rhoades
Chairman
Muhlenberg Joint City
County Planning Commission
203 North 2nd Street
Central City, Kentucky 42330
central@muhlon.com

J. R. Wilhite
Commissioner - Community Development
Economic Development Cabinet
2300 Capital Plaza Tower
500 Mero Street
Frankfort, Kentucky 40601
jwilhite@mail.state.ky.us

David A. Spainhoward
Vice President
Big Rivers Electric Corporation
201 Third Street
P.O. Box 24
Henderson, Kentucky 42420
dspainhoward@bigrivers.com

Randall Smith
116 Paradise Street
Greenville, KY 42345-1530
smithrandallt@yahoo.com

Thomas J. FitzGerald
Counsel & Director
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KY 40602
fitzKRC@aol.com


COUNSEL FOR THOROUGHBRED
GENERATING COMPANY, LLC

LOU.828658.2(WORD)