

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              | ) |            |

**RESPONSE OF THOROUGHbred  
TO BREc'S MOTION TO DENY APPLICATION**

Applicant, Thoroughbred Generating Company, LLC ("Thoroughbred"), through counsel, respectfully submits its Response to the Motion of Big Rivers Electric Corporation ("BREc") to Deny Thoroughbred's Application. For the reasons discussed below, BREc's Motion is without merit and Thoroughbred's Application should be considered by the Board. As a practical matter, the Board likely will not be able to consider BREc's Motion until the appearance of the parties at the Evidentiary Hearing and its consideration should be deferred until that time if the Board deems it deserves serious consideration. After an Evidentiary Hearing, the Board will conclude that Thoroughbred has satisfied the criteria set forth in KRS 278.710 and grant it a construction certificate for the proposed facility.

**INTRODUCTION**

On July 17, 2003, Thoroughbred's current Application was docketed by the Board. On July 25, 2003, the Board advised Thoroughbred that its Application was deficient in one filing requirement. On August 4, 2003, Thoroughbred filed its response to the deficiency identified by

the Board. On August 5, 2003 the Board found that Thoroughbred's Application "now meets the minimum filing requirement set by our regulations." A copy of the Board's letter is attached as Exhibit A. On September 3, 2003, BREC moved to deny Thoroughbred's Application claiming, contrary to the finding by the Board, that Thoroughbred's Application is deficient because it does not: (i) summarize the efforts made by the applicant to locate the proposed facility on an existing site as required by KRS 278.706(2)(g); and (ii) analyze the negative impact of the proposed facility as required by KRS 278.706(2)(i).

BREC made the following comments that appeared in the September 4, 2003 edition of the *Courier-Journal* in connection with the filing of its Motion to Deny Thoroughbred's Application.

BREC's president and chief executive Michael Core said yesterday that the company wants "to make sure there's no adverse impact to our ratepayers from the construction of Thoroughbred."

\* \* \*

"We welcome the expansion of generation in Kentucky and the use of Kentucky coal," Core said. However, Big Rivers is concerned that Thoroughbred could put new demands on Big Rivers power lines, and that Big Rivers customers would have to pay for upgrades.

Big Rivers is also worried that Thoroughbred would limit expansion potential at its D.B. Wilson coal plant in Ohio County, about 8 miles from the proposed site in Muhlenberg County.

The 2,000-acre Wilson site was designed to accommodate up to four generating units of up to 500 megawatts each, Core said, but just one unit has been built so far. Peabody's plans could devalue the Ohio County property, he said.

Big Rivers had hoped to partner with Peabody to add capacity at the Wilson site, rather than see a new location developed. "It would make sense,"

Core said, but the St. Louis-based energy company never entered any meaningful discussions.

*Courier-Journal*, Business Section F, pp. F1 & F6, September 4, 2003, a copy of which is attached as Exhibit B.

BREC's Motion should be denied. Thoroughbred submits that the real impetus for BREC's actions is concern about competition. Both BREC's Motion and public comments will be addressed below.

### ARGUMENT

BREC's Motion should be denied for several reasons. BREC confuses the requirements for an application set forth in KRS 278.706(2) with those criteria to be considered by the Board in rendering a decision on Thoroughbred's Application set forth in KRS 278.710(1). Thoroughbred's Application does address each application requirement contained in KRS 278.706. Thoroughbred's Application closely follows those previously submitted in proceedings before the Board by Kentucky Mountain Power, LLC in Case No. 2002-00149 and Kentucky Pioneer Energy, LLC in Case No. 2002-00312. The Board determined that Thoroughbred's Application was complete on August 5, 2003 which cannot be challenged by BREC. None of the Data Requests submitted by the Board Consultant raised either of the issues raised by BREC. The issues asserted by BREC are more appropriately addressed at an Evidentiary Hearing. BREC has made factual assertions in its Motions and public comments which are not supported by affidavits in the record in this proceeding and should be made, and

subjected to cross examination, at an Evidentiary Hearing. Finally, certain issues raised by BREC are outside the jurisdiction of the Board and should not be considered at all.

**I. BREC CONFUSES THE REQUIREMENTS FOR AN APPLICATION IN KRS 278.706 WITH THE CRITERIA TO BE CONSIDERED BY THE BOARD IN GRANTING OR DENYING AN APPLICATION CONTAINED IN KRS 278.710.**

**A. THOROUGHbred'S APPLICATION COMPLIES WITH KRS 278.706.**

Contrary to BREC's claim, Thoroughbred's Application contains information responsive to the requirements for an application set forth in KRS 278.706(2)(g) & (j) and the Board and its staff properly found that the Application met the statutory requirements. Thoroughbred's Application closely followed the information submitted by the applicants in the two prior proceedings before the Board, which were deemed to have complied with all application requirements contained in KRS 278.706. Copies of the economic impact evaluation submitted, contained at Tab 6 of Thoroughbred's Application (excluding the expert reports), and responsive to KRS 278.706(2)(j), and the existing generating facility siting discussion, contained at Tab 9 of Thoroughbred's Application, and responsive to KRS 278.706(2)(g), are attached as Exhibits C and D, respectively.

BREC ignores the Board's August 5, 2003 finding that Thoroughbred's Application complies with the Board's minimum filing requirements.<sup>1</sup> Moreover, the Data Requests submitted by the Board do not raise either of the issues identified by BREC, a fact that BREC

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<sup>1</sup> BREC does not have the authority to challenge this finding by the Board. *Public Serv. Comm'n v. Attorney General*, Ky. App., 860 S.W. 2d 296, 298 (1993) (holding administrative agencies are creatures of statute and their jurisdiction is limited by the express terms of their enabling statutes which in this case do not give BREC the ability to challenge the finding by the Board that Thoroughbred's Application is complete).

fails to note. BREC also fails to recognize that an appropriate response for KRS 278.706(2)(g) might be that an applicant made no efforts to locate a proposed facility on an existing site (which would then be considered by the Board according to the criteria established by KRS 278.710). Also, as for KRS 278.706(2)(j), BREC concedes that Thoroughbred submitted an analysis of the economic impact on the region but disagrees with the conclusions reached by Thoroughbred and contends it is not an “adequate analysis.” BREC Motion at p. 7. The fact that BREC disagrees with the analysis provided by Thoroughbred is not a reason for the denial of Thoroughbred’s Application. Thoroughbred’s Application meets the requirements of KRS 278.706 as previously found by the Board, and BREC’s Motion should be denied.

**B. THE BOARD’S APRIL 16, 2003, ORDER WHICH IS RELIED UPON BY BREC DOES NOT SUPPORT ITS MOTION.**

Interestingly, BREC relies on the Board’s April 16, 2003 Order in the Application of Kentucky Pioneer Energy in Case No. 2002-00312 to support its present Motion. However, the Board’s April 16, 2003 Order in the Kentucky Pioneer Energy proceeding supports the proposition that BREC’s Motion is premature and should be denied. In the Order, the Board did not deny the application because of any failure to comply with KRS 278.706, but rather concluded that Kentucky Pioneer Energy had not satisfied the criteria set forth in KRS 278.710(1). The Order states as follows:

**After carefully weighing all of the factors outlined in KRS 278.710(1), the Board finds that Kentucky Pioneer has not satisfied the requirements set forth in the Board’s enabling statute.**

\* \* \*

**While Kentucky Pioneer has met some of the criteria outlined in KRS 278.710, the board ultimately finds as a matter of law that none of the**

evidence presented with regard to the remaining criteria can compensate for Kentucky Pioneer's failure to comply with local planning and zoning ordinances. (Emphasis Supplied.)

Case No. 2002-00312, pp. 4 & 13, April 16, 2003. Therefore, the Board did not deny Kentucky Pioneer Energy's application until it had conducted an Evidentiary Hearing and considered the criteria set forth in KRS 278.710.<sup>2</sup>

**II. THE ISSUES RAISED BY BREC ARE MORE APPROPRIATELY ADDRESSED, IF AT ALL, AT AN EVIDENTIARY HEARING.**

BREC's present Motion, and comments to the media, essentially have been made to support the proposition that Thoroughbred's Application should be denied because of BREC's existing D.B. Wilson facility and what BREC claims will be an adverse economic impact created by Thoroughbred's proposed facility. Again, these issues are more appropriately raised at an Evidentiary Hearing and do not support the denial of Thoroughbred's Application.

**A. THOROUGHbred'S PROPOSED FACILITY MEETS THE CRITERIA CONTAINED IN KRS 278.710.**

Pursuant to KRS 278.710(1)(d), Thoroughbred can present abundant evidence as to the reasons the proposed facility cannot or should not be located on BREC's D.B. Wilson site.

The summary of these reasons is as follows:

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<sup>2</sup> Finally, the remedy advocated by BREC that Thoroughbred's Application be denied is inappropriate. In the Kentucky Pioneer Energy matter, the applicant was allowed to cure its deficiency with any local planning and zoning regulations.

1. BREC does not 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.<sup>3</sup>

4. The agreement reached to remove BREC from bankruptcy requires that Western Kentucky Energy ("WKE") have a 25-year operating lease and power sales agreement for all BREC facilities including any expansions thereof which would serve as an impediment to the proposed project.

5. BREC's public comments ignore that FERC requires Thoroughbred to fund any required transmission upgrade upfront which will improve the overall reliability of BREC's Transmission System.

6. BREC's opposition is merely an attempt to maintain a competitive advantage without regard to the merits of Thoroughbred's proposed facility. An expansion by BREC of generating capacity at the D.B. Wilson plant for the wholesale power market would make BREC a merchant competing with Thoroughbred for customers.

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<sup>3</sup> As reviewed in Section 9 of the Application and in the response to BREC Data Request No. 19 (filed September 8, 2003), the permitting process for the Thoroughbred project began in 2000, two years before the siting legislation was enacted. As the Board can see from review of Section 10 of the Application, Thoroughbred has aggressively pursued the permits needed for its project to proceed.

7. Moreover, the MACTEC Report directly contradicts BREC's alleged concern about a potential decrease in property values. "Based 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, September 4, 2003. In fact, the MACTEC Report concluded 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. *Id.*

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

The above summary, which will be part of Prefiled Testimony and presented at any Evidentiary Hearing in this matter, demonstrates why BREC's D.B. Wilson facility has not been a viable alternative to Thoroughbred's proposed facility and did not merit specific reference in Section 9 of Thoroughbred's Application.<sup>4</sup>

**B. THOROUGHbred'S DISCUSSIONS WITH BREC WERE NOT REQUIRED TO BE PROVIDED TO THE BOARD BECAUSE IT WAS READILY APPARENT THAT BREC'S D.B. WILSON SITE WAS NOT AN APPROPRIATE ALTERNATIVE.**

BREC's comments that Thoroughbred (or its parent Peabody) never had any meaningful discussions regarding the D.B. Wilson facility and Thoroughbred's proposed project are simply wrong. The communications between BREC and Thoroughbred may be summarized as follows:

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<sup>4</sup> As stated in response to BREC Data Request No. 1, under the terms of the Confidentiality Agreement between BREC and Thoroughbred, the fact that discussions of partnering occurred were to be kept confidential. However, BREC has presumably concluded that the obligation has expired given its public statements.



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 on pages 7 through 8, *supra*, it was apparent that the D.B. Wilson facility was not a viable option for Thoroughbred and is one of the reasons these discussions were not included in Section 9 of Thoroughbred's Application.<sup>5</sup>

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 parent's interest in participating in an expansion of BREC's D.B. Wilson facility.

5. As of August 28, 2002, Thoroughbred made clear that it intended to proceed with the proposed project regardless of the outcome of the continuing discussions regarding any expansion of BREC's D.B. Wilson facility.

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<sup>5</sup> To the extent the Board deems the information relevant, the information is now in the record and can be addressed at the Evidentiary Hearing in this matter.

Therefore, although not required by KRS 278.706(2)(g), Thoroughbred provides the above information which, if necessary, will be subject to Prefiled Testimony to respond to BREC's Motion and public comments and provide a complete record for the Board.

**C. MANY ISSUES RAISED BY BREC ARE NOT APPROPRIATE FOR THIS PROCEEDING.**

As previously noted, BREC contends that Thoroughbred's Application is deficient for failure to provide an analysis of any adverse economic impact caused by Thoroughbred's proposed facility. Initially, the issues raised by BREC are arguments for an Evidentiary Hearing and are not appropriate for a determination without the benefit of testimony. Thoroughbred has provided a detailed economic analysis of its project, including evaluations by two recognized experts in the field. *See* Exhibit C. Thoroughbred's proposed facility will utilize state of the art technology, provide low cost electricity, provide jobs and serve as an economic engine for the region. BREC's unsubstantiated claims of adverse economic impact are no more than efforts by a competitor to derail the project.

In addition, BREC's complaints about "economics" all appear to relate to environmental impacts allegedly associated with the project. The siting legislation that created the Board also specifically directs that the Natural Resources and Environmental Protection Cabinet ("NREPC") address the environmental issues associated with new plant construction. KRS 224.10-280 (codifying 2002 Ky.Acts., Ch. 365, Section 10). Additionally, pursuant to KRS Chapter 224 and federal law, NREPC has been charged by the General Assembly with implementing federal and state environmental laws relating to air, water withdrawal, wastewater discharge and waste disposal permits. Thus, BREC's complaints to the Board on environmental matters are

misdirected. *See* KRS 13B.090(1) (stating that hearing officers should exclude from any administrative proceeding “evidence that is irrelevant, immaterial or unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege”). BREC cites KRS 278.025(6) as support for its position, but as BREC notes in its Motion, that statute applies to utility proceedings before the Public Service Commission and does not apply to this proceeding.

Moreover, BREC has mischaracterized the environmental effects of the Thoroughbred project, which is the lowest emitting pulverized coal-fired power plant permitted in Kentucky.

Among the inaccuracies in BREC’s motion, Thoroughbred notes the following:

1. Contrary to BREC’s assertions, Thoroughbred has not consumed Class I increment at Mammoth Cave National Park. Additionally, pursuant to Section 162 of the federal Clean Air Act, the national park is the Class I area to which Class I increment applies, not counties outside the park.

2. With respect to Class II increment, the NREPC Division for Air Quality only requires that type of analysis where a level, which is established by regulation as “significant,” has been exceeded. Moreover, Class II increment is accounted for on a county by county basis in Kentucky. In this case, the Thoroughbred project has consumed part of the increment for SO<sub>2</sub>, NO<sub>x</sub>, and PM<sub>10</sub> in Muhlenberg County and part of the SO<sub>2</sub> increment in Ohio County. *See* Response to BREC Data Request No. 23. Additional increment is available for other expansion in each instance. Finally, BREC makes it sound as if once increment is consumed, it can never be regained. However, the air quality regulations authorize re-evaluation of increment levels as a result of emission reductions at regulated sources.

Presumably BREC is monitoring all industrial development in these counties as consumption of increment occurs upon issuance of air permits to any major source that triggers certain criteria. For that very reason, action to stop the construction of the Thoroughbred project will not and cannot legally guarantee availability of increment for other power plant projects.

3. BREC also raises the specter of potential future issues of compliance with the National Ambient Air Quality Standard (“NAAQS”) for PM<sub>2.5</sub> as a result of the Thoroughbred plant. However, as pointed out in the response to BREC’s data request, the NREPC has evaluated PM<sub>2.5</sub> emissions from existing and new power plants and concluded that “new power plant emissions . . . appear to have little impact on future compliance with the short-term 24-hour [PM<sub>2.5</sub>] standard.” See Appendix A, A-17, A-18, A-22 of the NREPC Report, entitled “A Cumulative Assessment of the Environmental Impacts Caused by Kentucky Electric Generating Units” (December 17, 2001) attached hereto as Exhibit E. See also Thoroughbred Response to BREC Data Request, No. 31. BREC also fails to point out in its Motion that pursuant to the federal Clean Air Act and U.S. EPA directives, the collection of data to evaluate attainment with the new standard is ongoing, and attainment designations will not be made until December 2004. The NREPC will then have three years to prepare its plan for implementation of the standard.

BREC’s questions about the proposed facility’s air emissions (including increment consumption), water discharges, planned waste management and disposal methods simply should not be considered by the Board because they are not part of the Board’s statutory mandate. See *Public Serv. Comm’n, supra*, 860 S.W.2d at 298 (holding that an agency’s jurisdiction is defined and limited by its enabling statutes.) Many of these issues relate to the final determination of the Kentucky Division of Air Quality to issue an air permit to Thoroughbred. BREC chose not to

challenge Thoroughbred's air permit, which was issued almost a year ago, and did not intervene in Thoroughbred's air permit proceeding. BREC has not sought involvement in any other of Thoroughbred's regulatory proceedings. BREC's newfound concern about the environmental impacts of the Thoroughbred project should not be considered by the Board.

Finally, the suggestion by BREC that the economic analysis provided by Thoroughbred is somehow deficient due to omission of lost opportunity costs is without merit. Sound economic analysis must be grounded in reality. Guesswork as to what hypothetical plants might decide to locate (or expand) in Muhlenberg or surrounding counties in the next five or ten years and what air emission sources built in the last 20 years might decide to reduce emissions or shutdown thereby providing potential increases in increment available for consumption cannot form the basis for rational decision-making. Analysis of benefits associated with plants that "might" expand or "might" locate in an area is highly speculative. For example, BREC has apparently been contemplating an expansion at its D.B. Wilson facility but has not yet even submitted an air permit application in order to be "in line" for increment consumption. As another example, at one point over 20 power plant projects were proposed for Kentucky, yet only a handful remain as viable projects. Agency action based on speculation is not the type of rational decision-making required in Kentucky. Thoroughbred's economic analysis meets the requirements of the statute and BREC's attack is without merit.

In summary, the total lack of support for BREC's position, coupled with the effort to utilize the provisions of KRS 278.700, *et seq.* to raise issues governed instead by the NREPC leads to the inescapable conclusion that BREC has intervened herein, propounded 39 Data Requests and filed its present Motion, not to raise any legitimate issues, but rather to prevent

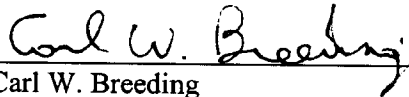
competition from Thoroughbred. BREC's claim that it "welcomes the expansion of generation in Kentucky and the use of Kentucky coal" apparently only applies to facilities which it owns or controls and not that of any potential competitor.

### CONCLUSION

BREC's Motion should be denied. Thoroughbred's Application complied with KRS 278.706 and the Board has already determined the Application is complete. For the reasons set out above, Thoroughbred believes BREC's claims are without merit and should not be further considered by the Board. To the extent the Board is inclined to give any consideration to BREC's claims, the matters can be better addressed in Prefiled Testimony and at any Evidentiary Hearing.

For the reasons set forth above, BREC's Motion should be denied.

Respectfully submitted,



Carl W. Breeding  
Holland N. McTyeire, V  
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COUNSEL FOR THOROUGHBRED  
GENERATING COMPANY, LLC

## CERTIFICATE OF SERVICE

It is hereby certified that a copy of the Response Of Thoroughbred To BREC's Motion to Deny Application was sent by United States First Class Mail, sufficient postage prepaid, to the following this the 12<sup>th</sup> day of September, 2003:

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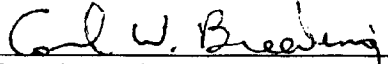
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GENERATING COMPANY, LLC

LOU-809988.1



# **EXHIBIT A**



Paul E. Patton  
Governor

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Chairman, Kentucky Public Service  
Commission

Gary W. Gillis, *ex officio*  
Kentucky Public Service Commission

Robert E. Spurlin, *ex officio*  
Kentucky Public Service Commission

Hank List, *ex officio*  
Secretary, Kentucky Natural Resources  
and Environmental Protection Cabinet

Marvin E. Strong, Jr., *ex officio*  
Secretary, Kentucky Economic  
Development Cabinet

August 5, 2003

Honorable Carl W. Breeding  
Greenebaum Doll & McDonald PLLC  
229 West Main Street  
Suite 101  
Frankfort, KY 40601

Dear Mr. Breeding:

Re: Case No. 2002-00150  
Thoroughbred Generating Company, LLC  
Deficiency Cured

Dear Mr. Breeding:

The Board staff has reviewed your response of August 4, 2003 and has determined that your application in the above case now meets the minimum filing requirements set by our regulations. Enclosed please find a stamped filed copy of the first page of your filing. This case has been docketed and will be processed as expeditiously as possible.

If you need further information, please contact my staff at 502/564-3940.

Sincerely,

Thomas M. Dorman  
Executive Director  
on behalf of  
The Kentucky State Board on  
Electric Generation and Transmission Siting

cc: Attached List  
Enclosure



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

# **EXHIBIT B**



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Business » News

Thursday, September 04, 2003

# Utility opposes power plant's application Big Rivers battles Peabody Energy plan

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By **BILL WOLFE**  
bwolfe@courier-journal.com  
The Courier-Journal

Citing what it calls a "fatally incomplete" permit application for Peabody Energy's proposed Thoroughbred Energy Campus in Muhlenberg County, neighboring utility company Big Rivers Electric Corp. has asked a state board to deny a siting permit for the Western Kentucky project.

Big Rivers, which sells power to 105,000 customers in 22 Western Kentucky counties, filed a motion Tuesday with the state Board on Electric Generation and Transmission Siting, asking it to turn down the application to construct a \$2 billion coal-fired plant near Central City.

The siting board is one of the final hurdles for the 1,500-megawatt merchant power plant. Thoroughbred already has received a permit from the Kentucky Division of Air Quality, although it is being challenged in court by the Sierra Club, Valley Watch Inc. and three individuals. The plant would rise on a reclaimed Peabody mine site and would burn coal from Peabody holdings in the area.

Big Rivers president and chief executive Michael Core said yesterday the company wants "to make sure there's no adverse impact to our ratepayers from the construction of Thoroughbred."

A generation and transmission cooperative, Big Rivers is owned by three member distribution systems: Jackson Purchase Energy Corp. in Paducah; Kenergy Corp. in Henderson; and Meade County RECC in Brandenburg.

**Update**

**Last we knew:**

Peabody Energy's plan to build a merchant electricity-generating plant in Western Kentucky was slowly moving through the regulatory process, with the state Board on

"We welcome the expansion of generation in Kentucky and the use of Kentucky coal," Core said. However, Big Rivers is concerned that Thoroughbred could put new demands on Big Rivers power lines, and that Big Rivers customers would have to pay for upgrades.

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Electric Generation and Transmission Siting taking up whether a permit should be issued.

**The latest:**

Big Rivers Electric Corp., which operates a smaller power plant nearby, filed a motion to deny the permit, arguing that the siting board failed to explore all possible locations for the Thoroughbred Energy Campus.

**Why it's news:**

Using new technology, Peabody says the \$2 billion, 1,500-megawatt plant could burn Kentucky's high-sulfur coal, which would help the area's mining industry.

**For more info:**

[www.psc.state.ky.us](http://www.psc.state.ky.us)

Thoroughbred has promised to boost Muhlenberg County's coal-mining industry by burning as much as 6 million tons a year of high-sulfur coal with a new generation of pollution-control equipment. The Thoroughbred plant has received strong support in the county, where it is seen as a boon to coal mining and the local economy.

In its motion asking the state board to deny Thoroughbred's siting request, Big Rivers argued that the application did not contain an adequate analysis of the proposed plant's economic impact on the region, as required by law. Big Rivers also said the application failed to describe efforts to place the operation next to existing generating facilities.

Kentucky requires the siting board to consider whether a proposed power plant will locate on a site with existing generating facilities, but does not necessarily give preference to such sites.

The General Assembly, which created the siting standards last year, "clearly intended that the board weigh the positive economic benefits of a merchant generating project against the negative implications of the projects," the Big Rivers motion said. Unless Thoroughbred provides an analysis of both sides of the issue, the board "cannot perform its duties," the motion asserts.

Big Rivers also raised questions about Thoroughbred's emissions, noting that the plant "could significantly impact future economic development" in areas within about 60 miles of the plant, including Bowling Green and Elizabethtown.

Asked whether the Big Rivers motion threatened Thoroughbred, Svec said, "We believe that our permit application is complete and it is strong."

The siting certification is determined by a seven-member board administered through the Kentucky Public Service Commission, but the members "can't comment on a matter that's pending before them," spokesman Andrew Melnykovich said yesterday.

Big Rivers is also worried that Thoroughbred would limit expansion potential at its D.B. Wilson coal plant in Ohio County, about 8 miles from the proposed site in Muhlenberg County.

The 2,000-acre Wilson site was designed to accommodate up to four generating units of up to 500 megawatts each, Core said, but just one unit has been built so far. Peabody's plans could devalue the Ohio County property, he said.

Big Rivers had hoped to partner with Peabody to add capacity at the Wilson site, rather than see a new location developed. "It would make sense," Core said, but the St. Louis-based energy company never entered any meaningful discussions.

Vic Svec, vice president of public and investor relations for Peabody, said the company did talk with Big Rivers and had considered "a number of alternative sites," but "we strongly believe that our current location is preferable."

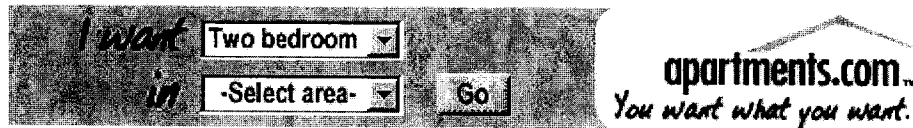
Thoroughbred's application to the siting board was certified as complete Aug. 4, giving the board 120 days to make a ruling, Melnykovich said. Today is the final day for Muhlenberg County or a group of its residents to ask the board for a local hearing on the siting request, he said, and there had been no requests as of yesterday.

The board is expected to conduct "a formal evidentiary hearing" before issuing its ruling, he said.

There are seven members on the siting board: the three PSC commissioners, two local-government representatives from the proposed plant site and the secretaries or other representatives of the state's cabinets for Natural Resources and Environmental Protection and Economic Development.

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# **EXHIBIT C**

## **6. ECONOMIC IMPACT ON THE REGION**

**SB 257 Section 4(2)(j)**



## **6. Economic Impact - SB257 4(2)(j)**

The proposed Thoroughbred Generating Company will have a tremendous positive economic impact on the Central City/Muhlenberg County area as well as a seventeen county region of western Kentucky. It has been estimated that the Thoroughbred project is expected to create an annual average of more than \$98 million in new spending.

Construction of the Thoroughbred Generating Station will occur over a four and one half year period. The average number of workers will be approximately 1,500 with the maximum at peak of 2,900. These workers will most likely be residents of the western Kentucky area. Some workers will temporarily relocate to the area during the construction.

When operational, the power plant and mine together will employ approximately 450 full time workers. It is anticipated that approximately 400 of those workers will reside in Kentucky. An estimate of indirect and induced jobs adds another 633 job years annually for the region.

In addition to the jobs created, Thoroughbred, its contractors, and employees will purchase many goods and services from the surrounding area and Kentucky. It is estimated that there will be \$3.345 billion in cumulative new spending over the 30 plus years of construction and operation.

Attached is an analysis prepared by KPMG LLP Economic Consulting Services which details the economic impacts for Kentucky which would likely result from construction and operation of the Thoroughbred Energy Campus. In addition an analysis by Hill & Associates is also attached. The Hill report outlines the long-term economic advantages of coal fueled power plants over gas fueled plants.

# **EXHIBIT D**

## **9. Efforts to Utilize Existing Electric Generating Facility Sites**

**SB 257 Section 4(2)(g)**

**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.

# **EXHIBIT E**

**A Cumulative Assessment of the  
Environmental Impacts  
Caused by Kentucky Electric Generating  
Units**

**Prepared by:  
The Kentucky Natural Resources and  
Environmental Protection Cabinet**

**In response to Executive Order 2001-771**

**December 17, 2001**



**Commonwealth of Kentucky  
Natural Resources and Environmental Protection Cabinet  
Office of the Secretary  
Frankfort, Kentucky 40601  
(502) 564-3350**

## **Appendix A**

# **U.S. EPA CMAQ Modeling Results Power Generation Units in Kentucky**



**Prepared by:**

**Kentucky Department for Environmental Protection**

**Division for Air Quality**

**Program Planning and Administration Branch**

**December 17, 2001**

There were some instances of "disbenefit" in areas. This means that in some instances, zeroing out all power plant emissions in the state actually showed an increase in projected ozone concentrations, generally in urban areas.

### **Fine Particulate Matter**

Fine particulate has two standards, a 24-hour concentration standard which is set at 65 micrograms per cubic meter (ug/m<sup>3</sup>) and an annual standard set at 15 ug/m<sup>3</sup>. These standards did not exist in 1995, so no historic monitoring data exists for comparison. However, a comparison can be made to recent fine particulate in an attempt to correlate projected emissions increases to present day monitoring results. Based on recent monitoring reports, Kentucky has no areas out of compliance with the 24-hour fine particulate standard, but has several areas which could fall out of compliance in the future.

Modeling was performed by U.S. EPA for fine particulate and for sulfates which is a subset of fine particulates. For fine particulate, hourly average concentrations and changes in those concentrations were determined for the addition of proposed power plant emissions and the removal of existing power plant emissions.

Due to the short time for completing the modeling exercise, U.S. EPA was unable to perform the routine base simulation model evaluations and was only able to perform limited quality assurance on the output runs. U.S. EPA has noted that they are fairly confident of the modeling results within Kentucky, but not as confident on results outside Kentucky's boundaries.

### **Proposed Units**

New electric generating units contribute fewer emissions of fine particles than existing power plants. Projected SO<sub>2</sub> emissions from proposed new power plants are anticipated to be



approximately 87 tons per summer day. The U.S. EPA model projects the additional emissions from the new electric generating units will contribute insignificant amounts in limited areas throughout the state. Impacts of up to 1.144 ug/m<sup>3</sup> for an hourly average are shown in the results and these impacts are generally in areas with proposed new units.

The second round of modeling performed by U.S. EPA for the fine particulate standard, where all emissions from existing electric generating units were removed, showed a wide range of impacts. In general, existing coal burning electric generating units play a significant role in fine particulate formation. Existing units generate approximately 2,264 tons of SO<sub>2</sub> per summer day. In Kentucky, maximum contributions up to 23.75 ug/m<sup>3</sup> for an hourly average were modeled. However, some degree of impact is seen on a wider regional/state scale for each day of the modeling analysis.

The separate modeling performed for sulfates mirrors the results of those found for total fine particulate. Modeled increases are seen in very limited areas with a range from 0.284 through 1.0 ug/m<sup>3</sup>.

### **Visibility**

In our nation's scenic areas, the visual range has been substantially reduced by air pollution. In eastern parks, average visual range has decreased from 90 miles to 15-25 miles. Typically, in Kentucky, sulfates and to some extent nitrates, are the major contributors to decreasing visibility.

While there is no one definition of visibility that meets all the criteria of "seeing" landscape features, a number of visibility indices have evolved. Gauging whether visibility is getting better or worse is sometimes expressed in terms of "deciviews." Deciviews represent

The model utilized emission data for all sectors – mobile, area, point, and biogenic (natural sources). Emissions expected from new power plants are dwarfed by the current emissions from existing power plants, and are even smaller when compared to the overall emission inventory totals from all sources. Clearly, the impacts from electric generation are more significant from the existing facilities than that predicted from new facilities.

The new power plant emissions appear to pose no problems for future compliance with the 1-hour ozone standard and appear to have little impact on future compliance with the short-term 24-hour fine particulate standard. The modeling was inconclusive regarding visibility impacts and no conclusions are being drawn regarding visibility. The one issue of some significance is related to the 8-hour ozone standard.

Official determinations of compliance with the 8-hour ozone standard have not been made at this point and may not occur until 2004 or 2005. Air quality monitoring data has been collected for a number of years and indicates that several areas of the state are not complying with the 8-hour standard. At least the Ashland and Henderson/Owensboro areas would appear to be adversely impacted by the increased emissions respectively from Dynegy Riverside in Lawrence County and the Grane Creek and Cash Creek facilities in Henderson County, but further consideration is warranted.

Coupled with the increase in emissions which Kentucky will experience from new power generation facilities is a substantial decrease in NOx emissions from existing power plants mandated by the NOx SIP call. These reductions are to be achieved by May 2004. While these reductions alone do not appear to fully resolve the 8-hour ozone compliance issues in these two areas, the analysis indicates that significant improvements will occur. Mechanisms will exist in the federal requirements currently being developed to guide states in enforcing the 8-hour